

H.B. NO. 1380

A BILL FOR AN ACT

RELATING TO WORKERS' COMPENSATION STRESS CLAIMS.

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

1 SECTION 1. The purpose of this bill is to disallow workers'
2 compensation claims for mental illness or injury proximately
3 caused by all personnel actions taken in good faith by
4 employers. Personnel actions include disciplinary action,
5 counseling, work evaluation or criticism, job transfer, lay-off,
6 promotion, demotion, suspension, termination, retirement, or
7 other actions ordinarily associated with personnel
8 administration.

9 This measure ensures that employers can exercise their
10 lawful management right to take personnel action such as issuing
11 a poor performance evaluation or not selecting an applicant for
12 a promotion without fear of workers' compensation liability.

13 In Mitchell v. State of Hawaii, DOE, 85 Haw. 250 (1997), the
14 Court held that a teacher's stress-related injury resulting from
15 disciplinary action taken by the employer in response to her
16 alleged misconduct was compensable under workers' compensation
17 law. Consequently, in 1998, the legislature amended section

1 386-3, Hawaii Revised Statutes, to exclude injuries arising from
2 "good faith" disciplinary action from being compensable.

3 However, under this 1998 amendment, injuries arising from all
4 other good faith personnel actions are still compensable.

5 In December 2002, the Hawaii Supreme Court rendered an
6 opinion in the case of a firefighter against the City and County
7 of Honolulu Fire Department, Davenport v. City and County of
8 Honolulu, Honolulu Fire Department, 100 Haw. 481 (2002). Mr.
9 Davenport had filed for workers' compensation due to a mental
10 stress injury he received while trying to attain a promotion.
11 In Davenport, the Supreme Court opined that, under the "unitary"
12 test, and without explicit exclusion from state law, a stress-
13 related injury that stems from an essential function of the
14 employer and results from an activity that serves an important
15 interest of the employer is compensable.

16 In Davenport, the promotion process was an essential
17 function of the employer and served an important interest of the
18 employer. Thus, an injury that stems from such a process is
19 compensable. Consequently, the Supreme Court held in Mr.
20 Davenport's favor. This measure ensures that employers can
21 exercise their lawful management right to take personnel action
22 such as issuing a poor job performance evaluation or not

1 selecting an applicant for a promotion without fear of reprisal
2 through the form of a workers' compensation claim for mental
3 stress.

4 SECTION 2. Section 386-3, Hawaii Revised Statutes, is
5 amended by amending subsection (c) to read as follows:

6 "(c) ~~[A claim for mental stress resulting solely from
7 disciplinary action taken in good faith by the employer shall
8 not be allowed; provided that if a collective bargaining
9 agreement or other employment agreement specifies a different
10 standard than good faith for disciplinary actions, the standards
11 set in the collective bargaining agreement or other employment
12 agreement shall be applied in lieu of the good faith standard.
13 For purposes of this subsection, the standards set in the
14 collective bargaining agreement or other employment agreement
15 shall be applied in any proceeding before the department, the
16 appellate board, and the appellate courts.]~~ No claim for
17 compensation shall be allowed for mental injury or illness, or
18 the physical manifestation brought on by mental injury or
19 illness, for which personnel actions, taken in good faith by the
20 employer are the stated cause or factor in aggravation of the
21 claimed injury. Personnel actions include disciplinary action
22 as defined in section 386-1, counseling, work evaluation or

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1 criticism, job transfer, layoff, demotion, suspension,
2 termination, retirement."

3 SECTION 3. Statutory material to be repealed is bracketed
4 and stricken. New statutory material is underscored.

5 SECTION 4. This Act shall take effect upon its approval.

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INTRODUCED BY:

Calvin K. M. May

BY REQUEST

JAN 22 2007

JUSTIFICATION SHEET

DEPARTMENT: Labor and Industrial Relations

TITLE: A BILL FOR AN ACT RELATING TO WORKERS' COMPENSATION STRESS CLAIMS.

PURPOSE: To disallow workers' compensation claims for mental illness or injury proximately caused by all personnel actions taken in good faith by the employer.

MEANS: Amend section 386-3, Hawaii Revised Statutes.

JUSTIFICATION: This measure ensures that employers can exercise their lawful management right to take personnel action such as issuing a poor performance evaluation or not selecting an applicant for a promotion without fear of workers' compensation liability. The purpose of this bill is to disallow workers' compensation claims for mental illness or injury proximately caused by all personnel actions taken in good faith by employers. Personnel actions include disciplinary action, counseling, work evaluation or criticism, job transfer, lay-off, promotion, demotion, suspension, termination, retirement, or other actions ordinarily associated with personnel administration.

This measure ensures that employers can exercise their lawful management right to take personnel action such as issuing a poor performance evaluation or not selecting an applicant for a promotion without fear of workers' compensation liability.

In Mitchell v. State of Hawaii, DOE, 85 Haw. 250 (1997), the Court held that a teacher's stress-related injury resulting from disciplinary action taken by the employer in response to her alleged misconduct was compensable under workers' compensation law.

Consequently, in 1998, the legislature amended section 386-3 to exclude injuries arising from "good faith" disciplinary action from being compensable. However, under this 1998 amendment, injuries arising from all other good faith personnel actions are still compensable.

In December 2002, the Hawaii Supreme Court rendered an opinion in the case of a firefighter against the City and County of Honolulu Fire Department, Davenport v. City and County of Honolulu, Honolulu Fire Department, 100 Haw. 481 (2002). Mr. Davenport had filed for workers' compensation due to a mental stress injury he received while trying to attain a promotion. In Davenport, the Supreme Court opined that, under the "unitary" test, and without explicit exclusion from state law, a stress-related injury that stems from an essential function of the employer and results from an activity that serves an important interest of the employer is compensable.

In Davenport, the promotion process was an essential function of the employer and served an important interest of the employer. Thus, an injury that stems from such a process is compensable. Consequently, the Supreme Court held in Mr. Davenport's favor.

This measure ensures that employers can exercise their lawful management right to take personnel action such as issuing a poor job performance evaluation or not selecting an applicant for a promotion without fear of reprisal through the form of a workers' compensation claim for mental stress.

Impact on the public: None.

Impact on the department and other agencies:
None.

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GENERAL FUND: None.
OTHER FUNDS: None.
PPBS PROGRAM
DESIGNATION: LBR-183.
OTHER AFFECTED
AGENCIES: None.
EFFECTIVE DATE: Upon approval.