2019 – Employment Bills after First Crossover

**Employment Practices and Employee Rights**

**HB 6 HD3**  
**Social Media Privacy** – Prohibits employers from requiring or coercing employees and prospective employees to provide information about a protected personal online account, including (1) login credentials; (2) contents of the account; or (3) increased accessibility or actual access to the account. Prohibits employers from retaliating against employees who refuse to provide such information.

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 HD1**  
**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, which is currently 9/1/2019. HB 32 HD1 requests a new deadline of 11/13/2019 and SB 308 SD2 requests a deadline of 12/2/2019.

**HB 488 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 and (2) employees who are requested to maintain confidentiality during an ongoing investigation. Both measures also provide an exception for confidential settlement agreements, but under HB 488 HD2 the exception applies only if the employee consents to confidentiality.

**HB 710 HD1**  
**Employment Discrimination; Reproductive Health Decisions; Use of Family Leave** – Adds (1) reproductive health decisions and (2) utilization of family leave 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 HD2  **Equal Pay; Pay Transparency Exceptions; 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.

Clarifies that the prohibition under Act 108, Session Laws of Hawaii (“SLH”) 2018 prohibiting retaliation or discrimination by an employer against an employee for disclosing or inquiring about the wages of other employees does not apply where knowledge of wages stems from human resources, payroll, or legal professional responsibilities in the workplace.

Requires employers to disclose pay scales and wage rates for job positions to applicants and employees, and in job advertisements.

HB 1059 HD1 **Non-compete Agreements; Low Wage Earners** – Prohibits employers from entering into a non-compete or non-solicitation agreement with an employee whose earnings do not exceed the greater of (1) federal or state minimum wage or (2) $15 per hour.

HB 1343 HD1 **Hawaii Family Leave Law (“HFLL”); Grandchild** – Extends HFLL to include care for an employee’s grandchild with a serious health condition.

SB 739 SD1 **Parking Cash Out Program; Working Group** – Establishes a working group to research and explore the idea of a parking cash-out program that would enable businesses and employers to offer a cash allowance to their employees in lieu of employer-subsidized parking.

SB 1046 SD2 **HFLL; Domestic and Sexual Violence** – Allows an employee to take leave under HFLL for reasons related to domestic or sexual violence against the employee or employee’s minor child. Requires an employee to submit certification for such leave. Requires employer confidentiality of information related to domestic or sexual violence against the employee or the employee’s minor child.

SB 1048 SD1 **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. 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 SD1 **Child Support; Discrimination Prohibited; Fines** – Amends the income withholding requirements to impose a fine 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 96 HD1 **Minimum Wage; Counties** – Authorizes the counties to establish a minimum wage that is a higher wage than the state minimum wage under Chapter 387 of the Hawaii Revised Statutes.
HB 1191 HD1  **Minimum Wage Increase; Prepaid Health Care Lower Rate** – Increases the minimum wage as follows:

- $11.00 per hour on 1/1/2020,
- $12.00 per hour on 1/1/2021,
- $13.00 per hour on 1/1/2022,
- $14.00 per hour on 1/1/2023, and
- $15.00 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:

- $10.50 per hour on 1/1/2020,
- $11.00 per hour on 1/1/2021,
- $11.50 per hour on 1/1/2022,
- $12.00 per hour on 1/1/2023, and
- $12.50 per hour on 1/1/2024.

SB 789 SD2  **Minimum Wage Increase; Small Business Tax Credit** – Increases the minimum wage as follows:

- $12.00 per hour on 1/1/2022, 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 paid each taxable year that are 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 less employees and less than $____ in gross income for the taxable year in which the credit is being claimed.

**Workers’ Compensation (“WC”)**

HB 389 HD1  **WC; Independent Medical Examination (“IME”) Deadlines** – Requires that the person performing an IME or permanent impairment rating exam for a workers’ compensation work injury examine the employee within __ calendar days upon receipt of notice. Provides that the employee be provided a copy of the exam within __ calendar days.

HB 390 HD1  **WC Examinations; Recording Devices** – Makes permanent Act 172, SLH 2017, which (1) gave employees the right to have a chaperone present during an 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 HD1  **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 charged billed within 60 days, unless there is reasonable agreement and the employer has submitted timely notice of such disagreement.
Healthcare and Health Insurance; Mandatory Coverage

SB 493 SD2  
**Health Care Insurance; Step Therapy** – Prohibits a health care insurer, mutual benefit society, or health maintenance organization from requiring an insured, subscriber, member, or enrollee diagnosed with stage two through stage four cancer to undergo step therapy prior to covering the insured for the drug prescribed by the insured's health care provider, under certain conditions.

SB 1043 SD2  
**Mandatory Coverage; Preventive Care and Screening; Reproductive Health Care** – Requires health insurers, mutual benefit societies, and health maintenance organizations to provide coverage for a comprehensive category of reproductive health services, drugs, devices, products, and procedures, including (1) preventive care; (2) counseling for sexually transmitted diseases; (3) screening for sexually transmitted diseases, genetic mutations, substance abuse, domestic and interpersonal violence; mental health and depression; (4) folic acid supplements; (5) abortion, contraception, and sterilization; and (6) breast cancer prevention. Prohibits discrimination in the provision of the care provided above.

Legalization of Hemp; Decriminalization of Marijuana

HB 131 HD2  
**Hemp; Legalization; Regulation** – Legalizes hemp to the extent legalized under federal law. Requires the Chairperson of the Board of Agriculture to prepare and submit a proposed state plan to monitor and regulate hemp production, including commercial production and research, to the federal Secretary of Agriculture pursuant to section 297B of the Agricultural Marketing Act of 1946, as amended. Authorizes the Department of Agriculture to monitor and regulate hemp production. Allows Industrial Hemp Pilot Project licensee to utilize hemp genetics. Requires reports to the Governor and Legislature.

HB 290 HD1  
**Uniform Controlled Substances Act** – Updates the Uniform Controlled Substances Act to make it consistent with amendments in federal controlled substances law as required under the authority to schedule controlled substances.

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 $200. 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 HD1  
**Foremen; Little Davis-Bacon Act** – Requires that the foreperson classification be recognized in Hawaii’s Davis-Bacon Act and the requirements in the collective bargaining agreement followed when the basic hourly rate is established by a collective bargaining agreement.

SB 1475 SD1  
**Contractors; Handyman Exception** – Raises the threshold under the contractor licensing law's handyman exemption from $1,000 to $1,500 and makes it applicable only to the cost of labor.
HB 81 HD1  **Incidental and Supplemental Work; Professional Engineer** – Prohibits the performance of incidental and supplemental work outside the scope of licensure by a specialty contractor on any project requiring the seal or stamp of a licensed structural engineer. Specifies that the performance of work in certain crafts or trades shall not be considered incidental and supplemental.

SB 1082 SD2  **Liability for Wages of Subcontractors** – Makes general contractors entering into or under contracts in Hawaii for work on buildings or structures liable for debt incurred by subcontractors for wages due to claimants for performance of labor in the contract between the general contractor and owner.

HB 158 HD1  **Certified Payrolls** – Requires that a contractor contracting for services with a civil servant submit certified payrolls and comply with certain wages and hours laws.

### Public Employees

HB 157 HD1, SB 1143 SD1  **Collective Bargaining; Employee Information Disclosure; Exclusive Representatives** – Expands the types of employee information government agencies are required to disclose, upon written request, to employees' exclusive representatives. Requires that information regarding new hire employees under the collective bargaining disclosure requirements of HRS Section 89-16.6 be provided to the appropriate exclusive representatives within a certain time frame.

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 HD1  **Hawaii Labor Relations Board ("HLRB"); Electronic Documents** – Authorizes the HLRB to accept paper and electronic filing of documents.

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 1008 HD1  **Office of Collective Bargaining** – Transfers the Office of Collective Bargaining, including the position of chief negotiator, to the Department of Human Resources Development.

HB 1186 HD1  **Department of Labor and Industrial Relations ("DLIR"); Appropriations** – Appropriates funds to DLIR for the Disability Compensation Division Modernization Project, Unemployment Insurance Modernization Project, administration of the Hawaii Employment Security Law, and positions in the Labor and Industrial Relations Appeals Board, Hawaii Civil Rights Commission, and Wage Standards Division.

HB 1532 HD1  **HLRB; Hearsay Evidence** – Allows the HLRB to admit and consider hearsay evidence in unfair labor practices proceedings.

SB 1498 SD1  **HLRB; Arbitrator Qualifications** – Requires the HLRB to determine qualifications for grievance arbitrators and interest arbitrators. Requires the HLRB to review and determine the
qualifications and criteria for potential arbitrators selected under certain circumstances to resolve collective bargaining impasses.

**Tax Credits; General Excise Tax ("GET")**

**SB 161 SD2**  
**Individuals with Disabilities; Tax Credit** – Provides a taxpayer who hires an individual with a disability a nonrefundable tax credit for the six-month period after the individual is initially hired by the taxpayer. Provides that the tax credit shall be 25% of the wages for the first 12 months after the individual is initially hired. Provides a tax credit limit of $__ per company. Provides certification requirements.

**SB 1464 SD2**  
**GET Increase; UH and DOE Funding** – Increases the state’s GET and use tax by 0.5%. Applies such additional revenues for operations of the Department of Education and University of Hawaii.

**Miscellaneous**

**HB 18 HD1**  
**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 362 HD1**  
**Legislative Salaries; Transparency** – Permits public inspection and duplication of salary ranges for legislative employees in incremental amounts of $15,000, rather than exact compensation amounts. Defines "legislative employees."

**HB 483 HD2**  
**Title IX; Deadline Extension** – Extends the deadline for the Legislative Reference Bureau to submit a report studying how other jurisdictions oversee Title IX enforcement to 8/1/19 (instead of 20 days before the start of the 2019 session).

**HB 713 HD1**  
**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 DHS to submit a report to the Legislature prior to the 2020 Regular Session.

**HB 760 HD2**  
**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 762 HD2**  
**Single Use Plastic Straws** – Prohibits a full-service restaurant from providing a single-use plastic straw to a consumer unless requested by the consumer.

**HB 766 HD1**  
**Service of Process; Electronic Mail; Task Force** – Establishes a task force within the Judiciary to review allowing service of notice and process by electronic mail in civil and administrative proceedings.

**HB 1435 HD2**  
**Public Accommodation; Diaper Changing Stations** – Requires all places of public accommodation and state buildings to provide baby diaper-changing accommodations that are equally accessible to men and women. HB 1435 HD2 applies to buildings that are constructed
or substantially modified after 12/31/20. SB 821 SD1 applies to buildings that are constructed or substantially modified after June 30, 2019 and also requires all other existing buildings to become compliant by July 1, 2022.

HB 944 HD1 **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.

HB 1153 HD1 **Legislative Hearings; Remote Testimony** – Requires each house of the Legislature to establish, by rule, procedures for the public to present oral testimony at legislative committee hearings through remote testimony. Appropriates funds.

SB 334 SD2 **Assistance Animals** – Codifies the administrative rule definition of "assistance animal". Clarifies the type of verification an individual may provide to substantiate a reasonable accommodation request for a specific assistance animal. Specifies that possession of a vest or other distinguishing animal garment, tag, or registration document commonly purchased online and purporting to identify an animal as a service animal or assistance animal does not constitute valid verification of a disability-related need for an assistance animal.

SB 1368 SD1 **UH Graduate Students; Collective Bargaining** – Establishes a collective bargaining unit for graduate student assistants at the University of Hawaii.

SB 1374 SD2 **Hawaii Retirement Savings Program** – Establishes a Hawaii retirement savings program for private sector employees that shall be administered by the Department of Budget and Finance. Establishes the Hawaii retirement savings program administrative fund that shall be used to pay the administrative costs and expenses of the program. 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.