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# A BILL FOR AN ACT

RELATING TO EMPLOYMENT PRACTICES.

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

1           SECTION 1. Section 378-32, Hawaii Revised Statutes, is  
2 amended to read as follows:

3           "§378-32 Unlawful suspension, discharge, or  
4 discrimination. (a) It shall be unlawful for any employer to  
5 suspend, discharge, or discriminate against any of the  
6 employer's employees:

7           (1) Solely because the employer was summoned as a  
8 garnishee in a cause where the employee is the debtor  
9 or because the employee has filed a petition in  
10 proceedings for a wage earner plan under Chapter XIII  
11 of the Bankruptcy Act; [~~or~~]

12           (2) Solely because the employee has suffered a work injury  
13 which arose out of and in the course of the employee's  
14 employment with the employer and which is compensable  
15 under chapter 386 unless the employee is no longer  
16 capable of performing the employee's work as a result  
17 of the work injury and the employer has no other  
18 available work which the employee is capable of



1 performing. Any employee who is discharged because of  
2 the work injury shall be given first preference of  
3 reemployment by the employer in any position which the  
4 employee is capable of performing and which becomes  
5 available after the discharge and during the period  
6 thereafter until the employee secures new employment.  
7 This paragraph shall not apply to any employer in  
8 whose employment there are less than three employees  
9 at the time of the work injury or who is a party to a  
10 collective bargaining agreement which prevents the  
11 continued employment or reemployment of the injured  
12 employee;

13 (3) Because the employee testified or was subpoenaed to  
14 testify in a proceeding under this part; or

15 (4) Because an employee tested positive for the presence  
16 of drugs, alcohol, or the metabolites of drugs in a  
17 substance abuse on-site screening test conducted in  
18 accordance with section 329B-5.5; provided that this  
19 provision shall not apply to an employee who fails or  
20 refuses to report to a laboratory for a substance  
21 abuse test pursuant to section 329B-5.5.

1        (b) It shall be an unlawful practice for an employer or  
2 labor organization to bar or discharge from employment, withhold  
3 pay from, or demote an employee solely because the employee  
4 legitimately uses accrued and available negotiated sick leave in  
5 accordance with the employer's attendant and negotiated sick  
6 leave policies, except for abuse of sick leave.

7        (c) Employers and labor organizations are not prohibited  
8 from barring or discharging from employment, withholding pay  
9 from, or demoting an employee if the employee is unable to  
10 fulfill the essential job functions or requirements of the  
11 employee's position.

12        (d) Subsections (b) and (c) shall only apply to employers  
13 who have:

14        (1) A collective bargaining agreement with their  
15 employees; and

16        (2) One hundred or more employees."

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. Statutory material to be repealed is bracketed  
21 and stricken. New statutory material is underscored.

22        SECTION 4. This Act shall take effect on July 1, 2020.



**Report Title:**

Unemployment Practices

**Description:**

Makes it an unlawful practice for an employer or labor organization who has a collective bargaining agreement with its employees and who have 100 or more employees, to bar or discharge from employment, withhold pay from, or demote an employee because the employee legitimately uses accrued and available sick leave in accordance with the employer's attendant and negotiated sick leave policies, except for the abuse of sick leave. Provides exceptions to the prohibition if the employee is unable to fulfill the essential job functions or requirements of the employee's position. Effective July 1, 2020. (HB2935 HD3)

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

