

April 15, 2019

## 2019 – Employment Bills after Second Crossover

### Employment Practices and Employee Rights

**HB 6 SD1 Social Media Privacy** – Prohibits employers from requiring or coercing employees and prospective employees to provide information about or access to a protected personal online account, including (1) login credentials; (2) contents of the account; (3) altering account settings for increased accessibility; or (4) actual access to the account in the presence of the employer. Prohibits employers from retaliating against employees who refuse to provide such information or access.

Clarifies that these requirements do not prevent an employer from (1) accessing information that is publicly available; (2) complying with federal or state law; (3) implementing and enforcing a policy for use of employer-owned devices business use of employee-owned devices; and (4) conducting an investigation based upon specific facts about the employee’s protected personal online account.

Requires that employers who acquire login information of an employee’s protected personal online account through an information technology monitoring system shall (1) not use the information to access an account; (2) make a reasonable effort to keep the information secure; (3) dispose of the information. If the employer is conducting an investigation of an actual or suspected security breach, such information shall be disposed of afterwards.

**HB 32 SD2 Family Leave Study; Deadline Extension** – Extends the deadline for the Legislative Reference Bureau to submit the sunrise analysis required by Act 109, Session Laws of Hawaii (“SLH”) 2018, from 9/1/2019 to 11/13/2019.

**HB 673 SD2 Medical Marijuana Non-Discrimination** – Prohibits an employer from discriminating against an employee based on the employee's status as a qualifying patient. Prohibits an employer from taking action against an employee based solely on the employee's status as a qualifying patient or if the results of the employee's drug test are positive for cannabis. Exempts employees in law enforcement or employers who would lose a monetary or licensing related benefit under federal law or regulations.

Clarifies that employers may discipline an employee who is “impaired” while at work. Defines “impaired” as an individual who manifests specific, articulable symptoms while working that decrease the employee’s performance of the duties or tasks of the employee’s job position. Symptoms could include speech, physical dexterity, agility, coordination, demeanor, irrational or unusual behavior, negligence or carelessness, disregard of safety, accidents, or disruption.

**HB 710 SD1 Employment Discrimination; Reproductive Health Decisions** – Adds reproductive health decisions to the list of categories that are protected against discriminatory employment practices. Defines “reproductive health decision” as any use or attempted use of any legal drug,

device or medical device intended to prevent or terminate a pregnancy, or the use or attempted use of any assisted reproductive technology.

HB 1192 SD2 **Equal Pay for Substantially Similar Work; Mandatory Disclosure of Pay Scale and Wage Rates** – Adds several protected classes to Hawaii’s equal pay law and amends the law to require equal pay for “substantially similar” (instead of equal) work. New protected classes include gender identity or expression, sexual orientation, age, religion, color, ancestry, disability, marital status, arrest and court record, and domestic or sexual violence status.

Amends or provides exceptions for:

- Non-discriminatory seniority systems,
- Non-discriminatory merit systems,
- Systems that objectively measure earnings by quantity or quality; and
- Factors that have neither the purpose nor the effect of discriminating on any basis prohibited by this law.

Repeals current exceptions for (1) bona fide occupational qualifications and (2) factors other than sex.

Requires employers to disclose pay scales and wage rates for job positions to applicants and employees, and in job advertisements. Provides that employees can request the wage range on an annual basis for their job title and for jobs that are substantially similar.

HB 1343 SD2 **Hawaii Family Leave Law (“HFLL”); Grandchild** – Expands HFLL to provide one week of leave during any calendar year to care for a grandchild with a serious health condition. Such leave shall be in addition to the four weeks of leave that are already available under HFLL. Allows employees to use up to seven days of paid leave for this purpose.

SB 1041 HD2 **Nondisclosure Agreements; Sexual Misconduct** – Prohibits employers from requiring an employee to enter into a nondisclosure agreement as a condition of employment that prevents the employee from discussing sexual harassment or sexual assault in the workplace or at work-related events. Prohibits retaliation against disclosure of sexual harassment or sexual assault.

Provides exceptions for (1) human resources personnel who are required to maintain confidentiality, (2) employees who are requested to maintain confidentiality during an ongoing investigation, and (3) confidential settlements between an employee alleging sexual harassment and an employer only if the employee consents to confidentiality.

SB 1048 HD1 **Arbitration and Confidentiality Clauses; Sexual Harassment** – Provides that confidentiality clauses in employment contracts are not enforceable as to a sexual harassment claim. Clarifies that no person shall be required to involuntarily disclose or disseminate information of such a claim. Allows for confidentiality agreements as part of a legal settlement of a specific claim. Bans mandatory arbitration agreements as to sexual harassment claims. Makes mandatory confidentiality clauses in an arbitration agreement unenforceable as to sexual harassment claims, provided that parties may voluntarily agree to arbitrate a sexual harassment claim.

SB 1173 HD1 **Child Support; Discrimination Prohibited; Fines** – Amends the income withholding requirements to impose a fine of \$250 against any employer who (1) discharges from employment, refuses to employ, or takes disciplinary action against any noncustodial parent subject to income withholding or (2) fails to withhold support from income or pay the amounts to the Child Support Enforcement Agency (“CSEA”). Amends the amount of the annual fee imposed by CSEA to be in compliance with federal regulations.

**Minimum Wage**

HB 1191 SD2 **Minimum Wage Increase; Qualified Small Business Tax Credit** – Increases the minimum wage as follows:

Full-time employees:

- \$17.00 per hour as of the effective date of this measure.

All other employees:

- \$12.00 per hour on 1/1/2020, and
- \$15.00 per hour on 1/1/2023.

Provides “qualified small businesses” with a tax credit equal to 20% of the increase in hourly wages that are (1) attributable to the increase in the minimum wage and (2) paid each taxable year over the total hourly wages paid in the prior taxable year. Limits the credit to \$50,000 per taxable year. Defines “qualified small business” as one with 50 or fewer employees.

SB 789 HD2 **Minimum Wage Adjustment; Alternative Rate for Prepaid Health Care Recipients; Persons with Disabilities** – Adjusts the minimum wage as follows:

- \$\_\_ per hour on 1/1/2020,
- \$\_\_ per hour on 1/1/2021,
- \$\_\_ per hour on 1/1/2022,
- \$\_\_ per hour on 1/1/2023, and
- \$\_\_ per hour on 1/1/2024.

For employees who receive employer-sponsored health benefits under the Hawaii Prepaid Health Care Act, provides for the following increases:

- \$\_\_ per hour on 1/1/2020,
- \$\_\_ per hour on 1/1/2021,
- \$\_\_ per hour on 1/1/2022,
- \$\_\_ per hour on 1/1/2023, and
- \$\_\_ per hour on 1/1/2024.

Additionally, repeals provision in the law that allows employers to obtain a certificate from the Department of Labor and Industrial Relations to pay below the minimum wage to employees with physical or mental impairments.

**Workers’ Compensation (“WC”)**

HB 390 SD2 **WC Examinations; Recording Devices** – Makes permanent Act 172, SLH 2017, which (1) gave employees the right to have a chaperone present during an independent medical examination (“IME”) and record the IME, at the employee’s expense, upon approval of the examining physician and (2) provided that the physician may suspend the examination if the employee or chaperone is being obstructive until such time that the obstruction ends.

HB 912 SD1 **WC; Employer Payment of Medical Bills** – Codifies portions of Section 12-15-94 of the Hawaii Administrative Rules which requires an employer to pay for all medical services related

to an employee's compensable injury and the employee's rehabilitation. Provides that the employer shall pay for all charges billed within 60 days, unless there is reasonable agreement and the employer has submitted timely notice of such disagreement.

**Health Insurance**

SB 493 HD1 **Health Care Insurance; Step Therapy** – Prohibits health insurance plans from requiring an insured, subscriber, member, or enrollee diagnosed with stage two cancer to undergo step therapy prior to covering the insured for the drug prescribed by the insured's health care provider if the prescribed drug is (1) an investigational new drug or (2) a prescription drug that is approved by the U.S. Food and Drug Administration, whose use is consistent with best practices for treatment of stage two cancer and is listed in the insurer's prescription drug formulary.

Defines "step therapy" as a protocol that requires an enrollee to use a drug or sequence of drugs other than the drug that is recommended for treatment, before the individual can use the recommended drug.

**Decriminalization of Marijuana**

HB 1383 HD2 **Decriminalization of Marijuana; Expungement of Criminal Records; Working Group** - Decriminalizes the possession of 3 grams or less of marijuana and establishes that the possession is an infraction punishable by a monetary fine of \$30. Provides for the dismissal of criminal charges, and expungement of criminal records, pertaining solely to the possession of 3 grams or less of marijuana. Establishes a marijuana evaluation task force to make recommendations on changing marijuana use penalties and outcomes in the State.

**Contractors; Procurement Contracts**

HB 34 SD1  
SB 1475 HD1 **Foremen; Little Davis-Bacon Act** – Provides that the foreperson classification shall be recognized as a separate wage classification for public works projects and shall follow the requirements stated in the collective bargaining agreement. Defines "foreperson" as a skilled person employed to supervise personnel who work in construction.

HB 158 SD2 **Government Contracts; Payment for Mechanics and Laborers** – Requires contractors or subcontractors on government projects to give laborers and mechanics a copy of their wage rates under the contract, unless there is a collective bargaining agreement. Permits governmental contracting agencies to withhold accrued payments as necessary to pay mechanics and laborers. Requires that contractors for public works projects maintain and submit weekly certified payroll records to demonstrate compliance with wage and hour requirements.

SB 767 HD1 **Contractors; Handyman Exception** – Raises the threshold under the contractor licensing law's handyman exemption from \$1,000 to \$1,500 per project or operation and makes it applicable only to the cost of labor and materials.

SB 1082 HD2 **Liability for Wages of Subcontractors** – Makes general contractors entering into or under contracts in the State for work on buildings, structures, or other private works liable for debt incurred by subcontractors for wages due to claimants for performance of labor in the contract between the general contractor and owner.

SB 292 HD1 **Certified Payrolls** – Specifies the obligations and conditions of contractors performing services in excess of \$25,000 for any governmental agency. Authorizes a governmental agency to withhold portions of payments for certain reasons. Requires the submission of certified copies of payrolls. Specifies the obligations in connection with payrolls and penalties for failing to comply.

### **Public Employees**

HB 157 SD2 **Collective Bargaining; Employee Information Disclosure; Exclusive Representatives** – Expands the types of employee information government agencies must disclose, upon written request, to employee exclusive representatives. Requires that information regarding new hire employees under collective bargaining disclosure requirements be provided to the appropriate exclusive representatives within an unspecified payroll period.

SB 785 SD1 **Collective Bargaining; Benefits** – Allows the scope of collective bargaining negotiations to include benefits. Allows collective bargaining parties to resolve impasses related to contribution disputes through binding arbitration.

### **Government Agencies**

HB 913 SD2 **Hawaii Labor Relations Board (“HLRB”); Electronic Documents** – Authorizes the HLRB to accept paper and electronic filing of documents. Specifies that electronic documents may be filed through a company designated by the Hawaii Labor Relations Board.

HB 914 HD1 **HLRB; Transcripts** – Clarifies that the party seeking judicial review shall bear the cost of preparing a transcript, except as provided by law, in which case the HLRB shall bear the cost of preparing the transcript.

HB 1532 SD1 **HLRB; Hearsay Evidence** – Allows the HLRB to admit and consider hearsay evidence in unfair labor practices proceedings.

SB 1498 HD1 **HLRB; Arbitrator Qualifications** – Gives the HLRB authority to resolve disputes over the qualifications and criteria of the list of five qualified arbitrators to resolve collective bargaining impasses.

### **Miscellaneous**

HB 18 SD1 **Childhood Sexual Abuse; Statute of Limitations** – Repeals statutory limitations on the time period in which a survivor of childhood sexual abuse may file suit and allows suit to be filed “at any time.”

HB 713 SD1 **Homeless Employment Grant Program** – Establishes a three-year Homeless Employment Grant Program that provides homeless individuals with work opportunities and connects them

with service providers. Requires the Department of Human Services to submit a report to the Legislature prior to the 2020 Regular Session. Appropriates funds.

- HB 760 SD1 **Full Service Restaurants; Non-Participation in Promotions** – Requires full-service restaurants to disclose their non-participation in national advertising campaigns that offer a promotion or discount at its entrance or storefront. Provides an exception where the franchisor’s national advertising campaign discloses that the discount or promotion does not apply to the franchisee’s restaurant.
- HB 1165 SD2 **Driver’s License; Gender Designation** - Requires a license or state identification card to include a person's full legal name, date of birth, gender designation, residence address, and license number. Specifies gender designation options of F, M, or X. Prohibits the examiners of drivers to require documentation for an applicant’s selection of gender other than the applicant’s self-certification of their chosen gender.
- SB 821 HD1 **Public Accommodation; Diaper Changing Stations** – Requires all places of public accommodation and state buildings constructed or substantially modified after December 31, 2020 to provide baby diaper-changing accommodations that are equally accessible to men and women.
- HB 944 SD2 **Non-Profit Corporations** – Prohibits purchase of its own memberships by a public benefit corporation. Clarifies functions, duties, and composition of nonprofit boards of directors. Permits boards to take action without a meeting through electronic means. Clarifies time limits for notice to the Attorney General for oversight purposes.
- SB 1374 HD1 **Hawaii Retirement Savings Program** – Establishes a Hawaii Retirement Savings Program for private sector employees. Establishes the Hawaii Retirement Savings Program Administrative Fund. Requires the Department of Budget and Finance to prepare an annual report detailing the Department's activities for the previous fiscal year to the Governor and Legislature. Appropriates funds. Exempts employers if they offered a qualified retirement plan to some or all of its employees within the last five years.