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# A BILL FOR AN ACT

RELATING TO WORKPLACE PRACTICES.

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

1           SECTION 1. The legislature finds that healthy and  
2 productive employees are the cornerstones of successful  
3 businesses and a prosperous economy. Unfortunately, many  
4 employees are subjected to unhealthy, abusive work environments  
5 where workplace bullying, abuse, and harassment are prevalent  
6 occurrences, independent of membership in a protected group. As  
7 a result, these employees may experience physical and  
8 psychological harm, which negatively impacts job performance and  
9 job safety, often manifesting in injuries and illnesses. The  
10 National Institute for Occupational Safety and Health recognizes  
11 general harassment, including workplace bullying, as a form of  
12 workplace violence.

13           Workplace bullying has been defined by the National  
14 Institute for Occupational Safety and Health as the repeated  
15 intimidation, slandering, social isolation, or humiliation by  
16 one or more persons against another. Congress has found that  
17 employee injuries and illness that arise out of work situations  
18 impose a substantial burden on businesses and that these



1 injuries and illnesses can be reduced through the establishment  
 2 and enforcement of minimum health and safety standards. The  
 3 legislature further finds that employees need protection from  
 4 the repeated health-impairing mistreatment of one person by  
 5 another to promote safe and healthy work environments.

6 The purpose of this Act is to protect public employees from  
 7 an abusive work environment and provide remedies when they are  
 8 victims of abusive conduct of another public employee.

9 SECTION 2. Chapter 78, Hawaii Revised Statutes, is amended  
 10 by adding a new part to be appropriately designated and to read  
 11 as follows:

12 **"PART . ABUSIVE WORK ENVIRONMENTS**

13 **§78-A Definitions.** As used in this part:

14 "Abusive conduct" means:

- 15 (1) Conduct of an employer or employee in the workplace,  
 16 with malice, that a reasonable person would find  
 17 hostile, offensive, and unrelated to an employer's  
 18 legitimate business interests;
- 19 (2) Subjection of an employee by the employee's employer  
 20 to an abusive work environment; or
- 21 (3) Retaliation in any manner against an employee because  
 22 the employee:



1 (A) Opposed any unlawful safety violation under this  
2 part; or

3 (B) Made a charge, testified, assisted, or  
4 participated in any manner in an investigation or  
5 proceeding under this part, including but not  
6 limited to internal proceedings, arbitration or  
7 mediation proceedings, and legal actions.

8 Abusive conduct may include but is not limited to repeated  
9 infliction of verbal abuse, such as the use of derogatory  
10 remarks, insults, and epithets; verbal or physical conduct that  
11 a reasonable person would find threatening, intimidating, or  
12 humiliating; the gratuitous sabotage or undermining of a  
13 person's work performance; or interference with subsequent work  
14 opportunities by defamatory evaluation. A single act normally  
15 may constitute abusive conduct if the act is especially severe  
16 and egregious; provided that the severity, nature, and frequency  
17 of any conduct objected to shall be considered in determining  
18 whether acts constitute abusive conduct.

19 "Abusive work environment" means a workplace where an  
20 employee is subjected to abusive conduct that is so severe that  
21 it causes physical or psychological harm to the employee.



1 "Conduct" means all forms of behavior, including acts and  
2 omissions of acts.

3 "Constructive discharge" means abusive conduct that causes  
4 the employee to resign, and where prior to resigning, the  
5 employee brings to the employer's attention the existence of the  
6 abusive conduct, and the employer fails to take reasonable steps  
7 to eliminate the abusive conduct.

8 "Department" means the department of human resources  
9 development.

10 "Economic harm" means any material pecuniary loss,  
11 including the loss of earnings or other benefits related to  
12 employment, to the extent recovery is allowed under the law.

13 "Employee" means any public employee of the State or any  
14 county, and the political subdivisions and agencies thereof, any  
15 employees under contract with the State or county, any civil  
16 service employees, and any probationary or provisional employees  
17 of the State or county.

18 "Employer" means the governor in the case of the State, the  
19 respective mayors in the case of the counties, the chief justice  
20 of the supreme court in the case of the judiciary, the board of  
21 education in the case of the department of education, the board  
22 of regents in the case of the University of Hawaii, the Hawaii



1 health systems corporation board in the case of the Hawaii  
2 health systems corporation, and any individual who represents  
3 one of the employers or acts in their interest in dealing with  
4 public employees. In the case of the judiciary, the  
5 administrative director of the courts shall be the employer in  
6 lieu of the chief justice for purposes which the chief justice  
7 determines would be prudent or necessary to avoid conflict.

8 "Malice" means the desire to see another person suffer  
9 psychological, physical, or economic harm, without legitimate  
10 cause or justification. Malice may be inferred from the  
11 presence of one or more factors such as outward expressions of  
12 hostility, harmful conduct inconsistent with an employer's  
13 legitimate business interests, a continuation of harmful,  
14 illegitimate conduct after the complainant requests that it  
15 cease or demonstrates outward signs of emotional or physical  
16 distress in the face of the conduct, or attempts to exploit the  
17 complainant's known psychological or physical vulnerability.

18 "Negative employment decision" means a termination,  
19 constructive discharge, demotion, unfavorable reassignment,  
20 refusal to promote, disciplinary action, or interference with  
21 subsequent work opportunities by defamatory evaluation.



1 "Physical harm" means the material impairment of a person's  
2 physical health or bodily integrity, as documented by a  
3 competent physician or supported by competent expert evidence at  
4 trial.

5 "Psychological harm" means the material impairment of a  
6 person's mental health, as documented by a competent  
7 psychologist, psychiatrist, or psychotherapist or supported by  
8 competent expert evidence at trial.

9 **§78-B Abusive conduct as a workplace safety and health**  
10 **violation; workers' compensation.** Abusive conduct shall  
11 constitute a workplace safety and health violation, as well as a  
12 work injury for which workers' compensation benefits may be  
13 paid, as provided in section 78-K.

14 **§78-C Liability; limitations.** An employee who is  
15 subjected to abusive conduct shall have a cause of action under  
16 this part for emotional distress against:

- 17 (1) Another employee who is claimed to have made the  
18 abusive conduct; provided that the employer shall be  
19 vicariously liable for the acts of the employee  
20 claimed to have made the abusive conduct; provided  
21 further that the employer shall be vicariously liable  
22 up to \$25,000 under this paragraph; or



- 1           (2) The employer:
- 2                 (A) Who directly commits abusive conduct; provided
- 3                         that the employer shall not be liable for
- 4                         punitive damages if the abusive conduct did not
- 5                         result in a negative employment decision; or
- 6                 (B) Whose workplace is an abusive work environment.

7           **§78-D Complaint against abusive conduct.** Any employee  
8 subjected to abusive conduct may file with the department a  
9 complaint in writing, stating the name and address of the  
10 employee or employer alleged to have committed the abusive  
11 conduct, and shall set forth the particulars thereof and other  
12 information as may be required by the department.

13           **§78-E Proceeding and hearing on complaint.** (a) After the  
14 filing of any complaint, the department shall serve a copy of  
15 the complaint upon the employer or employee alleged to have  
16 committed the abusive conduct. Service may be by delivery to  
17 the employer or employee or by mail. The employer or employee  
18 may file an answer to the complaint.

19           (b) A hearing on the complaint shall be held by the  
20 department in conformance with chapter 91.

21           **§78-F Findings and order.** (a) If the department finds,  
22 after a hearing, that an employee was subject to abusive conduct

1 by an employer or another employee, the department may order the  
2 employer to take any necessary action to remedy the situation.

3 (b) Any person aggrieved by the order of the department  
4 shall be entitled to judicial review as provided by section  
5 91-14.

6 **§78-G Enforcement of order; judgment rendered thereon.** If  
7 an employer or employee found to have committed abusive conduct  
8 fails or neglects to comply with the final order of the  
9 department from which no appeal has been taken as provided by  
10 this part, the department or the employee affected may apply to  
11 the circuit court of the judicial circuit in which the employer  
12 or employee found by the department to have committed the  
13 abusive conduct resides or transacts business for a judgment to  
14 enforce the provisions of the final order and for any other  
15 appropriate relief. In any proceeding to enforce the provisions  
16 of the final order, the department or the employee affected need  
17 only file with the court proof that notice of the hearing was  
18 given, a certified copy of the final order, and proof that the  
19 final order was served. The judgment shall have the same  
20 effect, and all proceedings in relation thereto shall thereafter  
21 be the same, as though the judgment had been rendered in an  
22 action duly heard and determined by the court.





1           **§78-H Affirmative defenses.** It shall be an affirmative  
2 defense to an action for an abusive work environment that:

3           (1) The employer exercised reasonable care to prevent and  
4 promptly correct the abusive conduct and the aggrieved  
5 employee unreasonably failed to take advantage of  
6 appropriate preventive or corrective opportunities  
7 provided by the employer; provided that the defense is  
8 not available when abusive conduct culminates in a  
9 negative employment decision; and

10          (2) The complaint is grounded primarily upon a negative  
11 employment decision made consistent with an employer's  
12 legitimate business interests, including a termination  
13 or demotion based on an employee's poor performance,  
14 or the complaint is grounded primarily upon an  
15 employer's reasonable investigation of potentially  
16 illegal or unethical activity.

17           **§78-I Statute of limitations.** An action under this part  
18 shall be commenced no later than three years after the last act  
19 that constitutes or comprises the alleged violation.

20           **§78-J Education.** (a) The department shall develop and  
21 disseminate, at no cost to employers, information on abusive  
22 work environments and the legal consequences that employees or



1 employers encounter if they contribute to the creation or  
2 perpetuation of abusive work environments.

3 (b) Employers shall be responsible for:

4 (1) Posting or providing the information provided by the  
5 department under subsection (a) in a prominent place  
6 in the workplace that is readily accessible to  
7 employees; and

8 (2) Educating supervisors and employees on abusive work  
9 environments and the legal consequences provided under  
10 this part.

11 **§78-K Remedies.** (a) In addition to an award of damages  
12 under section 78-C, a court may enjoin the defendant from  
13 engaging in conduct constituting abusive conduct and order any  
14 other relief that is deemed appropriate, including but not  
15 limited to reinstatement, removal of the offending party from  
16 the complainant's work environment, back pay, front pay, medical  
17 expenses, and attorney's fees.

18 (b) An employee making a claim under this part may elect  
19 to accept workers' compensation benefits under chapter 386 for a  
20 work injury in lieu of bringing an action under this part. An  
21 employee who elects to accept workers' compensation benefits  
22 shall be barred from bringing an action under this part for the



1 same abusive conduct. For purposes of chapter 386, emotional  
2 distress suffered by an employee shall be deemed to constitute a  
3 work injury.

4 (c) In any action brought under this part, the court, in  
5 addition to any judgment awarded to the plaintiff or plaintiffs,  
6 shall allow costs of the action, including costs or fees of any  
7 nature and reasonable attorney's fees, to be paid by the  
8 defendant."

9 SECTION 3. Section 386-1, Hawaii Revised Statutes, is  
10 amended by amending the definition of "work injury" to read as  
11 follows:

12 "Work injury" means a personal injury suffered under the  
13 conditions specified in section 386-3[-] or as provided in  
14 section 78-K."

15 SECTION 4. Chapter 78, Hawaii Revised Statutes, is amended  
16 by designating sections 78-1 through 78-52 as part I, entitled  
17 "General Provisions".

18 SECTION 5. In codifying this Act, the revisor shall  
19 substitute appropriate section numbers for the letter  
20 designations used in section 2 of this Act.

21 SECTION 6. Statutory material to be repealed is bracketed  
22 and stricken. New statutory material is underscored.



1 SECTION 7. This Act shall take effect on July 1, 2050.



**Report Title:**

Abusive Work Environment; Public Employment

**Description:**

Makes abusive conduct against a public employee by another public employee a workplace safety and health violation.

Effective 7/1/50. (SD1)

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

