

## *How an employment discrimination complaint is processed:*

Anyone who believes he/she is a victim of employment discrimination can file a complaint, at no cost, with the HCRC. Telephone the HCRC information line at 586-8640.

Complaints must be filed **within 180 days** after the discriminatory practice has occurred. And there must be a “basis” for the discrimination. A person wishing to file should:

- be prepared to present specific facts about the alleged act(s) of discrimination.
- provide copies of documents, if any, that substantiate charges made in the complaint.
- keep records and documents about the complaint, such as applications, evaluations, paycheck stubs, notices and the like.
- keep the HCRC updated about the person’s employment situation and changes of address or phone number.

### *Investigations/Determinations*

After the complaint is accepted, the HCRC conducts an objective investigation of the complaint. Where appropriate, the HCRC will encourage parties to resolve complaints through mediation or pre-determination settlements. If the HCRC determines that there is reasonable cause to believe that discrimination has occurred, it will attempt to correct the discrimination and obtain relief through conciliation.

If conciliation is not successful, the HCRC holds an administrative hearing on the complaint. Where the HCRC finds a violation of the law as a result of the hearing, the Commission Board issues final orders to correct any discriminatory practices and to prevent their recurrence.

The HCRC can order remedies such as (but not limited to):

- requiring the employer to hire the complainant.
- back pay, promotion, or reinstatement.
- policy changes to prevent future discrimination
- money damages to compensate for the emotional or physical harm caused by the act of discrimination.
- punitive damages where there is clear and convincing evidence that an employer wilfully, deliberately, or maliciously violated the law.

A person does not need an attorney to file a complaint or be represented through the HCRC’s investigation or hearings procedures. However, individuals do have the right to be represented by an attorney at their own expense, if they so choose.

For information on these and other aspects of discrimination, contact the:



830 Punchbowl Street, Room 411  
Honolulu, HI 96813

Phone: 586-8636  
Information: 586-8640  
TDD: 586-8692  
FAX: 586-8655

Neighbor Islands call (toll-free):  
Kaua’i: 274-3141, Ext. 6-8636#  
Maui: 984-2400, Ext. 6-8636#  
Hawai’i: 974-4000, Ext. 6-8636#

Lāna’i & Moloka’i: 1-800-468-4644 Ext. 6-8636#

All non-800 numbers are area code (808)  
E-mail: [info@hicrc.org](mailto:info@hicrc.org)

Website: [www.state.hi.us/hcrc](http://www.state.hi.us/hcrc)

This pamphlet is a general summary of the state’s employment discrimination laws and does not have the force or effect of administrative rules or Hawai’i laws. If there are any inconsistencies, the rules and Hawai’i law will control.

# *what is Employment Discrimination?*

## **A Basic Overview of Hawai’i’s State Law**



## ***What is employment discrimination?***

Hawai'i law, \* prohibits unfair or unequal treatment in employment practices & policies such as:

- job advertisements.
- hiring practices (application forms, interviews, selection).
- referrals by employment agencies.
- salary, job classification, work duties, working conditions, & fringe benefits.
- promotion, demotion, suspension, layoff, recall, or termination.

The unfair act must be based on a person's:

- sex
- race
- ancestry/national origin
- religion\*\*
- color
- disability
- age
- marital status
- assignment of income for child support obligations
- arrest & court record\*\*\*
- National Guard participation
- sexual orientation
- breast-feeding

\*\* Exemptions include religious or denominational organizations who may give preference to individuals of the same religion for certain types of jobs.

\*\*\* Except that employers who are expressly permitted to consider an individual's criminal history for employment purposes pursuant to law may do so before making a conditional job offer.

The law also protects employees who take leaves of absence for National Guard duty, and employees whose income is assigned to satisfy child support obligations.

It also protects people from retaliation when they oppose discriminatory practices, file a complaint, or try to comply with this law, such as being a witness.

The law provides that nothing shall preclude the establishment and maintenance of a Bona Fide Occupational Qualification (BFOQ). This is a narrow exception to the employment discrimination law, and the employer bears the burden of proving the basis for a BFOQ.

## ***Who is regulated?***

- government and private employers with one or more employees (except the federal government).
- employment agencies and placement services.
- labor organizations.

## ***Job applications and interviews***

The law generally prohibits pre-employment practices or policies which:

- 1) ask information from applicants (prior to employment) concerning the applicant's race, sex, sexual orientation, age, religion, color, ancestry, disability, marital status, or arrest and court record;
- 2) result in the disproportionate screening-out of members of such protected groups; or
- 3) are not relevant to successful job performance.

It is the employer's right to establish job-related requirements and to seek the most qualified individual for the job. Therefore, the employer should only ask those questions necessary to determine the applicant's eligibility for employment. Examples of acceptable and unacceptable pre-employment inquiries are listed inside this brochure.

## ***Sexual harassment at the workplace***

The law defines sexual harassment as unwelcome sexual advances, requests for sexual favors or

other unwelcome visual, verbal, or physical conduct of a sexual nature. This may include many forms of offensive behavior such as:

- unwanted sexual advances.
- offering jobs, promotions, or benefits in exchange for sexual favors.
- threatening to demote, fire, or withhold benefits if an employee protests, refuses, or ignores sexual advances.
- unwanted leering, making sexual gestures, or displaying sexually suggestive objects, pictures, cartoons, or posters.
- unwanted derogatory comments, slurs, jokes, suggestive or obscene letters or notes.
- unwanted touching, assault, impeding, or blocking of movement.

Employers are liable for acts of sexual harassment committed by themselves, their agents or supervisory employees.

They are also liable for sexual harassment committed by other employees or non-employees, if they know, or should have known, of the conduct and fail to take immediate and appropriate corrective action.

## ***Pregnancy discrimination***

The law prohibits employers from not hiring an applicant because she is pregnant, or discharging or penalizing an employee in the terms, conditions, and privileges of employment because she is pregnant.

- 1) Employers must make reasonable accommodations such as: allowing the pregnant employee to sit, instead of stand, while working; excusing from or providing assistance for lifting tasks; allowing time off for doctor's appointments.
- 2) Employers are also required to provide leave, with or without pay, for a reasonable period of time for disabilities due to and resulting from

pregnancy, childbirth, or related medical conditions. A reasonable period of time is determined by the employee's physician with regard to her physical condition and her specific job requirements.

3) Such employees have return rights to their original jobs or to positions of comparable status and pay (without loss of accumulated service credits and privileges).

## ***Employees with disabilities***

The law requires employers to provide reasonable accommodations for a qualified employee with a disability. An accommodation is reasonable if it does not impose an undue hardship on the employer's business. Examples of reasonable accommodations are:

- job restructuring or job sharing.
- adjustments to the work environment, such as raising desks to accommodate wheelchairs.
- providing qualified readers, interpreters, or assistants.

Employers may obtain help from government agencies and outside experts regarding accommodations. Contact the state Disability and Communication Access Board at (808) 586-8121 (Voice or TTY) for information on types of accommodation, and local & national resources.

## ***Religious accommodations***

The law requires employers to reasonably accommodate an employee's religious practices unless an undue hardship would result. Two examples of accommodating religious practices are:

- allowing the employee to observe a religious holiday by trading workdays with a voluntary, qualified co-employee,
- granting flexible work schedules.

# GUIDELINE FOR PRE-EMPLOYMENT INQUIRIES (APPLICATION FORMS AND JOB INTERVIEWS)\*

SUBJECT	LAWFUL INQUIRIES	UNLAWFUL INQUIRIES
<b>NAME</b>	Whether applicant has used another name (for the purpose of checking the applicant's past work record).	Inquiries about the name which would indicate applicant's lineage, ancestry, national origin, descent, or marital status (i.e. maiden name). Inquiry into previous name of applicant (if not for the purpose of checking the applicant's work record). Mr., Mrs., Miss, or Ms.
<b>ADDRESS or DURATION OF RESIDENCE</b>	Applicant's address. Inquiry into place and length of current and previous address.	Specific inquiry into foreign addresses which would indicate national origin.
<b>BIRTHPLACE, CITIZENSHIP</b>		Whether applicant, parents, or spouse are naturalized or native-born U.S. citizens. Birthplace of applicant. Birthplace of applicant's parents, spouse, or other relatives. Requirement that applicant submit proof of birth document prior to hiring. "Of what country are you a citizen?" Date when applicant, parents or spouse acquired U.S. citizenship. Requirement that applicant produce naturalization papers.
<b>AGE</b>	Inquiry whether or not the applicant meets the minimum age requirement set by law. If a minor, require proof of age in form of a work permit or a certificate of age. After being hired, require proof of age (if age is a legal requirement) or if inquiry serves legitimate record-keeping purpose.	Requirement that applicant state age or date of birth. Requirement that applicant produce proof of age in the form of a birth certificate or baptismal record. Phrases such as: "young," "college student," "girl," "boy," "recent college graduate," "retired person," or "supplement your pension." Date of attendance/completion of elementary/high school/college.
<b>RELIGION</b>	An applicant may be advised concerning normal hours and days of work. "Apart from absences for religious observances, will you be available for work at the following times?" After a position is offered, inquiry into the need for reasonable religious accommodation.	Applicant's religious denomination or affiliation, church, parish, pastor, or religious holidays observed.** Applicant is told: "This is a Catholic/Protestant/Jewish/atheist/etc. organization."** "Do you attend religious services or a house of worship?"** Any inquiry to indicate or identify religious customs, or holidays observed. Applicant is told that employees are required to work on religious holidays which are observed as days of complete prayer by members of their specific faith. ** <i>unless employer is exempt under HRS 378-3(5)</i> .
<b>RACE or COLOR</b>		Applicant's race. Color of applicant's skin, eyes, hair, etc., or other questions directly or indirectly indicating race or color. Applicant's height.
<b>PHOTOGRAPH</b>	May be required for identification <u>after</u> hiring.	Request photograph <u>before</u> hiring.
<b>ANCESTRY or NATIONAL ORIGIN (country of origin)</b>	Languages applicant reads, speaks or writes fluently, if use of language other than English is relevant to the job for which applicant is applying.	Applicant's nationality, lineage, ancestry, national origin, descent, or parentage. Nationality of applicant's parents or spouse; maiden name of applicant's wife or mother. Language commonly used by applicant. "What is your mother tongue?" How applicant acquired ability to read, write, or speak a foreign language.
<b>EDUCATION</b>	Applicant's academic, vocational, or professional education; schools attended.	Any inquiry asking specifically the nationality, racial, or religious affiliation of a school. Dates of attendance and/or graduation from school.
<b>EXPERIENCE</b>	Applicant's work experience.	
<b>ARREST &amp; COURT RECORD</b>	After making a conditional job offer: Convictions (not arrests) not more than 10 years old, that are rationally related to the duties and responsibilities of the position, except that employers who are expressly permitted to consider an individual's criminal history for employment purposes pursuant to law may do so before making a conditional job offer.	Prior to making a conditional job offer: "Have you ever been arrested or convicted?" or ask to check into person's arrest or conviction record.*** *** <i>These inquiries are unlawful except as expressly permitted by law.</i>
<b>NOTICE IN CASE OF EMERGENCY</b>	Name and address of <u>person</u> to be notified in case of emergency.	Name and address of <u>relative</u> to be notified in case of emergencies.
<b>ORGANIZATIONS, ACTIVITIES</b>	Membership in <u>job-related</u> clubs, organizations, churches, and schools. May omit those which reveal the race, religion, age, sex, color, disability, marital status, ancestry, or sexual orientation of the applicant. What offices are held, if any.	The names of all organizations, clubs, societies, lodges to which the applicant belongs.
<b>REFERENCES</b>	"By whom were you referred for a position here?" Names of persons willing to provide professional and/or character references for applicant.	Require the submission of a religious reference. Questions to references which elicit information specifying applicant's race, color, religion, ancestry, age, marital status, national origin, or sexual orientation.
<b>SEX</b>		Sex of the applicant. "Are you expecting?" "Are you pregnant?" "Use of birth control?" "What are your plans for having a family?" Applicant's weight or height (unless it is a BFOQ). Mr., Mrs., Miss, or Ms.
<b>DISABILITY</b>	"Are you able to perform the essential functions of this job with or without a reasonable accommodation?"  After the job offer is made, require a physical examination if that is a requirement for all employees.	Whether applicant has any physical or mental disability. "Have you ever collected workers' compensation or temporary disability insurance for a previous illness or injury?" Questions regarding applicant's general state of health or medical condition.
<b>MARITAL STATUS</b>		Whether single, married, divorced, widowed, separated, etc. Mr., Mrs., Miss, or Ms. Names and ages of spouse and children; provisions for child care. Spouse's place of employment. "With whom do you reside?" "Do you live with your parents?"
<b>SEXUAL ORIENTATION</b>		Whether an applicant has a preference for heterosexual, homosexual, or bisexual partners/relationships.
<b>MISCELLANEOUS</b>	Notice to applicants that any misstatements or omission of material facts in the application may be cause for dismissal.	Require an applicant to submit a resume containing answers to unlawful inquiries.
<b>BONA FIDE OCCUPATIONAL QUALIFICATION (BFOQ)</b>	BFOQ Exception: Nothing shall prohibit the establishment and maintenance of a bona fide occupational qualification (BFOQ). To establish a protected basis as a BFOQ, an employer is required to show: a) that the essence of the business operation would be undermined by the hiring of a person from the protected class or b) a factual basis for believing that all or substantially all persons from the protected class would be unable to safely or efficiently perform the job duties, or it is impossible or highly impractical to deal with such persons on an individualized basis	Require an applicant to submit a resume containing answers to unlawful inquiries.

**PREPARED BY THE HAWAII CIVIL RIGHTS COMMISSION, DECEMBER 2002 • TELEPHONE 586-8636 (TDD 586-8692)**

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