
A BILL FOR AN ACT

RELATING TO WORKPLACE SAFETY.

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

1 SECTION 1. Chapter 321, Hawaii Revised Statutes, is
2 amended by adding a new section to be appropriately designated
3 and to read as follows:

4 "§321- Reporting of acts of violence against health care
5 workers. (a) A person who employs or contracts with a health
6 care worker who suffers an act of violence may report the event
7 to law enforcement; provided that the health care worker
8 consents to reporting the event.

9 (b) Nothing in this section shall be construed to prohibit
10 a health care worker from self-reporting to law enforcement an
11 act of violence.

12 (c) For purposes of this section:

13 "Act of violence" means an action in which a person
14 intentionally or knowingly uses force that causes bodily injury
15 to another person or threatens, by word or conduct, to cause
16 bodily injury to another person.



1 "Health care facility" has the same meaning as defined in
2 section 323D-2.

3 "Health care worker" means any employee or independent
4 contractor who is employed or contracted to perform work in a
5 health care facility and who provides health care services in
6 the course of employment or by contract."

7 SECTION 2. Section 604-10.5, Hawaii Revised Statutes, is
8 amended to read as follows:

9 **"§604-10.5 Power to enjoin and temporarily restrain**

10 **harassment.** (a) For the purposes of this section:

11 "Course of conduct" means a pattern of conduct composed of
12 a series of acts over any period of time evidencing a continuity
13 of purpose.

14 "Harassment" means:

15 (1) Physical harm, bodily injury, assault, or the threat
16 of imminent physical harm, bodily injury, or assault;
17 or

18 (2) An intentional or knowing course of conduct directed
19 at an individual that seriously alarms or disturbs
20 consistently or continually bothers the individual and
21 serves no legitimate purpose; provided that [~~such~~] the



1 course of conduct would cause a reasonable person to
2 suffer emotional distress.

3 "Health care facility" has the same meaning as in section
4 323D-2.

5 "Health care worker" has the same meaning as in section
6 321- .

7 (b) The district courts shall have the power to enjoin,
8 prohibit, or temporarily restrain harassment.

9 (c) Any person who has been subjected to harassment may
10 petition the district court for a temporary restraining order
11 and an injunction from further harassment in the district in
12 which:

13 (1) The petitioner resides or is temporarily located;

14 (2) The respondent resides; or

15 (3) The harassment occurred.

16 A person who employs or contracts with a health care worker
17 who has been subjected to harassment at the health care facility
18 in which the health care worker is employed or contracted to
19 perform work may, on behalf of and with the consent of the
20 health care worker, petition the district court of the district
21 in which the health care facility is situated for a temporary



1 restraining order and an injunction from further harassment at
2 the health care facility; provided that no injunction shall be
3 issued in derogation of chapter 380.

4 An employee organization that represents the health care
5 worker shall be allowed to intervene in a proceeding under this
6 section.

7 (d) A petition for relief from harassment shall ~~[be]~~:

8 (1) Be in writing [and shall allege];

9 (2) Allege that a past act or acts of harassment may have
10 occurred or that threats of harassment make it
11 probable that acts of harassment may be imminent[+].

12 In the case of a petition filed by a person who
13 employs or contracts with a harassed health care
14 worker, allege that a past act or acts of harassment
15 may have occurred or that threats of harassment make
16 it probable that acts of harassment may be imminent at
17 the health care facility; and [shall be]

18 (3) Be accompanied by an affidavit made under oath or
19 statement made under penalty of perjury stating the
20 specific facts and circumstances for which relief is
21 sought.



1 (e) Upon petition to a district court under this section,
2 the court may allow a petition, complaint, motion, or other
3 document to be filed identifying the petitioner as "jane doe" or
4 "john doe"; provided that the court finds that the "jane doe" or
5 "john doe" filing is reasonably necessary to protect the privacy
6 of the petitioner and will not unduly prejudice the prosecution
7 or the defense of the action.

8 In considering a petition requesting a "jane doe" or "john
9 doe" filing, the court shall weigh the petitioner's interest in
10 privacy against the public interest in disclosure.

11 The court, only after finding clear and convincing evidence
12 that would make public inspection inconsistent with the purpose
13 of this section, may seal from the public all documents or
14 portions of documents, including all subsequently filed
15 documents, that would identify the petitioner or contain
16 sufficient information from which the petitioner's identity
17 could be discerned or inferred. Access to identifying
18 information may be permitted to law enforcement or other
19 authorized authority, in the course of conducting official
20 business, to effectuate service, enforcement, or prosecution, or
21 as ordered by the courts.



1 (f) Upon petition to a district court under this section,
2 the court may temporarily restrain the person or persons named
3 in the petition from harassing the petitioner or health care
4 worker upon a determination that there is probable cause to
5 believe that a past act or acts of harassment have occurred or
6 that a threat or threats of harassment may be imminent. The
7 court may issue an ex parte temporary restraining order either
8 in writing or orally; provided that oral orders shall be reduced
9 to writing by the close of the next court day following oral
10 issuance.

11 (g) A temporary restraining order that is granted under
12 this section shall remain in effect at the discretion of the
13 court for a period not to exceed ninety days from the date the
14 order is granted, including, in the case where a temporary
15 restraining order restrains any party from harassing a minor,
16 for a period extending to a date after the minor has reached
17 eighteen years of age. A hearing on the petition to enjoin
18 harassment shall be held within fifteen days after the temporary
19 restraining order is granted. If service of the temporary
20 restraining order has not been effected before the date of the
21 hearing on the petition to enjoin, the court may set a new date



1 for the hearing; provided that the new date shall not exceed
2 ninety days from the date the temporary restraining order was
3 granted.

4 The parties named in the petition may file or give oral
5 responses explaining, excusing, justifying, or denying the
6 alleged act or acts of harassment. The court shall receive all
7 evidence that is relevant at the hearing and may make
8 independent inquiry.

9 If the court finds by clear and convincing evidence that
10 harassment as defined in paragraph (1) of that definition
11 exists, it may enjoin for no more than three years further
12 harassment of the petitioner[7] or health care worker, or that
13 harassment as defined in paragraph (2) of that definition
14 exists, it shall enjoin for no more than three years further
15 harassment of the petitioner[7] or health care worker,
16 including, in the case where any party is enjoined from
17 harassing a minor, for a period extending to a date after the
18 minor has reached eighteen years of age; provided that this
19 subsection shall not prohibit the court from issuing other
20 injunctions against the named parties even if the time to which
21 the injunction applies exceeds a total of three years.



1 Any order issued under this section shall be served upon
2 the respondent. For the purposes of this section, "served"
3 means actual personal service, service by certified mail, or
4 proof that the respondent was present at the hearing at which
5 the court orally issued the injunction.

6 Where service of a restraining order or injunction has been
7 made or where the respondent is deemed to have received notice
8 of a restraining order or injunction order, any knowing or
9 intentional violation of the restraining order or injunction
10 order shall subject the respondent to the provisions in
11 subsection (i).

12 Any order issued shall be transmitted to the chief of
13 police of the county in which the order is issued by way of
14 regular mail, facsimile transmission, or other similar means of
15 transmission.

16 (h) The court may grant the prevailing party in an action
17 brought under this section costs and fees, including attorney's
18 fees.

19 (i) A knowing or intentional violation of a restraining
20 order or injunction issued pursuant to this section is a
21 misdemeanor. The court shall sentence a violator to appropriate



1 counseling and shall sentence a person convicted under this
2 section as follows:

3 (1) For a violation of an injunction or restraining order
4 that occurs after a conviction for a violation of the
5 same injunction or restraining order, the person shall
6 be sentenced to a mandatory minimum jail sentence of
7 not less than forty-eight hours; and

8 (2) For any subsequent violation that occurs after a
9 second conviction for violation of the same injunction
10 or restraining order, the person shall be sentenced to
11 a mandatory minimum jail sentence of not less than
12 thirty days.

13 The court may suspend any jail sentence, except for the
14 mandatory sentences under paragraphs (1) and (2), upon
15 appropriate conditions, such as that the defendant remain
16 alcohol- and drug-free, conviction-free, or complete court-
17 ordered assessments or counseling. The court may suspend the
18 mandatory sentences under paragraphs (1) and (2) where the
19 violation of the injunction or restraining order does not
20 involve violence or the threat of violence. Nothing in this
21 section shall be construed as limiting the discretion of the



1 judge to impose additional sanctions authorized in sentencing
2 for a misdemeanor offense.

3 (j) Nothing in this section shall be construed to prohibit
4 constitutionally protected activity.

5 (k) Nothing in this section shall be construed to:

6 (1) Create, expand, diminish, alter, or modify the duty,
7 if any, of a person who employs or contracts with
8 health care workers to provide a safe workplace for
9 health care workers;

10 (2) Limit any other rights or remedies available to health
11 care workers or persons who employ or contract with
12 health care workers under law, including but not
13 limited to the seeking of injunctive relief through
14 methods other than the procedures set forth in this
15 section;

16 (3) Affect or in any way limit the exclusivity provision
17 in chapter 386; or

18 (4) Limit the rights of employees to organize pursuant to
19 article XIII, sections 1 and 2, of the Hawaii State
20 Constitution or sections 377-4 and 380-2.



1 (1) No civil liability shall attach or be imposed upon any
2 person who employs or contracts with health care workers for:

3 (1) Initiating a proceeding under this section; or

4 (2) Investigating any alleged act or threat of harassment
5 in the health care facility for purposes of
6 determining the feasibility of or initiating a
7 proceeding under this section.

8 (m) A person who employs or contracts with health care
9 workers, or the person's agent who acts in accordance with this
10 section, shall be presumed to be acting in good faith and,
11 unless lack of good faith is shown by clear and convincing
12 evidence, shall be immune from civil liability for actions taken
13 under this chapter. No person who employs or contracts with
14 health care workers, or agent of the person, who fails to use
15 the procedures authorized by this section shall be liable for
16 negligence nor shall evidence of a failure to use those
17 procedures be admissible as evidence of negligence.

18 (n) No civil liability shall attach or be imposed upon any
19 health care worker or witness for:

20 (1) Participating in an investigation for purposes of
21 initiating a proceeding under this section; provided



1 that this immunity shall not apply to an action taken
2 with malicious intent or any statement made with
3 knowledge of its falsity; or
4 (2) Presenting statements or evidence in a judicial
5 proceeding under this section."

6 SECTION 3. Statutory material to be repealed is bracketed
7 and stricken. New statutory material is underscored.

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



Report Title:

Health Care Workers; Acts of Violence; Report; Law Enforcement;
Temporary Restraining Orders

Description:

Allows a person who employs or contracts with a health care worker who suffers an act of violence at the health care facility to report the event to law enforcement and petition for a temporary restraining order and injunction under certain circumstances. (SD1)

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

