

HB 1371

**RELATING TO WORKPLACE
VIOLENCE.**

LAB, JUD

HB1371



Submit Testimony

Measure Title: RELATING TO WORKPLACE VIOLENCE.

Report Title: Public Safety; Workplace Violence

Description: Establishes department of labor and industrial relations responsibilities for incidents of workplace violence as well as investigation procedures for incidents of workplace violence.

Companion:

Package: None

Current Referral: LAB, JUD

Introducer(s): FUKUMOTO

<u>Sort by Date</u>		Status Text
1/24/2017	H	Pending introduction.
1/25/2017	H	Pass First Reading
1/30/2017	H	Referred to LAB, JUD, referral sheet 6
2/10/2017	H	Bill scheduled to be heard by LAB on Tuesday, 02-14-17 8:30AM in House conference room 309.

S = Senate | H = House | D = Data Systems | \$ = Appropriation measure | ConAm = Constitutional Amendment
Some of the above items require Adobe Acrobat Reader. Please visit [Adobe's download page](#) for detailed instructions.

A BILL FOR AN ACT

RELATING TO WORKPLACE VIOLENCE.

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

1 SECTION 1. The legislature finds that state agencies in
2 Hawaii have varying policies for handling workplace violence
3 incidents. Furthermore, other states have already codified
4 policies to both prevent and properly address incidents of
5 workplace violence.

6 The purpose of this Act is to codify a uniform statewide
7 policy to protect state employees from an abusive work
8 environment and provide remedies when they are victims of
9 workplace violence.

10 SECTION 2. Chapter 378, Hawaii Revised Statutes, is
11 amended by adding a new section to be appropriately designated
12 and to read as follows:

13 "§378- Workplace violence protection. (a) The
14 department of labor and industrial relations shall:

15 (1) Provide procedures for state employees to report
16 incidents of workplace violence to the department;



H.B. NO. 1371

1 (2) Set out how information obtained about an incident or
2 complaint of workplace violence, including identifying
3 information about any individuals involved, will not be
4 disclosed unless the disclosure is necessary for the
5 purposes of investigating or taking corrective action with
6 respect to the incident or complaint; and

7 (3) Set out how a state employee who has allegedly
8 experienced workplace violence and the alleged perpetrator
9 will be informed of the results of the investigation and of
10 any corrective action that has been taken or that will be
11 taken as a result of the investigation.

12 (b) To protect a state employee from workplace violence,
13 the department of labor and industrial relations shall ensure
14 that:

15 (1) A prompt response to reports of workplace violence is
16 made and, upon notice of a serious incident, take immediate
17 action to ensure the safety of state employees;

18 (2) After the safety and well-being of state employees has
19 been guaranteed, victims of workplace violence are provided
20 with appropriate support and services; and



1 "Child" means an individual who is a biological, adopted,
2 or foster son or daughter; a stepchild; or a legal ward of an
3 employee.

4 "Course of conduct" means acts over any period of time of
5 repeatedly maintaining a visual or physical proximity to a
6 person or conveying verbal or written threats, including threats
7 conveyed through electronic communications or threats implied by
8 conduct.

9 "Domestic abuse" means conduct defined in section 586-1.

10 "Domestic or sexual violence" means domestic abuse, sexual
11 assault, or stalking.

12 "Electronic communications" includes communications via
13 telephone, mobile phone, computer, e-mail, video recorder, fax
14 machine, telex, or pager.

15 "Employee" means a person who performs services for hire
16 for not fewer than six consecutive months for the employer from
17 whom benefits are sought under this chapter.

18 "Health care provider" means a physician as defined under
19 section 386-1.

20 "Sexual assault" means any conduct proscribed by chapter
21 707, part V.



1 "Stalking" means engaging in a course of conduct directed
2 at a specifically targeted person that would cause a reasonable
3 person to suffer substantial emotional distress or to fear
4 bodily injury, sexual assault, or death to the person or to the
5 person's spouse, parent, child, or any other person who
6 regularly resides in the person's household, and where the
7 conduct does cause the targeted person to have such distress or
8 fear.

9 "Victim services organization" includes:

- 10 (1) A nonprofit, nongovernmental organization that
11 provides assistance to victims of domestic or sexual
12 violence or to advocates for such victims, including a
13 rape crisis center;
- 14 (2) An organization operating a shelter or providing
15 professional counseling services; or
- 16 (3) An organization providing assistance through the legal
17 process.

18 "Violence" means any act by a person that causes or
19 threatens to cause an injury to another person.

20 "Workplace" means any site, premises, location, or place
21 where an employer conducts business operations or activities,



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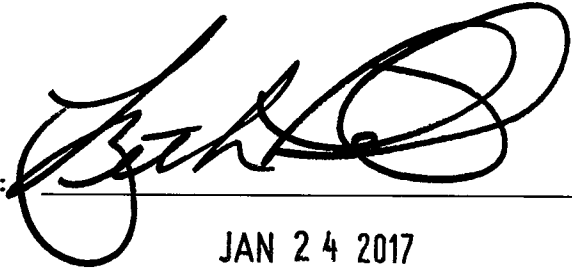
1 regardless of the employer's ownership or tenancy status, and
2 regardless of the employer's right to exclusive use or non-
3 exclusive use, operation, or control of the site, premises,
4 location, or place."

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

7 SECTION 5. This Act shall take effect on July 1, 2017.

8
9

INTRODUCED BY: _____



JAN 24 2017



H.B. NO. 1371

Report Title:

Public Safety; Workplace Violence

Description:

Establishes department of labor and industrial relations responsibilities for incidents of workplace violence as well as investigation procedures for incidents of workplace violence.

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





STATE OF HAWAII
DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS
830 PUNCHBOWL STREET, ROOM 321
HONOLULU, HAWAII 96813
www.labor.hawaii.gov
Phone: (808) 586-8844 / Fax: (808) 586-9099
Email: dlir.director@hawaii.gov

February 14, 2017

To: The Honorable Aaron Ling Johanson, Chair,
The Honorable Daniel Holt, Vice Chair, and
Members of the House Committee on Labor & Public Employment

Date: Tuesday, February 14, 2017
Time: 8:30 a.m.
Place: Conference Room 309, State Capitol

From: Linda Chu Takayama, Director
Department of Labor and Industrial Relations (DLIR)

Re: H.B. No. 1371 Relating to Workplace Violence

I. OVERVIEW OF PROPOSED LEGISLATION

HB1371 adds a new section to chapter 378, Hawaii Revised Statutes (HRS), to assign DLIR the responsibility for workplace violence protection and investigations and includes a non-discrimination provision. HB1371 also inserts two new definitions to Part VI VICTIMS PROTECTIONS in chapter 378, HRS.

DLIR strongly opposes the measure and asks the Committee to hold the measure.

II. CURRENT LAW

There are no provisions in State law specifically pertaining to workplace violence. The Occupational Safety and Health Administration (OSHA) has not promulgated standards for workplace violence, but does offer informal guidance¹. The Hawaii Occupational Safety and Health Division (HIOSH) and OSHA apply the "general duty" clause where no specific standards exist, as in workplace violence.

The Occupational Safety and Health Act (OSH Act) spells out an employer's duty to provide a safe working environment in two clauses:

1. Section 5(a)(1) (General Duty Clause). Each employer—shall furnish to each of his employees employment and a place of employment which are

free from recognized hazards that are causing or are likely to cause death or serious physical harm to his employees;

2. Section 5(a)(2) Each employer—shall comply with occupational safety and health standards promulgated under this chapter.

DLIR notes that OSHA and the states have encountered great difficulty proving workplace violence cases unless they are cut-and-dried.

OSHA offers the following guidance on reducing workplace violence hazards²:

In most workplaces where risk factors can be identified, the risk of assault can be prevented or minimized if employers take appropriate precautions. One of the best protections employers can offer their workers is to establish a zero-tolerance policy toward workplace violence. This policy should cover all workers, patients, clients, visitors, contractors, and anyone else who may come in contact with company personnel.

By assessing their worksites, employers can identify methods for reducing the likelihood of incidents occurring. OSHA believes that a well-written and implemented workplace violence prevention program, combined with engineering controls, administrative controls and training can reduce the incidence of workplace violence in both the private sector and federal workplaces.

This can be a separate workplace violence prevention program or can be incorporated into a safety and health program, employee handbook, or manual of standard operating procedures. It is critical to ensure that all workers know the policy and understand that all claims of workplace violence will be investigated and remedied promptly. In addition, OSHA encourages employers to develop additional methods as necessary to protect employees in high risk industries.

DLIR notes that the State does have an executive-wide workplace violence prevention program.³ The Department of the Attorney General has also issued guidance to help organizations develop and implement effective workplace violence policies.⁴

III. COMMENTS ON THE HOUSE BILL

DLIR strongly opposes the measure and requests that the Committee hold the measure.

The measure creates a new section and amendments to chapter 378, HRS. HIOSH under chapter 396, HRS, has jurisdiction over investigations of workplace violence and therefore this measure is unnecessary.

The proposal also contains numerous construction deficiencies due to adding a free-floating new section to chapter 378, which has six parts. There are no provisions for rule-making authority, enforcement, administrative process, definitions, etc.

Section 3 of the proposal only requires setting out the new definitions because the addition of new definitions to a section composed only of definitions requires only the new definitions to be set forth.

¹ <https://www.osha.gov/Publications/osha3148.pdf>

² <https://www.osha.gov/SLTC/workplaceviolence/>

³ <http://dhrd.hawaii.gov/wp-content/uploads/2012/10/0800002.pdf>

⁴ <http://ag.hawaii.gov/cpja/files/2013/01/WVfull.pdf>

From: mailinglist@capitol.hawaii.gov
Sent: Friday, February 10, 2017 4:14 PM
To: LABtestimony
Cc: KarinNomura1@gmail.com
Subject: Submitted testimony for HB1371 on Feb 14, 2017 08:30AM

HB1371

Submitted on: 2/10/2017

Testimony for LAB on Feb 14, 2017 08:30AM in Conference Room 309

Submitted By	Organization	Testifier Position	Present at Hearing
Karin Nomura	Individual	Support	No

Comments: While not a state employee, feel that violence in the workplace or creation of a hostile environment should never be considered 'acceptable', and def. not something a department head should tell an employee is "part of your job". As someone who's been shoved, shown the finger, had to endure issues – lawyers said to just call the police, manager just emailed that I complained of 'harassment', yet didn't really deal with issues...With extreme items occurring not only in my work environment but also within my neighborhood, feel that not enough is done to protect the workforce.

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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From: mailinglist@capitol.hawaii.gov
Sent: Friday, February 10, 2017 8:43 PM
To: LABtestimony
Cc: clareloprinzi@gmail.com
Subject: *Submitted testimony for HB1371 on Feb 14, 2017 08:30AM*

HB1371

Submitted on: 2/10/2017

Testimony for LAB on Feb 14, 2017 08:30AM in Conference Room 309

Submitted By	Organization	Testifier Position	Present at Hearing
clare loprinzi	Individual	Support	No

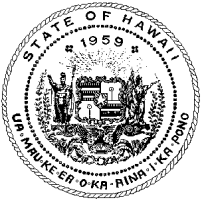
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HB 1371

Late Testimony



LATE

LATE

LATE

HAWAI‘I CIVIL RIGHTS COMMISSION

830 PUNCHBOWL STREET, ROOM 411 HONOLULU, HI 96813 · PHONE: 586-8636 FAX: 586-8655 TDD: 568-8692

February 14, 2017
Rm. 309, 8:30 a.m.

To: The Honorable Aaron Ling Johanson, Chair
Members of the House Committee on Labor and Public Employment

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

Re: H.B. No. 1371

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.

H.B. No. 1371 is intended to protect state employees from abusive work environments and provide remedies when they are victims of workplace violence. It would do so by adding a new section to HRS chapter 378, providing the Department of Labor and Industrial Relations (DLIR) with enforcement jurisdiction over state employee complaints of workplace violence. H.B. No. 1371 would also add definitions of “violence” and “workplace” to HRS chapter 378, part VI.

The HCRC offers comments on H.B. No. 1371:

- It is unclear which part of HRS chapter 378 the new section and protection will be added, and it is unclear what remedies the DLIR can provide in complaints brought under the new section.
- It is unclear why the new definitions of “violence” and “workplace” are being added to HRS chapter 378, part I, the victim protections law, and the legislature should be careful to ensure the added definitions do not yield unintended consequences.
- Given the applicability of the new protection against workplace violence only to state employees, perhaps it should be placed in an HRS chapter covering civil service or public service, chapter 76 or chapter 78.



HAWAII GOVERNMENT EMPLOYEES ASSOCIATION
AFSCME Local 152, AFL-CIO

RANDY PERREIRA, Executive Director • Tel: 808.543.0011 • Fax: 808.528.0922

LATE

The Twenty-Ninth Legislature, State of Hawaii
House of Representatives
Committee on Labor & Public Employment

LATE

Testimony by
Hawaii Government Employees Association

LATE

February 14, 2017

H.B. 1371 - RELATING TO
WORKPLACE VIOLENCE

The Hawaii Government Employees Association, AFSCME Local 152, AFL-CIO supports the purpose and intent of H.B. 1371 which establishes Department of Labor and Industrial Relations responsibilities for incidents of workplace violence, as well as investigation procedures for incidents of workplace violence.

Abusive work environments can have serious health effects on targeted employees, inclusive of stress, anxiety, loss of sleep, depression, hypertension and other stress-related illnesses and disorders. Such environments also have adverse consequences for employers in the form of reduced employee productivity, low morale and higher turnover and absentee rates. While there are differing workplace violence policies currently in place among state agencies, creating a uniform statewide policy will provide invariable protection to state employees from abusive work environments. Implementing a statewide policy will also ensure consistency when addressing and remedying workplace violence incidents.

Thank you for the opportunity to testify in support of H.B. 1371.

Respectfully submitted,

Randy Perreira
Executive Director