
A BILL FOR AN ACT

RELATING TO WORKPLACE PRACTICES.

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, independent of membership in a protected group. As
7 a result, these employees may experience physical and
8 psychological harm, which negatively impacts job performance and
9 job safety, often manifesting in injuries and illnesses. The
10 National Institute for Occupational Safety and Health recognizes
11 general harassment, including workplace bullying, as a form of
12 workplace violence.

13 Workplace bullying has been defined by the National
14 Institute for Occupational Safety and Health as the repeated
15 intimidation, slandering, social isolation, or humiliation by
16 one or more persons against another. Congress has found that
17 employee injuries and illness that arise out of work situations



1 impose a substantial burden on businesses and that these
2 injuries and illnesses can be reduced through the establishment
3 and enforcement of minimum health and safety standards.
4 Accordingly, the Hawaii occupational safety and health law
5 ensures safe and healthful working conditions for all employees
6 throughout the State. The legislature determines that in
7 addition to the current protections under the law, employees
8 need protection from the repeated health-impairing mistreatment
9 of one person by another to promote safe and healthy work
10 environments.

11 The purpose of this Act is to make an abusive work
12 environment an occupational safety violation.

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

16 **"PART . ABUSIVE WORK ENVIRONMENTS**

17 **§396-A Definitions.** As used in this part:

18 "Abusive conduct" means:

- 19 (1) Conduct of an employer or employee in the workplace,
20 with malice, that a reasonable person would find
21 hostile, offensive, and unrelated to an employer's
22 legitimate business interests;



1 (2) Subjection of an employee by the employee's employer
2 to an abusive work environment; or

3 (3) Retaliation in any manner against an employee because
4 the employee:

5 (A) Opposed any unlawful safety violation under this
6 part; or

7 (B) Made a charge, testified, assisted, or
8 participated in any manner in an investigation or
9 proceeding under this part, including but not
10 limited to, internal proceedings, arbitration or
11 mediation proceedings, and legal actions.

12 Abusive conduct may include, but is not limited to, repeated
13 infliction of verbal abuse, such as the use of derogatory
14 remarks, insults, and epithets; verbal or physical conduct that
15 a reasonable person would find threatening, intimidating, or
16 humiliating; the gratuitous sabotage or undermining of a
17 person's work performance; or interference with subsequent work
18 opportunities by defamatory evaluation. A single act normally
19 may constitute abusive conduct if the act is especially severe
20 and egregious; provided that the severity, nature, and frequency
21 of any conduct objected to shall be considered in determining
22 whether acts constitute abusive conduct.



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

4 "Conduct" means all forms of behavior, including acts and
5 omissions of acts.

6 "Constructive discharge" means abusive conduct that causes
7 the employee to resign, and where prior to resigning, the
8 employee brings to the employer's attention the existence of the
9 abusive conduct, and the employer fails to take reasonable steps
10 to eliminate the abusive conduct.

11 "Economic harm" means any material pecuniary loss,
12 including the loss of earnings or other benefits related to
13 employment, to the extent recovery is allowed under the law.

14 "Malice" means the desire to see another person suffer
15 psychological, physical, or economic harm, without legitimate
16 cause or justification. Malice may be inferred from the
17 presence of one or more factors such as outward expressions of
18 hostility, harmful conduct inconsistent with an employer's
19 legitimate business interests, a continuation of harmful,
20 illegitimate conduct after the complainant requests that it
21 cease or demonstrates outward signs of emotional or physical



1 distress in the face of the conduct, or attempts to exploit the
2 complainant's known psychological or physical vulnerability.

3 "Negative employment decision" means a termination,
4 constructive discharge, demotion, unfavorable reassignment,
5 refusal to promote, disciplinary action, or interference with
6 subsequent work opportunities by defamatory evaluation.

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

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

15 **§396-B Abusive conduct as occupational safety and health**
16 **violation; workers' compensation.** Abusive conduct shall
17 constitute an occupational safety and health violation, as well
18 as a workers' compensation claim as provide in section 396-G.

19 **§396-C Liability; limitations.** An employee who is
20 subjected to abusive conduct shall have a cause of action under
21 this part for emotional distress against:



1 (1) Another employee who is claimed to have made the
2 abusive conduct; provided that the employer shall be
3 vicariously liable for the acts of the employee
4 claimed to have made the abusive conduct; provided
5 that the employer shall be vicariously liable up to
6 \$25,000 under this paragraph; or

7 (2) The employer:

8 (A) Who directly commits abusive conduct; provided
9 that the employer shall not be liable for
10 punitive damages if the abusive conduct did not
11 result in a negative employment decision; or

12 (B) Whose workplace is an abusive work environment.

13 **§396-D Affirmative defenses.** It shall be an affirmative
14 defense to an action for an abusive work environment that:

15 (1) The employer exercised reasonable care to prevent and
16 promptly correct the abusive conduct and the aggrieved
17 employee unreasonably failed to take advantage of
18 appropriate preventive or corrective opportunities
19 provided by the employer; provided that the defense is
20 not available when abusive conduct culminates in a
21 negative employment decision; and



1 (2) The complaint is grounded primarily upon a negative
2 employment decision made consistent with an employer's
3 legitimate business interests, including a termination
4 or demotion based on an employee's poor performance,
5 or the complaint is grounded primarily upon an
6 employer's reasonable investigation of potentially
7 illegal or unethical activity.

8 **§396-E Statute of limitations.** An action under this part
9 shall be commenced no later than three years after the last act
10 that constitutes or comprises the alleged unlawful safety
11 violation.

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

17 (b) Employers shall be responsible for:

18 (1) Posting or providing the information provided by the
19 department under subsection (a) in a prominent place
20 in the workplace that is readily accessible to
21 employees; and

1 (2) Educating supervisors and employees on abusive work
2 environments and the legal consequences provided under
3 this part.

4 **§396-G Remedies.** (a) In addition to an award of damages
5 under section 396-C, the court may enjoin the defendant from
6 engaging in conduct constituting abusive conduct and order any
7 other relief that is deemed appropriate, including but not
8 limited to, reinstatement, removal of the offending party from
9 the complainant's work environment, back pay, front pay, medical
10 expenses, and attorney's fees.

11 (b) An employee making a claim under section 396-C, may
12 elect to accept workers' compensation benefits under chapter 386
13 for a work injury in lieu of bringing an action under this part.
14 An employee who elects to accept workers' compensation benefits
15 shall be barred from bringing an action under this part for the
16 same abusive conduct. For purposes of chapter 386, emotional
17 distress suffered by an employee shall be deemed to constitute a
18 work injury.

19 (c) In any action brought under this part, the court, in
20 addition to any judgment awarded to the plaintiff or plaintiffs,
21 shall allow costs of the action, including costs or fees of any



1 nature and reasonable attorney's fees, to be paid by the
2 defendant."

3 SECTION 3. Section 386-1, Hawaii Revised Statutes, is
4 amended by amending the definition of "work injury" to read as
5 follows:

6 "Work injury" means a personal injury suffered under the
7 conditions specified in section 386-3[-] or as provided in
8 section 396-G."

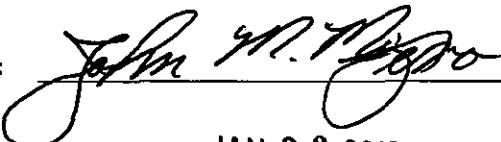
9 SECTION 4. Chapter 396, Hawaii Revised Statutes, is
10 amended by designating sections 396-1 through 396-20 as part I,
11 entitled "General Provisions".

12 SECTION 5. In codifying this Act, the revisor shall
13 substitute appropriate section numbers for the letter
14 designations used in section 2 of this Act.

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

17 SECTION 7. This Act shall take effect upon its approval.

18

INTRODUCED BY: 
JAN 22 2010

Report Title:

Occupational Safety; Abusive Work Environments

Description:

Makes abusive conduct against an employee in the workplace a violation of occupational safety and health law.

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