

**"CHAPTER 379  
RECRUITING AND HIRING OF EMPLOYEES DURING  
LABOR DISPUTES**

Section

- 379-1 Definitions
- 379-2 Unlawful practices
- 379-3 Advertising
- 379-4 Penalty

" **§379-1 Definitions.** The term "labor disputes" includes any controversy concerning terms, tenure, or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether the disputants stand in the proximate relation of employer and employee. [L 1967, c 18, pt of §2; HRS §379-1]

" **§379-2 Unlawful practices.** It shall be unlawful for any person:

- (1) To recruit, procure, supply, or refer any person for employment in place of an employee involved in a labor dispute in which the person recruiting, procuring, supplying, or referring is not directly interested.
- (2) When involved in a labor dispute, to employ in place of an employee involved in such labor dispute any person who customarily and repeatedly offers oneself for employment in the place of employees involved in a labor dispute, or to knowingly employ any person in place of an employee involved in a labor dispute who is recruited, procured, supplied, or referred for employment by any person not directly involved in the labor dispute.
- (3) Who customarily and repeatedly offers oneself for employment in place of employees involved in a labor dispute to take or offer to take the place in employment of employees involved in a labor dispute.
- (4) Involved in a labor dispute to contract or arrange with any other person to recruit, procure, supply, or refer persons for employment in place of employees involved in the labor dispute. [L 1967, c 18, pt of §2; HRS §379-2; gen ch 1985]

#### Case Notes

Plaintiff had standing to seek declaratory judgment that all [paragraphs] of this [section] were unconstitutional or preempted, where, inter alia, plaintiff's interests were adversely impacted by the application of paragraphs (1) and (3), since plaintiff could be prosecuted under Hawaii law for criminal conspiracy under these paragraphs. 82 F. Supp. 2d 1151 (2000), amended, 103 F. Supp. 2d 1233 (2000).

Section unenforceable as it applies to private employers covered by National Labor Relations Act (NLRA) and private third party employment or recruitment agencies in their dealings with employers covered by NLRA. 82 F. Supp. 2d 1151 (2000), amended, 103 F. Supp. 2d 1233 (2000).

" **§379-3 Advertising.** (a) If any person advertises for, or seeks employees by means of newspapers, posters, letters, radio, television, or by means of any employment agency to work for that person or the person for whom that person is acting at any shop, plant, or establishment, while a labor dispute is still in active progress at the shop, plant, or establishment, that person shall plainly and explicitly mention in the advertisement or solicitation that a labor dispute exists.

(b) The person soliciting or advertising for employees in the manner set forth in this section shall use in the advertisement or solicitation that person's own name, and, if that person is representing another, the name of the person that person is representing and at whose direction and under whose authority the solicitation or advertisement is made. The appearance of this name in connection with the advertisement or solicitation shall be deemed prima facie evidence as to the person responsible for the advertisement or solicitation. [L 1967, c 18, pt of §2; HRS §379-3; am L 2016, c 55, §6]

#### **Case Notes**

Section not preempted by federal law; among other things, requiring truthful advertising does not affect employer's ability to find replacements. 82 F. Supp. 2d 1151 (2000), amended, 103 F. Supp. 2d 1233 (2000).

" **§379-4 Penalty.** Any person, or agent, or officer thereof, who violates this chapter is punishable by a fine of not more than \$1,000 or imprisonment of not more than one year, or both. [L 1967, c 18, pt of §2; HRS §379-4]