

Hawaii

Employment Law Workbook Addendum

(Update on legislation enacted from Jan. 1, 2015- Dec. 31, 2016)

Topics

I. Discrimination

No new laws or regulations enacted in 2015 or 2016.

II. Pre-Employment Inquiry Guidelines

No new laws or regulations enacted in 2015 or 2016.

III. Family and Medical Leave

No new laws or regulations enacted in 2015 or 2016.

IV. Wage and Hour Laws

Hawaii law requires employers to make, keep, and preserve certain wage and hour records. The amendments require employers to keep a record of the former and current physical addresses of the employer and the North American Industry Classification System code applicable to the employer. The amendments also remove the requirement that the Department of Labor and Industrial Relations collect and furnish information regarding group insurance and pension plans.

HRS § 371-11 (Effective Date 07/01/2016).

V. Drug Testing

No new laws or regulations enacted in 2015 or 2016.

VI. Noncompete and Other Employment Agreements

No new laws or regulations enacted in 2015 or 2016.

VII. Workplace Safety

No new laws or regulations enacted in 2015 or 2016.

VIII. Workers' Compensation

A. Workers' Compensation

Hawaii enacted several amendments to its Workers' Compensation laws. The amendments increase the penalty:

- To \$5,000 for employers that violate the total disability compensation statute;
- To \$5,000 for employers that fail to furnish medical reports to employee or to allow inspection and copying of transcripts of depositions of medical witnesses by employee;

- To \$500 for employers that violate the statute regarding security for payment of compensation, or \$100 for each employee for every day of noncompliance;
- To \$5,000 for employers that make deductions from employees' wages to pay for workers' compensation insurance; and
- To \$500 for employers that violate the statute regarding payment of temporary disability insurance payments, or \$100 for each employee for every day of noncompliance.

The amendments also permit employers to submit electronically reports of injuries and reports of treatment to the director of Disability Compensation Division.

The amendments exclude the following from the definition of "employment" for Temporary Disability Insurance purposes:

- Services performed by an individual for a corporation where the individual owns at least 50% of the corporation;
- Services performed by a member of a limited liability company if the member is an individual and has a distributional interest of not less than 50% in the LLC;
- Services performed by a partner of a partnership if the partner is an individual;
- Services performed by a partner of a limited liability partnership, if the partner is an individual and has a transferable interest of at least 50%; and,
- Services performed by a sole proprietor.

However, employers may not require an employee to incorporate, form an LLC, form a partnership, or form a limited liability partnership as a condition of employment.

HRS § 386-31; HRS § 386-95; HRS § 386-96; HRS § 386-123; HRS § 386-129; HRS § 392-5; and HRS § 392-47 (Effective Date 07/01/2016).

B. Workers' Compensation Treatment Plans

Hawaii law requires that a physician transmit a treatment plan in workers' compensation claims to an employer by mail. The new law allows a physician to transmit a treatment plan to an employer by mail or facsimile. The physician must send the treatment plan to an address or facsimile number provided by the employer. The new law further states that beginning January 1, 2021, a physician may also transmit a treatment plan by secure electronic means.

In addition, the new law sets forth criteria establishing when a treatment plan is deemed accepted by an employer. A treatment plan will be deemed received when the plan is sent by mail or facsimile with reasonable evidence showing that the treatment plan was received. A treatment plan will then be deemed accepted if an employer fails to file with the Director of the state's Disability Compensation Division:

- an objection to the treatment plan;
- any applicable documentary evidence supporting the denial; and
- a copy of the denied treatment plan, copying the physician and injured employee.

Finally, the new law allows an employer to file an objection to the treatment plan if the employer receives new documented evidence supporting the denial of the plan.

The new law is not yet codified (Effective Date 06/21/2016).

IX. Miscellaneous

A. Contraceptive Coverage

Hawaii law prohibits each employer group accident and health coverage plans from excluding or imposing any unusual copayment, charge, or waiting requirement for contraceptive services or supplies for a covered subscriber or dependent. This amendment adds the requirement that coverage include reimbursement to a prescribing health care provider or dispensing entity for prescription contraceptive supplies intended to last up to 12 months for an insured individual. The bill noted that insurance companies typically cover a 30- or 90-day supply of prescription contraceptives; the amendment ensures that covered subscribers may receive a 12-month supply.

HRS § 431:10A-116.6 and HRS § 432:1-604.5 (Effective Date 07/01/2016).

B. Employee Commuter Benefits

Under this act, counties may adopt ordinances that require employers to offer employees commuter benefits options to help reduce traffic, greenhouse gas emissions, air pollution, and imported fossil fuels. There are three different options for employee commuter benefits:

- Allow covered employees to exclude the cost of transit passes, vanpool charges, and bicycle costs from taxable wages.
- Employers may offer a subsidy to offset the monthly cost of commuting via transit, vanpool, or bicycle. The amount of the subsidy must equal either the monthly cost of a transit pass or the monthly cost of a vanpool, whichever costs less. A subsidy for bicycle costs is in addition to subsidies for transit and vanpool costs.
- Employer-provided vanpools, buses, or similar vehicles at no or low cost.

An employer can provide more commuter benefits as long as they are consistent with the ordinance.

A commuter benefit program does not affect any obligations an employer may have under an existing collective bargaining agreement.

The act defines the following:

- Employee: anyone who works in a full- or part-time position that is on the employer's payroll and receives at least a minimum wage.

- Employer: anyone who employs or exercises control over an employee's wages, hours, or working conditions.
- Transit pass: any pass, token, fare card, or voucher for a public transit such as trains or buses.
- Vanpool: any highway vehicle that can seat at least six adults and a driver. At least 80% of the vehicle's mileage must be to transport employees to their place of employment. At least 50% of the vehicle's seating capacity must be used; however, this does not include the driver.

HRS § 46-16.2 (Effective Date 07/01/2015).

C. Electronic Smoking Devices

Under Hawaii law, smoking is prohibited in enclosed or partially enclosed places of employment and 20 feet from any window, ventilation intake, or entrance to a workplace. The new law amends the workplace smoking prohibition to include the use of an electronic smoking device. "Smoking" means inhaling, exhaling, burning, or carrying any lighted or heated tobacco product or plant product intended for inhalation in any manner or in any form, and includes the use of an electronic smoking device. "Electronic smoking device" means any electronic product that can be used to aerosolize and deliver nicotine or other substances to the person inhaling from the device, including but not limited to an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, hookah pipe, or hookah pen, and any cartridge or other component of the device or related product, whether or not sold separately.

HRS § 328J-1 (Effective Date 01/01/2016).