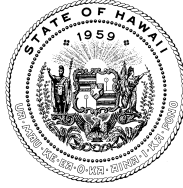


DAVID Y. IGE
GOVERNOR

SHAN S. TSUTSUI
LIEUTENANT GOVERNOR



LINDA CHU TAKAYAMA
DIRECTOR

LEONARD HOSHIO
DEPUTY DIRECTOR

**STATE OF HAWAII
DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS**

830 PUNCHBOWL STREET, ROOM 321
HONOLULU, HAWAII 96813

www.labor.hawaii.gov
Phone: (808) 586-8844 / Fax: (808) 586-9099
Email: dlir.director@hawaii.gov

April 7, 2016

To: The Honorable Sylvia Luke, Chair,
The Honorable Scott Y. Nishimoto, Vice Chair, and
Members of the House Committee on Finance

Date: Thursday, April 7, 2016
Time: 2:01 p.m.
Place: Conference Room 309, State Capitol

From: Linda Chu Takayama, Director
Department of Labor and Industrial Relations (DLIR)

Re: S.B. No. 2289 SD1 Relating to Labor

I. OVERVIEW OF PROPOSED LEGISLATION

S.B. 2289 proposes to amend section 371-11, Hawaii Revised Statutes (HRS) to allow the DLIR to require employers to make, keep, and preserve records of the business name, physical location address, North American Industry Classification System (NAICS) business activity code, and number of employees employed by the employer.

The department strongly supports this proposal and thanks the Committee for its consideration. DLIR also proposes an HD2, which would also amend section 373L-2 and add two new sections to include Professional Employer Organizations (PEOs) to report who their client companies are, their locations, NAICS codes, and the number of employees employed at these individual client companies. The proposal has provisions that protect both the confidentiality of the PEO's client information as well as the PEO if the client companies do not provide the information.

This proposal does not impact the quarterly wage records collected from employers through the Unemployment Insurance Wage Records System. Those

records are confidential and retained separately from the Multiple Worksite Report (MWR) data collected by the Research & Statistics Office.

The department's federal funding levels are in jeopardy of being lowered because the Bureau of Labor Statistics (BLS) ties funding to the number of employing units reported and more and more employers, both national chains and local businesses, are not responding to surveys unless they are required. The information gathered about businesses, locations, workers, and industries in local areas will be greatly improved.

Additionally, the department proposes to amend section 371-11 with the deletion of paragraph 4 which contains archaic information. The DLIR no longer collects insurance plan information.

II. CURRENT LAW

Section 371-11, HRS, currently allows the DLIR's Research and Statistics Office (R&S) to investigate and gather data regarding wages, hours, and other related employment information. However, the current law is limited in that it does not provide for the collection of the employer's physical location, NAICS classification code, and the number of employees. Similarly, section 373L-2 also does not require PEOs to report who their client companies are, their location, NAICS codes, and the number of employees employed at these individual client companies.

III. COMMENTS ON THE HOUSE BILL

This legislation will allow the DLIR to gather information necessary for preparing accurate industrial and geographical summaries of economic conditions within Hawaii. These data are important input to funding formulas for many of our State's programs and agencies that rely on federal funding.

The Department of Transportation Statewide Transportation Planning Office uses this information for updating travel demand forecasting models to develop land transportation plans for all islands in the State. The plans utilize the employer and employment data to quantify land use activity and trip purposes correlated to the amount of employment in specific areas.

The information that will be collected from all employers, including PEOs, would be employment and wages by worksite. Companies that utilize PEOs will be required to provide their physical addresses and NAICS codes to their PEO on a quarterly basis so that the PEOs, in turn, will be able to provide that information to DLIR on their Multiple Worksite Report.

An Electronic Data Interchange system is available to support reporting of this information by PEOs, payroll provider firms, and large-sized employers. While Unemployment Insurance can provide total employment and wages for the State, the Multiple Worksite Report would provide much needed detail to produce employment distribution by county and industry to assess shifts in employment and

wages at the local level. This worksite level information enables DLIR to track growth and decline in employment for smaller areas such as local area communities like Kapolei or the counties for example. Currently 25 other states mandate collection of this type of information from employers and businesses in their states.

Furthermore, the growth of PEOs in the State affects the quality of the data compiled and reported by R&S. Without the detailed company data from PEOs, all client companies and their employees are coded and reported under the PEO, not by company and not under their company's major business activity and location.

For example if a client company is in the Construction Industry and utilizes a PEO, their employees are reported as employees of the PEO and these employees are coded under the Professional and Business Services industry and not in Construction. In addition, the geographic location is reported as the location of the PEO and not the client company which tends to under count employment on the neighbor islands.

R&S adheres to the US DOL Bureau of Labor Statistics' privacy procedures so all data collected by R&S are kept confidential and used for statistical research purposes only.

This legislation will also greatly improve the Quarterly Census of Employment and Wages (QCEW) program conducted by R&S, which is a near census of monthly employment and quarterly wage information by industry at the State and county levels. It provides information on major shifts in employment or wage levels as a result of various economic activities.

In addition to the federally-funded state agencies listed above, the data is needed by other state agencies and consumers including the Legislature, the Council on Revenues, the Department of Business, Economic Development and Tourism (DBEDT), the Economic Research Organization at the University of Hawaii (UHERO), and the Hawaii Tourism Authority (HTA) for economic studies and workforce development and planning.

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A BILL FOR AN ACT

RELATING TO LABOR.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. Chapter 373L, Hawaii Revised Statutes, is
2 amended by adding a new section to read as follows:

3 "§373L- Responsibility of the client company. Each
4 client company shall provide to the professional employer
5 organization its physical address or addresses and North
6 American Industry Classification System code and shall
7 report any changes to the professional employer
8 organization on a quarterly basis."

9 SECTION 2. Chapter 373L, Hawaii Revised Statutes, is
10 amended by adding a new section to read as follows:

11 "§373L- Confidentiality of Information. The department shall
12 keep confidential and not disclose the information provided by
13 the professional employer organization pursuant to section 373L-
14 2(b)(13).

15 SECTION 3. Section 371-11, Hawaii Revised Statutes, is
16 amended to read as follows:

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1 "§371-11 **Research and statistics; employers to keep**
2 **certain records.** The department of labor and industrial
3 relations:

4 (1) Shall investigate and gather data regarding the
5 wages, hours, and other conditions and practices of
6 employment in the State, and may enter and inspect
7 ~~[such]~~ places of employment and ~~[such]~~ records,
8 [+] and make ~~[such transcriptions]~~ copies thereof[+],
9 and investigate ~~[such]~~ facts, conditions, practices,
10 or matters as are necessary or appropriate to carry
11 into effect the duties imposed upon it under this
12 chapter or under the rules of the department;

13 (2) May investigate, collect, and publish ~~[such]~~
14 information relating to the cost of living in the
15 State as it deems advisable;

16 (3) Shall collect, file, and publish ~~[such]~~ information
17 relating to labor and industrial relations and shall
18 perform ~~[such]~~ other duties as the director of labor
19 and industrial relations shall by rule prescribe.

20 Every employer subject to this chapter or any
21 rule or regulation of the department issued under this
22 chapter shall make, keep, and preserve ~~[such]~~ records

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1 of the persons employed by the employer and of the
2 wages, hours, and other conditions and practices of
3 employment, maintained by the employer, and preserve
4 ~~[such]~~ the records for ~~[such]~~ periods of time~~[7]~~ as
5 the department may by rule prescribe. In addition,
6 every employer shall keep a record of the physical
7 addresses of the employer and the North American
8 Industry Classification System code applicable to the
9 employer.

10 The director or the director's authorized
11 representative shall for the purpose of examination
12 have access to and the right to copy from ~~[such]~~ the
13 records any matter or thing pertinent to this section,
14 and every employer shall furnish to the director or
15 the director's authorized representative on demand a
16 copy under oath of ~~[such]~~ the material portion of
17 ~~[such]~~ the records as the director or the director's
18 authorized representative requires, and if the
19 director so requires, upon forms prescribed or
20 approved by the director~~[7]~~.

21 ~~[(4) The department shall collect, assemble, and furnish~~
22 ~~information regarding group life insurance plans,~~

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1 ~~group medical, hospitalization, and health insurance~~
2 ~~plans, and pension and retirement plans, at the~~
3 ~~request of any employer or employee. Upon the request~~
4 ~~of any employer or employee, the department shall~~
5 ~~undertake a study of the feasibility of establishing~~
6 ~~any or all of such plans for such persons as may be~~
7 ~~designated by the employer or employee making the~~
8 ~~request. If the department determines that it will be~~
9 ~~feasible to establish such plan or plans for the~~
10 ~~persons so designated, it shall render all necessary~~
11 ~~assistance to the persons who will be included in such~~
12 ~~plan or plans, including but not limited to such~~
13 ~~matters as negotiating for and on behalf of such~~
14 ~~persons with insurance companies, and drafting of~~
15 ~~contracts and agreements. If the department~~
16 ~~determines that it will not be feasible to establish~~
17 ~~such plan or plans for the persons designated because~~
18 ~~of the small number or the diversity of occupations~~
19 ~~within the group or for any other reason, the~~
20 ~~department shall actively solicit the participation of~~
21 ~~as many other employers and employees within the State~~
22 ~~as may be necessary to form a group or groups for~~

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1 ~~which it shall be feasible to establish the plan or~~
2 ~~plans contemplated by the employer or employee who~~
3 ~~made the original request, and shall furnish all~~
4 ~~necessary assistance in similar manner.]~~

5 The department shall adopt all necessary rules and
6 regulations to carry out the purposes of this section."

7 SECTION 4. Section 373L-2, Hawaii Revised Statutes, is
8 amended by amending subsection (b) to read as follows:

9 "(b) Registration information required by this section
10 shall include:

- 11 (1) The name or names under which the professional
12 employer organization conducts or will conduct
13 business;
- 14 (2) The address of the principal place of business of the
15 professional employer organization and the address of
16 each office that the professional employer
17 organization maintains in this State;
- 18 (3) The professional employer organization's general
19 excise tax number;
- 20 (4) A copy of the certificate of authority to transact
21 business in this State issued by the director of

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1 commerce and consumer affairs pursuant to title 23 or
2 title 23A, if applicable;

3 (5) A list, organized by jurisdiction, of each name under
4 which the professional employer organization has
5 operated in the preceding five years, including any
6 alternative names; names of predecessors; and, if
7 known, names of successor business entities;

8 (6) A statement of ownership, which shall include the name
9 of each person who, individually or acting in concert
10 with any other person or persons, owns or controls,
11 directly or indirectly, twenty-five per cent or more
12 of the equity interests of the professional employer
13 organization;

14 (7) A statement of management, which shall include the
15 name of any person who serves as president or chief
16 executive officer or who otherwise has the authority
17 to act as a senior executive officer of the
18 professional employer organization;

19 (8) Proof of valid workers' compensation coverage in
20 compliance with all laws of this State;

21 (9) Proof of compliance with the Hawaii temporary
22 disability insurance law;

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- 1 (10) Proof of compliance with the Hawaii prepaid health
2 care act;
- 3 (11) Proof of compliance with the Hawaii employment
4 security law, including payment of any applicable
5 employer liability pursuant to chapter 383;
- 6 (12) The name, address, and phone number of the financial
7 institution utilized by the professional employer
8 organization for payroll purposes that operates and
9 maintains branches in the State;
- 10 (13) The name, physical address or addresses, North
11 American Industry Classification System code, and the
12 number of employees of each client company that is
13 party to a professional employer agreement with a
14 professional employer organization which shall be
15 provided to the department on a form approved by the
16 department within twenty-one business days of the
17 initiation of the agreement and within twenty-one
18 business days of the termination of the agreement; and
- 19 (14) A copy of the Internal Revenue Service Form W-3,
20 Transmittal of Wage and Tax Statements, that was most
21 recently filed with the federal government, and which

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1 shall be used for obtaining a bond or irrevocable
2 letter of credit pursuant to section 373L-3."

3 SECTION 5. Statutory material to be repealed is bracketed
4 and stricken. New statutory material is underscored.

5 SECTION 6. This Act, upon its approval, shall take effect
6 on July 1, 2016.

7

8 INTRODUCED BY: _____

9

BY REQUEST

_____.B. NO. _____

Report Title:

Department of Labor and Industrial Relations; Recordkeeping;
Insurance Plans; Professional Employer Organizations

Description:

Requires employers to keep a record of the physical addresses of the employer and the North American Industry Classification System code applicable to the employer; deletes anachronistic provision pertaining to insurance plan information. Takes effect on July 1, 2016.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.