2014 - Employment Bills After First Crossover

Employment Practices and Employment Rights

HB 1814 HD2  Direct Deposit of Wages; Debit Card Payment – Clarifies that employers may pay wages by direct deposit under certain conditions. Allows employers to pay wages by pay cards or similar means of electronic payment card under certain circumstances. Makes employers responsible for any fees incurred if an employer has insufficient funds for the direct deposit. Creates an exception to the State's Money Transmitters Act for use of pay cards that cannot be used internationally, be used for transfers from person to person, or be reloaded from a non-depository source.

HB 2400  Temporary Disability Insurance ("TDI"); Organ Donation – Revises the definition of “disability” under Hawaii’s TDI law to include a disability caused by “organ donation.”

SB 3126 SD2  Non-compete and Non-solicitation Agreements; Technology Businesses; Licensed Physicians – Prohibits the use of non-compete agreements and non-solicitation agreements against employees in an employment contract, post-employment contract or separation agreement for employees of a technology business or for licensed physicians. Applies to agreements entered into after June 30, 2014 and all amendments adding or amending non-compete and non-solicitation clauses in existing written agreements created prior to July 1, 2014.

Minimum Wage

HB 2580 HD1  Minimum Wage; Tip Credit Repeal; CPI – Increases the State minimum wage to $7.75 on January 1, 2015; $8.50 on January 1, 2016; $9.25 on January 1, 2017; and $10.00 on January 1, 2018. Increases tip credit to 50 cents on January 1, 2015; 75 cents on January 1, 2016, and $1.00 on January 1, 2017. Provides that tip credit can be used only when employee earns at least 250% of the poverty level as determined by the DLIR.

SB 2609 SD1  Minimum Wage; Tip Credit Repeal; CPI – Increases the State minimum wage to $8.20 on January 1, 2015; $9.15 on January 1, 2016; and $10.10 on January 1, 2017. Blank ($__) tip credit.

Workers’ Compensation (“WC”)

HB 1973 HD1  WC; Penalty for Failure to Timely Pay TPD – Imposes a penalty on an employer who does not pay an employee temporary partial disability benefits within fourteen calendar days after the end of the employee's customary work week. Clarifies that an eligibility determination for disability benefits depends on the attending physician to certify the employee's disability every thirty days. Clarifies that the failure of the employee's physician to certify does not disqualify the employee from disability benefits. Allows one-time retroactive certification.
**Legislative Digest**

*2014 – Employment Bills After First Crossover*

**Page 2**

HB 1974 HD2  **WC Fee Schedule; Annual Review** – Requires DLIR to update the workers’ compensation medical fee schedule annually, and in an amount that exceeds 110% of the fees prescribed in the Medicare Resource Relative Value Scale for Hawaii. Blank ($__) appropriation.

SB 2923 SD2  **WC Settlements** – Provides that settlements in workers’ compensation cases involving third-party liability do not require approval by the Director of Labor and Industrial Relations.

HB 2579  **WC; Psychological and Psychiatric Services** – Provides that any employee suffering a work injury shall be entitled to up to 17 visits for psychological and psychiatric services, if performed within a 60 day period.

SB 2064 SD1  **WC Repackaged Drugs** – Limits the reimbursement payments of prescription medications, including relabeled, repackaged, or compounded prescription medications, in workers’ compensation claims to an unspecified percentage of average wholesale price. Specifies that payment for a prescription drug that is not available at a retail pharmacy is not reimbursable. Requires motor vehicle insurance benefits to automatically adopt the prescription drug pricing protections associated with the workers’ compensation supplemental medical fee schedule, unless otherwise modified by the Insurance Commissioner through rulemaking.

**Health and Insurance**

HB 1752 HD1  **Cost-Effective Healthcare** – Appropriates funds to provide primary medical, dental, and behavioral healthcare to uninsured and underinsured patients and restores basic adult dental benefits to Medicaid enrollees. Appropriates unspecified ($__) amount to community health centers to provide outreach and eligibility services as well as behavioral services and to establish health care homes for Medicaid enrollees.

HB 1754 HD2  **Medicaid Buy-In Program; Disabled Workers** – Establishes and appropriates funds for the Medicaid buy-in program for workers with disabilities. Blank ($__) appropriation.

SB 2525 SD2  **Podiatrists** – Conforms the definition of "podiatric medicine" to national standards regarding diagnosis and treatment of the foot and ankle. House version allows podiatric physicians to perform ankle fracture surgery if physician is board qualified/certified in reconstructive rearfoot ankle surgery by the American Board of Podiatric Surgery and completed a 36-month residency.

HB 1880 HD2  **Alzheimer's Disease and Related Dementia Services** – Deletes the provision requiring the Director of Health to hire the Alzheimer's Disease and Related Dementia Services Coordinator. Establishes the Elder Justice Coordinator. Appropriates funds for the Alzheimer's Disease and Related Dementia Services Coordinator position, various senior centers, Elder Justice Coordinator position, and services and programs to prevent elder financial exploitation.

SB 2467  **Advance Practice RNs; Scope of Practice** – Expands scope of practices that can be performed by APRNs, including certification for disability, renewal of driver’s licenses, exemption from seatbelts, child immunization, daily living and cognitive impairment for insured’s need for long-term care, and other duties.
HB 2115 HD1 **Chiropractic Care; Med-QUEST and Medicaid** – Requires Med-QUEST and Medicaid coverage for chiropractic care, limited to 24 visits per calendar year.

HB 2269 HD1 **Health Insurance Premium Information** – Authorizes the Insurance Commissioner to collect and publish health premium information.

SB 1227 SD2 **Health Coverage Brain Injuries** – Requires certain insurance contracts and plans to provide coverage beginning 1/1/2015 for treatment of brain injuries, including cognitive and neurocognitive therapy, neurobehavioral and neuropsychological testing or treatment, and necessary post-acute transition services or community reintegration activities for a period of at least twenty years from the date the injury occurred and up to a lifetime cap per person of $300,000. Requires auditor to conduct an economic impact study.

SB 2054 SD3 **Health Insurance; Autism Spectrum Disorders** – Requires health insurers, mutual benefit societies, and health maintenance organizations to provide coverage for autism spectrum disorder treatments.

SB 2054 SD2 **Health Coverage Brain Injuries** – Requires certain insurance contracts and plans to provide coverage beginning 1/1/2015 for treatment of brain injuries, including cognitive and neurocognitive therapy, neurobehavioral and neuropsychological testing or treatment, and necessary post-acute transition services or community reintegration activities for a period of at least twenty years from the date the injury occurred and up to a lifetime cap per person of $300,000. Requires auditor to conduct an economic impact study.

SB 2194 SD1 **Birthing Facilities; Congenital Heart Disease Testing** - Requires birthing facilities to perform a critical congenital heart defect screening using pulse oximetry on every newborn in its care prior to discharge from the facility, with certain exceptions. Requires the department of health to adopt rules pursuant to chapter 91 regarding newborn critical congenital heart defect screening using pulse oximetry. Blank ($__) appropriation.

SB 2349 SD1 **Drug and Alcohol Treatment** – Creates statewide pilot program to treat chronic, substance-dependent adults to be established by the Department of Health. Services would include individual, group, and family counseling; intensive case management and referral; medication management; cognitive-behavioral skill training; and daily living skills, and supportive services, including housing assistance, employment training, job placement, and continuing care support, to chronic, substance-dependent adults. Blank ($__) appropriation.

SB 2469 SD2 **Telehealth; Insurance and Reimbursement** – Requires reimbursement for services provided through telehealth to be equivalent to reimbursement for the same services provided via face-to-face contact between a health care provider and a patient. Clarifies that a health care provider of telehealth includes primary care providers, mental health providers, and oral health providers, such as physicians and osteopathic physicians, advanced practice registered nurses, psychologists, and dentists. Amends references to "telemedicine" in the Hawaii Revised Statutes to "telehealth" for consistency.

SB 2869 SD2 **Privacy of Health Information** – Provides confidentiality protections for developmental disability and mental health information. Allows for reasonable use and disclosure as provided by the Health Insurance Portability and Accountability Act.

SB 3064 SD2 **Hawaii Health Systems Corporation** - Allows for the transition of the Hawaii health systems corporation, a regional system, to a nonprofit hospital corporation incorporated in Hawaii before January 1, 2000. Requires the nonprofit hospital corporation to maintain equivalent services in acquired regions for no less than five years. Requires the State to continue to meet all financial obligations to public employees, including all benefits, pensions, and other financial obligations negotiated with public employees' unions before the effective date of this measure.
Healthcare Industry; Licensing

HB 1882 HD2 SB 2468 SD1: Podiatrists; Licensing Requirements – Adopts the national standard of a minimum of 24 months in an accredited podiatric residency prior to licensure as a podiatrist. Also requires applicant for licensure to have completed at least 12 months in an accredited podiatric residency; have at least 10 years of active licensed experience in podiatric medicine in another state; and hold a current, unencumbered license in podiatric medicine in another state.

HB 2031 SB 2466 SD1: Marriage and Family Therapists; Continuing Education – Requires licensed marriage and family therapists to complete a minimum of 45 continuing education credit hours, including six hours in ethics courts, during each licensing period.

SB 2472 SD2: Occupational Therapists; Licensing – Establishes an occupational therapy program and licensing requirements for occupational therapists and occupational therapy assistants. Blank ($__) appropriation.

SB 2491: Advance Practice RNs; Licensure – Technical amendments to Hawaii APRN licensing statute to align with federal law. Deletes reference to “recognized” as an APRN; maintains language requiring “licensure.”

SB 2490 SD2: Nurses; Continuing Competency and Licensure – Requires licensed registered nurses and licensed practical nurses to submit evidence of continuing competency at each renewal period, beginning with the June 30, 2017, licensing biennium. Requires the department of commerce and consumer affairs, in collaboration with the center for nursing, to convene a stakeholder group to address any outstanding issues associated with the implementation of the continuing competency requirements for nurses and report to the legislature.

Hawaii Health Connector

HB 2529 HD3: Hawaii Health Connector; State Entity; Board Composition – Reduces the membership of the Connector board of directors from fifteen to ten members and changes the composition and voting status of the board. Creates the consumer, patient, business, and health care advisory group; health insurers advisory group; and the insurance producers advisory group to advise the Connector board of directors. Creates the Connector legislative oversight committee to review the financial and operational plans of the Connector. Establishes a sustainability fee to be collected through 6/30/2018, to support operations of the Connector, and establishes a special fund.
SB 2470 SD1 **Hawaii Health Connector; Board** – Lowers the number of members on the board of directors of the Hawaii health connector to twelve, with a maximum of nine total voting members. Removes members representing insurers and dental benefit providers from the board. Requires the governor to designate a state agency representative to serve as the official voting state representative member of the board. Requires all other state agency representatives to be ex officio nonvoting members. Requires the governor to notify the chair of the board regarding the selection of the designated voting and nonvoting state representative members of the board. Establishes procedures for filling vacancies on the board.

**Electronic Cigarettes (“E-Cigarettes”)**

SB 2222 SD2 **Flavored Tobacco Products; Sales Prohibited** – Prohibits the sale, offering for sale, or distribution of any flavored tobacco product, including menthol products, within the State. (Current version does not include e-cigarettes.)

SB 2495 SD3 **E-Cigarettes; Prohibitions; Regulation** – Amends Hawaii’s anti-smoking statute to prohibit the use of electronic smoking devices in places open to the public and places of employment. Defines “smoking” as including inhaling or exhaling of smoke or vapor from an electronic smoking device. Regulates sale of electronic cigarettes in same way as cigarettes and other tobacco products.

**Medical Marijuana; Legalization of Marijuana**

HB 2092 **Medical Marijuana Registration** – Makes clarifying amendments to the registration requirements for medical marijuana. Deletes language requiring the certifying physician to be the patient’s primary care physician.

SB 2574 SD1 **Medical Marijuana Prescriptions** – Permits board certified pain specialist physicians, oncologists, ophthalmologists, and board certified palliative care physicians to prescribe medical marijuana.

**Unlicensed Contractors**

HB 1639 HD1 **Unlicensed Contractor Fraud** – Clarifies the offense of unlicensed contractor fraud by specifying that the "intent to deprive" may be formed before or after the person obtains or exerts control over the property of another.

SB 2076 **Unlicensed Contractors; Aiding and Abetting** – Adds language to unlicensed contractor law stating that any contractor licensee who aids and abets an unlicensed contractor to evade or violate Hawaii unlicensed contractor laws shall be subject to additional discipline to be determined by the contractor licensing board.
**Public Works Contracts**

**HB 1958 HD2**  
**Public Works; Overtime Compensation**  – Establishes the calculation of overtime compensation for government public works construction contracts that are greater than $2,000 to be not less than one and one-half times the laborer's or mechanic's basic hourly rate of pay plus the cost of fringe benefits. Establishes that the overtime compensation rate shall be the rate specified in a collective bargaining agreement if the basic hourly rate is based on such agreement.

**SB 2704 SD2**

**Public Works Contracts**

**HB 1976 HD2**  
**Public Works: Wage and Hour Special Fund**  – Establishes the Wage and Hour for Public Works Projects Special Fund and establishes and funds two additional labor law enforcement specialist IV positions to assist the enforcement of Hawaii's wage and hour law on public construction projects. Specifies a funding mechanism for the special fund and requires an annual report. Exempts the Department of Transportation's Airports Division from the special fund fee. Blank ($__) appropriation.

**SB 3039 SD2**

**Public Works; Public-Private Partnerships**  – Includes public-private partnerships in the definition of “governmental contracting agency” for purposes of Hawaii Little Davis Bacon Act.

**HB 2413 HD1**  
**Public Works; Public-Private Partnerships**

**SB 2260 SD2**  
**Prevailing Wage Violations; Suspensions**  – Increases the suspension period from three to five years for a third violation of a person or firm who violates state law on wages and hours of employees on public works. Clarifies the effective date of suspension. Clarifies that a first, second, or third violation refers to each investigation involving one or more projects, rather than each project, in which a contractor has failed to comply. Specifies that suspension for falsification of records or delay or interference with an investigation is immediate. Specifies who the director of labor and industrial relations must notify of any suspension order.

**SB 2463 SD2**  
**Procurement Contracts; Liability; Duty to Defend**  – Prohibits any contract that is entered into by any governmental body with a person licensed under chapter 464, Hawaii Revised Statutes, from requiring the contractor to defend the governmental body from claims arising out of the contractor's performance under the contract. Provides that the requirement for persons licensed under chapter 444, Hawaii Revised Statutes, to defend a governmental body from claims arising out of the contractor's performance under, or any subcontractor's performance pursuant to, the contract shall not extend beyond the owner's final acceptance of the project and the contractor's warranty period up to a minimum of one year after final acceptance.

**Public Employees**

**HB 1975 HD1**  
**Public Employees; Criminal Background Checks**  – Allows State and counties to perform criminal history record checks on employees, prospective employees, volunteers, and contractors who work with children, have contact with vulnerable adults, have unescorted access to secured areas related to a traffic management center, handle or use firearms for other than law enforcement purposes, and work with an agency's information technology operation and have access to sensitive information. Removes exemption from employer inquiry into and consideration of conviction records of positions involving handling or use of firearms for other than law enforcement purposes.
Legislative Digest
2014 – Employment Bills After First Crossover
Page 7

HB 1977 HD2  Collective Bargaining Arbitration – Amends a provision of the final position in a collective bargaining arbitration to include only proposals that were submitted before impasse. Provides the arbitration panel with authority to determine if final positions submitted are compliant with statutory requirements.

SB 2259 SD1  Nepotism – Prohibits a legislator or public official from advocating for, appointing, employing, promoting, supervising, or advancing any relative to public office or employment. Allows the director of human resources development, administrative director of the courts, and senate president and speaker of the house of representatives to prescribe rules for the temporary employment of relatives in the event of any emergency resulting from a natural disaster or similar unforeseen event or circumstance.

Government Agencies

HB 2038 HD1  DLIR; Human Trafficking Fund – Establishes the human trafficking victim services fund to be administered by the department of labor and industrial relations to provide support and services to human trafficking victims.

HB 2217 HD2  Workforce Development – Authorizes DLIR to establish working groups to identify high growth industries and workforce needs and to develop training programs.

HB 2496 HD1  Hawaii Labor Relations Board (“HLRB”) – Amends the procedures by which regular and acting members of the HLRB are appointed by requiring the Governor, subject to certain limitations, to appoint: (1) the representative of the public; (2) the representative of management after first considering a list of nominees submitted by the counties; and (3) the representative of labor from a list submitted by mutual agreement of the exclusive representatives.

SB 2822 SD1  Criminal Background Checks; Real Estate Appraisers – Allows the DCCA to conduct a criminal background check on applicants for a real estate appraiser license.

SB 3038  HLRB; Replacement of Absent Member; Electronic Service – Authorizes notice of hearings to be served by electronic service through a company designated by the HLRB. Clarifies the process to replace a recused HLRB member representing labor.

Tax; General Excise Tax (“GET”); Tax Credits

HB 1525 HD1  Commission on Fiscal Responsibility and Reform – Establishes a commission within the Department of Taxation (“DoTax”) to review and make recommendations on expenditures, revenue enhancement, and tax reform.

HB 1651 HD1  Use Tax; Internet Sales – Unless preempted by federal law, requires the collection of use taxes by sellers of tangible personal property who enter into agreements under which a person in the State refers potential purchasers to the seller, including by an internet link or web site, or performs related services in the State on behalf of the seller.
HB 1847 HD1  **GET Returns; Electronic Filing**  – Requires all GET returns to be filed electronically beginning January 1, 2015. Authorizes DoTax to assess a fee on returns filed manually.

HB 1848 HD1  **GET Monthly Returns; Electronic Filing**  – Requires all general excise tax monthly returns to be filed electronically, beginning on January 1, 2015. Grants Director of Taxation discretionary authority to assess fines for returns filed manually.

SB 2496 SD2  **Tobacco GET**  – Imposes an excise tax equal to an unspecified percentage of the wholesale price of any tobacco product, other than large cigars, sold by a wholesaler or dealer on and after 1/1/2015, whether or not sold at wholesale, or if not sold then at the same rate upon the use by the wholesaler or dealer. Requires any increase in the excise tax rate imposed on cigarettes or little cigars on or after 1/1/2015 to trigger an automatic excise tax increase on other tobacco products on or after 1/1/2015. Requires the moneys collected under the excise tax on tobacco products to be deposited to the credit of the Hawaii cancer research special fund.

SB 3041 SD2  **Liquor Tax**  – Defines "barrel" and "small brewery or brewpub". Establishes an unspecified tax rate on draft beer and beer other than draft beer that are brewed or produced by a small brewery or brewpub.

SB 3109 SD1  **GET Filing Deadline**  – Amends the date of filing of monthly, quarterly, and semiannual general excise tax returns from the 20th day of the respective applicable month to the last day of the month. Effective upon approval. Applies to taxable years beginning after 12/31/2016.

**Miscellaneous**

HB 1072 HD1  **UH Board of Regents; Financial Disclosures**  – Requires members of the UH Board of Regents to file an annual disclosure of financial interests with the state ethics commission. Make the disclosure public record.

HB 1504 HD2  **Child Support**  – Provides that child support orders are presumed to apply on a per child basis.

HB 1509 HD1  **Use of Mobile Devices on Highways**  – Specifies that operating a motor vehicle in the State while using a mobile device is a traffic infraction. Specifies that the penalty for such an infraction shall be a fine of not less than $250 and that collected fines shall be deposited in the state highway fund.

HB 1634  **Uniform Mediation Act**  – Technical amendment for exceptions for mediation conducted by judges to include only mediations conducted by judges, and not judges who might make a ruling on a case.

SB 2080  **Aging; Long-term Care Education**  – Appropriates general funds to provide ongoing financial support to healthy aging programs and services. Requires the Executive Office on Aging to conduct a public education and awareness campaign on long-term care and appropriates general funds for its support and evaluation.
HB 1889 HD1 **Homeless Person’s Bill of Rights** – Establishes a homeless person’s bill of rights, including rights related to move freely in public spaces, equal opportunity for employment, receipt of medical care, voting, protection of personal information, reasonable expectation of privacy and equal treatment by state and county agencies.

HB 2041 HD1 SB 2623 SD1 **Franchises** – Voids provisions in a franchise that restricts the resolution of claims arising to foreign forums.

HB 2243 HD1 **Criminal Background Checks; Care or Care Placement Services** - Allows qualified entities to conduct state and national fingerprint-based criminal history record checks on their applicants, employees, and volunteers who provide care for children, vulnerable adults, or the disabled, and to receive the results directly.

SB 2452 **Breastfeeding Exemption from Jury Duty** – Exempts breastfeeding mothers from jury duty for up to one year from the time the mother began breastfeeding the child.

SB 2486 SD1 **Private Guards; Continuing Education** – Reduces continuing education requirement to four hours every two years instead of annually. Delays renewal requirement until June 30, 2016 instead of 2014. Repeals sunset provision.

SB 2497 SD2 **Tobacco Regulations; License Fee** – Increases the license fee for persons engaged as a wholesaler or dealer of cigarettes or tobacco products. Increases the retail tobacco permit fee for retailers engaged in the retail sale of cigarettes and other tobacco products. Specifies that revenue from the license and permit fees shall be deposited into the Hawaii tobacco prevention and control trust fund.

SB 2682 SD1 **Financial Disclosures; Public Utilities Commission** – Requires the financial disclosure statements of the commissioners of the public utilities commission to be made available for public inspection and duplication.

SB 2687 SD1 **Sex Assault on a Minor; Statute of Limitations** - Allows a victim of child sexual abuse to bring a civil action against victim's abuser or an entity, except for the State or counties, when the entity was grossly negligent, if the statute of limitations for filing a civil claim has lapsed and the victim has not yet attained the age of fifty-five.

SB 2729 SD1 **Mobile Electronic Devices While Driving** – Amends section 291C-137, HRS, to prohibit the operation of a motor vehicle while using a mobile electronic device held in a person's hand for making or receiving a non-emergency call, texting, or receiving a text message. Adds exemptions to prohibition. Amends the penalties for violations. Deems a violation to be a traffic infraction.