
A BILL FOR AN ACT

RELATING TO OCCUPATIONAL SAFETY AND HEALTH.

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

1 SECTION 1. The legislature finds that healthy and
2 productive employees are the cornerstones of successful
3 businesses and a prosperous economy. Unfortunately, many
4 employees are subjected to unhealthy, abusive work environments
5 where workplace bullying, abuse, and harassment are prevalent
6 occurrences. As a result, these employees may experience
7 physical and psychological harm, which negatively impacts job
8 performance and job safety, often manifesting in injuries and
9 illnesses. The National Institute for Occupational Safety
10 recognizes general harassment, including workplace bullying, as
11 a form of workplace violence.

12 Workplace bullying is defined as the repeated health-
13 impairing mistreatment of one person by another that a
14 reasonable person would recognize as harmful. Congress has
15 found that employee injuries and illness that arise out of work
16 situations impose a substantial burden on businesses and that
17 these injuries and illnesses can be reduced through the
18 establishment and enforcement of minimum health and safety



1 standards. Accordingly, the Hawaii occupational safety and
2 health law ensures safe and healthful working conditions for all
3 employees throughout the State. The legislature determines that
4 in addition to the current protections under the law, employees
5 need protection from the repeated health-impairing mistreatment
6 of one person by another in order to promote safe and healthy
7 work environments.

8 The purpose of this Act is to provide legal recourse for
9 employees who have been psychologically or physically harmed by
10 being deliberately subjected to abusive work environments.

11 SECTION 2. Chapter 396, Hawaii Revised Statutes, is
12 amended by adding a new part to be appropriately designated and
13 to read as follows:

14 **"PART . ABUSIVE WORK ENVIRONMENTS**

15 **§396- Definitions.** As used in this part:

16 "Abusive conduct":

- 17 (1) Means conduct of an employer or employee in the
18 workplace, with malice, that a reasonable person would
19 find hostile, offensive, and unrelated to an
20 employer's legitimate business interests; and
21 (2) May include, but is not limited to, repeated
22 infliction of verbal abuse, such as the use of



1 derogatory remarks, insults, and epithets; verbal or
2 physical conduct that a reasonable person would find
3 threatening, intimidating, or humiliating; or the
4 gratuitous sabotage or undermining of a person's work
5 performance.

6 Single acts normally shall not constitute abusive conduct,
7 unless especially severe and egregious, and the severity,
8 nature, and frequency of any conduct objected to shall be
9 considered.

10 "Abusive work environment" means a workplace where an
11 employee is subjected to abusive conduct that is so severe that
12 it causes physical or psychological harm to the employee.

13 "Conduct" means all forms of behavior, including acts and
14 omissions of acts.

15 "Constructive discharge" means abusive conduct that causes
16 the employee to resign, and where prior to resigning, the
17 employee brings to the employer's attention the existence of the
18 abusive conduct, and the employer fails to take reasonable steps
19 to eliminate the abusive conduct.

20 "Harassment" means:

21 (1) Physical harm, bodily harm, assault, or the threat of
22 imminent physical harm, bodily injury, or assault; or



1 (2) An intentional or knowing course of conduct directed
2 at an individual that seriously alarms, disturbs, or
3 consistently or continually bothers the individual,
4 including contact by electronic telephonic means of
5 communication, and that serves no legitimate purpose;
6 provided that the course of conduct would cause a
7 reasonable person to suffer emotional distress.

8 "Malice":

- 9 (1) Means the desire to see another person suffer
10 psychological, physical, or economic harm, without
11 legitimate cause or justification; and
- 12 (2) May be inferred from the presence of one or more
13 factors such as outward expressions of hostility,
14 harmful conduct inconsistent with an employer's
15 legitimate business interests, a continuation of
16 harmful, illegitimate conduct after the complainant
17 requests that it cease or demonstrates outward signs
18 of emotional or physical distress in the face of the
19 conduct, or attempts to exploit the complainant's
20 known psychological or physical vulnerability.



1 "Negative employment decision" means a termination,
2 constructive discharge, demotion, unfavorable reassignment,
3 refusal to promote, or disciplinary action.

4 "Physical harm" means the material impairment of a person's
5 physical health or bodily integrity, as documented by a
6 competent physician or supported by competent expert evidence at
7 trial.

8 "Psychological harm" means the material impairment of a
9 person's mental health, as documented by a competent
10 psychologist, psychiatrist, or psychotherapist, or supported by
11 competent expert evidence at trial.

12 **§396- Unlawful safety violations.** It shall be an
13 unlawful safety violation under this part to:

14 (1) Subject an employee to an abusive work environment; or

15 (2) Retaliate in any manner against an employee because
16 the employee:

17 (A) Opposed any unlawful safety violation under this
18 part; or

19 (B) Made a charge, testified, assisted, or
20 participated in any manner in an investigation or
21 proceeding under this part, including but not

1 limited to, internal proceedings, arbitration or
2 mediation proceedings, and legal actions.

3 **§396- Liability; limitations.** (a) An employer shall be
4 vicariously liable for an unlawful safety violation committed by
5 its employee in violation of this part.

6 (b) The employer's liability for damages for emotional
7 distress shall not exceed \$25,000, and the employer shall not be
8 liable for punitive damages where an employer has been found to
9 have committed an unlawful safety violation under this part that
10 did not result in a negative employment decision.

11 **§396- Statute of limitations.** An action commenced under
12 this part shall be commenced no later than three years after the
13 last act that constitutes or comprises the alleged unlawful
14 safety violation.

15 **§396- Affirmative defenses.** It shall be an affirmative
16 defense to an action for an abusive work environment that:

17 (1) The employer exercised reasonable care to prevent and
18 promptly correct the abusive conduct and the aggrieved
19 employee unreasonably failed to take advantage of
20 appropriate preventive or corrective opportunities
21 provided by the employer. This defense is not



1 available when abusive conduct culminates in a
2 negative employment decision; and
3 (2) The complaint is grounded primarily upon a negative
4 employment decision made consistent with an employer's
5 legitimate business interests, such as a termination
6 or demotion based on an employee's poor performance,
7 or the complaint is grounded primarily upon an
8 employer's reasonable investigation of potentially
9 illegal or unethical activity.

10 **§396- Education.** (a) The department shall develop and
11 disseminate, at no cost to employers, information on abusive
12 work environments and the legal consequences that employees or
13 employers encounter if they contribute to the creation or
14 perpetuation of abusive work environments.

15 (b) Employers shall be responsible for posting or
16 providing the information provided by the department under
17 subsection (a) in a prominent place in the workplace that is
18 readily accessible to employees.

19 **§396- Remedies.** (a) The court may enjoin the defendant
20 from engaging in conduct constituting an unlawful safety
21 violation committed under this part. The court may order any
22 other relief that is deemed appropriate, including but not



1 limited to, reinstatement, removal of the offending party from
2 the complainant's work environment, back pay, front pay, medical
3 expenses, compensation for emotional distress, punitive damages,
4 and attorney's fees.

5 (b) The remedies contained in this part shall be available
6 in addition to those remedies available under workers'
7 compensation law. However, a person who believes that the
8 person has been subjected to an unlawful safety violation under
9 this part may elect to accept workers' compensation benefits in
10 connection with the underlying behavior in lieu of bringing an
11 action under this part. A person who elects to accept workers'
12 compensation benefits shall not bring an action under this part
13 for the same underlying behavior.

14 (c) In any action brought under this part, the court, in
15 addition to any judgment awarded to the plaintiff or plaintiffs,
16 shall allow costs of the action, including costs or fees of any
17 nature and reasonable attorney's fees, to be paid by the
18 defendant."

19 SECTION 3. Chapter 396, Hawaii Revised Statutes, is
20 amended by designating sections 396-1 through 396-20 as "Part I
21 General Provisions."



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

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INTRODUCED BY:

Dyabriel J. Magaway

Maileys B. Lee

C. H.

R. James

Ann. G. Cucki

Bertha Kawahara

John K. Krentler

Tony Wate

Josiah

Joseph

SLT. Q

Kirk Caldwell

[Signature]

Ant. L.

HB2040

Report Title:

Occupational Safety and Health; Abusive Work Environments

Description:

Prohibits an employer from subjecting an employee to an abusive work environment. Provides legal recourse for employees who have been psychologically, physically, or economically harmed as a result of being deliberately subjected to an abusive work environment.

