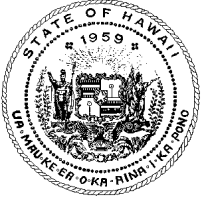


SB229

Testimony



HAWAI`I CIVIL RIGHTS COMMISSION

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March 1, 2011
Rm. 016, 9:00 a.m.

To: The Honorable Clayton Hee, Chair
Members of the Senate Committee on Judiciary and Labor

From: Coral Wong Pietsch, Chair, and Commissioners of the Hawai`i Civil Rights Commission

Re: S.B. No. 229

The Hawai`i Civil Rights Commission (HCRC) has enforcement jurisdiction over state laws prohibiting discrimination in employment, housing, public accommodations, and access to state and state-funded services. The HCRC carries out the Hawai`i constitutional mandate that "no person shall be discriminated against in the exercise of their civil rights because of race, religion, sex or ancestry". Art. I, Sec. 5.

The HCRC supports the intent of S.B. No. 229, which adds "domestic abuse victim status" as a protected class under H.R.S. § 378-2, the state's employment discrimination law. The HCRC recognizes the serious and devastating impact that domestic violence has on women's physical and emotional health and financial security. Domestic abuse takes a heavy toll on both victims and their employers, including increased security and safety concerns, reduced productivity, and increased health care costs. As a result, victims of domestic abuse can face loss of their jobs at a time when employment and financial independence is critical.

However, the HCRC has three concerns regarding this bill:

1. Need for clarification as to what an employer’s obligations are under the newly created protected class.

The bill would prohibit the discriminatory practices described in H.R.S. § 378-2, but it does not expressly require employers to provide reasonable leave, safety and/or other accommodations. If requirement of such accommodations is intended, the bill should expressly provide for an affirmative obligation, delineate the kinds of accommodations required, and provide for any defenses or exceptions, e.g. if the requested accommodation would cause an undue hardship in the operation of the employer’s business.

If the new protection includes a reasonable accommodation requirement, the bill should address how a person establishes he or she is a victim of domestic violence in order to trigger an employer obligation to provide an accommodation. Initial research indicates that other jurisdictions that have provided or required reasonable safety accommodations have allowed employers to require an employee to certify that he or she is a “victim of domestic violence,” which can be established through: a medical certificate; a signed written statement from a victim services organization, an attorney or advocate, a member of the clergy, or medical or other professional stating that the employee has sought assistance related to the domestic violence; a police report or court record (including TRO) related to domestic violence; or other corroborating evidence related to the domestic violence. Under H.R.S. Chapter 378 Part VI (the Victims Leave law), such certification may be similarly requested by employers prior to granting leave accommodations for domestic or sexual violence victims.

2. If the bill requires employers to provide reasonable leave accommodations, this may create potentially overlapping jurisdiction with the specific provisions and private action procedure already provided under the Victims Leave law, H.R.S. Chapter 378 Part VI.

3. If “domestic abuse victim status” is added as a protected basis to H.R.S. Chapter 378-2, the HCRC will require additional funding and staffing. During the current fiscal biennium, the HCRC lost 3 of 11 permanent investigator positions and 1 of 4 enforcement attorney positions, in addition to two days per month of work productivity lost to furloughs. As such, our focus will be on timely processing and effective enforcement in the face of a growing caseload and shrinking resources. The proposed new protected basis will require additional funding and staffing, in light of the data suggesting that the affected protected class will be large, and we would also request the addition/restoration of one full time investigator position and one enforcement attorney position.

Thank you for considering these concerns.