

DAVID Y. IGE
GOVERNOR



PANKAJ BHANOT
DIRECTOR

CATHY BETTS
DEPUTY DIRECTOR

STATE OF HAWAII
DEPARTMENT OF HUMAN SERVICES
P. O. Box 339
Honolulu, Hawaii 96809-0339

February 9, 2020

TO: The Honorable Representative Chris Lee, Chair
House Committee on Judiciary

FROM: Pankaj Bhanot, Director

SUBJECT: **HB 2054 HD1 – RELATING TO EMPLOYMENT PRACTICES**

Hearing: February 11, 2020, Time 2:05 p.m.
Conference Room 325, State Capitol

DEPARTMENT'S POSITION: The Department of Human Services (DHS) supports this measure as all individuals should have a workplace environment free from harassment, assault, and violence. Low wage, low skill workers, or workers just entering the workforce are especially vulnerable to harassment. This measure is a positive employment policy that will improve the social and economic mobility of Hawaii's residents. DHS provides benefits and services that support individuals and families with their basic needs so adults can address their children's care and education, and improve their own skills to gain and maintain employment.

PURPOSE: The purposes of the bill prohibits an employer from requiring an employee to enter into a nondisclosure agreement pertaining to sexual harassment or sexual assault. Prohibits an employer from retaliating against an employee for disclosing or discussing sexual harassment or sexual assault. Takes effect 1/1/2050. (HD1)

Women, men, gender non-conforming, and low-income individuals, all may experience sexual harassment and sexually coercive behavior in the workplace. However, the majority of workplace harassment victims are women. The risk of being sexually harassed in the workplace increases greatly for women of color and women who work in low paying jobs.

As such, workplace harassment and subsequent retaliation have a direct effect on individual's ability to work and to be economically self-sufficient. Many victims do not report for fear of being retaliated against.

The proliferation of non-disclosure agreements (NDA) has enabled abusers to continue their abuse and in turn, silence their victims from reporting.

DHS provides services to 1 in 4 Hawaii residents, and to some of the most vulnerable individuals and families in the State. Through our multi-generational 'Ohana Nui framework, we endeavor to address the multiple factors that contribute to multi-generational poverty including the impact of trauma on individuals and families. Reducing harassment in the work place and supporting better employment practices will further this goal.

Thank you for the opportunity to testify in support.



‘O kēia ‘ōlelo hō’ike no ke
Komikina Kūlana Olakino o Nā Wāhine

Testimony on behalf of the
Hawai‘i State Commission on the Status of Women

Prepared for the House Committee on Judiciary

In Support of HB2054 HD1
Tuesday, February 11, 2020, at 2:05 p.m. in Room 325

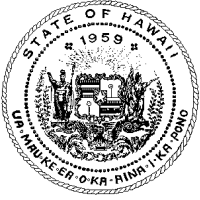
Dear Chair Lee, Vice Chair San Buenaventura, and Honorable Members,

The Hawai‘i State Commission on the Status of Women supports the intent of HB2054 HD1, which prohibits non-disclosure agreements, legally enforceable contracts that prohibit disclosure of sexual harassment or sexual assault, as a condition of employment. The Commission notes the silencing effect of confidentiality clauses or non-disclosure agreements (NDAs). NDAs are not actually victim-centered, and have functioned to shield serial offenders of sex discrimination, including sexual assault and sexual harassment, by allowing the pattern of misconduct to continue unnoticed and other women to suffer similar abuse by the same offender.

In doing so, NDAs perpetuate the power imbalance between men and women in the workplace. They also create a ripple effect impacting women’s career choices and ability to advance in the workplace. The Legislature should act to ban NDAs as part of a broader strategy to eradicate sexual harassment. Accordingly, the Commission respectfully urges the Committee to pass HB2054 HD1.

Sincerely,

Khara Jabola-Carolus



LATE

HAWAI‘I CIVIL RIGHTS COMMISSION

830 PUNCHBOWL STREET, ROOM 411 HONOLULU, HI 96813 • PHONE: 586-8636 • FAX: 586-8655 • TDD: 568-8692

February 11, 2020
Rm. 325, 2:05 p.m.

To: The Honorable Chris Lee, Chair
The Honorable Joy A. San Buenaventura, Vice Chair
Members of the House Committee on Judiciary

From: Liann Ebesugawa, Chair
and Commissioners of the Hawai‘i Civil Rights Commission

Re: H.B. No. 2054, H.D. 1

The Hawai‘i Civil Rights Commission (HCRC) has enforcement jurisdiction over Hawai‘i’s laws prohibiting discrimination in employment, housing, public accommodations, and access to state and state funded services (on the basis of disability). The HCRC carries out the Hawai‘i constitutional mandate that no person shall be discriminated against in the exercise of their civil rights. Art. I, Sec. 5.

The HCRC supports H.B. No. 2054, H.D. 1.

H.B. No. 2054, H.D. 1 amends HRS chapter 378 to add a new section prohibiting employers from requiring nondisclosure agreements that prevent disclosure of sexual assault or sexual harassment as a condition of employment. The bill prohibits employers from retaliating against an employee for disclosing or discussing sexual harassment or sexual assault. HCRC supports both prohibitions, which in combination will preclude nondisclosure agreements that can enable serial harassers to continue unlawful sexual harassment. The current bill creates a new section in HRS chapter 378, but does not designate in which part it will be placed. If enacted, placement of the new section in HRS chapter 378, part I, would provide for both enforcement and remedies.

The HCRC notes that the confidentiality permitted as part of a legal settlement in H.B. No. 2063 may conflict with this bill, which would prohibit nondisclosure agreements regarding

discussion and disclosure of sexual harassment in the workplace. If these bills both move forward, it may be necessary to reconcile this potential conflict.

The HCRC supports H.B. No, 2054, H.D. 1.



of Hawaii

Hawaii State House of Representatives Committee on Judiciary

Hearing Date/Time: Tuesday February 11, 2020 2:05PM

Place: Hawaii State Capitol, Room 325

Re: Testimony in STRONG SUPPORT of H.B. 2054

Dear Chair Lee, Vice Chair San Buenaventura, and Members of the Committee,

Members of AAUW of Hawaii are grateful for this opportunity to testify in strong support of H.B. 2054, which would prohibit nondisclosure agreements involving sexual assault and sexual harassment as part of an employee's conditions of employment, and prohibit employers from retaliating against an employee for disclosing or discussing sexual harassment or sexual assault.

Workplace sexual harassment is more common than we think: 53% of women and 42% of men experienced workplace sexual harassment while working in Hawaii according to a recent survey by Safe Spaces & Workplaces. Workplace sexual harassment take a toll on victim's physical and mental health, and it also limits the livelihood for 38% of those harassed said the harassment contributed to their decision to leave their job and 37% said the harassment disrupted their career advancement.¹ Many in Hawaii don't report because they don't want to make waves; many don't report because they fear retaliation.

Non-disclosure agreements and retaliating employees for disclosing and discussing sexual harassment or sexual assault silences victims and allow serial harassers to escape accountability and continue with harassment and assault.

Fifteen states passed new laws since 2017 to protect workers from sexual harassment; thirteen states now limit or prohibit employers from requiring employees to sign non-disclosure agreements as a condition of employment or as part of a settlement agreement.² Hawaii should join Arizona, California, Illinois,

¹ <https://www.aauw.org/research/limiting-our-livelihoods/>

² <https://nwlc-ciww49tixgw5lbab.stackpathdns.com/wp-content/uploads/2019/07/20-States-By-2020-report.pdf>

Louisiana, Maryland, Nevada, New Jersey, New York, Oregon, Tennessee, Vermont, Virginia, and Washington by passing this bill and protect the workers from workplace sexual harassment and assault.

The American Association of University Women (AAUW) of Hawaii is a state-wide organization made up of six branches (Hilo, Honolulu, Kauai, Kona, Maui, and Windward Oahu) and includes just over 650 active members with over 3800 supporters statewide. As advocates for gender equity, AAUW of Hawaii promotes the economic, social, and physical well-being of all persons.

Mahalo.

A handwritten signature in blue ink, appearing to read 'Y. Overly', with a stylized, cursive script.

Younghee Overly
Public Policy Chair, AAUW of Hawaii
publicpolicy-hi@aauw.net



Hawaii Women's Coalition

To: Hawaii State House of Representatives Committee on Judiciary
Hearing Date/Time: Tuesday February 11, 2020 2:05PM
Place: Hawaii State Capitol, Room 325
Re: Testimony in STRONG SUPPORT of H.B. 2054

Dear Chair Lee, Vice Chair San Buenaventura, and Members of the Committee,

The Hawaii Women's Coalition writes in support of H.B. 2054, to prohibit an employer from requiring an employee to enter into a nondisclosure agreement pertaining to sexual harassment or sexual assault and to prohibit an employer from retaliating against an employee for disclosing or discussing sexual harassment or sexual assault.

A recent survey by Safe Spaces & Workplaces of Hawaii adults showed 52% of women and 42% of men experienced workplace sexual harassment while working in Hawaii. Only 18% reported the incident to Human Resources. Many stay silent because they don't want to make waves; others see sexual harassment as a strictly legal issue likely to result in costly litigation. 15% changed their job or quit.

A recent study "Limiting Our Livelihoods" by American Association of University Women (AAUW) showed 38% of women who were sexually harassed said the harassment contributed to their decision to leave their job, 37% said the harassment disrupted their career advancement. Many do not report the incident because they fear retaliation.

Although federal law appears comprehensive and robust, employees who are harassed at work are often unable to access justice. The barriers include:

- Narrow standards about the kinds of employers covered by existing laws. For example, employers with fewer than 15 employees are exempt;
- The exclusion from coverage of various categories of workers, including contractors and unpaid interns;
- A limited time frame for bringing charges;
- Onerous standards of proof: Courts have narrowly interpreted the definition of sexual harassment so many egregious complaints have not met the required standard;
- Reduced liability: The Supreme Court has narrowed the circumstances in which employers and coworkers can be liable for harassment;
- Non-disclosure agreements and mandatory arbitration: These can prevent employees from speaking out and/or pursuing legal remedies;



Hawaii Women's Coalition

- Non-disclosure agreements and retaliating employees for disclosing and discussing sexual harassment or sexual assault allows serial harassers to escape accountability and continue with harassment.

Fifteen states passed new laws since 2017 to protect workers from sexual harassment; thirteen states now limit or prohibit employers from requiring employees to sign non-disclosure agreements as a condition of employment or as part of a settlement agreement. Hawaii should join Arizona, California, Illinois, Louisiana, Maryland, Nevada, New Jersey, New York, Oregon, Tennessee, Vermont, Virginia, and Washington by passing this bill.

Thank you for your support for this important measure to promote fairness and equity in the workplace.

Sincerely,

Hawaii Women's Coalition

HB-2054-HD-1

Submitted on: 2/8/2020 4:22:43 PM

Testimony for JUD on 2/11/2020 2:05:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Michael Golojuch Jr	LGBT Caucus of the Democratic Party of Hawaii	Support	No

Comments:

Aloha Chair Lee, Vice Chair San Bueventura and Committee Members,

The LGBT Caucus of the Democratic Party of Hawai'i stands in full support of the passage of House Bill 2054.

Nondisclosure agreements pertaining to sexual harassment or sexual assault have allowed sexual predators to go unpunished and continue to attack more people. They are a blight on our society and need banned.

Mahalo for the opportunity to testify,

Michael Golojuch, Jr.
Chair
LGBT Caucus of the Democratic Party of Hawai'i

HB-2054-HD-1

Submitted on: 2/10/2020 9:27:39 AM

Testimony for JUD on 2/11/2020 2:05:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Laurie Field	Planned Parenthood Votes Northwest and Hawaii	Support	No

Comments:



February 11, 2020

Committee on Judiciary
Rep. Lee, Chair
Rep. San Buenaventura, Vice Chair

The House of Representatives
The Thirtieth Legislature
Regular Session of 2020

RE: HB 2054, HDI - RELATING TO EMPLOYMENT PRACTICES
DATE: Tuesday, February 11, 2020
TIME: 2:05
PLACE: Conference Room 325
State Capitol 415 South Beretania Street, Honolulu HI

Aloha Chair Lee, Vice Chair San Buenaventura, and the Members of the Committee,

Thank you for the opportunity to testify in **support** of this measure. [SAG-AFTRA](#) represents over 1000 actors, recording artists, and media professionals in our state.

We support this ban on pre-employment nondisclosure agreements whenever this legal tool is used to cover up sexual harassment and assault in the workplace. These type of pre-employment requirements cover up abuse and act as a restraint on the freedom of speech on Hawaii's workers.

We also support adding a new section to HRS chapter 378 making it unlawful practice to retaliate against employees for disclosing or discussing sexual harassment or sexual assault. An employee's fear that her/his employer will retaliate against them for disclosing or even just discussing sexual assault or harassment acts as a powerful deterrent and silencer. Adding this section goes a long way to protect workers and to shine a light on discriminatory and dangerous practices.

In taking action to encourage open discourse, the state will not only strengthen the civil rights of Hawaii workers that may find themselves in vulnerable and precarious positions but will also allow for the exposure of persons who pose a risk to public safety.

Thank you again for your continued support and please don't hesitate to contact the SAG-AFTRA Hawaii Local office for more information on this issue as it relates to professional performers.

Respectfully,

A handwritten signature in black ink, appearing to read "Mericia Palma Elmore".

Mericia Palma Elmore
Executive Director SAG-AFTRA Hawaii Local

Mericia Palma Elmore, Executive Director
SAG-AFTRA Hawaii Local
mericia.palmaelmore@sagaftra.org
Ph: 808-596-0388 • Fax: 808-593-2636
201 Merchant St Suite 2301 Honolulu, HI 96813

SCREEN ACTORS GUILD - AMERICAN FEDERATION OF
TELEVISION AND RADIO ARTISTS
SAGAFTRA.org
Associated Actors & Artistes of America / AFL-CIO

HB-2054-HD-1

Submitted on: 2/10/2020 3:49:59 PM

Testimony for JUD on 2/11/2020 2:05:00 PM

LATE

Submitted By	Organization	Testifier Position	Present at Hearing
	Domestic Violence Action Center	Support	No

Comments:

HB-2054-HD-1

Submitted on: 2/8/2020 10:31:21 AM

Testimony for JUD on 2/11/2020 2:05:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Beverley D. Tobias	Individual	Support	No

Comments:

On the topic of Sexual Harassment, HB 2054HDI

I would like to see Hawaii join the 15 states that have passed new laws since 2017 that protect all workers from sexual Harassment in the work place. By not having employees or interns sign away their rights (non disclosure agreements as a condition of employment or as part of any settlement).

Can we also agree not limit the time frame to bring charges to an employer which directly impact, workability under tenuous conditions, pay or career advancement. If the employer retaliates in the present or restricts reporting, can provisions be made to prevent future pay, promotion or emotional and physical well being that impact employees from such cases be deminished by this bill. Can we also work to bring the date of effectiveness closer than 2050.

HB-2054-HD-1

Submitted on: 2/8/2020 2:22:37 PM

Testimony for JUD on 2/11/2020 2:05:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Katrina Obleada	Individual	Support	No

Comments:

HB-2054-HD-1

Submitted on: 2/9/2020 11:22:35 AM

Testimony for JUD on 2/11/2020 2:05:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Caroline Kunitake	Individual	Support	No

Comments:

Dear Chair Lee and Members of the Committee on Judiciary,

I am writing in support of HB2054 HD1.

- A recent survey by Safe Spaces & Workplaces^[1] of Hawaii adults showed 52% of women and 42% of men experienced workplace sexual harassment while working in Hawaii. Only 18% reported the incident to Human Resources. Many stay silent because they don't want to make waves; others see sexual harassment as a strictly legal issue likely to result in costly litigation. 15% changed their job or quit.
- A recent study "Limiting Our Livelihoods" by American Association of University Women (AAUW)^[2] showed 38% of women who were sexually harassed said the harassment contributed to their decision to leave their job, 37% said the harassment disrupted their career advancement. Many do not report the incident because they fear retaliation.
- Although federal law appears comprehensive and robust, employees who are harassed at work are often unable to access justice. The barriers include:^[3]
 - Narrow standards about the kinds of employers covered by existing laws. For example, employers with fewer than 15 employees are exempt.
 - The exclusion from coverage of various categories of workers, including contractors and unpaid interns.
 - A limited time frame for bringing charges.
 - Onerous standards of proof: Courts have narrowly interpreted the definition of sexual harassment so many egregious complaints have not met the required standard.
 - Reduced liability: The Supreme Court has narrowed the circumstances in which employers and coworkers can be liable for harassment.
 - Non-disclosure agreements and mandatory arbitration: These can prevent employees from speaking out and/or pursuing legal remedies.
- Non-disclosure agreements and retaliating employees for disclosing and discussing sexual harassment or sexual assault allows serial harassers to escape accountability and continue with harassment.
- Fifteen states passed new laws since 2017 to protect workers from sexual harassment; thirteen states now limit or prohibit employers from requiring employees to sign non-disclosure agreements as a condition of employment or

as part of a settlement agreement.^[4] Hawaii should join Arizona, California, Illinois, Louisiana, Maryland, Nevada, New Jersey, New York, Oregon, Tennessee, Vermont, Virginia, Washington by passing this bill.

[1] <https://www.safespacesandworkplaces.com/hawaii-workplace-survey>

[2] <https://www.aauw.org/research/limiting-our-livelihoods/>

[3] <https://www.aauw.org/files/2019/11/Limiting-our-Livelihoods-2-pager.pdf>

[4] <https://nwlc-ciw49tixgw5lbab.stackpathdns.com/wp-content/uploads/2019/07/20-States-By-2020-report.pdf>

Please pass this bill.

Mahalo,

Caroline Kunitake

HB-2054-HD-1

Submitted on: 2/9/2020 7:01:08 PM

Testimony for JUD on 2/11/2020 2:05:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Joanna Amberger	Individual	Support	No

Comments:

- A recent survey by Safe Spaces & Workplaces^[1] of Hawaii adults showed 52% of women and 42% of men experienced workplace sexual harassment while working in Hawaii. Only 18% reported the incident to Human Resources. Many stay silent because they don't want to make waves; others see sexual harassment as a strictly legal issue likely to result in costly litigation. 15% changed their job or quit.
- A recent study "Limiting Our Livelihoods" by American Association of University Women (AAUW)^[2] showed 38% of women who were sexually harassed said the harassment contributed to their decision to leave their job, 37% said the harassment disrupted their career advancement. Many do not report the incident because they fear retaliation.
- Although federal law appears comprehensive and robust, employees who are harassed at work are often unable to access justice. The barriers include:^[3]
 - Narrow standards about the kinds of employers covered by existing laws. For example, employers with fewer than 15 employees are exempt.
 - The exclusion from coverage of various categories of workers, including contractors and unpaid interns.
 - A limited time frame for bringing charges.
 - Onerous standards of proof: Courts have narrowly interpreted the definition of sexual harassment so many egregious complaints have not met the required standard.
 - Reduced liability: The Supreme Court has narrowed the circumstances in which employers and coworkers can be liable for harassment.
 - Non-disclosure agreements and mandatory arbitration: These can prevent employees from speaking out and/or pursuing legal remedies.
- Non-disclosure agreements and retaliating employees for disclosing and discussing sexual harassment or sexual assault allows serial harassers to escape accountability and continue with harassment.
- Fifteen states passed new laws since 2017 to protect workers from sexual harassment; thirteen states now limit or prohibit employers from requiring employees to sign non-disclosure agreements as a condition of employment or as part of a settlement agreement.^[4] Hawaii should join Arizona, California, Illinois, Louisiana, Maryland, Nevada, New Jersey, New York, Oregon, Tennessee, Vermont, Virginia, Washington by passing this bill.

[1] <https://www.safespacesandworkplaces.com/hawaii-workplace-survey>

[2] <https://www.aauw.org/research/limiting-our-livelihoods/>

[3] <https://www.aauw.org/files/2019/11/Limiting-our-Livelihoods-2-pager.pdf>

[4] <https://nwlc-ciw49tixgw5lbab.stackpathdns.com/wp-content/uploads/2019/07/20-States-By-2020-report.pdf>

Hawaii State House of Representatives Judiciary Committee

Hearing Date: Tuesday, February 11, 2020

Time & Room: 2:05pm, Rm. 325

Re: Testimony in support of HB2054, HD1 Relating to Employment Practices

Dear Representative Chris Lee, Chair Representative, Joy A. San Buenaventura, Vice Chair and members of the committee:

- A recent survey by Safe Spaces & Workplaces of Hawaii adults showed 52% of women and 42% of men experienced workplace sexual harassment while working in Hawaii. Many do not report the incident because they fear retaliation.

This bill prohibits an employer from retaliating against an employee for disclosing or discussing sexual harassment or sexual assault.

- Retaliation against employees for disclosing and discussing sexual harassment or sexual assault allows serial harassers to escape accountability and continue with harassment.

This bill prohibits an employer from requiring an employee to enter into a nondisclosure agreement pertaining to sexual harassment or sexual assault.

- Non-disclosure agreements can prevent employees from speaking out and/or pursuing legal remedies.

I urge you to add these protections to Chapter 378, Hawaii Revised Statutes. Please pass this bill and protect workers in Hawaii from sexual harassment.

Thank you for the opportunity to testify.

Janet Morse
AAUW Hawaii member



Fujiwara & Rosenbaum, L.L.L.C.

*Alahea Corporate Tower
1100 Alahea Street 20th Floor
Honolulu, Hawaii 96813*

LATE

February 11, 2020
Rm. 305 at 2:05 p.m.

To: The Honorable Chris Lee, Chair
The Honorable Joy A. San Buenaventura, Vice Chair
Members of the House Committee on Judiciary

From: Elizabeth Jubin Fujiwara, Senior Partner,
Fujiwara & Rosenbaum, L.L.L.C.

Re: **H.B. 2054 H.D. 1**

I have specialized in civil rights and employment law as a plaintiff's attorney since 1986 with an experience in hundreds of sexual harassment cases as well as found to be an expert in our courts. As many of you are now aware, if you weren't before the public case of my client, Rachael Wong against Joe Souki, sexual harassment in Hawai'i has gone unchecked for years, especially where there are powerful individuals. One reason is the **use of harmful nondisclosure agreements (NDAs)/confidential agreements in the workplace.**

Our law firm strongly supports the intent of H.B. 2054 H.D. 1 to limit the NDA: it is an important step forward in the fight to prevent and end harassment in the workplace. By amending HRS chapter 378 it prohibits employers from (1) forcing employees to agree to a NDA at the time of hire and/or at the time of settlement; (2) retaliating against an employee for disclosing or discussing sexual harassment or sexual assault; and NDAs are legally enforceable contracts, often found in employment contracts or settlement agreements, that prohibit a party or parties from disclosing certain information.

Consequently, this bill would help lift the veil of secrecy that enables predatory behavior, would protect employees' rights to report and discuss harassment, and increase employer accountability.

Exactly what is wrong with NDAs/confidential settlements? In Hawai'i it has definitely been my experience for **over 30 years** that it is standard practice to include NDAs/confidentiality provisions in settlement agreements in employment discrimination cases, including sexual harassment cases. **As the sexual**

harassment and assault cases against Harvey Weinstein, so aptly demonstrated, NDAs have increasingly been used to prevent individuals from speaking up about sexual harassment and discrimination, thereby helping hide harassment and allowing predators to evade accountability.

However, to be truly effective this bill clearly needs to go two steps further in protecting victims of sexual harassment. Thus, a modified amendment of section(a) would allow the use of an NDA when “entered into at the claimant’s request.” Such a modified amendment does not ban all NDAs in the settlement context but seeks to shift the power to the employee to decide whether to request confidentiality. Victims of harassment sometimes want to ensure confidentiality to protect themselves from retaliation or damage to their professional reputations and job prospects. Moreover, a policy banning all NDAs in the settlement context could make employers less likely to settle claims or offer significantly less money, forcing victims into costly litigation in court, which is not a realistic option for many workers.¹

Therefore, this amended section should read as follows:

“Right to request confidentiality of settlement. An employee may request confidentiality of a legal settlement to protect their privacy”.

The next amendments that need to be made in order to enforce this legislation are as follows:

“Civil Penalty. If an employer or respondent or defendant makes any request to an employee, complainant or plaintiff or pressures the employee, complainant or plaintiff in any way to enter into a confidentiality agreement as part of a legal settlement relating to a sexual harassment or sexual assault claim, each such request shall constitute a separate violation. An employee, complainant or plaintiff that brings an action pursuant to this section shall be awarded liquidated damages

¹ Some examples of approaches from other states grappling with this issue are, for example, New York that gives complainants 21 days to review the agreement, and another seven days to revoke their consent even after executing the agreement. Another state considering a bill that would deem an NDA in a settlement agreement involving harassment or discrimination to be against public policy and unenforceable against an employee. However, if the employee divulges sufficient information to make the employer identifiable, the NDA is not enforceable against the employer either.

equal to three times the amount of the legal settlement. The penalties provided in this section are cumulative to the remedies and penalties available under all other laws of this State”.

“Time to review voluntary confidentiality agreement; revocation of consent. If an employee has voluntarily requested a confidentiality agreement, the employee has twenty-one days to review the agreement, and an additional seven days to revoke their consent even after executing the agreement²”.

Conclusion

By modifying Section 1 you would further empower employees to speak up about sexual assault and sexual harassment at their workplace, where they are supposed to be safe from rape, other sexual assaults of their body and other sexual harassment and **not live in fear of what is going to happen each day**: “How am I going to be terrorized today?”

It has been over three decades since the Supreme Court first recognized workplace sexual harassment as illegal. But as the stories and data of this past year in Hawai‘i and years prior have reminded us, despite the longstanding prohibitions against harassment based on sex—as well as race, color, religion, national origin, age, and disability—thousands of Hawai‘i’s working people are still denied the right to earn a living with dignity and in safety. The two-year anniversary of #MeToo in Hawai‘i with Rachael Wong’s case going viral provides an important opportunity to respond to the systemic problems highlighted over the past two years relating to workplace harassment, including the increasing use of contractual provisions like NDAs that silence victims and help hide harassment. We are pleased to see the legislature grappling with this important issue.

² – These three amendments are taken directly from H.B. No. 2063, Thirtieth Legislature, 2020

