

JAN 15 2025

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# A BILL FOR AN ACT

RELATING TO HEALTHY WORKPLACES.

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

1           SECTION 1. The legislature finds that the social and  
2 economic well-being of the State is dependent upon healthy and  
3 productive employees. The legislature further finds that  
4 workplace bullying, mobbing, and harassment can inflict serious  
5 harm upon targeted employees, including feelings of shame and  
6 humiliation, severe anxiety, depression, suicidal tendencies,  
7 cardiovascular disease, and symptoms consistent with post-  
8 traumatic stress disorder. The legislature also finds that  
9 abusive work environments can have serious consequences for  
10 employers, including reduced employee productivity and morale,  
11 higher turnover and absenteeism rates, and increases in medical  
12 and workers' compensation claims.

13           The legislature finds, however, that if employees who have  
14 been subjected to abusive treatment at work cannot establish  
15 that the abusive behavior was motivated by race, color, sex,  
16 sexual orientation, national origin, age, or other category  
17 protected under existing employment discrimination laws, the



1 targeted employee is unlikely to be legally protected against  
2 the abusive treatment. The legislature finds that legal  
3 protection from abusive work environments should not be limited  
4 to behavior grounded in protected class status. Furthermore,  
5 existing workers' compensation laws and common-law tort actions  
6 are inadequate to discourage this behavior or to provide  
7 adequate relief to employees who have been harmed by abusive  
8 work environments.

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

12 **"PART . HEALTHY WORKPLACE ACT**

13 **§378-A Definitions.** As used in this part:

14 "Abusive conduct" means unwelcome, degrading, and  
15 dehumanizing conduct that is severe or pervasive enough to  
16 create a work environment that a reasonable person would  
17 consider intimidating, hostile, or abusive. "Abusive conduct"  
18 may be perpetrated by one or more persons. "Abusive conduct"  
19 does not include petty slights, annoyances, and isolated  
20 incidents, unless serious.



1 "Employee" means any person who renders services to an  
2 employer, contractor, or any other entity and receives  
3 compensation for those services. "Employee" includes full- and  
4 part-time paid employees, temporary employees, contracted  
5 employees, and independent contractors.

6 "Employer" has the same meaning as defined in section  
7 378-1.

8 "Representative employee" means an employee in a  
9 leadership, management, or legal position whose responsibility  
10 is to advise on, oversee, or enforce organizational policies.

11 **§378-B Work environment; abusive conduct; employer**  
12 **responsibilities; retaliation; prohibited.** (a) It shall be  
13 unlawful for any employer or employee to subject an employee to  
14 abusive conduct. Factors to be considered in determining  
15 whether conduct qualifies as abusive include but are not limited  
16 to:

- 17 (1) The nature, frequency, and duration of the conduct;  
18 (2) The context in which the conduct occurs; and  
19 (3) A review of the totality of the circumstances.



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1 (b) Employers and representative employees shall take all  
2 reasonable preventative and responsive measures to ensure a  
3 healthy work environment free of abusive conduct, including:

4 (1) Acknowledging and responding to complaints of abusive  
5 conduct within a reasonable time frame appropriate to  
6 the level of urgency;

7 (2) Establishing and implementing a transparent and timely  
8 complaint process that includes a prompt, thorough,  
9 and unbiased fact-finding investigation and issuance  
10 of a timely and accurate report of findings;

11 (3) Establishing and implementing a transparent  
12 disciplinary process commensurate with the severity of  
13 the abusive conduct within a reasonable time frame, if  
14 applicable, including taking the following  
15 disciplinary action against the employee who was found  
16 to have engaged in abusive conduct:

17 (A) Coaching;

18 (B) Counseling;

19 (C) Issuance of a warning;

20 (D) Removal of supervisory duties;

21 (E) Termination; or



- 1 (F) Other disciplinary action;
- 2 (4) Maintaining accurate records of complaints, findings,
- 3 and disciplinary actions;
- 4 (5) Before December 31, 2025, adopting, distributing,
- 5 posting, and otherwise providing all employees with a
- 6 written healthy workplace policy providing protections
- 7 for employees against all forms of abusive conduct,
- 8 including an anti-retaliation policy and description
- 9 of methods to report or file a complaint of abusive
- 10 conduct or retaliation, consistent with this section
- 11 and all applicable laws. The written policy shall be
- 12 distributed to employees on a regular basis; and
- 13 (6) Training all employees on the healthy workplace
- 14 policy.
- 15 (c) It shall be unlawful for an employer or representative
- 16 employee to:
- 17 (1) Engage in, offer, or require an employee to engage in
- 18 mediation or arbitration of an abusive conduct
- 19 complaint before the employee retains legal counsel;



1 (2) Enter into, offer, or require an employee to enter  
2 into a non-disclosure or non-disparagement agreement  
3 related to an abusive conduct complaint; or

4 (3) Take adverse employment action against an employee who  
5 opposes a violation of this section or exercises a  
6 right under this section, including:

7 (A) Forced resignation;

8 (B) Termination;

9 (C) Demotion;

10 (D) Unfavorable reassignment;

11 (E) Failure to promote;

12 (F) Disciplinary action;

13 (G) Reduction in compensation;

14 (H) Constructive discharge; or

15 (I) Other similar actions.

16 **§378-C Penalty.** Any employer who is in violation of  
17 subsection 378-B(b) (5) or (6) shall be fined not more than \$100  
18 for each violation.

19 **§378-D Private cause of action.** (a) A person who alleges  
20 a violation of this part may bring a civil action against the  
21 employer or employee in violation for appropriate injunctive



1 relief, or damages, or both within three years after the  
2 occurrence of the last act that constitutes the alleged  
3 violation of this part.

4 (b) An action commenced pursuant to subsection (a) may be  
5 brought in the circuit court for the circuit where the alleged  
6 violation occurred, where the complainant resides, or where the  
7 person against whom the civil complaint is filed resides or has  
8 a principal place of business.

9 (c) A complainant bringing a civil action pursuant to  
10 subsection (a) may proceed using a pseudonym for the true name  
11 of the complainant and may exclude or redact from all pleadings  
12 and documents filed in the action other identifying  
13 characteristics of the complainant. In cases where a  
14 complainant proceeds using a pseudonym:

15 (1) A party excluding or redacting identifying  
16 characteristics as provided in this subsection shall  
17 file with the court and serve upon all other parties a  
18 confidential information form that includes the  
19 complainant's name and other identifying  
20 characteristics excluded or redacted. The court shall



1 keep the complainant's name and excluded or redacted  
2 characteristics confidential;

3 (2) All other parties and their agents and attorneys shall  
4 use the pseudonym in all pleadings, discovery  
5 documents, and other documents filed or served in the  
6 action, and at hearings, trial, and other court  
7 proceedings that are open to the public;

8 (3) Any party filing a pleading, discovery document, or  
9 other document in the action shall exclude or redact  
10 any identifying characteristics of the complainant  
11 from the pleading, discovery document, or other  
12 document, except for a confidential information form  
13 filed pursuant to this subdivision; and

14 (4) All court decisions, orders, petitions, discovery  
15 documents, and other documents shall be worded to  
16 protect the name or other identifying characteristics  
17 of the complainant from public revelation.

18 The responsibility for excluding or redacting the name or  
19 identifying characteristics of the complainant from all  
20 documents filed with the court rests solely with the parties and  
21 their attorneys. Nothing in this subsection requires the court





1 to review pleadings or other papers for compliance with this  
2 provision.

3       **§378-E Remedies ordered by court.** (a) Except as provided  
4 in section 378-C, a court, in rendering a judgment in an action  
5 brought pursuant to this part, shall order, as the court  
6 considers appropriate:

7       (1) Compensatory damages, including economic and  
8       noneconomic damages;

9       (2) Punitive damages; provided that the violation is  
10       extreme or egregious;

11       (3) Injunctive relief to enjoin the defendant from  
12       continuing any violation of this part;

13       (4) Restorative measures;

14       (5) Any other relief the court considers appropriate; or

15       (6) Any combination of these remedies;

16 provided that the total amount of damages awarded to the  
17 complainant shall be the greater of the aggregate of all damages  
18 deemed appropriate by the court pursuant to this subsection or  
19 \$5,000 for each violation of subsection 378-B(a), (b), or (c),  
20 for a maximum of \$15,000.



1 (b) In addition to any relief provided for in subsection  
2 (a), the court shall award the prevailing party the costs of  
3 litigation, including reasonable attorney's fees; provided that  
4 the prevailing party is not the employer.

5 **§378-F Collective bargaining and confidentiality rights,**  
6 **takes precedence.** (a) This part shall not be construed to  
7 diminish or impair the rights of a person under any collective  
8 bargaining agreement, nor to permit disclosures which would  
9 diminish or impair the rights of any person to the continued  
10 protection of confidentiality of communications where statute or  
11 common law provides such protection.

12 (b) Where a collective bargaining agreement provides an  
13 employee rights and remedies superior to the rights and remedies  
14 provided in this part, contractual rights shall supersede and  
15 take precedence over the rights, remedies, and procedures  
16 provided in this part. Where a collective bargaining agreement  
17 provides inferior rights and remedies to those provided in this  
18 part, the provisions of this part shall supersede and take  
19 precedence over the rights, remedies, and procedures provided in  
20 collective bargaining agreements.



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1           **§378-G Rules.** The department of labor and industrial  
2 relations shall adopt rules in accordance with chapter 91 to  
3 implement this part."

4           SECTION 3. In codifying the new sections added by  
5 section 2 of this Act, the revisor of statutes shall substitute  
6 appropriate section numbers for the letters used in designating  
7 the new sections in this Act.

8           SECTION 4. This Act does not affect rights and duties that  
9 matured, penalties that were incurred, and proceedings that were  
10 begun before its effective date.

11           SECTION 5. This Act shall take effect upon its approval.

12

INTRODUCED BY: *Joseline R. Anaya*



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**Report Title:**

Employment Practices; Healthy Workplace Act; Abusive Conduct; Prohibition; Penalty; Private Cause of Action; Remedies; Rules

**Description:**

Prohibits any employer or employee from subjecting an employee to abusive conduct. Requires employers and certain employees to take all reasonable preventative and responsive measures to ensure a safe work environment free of abusive conduct.

Prohibits employers and certain employees from taking retaliatory actions against employees who engage in certain protected acts. Establishes a penalty, private cause of action, and remedies. Requires the Department of Labor and Industrial Relations to adopt rules.

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

