
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, barring, discharge,**
4 **withholding pay, demoting, or discrimination. (a)** It shall be
5 unlawful for any employer to suspend, discharge, or discriminate
6 against any of the 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 a
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; provided that:

5 (1) After an employee uses three or more consecutive days
6 of sick leave, an employer or labor organization may
7 require the employee to provide written verification
8 from a physician indicating that the employee was ill
9 when the sick leave was used;

10 (2) For purposes of the unlawful practice established
11 pursuant to subsection (a), employers and labor
12 organizations shall not be prohibited from barring or
13 discharging from employment, withholding pay from, or
14 demoting an employee if the employee is unable to
15 fulfill the essential job functions or requirements of
16 the employee's position; provided further that:

17 (A) The employee shall have used all accrued and
18 available sick leave before the employer or labor
19 organization can bar or discharge an employee
20 from employment, withhold pay from the employee,
21 or demote the employee under this subsection; and



1 (B) The employer shall comply with all federal,
2 state, and county laws providing for protected
3 leave, including the Family and Medical Leave Act
4 of 1993, Public Law 103-3, as amended; chapter
5 398, relating to family leave; chapter 392,
6 relating to Hawaii temporary disability insurance
7 law; and chapter 386, the workers compensation
8 law;

9 (3) Subsection (b) shall only apply to employers who have:

10 (A) A collective bargaining agreement with their
11 employees; and

12 (B) One hundred or more employees;

13 and

14 (4) Nothing in subsection (b) shall be construed to
15 supersede any provision of any collective bargaining
16 agreement or employment benefits program or plan that
17 provides greater employee benefits or rights."

18 SECTION 2. This Act does not affect rights and duties that
19 matured, penalties that were incurred, and proceedings that were
20 began before its effective date.

21 SECTION 3. New statutory material is underscored.

22 SECTION 4. This Act shall take effect on July 1, 2011.



Report Title:

Employee Benefits; Employment Practices; Sick Leave

Description:

Makes it unlawful for any employer or labor organization with more than one hundred employees and a collective bargaining agreement to bar or discharge from employment, withhold pay from, or demote an employee solely because the employee uses accrued and available sick leave, except if the employee is unable to fulfill the essential job functions or requirements of the employee's position. Reinforces that the employer must still comply with all federal, state, and local laws protecting employees. Effective July 1, 2011. (SB1076 HD2)

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

