
A BILL FOR AN ACT

RELATING TO PUBLIC EMPLOYMENT.

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

1 SECTION 1. The purpose of this Act is provide equity and
2 certainty in disciplinary actions relating to public employees.

3 SECTION 2. Section 76-45, Hawaii Revised Statutes, is
4 amended to read as follows:

5 "**§76-45 Suspension.** An appointing authority may [~~for~~
6 ~~disciplinary purposes,~~] suspend any employee for disciplinary
7 purposes based on recently obtained evidence gathered to support
8 probable cause for a serious offense, with or without pay [~~or~~
9 ~~place an employee on leave without pay pending an investigation.~~
10 ~~Suspensions and leaves without pay pending an investigation~~
11 ~~shall be in accordance with]. Before suspending an employee
12 without pay, the employer shall have documentation to show
13 progressive disciplinary actions. The suspension with or
14 without pay shall be for the purpose of conducting an
15 investigation to verify charges of a violation by action or
16 inaction on the part of that employee of a specific section of
17 law or rule. Any suspension shall be imposed in accordance with~~



1 processes and procedures negotiated under chapter 89 or
2 established under chapter 89C, as applicable."

3 SECTION 3. Section 76-46, Hawaii Revised Statutes, is
4 amended to read as follows:

5 "**§76-46 Discharges; demotions.** An appointing authority
6 may discharge or demote any employee [~~when the appointing~~
7 ~~authority considers that the good of the service will be served~~
8 ~~thereby. Discharges may be made only for such causes that will~~
9 ~~promote the efficiency of government service.~~

10 ~~Demotions or discharges shall be in accordance with]~~ for
11 disciplinary purposes based on recently obtained evidence
12 gathered to support probable cause for a serious offense.
13 Before demoting or discharging an employee, the employer shall
14 have documentation to show progressive disciplinary actions.
15 The demotion or discharge shall be imposed for a violation by
16 action or inaction on the part of that employee of a specific
17 section of law or rule. Any demotion or discharge shall be
18 imposed in accordance with processes and procedures negotiated
19 under chapter 89 or established under chapter 89C, as
20 applicable."
21



1 SECTION 4. Section 89-9, Hawaii Revised Statutes, is
2 amended by amending subsection (d) to read as follows:

3 "(d) Excluded from the subjects of negotiations are
4 matters of classification, reclassification, benefits of but not
5 contributions to the Hawaii employer-union health benefits trust
6 fund or a voluntary employees' beneficiary association trust;
7 recruitment; examination; initial pricing; and retirement
8 benefits except as provided in section 88-8(h). The employer
9 and the exclusive representative shall not agree to any proposal
10 that would be inconsistent with the merit principle or the
11 principle of equal pay for equal work pursuant to section 76-1
12 or that would interfere with the rights and obligations of a
13 public employer to:

- 14 (1) Direct employees;
- 15 (2) Determine qualifications, standards for work, and the
16 nature and contents of examinations;
- 17 (3) Hire, promote, transfer, assign, and retain employees
18 in positions;
- 19 (4) Suspend, demote, discharge, or take other disciplinary
20 action against employees for proper cause;
- 21 (5) Relieve an employee from duties because of lack of
22 work or other legitimate reason;



- 1 (6) Maintain efficiency and productivity, including
- 2 maximizing the use of advanced technology, in
- 3 government operations;
- 4 (7) Determine methods, means, and personnel by which the
- 5 employer's operations are to be conducted; and
- 6 (8) Take such actions as may be necessary to carry out the
- 7 missions of the employer in cases of emergencies.

8 This subsection shall not be used to invalidate provisions
9 of collective bargaining agreements in effect on and after June
10 30, 2007, and shall not preclude negotiations over the
11 procedures and criteria on promotions, transfers, assignments,
12 probations, demotions, layoffs, suspensions, terminations,
13 discharges, or other disciplinary actions as a permissive
14 subject of bargaining during collective bargaining negotiations
15 or negotiations over a memorandum of agreement, memorandum of
16 understanding, or other supplemental agreement.

17 Violations of the procedures and criteria so negotiated may
18 be subject to the grievance procedure in the collective
19 bargaining agreement."

20 SECTION 5. By September 1, 2008, the department of human
21 resources development shall prepare preliminary administrative



1 rules, policies, processes, and procedures needed to implement
2 this Act.

3 By December 1, 2008, the department shall adopt the final
4 administrative rules, policies, processes, and procedures.

5 SECTION 6. Statutory material to be repealed is bracketed
6 and stricken. New statutory material is underscored.

7 SECTION 7. This Act shall take effect upon its approval;
8 provided that the amendment made to section 89-9(d), Hawaii
9 Revised Statutes, by section 4 of this Act shall not be repealed
10 when that section is reenacted on July 1, 2009 by section 8 of
11 Act 245 of the Session Laws of Hawaii 2005, as amended by
12 section 2 of Act 294, Session Laws of Hawaii 2007.

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INTRODUCED BY: Calvin K. Aoy
BY REQUEST

JAN 15 2008



Report Title:

Public Employment; Disciplinary Action

Description:

Clarifies disciplinary actions against public employees by requiring evidence to support probable cause for serious offense and documentation showing progressive disciplinary actions. Authorizes suspension with pay pending investigation of charge.

