
A BILL FOR AN ACT

RELATING TO EMPLOYMENT.

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

1 SECTION 1. The legislature finds that the employment
2 practices laws under sections 378-2, 378-2.3, 378-2.5, and
3 378-2.7, Hawaii Revised Statutes, relate respectively to
4 discriminatory practices, unequal pay, criminal conviction
5 records, and credit history. These sections were enacted to
6 prohibit employment discrimination against individuals based
7 upon protected categories, but were not intended to prevent
8 employers from taking employment action for reasons unrelated to
9 the categories protected by the legislature in those sections.

10 The purpose of this Act is to clarify that Hawaii's anti-
11 discrimination law, as set forth in part I of chapter 378 of the
12 Hawaii Revised Statutes, does not prohibit refusals to hire,
13 refusals to refer, or discharges that are unrelated to
14 discriminatory practices in section 378-2, unequal pay in
15 378-2.3, criminal conviction records in 378-2.5, and credit
16 history in 378-2.7, Hawaii Revised Statutes.



1 SECTION 2. Section 378-3, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "§378-3 Exceptions. Nothing in this part shall be deemed
4 to:

5 (1) Repeal or affect any law, ordinance, or government
6 rule having the force and effect of law;

7 (2) Prohibit or prevent the establishment and maintenance
8 of bona fide occupational qualifications reasonably
9 necessary to the normal operation of a particular
10 business or enterprise, and that have a substantial
11 relationship to the functions and responsibilities of
12 prospective or continued employment;

13 (3) Prohibit or prevent an employer, employment agency, or
14 labor organization from refusing to hire~~[7]~~ or
15 refer~~[7]~~ or ~~[discharge]~~ from discharging any
16 individual for reasons ~~[relating to the ability of the~~
17 ~~individual to perform the work in question,]~~ unrelated
18 to section 378-2, 378-2.3, 378-2.5, or 378-2.7;

19 (4) Affect the operation of the terms or conditions of any
20 bona fide retirement, pension, employee benefit, or
21 insurance plan that is not intended to evade the



- 1 purpose of this chapter; provided that this exception
2 shall not be construed to permit any employee plan to
3 set a maximum age requirement for hiring or a
4 mandatory retirement age;
- 5 (5) Prohibit or prevent any religious or denominational
6 institution or organization, or any organization
7 operated for charitable or educational purposes, that
8 is operated, supervised, or controlled by or in
9 connection with a religious organization, from giving
10 preference to individuals of the same religion or
11 denomination or from making a selection calculated to
12 promote the religious principles for which the
13 organization is established or maintained;
- 14 (6) Conflict with or affect the application of security
15 regulations or rules in employment established by the
16 United States or the State;
- 17 (7) Require the employer to execute unreasonable
18 structural changes or expensive equipment alterations
19 to accommodate the employment of a person with a
20 disability;



- 1 (8) Prohibit or prevent the department of education or
2 private schools from considering criminal convictions
3 in determining whether a prospective employee is
4 suited to working in close proximity to children;
- 5 (9) Prohibit or prevent any financial institution in which
6 deposits are insured by a federal agency having
7 jurisdiction over the financial institution from
8 denying employment to or discharging from employment
9 any person who has been convicted of any criminal
10 offense involving dishonesty or a breach of trust,
11 unless it has the prior written consent of the federal
12 agency having jurisdiction over the financial
13 institution to hire or retain the person;
- 14 (10) Preclude any employee from bringing a civil action for
15 sexual harassment or sexual assault and infliction of
16 emotional distress or invasion of privacy related
17 thereto; provided that notwithstanding section 368-12,
18 the commission shall issue a right to sue on a
19 complaint filed with the commission if it determines
20 that a civil action alleging similar facts has been
21 filed in circuit court; or



1 (11) Require the employer to accommodate the needs of a
2 nondisabled person associated with or related to a
3 person with a disability in any way not required by
4 title I of the Americans with Disabilities Act."

5 SECTION 3. This Act does not affect rights and duties that
6 matured, penalties that were incurred, and proceedings that were
7 begun before its effective date.

8 SECTION 4. Statutory material to be repealed is bracketed
9 and stricken. New statutory material is underscored.

10 SECTION 5. This Act shall take effect on July 1, 2050.



Report Title:

Employment Practices; Discriminatory Practices

Description:

Clarifies that Hawaii's anti-discrimination law does not prohibit or prevent an employer, employment agency, or labor organization from refusing to hire or refer or discharge an individual for reasons unrelated to unlawful discriminatory practices. (HB809 HD1)

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