Employment Practices and Employee Rights

**Uniform Employee and Student Online Privacy Protection Act** – Prohibits employers from requiring or coercing an employee to disclose login credentials for a social media account or take an adverse action against an employee for failing to provide such information. Provides exceptions for accessing information that is publicly available, complying with legal requirements, enforcing employer policy on employer-owned devices or employee-owned devices used for business purposes, or conducting an investigation.

**Criminal History Check** – Changes the lookback period for criminal conviction checks from 10 years to felony convictions that occurred in the most recent 5 years and misdemeanor convictions that occurred in the most recent 3 years. HB 1782 HD1 is effective 1/1/2050.

**Equal Pay** – Expands the Equal Pay Act to prohibit compensation discrimination not only because of sex, but also because of gender identity or expression, sexual orientation, age, religion, color, ancestry, disability, marital status, arrest and court record and domestic or sexual violence victim status. Changes the comparison standard from “equal work” to “substantially similar work.” Deletes as permissible reasons for compensation differentials (1) BFOQ and (2) permissible factor other than sex. Clarifies that employees who have access to wage information of other employees as part of such employee’s essential job functions generally cannot disclose the wages of other employees, unless in response to a complaint, investigation, proceeding, or hearing. Requires employers to provide (1) the pay scale for a position to applicant and (2) the wage range of substantially similar jobs to employees annually upon request. HB 1701 HD1 is effective 1/1/2050; SB 2253 SD1 is effective 7/1/2050.

**Earned Income Tax Credits** – Requires all employers to notify their employees in writing of the availability of federal and state earned income tax credits.

**Domestic Violence** – Clarifies the permissible documentation to verify an employee is a victim of domestic or sexual violence:
- Records or files of a court or government agency including police reports, valid restraining orders, injunctions against harassment, and documents from criminal cases;
- Documentation from a victim services organization or domestic or sexual violence program, agency, or facility, including a shelter or safe house for victims of domestic or sexual violence; or
- Documentation from a medical professional, mental health care provider, attorney, advocate, social worker, or member of the clergy from whom the employee or the employee's minor child has sought assistance in relation to the domestic or sexual violence.
HB 2061 HD1  Child Support – Increases the maximum fine for an employer who discharges from employment, refuses to employ, or takes disciplinary action against any noncustodial parent subject to income withholding or who fails to comply with an order of assignment of future income to pay child support. HB 2061 HD1 is effective 12/31/2059; SB 2310 SD1 is effective 1/1/2021.

HB 2054 HD1  Sexual Harassment or Assault; Nondisclosure Agreements – Prohibits an employer from requiring an employee to enter into a nondisclosure agreement pertaining to sexual harassment or sexual assault. Prohibits an employer from retaliating against an employee for disclosing or discussing sexual harassment or sexual assault. HB 2054 HD1 is effective 1/1/2050.

HB 2148 HD1  Family Leave Law – Extends the Family Leave Law to include care for employees’ grandchildren. Effective 1/1/2050.

SB 2491 SD2  Family Leave Insurance – Establishes a family leave insurance fund to provide covered individuals with up to 16 weeks of paid family leave each calendar year. Requires employers and employees to contribute to the fund based on the contribution rate to TDI. Sets the weekly benefit amount based on a sliding scale of wage levels, up to a maximum of $1,000. Expands Hawaii Family leave law to apply to all employers, not just those with 100+ employees. Permits leave to care for a child of a reciprocal beneficiary, grandchild, child of covered individuals who stands in loco parentis, hanai parent, parent or grandparent of a reciprocal beneficiary, or person who stands in loco parentis for a minor child. Effective date is 7/1/2050.

HB 2708 HD1  Taxation; Withholding – Requires the Department of Taxation to authorize certain low-income individuals to reduce the amount of tax withheld from their wages by a prorated portion of the state earned income tax credit the taxpayers would otherwise be entitled to claim on an annual basis. Effective date is 1/1/2050.

SB 2554 SD1  Seizure First Aid – Requires employers to educate employees regarding seizure first aid with information provided by department of labor and industrial relations.

HB 2350 HD2  DLIR; Penalties – Increases penalties for various laws enforced by DLIR, including:

- DLIR’s catchall penalty: Increases from $250 to $500
- Lie Detector Test: Civil penalty increases from $250 to $2,500. Criminal penalty increases from $1,000 to $2,500.
- Whistleblowers’ Protection Act: Increases from $750 to $7,500.
- Leave for domestic or sexual violence: Increases from $10 to $100.
- Additional unemployment compensation benefits: Fines would be between $175 to $1,750 (instead of $20 to $200).
- Workers’ compensations inspections: Increases from $250 to $500.
- Workers’ compensation fraud: Increases from $10,000 to $20,000.
- Wage & Hour willful hindering investigations: Increases from $500 to $10,000.
- Wage & Hour criminal fines: Fines would be between $500 and $5,000 (instead of $50 and $500).
- Job application processing fees: Fines would be between $250 and $2,500 (instead of $100 to $1,000).
- TDI failure to pay assessment: Increases from $10 to $250.
- TDI failure to file claims: Increases from $10 to $250.
- TDI violations: Increases from $250 to $500.
Wage and Hour; Payroll; Flexible Spending Accounts; Workers’ Compensation

SB 2641 SD1  **Workers’ Compensation; Average Weekly Wages** – Adjusts the method of calculating average weekly wages for workers’ compensation claims by eliminating “at the time of personal injury.” Effective 7/1/2051.

HB 2273 HD1  **Wages; Penalties** – Increases the penalty for violation of wages and hours laws to a class C felony. Effective 1/1/2050.

HB 2541  **Minimum Wage** – Increases minimum wage to
- $11.00/hour beginning January 1, 2021
- $12.00/hour beginning January 1, 2022
- $12.50/hour beginning January 1, 2023
- $13.00/hour beginning January 1, 2024

SB 2769 SD1  **Child Support; Spousal Support; Income Withholding; Tips** – Includes tips or gratuities paid directly to an individual by a customer of the employer and reported or declared to the employer under the definition of income withheld by employers for payments of child or spousal support to the extent permitted under relevant federal law.

SB 2921 SD1  **Withholding** – Amends the due date for employers to file the wage and tax statement from the last day of February to January 31 following the close of the calendar year. Imposes a $25 penalty per failure, up to a maximum of $50 per employee, on employers that fail to timely furnish and file the wage and tax statement.

Health and Insurance Bills

HB 1805 HD1  **Prescription Drugs; Price Increases** – Requires drug manufacturers to notify prescription drug benefit plans and pharmacy benefit managers if a proposed increase in the wholesale price of certain drugs would result in a sixteen per cent or more price increase over a two-year period. Requires the drug manufacturer to identify and report to the insurance commissioner information on certain drugs whose wholesale acquisition cost increases by a certain amount during a specified time frame.

HB 2425 HD1  **Domestic Abuse; Insurance Policies** – Amends the definition of domestic abuse under Hawaii’s insurance laws and domestic abuse protective order statutes to include coercive control between family or household members. Defines coercive control. Effective 7/1/2050.

SB 2539 SD1  **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. Prohibits discrimination in the provision of reproductive health care services. SB 2539 HD1 is effective 1/2/2021.

SB 2284 SD1  **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. The prohibition on step therapy applies to health insurance policies and contracts issued or renewed after 12/31/2020.

SB 2439 SD1  **Auto-Injectable Epinephrine; Minors** – Requires insurers, mutual benefit societies, and health maintenance organizations to provide coverage for the cost of auto-
injectable epinephrine for insured persons eighteen years of age or younger, beginning 1/1/2021.

**Marijuana**

- **SB 2543 SD1** Medical Cannabis Discrimination – Prohibits employment discrimination based on the person’s status as a medical cannabis cardholder, or registered cardholder’s positive drug test, unless the patient was impaired during work. Permits employers to use a fit for duty test as a tool for medical cannabis users in potentially dangerous occupations, which include law enforcement officers and correction facility employees. Employers can consider a positive drug test where a worker is impaired during hours of employment or in a “potentially dangerous occupation.” Employers who would lose monetary benefits under a contract are exempt.

- **SB 2586 SD1** Reimbursement by Insurer - Permits qualifying patients to be reimbursed by health insurers, mutual benefit societies, and health maintenance organizations for amounts spent on medical cannabis and manufactured cannabis products. Limits the monthly amount of reimbursement. Effective 7/1/2050.

**Public Contracts**

- **SB 2468 SD2** Qualified Community Rehabilitation Programs; Persons with Disabilities; Procurement Code – Allows community rehabilitation programs for persons with disabilities to be considered qualified under the State’s procurement code without requiring federal and state certification that authorizes the payment of subminimum wage to workers in their program. Effective 1/1/2050.

**Construction**

- **HB 1799 HD1** Structural Steel Contractor License – Requires a specialty contractor to obtain a C-48 specialty license (structural steel contractor) or sublicense if the performance of work on a contract requires a C-48 specialty license or sublicense and the specialty contractor does not have that specialty license or sublicense. Effective 1/1/2050.

- **SB 2961 SD2** Wages; Timely Payment; General Contractors; Subcontractors; Liability – 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. Effective 7/1/2051.

- **SB 3138 SD2** Rental Housing Projects; Prevailing Wages – Prevailing wage for 201H-36(a)(5) projects requires either a CBA with a prevailing wage for the laborers and mechanics employed for the construction project has been approved by the director, or a project labor agreement with the group whose wages are reflected in the Hawaii prevailing wage schedule for the laborers and mechanics employed for the construction project have been approved by the director.
Holidays

SB 3096 SD1  **State Holiday; La Kuʻokoʻa; Hawaiian Recognition Day** – Establishes the Tuesday after the first Monday in November as La Kuʻokoʻa, Hawaiian Recognition Day, as an official state holiday.

Miscellaneous

SB 2112 SD1  **Nonprofit; UBTI** – Clarifies that the GET exemption applicable to nonprofit organizations is inapplicable to UBTI under IRC section 512.

HB 1915 HD2  **Adult Education; Workforce Development Diploma** – Establishes a workforce readiness diploma program within the department of education adult community schools program. Appropriates funds. HB 1915 HD1 takes effect on 7/1/2050.

SB 2259  **Refundable Tax Credit; Business-Supported Child Care** – Establishes a refundable tax credit equal to an unspecified percentage of a taxpayer's eligible child care expenses. Defines eligible child care expenses to mean the sum of the taxpayer paid to a child care facility in the State to: (1) support the child care needs of the taxpayer's employees in the taxable year; and (2) purchase child care slots at the child care facility that are actually provided or reserved for children of the taxpayer's employees. Applies to taxable years beginning after December 31, 2020.

SB 2291 SD2  **Refundable Tax Credit; Business-Supported Child Care** –

SB 2490 SD2  **Hawaii Retirement Savings Program; Task Force** – Establishes the Hawaii Retirement Savings Program task force, tasked with evaluating a retirement savings plan for non-government employees and reports findings and recommendations to the legislature. Appropriates funds. Task force in HB 2251 HD1 takes effect on 1/1/2050. Task force in SB 2490 dissolves on 3/15/2021.