

JAN 21 2010

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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 any employer or  
2 labor organization to bar or discharge from employment, withhold  
3 pay from, or demote an employee because the employee uses  
4 accrued and available sick leave. If the illness or injury  
5 requires the use of more than one day of accrued and available  
6 sick leave, the injury or illness shall be validated, in  
7 writing, by the employee's physician. In the event that an  
8 employee uses accrued or available sick leave as stated above  
9 three times over a six-month period, the employer may mandate  
10 the ill or injured employee be medically evaluated by a  
11 physician of the employee's choice from an employer's healthcare  
12 provider list of no fewer than three physicians. It shall not  
13 be a violation of this section if the employer or labor  
14 organization's actions are in accordance with the provisions of  
15 a valid negotiated attendance policy."

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

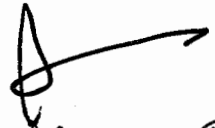
19        SECTION 3. New statutory material is underscored.

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

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INTRODUCED BY: *[Signature]*  
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**Report Title:**

Sick Leave; Employment Practices

**Description:**

Prohibits an employer or labor organization from discharging or barring from employment, withholding pay from, or demoting an employee who uses accrued and available sick leave.

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