

## ACT 206

S.B. NO. 229

A Bill for an Act Relating to Employment Relations.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 378-1, Hawaii Revised Statutes, is amended by adding a new definition to be appropriately inserted and to read as follows:

““Domestic or sexual violence victim” or “victim” means an individual who is the victim of domestic or sexual violence as defined in section 378-71.”

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

**“§378-2 Discriminatory practices made unlawful; offenses defined. (a)** It shall be an unlawful discriminatory practice:

- (1) Because of race, sex, sexual orientation, age, religion, color, ancestry, disability, marital status, [ø] arrest and court record[;], or domestic or sexual violence victim status if the domestic or sexual violence victim provides notice to the victim’s employer of such status or the employer has actual knowledge of such status:
  - (A) For any 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;
  - (B) For any employment agency to fail or refuse to refer for employment, or to classify or otherwise to discriminate against, any individual;
  - (C) For any employer or employment agency to print, circulate, or cause to be printed or circulated any statement, advertisement, or publication or to use any form of application for employment or to make any inquiry in connection with prospective employment, which expresses, directly or indirectly, any limitation, specification, or discrimination;
  - (D) For any labor organization to exclude or expel from its membership any individual or to discriminate in any way against any of its members, employer, or employees; or
  - (E) For any employer or labor organization to refuse to enter into an apprenticeship agreement as defined in section 372-2; provided that no apprentice shall be younger than sixteen years of age;

- (2) For any employer, labor organization, or employment agency to discharge, expel, or otherwise discriminate against any individual because the individual has opposed any practice forbidden by this part or has filed a complaint, testified, or assisted in any proceeding respecting the discriminatory practices prohibited under this part;
  - (3) For any person, whether an employer, employee, or not, to aid, abet, incite, compel, or coerce the doing of any of the discriminatory practices forbidden by this part, or to attempt to do so;
  - (4) For any employer to violate the provisions of section 121-43 relating to nonforfeiture for absence by members of the national guard;
  - (5) For any employer to refuse to hire or employ or to bar or discharge from employment<sup>[5]</sup> any individual because of assignment of income for the purpose of satisfying the individual's child support obligations as provided for under section 571-52;
  - (6) For any employer, labor organization, or employment agency to exclude or otherwise deny equal jobs or benefits to a qualified individual because of the known disability of an individual with whom the qualified individual is known to have a relationship or association;
  - (7) For any employer or labor organization to refuse to hire or employ or to bar or discharge from employment, or withhold pay, demote, or penalize a lactating employee because ~~[an]~~ the employee breastfeeds or expresses milk at the workplace. For purposes of this paragraph, the term "breastfeeds" means the feeding of a child directly from the breast; or
  - (8) For any 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 of any individual because of the individual's credit history or credit report, unless the information in the individual's credit history or credit report directly relates to a bona fide occupational qualification under section 378-3(2).
- (b) For purposes of subsection (a)(1):
- (1) An employer may verify that an employee is a victim of domestic or sexual violence by requesting that the employee provide:
    - (A) A signed written statement from a person listed below from whom the employee or the employee's minor child has sought assistance in relation to the domestic or sexual violence:
      - (i) An employee, agent, or volunteer of a victim services organization;
      - (ii) The employee's attorney or advocate;
      - (iii) The attorney or advocate of the employee's minor child;
      - (iv) A medical or other health care professional; or
      - (v) A member of the clergy; or
    - (B) A police or court record supporting the occurrence of the domestic or sexual violence; and
  - (2) An employer may verify an employee's status as a domestic or sexual violence victim not more than once every six months following the date the employer:
    - (A) Was provided notice by the employee of the employee's status as a domestic or sexual violence victim;
    - (B) Has actual knowledge of the employee's status as a domestic or sexual violence victim; or
    - (C) Received verification that the employee is a domestic or sexual violence victim;

provided that where the employee provides verification in the form

of a protective order related to the domestic or sexual violence with an expiration date, the employer may not request any further form of verification of the employee's status as a domestic or sexual violence victim until the date of the expiration or any extensions of the protective order, whichever is later."

SECTION 3. Chapter 378, Hawaii Revised Statutes, is amended as follows:

1. By amending the title of part VI to read:

**"[PART VI.] VICTIMS [~~LEAVE~~] PROTECTIONS"**

2. By designating section 378-71, as a new subpart and inserting a title before section 378-71 to read:

**" . GENERAL PROVISIONS"**

3. By designating sections 378-72 to 378-74 as a new subpart and inserting a title before section 378-72 to read:

**" . VICTIMS LEAVE"**

4. Adding a new subpart to read as follows:

**" . REASONABLE ACCOMMODATIONS IN THE WORKPLACE**

**§378- Reasonable accommodations.**<sup>2</sup> An employer shall make reasonable accommodations in the workplace for an employee who is a victim of domestic or sexual violence, including:

- (1) Changing the contact information, such as telephone numbers, fax numbers, or electronic-mail addresses, of the employee;
- (2) Screening the telephone calls of the employee;
- (3) Restructuring the job functions of the employee;
- (4) Changing the work location of the employee;
- (5) Installing locks and other security devices; and
- (6) Allowing the employee to work flexible hours;

provided that an employer shall not be required to make the reasonable accommodations if they cause undue hardship on the work operations of the employer.

(b) Prior to making the reasonable accommodations under this section, an employer may verify that an employee is a victim of domestic or sexual violence as provided in section 378-2(b).

(c) As used in this section, "undue hardship" means an action requiring significant difficulty or expense on the operation of an employer, when considered in light of the following factors:

- (1) The nature and cost of the reasonable accommodation needed under this section;
- (2) The overall financial resources of the employer; the number of employees of the employer; and the number, type, and placement of the work locations of an employer; and
- (3) The type of operation of the employer, including the composition, structure, and functions of the workforce of the employer, the geographic separateness of the victim's work location from the employer, and the administrative or fiscal relationship of the work location to the employer.

**§378- Civil actions.** Any employee denied reasonable accommodations by an employer in violation of this subpart may file a civil action against the employer to enforce this subpart and recover costs, including reasonable attorney's fees, incurred in the civil action."

**SECTION 4.** Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.<sup>3</sup>

**SECTION 5.** This Act shall take effect on January 1, 2012.

(Approved July 8, 2011.)

**Notes**

1. Definition should be underscored.
2. No (a).
3. Edited pursuant to HRS §23G-16.5.