



HAWAI'I CIVIL RIGHTS COMMISSION

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

FREQUENTLY ASKED QUESTIONS (FAQ) SHEET FOR ACT 206

In 2011, the state of Hawai'i enacted Act 206 to protect the employment rights of victims of domestic and sexual violence by: (1) prohibiting employment discrimination on the basis of domestic or sexual violence victim status under H.R.S. chapter 378, part I "Discriminatory Practices"; and (2) amending H.R.S. chapter 378, part VI, formerly titled "Victims Leave" and renamed "Victims Protections", to add a sub-part requiring employers to make reasonable accommodations for employees who are victims of domestic or sexual violence. Act 206 takes effect on January 1, 2012.

Q. Which employees are covered by these laws?

A. Any employee who is a victim of domestic or sexual violence is covered by the law, regardless of how long she or he has worked for the employer or how many hours per week the employee works. An employee, whose minor child is a victim of domestic or sexual violence, is protected by Act 206, as well as job applicants.

Q. Which employers are covered by these laws?

A. Under H.R.S. chapter 378, part I, Hawaii's employment discrimination law applies to all employers who have one or more employees. This includes the State of Hawai'i, the counties, and employment agencies. The United States as an employer is *not* covered by these laws. Under H.R.S. 378, part VI, the Victims Leave law, the number of victim leave days available depends on the size of the employer, up to 5 days or 30 days of unpaid victim leave per calendar year.

Q. What is the definition of a victim of domestic or sexual violence?

A Any individual who is a victim of domestic abuse, sexual assault, or stalking is protected. This is the same definition used in the Victims Leave law.

Q. I'm being harassed at work by my abuser. What can I do?

A. You can ask your employer to provide you with a reasonable safety accommodation, such as:

- Allowing leave time so you can go to court, seek assistance from a victim services organization or medical treatment, move, or take other steps to deal with the abuse
- Allowing a flexible or modified work schedule
- Changing your work telephone number or extension, or e-mail address
- Keeping your home or business address or phone number confidential
- Transferring you to a different desk, shift or work site
- Having security or the front desk help make sure your abuser cannot come inside
- Providing other reasonable security measures at the workplace

The reasonable safety accommodations are separate from steps you can take on your own. For more information, contact Hawaii State Coalition Against Domestic Violence, <http://www.hscadv.org/>. If you believe that you are in immediate danger, CALL 911.

Q. What if after I request a reasonable safety accommodation, my employer asks me to prove that I am a victim of domestic or sexual violence?

A. An employer may grant an employee a reasonable safety accommodation based on the employee's statement that he or she is a victim of domestic or sexual violence. However, an employer is allowed to request written proof of victim status. This proof, or "certification," can be any of the following:

- A document from law enforcement or the courts, such as a police report or protective order

- A letter from an attorney or advocate for you or your minor child
- A letter from a counselor, domestic violence or sexual assault victim services provider
- A letter from a health care professional
- A letter from a clergy member

Any of these forms of documentation is sufficient, and your employer cannot tell you which document to provide.

Q. What if the accommodation request would impose an undue hardship on the employer?

A. An undue hardship is something that would cause significant difficulty or expense for the employer. In determining significant difficulty or expense, many factors are considered including the employer's size and resources, the type of operation, and the number, type and locations of the employer's facilities. These factors will be balanced against the nature and cost of the accommodation requested by the employee.

If the request would impose an undue hardship on the employer, the accommodation need not be provided. In this case, the employer should work with the employee to determine if there are other less burdensome accommodations that would support the employee's continued employment in a safe environment.

Q. How does the employer know if the accommodation requested is the safest option for its employee who is a victim of domestic or sexual violence?

A. Because the employee knows the circumstances of his or her situation, he or she is usually best able to determine both what threats to safety exist as well as what steps can be taken to increase safety. Thus, when an employee makes a request for a reasonable safety accommodation, the employer should rely on the employee's judgment. The employer should engage in an interactive process with the employee to develop a safety plan that best serves their needs.

Q. My employer is threatening to fire me because I am a victim of domestic or sexual violence. What can I do?

A. The law says that your employer cannot fire you, pay you differently, or treat you negatively because you are a victim of domestic or sexual violence. It is also unlawful to fire you or otherwise discriminate against you because you are being harassed at work by your abuser. If you believe your employer is violating the law (or about to violate the law), you can seek assistance from a victim services advocate or make an inquiry with HCRC.

Q. As an employer, how can I be sure that all my employees will be safe?

A. We all want safe, productive workplaces. This law is an opportunity to review your workplace violence prevention policy and ensure you have a policy that protects all employees, including those experiencing domestic or sexual violence.

Q. What remedies are available to an employee who is a victim of domestic or sexual violence if an employer discriminates against him/her based upon victim status?

A. Employees who believe their employer has violated the law may file a complaint with the Hawai'i Civil Rights Commission within 180 days of the adverse act (e.g., termination, refusal to hire, denial of reasonable safety accommodation). In certain instances, an employee may choose to file a private lawsuit in State Court for violations under H.R.S. chapter 378, part VI, the Victims Leave law. Please consult a lawyer.

Q. How much leave am I entitled to take under the new law? Does the new law affect my rights under the Victims Leave law?

A. The new law does not reduce the amount of leave an employee who is a victim of domestic or sexual violence can take under the existing Victims Leave law to address matters related to the domestic or sexual violence. The Victims Leave law provides, within a calendar year, up to 30 days of unpaid victim leave if the employer has 50 or more employees, or 5 days of unpaid victim leave in workplaces with fewer than 50 employees. Additional leave time may also be viewed as a reasonable accommodation to which employees who are victims of domestic or sexual violence may be entitled under H.R.S. chapter 378, part I.



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EFFECTIVE JANUARY 1, 2012, NEW STATE LAW PROHIBITS EMPLOYMENT DISCRIMINATION AGAINST VICTIMS OF DOMESTIC OR SEXUAL VIOLENCE

Act 206*, enacted in 2011, amends our state fair employment law to protect victims of domestic and sexual violence against employment discrimination.

Act 206 also amends the current victims leave law, now titled the victims protection law, to add a requirement that employers make reasonable accommodations for employees who are victims of domestic or sexual violence.

WHO IS PROTECTED BY THE NEW LAW?

The new state law protects employees and prospective employees who are victims of domestic or sexual violence, as well as those who have a minor child who is a victim of domestic or sexual violence. A victim of domestic or sexual violence means a victim of domestic abuse, sexual assault, or stalking.

The law allows an employer to verify that an employee is a victim of domestic or sexual violence by requesting:

- A signed written statement from one of the following persons, from whom the employee or the employee's minor child has sought assistance in relation to the domestic or sexual violence: 1) an employee, agent, or volunteer of a victim services organization; 2) the employee's attorney or advocate; 3) the attorney or advocate for the employee's minor child; 4) a medical or other health care professional; or 5) a member of the clergy.

OR

- A police or court record supporting the occurrence of the domestic or sexual violence.

An employer may verify that the employee is a victim of domestic or sexual violence not more than once every six months after being put on notice of the employee's status as a victim of domestic or sexual violence. An employer can be put on notice either by having actual knowledge of the employee's status of being a victim of domestic or sexual violence or by receiving written verification that the employee is a victim of domestic or sexual violence. However, if the employee provides verification of victim status in the form of a protective order, the employer may not request any further form of verification until the date of the expiration of the protective order, or any extension, whichever is later.

WHAT KIND OF DISCRIMINATION IS PROHIBITED?

Effective January 1, 2012, it is illegal for an employer to "refuse to hire or employ or to bar or discharge from employment, or otherwise to discriminate against any individual in compensation or in the terms, conditions, or privileges of employment ..." based on domestic or sexual violence victim status. The law also prohibits discrimination by employment agencies and labor organizations.

Refusal to make a reasonable accommodation for a victim of domestic or sexual violence, including denial of leave as a reasonable accommodation, may be prohibited discrimination under Hawai'i Revised Statutes § 378-2.

* Act 206, 2011 Session, amending Hawai'i Revised Statutes chapter 378, part I, §378-2, and part VI.
<http://www.capitol.hawaii.gov/session2011/bills/GM1310.PDF>

ARE EMPLOYERS REQUIRED TO PROVIDE LEAVE AND REASONABLE ACCOMMODATIONS FOR VICTIMS OF DOMESTIC OR SEXUAL VIOLENCE?

Hawai'i's current victims leave law requires employers to allow an employee who is a victim or the parent of a minor child who is a victim of domestic or sexual violence to take unpaid leave to seek medical attention, obtain services from a victim services organization, obtain psychological or other counseling services, temporarily or permanently relocate, or to take legal action, including preparing for or participating in any civil or criminal legal proceeding related to or resulting from the domestic or sexual violence. Large employers (who have ≥ 50 employees) are required to give up to 30 days of unpaid leave per calendar year. Small employers (who have ≤ 49 employees) are required to give up to five days of unpaid leave per calendar year.

The new law requires employers to make reasonable accommodations for the safety of victims of domestic and sexual abuse.

Examples of reasonable accommodations include:

- Changing contact information, such as telephone numbers, fax numbers, or e-mail addresses.
- Screening telephone calls.
- Restructuring job functions.
- Changing work location.
- Installing locks or other security measures.
- Allowing flexible or modified work schedules.

An employer is not required to make a reasonable accommodation if it would cause an undue hardship on its work operations. "Undue hardship" means the requested reasonable accommodation would impose significant difficulty or expense to the employer, taking into consideration the following factors:

- The nature and cost of the reasonable accommodation.
- The financial resources of the employer, the number of employees, and the number, type, and placement of the employer's workplaces.
- The type of operation of the employer, including the composition, structure, and functions of the workforce, geographic location of the employee's work location, and the relationship of the work location to the employer.

When an employee who is a victim of domestic or sexual violence requests an accommodation, an employer should engage in an interactive process with the employee to find an effective and workable reasonable accommodation.

FOR MORE INFORMATION, CONTACT:

HAWAII CIVIL RIGHTS COMMISSION
830 Punchbowl Street, Room 411
Honolulu, Hawai'i 96813
Telephone: (808) 586-8636
TDD: (808) 586-8692
Fax (808) 586-8655

Neighbor Islands call (toll free):

Kauai: 274-3141 ext 6-8636#

Maui: 984-2400 ext. 6-8636#

Hawai'i: 974-4000 ext. 6-8636#

Lana'i & Moloka'i: 1-800-468-4644 ext. 6-8636#

Email: DLIR.HCRC.INFOR@hawaii.gov

Website: <http://www.hawaii.gov/hcrc>