
A BILL FOR AN ACT

RELATING TO EMPLOYMENT.

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

1 SECTION 1. The legislature finds that the employment
2 practices laws under sections 378-2, 378-2.3, 378-2.5, and
3 378-2.7, Hawaii Revised Statutes, relate to discriminatory
4 practices, unequal pay due to sex discrimination, criminal
5 conviction records, and credit history, respectively. These
6 sections were enacted to prohibit employment discrimination
7 against individuals based upon protected categories, but were
8 not intended to prevent employers from taking employment action
9 for reasons unrelated to the categories protected by the
10 legislature in those sections.

11 The purpose of this Act is to clarify that Hawaii's anti-
12 discrimination law, as set forth in part I of chapter 378,
13 Hawaii Revised Statutes, does not prohibit refusals to hire,
14 refusals to refer, or discharges that are unrelated to
15 discriminatory practices in section 378-2, unequal pay due to
16 sex discrimination in section 378-2.3, criminal conviction



1 records in section 378-2.5, and credit history in section 378-
2 2.7, Hawaii Revised Statutes.

3 SECTION 2. Section 378-3, Hawaii Revised Statutes, is
4 amended to read as follows:

5 "§378-3 Exceptions. Nothing in this part shall be deemed
6 to:

7 (1) Repeal or affect any law, ordinance, or government
8 rule having the force and effect of law;

9 (2) Prohibit or prevent the establishment and maintenance
10 of bona fide occupational qualifications reasonably
11 necessary to the normal operation of a particular
12 business or enterprise, and that have a substantial
13 relationship to the functions and responsibilities of
14 prospective or continued employment;

15 (3) Prohibit or prevent an employer, employment agency, or
16 labor organization from refusing to hire, refusing to
17 refer, or ~~[discharge]~~ from discharging any individual
18 for reasons ~~[relating to the ability of the individual~~
19 ~~to perform the work in question;]~~ unrelated to
20 sections 378-2, 378-2.3, 378-2.5, or 378-2.7;



- 1 (4) Affect the operation of the terms or conditions of any
2 bona fide retirement, pension, employee benefit, or
3 insurance plan that is not intended to evade the
4 purpose of this chapter; provided that this exception
5 shall not be construed to permit any employee plan to
6 set a maximum age requirement for hiring or a
7 mandatory retirement age;
- 8 (5) Prohibit or prevent any religious or denominational
9 institution or organization, or any organization
10 operated for charitable or educational purposes, that
11 is operated, supervised, or controlled by or in
12 connection with a religious organization, from giving
13 preference to individuals of the same religion or
14 denomination or from making a selection calculated to
15 promote the religious principles for which the
16 organization is established or maintained;
- 17 (6) Conflict with or affect the application of security
18 regulations or rules in employment established by the
19 United States or the State;
- 20 (7) Require the employer to execute unreasonable
21 structural changes or expensive equipment alterations



1 to accommodate the employment of a person with a
2 disability;

3 (8) Prohibit or prevent the department of education or
4 private schools from considering criminal convictions
5 in determining whether a prospective employee is
6 suited to working in close proximity to children;

7 (9) Prohibit or prevent any financial institution in which
8 deposits are insured by a federal agency having
9 jurisdiction over the financial institution from
10 denying employment to or discharging from employment
11 any person who has been convicted of any criminal
12 offense involving dishonesty or a breach of trust,
13 unless it has the prior written consent of the federal
14 agency having jurisdiction over the financial
15 institution to hire or retain the person;

16 (10) Preclude any employee from bringing a civil action for
17 sexual harassment or sexual assault and infliction of
18 emotional distress or invasion of privacy related
19 thereto; provided that notwithstanding section 368-12,
20 the commission shall issue a right to sue on a
21 complaint filed with the commission if it determines



1 that a civil action alleging similar facts has been
2 filed in circuit court; or

3 (11) Require the employer to accommodate the needs of a
4 nondisabled person associated with or related to a
5 person with a disability in any way not required by
6 title I of the Americans with Disabilities Act."

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

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

12 SECTION 5. This Act shall take effect on January 1, 2050.



Report Title:

Employment Practices; Discriminatory Practices

Description:

Clarifies that Hawaii's anti-discrimination law does not prohibit or prevent an employer, employment agency, or labor organization from refusing to hire or refer or from discharging an individual for reasons unrelated to unlawful discriminatory practices. (HB2201 HD1)

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