
A BILL FOR AN ACT

RELATING TO EMPLOYMENT PRACTICES.

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

1 SECTION 1. In response to the COVID-19 pandemic,
2 applications for mobile phones have been promoted as a means to
3 track the whereabouts of individuals who may have been exposed
4 to someone testing positive for the virus, prompting privacy
5 concerns and anxiety over potential misuse of the location
6 information. While cellphone users may voluntarily agree to be
7 tracked, the legislature finds that privacy concerns dictate
8 against making this requirement a condition of employment.

9 The purpose of this Act is to prohibit an employer from:

- 10 (1) Requiring an employee to download a mobile application
11 to the employee's personal communication device that
12 enables the employee's location to be tracked or their
13 personal information revealed;
- 14 (2) Terminating or otherwise discriminating against an
15 employee for refusing to download a mobile application
16 to the employee's personal communication device; or



1 (3) Discharging or otherwise discriminating against an
2 employee for filing a complaint, testifying, or
3 assisting in any proceeding concerning these unlawful
4 practices.

5 SECTION 2. Chapter 378, Hawaii Revised Statutes, is
6 amended by adding a new part to be appropriately designated and
7 to read as follows:

8 **"PART . . . MOBILE APPLICATIONS**

9 **§378- Definitions.** As used in this part:

10 "Employee" means an individual who performs a service for
11 wages or other remuneration under a contract for hire, written
12 or oral, or expressed or implied. "Employee" includes an
13 individual employed by the State or a political subdivision of
14 the State.

15 "Employer" means a person who has one or more employees.

16 "Employer" includes an agent of an employer or of the State or a
17 political subdivision thereof, but does not include the United
18 States.

19 "Personal communication device" means a device allowing for
20 electric communications, such as a mobile phone or tablet, that



1 is not owned, or the cost of which is not reimbursed, by the
2 employer.

3 **§378- Unlawful practices.** It shall be unlawful for any
4 employer to:

5 (1) Require an employee to download a mobile application
6 to the employee's personal communication device that
7 enables the employee's location to be tracked or their
8 personal information revealed;

9 (2) Terminate or otherwise discriminate against an
10 employee for refusing to download a mobile application
11 to the employee's personal communication device that
12 enables the employee's location to be tracked or their
13 personal information revealed; or

14 (3) Discharge or otherwise discriminate against an
15 employee because the employee has filed a complaint,
16 testified, or assisted in any proceeding concerning
17 the unlawful practices prohibited under this part.

18 **§378- Exception.** Nothing in this part shall be deemed
19 to:

20 (1) Repeal or affect any law or ordinance or government
21 rule or regulation having the force and effect of law;



1 (2) Apply to the United States and any subdivision
2 thereof; or

3 (3) Conflict with or affect the application of security
4 regulations in employment established by the United
5 States or the State.

6 **§378- Civil actions for injunctive relief or damages.**

7 (a) An employee who alleges a violation of this part may bring
8 a civil action for appropriate injunctive relief, actual
9 damages, or both within two years after the occurrence of the
10 alleged violation.

11 (b) A cause of action pursuant to subsection (a) may be
12 brought in the appropriate court in the circuit where the
13 alleged violation occurred, where the plaintiff resides, or
14 where the defendant resides or has a principal place of
15 business.

16 (c) A defendant who violates this part shall be fined \$500
17 for each violation. A civil fine that is ordered pursuant to
18 this section shall be deposited with the director of finance to
19 the credit of the state general fund.



1 (d) For purposes of this section, "damages" means damages
2 for injury or loss caused by each violation of this part,
3 including reasonable attorney's fees."

4 SECTION 3. This Act shall take effect on December 25,
5 2040.



Report Title:

Employment Practices; Mobile Applications; Prohibition

Description:

Prohibits an employer from: (1) requiring an employee to download a mobile application to the employee's personal communication device that enables the employee's location to be tracked or their personal information revealed; (2) terminating or otherwise discriminating against an employee for refusing to download a mobile application on their personal device; or (3) discharging or discriminating against an employee for filing a complaint concerning these unlawful practices. Effective 12/25/2040. (HD1)

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