

# HAWAI‘I CIVIL RIGHTS COMMISSION

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

February 21, 2020  
Rm. 016, 10:45 a.m.

To: The Honorable Karl Rhoads, Chair  
The Honorable Jarrett Keohokalole, Vice Chair  
Members of the House Committee on Judiciary

From: Liann Ebesugawa, Chair  
and Commissioners of the Hawai‘i Civil Rights Commission

Re: S.B. No. 2313, S.D. 1

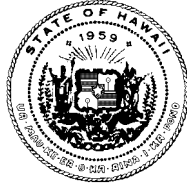
The Hawai‘i Civil Rights Commission (HCRC) has enforcement jurisdiction over Hawai‘i’s laws prohibiting discrimination in employment, housing, public accommodations, and access to state and state funded services (on the basis of disability). The HCRC carries out the Hawai‘i constitutional mandate that no person shall be discriminated against in the exercise of their civil rights. Art. I, Sec. 5.

**The HCRC supports S.B. No. 2313, S.D. 1.**

S.B. No. 2313, S.D.1, amends HRS chapter 378, part I, to add a new section prohibiting employers from requiring nondisclosure agreements that prevent disclosure of sexual assault or sexual harassment as a condition of employment. The bill prohibits employers from retaliating against an employee for disclosing or discussing sexual harassment or sexual assault. The HCRC supports both prohibitions, which in combination will preclude nondisclosure agreements that can enable serial harassers to continue unlawful sexual harassment. The placement of the new section in HRS chapter 378, part I, provides for both enforcement and remedies.

The HCRC supports S.B. No. 2313, S.D. 1.

DAVID Y. IGE  
GOVERNOR



PANKAJ BHANOT  
DIRECTOR

CATHY BETTS  
DEPUTY DIRECTOR

STATE OF HAWAII  
DEPARTMENT OF HUMAN SERVICES  
P. O. Box 339  
Honolulu, Hawaii 96809-0339

February 15, 2020

TO: The Honorable Senator Karl Rhoads, Chair  
Senate Committee on Judiciary

FROM: Pankaj Bhanot, Director

SUBJECT: **SB 2313 SD1 – RELATING TO EMPLOYMENT PRACTICES**

Hearing: February 21, 2020, Time 10:45 a.m.  
Conference Room 016, State Capitol

**DEPARTMENT'S POSITION:** The Department of Human Services (DHS) supports this measure as all individuals should have a workplace environment free from harassment, assault, and violence. Low wage, low skill workers, or workers just entering the workforce are especially vulnerable to harassment. This measure is a positive employment policy that will improve the social and economic mobility of Hawaii's residents. DHS provides benefits and services that support individuals and families with their basic needs so adults can address their children's care and education, and improve their own skills to gain and maintain employment. DHS appreciates the amendments of the Committee on Human Services and the comments of the Hawaii Civil Rights Commission regarding confidentiality provisions related to legal settlements as proposed in SB2314/HB2063.

**PURPOSE:** Prohibits an employer from requiring an employee to enter into a nondisclosure agreement pertaining to sexual harassment or sexual assault. Prohibits an employer from retaliating against an employee for disclosing or discussing sexual harassment or sexual assault. (SD1)

Women, men, gender non-conforming, and low-income individuals, all may experience sexual harassment and sexually coercive behavior in the workplace. However, the

majority of workplace harassment victims are women. The risk of being sexually harassed in the workplace increases greatly for women of color and women who work in low paying jobs.

As such, workplace harassment and subsequent retaliation have a direct effect on individual's ability to work and to be economically self-sufficient. Many victims do not report for fear of being retaliated against.

The proliferation of non-disclosure agreements (NDA) has enabled abusers to continue their abuse and in turn, silence their victims from reporting.

DHS provides services to 1 in 4 Hawaii residents, and some of the most vulnerable individuals and families in the State. Through our multi-generational 'Ohana Nui framework, we endeavor to address the multiple factors that contribute to multi-generational poverty including the impact of trauma on individuals and families. Reducing harassment in the work place and supporting better employment practices will further this goal.

Thank you for the opportunity to testify in support.



## of Hawaii

Hawaii State Senate Committee on Judiciary

Hearing Date/Time: February 21, 10:45AM

Place: Hawaii State Capitol, Room 016

Re: Testimony in STRONG SUPPORT of SB2313 SD1

Dear Chair Rhoads, Vice Chair Keohokalole, and Members of the Committee,

Members of AAUW of Hawaii are grateful for this opportunity to testify in strong support of SB2313 SD1, which would prohibit nondisclosure agreements involving sexual assault and sexual harassment as part of an employee's conditions of employment, and prohibit employers from retaliating against an employee for disclosing or discussing sexual harassment or sexual assault.

Workplace sexual harassment is more common than we think: 53% of women and 42% of men experienced workplace sexual harassment while working in Hawaii according to a recent survey by Safe Spaces & Workplaces. Workplace sexual harassment take a toll on victim's physical and mental health, and it also limits the livelihood for 38% of those harassed said the harassment contributed to their decision to leave their job and 37% said the harassment disrupted their career advancement.<sup>1</sup> Many in Hawaii don't report because they don't want to make waves; many don't report because they fear retaliation.

Non-disclosure agreements and retaliating employees for disclosing and discussing sexual harassment or sexual assault silences victims and allow serial harassers to escape accountability and continue with harassment and assault.

Fifteen states passed new laws since 2017 to protect workers from sexual harassment; thirteen states now limit or prohibit employers from requiring employees to sign non-disclosure agreements as a condition of employment or as part of a settlement agreement.<sup>2</sup> Hawaii should join Arizona, California, Illinois,

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<sup>1</sup> <https://www.aauw.org/research/limiting-our-livelihoods/>

<sup>2</sup> <https://nwlc-ciw49tixgw5lbab.stackpathdns.com/wp-content/uploads/2019/07/20-States-By-2020-report.pdf>

Louisiana, Maryland, Nevada, New Jersey, New York, Oregon, Tennessee, Vermont, Virginia, and Washington by passing this bill and protect the workers from workplace sexual harassment and assault.

The American Association of University Women (AAUW) of Hawaii is a state-wide organization made up of six branches (Hilo, Honolulu, Kauai, Kona, Maui, and Windward Oahu) and includes just over 650 active members with over 3800 supporters statewide. As advocates for gender equity, AAUW of Hawaii promotes the economic, social, and physical well-being of all persons.

Please pass this important measure and mahalo.

A handwritten signature in blue ink, appearing to read 'Y. Overly', with a stylized, cursive script.

Younghee Overly  
Public Policy Chair, AAUW of Hawaii  
[publicpolicy-hi@aauw.net](mailto:publicpolicy-hi@aauw.net)

## Hawaii State Senate Judiciary Committee

Hearing Date: Friday, February 21, 2020

Time & Room: 10:45 am, Rm. 016

### Re: Testimony in support of SB 2313, SD1 Relating to Employment Practices

Dear Senator Karl Rhoads, Chair Senator Jarrett Keohokalole, Vice Chair and members of the committee:

- A recent survey by Safe Spaces & Workplaces of Hawaii adults showed 52% of women and 42% of men experienced workplace sexual harassment while working in Hawaii. Many do not report the incident because they fear retaliation.

#### **This bill prohibits an employer from retaliating against an employee for disclosing or discussing sexual harassment or sexual assault.**

- Retaliation against employees for disclosing and discussing sexual harassment or sexual assault allows serial harassers to escape accountability and continue with harassment.

#### **This bill prohibits an employer from requiring an employee to enter into a nondisclosure agreement pertaining to sexual harassment or sexual assault.**

- Non-disclosure agreements can prevent employees from speaking out and/or pursuing legal remedies.

I urge you to add these protections to Chapter 378, Hawaii Revised Statutes. Please pass this bill and protect workers in Hawaii from sexual harassment.

Thank you for the opportunity to testify.

Janet Morse  
AAUW Hawaii member  
Kailua, Oahu

**SB-2313-SD-1**

Submitted on: 2/19/2020 1:36:50 PM

Testimony for JDC on 2/21/2020 10:45:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Betty Sestak	Testifying for AAUW Windward	Support	No

Comments:



February 19, 2020

Committee on Judiciary  
Sen. Rhoads, Chair  
Sen. Keohokalole, Vice Chair

The Senate  
The Thirtieth Legislature  
Regular Session of 2020

RE: SB 2313, SD1 - RELATING TO EMPLOYMENT PRACTICES  
DATE: Friday, February 21, 2020  
TIME: 10:45 am  
PLACE: Conference Room 016  
State Capitol 415 South Beretania Street, Honolulu HI

Aloha Chair Rhoads, Vice Chair Keohokalole, and the Members of the Committee,

Thank you for the opportunity to testify in **support** of this measure. [SAG-AFTRA](#) represents over 1100 actors, recording artists, and media professionals in our state.

We support this ban on pre-employment nondisclosure agreements whenever this legal tool is used to cover up sexual harassment and assault in the workplace. These type of pre-employment requirements cover up abuse and act as a restraint on the freedom of speech on Hawaii's workers.

We also support adding a new section to HRS chapter 378 making it unlawful practice to retaliate against employees for disclosing or discussing sexual harassment or sexual assault. An employee's fear that her/his employer will retaliate against them for disclosing or even just discussing sexual assault or harassment acts as a powerful deterrent and silencer. Adding this section goes a long way to protect workers and to shine a light on discriminatory and dangerous practices.

In taking action to encourage open discourse, the state will not only strengthen the civil rights of Hawaii workers that may find themselves in vulnerable and precarious positions but will also allow for the exposure of persons who pose a risk to public safety.

Thank you again for your continued support and please don't hesitate to contact the SAG-AFTRA Hawaii Local office for more information on this issue as it relates to professional performers.

Respectfully,

A handwritten signature in black ink, appearing to read "Mericia Palma Elmore".

Mericia Palma Elmore  
Executive Director SAG-AFTRA Hawaii Local

Mericia Palma Elmore, Executive Director  
SAG-AFTRA Hawaii Local  
[mericia.palmaelmore@sagaftra.org](mailto:mericia.palmaelmore@sagaftra.org)  
Ph: 808-596-0388 • Fax: 808-593-2636  
201 Merchant St Suite 2301 Honolulu, HI 96813

SCREEN ACTORS GUILD - AMERICAN FEDERATION OF  
TELEVISION AND RADIO ARTISTS  
SAGAFTRA.org  
Associated Actors & Artistes of America / AFL-CIO





To: Chair Karl Rhoads and members of the Senate Judiciary Committee members  
Subject: Testimony in SUPPORT of S.B. 2313  
Date: February 18, 2020

Thank you for the opportunity to testify in SUPPORT of S.B. 2313.

In the past 3 years, thirteen states have passed laws similar to the one proposed in HB 2054. This Law would 1) Prohibit an employer from requiring an employee to enter into a nondisclosure agreement concerning sexual harassment or assault, and 2) Prohibit an employer from retaliating against an employee for disclosing or discussing sexual harassment or assault.

Sexual harassment is a form of sex discrimination that violates Title VII of the Civil Rights Act, and sexual assault is a crime. We should not be complicit in allowing perpetrators to avoid accountability by hiding behind a non-disclosure agreement. And we should not send the message to victims that they are not free to report harassment or assault, or that they face penalties for reporting such crimes.

Non-disclosure agreements concerning sexual harassment and assault keep victims from reporting crimes and protect serial perpetrators who can continue to prey on employees.

Please vote for this S.B. 2313.

Sincerely,

Amy Monk  
Co-Chair, Hawaii Democratic Party Women's Caucus



## Hawaii Women's Coalition

To: Hawaii State Senate Committee on Judiciary  
Hearing Date/Time: Friday February 21, 2020 10:45AM  
Place: Hawaii State Capitol, Room 016  
Re: Testimony in STRONG SUPPORT of S.B. 2313 SD1

Dear Chair Rhoads, Vice Chair Keohokalole, and Members of the Committee,

The Hawaii Women's Coalition writes in support of S.B. 2313 SD1, to prohibit an employer from requiring an employee to enter into a nondisclosure agreement pertaining to sexual harassment or sexual assault and to prohibit an employer from retaliating against an employee for disclosing or discussing sexual harassment or sexual assault.

A recent survey by Safe Spaces & Workplaces of Hawaii adults showed 52% of women and 42% of men experienced workplace sexual harassment while working in Hawaii. Only 18% reported the incident to Human Resources. Many stay silent because they don't want to make waves; others see sexual harassment as a strictly legal issue likely to result in costly litigation. 15% changed their job or quit.

A recent study "Limiting Our Livelihoods" by American Association of University Women (AAUW) showed 38% of women who were sexually harassed said the harassment contributed to their decision to leave their job, 37% said the harassment disrupted their career advancement. Many do not report the incident because they fear retaliation.

Although federal law appears comprehensive and robust, employees who are harassed at work are often unable to access justice. The barriers include:

- Narrow standards about the kinds of employers covered by existing laws. For example, employers with fewer than 15 employees are exempt;
- The exclusion from coverage of various categories of workers, including contractors and unpaid interns;
- A limited time frame for bringing charges;
- Onerous standards of proof: Courts have narrowly interpreted the definition of sexual harassment so many egregious complaints have not met the required standard;
- Reduced liability: The Supreme Court has narrowed the circumstances in which employers and coworkers can be liable for harassment;
- Non-disclosure agreements and mandatory arbitration: These can prevent employees from speaking out and/or pursuing legal remedies;



## Hawaii Women's Coalition

- Non-disclosure agreements and retaliating employees for disclosing and discussing sexual harassment or sexual assault allows serial harassers to escape accountability and continue with harassment.

Fifteen states passed new laws since 2017 to protect workers from sexual harassment; thirteen states now limit or prohibit employers from requiring employees to sign non-disclosure agreements as a condition of employment or as part of a settlement agreement. Hawaii should join Arizona, California, Illinois, Louisiana, Maryland, Nevada, New Jersey, New York, Oregon, Tennessee, Vermont, Virginia, and Washington by passing this bill.

Thank you for your support for this important measure to promote fairness and equity in the workplace.

Sincerely,

Hawaii Women's Coalition



## THE QUEEN'S HEALTH SYSTEMS

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To: The Honorable Karl Rhoads, Chair  
The Honorable Jarrett Keohokalole, Vice Chair  
Members, Committee on Judiciary

From: ~~Rowena~~ Rowena Buffett Timms, Executive Vice President & Chief Administrative Officer, The Queen's Health Systems  
Collette Masunaga, Manager, Government Relations & External Affairs, The Queen's Health Systems

Date: February 19, 2020

Hrg: Senate Committee on Judiciary Decision Making; Friday, February 21, 2020 at 10:45 a.m. in Room 016

Re: **Supports the intent with Comments on SB2313 SD1, Relating to Employment Practices**

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The Queen's Health Systems (Queen's) is a not-for-profit corporation that provides expanded health care capabilities to the people of Hawai'i and the Pacific Basin. Since the founding of the first Queen's hospital in 1859 by Queen Emma and King Kamehameha IV, it has been our mission to provide quality health care services in perpetuity for Native Hawaiians and all of the people of Hawai'i. Over the years, the organization has grown to four hospitals, 66 health care centers and labs, and more than 1,600 physicians statewide. As the preeminent health care system in Hawai'i, Queen's strives to provide superior patient care that is constantly advancing through education and research.

Queen's appreciates the opportunity to offer comments on SB2313 SD1, Relating to Employment Practices. The proposed bill would prohibit an employer from requiring an employee to enter into a nondisclosure agreement pertaining to sexual harassment or sexual assault, as well as prohibits an employer from retaliating against an employee for disclosing or discussing sexual harassment or sexual assault.

While Queen's appreciates and supports the intent of this measure, we have concerns that the bill, as written, is too broad and would impede on our peer review process. The peer review process - as mandated by The Centers for Medicare and Medicaid Services, Conditions of Participation, and The Joint Commission - requires that hospitals take on the responsibility for quality assessment and performance improvement.

The Queen's Medical Staff Bylaws requires individuals (employed and non-employed), participating in credentialing, peer review, and quality management activities, preserve confidentiality and invoke the peer review privileges afforded under HRS §624-25.5.

*The mission of The Queen's Health Systems is to fulfill the intent of Queen Emma and King Kamehameha IV to provide in perpetuity quality health care services to improve the well-being of Native Hawaiians and all of the people of Hawai'i.*

In order to preserve the medical staff peer review process, Queen's respectfully requests the following amendment under section 1, (c) be added.

(c) This section shall not apply to:

(1) Human resources employees expected to maintain the confidentiality of an investigation as part of their official duties; and

(2) Employees requested to maintain the confidentiality of an ongoing human resources investigation.

(3) Proceedings under section 624-25.5"

Thank you for the opportunity to testify on this measure.

# IRON WORKERS STABILIZATION FUND

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February 21, 2020

Senate Committee on Judiciary  
Conference Room 016  
State Capitol  
415 South Beretania Street

Re: SB2313, SD1 - RELATING TO EMPLOYMENT PRACTICES.

Aloha Chair Rhoads, Vice-Chair Keohokalole, and members of the Senate Committee on Judiciary:

We **SUPPORT** the intent of SB2313 SD1. This bill will prohibit an employer from requiring an employee to enter into a nondisclosure agreement pertaining to sexual harassment or sexual assault. It further prohibits an employer from retaliating against an employee for disclosing or discussing sexual harassment or sexual assault. No one should fear retaliation of loss of employment or otherwise for reporting sexual assault or sexual harassment. This bill will help us move towards a more healthy and safe working environment.

Sincerely,



T. George Paris  
Managing Director

TGP: MP

**SB-2313-SD-1**

Submitted on: 2/15/2020 8:05:15 AM

Testimony for JDC on 2/21/2020 10:45:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Caroline Kunitake	Individual	Support	No

Comments:

Dear Chair Rhoads and Members of the Committee on Judiciary,

I am writing in support of SB2313 SD1.

I don't believe that it is right or fair for an employer to require anyone to sign a non disclosure agreement (NDA) in cases of sexual harassment and sexual assault. Everyone that works for someone else deserves to work in a harassment free workplace. Therefore we need laws to protect workers' rights and regulations that prevent employers from unfairly taking advantage of workers.

It is important for employers and employees to openly discuss instances of sexual harassment and sexual assault that occurs at the workplace or between anyone employed at the same place of work. Disclosure without retaliation is necessary to investigate reports of sexual harassment and sexual assault. Discussion is needed to further improve internal policies and procedures to properly handle true instances of sexual harassment and sexual assault. Some employers may not be aware of the legalities and criminal punishments that go along with sexual harassment and/or sexual assault. Few employees will be willing to make a complaint or event press charges if the employer is not supportive.

Please pass SB2313 SD1 to protect worker's rights to a harassment free work place.

Mahalo,

Caroline Kunitake

Hearing Date: February 21, 2020, 10:45 AM, Rm. 016

To: Senate Committee on Judiciary  
Chair, Senator Karl Rhoads  
Vice Chair, Jarrett Keohokalole

From: Jean Evans, MPH (Individual, [jevans9999@yahoo.com](mailto:jevans9999@yahoo.com), 808-728-1152, 99-1669 Hoapono Pl., Aiea, HI 96701)

Re: **TESTIMONY IN SUPPORT OF SB 2313, SD1 RELATING TO EMPLOYMENT PRACTICES.**

**I am strong support of SB 2313, SD1 Relating to Employment Practices**

I am in favor of this ban on nondisclosure agreements (NDA). NDAs have been used to cover up sexual harassment and assault in the workplace for many years. Often these agreements are used to protect a serial workplace sexual harasser or assaulter such as those we have seen in the national news. One can only hazard a guess as to how many of these predators have been protected by their employer here in Hawaii.

I also support making it unlawful to retaliate against employees for disclosing or discussing sexual harassment or sexual assault. This will remove the fear an employee has that their employer will retaliate against them for disclosing or even just discussing sexual assault or harassment acts as a powerful deterrent and silencer.

This bill will ensure that Hawaii joins 13 other states in the nation to limit or prohibit employers from requiring employees to sign non-disclosure agreements as a condition of employment or as part of a settlement agreement. I urge you to pass this important bill.

Mahalo for allowing me to submit my testimony today.

*Jean Evans*



**LATE**

**SB-2313-SD-1**

Submitted on: 2/20/2020 12:04:30 PM

Testimony for JDC on 2/21/2020 10:45:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Ann S Freed	Individual	Support	No

Comments:

Aloha Chair Rhoads, Vice Chair Keohokalole and members,

I strongly support this bill. As Hawaii Women's Coalition Chair Emeritus, I am aware that this issues has been on our radar for awhile now.

NDA's are used to protect the perpetrator of sex assault/sex harassment from the consequences of their actions. The end result is they are free to go out and do it again resulting in serial offenders like Harvey Weinstein and Bill Cosby.

I am sure there are cases close to home that we just don't know about yet.

Please pass this bill and ensure that, victims get their full measure of justice and that perpetrators are not encouraged to do it again.

Mahalo,

Ann S. Freed