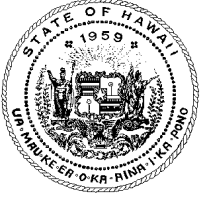


LATE



HAWAI‘I CIVIL RIGHTS COMMISSION

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

June 30, 2020
Room 016, 9:46 a.m.

To: The Honorable Karl Rhoads, Chair
The Honorable Jarrett Keohokalole, Vice Chair
Members of the Senate Committee on Judiciary

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

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

H.B. No. 2054, H.D. 1, S.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 also 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 S.D. 1 places the new section in HRS chapter 378, part I, providing for both enforcement and remedies.

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

HB-2054-SD-1

Submitted on: 6/28/2020 10:25:53 AM

Testimony for JDC on 6/30/2020 9:46:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Leimomi Khan	Testifying for Democratic Party of Hawaii, Hawaiian Affairs Caucu	Support	No

Comments:

Aloha,

The Hawaiian Affairs Caucus of the Democratic Party of Hawaii (DPH) supports HB2054, HD1, SD1 that would prohibit an employer from requiring an employee to enter into a nondisclosure agreement pertaining to sexual harassment or sexual assault and retaliating against an employee for disclosing or discussing sexual harassment or sexual assault. This measure is in line with the DPH Platform concerning Labor. Our belief is that workers need to be safe and free from any form of discrimination, harassment or abuse in the workplace. Please pass this measure.

Respectfully

JUANITA BROWN KAWAMOTO, Luna Ho'omaluu (Chair), Hawaiian Affairs Caucus

HB-2054-SD-1

Submitted on: 6/27/2020 7:52:18 AM

Testimony for JDC on 6/30/2020 9:46:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Michael Golojuch Jr	Testifying for LGBT Caucus of the Democratic Party of Hawaii	Support	Yes

Comments:

Aloha Chair Rhoads, Vice Chair Keohokalole and fellow committee members,

The LGBT Caucus of the Democratic Party of Hawai'i fully supports the passage of HB 2054.

No survivor of workplace sexual harassment or sexual assault should be forced to or even asked to sign a nondisclosure agreement.

The LGBT Caucus of the DPH asks that you support this very important bill.

Mahalo nui loa,

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

HB-2054-SD-1

Submitted on: 6/28/2020 11:01:38 AM

Testimony for JDC on 6/30/2020 9:46:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Tracy Ryan	Testifying for Harm Reduction Hawaii	Support	No

Comments:

HRH supports efforts to prevent businesses from covering up abuse of their employees.

HB-2054-SD-1

Submitted on: 6/27/2020 8:02:35 AM

Testimony for JDC on 6/30/2020 9:46:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Pride at Work - Hawaii	Testifying for Pride @ Work - Hawaii	Support	Yes

Comments:

Aloha Chair Rhoads, Vice Chair Keohokalole and fellow committee members,

Pride at Work – Hawai'i supports the passage of HB 2054.

Nondisclosure agreements are what have allowed sexual predators to thrive in the workplace. As we saw with the “Me Too” movement. By passing this bill you will help ensure that no survivor of sexual assault or harassment in the workplace will be attacked again by their employer and hopefully their attacker will be brought to justice.

Pride at Work – Hawai'i encourages you to pass this necessary piece of legislation.

In Solidarity,

Pride at Work – Hawai'i

HB-2054-SD-1

Submitted on: 6/29/2020 9:50:23 AM

Testimony for JDC on 6/30/2020 9:46:00 AM

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

Comments:



of Hawaii

To: Hawaii State Senate Committee on Judiciary

Hearing Date/Time: Tuesday June 30, 9:46AM

Place: Hawaii State Capitol, Room 016

Re: Testimony in STRONG SUPPORT of H.B. 2054 HD1 SD1

Dear Chair Rhoads, Vice Chair Keohokalole, and Members of the Committee,

Members of AAUW of Hawaii are grateful for this opportunity to testify in strong support of S.B. 2054 HD1 SD1, 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-ciw49tixgw5lbab.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) with over 3800 members and supporters statewide. As advocates for gender equity, AAUW of Hawaii promotes the economic, social, and physical well-being of all persons.

Please pass this important measure and 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 Senate Committee on Judiciary
Hearing Date/Time: Tuesday June 30, 9:46AM
Place: Hawaii State Capitol, Room 016
Re: Testimony in STRONG SUPPORT of H.B. 2054 HD1 SD1

Dear Chair Rhoads, Vice Chair Keohokalole, and Members of the Committee,

The Hawaii Women's Coalition writes in support of H.B. 2054 HD1 SD1, 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;
- 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.



Hawaii Women's Coalition

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

LATE



June 29, 2020

Senator Karl Rhodes, Chair
Senate Committee on Judiciary

Re: H.B. 2054, H.D. 1, S.D. 1 RELATING TO EMPLOYMENT PRACTICES.

Hearing: Tuesday, June 30, 2020, 9:46 a.m., Room 016

Dear Chair Rhodes and Members of the Committee on Judiciary:

Hawaii Women Lawyers (“HWL”) **supports** H.B. 2054, H.D. 1, S.D. 1, which prohibits written nondisclosure agreements involving sexual assault and sexual harassment as part of an employee's condition of employment; and prohibits employers from retaliating against an employee for disclosing or discussing sexual harassment or sexual assault.

The mission of Hawaii Women Lawyers is to improve the lives and careers of women in all aspects of the legal profession, influence the future of the legal profession, and enhance the status of women and promote equal opportunities for all. HWL has over 300 active members, who are all members of the Hawaii State Bar Association.

In 2018, HWL conducted a survey of its members as to the incidences and experiences of sexual harassment in the legal community.¹ 76 attorneys responded to the survey. Nearly 60% (42 attorneys) reported being sexually harassed at some time during their legal career, with approximately 13% (10 attorneys) reporting having been sexually harassed in the workplace within the prior two years.

It is common for victims of sexual assault and harassment not to report abuse for fear of retaliation. Nondisclosure agreements that prevent the disclosure of sexual harassment as a condition of employment have the impact and effect of further silencing victims. They can also allow repeat offenders to continue to engage in serial harassment.

For these reasons, we support H.B. 2054, H.D. 1, S.D. 1 and respectfully ask the Committee pass this bill. Thank you for the opportunity to submit testimony on this measure.

¹ HWL’s survey was conducted between January 12, 2018 and February 4, 2018. The survey was done on a strictly voluntary and anonymous basis, and with the understanding that any stories provided by survey respondents may be shared publicly to raise awareness of the occurrence of sexual harassment in the legal community. The survey was conducted for informational purposes only, and HWL has not conducted an independent investigation as to and cannot guaranty the accuracy of the results of the survey or the specific instances of harassment shared by survey respondents. HWL recognizes that terminology may carry different connotations for different parties and did not define “sexual harassment” in the survey. HWL also recognizes that men are victims of sexual harassment as well as women, but as the mission of HWL is to improve the lives and careers of women in all aspects of the legal profession, the main focus of the article is on the experiences of female victims.

HB-2054-SD-1

Submitted on: 6/27/2020 10:28:27 AM

Testimony for JDC on 6/30/2020 9:46:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Martha Randolph	Individual	Support	No

Comments:

I am supporting this bill because it is long past time that such a provision was part of state law. In fact it should be Federal law. NO ONE should have to endure sexual harassment from anyone much less an employer who can retaliate against a worker. This is a very simple equation. How would you feel if you were subjected to sexual harassment by someone who could restrict your income or ruin your career or even transfer you to a job other than the one you have or are quailed for?

Passing this bill is just about doing the right thing and it is about time. If you do not pass it then you are directly protecting employers who have and continue to abuse employees. I would hope that no representative of our State would be willing to do that.

Martha E Randolph

President Precinct 4 District 25

SCC Rep for the Environmental Caucus

Hearing Date: June 30, 2020 – 9:46 AM

To: Senate Committee on Judiciary
Chair, Senator Karl Rhoads
Vice Chair, Jarrett Keohokalole

From: Jean Evans, MPH (Individual, jevans9999@yahoo.com, 808-728-1152,
99-1669 Hoapono Pl., Aiea, HI 96701)

Re: **TESTIMONY IN SUPPORT OF HB 2054, HD1, SD1 RELATING TO
EMPLOYMENT
PRACTICES.**

I am strong support of HB 2054, HD1, SD1 Relating to Employment Practices

I am in favor of this ban on nondisclosure agreements (NDA). NDAs have been used to cover up sexual harassment and assault in the workplace for many years. Often these agreements are used to protect a serial workplace sexual harasser or assaulter such as those we have seen in the national news. One can only hazard a guess as to how many of these predators have been protected by their employer here in Hawaii.

I also support making it unlawful to retaliate against employees for disclosing or discussing sexual harassment or sexual assault. This will remove the fear an employee has that their employer will retaliate against them for disclosing or even just discussing sexual assault or harassment acts as a powerful deterrent and silencer.

This bill will ensure that Hawaii joins 13 other states in the nation to limit or prohibit employers from requiring employees to sign non-disclosure agreements as a condition of employment or as part of a settlement agreement. I urge you to pass this important bill.

Mahalo for allowing me to submit my testimony today.

Jean Evans

HB-2054-SD-1

Submitted on: 6/27/2020 2:47:49 PM

Testimony for JDC on 6/30/2020 9:46:00 AM

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

Comments:

Aloha Chair Karl Rhoads, Vice Chair Jarrett Keohokalole, and the Committee on the Judiciary,

I am writing in support of HB2054 HD1 SD1.

This bill will prohibit an employer from requiring an employee to enter into a nondisclosure agreement pertaining to sexual harassment or sexual assault. This bill will also prohibit the employer from retaliating against an employee for disclosing or discussing sexual harassment or sexual assault.

I have been sexually harassed at work and was reluctant to report the behaviors since I was embarrassed and also fearful of retaliation. At the time, I was a temp hired from a temp agency at a utility company. I needed a job and could have easily been let go. So I did not file a complaint. Eventually I left the temp assignment to find a better work environment.

A recent study "Limiting Our Livelihoods" by American Association of University Women (AAUW)[1] 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.

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

Please pass this bill to to create a safer, harassment free work environment for all.

Mahalo,

Caroline Kunitake

HB-2054-SD-1

Submitted on: 6/27/2020 5:56:20 PM

Testimony for JDC on 6/30/2020 9:46:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Mike Golojuch, Sr.	Individual	Support	No

Comments:

I strongly support HB2054. We have for too long protected the individual(s) who have committed sexual harassment with nondisclosure statements. We all need transparency to protect current and future employees. Please pass HB2054.

Mike Golojuch, Sr.

Secretary, Rainbow Family 808

Secretary. Pride at Work Honolulu

HB-2054-SD-1

Submitted on: 6/28/2020 1:14:49 AM

Testimony for JDC on 6/30/2020 9:46:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Dylan Ramos	Individual	Support	No

Comments:

Aloha Chair Rhoads, Vice Chair Keohokalole, and Members of the JDC,

I strongly support the intent of HB2054 and, bar any substantive evidence suggesting harmful or otherwise counterproductive results, I look forward to its passage. I recognize there are certain concerns and circumstances that may cause some to consider this too broad a bill, but I believe those are rare and can be addressed in defense of the public rather than only employers.

I will keep the rest of this short by simply endorsing previous testimony offered in support of the measure by groups including the Hawaii Women's Coalition, American Association of University Women, Hawaii State Commission on the Status of Women, Hawaii Women Lawyers, Hawaii Civil Rights Commission, SAG-AFTRA, and so many more organizations and individuals. It's 2020 -- such protections are long, long, long overdue.

Mahalo,
Dylan Ramos
HD19, SD10 (Kaimuki)

HB-2054-SD-1

Submitted on: 6/28/2020 11:18:48 AM

Testimony for JDC on 6/30/2020 9:46:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Rosemarie Muller	Individual	Support	No

Comments:

I am in support of HB2054 because Hawaii needs to pass this and stand in line with the other 13 states who have passed this already.

Thanks

Rosemarie Muller

Hilo

Senate Committee Judiciary

Hearing Date: Tuesday, June 30, 2020

Time & Room: 9:46 am, Rm. 016

Re: Testimony in support of HB2054, HD1, SD1, Relating to Employment Practices

Dear Senator Karl Rhoads, Chair, Senator Jarrett Keohokalole, 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.
- “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.

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 Workplace Sexual Harassment Nondisclosure Agreement (NDA)

- 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
Kailua, Oahu

Jeanne Y. Ohta

June 30, 2020

To: Senator Karl Rhoads, Chair
Senator Jarrett Keohokalole, Vice Chair, and
Members of the Committee on Judiciary

From: Jeanne Ohta

RE: HB 2054 HD1 SD1 Relating to Employment Practices
Tuesday, June 30, 2020, 9:46 a.m.

Position: Support

I write in support of HB 2054 HD1 SD1 Relating to Employment Practices which prohibits an employer from requiring an employee to enter into a nondisclosure agreement pertaining to sexual harassment or sexual assault and prohibits an employer from retaliating against an employee for disclosing or discussing sexual harassment or sexual assault.

The proliferation of non-disclosure agreements (NDA) has enabled abusers to continue their abuse, to be serial abusers, and silence their victims from reporting the abuse. Workplace harassment and retaliation have a direct effect on an individual's ability to work and to be economically self-sufficient; and disrupts career advancement.

NDA's have only served to discourage reporting of sexual harassment and sexual assault; and prevent employees from speaking out and pursuing legal remedies. This bill will help create safer work environments for all employees.

Please pass this important measure. Thank you for this opportunity to provide testimony.

HB-2054-SD-1

Submitted on: 6/29/2020 10:39:58 AM

Testimony for JDC on 6/30/2020 9:46:00 AM



Submitted By	Organization	Testifier Position	Present at Hearing
Susan J. Wurtzburg	Individual	Support	No

Comments:

Please pass this bill,

Sincerely, Susan J. Wurtzburg, Ph.D.