

ACT 204

H.B. NO. 1665

A Bill for an Act Relating to Occupational Safety and Health.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 396-8, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

“(e) Discharge or discrimination against [employee] employees for exercising [rights] any right under this chapter is prohibited. In consideration of this prohibition:

- (1) No person shall discharge, suspend or otherwise discriminate in terms and conditions of employment against any employee by reason of:
 - (A) The employee’s failure or refusal to operate or handle any machine, device, apparatus, or equipment which is in any unsafe condition; or

- (B) The employee's failure or refusal to engage in unsafe practices in violation of this chapter or of any standard, rule, regulation, citation or order issued under the authority of this chapter; [or
 - (C) The employee's failure or refusal to operate or handle any machine, device, apparatus, or equipment in violation of this chapter or of any standard, rule, regulation, citation or order issued under the authority of this chapter; or
 - (D) The employee's filing a complaint, having instituted or causing to be instituted any proceeding under or related to this chapter, or the employee's intent to testify in any such proceeding or otherwise acting to exercise rights under this chapter for oneself or others.]
- (2) Upon discretion of the director or request, names of complainants may be withheld from the employer[.];
 - (3) Within thirty days of the alleged act of discrimination, the employee shall file a complaint with the department setting forth the circumstances thereof.
 - (4) The director shall investigate said complaint and if the director finds discrimination in violation of this chapter, the director shall order the employer to provide necessary relief to the employee. This relief may include rehiring, reinstatement to former job with back pay and restoration of seniority.]
 - (3) No person shall discharge or in any manner discriminate against any employee because the employee has filed any complaint or instituted or caused to be instituted any proceeding under or related to this chapter, or has testified or intends to testify in any such proceeding, or acting to exercise or exercised on behalf of the employee or others any right afforded by this chapter;
 - (4) Any employee who believes that there has been a discharge or discrimination against the employee by any person in violation of this subsection may, within sixty days after the violation occurs, file a complaint with the director alleging unlawful discharge or discrimination and setting forth the circumstances thereof;
 - (5) Upon receipt of the complaint, the director shall investigate to determine if a discharge or discrimination in violation of this subsection has occurred;
 - (6) If upon investigation the director determines that the provisions of this subsection have been violated, the director shall order the employer to provide all appropriate relief to the employee, including rehiring or reinstating the employee to the former position with back pay and restoration of seniority;
 - (7) Within ninety days of receipt of a complaint filed under this subsection, unless extended by the director, the director shall notify the employee of the final determination and any subsequent action the department will take to resolve the complaint; and
 - (8) Nothing in this subsection shall preclude any employee or representative of an employee from simultaneously pursuing a cause of action for injunctive relief or any other remedy provided by law."

SECTION 2. Statutory material to be repealed is bracketed. New statutory material is underscored.

ACT 204

SECTION 3. This Act shall take effect upon its approval.

(Approved June 10, 1993.)