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# 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. As a result, these employees may experience  
7 physical and psychological harm, which negatively impacts job  
8 performance and job safety, often manifesting in injuries and  
9 illnesses. The National Institute for Occupational Safety  
10 recognizes general harassment, including workplace bullying, as  
11 a form of workplace violence.

12           Workplace bullying is defined as the repeated health-  
13 impairing mistreatment of one person by another that a  
14 reasonable person would recognize as harmful. Congress has  
15 found that employee injuries and illnesses that arise out of  
16 work situations impose a substantial burden on businesses and  
17 that these injuries and illnesses can be reduced through the  
18 establishment and enforcement of minimum health and safety



1 standards. Accordingly, the Hawaii occupational safety and  
 2 health law ensures safe and healthful working conditions for all  
 3 employees throughout the State. The legislature determines that  
 4 in addition to the current protections under the law, employees  
 5 need protection from the repeated health-impairing mistreatment  
 6 of one person by another in order to promote safe and healthy  
 7 work environments.

8 The purpose of this Act is to provide legal recourse for  
 9 employees who have been psychologically or physically harmed by  
 10 being deliberately subjected to abusive work environments.

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

14 **"PART . ABUSIVE WORK ENVIRONMENTS**

15 **§396- Definitions.** As used in this part:

16 "Abusive conduct":

- 17 (1) Means conduct of an employer or employee in the  
 18 workplace, with malice, that a reasonable person would  
 19 find hostile, offensive, and unrelated to an  
 20 employer's legitimate business interests; and
- 21 (2) May include, but is not limited to, repeated  
 22 infliction of verbal abuse, such as the use of



1           derogatory remarks, insults, and epithets; verbal or  
2           physical conduct that a reasonable person would find  
3           threatening, intimidating, or humiliating; or the  
4           gratuitous sabotage or undermining of a person's work  
5           performance.

6   Single acts normally shall not constitute abusive conduct,  
7   unless especially severe and egregious, and the severity,  
8   nature, and frequency of any conduct objected to shall be  
9   considered.

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

13           "Conduct" means all forms of behavior, including acts and  
14   omissions of acts.

15           "Constructive discharge" means abusive conduct that causes  
16   the employee to resign, and where prior to resigning, the  
17   employee brings to the employer's attention the existence of the  
18   abusive conduct, and the employer fails to take reasonable steps  
19   to eliminate the abusive conduct.



1 "Malice":

2 (1) Means the desire to see another person suffer  
3 psychological, physical, or economic harm, without  
4 legitimate cause or justification; and

5 (2) May be inferred from the presence of one or more  
6 factors such as outward expressions of hostility,  
7 harmful conduct inconsistent with an employer's  
8 legitimate business interests, a continuation of  
9 harmful, illegitimate conduct after the complainant  
10 requests that it cease or demonstrates outward signs  
11 of emotional or physical distress in the face of the  
12 conduct, or attempts to exploit the complainant's  
13 known psychological or physical vulnerability.

14 "Negative employment decision" means a termination,  
15 constructive discharge, demotion, unfavorable reassignment,  
16 refusal to promote, or disciplinary action.

17 "Physical harm" means the material impairment of a person's  
18 physical health or bodily integrity, as documented by a  
19 competent physician or supported by competent expert evidence at  
20 trial.

21 "Psychological harm" means the material impairment of a  
22 person's mental health, as documented by a competent



1 psychologist, psychiatrist, or psychotherapist, or supported by  
2 competent expert evidence at trial.

3       **§396- Unlawful safety violations.** It shall be an  
4 unlawful safety violation under this part to:

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

6       (2) Retaliate in any manner against an employee because  
7 the employee:

8           (A) Opposed any unlawful safety violation under this  
9 part; or

10          (B) Made a charge, testified, assisted, or  
11 participated in any manner in an investigation or  
12 proceeding under this part, including but not  
13 limited to internal proceedings, arbitration or  
14 mediation proceedings, and legal actions.

15       **§396- Liability; limitations.** (a) An employer shall be  
16 vicariously liable for an unlawful safety violation committed by  
17 its employee in violation of this part.

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



1           **§396- Statute of limitations.** An action commenced under  
2 this part shall be commenced no later than three years after the  
3 last act that constitutes or comprises the alleged unlawful  
4 safety violation.

5           **§396- Affirmative defenses.** It shall be an affirmative  
6 defense to an action for an abusive work environment that:

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

14           (2) The complaint is grounded primarily upon:

15           (A) A negative employment decision made consistent  
16 with an employer's legitimate business interests,  
17 such as a termination or demotion based on an  
18 employee's poor performance; or

19           (B) An employer's reasonable investigation of  
20 potentially illegal or unethical activity.

21           **§396- Education.** (a) The department shall develop and  
22 disseminate, at no cost to employers, information on abusive



1 work environments and the legal consequences that employees or  
2 employers encounter if they contribute to the creation or  
3 perpetuation of abusive work environments.

4 (b) Employers shall be responsible for posting or  
5 providing the information provided by the department under  
6 subsection (a) in a prominent place in the workplace that is  
7 readily accessible to employees.

8 **§396- Remedies.** (a) The court may enjoin the defendant  
9 from engaging in conduct constituting an unlawful safety  
10 violation committed under this part. The court may order any  
11 other relief that is deemed appropriate, including but not  
12 limited to reinstatement, removal of the offending party from  
13 the complainant's work environment, back pay, front pay, medical  
14 expenses, compensation for emotional distress, punitive damages,  
15 and attorney's fees.

16 (b) A person who believes that the person has been  
17 subjected to an unlawful safety violation under this part may  
18 elect to accept workers' compensation benefits in connection  
19 with the underlying behavior in lieu of bringing an action under  
20 this part. A person who elects to accept workers' compensation  
21 benefits shall not bring an action under this part for the same  
22 underlying behavior.



1 (c) In any action brought under this part, the court, in  
 2 addition to any judgment awarded to the plaintiff or plaintiffs,  
 3 shall allow costs of the action, including costs or fees of any  
 4 nature and reasonable attorney's fees, to be paid by the  
 5 defendant."

6 SECTION 3. Chapter 396, Hawaii Revised Statutes, is  
 7 amended by designating sections 396-1 to 396-20 as part I and  
 8 adding a title before section 396-1 to read as follows:

9 **PART I. GENERAL PROVISIONS**

10 SECTION 4. New Statutory material is underscored.

11 SECTION 5. This Act shall take effect upon its approval.

12

INTRODUCED BY:                     *Hal Abroad*                    

JAN 24 2007





**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 or physically harmed as a result of being deliberately subjected to an abusive work environment.

