
A BILL FOR AN ACT

RELATING TO EMPLOYMENT.

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

1 SECTION 1. Chapter 378, Hawaii Revised Statutes, is
2 amended by adding a new part to be appropriately designated and
3 to read as follows:

4 "PART . EMPLOYEE PERSONAL SOCIAL MEDIA

5 §378- Employer access to employee or potential employee
6 personal accounts prohibited. (a) An employer shall not
7 require, request, or coerce an employee or potential employee to
8 do any of the following:

9 (1) Disclose the username, password, or any other
10 information for the purpose of accessing the employee
11 or potential employee's personal account;

12 (2) Access the employee or potential employee's personal
13 account in the presence of the employer; or

14 (3) Add anyone, including the employer, to their list of
15 contacts associated with a personal account.

16 (b) Nothing in this section shall prevent an employer
17 from:



- 1 (1) Accessing information about an employee or potential
2 employee that is publicly available;
- 3 (2) Complying with applicable laws, rules, or regulations;
- 4 (3) Requiring an employee to disclose a username or
5 password for the purpose of accessing:
 - 6 (A) An employer-issued electronic device; or
 - 7 (B) An account or service provided by the employer,
8 obtained by virtue of the employee's employment
9 relationship with the employer, or used for the
10 employer's business purposes;
- 11 (4) Conducting an investigation or requiring an employee
12 to cooperate in an investigation, including by
13 requiring an employee to share the content that has
14 been reported to make a factual determination, if the
15 employer has specific information about an
16 unauthorized transfer of the employer's proprietary
17 information, confidential information, or financial
18 data, to an employee's personal account;
- 19 (5) Prohibiting an employee or potential employee from
20 using a personal account during employment hours,
21 while on employer time, or for business purposes; or



1 (6) Requesting an employee to share specific content
2 regarding a personal account for the purposes of
3 conducting an investigation of allegations of employee
4 misconduct under this chapter.

5 (c) If an employer inadvertently receives the username,
6 password, or any other information that would enable the
7 employer to gain access to the employee or potential employee's
8 personal account through the use of an otherwise lawful virus
9 scan or firewall that monitors the employer's network or
10 employer-provided devices, then the employer is not liable for
11 having that information, unless the employer:

12 (1) Shares that information with anyone;

13 (2) Uses that information to access the employee or
14 potential employee's personal account; or

15 (3) Does not delete the information as soon as reasonably
16 practicable.

17 (d) Nothing in this section shall diminish the authority
18 and obligation of an employer to investigate complaints,
19 allegations, or the occurrence of sexual, racial, or other
20 harassment as provided under this chapter.



1 (e) As used in this section, "personal account" means an
2 account, service, or profile on a social networking website that
3 is used by an employee or potential employee exclusively for
4 personal communications unrelated to any business purposes of
5 the employer."

6 SECTION 2. Section 378-2, Hawaii Revised Statutes, is
7 amended by amending subsection (a) to read as follows:

8 "(a) It shall be an unlawful discriminatory practice:

9 (1) Because of race, sex including gender identity or
10 expression, sexual orientation, age, religion, color,
11 ancestry, disability, marital status, arrest and court
12 record, or domestic or sexual violence victim status
13 if the domestic or sexual violence victim provides
14 notice to the victim's employer of such status or the
15 employer has actual knowledge of such status:

16 (A) For any employer to refuse to hire or employ or
17 to bar or discharge from employment, or otherwise
18 to discriminate against any individual in
19 compensation or in the terms, conditions, or
20 privileges of employment;



- 1 (B) For any employment agency to fail or refuse to
2 refer for employment, or to classify or otherwise
3 to discriminate against, any individual;
- 4 (C) For any employer or employment agency to print,
5 circulate, or cause to be printed or circulated
6 any statement, advertisement, or publication or
7 to use any form of application for employment or
8 to make any inquiry in connection with
9 prospective employment, that expresses, directly
10 or indirectly, any limitation, specification, or
11 discrimination;
- 12 (D) For any labor organization to exclude or expel
13 from its membership any individual or to
14 discriminate in any way against any of its
15 members, employer, or employees; or
- 16 (E) For any employer or labor organization to refuse
17 to enter into an apprenticeship agreement as
18 defined in section 372-2; provided that no
19 apprentice shall be younger than sixteen years of
20 age;



- 1 (2) For any employer, labor organization, or employment
2 agency to discharge, expel, or otherwise discriminate
3 against any individual because the individual has
4 opposed any practice forbidden by this part or has
5 filed a complaint, testified, or assisted in any
6 proceeding respecting the discriminatory practices
7 prohibited under this part;
- 8 (3) For any person, whether an employer, employee, or not,
9 to aid, abet, incite, compel, or coerce the doing of
10 any of the discriminatory practices forbidden by this
11 part, or to attempt to do so;
- 12 (4) For any employer to violate the provisions of section
13 121-43 relating to nonforfeiture for absence by
14 members of the national guard;
- 15 (5) For any employer to refuse to hire or employ or to bar
16 or discharge from employment any individual because of
17 assignment of income for the purpose of satisfying the
18 individual's child support obligations as provided for
19 under section 571-52;
- 20 (6) For any employer, labor organization, or employment
21 agency to exclude or otherwise deny equal jobs or



1 benefits to a qualified individual because of the
2 known disability of an individual with whom the
3 qualified individual is known to have a relationship
4 or association;

5 (7) For any employer or labor organization to refuse to
6 hire or employ, bar or discharge from employment,
7 withhold pay from, demote, or penalize a lactating
8 employee because the employee breastfeeds or expresses
9 milk at the workplace. For purposes of this
10 paragraph, the term "breastfeeds" means the feeding of
11 a child directly from the breast;

12 (8) For any employer to refuse to hire or employ, bar or
13 discharge from employment, or otherwise to
14 discriminate against any individual in compensation or
15 in the terms, conditions, or privileges of employment
16 of any individual because of the individual's credit
17 history or credit report, unless the information in
18 the individual's credit history or credit report
19 directly relates to a bona fide occupational
20 qualification under section 378-3(2); [~~ex~~]



1 (9) For any employer to discriminate against any
 2 individual employed as a domestic, in compensation or
 3 in terms, conditions, or privileges of employment
 4 because of the individual's race, sex including gender
 5 identity or expression, sexual orientation, age,
 6 religion, color, ancestry, disability, or marital
 7 status [-]; or

8 (10) For any employer to refuse to hire or employ, bar or
 9 discharge from employment, or otherwise to
 10 discriminate against any individual in compensation or
 11 in the terms, conditions, or privileges of employment
 12 of any individual because of the individual's refusal
 13 to disclose any information regarding a personal
 14 account according to section 378- (a)."

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

17 SECTION 4. This Act shall take effect upon its approval.



Report Title:

Personal Account; Privacy; Employment

Description:

Prohibits, subject to certain exemptions, employers from requiring, requesting, or coercing employees or potential employees to provide access to their personal social media accounts. (HB1739 HD1)

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