



GOV. MSG. NO. 1310

EXECUTIVE CHAMBERS
HONOLULU

NEIL ABERCROMBIE
GOVERNOR

July 8, 2011

The Honorable Shan Tsutsui, President
and Members of the Senate
Twenty-Sixth State Legislature
State Capitol, Room 409
Honolulu, Hawaii 96813

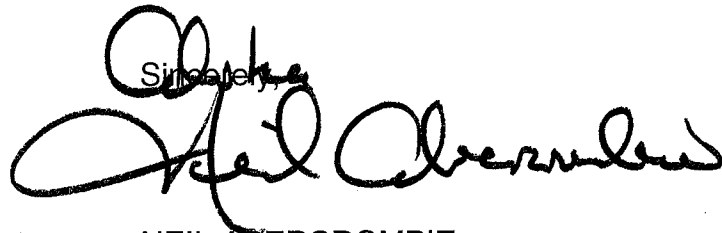
The Honorable Calvin Say, Speaker
and Members of the House
Twenty-Sixth State Legislature
State Capitol, Room 431
Honolulu, Hawaii 96813

Dear President Tsutsui, Speaker Say and Members of the Legislature:

This is to inform you that on July 8, 2011, the following bill was signed into law:

SB229 SD1 HD2 CD1

RELATING TO EMPLOYMENT RELATIONS.
Act 206 (11)

Sincerely,


NEIL ABERCROMBIE
Governor, State of Hawaii

A BILL FOR AN ACT

RELATING TO EMPLOYMENT RELATIONS.

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

1 SECTION 1. Section 378-1, Hawaii Revised Statutes, is
2 amended by adding a new definition to be appropriately inserted
3 and to read as follows:

4 "Domestic or sexual violence victim" or "victim" means an
5 individual who is the victim of domestic or sexual violence as
6 defined in section 378-71."

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

9 "§378-2 Discriminatory practices made unlawful; offenses
10 defined. (a) It shall be an unlawful discriminatory practice:

11 (1) Because of race, sex, sexual orientation, age,
12 religion, color, ancestry, disability, marital status,
13 [e] arrest and court record[-], or domestic or sexual
14 violence victim status if the domestic or sexual
15 violence victim provides notice to the victim's
16 employer of such status or the employer has actual
17 knowledge of such status:



- 1 (A) For any employer to refuse to hire or employ or
2 to bar or discharge from employment, or otherwise
3 to discriminate against any individual in
4 compensation or in the terms, conditions, or
5 privileges of employment;
- 6 (B) For any employment agency to fail or refuse to
7 refer for employment, or to classify or otherwise
8 to discriminate against, any individual;
- 9 (C) For any employer or employment agency to print,
10 circulate, or cause to be printed or circulated
11 any statement, advertisement, or publication or
12 to use any form of application for employment or
13 to make any inquiry in connection with
14 prospective employment, which expresses, directly
15 or indirectly, any limitation, specification, or
16 discrimination;
- 17 (D) For any labor organization to exclude or expel
18 from its membership any individual or to
19 discriminate in any way against any of its
20 members, employer, or employees; or
- 21 (E) For any employer or labor organization to refuse
22 to enter into an apprenticeship agreement as



- 1 defined in section 372-2; provided that no
2 apprentice shall be younger than sixteen years of
3 age;
- 4 (2) For any employer, labor organization, or employment
5 agency to discharge, expel, or otherwise discriminate
6 against any individual because the individual has
7 opposed any practice forbidden by this part or has
8 filed a complaint, testified, or assisted in any
9 proceeding respecting the discriminatory practices
10 prohibited under this part;
- 11 (3) For any person, whether an employer, employee, or not,
12 to aid, abet, incite, compel, or coerce the doing of
13 any of the discriminatory practices forbidden by this
14 part, or to attempt to do so;
- 15 (4) For any employer to violate the provisions of section
16 121-43 relating to nonforfeiture for absence by
17 members of the national guard;
- 18 (5) For any employer to refuse to hire or employ or to bar
19 or discharge from employment [7] any individual because
20 of assignment of income for the purpose of satisfying
21 the individual's child support obligations as provided
22 for under section 571-52;



- 1 (6) For any employer, labor organization, or employment
2 agency to exclude or otherwise deny equal jobs or
3 benefits to a qualified individual because of the
4 known disability of an individual with whom the
5 qualified individual is known to have a relationship
6 or association;
- 7 (7) For any employer or labor organization to refuse to
8 hire or employ or to bar or discharge from employment,
9 or withhold pay, demote, or penalize a lactating
10 employee because ~~an~~ the employee breastfeeds or
11 expresses milk at the workplace. For purposes of this
12 paragraph, the term "breastfeeds" means the feeding of
13 a child directly from the breast; or
- 14 (8) For any employer to refuse to hire or employ or to bar
15 or discharge from employment, or otherwise to
16 discriminate against any individual in compensation or
17 in the terms, conditions, or privileges of employment
18 of any individual because of the individual's credit
19 history or credit report, unless the information in
20 the individual's credit history or credit report
21 directly relates to a bona fide occupational
22 qualification under section 378-3(2).



1 (b) For purposes of subsection (a) (1):

2 (1) An employer may verify that an employee is a victim of
3 domestic or sexual violence by requesting that the
4 employee provide:

5 (A) A signed written statement from a person listed
6 below from whom the employee or the employee's
7 minor child has sought assistance in relation to
8 the domestic or sexual violence:

9 (i) An employee, agent, or volunteer of a victim
10 services organization;

11 (ii) The employee's attorney or advocate;

12 (iii) The attorney or advocate of the employee's
13 minor child;

14 (iv) A medical or other health care professional;
15 or

16 (v) A member of the clergy; or

17 (B) A police or court record supporting the
18 occurrence of the domestic or sexual violence;

19 and

20 (2) An employer may verify an employee's status as a
21 domestic or sexual violence victim not more than once
22 every six months following the date the employer:



1 (A) Was provided notice by the employee of the
2 employee's status as a domestic or sexual
3 violence victim;

4 (B) Has actual knowledge of the employee's status as
5 a domestic or sexual violence victim; or

6 (C) Received verification that the employee is a
7 domestic or sexual violence victim;

8 provided that where the employee provides verification
9 in the form of a protective order related to the
10 domestic or sexual violence with an expiration date,
11 the employer may not request any further form of
12 verification of the employee's status as a domestic or
13 sexual violence victim until the date of the
14 expiration or any extensions of the protective order,
15 whichever is later."

16 SECTION 3. Chapter 378, Hawaii Revised Statutes, is
17 amended as follows:

18 1. By amending the title of part VI to read:

19 "~~[+]PART VI.~~ ~~[+] VICTIMS~~ [LEAVE] PROTECTIONS"

20 2. By designating section 378-71, as a new subpart and
21 inserting a title before section 378-71 to read:

22 " GENERAL PROVISIONS"



1 3. By designating sections 378-72 to 378-74 as a new
2 subpart and inserting a title before section 378-72 to read:

3 " . VICTIMS LEAVE"

4 4. Adding a new subpart to read as follows:

5 " . REASONABLE ACCOMMODATIONS IN THE WORKPLACE

6 §378- Reasonable accommodations. An employer shall make
7 reasonable accommodations in the workplace for an employee who
8 is a victim of domestic or sexual violence, including:

9 (1) Changing the contact information, such as telephone
10 numbers, fax numbers, or electronic-mail addresses, of
11 the employee;

12 (2) Screening the telephone calls of the employee;

13 (3) Restructuring the job functions of the employee;

14 (4) Changing the work location of the employee;

15 (5) Installing locks and other security devices; and

16 (6) Allowing the employee to work flexible hours;

17 provided that an employer shall not be required to make the
18 reasonable accommodations if they cause undue hardship on the
19 work operations of the employer.

20 (b) Prior to making the reasonable accommodations under
21 this section, an employer may verify that an employee is a



1 victim of domestic or sexual violence as provided in section
2 378-2(b).

3 (c) As used in this section, "undue hardship" means an
4 action requiring significant difficulty or expense on the
5 operation of an employer, when considered in light of the
6 following factors:

7 (1) The nature and cost of the reasonable accommodation
8 needed under this section;

9 (2) The overall financial resources of the employer; the
10 number of employees of the employer; and the number,
11 type, and placement of the work locations of an
12 employer; and

13 (3) The type of operation of the employer, including the
14 composition, structure, and functions of the workforce
15 of the employer, the geographic separateness of the
16 victim's work location from the employer, and the
17 administrative or fiscal relationship of the work
18 location to the employer.

19 §378- Civil actions. Any employee denied reasonable
20 accommodations by an employer in violation of this subpart may
21 file a civil action against the employer to enforce this subpart

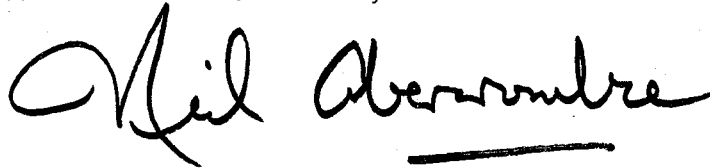


1 and recover costs, including reasonable attorney's fees,
2 incurred in the civil action."

3 SECTION 4. Statutory material to be repealed is bracketed
4 and stricken. New statutory material is underscored.

5 SECTION 5. This Act shall take effect on January 1, 2012.

APPROVED this 8 day of JUL, 2011

A handwritten signature in black ink, reading "Neil Abernethy". The signature is written in a cursive style. Below the signature is a horizontal line.

GOVERNOR OF THE STATE OF HAWAII