
A BILL FOR AN ACT

RELATING TO WORKPLACE SAFETY.

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

1 SECTION 1. The purpose of this Act is to establish a
2 mechanism for employers to obtain temporary restraining orders
3 to protect against threats of violence and harassment directed
4 toward employees or property at the worksite.

5 SECTION 2. Section 604-10.5, Hawaii Revised Statutes, is
6 amended to read as follows:

7 "§604-10.5 Power to enjoin and temporarily restrain
8 harassment. (a) For the purposes of this section:

9 "Course of conduct" means a pattern of conduct composed of
10 a series of acts over any period of time evidencing a continuity
11 of purpose.

12 "Employee" means any natural person who is required,
13 directed, permitted, or suffered by any employer to engage in
14 any employment, or to go to work or be in any place of
15 employment at any time, for compensation. The term "employee"
16 also includes any volunteer or other non-compensated person and
17 any independent contractor who performs services for the
18 employer at the employer's worksite.



1 "Employer" means any individual or type of organization,
2 including any partnership, association, trust, estate, private,
3 public, or quasi-public corporation, whether domestic or
4 foreign, for-profit or not-for-profit, a debtor in possession or
5 receiver or trustee in bankruptcy, or the legal representative
6 of a deceased person, who has one or more regular employees in
7 the employer's employment. The term "employer" also includes
8 the United States government, any agency or instrumentality of
9 the United States government, the State, any county, or any
10 agency or instrumentality of the State or any county.

11 "Harassment" means:

- 12 (1) Physical harm, bodily injury, assault, or the threat
13 of imminent physical harm, bodily injury, or assault;
14 or
15 (2) An intentional or knowing course of conduct directed
16 at an individual that seriously alarms or disturbs
17 consistently or continually bothers the individual,
18 and that serves no legitimate purpose; provided that
19 such course of conduct would cause a reasonable person
20 to suffer emotional distress.

21 (b) The district courts shall have power to enjoin or
22 prohibit or temporarily restrain harassment.



1 (c) Any person who has been subjected to harassment may
2 petition the district court of the district in which the
3 petitioner resides for a temporary restraining order and an
4 injunction from further harassment.

5 (d) Any employer, whose employee or invitee has been
6 subjected to harassment by any individual that can reasonably be
7 construed to have been carried out at the worksite, may petition
8 the district court of the district in which the worksite is
9 situated for a temporary restraining order and an injunction
10 from further harassment at the worksite; provided that no
11 injunction shall be issued in derogation of chapter 380 and the
12 employer shall pay for attorney's fees and costs to the
13 defendant or defendant's designated representative in the event
14 the employer's petition is denied or is set aside on appeal. To
15 the extent feasible, the employer shall consult the employee or
16 employees subject to the harassment or threats prior to
17 petitioning. An employee who is a target of threats or
18 harassment and who is unwilling to participate in this process
19 shall not face disciplinary action based upon the extent of the
20 employee's participation or cooperation with this process. An
21 employee organization that represents employees of the employer



1 shall be granted intervention in a proceeding under this
2 section.

3 ~~[(d)]~~ (e) A petition for relief from harassment shall be
4 in writing and shall allege that a past act or acts of
5 harassment may have occurred, or that ~~[threats of harassment~~
6 ~~make it probable that]~~ an act or acts of harassment may be
7 imminent; and shall be accompanied by an affidavit made under
8 oath or statement made under penalty of perjury stating the
9 specific facts and circumstances from which relief is sought.

10 (f) A petition by an employer shall specify that:

- 11 (1) An act or acts of harassment or threats of harassment,
12 or both, have occurred at the worksite; or
13 (2) An act or acts of harassment are likely to be carried
14 out at the worksite.

15 ~~[(e)]~~ (g) Upon petition to a district court under this
16 section, the court may temporarily restrain the person or
17 persons named in the petition from harassing the petitioner, or
18 the person who is the target of harassment or threats, upon a
19 determination that there is probable cause to believe that a
20 past act or acts of harassment have occurred or that ~~[a threat~~
21 ~~or threats]~~ an act or acts of harassment may be imminent. The
22 court may issue an ex parte temporary restraining order either



1 in writing or orally; provided that oral orders shall be reduced
2 to writing by the close of the next court day following oral
3 issuance.

4 ~~[(f)]~~ (h) A temporary restraining order that is granted
5 under this section shall remain in effect at the discretion of
6 the court for a period not to exceed ninety days from the date
7 the order is granted. A hearing on the petition to enjoin
8 harassment shall be held within fifteen days after the temporary
9 restraining order is granted. ~~[In the event that]~~ If service of
10 the temporary restraining order has not been effected before the
11 date of the hearing on the petition to enjoin, the court may set
12 a new date for the hearing; provided that the new date shall not
13 exceed ninety days from the date the temporary restraining order
14 was granted.

15 The parties named in the petition may file or give oral
16 responses explaining, excusing, justifying, or denying the
17 alleged act or acts of harassment. The court shall receive all
18 evidence that is relevant at the hearing~~[7]~~ and may make
19 independent inquiry. If the defendant is a current employee of
20 the petitioner, the court shall receive evidence concerning the
21 employer's decision to retain, terminate, or otherwise



1 discipline the defendant for the conduct giving rise to the
2 petition.

3 If the court finds by clear and convincing evidence that
4 [harassment]:

5 (1) Harrassment as defined in paragraph (1) of that
6 definition exists, it may enjoin for no more than
7 three years further harassment of the petitioner~~[7]~~ or
8 ~~[that harassment]~~ the person who is the target of
9 threats or harassment; or

10 (2) Harassment as defined in paragraph (2) of that
11 definition exists, it shall enjoin for no more than
12 three years further harassment of the petitioner~~[7]~~ or
13 the person who is the target of threats or harassment;

14 provided that ~~[this paragraph shall not prohibit]~~ the court
15 shall not be prohibited from issuing other injunctions against
16 the named parties even if the time to which the injunction
17 applies exceeds a total of three years.

18 Any order issued under this section shall be served upon
19 the respondent. For the purposes of this section, "served"
20 ~~[shall mean]~~ means actual personal service, service by certified
21 mail, or proof that the respondent was present at the hearing in
22 which the court orally issued the injunction.



1 Where service of a restraining order or injunction has been
2 made or where the respondent is deemed to have received notice
3 of a restraining order or injunction [~~order~~], any knowing or
4 intentional violation of the restraining order or injunction
5 [~~order~~] shall subject the respondent to the provisions in
6 subsection [~~(h)~~] (j).

7 Any order issued shall be transmitted to the chief of
8 police of the county in which the order is issued by way of
9 regular mail, facsimile transmission, or other similar means of
10 transmission.

11 [~~(g)~~] (i) The court may grant the prevailing party in an
12 action brought under this section[~~7~~] costs and fees, including
13 reasonable attorney's fees.

14 [~~(h)~~] (j) A knowing or intentional violation of a
15 restraining order or injunction issued pursuant to this section
16 is a misdemeanor. [~~The~~] In addition to appropriate counseling,
17 the court shall sentence [~~a violator to appropriate counseling~~
18 ~~and shall sentence~~] a person convicted under this section as
19 follows:

20 (1) For a violation of an injunction or restraining order
21 that occurs after a conviction for a violation of the
22 same injunction or restraining order, a violator shall



1 be sentenced to a mandatory minimum [~~jail sentence~~]
2 term of imprisonment of not less than forty-eight
3 hours; and

4 (2) For any subsequent violation that occurs after a
5 second conviction for violation of the same injunction
6 or restraining order, the person shall be sentenced to
7 a mandatory minimum [~~jail sentence~~] term of
8 imprisonment of not less than thirty days.

9 The court may suspend any [~~jail sentence,~~] term of
10 imprisonment, except for the mandatory sentences under
11 paragraphs (1) and (2), upon appropriate conditions, [~~such as~~]
12 including that the defendant remain alcohol and drug-free,
13 conviction-free, or complete court-ordered assessments or
14 counseling. The court may suspend the mandatory sentences under
15 paragraphs (1) and (2) where the violation of the injunction or
16 restraining order does not involve violence or the threat of
17 violence. Nothing in this section shall be construed as
18 limiting the discretion of the judge to impose additional
19 sanctions authorized in sentencing for a misdemeanor offense.

20 [~~(i)~~] (k) Nothing in this section shall be construed to
21 prohibit constitutionally protected activity.

22 (l) Nothing in this section shall be construed as:



- 1 (1) Creating, expanding, diminishing, altering, or
2 modifying the duty, if any, of an employer to provide
3 a safe workplace for employees;
- 4 (2) Limiting any other rights or remedies available to an
5 employer or employee, including but not limited to
6 seeking injunctive relief through methods other than
7 the procedures set forth in this section;
- 8 (3) Affecting or limiting the exclusivity provision in
9 chapter 386; or
- 10 (4) Limiting the rights of employees to organize pursuant
11 to article XIII, sections 1 and 2, of the state
12 Constitution or pursuant to sections 377-4 and 380-2.
- 13 (m) No civil liability shall attach or be imposed upon any
14 employer for:
 - 15 (1) Initiating a proceeding under this section; or
 - 16 (2) Conducting an investigation of any alleged act or
17 threat of violence or harassment in the workplace for
18 purposes of determining the feasibility of or
19 initiating a proceeding under this section.
- 20 An employer or an employer's agent who acts in accordance with
21 the provisions of this section shall be presumed to be acting in
22 good faith and, unless lack of good faith is shown by clear and



1 convincing evidence, the employer and the employer's agent shall
2 be immune from civil liability for actions taken under this
3 section. An employer or an employer's agent who fails to use
4 the procedures authorized by this section shall not be liable
5 for negligence nor shall evidence of the failure be admissible
6 as evidence of negligence.

7 (n) No civil liability shall attach or be imposed upon any
8 employee or witness for:

9 (1) Participating in an employer's investigation for
10 purposes of initiating a proceeding under this
11 section; except that this immunity shall not apply to
12 an action taken with malice or a statement made with
13 knowledge of its falsity; or

14 (2) Presenting statements or evidence in a judicial
15 proceeding under this section."

16 SECTION 3. This Act does not affect rights and duties that
17 matured, penalties that were incurred, and proceedings that were
18 begun before its effective date.

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



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

2

INTRODUCED BY:

J. Phil. Lancaster

JAN 27 2010



Report Title:

Workplace Violence

Description:

Establishes a mechanism for employers to obtain temporary restraining orders to protect against harassment, including violence or threatened violence, at the worksite.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

