A BILL FOR AN ACT

RELATING TO EMPLOYMENT PRACTICES.

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

1	SECTION 1. Chapter 378, Hawaii Revised Statutes, is
2	amended by adding a new part to be appropriately designated and
3	to read as follows:
4	"PART . UNLAWFUL DISCIPLINARY ACTION RELATED TO AN
5	EMPLOYEE'S USE OF SICK LEAVE
6	§378-A Sick leave. It shall be unlawful for any employer
7	or labor organization to discharge from employment, withhold
8	pay, demote, or otherwise discipline an employee with a serious
9	health condition requiring continuous treatment for a period
10	greater than twelve weeks as certified by a licensed physician
11	in the state because the employee uses accrued and available
12	sick leave as provided by the terms and conditions of a sick
13	leave policy under a valid collective bargaining agreement or a
14	valid employment policy. For purposes of this section, "serious
15	health condition" shall have the same meaning as defined under
16	the federal Family and Medical Leave Act of 1993 and the

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associated federal regulations.

- 1 §378-B Complaint against unlawful disciplinary practice.
- 2 (a) Any employee aggrieved by an alleged unlawful disciplinary
- 3 practice as set forth in section 378-A may file with the
- 4 department of labor and industrial relations a complaint in
- 5 writing, stating the name and address of the employer alleged to
- 6 have taken the unlawful disciplinary action, and shall set forth
- 7 the particulars thereof and other information as may be required
- 8 by the department.
- 9 (b) No complaint shall be filed after the expiration of
- 10 thirty days after the alleged act of unlawful disciplinary
- 11 action, or after the employee learns of the alleged act of
- 12 unlawful disciplinary action, except that a complaint for an
- 13 alleged act of unlawful discharge action under section 378-A
- 14 occurring while the aggrieved employee is still physically or
- 15 mentally incapacitated and unable to work may also be filed
- 16 before the expiration of thirty days after the date the
- 17 aggrieved employee is able to return to work.
- 18 §378-C Proceeding and hearing on complaint. (a) After
- 19 the filing of any complaint, the department of labor and
- 20 industrial relations shall serve a copy of the complaint upon
- 21 the employer charged. Service may be by delivery to the

- 1 employer or by mail. The employer shall file an answer to the
- 2 complaint within thirty days.
- 3 (b) A hearing on the complaint shall be held by the
- 4 department in conformance with chapter 91.
- 5 §378-D Proceeding and hearing on complaint. If the
- 6 department of labor and industrial relations finds, after a
- 7 hearing, that an employer has unlawfully taken disciplinary
- 8 action against an employee in violation of section 378-A, the
- 9 department may order the employer to rescind the unlawful
- 10 disciplinary action, and may, as appropriate, order the
- 11 reinstatement of the employee to the employee's prior position,
- 12 with or without back pay, or may order the payment of back pay
- 13 without reinstatement.
- 14 §378-E Judicial review. Any person aggrieved by the order
- 15 of the department of labor and industrial relations shall be
- 16 entitled to judicial review as provided by section 91-14."
- 17 SECTION 2. This Act does not affect rights and duties that
- 18 matured, penalties that were incurred, and proceedings that were
- 19 begun, before its effective date.
- 20 SECTION 3. In codifying the new sections added by section
- 21 1 of this Act, the revisor of statutes shall substitute

- 1 appropriate section numbers for the letters used in designating
- 2 the new sections in this Act.
- 3 SECTION 4. This Act shall take effect on July 1, 2020.

HB 2696 HD2

Report Title:

Sick leave; employment practices

Description:

Makes it unlawful for an employer to discharge or otherwise discipline an employee for lawful use of the employee's accrued and available sick leave. Establishes procedures for filing a complaint against an employer who retaliates against an employee for lawfully utilizing sick leave. (HB2696 HD2)