

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

January 29, 2020

TO: The Honorable Senator Brian T. Taniguchi, Chair
Senate Committee on Labor, Culture and the Arts

FROM: Pankaj Bhanot, Director

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

Hearing: January 30, 2020, Time 2:45 p.m.
Conference Room 224, 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.

PURPOSE: The purposes of the bill are 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.

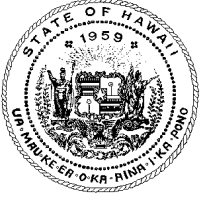
Women, men, gender non-conforming, and low-income individuals, all may experience sexual harassment and sexually coercive behavior in the workplace. However, the majority of workplace harassment victims are women. The risk of being sexually harassed in the workplace increases greatly for women of color 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.



HAWAI‘I CIVIL RIGHTS COMMISSION

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

January 30, 2020
Rm. 224, 2:45 p.m.

To: The Honorable Brian Taniguchi, Chair
The Honorable Les Ihara, Jr., Vice Chair
Members of the Senate Committee on Labor, Culture and the Arts

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

Re: S.B. No. 2313

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.

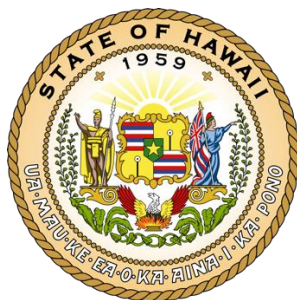
The HCRC supports S.B. No. 2313.

S.B. No. 2313 amends HRS chapter 378 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 current bill creates a new section in HRS chapter 378, but does not designate in which part it will be placed. If enacted, placement of the new section in HRS chapter 378, part I, would provide for both enforcement and remedies.

The HCRC notes that the confidentiality permitted as part of a legal settlement in S.B. No. 2314 and its companion H.B. No. 2063 may conflict with this bill, which would prohibit

nondisclosure agreements regarding discussion and disclosure of sexual harassment in the workplace. If these bills both move forward, it may be necessary to reconcile this potential conflict.

The HCRC supports S.B. No. 2313.



‘O kēia ‘ōlelo hō’ike no ke
Komikina Kūlana Olakino o Nā Wāhine

Testimony on behalf of the
Hawai‘i State Commission on the Status of Women

Prepared for the Senate Committee on Labor, Culture & Arts

In Support of SB2313

Thursday, January 30, 2020, at 2:45 p.m. in Room 224

Dear Chair Taniguchi, Vice Chair Ihara, and Honorable Members,

The Hawai‘i State Commission on the Status of Women supports the intent of SB2313 which prohibits non-disclosure agreements-- legally enforceable contracts that prohibit disclosure of sexual harassment or sexual assault-- as a condition of employment. The Commission notes the silencing effect of confidentiality clauses or non-disclosure agreements (NDAs). NDAs are not actually victim-centered, and have functioned to shield serial offenders of sex discrimination, including sexual assault and sexual harassment, by allowing the pattern of misconduct to continue unnoticed and other women to suffer similar abuse by the same offender.

In doing so, NDAs perpetuate the power imbalance between men and women in the workplace. They also create a ripple effect impact women’s career choices and ability to advance in the workplace. The Legislature should act to ban NDAs as part of a broader strategy to eradicate sexual harassment. Accordingly, the Commission asks the Committee to pass SB2313.

Sincerely,

Khara Jabola-Carolus



of Hawaii

January 27, 2020

Hawaii State Senate Committee on Labor, Culture and the Arts

Hearing Date/Time: January 30, 2020 2:45PM

Place: Hawaii State Capitol, Room 224

Re: Testimony in *STRONG SUPPORT* of SB2313

Dear Chair Taniguchi, Vice Chair Ihara, and Members of the Committee,

Members of AAUW of Hawaii are grateful for this opportunity to testify in strong support of SB2313, 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.¹ 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

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

part of a settlement agreement.² Hawaii should join Arizona, California, Illinois, Louisiana, Maryland, Nevada, New Jersey, New York, Oregon, Tennessee, Vermont, Virginia, 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.

Mahalo.

A handwritten signature in blue ink, appearing to read 'Y. Overly', with a stylized flourish at the end.

Younghee Overly
Public Policy Chair, AAUW of Hawaii
publicpolicy-hi@aauw.net

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



January 29, 2020

Committee on Economic Development,
Tourism and Technology
Sen. Brian T. Taniguchi, Chair
Sen. Les Ihara, Jr., Vice Chair

The Senate
The Thirtieth Legislature
Regular Session of 2020

RE: SB 2313 - RELATING TO EMPLOYMENT PRACTICES

DATE: Thursday, January 30, 2020

TIME: 2:45 pm

PLACE: Conference Room 224

State Capitol 415 South Beretania Street, Honolulu HI

Aloha Chair Taniguchi, Vice Chair Ihara, and the Members of the Committee,

Thank you for the opportunity to testify in **support** of this measure. [SAG-AFTRA](#) represents over 1000 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,

Mericia Palma Elmore
Executive Director SAG-AFTRA Hawaii Local

Mericia Palma Elmore, Executive Director
SAG-AFTRA Hawaii Local
mericia.palmaelmore@sagaftra.org
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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



Hawaii Women's Coalition

To: Hawaii State Senate Committee on Labor, Culture, and the Arts
Hearing Date/Time: Thursday, January 30, 2020, 2:45PM
Place: Hawaii State Capitol, Rm. 224
Re: Testimony of Hawaii Women's Coalition in support of S.B. 2313

Dear Chair Taniguchi, Vice Chair Ihara, and Members of the Committee,

The Hawaii Women's Coalition writes in support of S.B. 2313, 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, 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

SB-2313

Submitted on: 1/28/2020 7:54:39 PM

Testimony for LCA on 1/30/2020 2:45:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Laurie Field	Testifying for Planned Parenthood Votes Northwest and Hawaii	Support	No

Comments:

SB-2313

Submitted on: 1/27/2020 4:11:36 PM

Testimony for LCA on 1/30/2020 2:45:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Tamara Swift	Individual	Support	No

Comments:

- **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.**
- **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, Washington by passing this bill.

SB-2313

Submitted on: 1/28/2020 10:07:39 AM

Testimony for LCA on 1/30/2020 2:45:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Joanna Amberger	Individual	Support	No

Comments:

I write in strong support of SB2313:

- 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.
- 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, Washington by passing this bill.

SB-2313

Submitted on: 1/27/2020 4:40:13 PM

Testimony for LCA on 1/30/2020 2:45:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Amy Monk	Individual	Support	No

Comments:

Hearing Bill Number SB 2313

Hearing Date & Time: Thursday, January 30, 2020 2:45pm

Committee: House Labor, Culture & Arts

Chair: Brian T. Taniguchi

Vice Chair: Les Ihara Jr.

Dear Senator Taniguchi, Chair Senator Ihara, Vice Chair and members of the committee:

- A recent survey by Safe Spaces & Workplaces¹ 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.

SB 2313 the Workplace Sexual Harassment – NDA Bill Prohibits an employer from retaliating against an employee for disclosing or discussing sexual harassment or sexual assault.

- 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.

SB 2313 the Workplace Sexual Harassment – NDA Bill Prohibits an employer from requiring an employee to enter into a nondisclosure agreement pertaining to sexual harassment or sexual assault.

I urge you to pass SB2313 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

¹ <https://www.safespacesandworkplaces.com/hawaii-workplace-survey>

SB-2313

Submitted on: 1/29/2020 5:41:10 PM

Testimony for LCA on 1/30/2020 2:45:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Caroline Kunitake	Individual	Support	No

Comments:

Please support SB2313.

Mahalo,

Caroline Kunitake