

JAN 19 2007

A BILL FOR AN ACT

RELATING TO OCCUPATIONAL SAFETY AND HEALTH.

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

1 SECTION 1. The legislature finds that healthy and
2 productive employees are the cornerstones of successful
3 businesses and a prosperous economy. Unfortunately, many
4 employees are subjected to unhealthy, abusive work environments
5 where workplace bullying, abuse, and harassment are prevalent
6 occurrences, independent of membership in a protected group. As
7 a result, these employees may experience physical and
8 psychological harm, which negatively impacts job performance and
9 job safety, often manifesting in injuries and illnesses. The
10 National Institute for Occupational Safety and Health recognizes
11 general harassment, including workplace bullying, as a form of
12 workplace violence.

13 Workplace bullying has been defined by the National
14 Institute for Occupational Safety as the repeated intimidation,
15 slandering, social isolation, or humiliation by one or more
16 persons against another. Congress has found that employee
17 injuries and illness that arise out of work situations impose a



1 substantial burden on businesses and that these injuries and
2 illnesses can be reduced through the establishment and
3 enforcement of minimum health and safety standards.
4 Accordingly, the Hawaii occupational safety and health law
5 ensures safe and healthful working conditions for all employees
6 throughout the State. The legislature determines that in
7 addition to the current protections under the law, employees
8 need protection from the repeated health-impairing mistreatment
9 of one person by another in order to promote safe and healthy
10 work environments.

11 The purpose of this Act is to provide legal recourse for
12 employees who have been psychologically or physically harmed or
13 who have suffered from negative employment decisions by being
14 deliberately subjected to abusive work environments.

15 SECTION 2. Chapter 396, Hawaii Revised Statutes, is
16 amended by adding a new part to be appropriately designated and
17 to read as follows:

18 "PART . ABUSIVE WORK ENVIRONMENTS

19 §396- Definitions. As used in this part:

20 "Abusive conduct":

21 (1) Means conduct of an employer or employee in the
22 workplace, with malice, that a reasonable person would



1 find hostile, offensive, and unrelated to an
2 employer's legitimate business interests; and
3 (2) May include, but is not limited to, repeated
4 infliction of verbal abuse, such as the use of
5 derogatory remarks, insults, and epithets; verbal or
6 physical conduct that a reasonable person would find
7 threatening, intimidating, or humiliating; the
8 gratuitous sabotage or undermining of a person's work
9 performance; or interference with subsequent work
10 opportunities by defamatory evaluation.

11 Single acts normally shall not constitute abusive conduct,
12 unless especially severe and egregious, and the severity,
13 nature, and frequency of any conduct objected to shall be
14 considered.

15 "Abusive work environment" means a workplace where an
16 employee is subjected to abusive conduct that is so severe that
17 it causes physical or psychological harm to the employee.

18 "Conduct" means all forms of behavior, including acts and
19 omissions of acts.

20 "Constructive discharge" means abusive conduct that causes
21 the employee to resign, and where prior to resigning, the
22 employee brings to the employer's attention the existence of the



1 abusive conduct, and the employer fails to take reasonable steps
2 to eliminate the abusive conduct.

3 "Economic harm" means any material pecuniary loss,
4 including the loss of earnings or other benefits related to
5 employment, to the extent recovery is allowed under the law.

6 "Malice":

- 7 (1) Means the desire to see another person suffer
8 psychological, physical, or economic harm, without
9 legitimate cause or justification; and
- 10 (2) May be inferred from the presence of one or more
11 factors such as outward expressions of hostility,
12 harmful conduct inconsistent with an employer's
13 legitimate business interests, a continuation of
14 harmful, illegitimate conduct after the complainant
15 requests that it cease or demonstrates outward signs
16 of emotional or physical distress in the face of the
17 conduct, or attempts to exploit the complainant's
18 known psychological or physical vulnerability.

19 "Negative employment decision" means a termination,
20 constructive discharge, demotion, unfavorable reassignment,
21 refusal to promote, disciplinary action, or interference with
22 subsequent work opportunities by defamatory evaluation.



1 "Physical harm" means the material impairment of a person's
2 physical health or bodily integrity, as documented by a
3 competent physician or supported by competent expert evidence at
4 trial.

5 "Psychological harm" means the material impairment of a
6 person's mental health, as documented by a competent
7 psychologist, psychiatrist, or psychotherapist, or supported by
8 competent expert evidence at trial.

9 **§396- Unlawful safety violations.** It shall be an
10 unlawful safety violation under this part to:

11 (1) Subject an employee to an abusive work environment; or

12 (2) Retaliate in any manner against an employee because
13 the employee:

14 (A) Opposed any unlawful safety violation under this
15 part; or

16 (B) Made a charge, testified, assisted, or
17 participated in any manner in an investigation or
18 proceeding under this part, including but not
19 limited to, internal proceedings, arbitration or
20 mediation proceedings, and legal actions.



1 **§396- Liability; limitations.** (a) An employer shall be
2 vicariously liable for an unlawful safety violation committed by
3 its employee in violation of this part.

4 (b) The employer's liability for damages for emotional
5 distress shall not exceed \$25,000, and the employer shall not be
6 liable for punitive damages where an employer has been found to
7 have committed an unlawful safety violation under this part that
8 did not result in a negative employment decision.

9 **§396- Affirmative defenses.** It shall be an affirmative
10 defense to an action for an abusive work environment that:

11 (1) The employer exercised reasonable care to prevent and
12 promptly correct the abusive conduct and the aggrieved
13 employee unreasonably failed to take advantage of
14 appropriate preventive or corrective opportunities
15 provided by the employer. This defense is not
16 available when abusive conduct culminates in a
17 negative employment decision; and

18 (2) The complaint is grounded primarily upon a negative
19 employment decision made consistent with an employer's
20 legitimate business interests, such as a termination
21 or demotion based on an employee's poor performance,
22 or the complaint is grounded primarily upon an



1 employer's reasonable investigation of potentially
2 illegal or unethical activity.

3 **§396- Statute of limitations.** An action commenced under
4 this part shall be commenced no later than three years after the
5 last act that constitutes or comprises the alleged unlawful
6 safety violation.

7 **§396- Education.** (a) The department shall develop and
8 disseminate, at no cost to employers, information on abusive
9 work environments and the legal consequences that employees or
10 employers encounter if they contribute to the creation or
11 perpetuation of abusive work environments.

12 (b) Employers shall be responsible for:

13 (1) Posting or providing the information provided by the
14 department under subsection (a) in a prominent place
15 in the workplace that is readily accessible to
16 employees; and

17 (2) Educating supervisors and employees on abusive work
18 environments and the legal consequences provided under
19 this part.

20 **§396- Remedies.** (a) The court may enjoin the defendant
21 from engaging in conduct constituting an unlawful safety
22 violation committed under this part. The court may order any



1 other relief that is deemed appropriate, including but not
2 limited to, reinstatement, removal of the offending party from
3 the complainant's work environment, back pay, front pay, medical
4 expenses, and compensation for emotional distress, punitive
5 damages, and attorney's fees.

6 (b) A person who believes that the person has been
7 subjected to an unlawful safety violation under this part may
8 elect to accept workers' compensation benefits in connection
9 with the underlying behavior in lieu of bringing an action under
10 this part. A person who elects to accept workers' compensation
11 benefits shall not bring an action under this part for the same
12 underlying behavior.

13 (c) In any action brought under this part, the court, in
14 addition to any judgment awarded to the plaintiff or plaintiffs,
15 shall allow costs of the action, including costs or fees of any
16 nature and reasonable attorney's fees, to be paid by the
17 defendant."

18 SECTION 3. Chapter 396, Hawaii Revised Statutes, is
19 amended by designating sections 396-1 to 396-20 as:

20 "PART I. GENERAL PROVISIONS"



1 SECTION 4. This Act shall take effect upon its approval.

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INTRODUCED BY: *Franne Chun Oakland*
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Report Title:

Occupational Safety and Health; Abusive Work Environments

Description:

Prohibits an employer from subjecting an employee to an abusive work environment; provides legal recourse for employees who have been psychologically, physically, or economically harmed as a result of being deliberately subjected to an abusive work environment.

