

JAN 24 2019

A BILL FOR AN ACT

RELATING TO THE HAWAII LABOR RELATIONS BOARD.

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

1 SECTION 1. The purpose of this Act is to authorize the
2 electronic filing of documents with the Hawaii labor relations
3 board.

4 SECTION 2. Section 377-9, Hawaii Revised Statutes, is
5 amended to read as follows:

6 "§377-9 Prevention of unfair labor practices. (a) Any
7 controversy concerning unfair labor practices may be submitted
8 to the board in the manner and with the effect provided in this
9 chapter, but nothing herein shall prevent the pursuit of relief
10 in courts of competent jurisdiction.

11 (b) Any party in interest may file with the board a
12 written complaint, on a form provided by the board, charging any
13 person with having engaged in any specific unfair labor
14 practice. The board shall serve or require the complainant to
15 serve a copy of the complaint upon the person charged,
16 hereinafter referred to as the respondent. If the board has
17 reasonable cause to believe that the respondent is a member of



1 or represented by a labor union, then service upon an officer of
2 the union shall be deemed to be service upon the respondent.
3 Service may be by delivery to the person, or by mail or
4 electronic service through a company designated by the board, to
5 the person's last known address. Any other person claiming
6 interest in the dispute or controversy, as an employer, an
7 employee or their representative, shall be made a party upon
8 proof of the interest. The board may bring in additional
9 parties by service of a copy of the complaint. Only one
10 complaint shall issue against a person with respect to a single
11 controversy, but any complaint may be amended in the discretion
12 of the board at any time prior to the issuance of a final order
13 based thereon. The respondent may file an answer to the
14 original or amended complaint but the board may find to be true
15 any allegation in the complaint in the event either no answer is
16 filed or the answer neither specifically denies nor explains the
17 allegation nor states that the respondent is without knowledge
18 concerning the allegation. The respondent shall have the right
19 to appear in person or otherwise give testimony at the place and
20 time fixed in the notice of hearing. The hearing on the



1 complaint shall be before either the board or a hearings officer
2 of the board, as the board may determine.

3 The board shall fix a time for the hearing on the
4 complaint, which shall be not less than ten nor more than forty
5 days after the filing of the complaint or amendment thereof.
6 Notwithstanding section 91-9.5, in any hearing conducted by the
7 board, all parties shall be given written notice of the hearing
8 by first class mail or by electronic service through a company
9 designated by the board at least fifteen days before the
10 scheduled date of the hearing. In case a party in interest is
11 located without the State and has no known address within the
12 State and no known electronic mail address, a copy of the
13 complaint and copies of all notices shall be filed in the office
14 of the lieutenant governor and shall also be sent by first class
15 mail to the last known address of the party. Such filing and
16 mailing shall constitute sufficient service with the same force
17 and effect as if served upon a party located within the State.
18 The hearing may be adjourned from time to time in the discretion
19 of the board and hearings may be held at such places as the
20 board shall designate.



1 In all proceedings under this chapter before the board,
2 each member of the board may issue subpoenas and administer
3 oaths. Depositions may be taken in the manner prescribed by
4 law. No person shall be excused from attending and testifying
5 or from producing books, records, correspondence, documents, or
6 other evidence in obedience to the subpoena on the ground that
7 the testimony or evidence required of the person may tend to
8 incriminate the person or subject the person to a penalty or
9 forfeiture under the laws of the State, but such person shall
10 not be prosecuted or subjected to any penalty or forfeiture for
11 or on account of any transaction, matter, or thing concerning
12 which the person may testify or produce evidence, documentary or
13 otherwise, in such proceedings. Such person so testifying shall
14 not be exempt, however, from prosecution and punishment for
15 perjury committed in so testifying.

16 Any person who wilfully and unlawfully fails or neglects to
17 appear or to testify or to produce books, papers, and records as
18 required, shall, upon application to a circuit judge, be ordered
19 to appear before the board, and failure to obey the order may be
20 punished as a contempt of court.



1 Each witness who appears before the board by subpoena shall
2 receive for the witness' attendance the fees and mileage
3 provided for witnesses in civil cases in courts of record, which
4 shall be audited and paid by the State in the same manner as
5 other expenses are audited and paid, upon the presentation of
6 properly verified vouchers approved by the board.

7 (c) A full and complete record shall be kept of all
8 proceedings had before the board and all testimony and
9 proceedings shall be taken down by a reporter engaged for such
10 purpose or by use of a mechanical recording device. It shall
11 not be necessary to transcribe the record unless requested for
12 purposes of rehearing or court review. In the proceedings the
13 board shall not be bound by technical rules of evidence. No
14 hearsay evidence, however, shall be admitted or considered.

15 (d) After the final hearing, the board shall promptly make
16 and file an order or decision, incorporating findings of fact
17 upon all the issues involved in the controversy and the
18 determination of the rights of the parties. Pending the final
19 determination of the controversy the board may, after hearing,
20 make interlocutory orders which may be enforced in the same
21 manner as final orders. Final orders may dismiss the complaint



1 or require the person complained of to cease and desist from the
2 unfair labor practices found to have been committed, suspend the
3 person's rights, immunities, privileges, or remedies granted or
4 afforded by this chapter for not more than one year, and require
5 the person to take affirmative action, including reinstatement
6 of employees and make orders in favor of employees making them
7 whole, including back pay with interest, costs, and attorneys'
8 fees. Any order may further require the person to make reports
9 from time to time showing the extent to which the person has
10 complied with the order. Furthermore, an employer or employee
11 who wilfully or repeatedly commits unfair or prohibited
12 practices that interfere with the statutory rights of an
13 employer or employees or discriminates against an employer or
14 employees for the exercise of protected conduct shall be subject
15 to a civil penalty not to exceed \$10,000 for each violation. In
16 determining the amount of any penalty under this section, the
17 board shall consider the gravity of the unfair or prohibited
18 practice and the impact of the practice on the charging party,
19 on other persons seeking to exercise rights guaranteed by this
20 section, or on public interest.



1 (e) If any person fails or neglects to obey an order of
2 the board while the same is in effect the board may petition the
3 circuit judge of the judicial circuit wherein the person resides
4 or usually transacts business for the enforcement of the order
5 and for appropriate temporary relief or restraining order, and
6 shall certify and file in the court the record in the
7 proceedings, including all documents and papers on file in the
8 matter, the pleadings and testimony upon which the order was
9 entered, and the decision and order of the board. Upon such
10 filing the board shall cause notice thereof to be served upon
11 the person by mailing a copy to the person's last known post
12 office address, and thereupon the judge shall have jurisdiction
13 in the premises.

14 (f) Any person aggrieved by the decision or order of the
15 board may obtain a review thereof as provided in chapter 91 by
16 instituting proceedings in the circuit court of the judicial
17 circuit in which the person or any party resides or transacts
18 business, subject, however, to the general provisions of law for
19 a change of the place of trial or the calling in of another
20 judge. Where different parties in the same proceeding file
21 petitions for review in two or more courts having proper



1 jurisdiction, the jurisdiction of the judge first petitioned
2 shall be exclusive and the other petitions shall be transferred
3 to the judge. The petition shall state the grounds upon which a
4 review is sought and copies thereof shall be served upon the
5 other parties and the board. Service may be made by mailing
6 such copies to the last known post office address of the parties
7 concerned. When the proceedings are at issue, they may be
8 brought on for hearing before the court upon the record by any
9 party on ten days' written notice to the others. Upon the
10 hearing, the court may confirm, modify, or set aside the
11 decision or order of the board and enter an appropriate decree.
12 No objection that has not been urged before the board shall be
13 considered by the court unless the failure or neglect to urge
14 the objection shall be excused because of extraordinary
15 circumstances.

16 (g) In any proceedings for review of a decision or order
17 of the board, the judge shall disregard any irregularity or
18 error unless it is made to appear affirmatively that the
19 complaining party was prejudiced thereby.

20 (h) Commencement of proceedings under subsection (f) of
21 this section shall not stay enforcement of the board decisions



1 or order; but the board, or the reviewing court may order a stay
2 upon such terms as it deems proper.

3 (i) Petitions filed under this section shall have
4 preference over any civil cause of a different nature pending in
5 the circuit court, shall be heard expeditiously, and the circuit
6 courts shall always be deemed open for the trial thereof.

7 (j) Any party may appeal from the judgment of a circuit
8 court entered under this chapter, subject to chapter 602, in the
9 manner provided for civil appeals from the circuit courts.

10 (k) A substantial compliance with the procedure of this
11 chapter shall be sufficient to give effect to the decisions and
12 orders of the board, and they shall not be declared inoperative,
13 illegal, or void for any nonprejudicial irregularity in respect
14 thereof.

15 (l) No complaints of any specific unfair labor practice
16 shall be considered unless filed within ninety days of its
17 occurrence.

18 (m) All documents filed with the board under this section
19 shall be delivered to the board as:

20 (1) An original paper document; or



1 (2) An electronic version pursuant to technical standards,
2 if any, established by the board.

3 A document filed by electronic means shall be equivalent to
4 an original document for the purposes of this section.

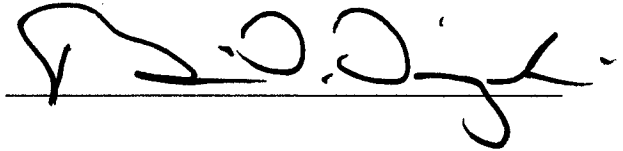
5 (n) For the purposes of this section, "document" includes
6 all complaints, answers, motions, memoranda, declarations,
7 exhibits, certificates of service, and other papers filed with
8 the board."

9 SECTION 3. New statutory material is underscored.

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

11

INTRODUCED BY:





S.B. NO. 1146

Report Title:

Hawaii Labor Relations Board; Documents; Electronic Filing

Description:

Authorizes the Hawaii labor relations board to accept paper and electronic filing of documents.

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

