2018 - Employment Bills after Second Crossover

**Employment Practices and Employee Rights**

**HB 1727 SD1** **Paid Sick Leave** – Requires employers to provide paid sick leave to employees who work over 480 hours a year. Provides that employees shall accrue one hour of paid sick leave for every 40 hours of work, up to 40 hours per calendar year unless the employer provides a higher limit. Allows such paid sick leave to be used beginning on the employee’s 481st hour of employment. Requires employees to make good faith effort to provide notice of need for leave.

Permits use of paid sick leave for:

- Employee’s mental or physical illness, injury or health condition;
- Care of a family member with a mental or physical illness, injury or health condition; and
- Closure of the employee’s place of business or child’s school by order of a public official due to a public health emergency.

Exceptions include companies who:

- Adopt or retain a paid sick leave policy that provides more paid sick leave than required by this bill;
- Pay employees a certain amount more than the minimum wage; or
- Waive such requirements through collective bargaining.

Mandates notice and posting requirements.

**HB 2598 SD2** **Paid Family Leave / Expanded TDI** – Requires the Department of Labor and Industrial Relations (“DLIR”) to establish a paid family program which shall include:

- An expanded temporary disability insurance (“TDI”) program;
- Paid family leave coverage for all employees of employers that have at least one employee;
- A system of progressive wage replacement to allow low-income workers to receive a higher percentage of their weekly earnings than average or high-wage earners; and
- Job protection to ensure that utilization of paid family leave does not adversely impact employment.

Requires DLIR to start processing payments by July 1, 2022.

**HB 2602 SD1** **Independent Contractors; Unemployment Insurance** – Adopts the test utilized by the Internal Revenue Service for determining independent contractor status. Test includes three categories (behavioral control, type of relationship, and financial control) and twelve factors.

**SB 2351 HD1** **Pay Secrecy and Pay Transparency** – Prohibits prospective employers from inquiring about or relying on the salary history of an applicant in determining the salary, benefits, or other compensation
for the applicant during the hiring process. Clarifies that this measure does not apply to applicants for internal transfer or promotion with their current employer; background checks; and public employees who are covered by a collective bargaining agreement. Provides that an employer shall not retaliate or discriminate against an employee for, nor prohibit an employee from, disclosing the employee’s wages with other employees.

**SB 2990 HD2 Paid Family Leave** – Establishes a paid family leave fund to be administered by the Department of Human Services (“DHS”). Requires DHS to adopt rules that establish a paid family leave program for all workers by January 1, 2020. Allows DHS to adopt interim rules that are exempt from the HRS Chapter 91 rule making process.

Provides that such a program shall include:

- A minimum of __ weeks of paid leave;
- Paid family leave coverage for all employees of employers that have at least one employee;
- A system of progressive wage replacement to allow low-income workers to receive a higher percentage of their weekly earnings than average or high-wage earners; and
- Job protection to ensure that utilization of paid family leave does not adversely impact employment.

Requires DHS to start collecting payments from employers and employees by July 1, 2021 and process payments by July 1, 2022.

**Minimum Wage**

**HB 1627 SD2 Intellectual Disabilities; Minimum Wage** – Deletes provision in the law that allows employers to pay a special minimum wage for individuals whose earning capacity is impaired by old age or physical or mental deficiency or injury, upon obtaining a certificate from the DLIR.

**Workers’ Compensation (“WC”)**

**HB 1778 SD1 WC; Controverted Claims; Firefighter Coverage** – In the case of a controverted claim, requires the private health care plan of an injured worker to pay for medical care, services, and supplies. When the claim is accepted or determined to be compensable, requires the employer to reimburse the private health care plan and injured worker. For firefighters with at least five years of service, provides that claims for cancer that are accepted or determined to be compensable shall be covered by Hawaii WC laws.

**HB 2202 SD1 WC; Medical Examination; Duly Qualified Physician** – Requires that the physician or surgeon who conducts an independent medical examination of a WC claimant be “duly qualified,” as defined by law. Defines “duly qualified” as (1) being appropriately licensed; (2) possessing medical insurance; and (3) owing the same duty and standard of care to the injured worker as would be owed to a traditional patient.

**HB 2377 SD1 WC; Vocational Rehabilitation** – Provides the following hierarchy of options for vocational rehabilitation training that is required to be in another occupational field: (1) on the job training; (2) training of less than 52 weeks; or (3) training of more than 52 weeks. Further provides that if the first three options are not feasible, self-employment may be considered.
SB 2244 HD2  **WC Opioid Therapy; Prescription Limits** – Requires health care providers in the workers' compensation system who are authorized to prescribe opioids to adopt and maintain policies for informed consent to opioid therapy in situations with higher risk of dependency. Requires DLIR to make available template developed by Department of Health. Establishes seven-day limit for concurrent opioid and benzodiazepine prescriptions, unless an exception applies.

SB 2364 HD1  **WC; Presumption of Compensability; Payment by Employers; Reimbursement** – Requires employers to pay for all medical services required for the employee for the compensable injury and the process of recovery, even when claims are disputed. States that an employer shall not use an investigation to determine compensability as the basis of denying medical services to an employee. Establishes negotiation, notice, and review procedures for disputed claims. Imposes fines and penalties on employers who fail to negotiate in good faith. Provides that employees shall be liable for reimbursement of benefits or payments for any disputed claim that is found to be not compensable.

**Temporary Disability Insurance ("TDI")**

HB 2375 SD1  **TDI; Certification by APRN; Penalties; Notices; Hearings** – Adds advanced practice registered nurses to the list of healthcare professionals who can certify an employee's disability for purposes of Hawaii TDI law. Increases the penalty an employer is assessed for failing to submit timely wage and employment information from $10 to $250.Permits filing of an appeal of a decision related to temporary disability insurance at the various offices of the DLIR throughout the State. Allows the department of send notices of hearing electronically or by first class mail. Allows the parties to a hearing to appear in person, via telephone, or by other communication devices approved by the DLIR. Provides that if any party fails to appear at the hearing, the referee shall issue a decision based on the available information.

**Healthcare and Health Insurance; Prescription Drugs**

HB 1602 SD1  **Opioid; Warning Label** – Requires the inclusion of a label warning of the risks of addiction and overdose on the packaging of any opioid drug dispensed by a health care professional or pharmacist. Requires a health care professional or pharmacist to also include the warning in an acknowledgment signed by the patient or person receiving the opioid drug for the patient.

HB 2128 SD1  **Insurance Coverage; Clinical Victim Support Services; Victims of Sexual Violence and Abuse** – Clarifies that clinical victim support services for victims of sexual violence and abuse are a mental health outpatient services benefit required to be covered under health insurance policies offered by health insurers, mutual benefit societies, fraternal benefit societies, and health maintenance organizations.

HB 2145 SD1  **Mental Health Coverage** – Allows the synchronization of plan participants' medications. Requires plans, policies, contracts, or agreements that are offered by health insurers, mutual benefit societies, and health maintenance organizations and provide prescription drug benefits, to apply prorated daily cost-sharing rates for prescriptions dispensed by network pharmacies for less than a thirty-day supply.

HB 2208 SD1  **Association Health Plans** – Requires association health plan policies to comply with the laws of this State regardless of the association's domicile. Enables certain voluntary associations and
sponsoring associations, including employer associations that issue association health plans, to qualify for authorization to transact insurance in the State.

**SB 2247 HD2**  **Opioid Antagonists; Prescriptions** – Authorizes pharmacists to prescribe, dispense, and provide related education on opioid antagonists to individuals at risk of opioid overdose and to family members and caregivers of individuals at risk of opioid overdose without the need for a written, approved collaborative agreement; subject to certain conditions.

**SB 2340 HD1**  **Health Insurance; Extended Coverage; Preexisting Conditions; Nondiscrimination** – Ensures certain benefits under the federal Affordable Care Act are preserved under Hawaii law, including: extending dependent coverage for adult children up to 26 years of age; prohibiting health insurance entities from imposing a preexisting condition exclusion; and prohibiting health insurance entities from using an individual's gender to determine premiums or contributions. Clarifies that benefits extended by this measure do not apply to limited benefit health insurance.

**Medical Marijuana**

**HB 2729 SD2**  **Medical Cannabis; Omnibus Bill; Employee Protections** – Section 8 provides that employers shall not suspend, discharge, or discriminate against an employee solely because the employee is a registered medical marijuana patient who tested positive for the presence of cannabis on an on-site screening test. Clarifies that this proposal shall not apply to an employee who: (1) fails or refuses to report to a laboratory for a substance abuse test, (2) uses marijuana in his or her workplace, (3) works in law enforcement or in a state correctional facility; (4) whose job requires the employee not to be under the influence of substances, such as a bus driver, a heavy machinery operator, a construction worker, or other employee with a job that has safety issues; and (5) who employer would be in violation of any federal law or regulation by having an employee who tested positive for the presence of cannabis.

**SB 2407 HD1**  **Medical Use of Cannabis Study Group** – Establishes the Medical Cannabis Study Group to examine the legal issues regarding Hawaii's medical use of cannabis law.

**SB 2488 HD1**  **Medical Cannabis; Insurance Reimbursement Working Group** – Establishes the Medical Cannabis Insurance Reimbursement Working Group to address the complexities surrounding the topic of making medical cannabis reimbursable by health insurance.

**Public Employees**

**HB 1725 HD2**  **Collective Bargaining; Employee Payroll Deductions** – Requires public employees in collective bargaining units to provide written notification to the exclusive representative to discontinue payroll assignments within a certain time period. Requires the exclusive representative to forward the notification to the employer within ten business days of receipt.

**HB 2114 SD1**  **Collective Bargaining; Scope of Negotiations** – Provides that negotiations over the implementation of management decisions affecting the terms and conditions of employment that are subject to collective bargaining are not precluded from collective bargaining negotiations. HB 2114 HD1 also specifies that negotiations over the procedures and criteria of certain subjects of bargaining does not compel either party to agree to a proposal or make a concession.
Government Agencies

HB 1647 SD1  **DHS; Employer Report; Public Assistance** – Requires DHS to compile information regarding employers with employees who receive public assistance. Requires DHS to submit an annual report to legislature on the 50 employers with the highest number of employees receiving public assistance. Requires DLIR to share employment data.

HB 1929 SD1  **Hawaii Labor Relations Board (“HLRB”); Emergency Rulemaking** – Requires the HLRB to adopt emergency rules if the Board finds that Hawaii's collective bargaining in public employment law, or the application thereof, is inconsistent with any federal or state law and the adoption of an emergency rule is urgently needed.

HB 1932 SD2  **Emergency Rules; Public Proceedings and Records** – Authorizes agencies to adopt specified emergency rules to lessen disruptions to prior practices caused from changes to federal legislation or federal and state court decisions. Requires a public hearing prior to the adoption of an emergency rule; provided that no less than thirty days' notice shall be given. Provides that an emergency rule will be effective until the Legislature has passed legislation relating to the subject matter of the emergency rule and the legislation has either been enacted or vetoed by the Governor.

HB 2115 SD2  **K-12 Agriculture Workforce Development Pipeline** – Appropriates funds to the Department of Labor and Industrial Relations for the K-12 agriculture workforce development pipeline initiative. Requires annual reporting on the effectiveness of the initiative. Amends Act 163, SLH 2017, by amending the funding source for appropriations made to the Department of Agriculture's biosecurity program.

HB 2174 SD1  **DBEDT; Business Development** – Establishes the high-growth grant program and special fund to provide grants to qualified businesses for certain business development activities. Makes an appropriation.

SB 2363 HD1  **DHRD; Supervisor Pilot Program** – Requires DHRD to establish a working group to establish a pilot program where candidates for promotion to supervisor or professional positions can shadow supervisors and professionals and receive supervisory and leadership training. Appropriates funds

SB 2801 HD1  **Labor Law Enforcement Special Fund** – Establishes the Labor Law Enforcement Special Fund to finance the collection of penalties for violations of labor law; establishes two positions, including an attorney and legal assistant, in the Department of the Attorney General to represent the DLIR in collecting penalties for violations of law.

SB 2803 HD1  **Boiler and Elevator Safety Law; Fund** – Makes housekeeping amendments to Boiler and Elevator Safety Law; extends the time from five to ten years for the Director of Labor and Industrial Relations to reimburse the general fund from the Boiler and Elevator Revolving Fund.

General Excise Tax (“GET”); Tax Credits

HB 1605 SD1  **GET; Repeal of Certain Provisions** – Removes unnecessary or redundant provisions of the general excise tax laws.
HB 2416 SD1 **GET; Use Tax; Intangible Property** – Clarifies that intangible property exempted from the general excise tax shall be used outside the State. Intangible property acquired from an unlicensed seller and used in the State is subject to the use tax of 4 percent of the value of the property.

HB 2462 SD2 **GET Exemption; Farm Equipment and Machinery** – Exempts gross proceeds arising from sales of farm equipment and machinery to certain producers of agricultural products from the general excise tax.

HB 2659 SD2 **Kapolei Jobs Initiative Pilot Program; Tax Credits** – Establishes a temporary Kapolei jobs initiative tax credit that offers incentives to increase the number of businesses willing to establish themselves or open new locations in the Kapolei region. For taxable years beginning after 12/31/2018.

SB 2905 HD1 **Tax Credit; On-Site Child Facilities** – Establishes an income tax credit for employers who create on-site early childhood facilities. Establishes and appropriates funds for one On-site Early Childhood Facility Coordinator position.

**Miscellaneous**

HB 1621 SD1 **Merchandise Returns and Refunds; Defective Goods; Damaged Goods; Shipping Charges; Handling Charges; Unfair and Deceptive Trade Practices** – Part I: Prohibits a merchant from charging a purchaser any fee, including a processing fee or an administrative fee, to repair, replace, or refund damaged or defective goods. Part II: Requires franchisees to disclose their non-participation in advertising campaigns of the franchise in which discounts or promotions are offered. Prohibit franchisors from limiting or restricting the disclosures.

HB 1774 SD2 **Income Withholding; Restitution; Crime Victims** – Requires employers to withhold income from an employee and transmit payment to the Department of the Attorney General upon receipt of an order to withhold income pursuant to a judgment for restitution in a criminal proceeding. Provides that an employer who fails to comply with the income withholding order shall be liable to the victim or the Department of the Attorney General for the full amount of all sums ordered to be withheld and transmitted.

HB 1906 SD2 **Health Care Work; Assault** – Makes intentionally or knowingly causing bodily injury to a health care worker a Class C felony.

HB 2003 SD1 **DUI; Employer Vehicles** – Allows requests for permits that authorize the respondent or defendant to operate an employer's vehicle during the period of license revocation to be supported by the employer's sworn statement attesting to the period of the specified assigned hours of work that the defendant will drive the vehicle for purposes of employment.

HB 2019 SD1 **Homeless Employee Grant Program** – Establishes a 3-year homeless employment grant program that provides homeless individuals with work opportunities and connects them with service providers. Requires the Governor's Coordinator on Homelessness to submit a report to the Legislature prior to the 2019 Regular Session on implementing the program. Appropriates funds.

HB 2671 HD1 **Displaced Workers; Molokai** – Appropriates funds to the Office of the Governor; Department of Labor and Industrial Relations; Department of Business, Economic Development, and Tourism; Department of Human Resources Development; and Department of Agriculture to collaboratively develop and implement solutions to assist dislocated workers and address the overall continued
availability of gainful employment on the island of Molokai. Requires the Office of the Governor to submit a report detailing the efforts made and expenditures of all offices and departments appropriated funds to assist dislocated workers and address the overall continued availability of gainful employment on the island of Molokai.

SB 2461 HD1  **Service Animals; Misrepresentation; Definition** – Establishes the offense of "misrepresentation of a service animal". Changes the term "service dog" to "service animal" and amends the definition of that term to conform with the Americans with Disabilities Act of 1990. Imposes a fine of $___ for each violation.

SB 2585 HD1  **UH Graduate Students; Collective Bargaining** – Establishes a collective bargaining unit for graduate student assistants employed by the University of Hawaii.

SB 2719 HD1  **Sexual Abuse of a Child; Statute of Limitations** – Extends the period during which a victim of child sexual abuse may bring an otherwise time-barred civil action against the victim's abuser or an entity with a duty of care.

SB 2742 HD1  **Criminal History Record Information** – Resolves inconsistencies in the processing of expungements and public dissemination of criminal history record information relating to cases in which the defendant is acquitted or charges are dismissed by reason of physical or mental disease, disorder, or defect under HRS Chapter 704, or is involuntarily hospitalized under HRS Section 706-607.