



HAWAI‘I CIVIL RIGHTS COMMISSION

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April 6, 2015
Rm. 016, 9:24 a.m.

To: The Honorable Gilbert Keith-Agaran, Chair
Members of the Senate Committee on Judiciary and Labor

From: Linda Hamilton Krieger, Chair
and Commissioners of the Hawai‘i Civil Rights Commission

Re: H.B. No. 683, H.D.1

The Hawai‘i Civil Rights Commission (HCRC) has enforcement jurisdiction over Hawai‘i’s 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. Art. I, Sec. 5.

The HCRC supports H.B. No. 683, H.D.1.

H.B. No. 683, H.D.1, authorizes the HCRC Executive Director, in cases in which a notice of cause has been issued and conciliation efforts fail, to: 1) issue a final demand, and docket the case for litigation; **OR**, 2) dismiss the complaint and issue a notice of right to sue. The H.D.1 also provides an exception for dual-filed fair housing cases, as required by HUD federal substantial equivalence requirements.

The current HRS § 368-13(e) mandates that when conciliation efforts in a cause case fail to secure a conciliation settlement, the Executive Director *shall* issue a final conciliation demand. § 368-14 then requires that the case be docketed for contested case hearing / trial before a Hearings Examiner.

The mandatory language in the statute, with the use of the word "shall" in mandating each next step of the process has several consequences negatively affecting the efficiency and effectiveness of HCRC civil rights law enforcement:

The bill provides for prosecutorial discretion, allowing the Executive Director to decide which cases should be litigated. **Similar discretion is provided to and exercised by the U.S. Equal Employment Opportunity Commission under Title VII of the Civil Rights Act of 1964.**

The current mandatory language creates problems and inefficiencies, stemming from the difference between the “reasonable cause” standard applied in investigation and the “preponderance of evidence” standard applied in litigation, administrative hearing and judicial review. Simply put, there are cases that are cause cases but not litigation cases, in which there may be reasonable cause, but it would be difficult to prevail at hearing and on appeal. The result is that the HCRC is forced to use its limited resources in an inefficient manner, in conciliation and investigation, rather than focusing its resources on strong cases that should be litigated.

This bill will in some measure help to alleviate the problems created by loss of enforcement resources since 2007, by allowing for more strategic use of existing resources.

The H.D.1 includes a new subsection 368-13(f) that makes an exception to the exercise of discretion by the Executive Director under the amendment to subsection 368-13(e). The H.D.1 includes the new subsection (f) that maintains the mandatory language from the current statute in cases that are dual-filed under both our state fair housing law, chapter 515, and the federal Fair Housing Act. These comprise approximately 10-15% of the complaints filed with the HCRC. Our federal partners at the U.S. Department of Housing and Urban Development (HUD) Office of Fair Housing and Equal Opportunity (FHEO) have advised us that this exception is required to maintain substantial equivalence with federal fair housing law.

The HCRC supports passage of H.B. No. 683, H.D.1.

Oppose to HB683 HD1

From: Karin Nomura

Comments: Now maybe it's me, but this is a legal institution that has the ability to assist in ensuring that "unlawful discriminatory practice within the commission's jurisdiction" are eliminated. They are supposedly around so that "no person shall be denied the enjoyment of civil rights or be discriminated against in the exercise thereof because of race, religion, sex or ancestry." So, how is it, "no person shall be denied..." if the HCRC can choose not to assist an individual even if there is reasonable cause to believe that discriminatory practices have occurred?

So, by enacting this bill, the Hawaii Civil Rights Commission can "Dismiss the complaint and issue a notice to the complainant indicating that the complainant may bring a civil action as provided under section 368-12." regardless of whether "there is reasonable cause to believe that an unlawful discriminatory practice has occurred and has been unable to secure from the respondent a conciliation agreement acceptable to the commission within [~~one hundred and~~] one hundred eighty days of the filing of the complaint" or not. Which basically means the HCRC can pick and choose who they wish to help and who they don't. Wouldn't this be a discriminatory practice? Because maybe it's me, but this is a legal institution that has the ability to assist in ensuring that "unlawful discriminatory practice within the commission's jurisdiction" are eliminated. They are supposedly around so that "no person shall be denied the enjoyment of civil rights or be discriminated against in the exercise thereof because of race, religion, sex or ancestry." So, how is it, "no person shall be denied..." if the HCRC can choose not to assist an individual even if there is reasonable cause to believe that discriminatory practices have occurred?

Then, "The executive director's determination that a complaint is to be dismissed and a notice of right to sue issued shall not be subject to reconsideration by the commission or judicial review." Why? Are they above the law? This bill allows the commission to not only pick and choose the individuals they wish to assist, but to also be above a review board. Isn't this why we have the EEOC to perform SWR's?

As I've testified previously about my claim to the HCRC, where comments of having the right to come to my neighborhood to perform mock investigations as the home next to mine is part of my claim on employer abuse – where party's of "you're not invited" and commentary of "she hit her head", "something's wrong with her", "she won't remember nothing", "she's stupid"(currently still using the neighbor's home but saying "we thought you were stupid"), and various employee's names (also heard them on my street during the party's) as "live here", as being the reason for being able to come here with clients of my former employer – including and notwithstanding the ones who even came to threaten my life at work. As since they "live here", are able to bring over "whomever we want" to their "VIP parties". (Which of course were also conducted at my former working place. Along with sub

contractors of the company also knowing where I lived, as a few mentioned *name* lives on your street, and the location.) Or conducted actions at work, to “mess with her head” during the temporary mental disability where even the supervisor would insinuate that “it may come back”(which they have come back, and even say who they are and “this is how the **** did it”). With even commentary of “harassment is part of your job”. Or continued actions/commentary of “if you have an account with us, then you can come here”, “you asked for too much, now if it was a million, we would have given it to you”(this starting after the claim was supposedly investigated, for the past two yrs. Where even one night, innuendos of it being the lawyer of my former employer. But like he said, I wouldn’t know if it was him or not.), etc. Notwithstanding of the sexual harassment, where my shirt was lifted, chased into the vault, etc. where commentary of “you’re not pretty enough” then started here, with more of “you’re fat” commentary. With even the commission stating that the company provided a long listing of names of party’s who had worked at my location, but told me that I was seeing things they were all the same person. Yet was not a part of the packet I received. In fact the only information concerning my claim was a letter from the lawyer about “being fair” and my statement. (I’ve even had a lawyer ask after looking it over if an investigation was even completed.)

As for the “When the executive director has determined that there is reasonable cause to believe that an unlawful discriminatory practice has occurred and has been unable to secure from the respondent a conciliation agreement acceptable to the commission within [~~one hundred and~~] one hundred eighty days of the filing of the complaint, unless the commission has granted an extension of time, the executive director [~~shall demand~~], in the executive director's discretion, may.” The one hundred and eighty day response time is fine, even the estimate that the HCRC sent me of 2 yrs. would be fine. My concern is over the handling of time sensitive material to support the allegations, also being given the same 2 yr. response time, as was in my case. As if they requested the footage I requested, the 2 yr. wait would not have meant anything to me. But nearly from the start, I was told that it would not be requested till 2 yrs. were up. And no matter how many times I tried to tell them that the footage would be erased before then and unobtainable didn’t matter. Instead I was just asked if I was dying, if so they’d rush it.

Now maybe it’s me, but this is a legal institution that has the ability to assist in ensuring that “unlawful discriminatory practice within the commission’s jurisdiction” are eliminated. They are supposedly around so that “no person shall be denied the enjoyment of civil rights or be discriminated against in the exercise thereof because of race, religion, sex or ancestry.” So, how is it, “no person shall be denied...” if the HCRC can choose not to assist an individual even if there is reasonable cause to believe that discriminatory practices have occurred? They may not handle the “terroristic threatening” (another employee of my former employer who stopped by at midnight to shout this out) portions of my claim, but the other items that were conducted at my former employer’s establishment and actions of the company itself when notified, should have been enough for the HCRC to handle my claim. While I’ve since had to hear shouts of how they’re not paid, I’m not Hawaiian, and how short staffed they are, shouldn’t they at least try to the best of their ability on every lawful claim.