

JAN 25 2006

S.B. NO. 3021

A BILL FOR AN ACT

RELATING TO EMPLOYMENT PRACTICES.

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

1 SECTION 1. Chapter 378, Hawaii Revised Statutes, is
2 amended by adding a new part to be appropriately designated and
3 to read as follows:

4 **"PART . UNLAWFUL DISCIPLINARY ACTION RELATED TO AN**
5 **EMPLOYEE'S USE OF SICK LEAVE**

6 **§378-A Sick leave.** It shall be unlawful for any employer
7 or labor organization to discharge from employment, withhold
8 pay, demote, or otherwise discipline an employee with a serious
9 health condition requiring continuous treatment for a period
10 greater than twelve weeks as certified by a licensed physician
11 in the State because the employee uses accrued and available
12 sick leave as provided by the terms and conditions of a sick
13 leave policy under a valid collective bargaining agreement or a
14 valid employment policy. For purposes of this section, the term
15 "serious health condition" is the same as defined under the
16 federal Family and Medical Leave Act of 1993 and the associated
17 federal regulations.



1 **§378-B Complaint against unlawful disciplinary practice.**

2 (a) Any employee aggrieved by an alleged unlawful disciplinary
3 practice as set forth in section 378-A may file with the
4 department of labor and industrial relations a complaint in
5 writing, stating the name and address of the employer alleged to
6 have committed the unlawful suspension, discharge, or
7 discrimination, and shall set forth the particulars thereof and
8 other information as may be required by the department.

9 (b) No complaint shall be filed after the expiration of
10 thirty days after the alleged act of unlawful disciplinary
11 action, or after the employee learns of the alleged act of
12 unlawful disciplinary action, except that a complaint for an
13 alleged act of unlawful discharge action under section 378-A
14 occurring while the aggrieved employee is still physically or
15 mentally incapacitated and unable to work may also be filed
16 before the expiration of thirty days after the date the
17 aggrieved employee is able to return to work.

18 **§378-C Proceeding and hearing on complaint.** (a) After
19 the filing of any complaint, the department of labor and
20 industrial relations shall serve a copy of the complaint upon
21 the employer charged. Service may be by delivery to the



1 employer or by mail. The employer may file an answer to the
2 complaint.

3 (b) A hearing on the complaint shall be held by the
4 department in conformance with chapter 91.

5 **§378-D Proceeding and hearing on complaint.** If the
6 department of labor and industrial relations finds, after a
7 hearing, that an employer has unlawfully taken disciplinary
8 action against an employee in violation of section 378-A, the
9 department may order the employer to rescind the unlawful
10 disciplinary action, including, as appropriate, the
11 reinstatement of the employee to the employee's prior position,
12 with or without back pay, or may order the payment of back pay
13 without reinstatement.

14 **§378-E Judicial review.** Any person aggrieved by the order
15 of the department of labor and industrial relations shall be
16 entitled to judicial review as provided by section 91-14."

17 SECTION 2. This Act does not affect rights and duties that
18 matured, penalties that were incurred, and proceedings that were
19 begun, before its effective date.

20 SECTION 3. This Act shall take effect upon its approval.

21
INTRODUCED BY: *Dr. Icarro*
Chenuevich
Will Evers

SB. NO. 3021

Report Title:

Employment Practices; Sick Leave

Description:

Makes it unlawful for an employer to discharge or otherwise punish an employee for the lawful use of the employee's accrued and available sick leave. Establishes procedures for filing a complaint against an employer who retaliates against an employee for lawfully utilizing sick leave.

