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# A BILL FOR AN ACT

RELATING TO EMPLOYMENT PRACTICES.

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

1           SECTION 1. Section 378-32, Hawaii Revised Statutes, is  
2 amended to read as follows:

3           "**§378-32 Unlawful suspension, discharge, or**  
4 **discrimination.** (a) It shall be unlawful for any employer to  
5 suspend, discharge, or discriminate against any of the  
6 employer's employees:

7           (1) Solely because the employer was summoned as a  
8 garnishee in a cause where the employee is the debtor  
9 or because the employee has filed a petition in  
10 proceedings for a wage earner plan under Chapter XIII  
11 of the Bankruptcy Act; [~~or~~]

12           (2) Solely because the employee has suffered a work injury  
13 which arose out of and in the course of the employee's  
14 employment with the employer and which is compensable  
15 under chapter 386 unless the employee is no longer  
16 capable of performing the employee's work as a result  
17 of the work injury and the employer has no other



1 available work which the employee is capable of  
2 performing. Any employee who is discharged because of  
3 the work injury shall be given first preference of  
4 reemployment by the employer in any position which the  
5 employee is capable of performing and which becomes  
6 available after the discharge and during the period  
7 thereafter until the employee secures new employment.

8 This paragraph shall not apply to any employer in  
9 whose employment there are less than three employees  
10 at the time of the work injury or who is a party to a  
11 collective bargaining agreement which prevents the  
12 continued employment or reemployment of the injured  
13 employee; or

14 (3) Because the employee testified or was subpoenaed to  
15 testify in a proceeding under this part.

16 (b) It shall be an unlawful practice for any employer or  
17 labor organization to bar or discharge from employment, withhold  
18 pay from, demote, or otherwise discipline an employee because  
19 the employee uses accrued and available sick leave. If the  
20 illness or injury requires the use of more than one day of  
21 accrued and available sick leave, the injury or illness shall be  
22 validated, in writing, by the employee's physician. In the



1 event that an employee uses accrued and available sick leave as  
2 stated above three times over a six-month period, the employer  
3 may require the ill or injured employee to be medically  
4 evaluated by a physician of the employee's choice from an  
5 employer's healthcare provider list of no fewer than three  
6 physicians. It shall not be a violation of this section if the  
7 employer's or labor organization's actions are in accordance  
8 with the provisions of a valid, negotiated attendance policy."

9 SECTION 2. Section 378-33, Hawaii Revised Statutes, is  
10 amended by amending subsection (b) to read as follows:

11 "(b) No complaint shall be filed after the expiration of  
12 thirty days after the alleged act of unlawful suspension,  
13 discharge, or discrimination, or after the employee learns of  
14 the suspension or discharge, except that a complaint for an  
15 alleged act of unlawful discharge under section [~~378-32(2)~~]  
16 378-32(a)(2) occurring while the aggrieved employee is still  
17 physically or mentally incapacitated and unable to work also may  
18 be filed before the expiration of thirty days after the date the  
19 aggrieved employee is able to return to work."

20 SECTION 3. This Act does not affect rights and duties that  
21 matured, penalties that were incurred, and proceedings that were  
22 begun, before its effective date.



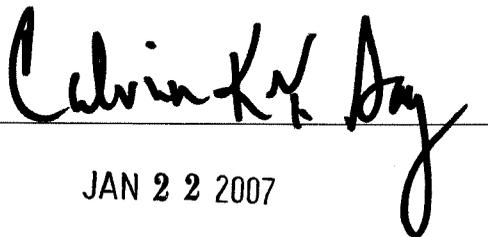
# H.B. NO. 1078

1 SECTION 4. Statutory material to be repealed is bracketed  
2 and stricken. New statutory material is underscored.

3 SECTION 5. This Act shall take effect on July 1, 2007.

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INTRODUCED BY:

  
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JAN 22 2007



**Report Title:**

Employment Practices; Sick Leave

**Description:**

Prohibits an employer from discharging or otherwise punishing an employee for the lawful use of the employee's accrued and available sick leave.

