

LEGISLATIVE Digest



MARCH 24, 2014

2014 - Employment Bills After Second Lateral

Employment Practices and Employment Rights

- HB 1814 SD1 **Direct Deposit of Wages; Debit Card Payment** – Clarifies that employers may pay wages by direct deposit under certain conditions. Also allows employers to pay wages by pay cards under certain circumstances. Makes employers responsible for any fees incurred if an employer has insufficient funds in their bank account for the electronic transfer.
- 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.”

Minimum Wage

- SB 2609 HD1 **Minimum Wage; Tip Credit Repeal; CPI** – Increases minimum wage rate to \$7.75 per hour beginning on 1/1/15, \$8.50 per hour beginning on 1/1/16, \$9.25 per hour beginning on 1/1/17, and \$10.10 per hour beginning on 1/1/18. Increases the tip credit to 50 cents per hour beginning on 1/1/15, 75 cents per hour beginning on 1/1/16, and \$1 per hour beginning on 1/1/17 if the gross amount the employee receives in wages and tips is at least 250 per cent of the poverty level for each calendar year based upon the United States Department of Health and Human Services poverty guidelines for Hawaii.

Workers’ Compensation (“WC”)

- HB 1973 SD1 **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 workweek as defined by administrative rule. Clarifies that an eligibility determination for disability benefits depends on the primary care physician to certify the employee's disability every thirty days. Clarifies that the failure of the employee's primary care physician to certify the dates of disability in an interim report does not disqualify the employee from disability benefits. Allows contemporaneous certification of an employee's disability status to be waived under certain conditions. Allows a one-time retroactive certification. Clarifies that certification requirements only apply during the period that an employee's injuries have not reach medical stabilization or the employee is enrolled in the vocational rehabilitation process
- 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 (\$__)
- SB 2923 HD1 appropriation.
- SB 2365 HD2 **WC Repackaged Drugs** – Limits the reimbursement payments of prescription medications, including relabeled, repackaged, or compounded prescription medications, in workers' compensation claims to 140% of average wholesale price as indicated by the Red

Book: Pharmacy's Fundamental Reference as of the date of dispensing. 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.

HB 2579 **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.

Health and Insurance

HB 1752 SD1 **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 moneys to community health centers to provide outreach and eligibility services as well as behavioral services and to establish health homes for medicaid enrollees.

HB 1754 SD1 **Medicaid Buy-In Program; Disabled Workers** – Establishes and appropriates funds for the Medicaid Buy-in Program for Workers with Disabilities. Establishes and appropriates funds for a Medicaid Buy-in Pilot Program to be in effect from July 1, 2015, until June 30, 2017. Blank (\$__) appropriation.

HB 1880 SD1 **Podiatrists** – Authorizes a podiatric physician who is board qualified or board certified in reconstructive rearfoot ankle surgery and has completed a 36-month podiatric surgical residency to perform ankle fracture surgery. Confirms the definition of "podiatric medicine" to national standards regarding diagnosis and treatment of the foot and ankle.

HB 2099 HD1 **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 SD1 **Chiropractic Care; Med-QUEST and Medicaid** – Requires Med-QUEST and Medicaid coverage for chiropractic care, limited to 24 visits per calendar year.

HB 2269 SD1 **Health Insurance Premium Information** – Authorizes the Insurance Commissioner to collect and publish health premium information.

SB 2054 HD2 **Health Insurance; Autism Spectrum Disorders** – Requires health insurers, mutual benefit societies, and health maintenance organizations to provide coverage for autism spectrum disorder treatments. Requires an actuarial analysis to estimate the cost impact of providing autism spectrum disorder benefits.

SB 2194 HD1 **Birthing Facilities; Congenital Heart Disease Testing** – Requires birthing facilities to perform a pulse oximetry test or other medically accepted screening on newborns to screen for critical congenital heart defects. Appropriates funds for a program to conduct such screening and to the Hawaii Health Systems Corporation to conduct such screening at its facilities. Blank (\$__) appropriation.

SB 2349 HD1 **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 care 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 HD2 **Telehealth; Insurance and Reimbursement** – Requires equivalent reimbursement for services provided through telehealth as for the same services provided via face-to-face contact. Clarifies definition of health care provider for telehealth purposes. Changes statutory references to "telemedicine" 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 HD2 **Hawaii Health Systems Corporation** – Allows for the transition of the Hawaii health systems corporation, a regional system, to a new healthcare management system organized under the laws of the State as a nonprofit corporation or public benefit corporation registered to do business in the State. Establishes a transition committee to assist the governor in implementing, reviewing, and negotiating the transitioning of the corporation, a regional system, or a combined regional system or two or more regional systems to a new healthcare management system.

Healthcare Industry; Licensing

- HB 1882 HD2 **Podiatrists; Licensing Requirements** – Adopts the national standard of a minimum of twenty-four months in an accredited podiatric residency prior to licensure as a podiatrist, beginning on 01/01/2015. Specifies separate requirements for out-of-state podiatrists who graduated from an approved college before 01/01/2004, who are seeking initial licensure in Hawaii.
- HB 2031
SB 2466 HD1 **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 courses, during each licensing period.
- SB 2472
HSD2 **Occupational Therapists; Licensing** – Establishes an occupational therapy program and licensing requirements for occupational therapists and occupational therapy assistants. Blank (\$__) appropriation.
- SB 2490 HD1 **Nurses; Continuing Competency and Licensure** – Requires licensed registered nurses and licensed practical nurses to submit evidence of continuing competency at each renewal period, beginning on July, 2017. 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 competence requirements for nurses and report to the legislature.
- 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."

Hawaii Health Connector

- HB 2529 SD1 **Hawaii Health Connector; State Entity; Board Composition** – Establishes the connector legislative oversight committee. Establishes the Hawaii health insurance exchange special fund. Beginning January 1, 2015, assesses a Hawaii health insurance exchange sustainability fee of no more than .345 per cent of the premiums derived from the sale of comprehensive medical insurance plans, including dental plans, in the State, to be deposited into the Hawaii health insurance exchange special fund. Notes that the current two percent surcharge authorized by the connector on plans sold through the connector shall cease to be collected once the Hawaii health insurance exchange sustainability fee is instituted. Requires the board of directors of the connector to prepare and submit to the legislative oversight committee a fully documented biennial sustainability plan budget request for the connector. Permits the legislature to annually appropriate funds collected from the sustainability fee to the Hawaii health insurance exchange. Clarifies that the connector must submit the results of the connector's annual audit to the legislature. Amends the composition and procedures of the board of directors of the Hawaii health connector. Appropriates funds to the Hawaii health insurance exchange special fund. Requires the Hawaii health insurance exchange special fund to reimburse the general fund over a five-year period once the sustainability fee is instituted and collected and the sustainability plan is adopted.
- SB 2470 SD1 **Hawaii Health Connector; Board** – Establishes the Hawaii health connector as the State of Hawaii Health Insurance Exchange. Establishes advisory groups and an oversight council to assist the Connector Board. Amends the composition and duties of the Connector Board. Establishes a special fund.

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 HD1 **E-Cigarettes; Prohibitions; Regulation** – Prohibits the use of electronic smoking devices in enclosed public areas and other specified locations under Chapter 328J, Hawaii Revised Statutes.

Medical Marijuana; Legalization of Marijuana

- HB 2092 SD1 **Medical Marijuana Prescriptions** – Permits board certified pain specialist physicians, oncologists, ophthalmologists, and board certified palliative care physicians to prescribe medical marijuana.
- SB 2574 HD1 **Medical Marijuana Registration** – Makes clarifying housekeeping amendments to the registration requirements regarding the medical use of marijuana. Adds certifying physician requirements for written certification of medical marijuana use. Effective July 1, 2050.

Unlicensed Contractors

- SB 2076 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 2475 **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 SD1
SB 2704 HD1 **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 prevailing wage is based on such agreement.
- HB 2413 HD1 **Public Works; Public-Private Partnerships** – Includes public-private partnerships in the definition of "governmental contracting agency" for purposes of Hawaii Little Davis Bacon Act.
- SB 2260 HD1 **Prevailing Wage Violations; Suspensions** – Increases the penalties imposed on a contractor who interferes with or delays an investigation to determine compliance with wage and hour laws of employees on public works to \$10,000 per project and \$1,000 per day. Specifies that a general contractor is secondarily liable for payment of back wages and penalties. Increases the suspension period from three to five years for a third violation. Clarifies the effective date of suspension. 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 HD1 **Procurement Contracts; Liability; Duty to Defend** – Prohibits the inclusion in any public works contract less than \$10,000,000 between any governmental body and a licensed design professional of a requirement that the contractor defend the governmental body from claims arising out of the contractor's performance under the contract unless the contractor is at fault.
- SB 3039 HD1 **Public Works: Wage and Hour Special Fund** – Establishes the Wage and Hour for Public Works Projects Special Fund to fund enforcement of wage and hour laws for public works projects. Requires state departments, except DOT Airports Division, to transfer a percentage of CIP appropriations to the special fund. Establishes and funds two additional labor law enforcement specialist IV positions in DLIR.

Public Employees

HB 1977 SD1
SB 2259 HD1 **Collective Bargaining Arbitration** – Requires any further provisions each party is proposing for inclusion in the final position in a collective bargaining arbitration to be limited to those specific proposals that were submitted in writing to the other party and were the subject of collective bargaining up to the time of impasse. Provides the arbitration panel with authority to determine if final positions submitted are compliant with statutory requirements.

Government Agencies

HB 2038 SD1 **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. Blank (\$__) appropriation.

HB 2496 SD1 **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 HD1 **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 HD1 **Tobacco GET** – Imposes an excise tax equal to an unspecified percentage of the wholesale price of any tobacco product, other than large cigars, effective January 1, 2015. Allocates funds collected to the Hawaii cancer research special fund and Hawaii tobacco prevention and control trust fund.

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 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.

HB 1713 SD1 **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.
SB 2346 HD1

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 **Franchises** – Voids provisions in a franchise that restricts the resolution of claims arising to foreign forums.

HB 2243 SD1 **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 individuals with disabilities, and to receive the results directly.

SB 2452 HD1 **Breastfeeding Exemption from Jury Duty** – Exempts breastfeeding mothers from jury duty for up to one year from birth of the child.

SB 2486 HD1 **Private Guards; Continuing Education** – Makes registration and licensure requirements for private guards and others acting in a guard capacity permanent; starts continuing education requirement prior to the June 30, 2016, renewal cycle; exempts loss prevention agents from private guard registration and licensure requirements.

- SB 2682 HD1 **Financial Disclosures; Boards and Commissions** – Requires the financial disclosure statements of members of certain boards and commissions to be made available for public inspection and duplication, including the Agribusiness Development Corporation, Board of Agriculture, State Ethics Commission, HCDA, Hawaiian Homes Commission, Hawaii Housing Finance and Development Corporation, Board of Land and Natural Resources, Land Use Commission, Legacy Land Conservation Commission, Natural Area Reserves System Commission, Natural Energy Laboratory of Hawaii, Hawaii Public Housing Authority, Public Utilities Commission, Commission on Water Resource Management, Hawaii Labor Relations Board, and the Labor and Industrial Relations Appeals Board.
- SB 2687 HD1 **Sex Assault on a Minor; Statute of Limitations** – Allows a victim of child sexual abuse to bring a civil action against the victim's abuser or an entity with a duty of care, with the exception of the State or its political subdivisions, if the statute of limitations for filing a civil claim has lapsed. Prohibits the court, plaintiff, or author of a notarized statement of facts from being required to disclose the contents of a sealed certificate of merit.
- SB 2729 HD1 **Mobile Electronic Devices While Driving** – Makes operating a motor vehicle in the State while using a mobile device a traffic infraction. Specifies that the penalty for operating a motor vehicle while using a mobile electronic device shall be a fine of not less than \$250, or \$400 if operating the motor vehicle in a school zone or construction area, and that collected fines shall be deposited in the State Highway Fund.