

JAN 28 2015

A BILL FOR AN ACT

RELATING TO EMPLOYMENT.

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 section to be appropriately designated
3 and to read as follows:
4 "§378- Discrimination; adverse tangible employment
5 action; prohibited. (a) It shall be an unlawful discriminatory
6 practice for a supervisor or employer to take adverse tangible
7 employment action against an employee because of the employee's
8 race, sex including gender identity or expression, sexual
9 orientation, age, religion, color, ancestry, disability, marital
10 status, arrest and court record, or domestic or sexual violence
11 victim status.
12 (b) An employer shall be liable for a supervisor's actions
13 that are in violation of this section; provided that the
14 employee proves by a preponderance of the evidence that:
15 (1) The employer authorized the supervisor to act as a
16 supervisor to the employee; and



1 (2) The supervisor subjected the employee to an adverse
2 tangible employment action.

3 (c) It is an affirmative defense that:

4 (1) The employer exercised reasonable care to prevent or
5 correct the supervisor's actions that violate this
6 section, including but not limited to the adoption and
7 implementation of an anti-harassment policy; and

8 (2) The employee:

9 (A) Unreasonably failed to take advantage of the
10 employer's preventative or corrective
11 opportunities; or

12 (B) Unreasonably failed to avoid harm.

13 The affirmative defense afforded by this subsection shall
14 not apply when the employee has demonstrated by a preponderance
15 of evidence that the employee has suffered an adverse tangible
16 employment action.

17 (d) For purposes of this section:

18 "Adverse tangible employment action" includes, but is not
19 limited to the firing, failure to promote, assigning of
20 significantly different responsibilities, and significantly
21 reducing benefits of an employee.



S.B. NO. 1012

1 "Supervisor" means a person who is employed and empowered
 2 by the employer to take tangible employment actions with respect
 3 to employees.

4 "Tangible employment action" includes, but is not limited
 5 to the hiring, firing, promoting, assigning responsibilities,
 6 and changing benefits of an employee."

7 SECTION 2. New statutory material is underscored.

8 SECTION 3. This Act does not affect rights and duties that
 9 matured, penalties that were incurred, and proceedings that were
 10 begun before its effective date.

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

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INTRODUCED BY:

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S.B. NO. 1012

Report Title:

Employer Liability; Discriminatory Practices

Description:

Allows an employee who has suffered a tangible adverse employment action resulting from a supervisor's discriminatory actions to sue the employee's employer. Allows an employer to raise an affirmative defense.

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

