
A BILL FOR AN ACT

RELATING TO EMPLOYMENT PRACTICES.

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

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

11 The purpose of this Act is to prohibit an employer, with
12 certain exemptions, from:

13 (1) Requiring an employee to download a mobile application
14 to the employee's personal communication device that
15 enables the employee's location to be tracked or their
16 personal information revealed;



- 1 (2) Terminating or otherwise discriminating against an
- 2 employee for refusing to download a mobile application
- 3 to the employee's personal communication device; or
- 4 (3) Discharging or otherwise discriminating against an
- 5 employee for filing a complaint, testifying, or
- 6 assisting in any proceeding concerning these unlawful
- 7 practices.

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

11 **"PART . MOBILE APPLICATIONS**

12 **§378- Definitions.** As used in this part:

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

18 "Employer" means a person who has one or more employees.
 19 "Employer" includes an agent of an employer or of the State or a
 20 political subdivision thereof, but does not include the United
 21 States.



1 "Personal communication device" means a device allowing for
2 electronic communications, such as a mobile phone or tablet,
3 that is not owned, or the cost of which is not reimbursed, by
4 the employer.

5 **§378- Unlawful practices.** It shall be unlawful for any
6 employer to:

- 7 (1) Require an employee to download a mobile application
8 to the employee's personal communication device that
9 enables the employee's location to be tracked or the
10 employee's personal information to be revealed;
- 11 (2) Terminate or otherwise discriminate against an
12 employee for refusing to download a mobile application
13 to the employee's personal communication device that
14 enables the employee's location to be tracked or the
15 employee's personal information to be revealed; or
- 16 (3) Discharge or otherwise discriminate against an
17 employee because the employee has filed a complaint,
18 testified, or assisted in any proceeding concerning
19 the unlawful practices prohibited under this part.

20 **§378- Exception.** Nothing in this part shall be deemed
21 to:



- 1 (1) Repeal or affect any law, ordinance, or rule having
- 2 the force and effect of law;
- 3 (2) Apply to the United States;
- 4 (3) Conflict with or affect the application of security
- 5 regulations in employment established by the United
- 6 States or the State;
- 7 (4) Apply if the employee consents to downloading the
- 8 mobile application to the employee's personal
- 9 communication device; or
- 10 (5) Apply if the mobile application is required as a
- 11 condition of employment and related to the functions
- 12 of the employment position.

13 **§378- Civil actions for injunctive relief or damages.**

14 (a) An employee who alleges a violation of this part may bring

15 a civil action for appropriate injunctive relief, actual

16 damages, or both within two years after the occurrence of the

17 alleged violation.

18 (b) A cause of action pursuant to subsection (a) may be

19 brought in the appropriate court in the circuit where the

20 alleged violation occurred, where the plaintiff resides, or

1 where the defendant resides or has a principal place of
2 business.

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

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

10 SECTION 3. This Act shall take effect on December 25,
11 2040.



Report Title:

Employment Practices; Mobile Applications; Prohibition

Description:

Prohibits employers, with certain exemptions, from requiring employees to download mobile applications to the employees' personal communication devices, terminating or otherwise discriminating against employees for refusing to download mobile applications, or discharging or discriminating against employees for filing complaints concerning these unlawful practices.
Effective 12/25/2040. (HD3)

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