

JAN 23 2009

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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.** 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



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

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

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



1 provided that any employer may suspend or discharge an employee  
2 who has completed the employer's probationary period of  
3 employment, if the suspension or discharge is for good cause and  
4 the employer has provided the employee with written  
5 documentation of the reasons for the suspension or discharge for  
6 good cause. For the purposes of this section, if an employer  
7 does not establish a specific probationary period at the date of  
8 hire, "probationary period" shall mean six months from the date  
9 of hire."

10 SECTION 2. Statutory material to be repealed is bracketed  
11 and stricken. New statutory material is underscored.

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

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INTRODUCED BY: S.S.T.L. (CBR)



**Report Title:**

Employment Practices; Suspension and Discharge

**Description:**

Authorizes any employer to suspend or discharge an employee for good cause once the employee had completed the employer's probationary period of employment; requires written documentation be provided to the employee; defines "probationary period" to mean six months from the date of hire if an employer does not establish a specific probationary period at the date of hire.

