

JAN 18 2013

S.B. NO. 196

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 internal
6 proceedings, arbitration or mediation
7 proceedings, and legal actions.

8 Abusive conduct includes repeated infliction of verbal abuse,
9 such as the use of derogatory remarks, insults, and epithets;
10 verbal or physical conduct that a reasonable person would find
11 threatening, intimidating, or humiliating; the gratuitous
12 sabotage or undermining of a person's work performance; or
13 interference with subsequent work opportunities by defamatory
14 evaluation. A single act normally may constitute abusive
15 conduct if the act is especially severe and egregious; provided
16 that the severity, nature, and frequency of any conduct objected
17 to shall be considered in determining whether acts constitute
18 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 the employer's interest in
4 dealing with public employees. In the case of the judiciary,
5 the administrative director of the courts shall be the employer
6 in lieu of the chief justice for purposes which the chief
7 justice determines would be prudent or necessary to avoid
8 conflict.

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

20 "Negative employment decision" means a termination,
21 constructive discharge, demotion, unfavorable reassignment,



1 refusal to promote, disciplinary action, or interference with
2 subsequent work opportunities by defamatory evaluation.

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

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

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

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

19 (1) Another employee who is claimed to have made the
20 abusive conduct; provided that the employer shall be
21 vicariously liable for the acts of the employee
22 claimed to have made the abusive conduct; provided



1 further that the employer shall be vicariously liable
2 up to \$25,000 under this paragraph; or

3 (2) The employer:

4 (A) Who directly commits abusive conduct; provided
5 that the employer shall not be liable for
6 punitive damages if the abusive conduct did not
7 result in a negative employment decision; or

8 (B) Whose workplace is an abusive work environment.

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

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

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



1 **§78-F Findings and order.** (a) If the department finds,
2 after a hearing, that an employee was subject to abusive conduct
3 by an employer or another employee, the department may order the
4 employer to take any necessary action to remedy the situation.

5 (b) Any person aggrieved by the order of the department
6 shall be entitled to judicial review as provided by section
7 91-14.

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



1 be the same, as though the judgment had been rendered in an
2 action duly heard and determined by the court.

3 **§78-H Affirmative defenses.** It shall be an affirmative
4 defense to an action for an abusive work environment that:

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

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

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



1 **§78-J Education.** (a) The department shall develop and
2 disseminate, at no cost to employers, information on abusive
3 work environments and the legal consequences that employees or
4 employers encounter if they contribute to the creation or
5 perpetuation of abusive work environments.

6 (b) Employers shall be responsible for:

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

11 (2) Educating supervisors and employees on abusive work
12 environments and the legal consequences provided under
13 this part.

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

21 (b) An employee making a claim under this part may elect
22 to accept workers' compensation benefits under chapter 386 for a



1 work injury in lieu of bringing an action under this part. An
2 employee who elects to accept workers' compensation benefits
3 shall be barred from bringing an action under this part for the
4 same abusive conduct. For purposes of chapter 386, emotional
5 distress suffered by an employee shall be deemed to constitute a
6 work injury.

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

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

15 ""Work injury" means a personal injury suffered under the
16 conditions specified in section 386-3[-] or pursuant to findings
17 of the department as provided in section 78-F."

18 SECTION 4. Chapter 78, Hawaii Revised Statutes, is amended
19 by designating sections 78-1 through 78-53 as part I, entitled
20 "General Provisions".

21 SECTION 5. In codifying the new sections added by section
22 2 of this Act, the revisor of statutes shall substitute



S.B. NO. 196

1 appropriate section numbers for the letters used in designating
2 the new sections in this Act.

3 SECTION 6. Statutory material to be repealed is bracketed
4 and stricken. New statutory material is underscored.

5 SECTION 7. This Act shall take effect on July 1, 2013.

6

INTRODUCED BY: Shzanne Chun Oakland

Will Zywo

Randy H. Bell

D. J. Jyl.
John

Jim
Thomas (L) (L)
John



S.B. NO. 196

Report Title:

Abusive Work Environment; Public Employment

Description:

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

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

