

JAN 21 2011

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# A BILL FOR AN ACT

RELATING TO WORKPLACE PRACTICES.

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

1           SECTION 1. The legislature finds that healthy and  
2 productive employees are the cornerstones of successful  
3 businesses and a prosperous economy. Unfortunately, many  
4 employees are subjected to unhealthy, abusive work environments  
5 where workplace bullying, abuse, and harassment are prevalent  
6 occurrences, independent of membership in a protected group. As  
7 a result, these employees may experience physical and  
8 psychological harm, which negatively impacts job performance and  
9 job safety, often manifesting in injuries and illnesses. The  
10 National Institute for Occupational Safety and Health recognizes  
11 general harassment, including workplace bullying, as a form of  
12 workplace violence.

13           Workplace bullying has been defined by the National  
14 Institute for Occupational Safety and Health as the repeated  
15 intimidation, slandering, social isolation, or humiliation by  
16 one or more persons against another. Congress has found that  
17 employee injuries and illness that arise out of work situations  
18 impose a substantial burden on businesses and that these



1 injuries and illnesses can be reduced through the establishment  
2 and enforcement of minimum health and safety standards.  
3 Accordingly, the Hawaii occupational safety and health law  
4 ensures safe and healthful working conditions for all employees  
5 throughout the State. The legislature determines that, in  
6 addition to the current protections under the law, employees  
7 need protection from repeated or severe and egregious health-  
8 impairing mistreatment of one person by another to promote safe  
9 and healthy work environments.

10 The purpose of this Act is to make an abusive work  
11 environment an occupational safety violation.

12 SECTION 2. Chapter 396, Hawaii Revised Statutes, is  
13 amended by adding a new part to be appropriately designated and  
14 to read as follows:

15 "PART . ABUSIVE WORK ENVIRONMENTS

16 §396-A Definitions. As used in this part:

17 "Abusive conduct" means:

- 18 (1) Conduct of an employer or employee in the workplace,  
19 with malice, that a reasonable person would find  
20 hostile, offensive, and unrelated to an employer's  
21 legitimate business interests;



1           (2) Subjection of an employee by the employee's employer  
2           to an abusive work environment; or

3           (3) Retaliation in any manner against an employee because  
4           the employee:

5           (A) Opposed any unlawful safety violation under this  
6           part; or

7           (B) Made a charge, testified, assisted, or  
8           participated in any manner in an investigation or  
9           proceeding under this part, including but not  
10          limited to internal proceedings, arbitration or  
11          mediation proceedings, and legal actions.

12 Abusive conduct may include but is not limited to repeated  
13 infliction of verbal abuse, such as the use of derogatory  
14 remarks, insults, and epithets; verbal or physical conduct that  
15 a reasonable person would find threatening, intimidating, or  
16 humiliating; the gratuitous sabotage or undermining of a  
17 person's work performance; or interference with subsequent work  
18 opportunities by defamatory evaluation. A single act normally  
19 may constitute abusive conduct if the act is especially severe  
20 and egregious; provided that the severity, nature, and frequency  
21 of any conduct objected to shall be considered in determining  
22 whether acts constitute abusive conduct.



1 "Abusive work environment" means a workplace where an  
2 employee is subjected to abusive conduct that is so severe that  
3 it causes physical or psychological harm to the employee.

4 "Conduct" means all forms of behavior, including acts and  
5 omissions of acts.

6 "Constructive discharge" means abusive conduct that causes  
7 the employee to resign, and where prior to resigning, the  
8 employee brings to the employer's attention the existence of the  
9 abusive conduct, and the employer fails to take reasonable steps  
10 to eliminate the abusive conduct.

11 "Economic harm" means any material pecuniary loss,  
12 including the loss of earnings or other benefits related to  
13 employment, to the extent recovery is allowed under the law.

14 "Malice" means the desire to see another person suffer  
15 psychological, physical, or economic harm, without legitimate  
16 cause or justification. Malice may be inferred from the  
17 presence of one or more factors such as outward expressions of  
18 hostility, harmful conduct inconsistent with an employer's  
19 legitimate business interests, a continuation of harmful,  
20 illegitimate conduct after the complainant requests that it  
21 cease or demonstrates outward signs of emotional or physical



1 distress in the face of the conduct, or attempts to exploit the  
2 complainant's known psychological or physical vulnerability.

3 "Negative employment decision" means a termination,  
4 constructive discharge, demotion, unfavorable reassignment,  
5 refusal to promote, disciplinary action, or interference with  
6 subsequent work opportunities by defamatory evaluation.

7 "Physical harm" means the material impairment of a person's  
8 physical health or bodily integrity, as documented by a  
9 competent physician or supported by competent expert evidence at  
10 trial.

11 "Psychological harm" means the material impairment of a  
12 person's mental health, as documented by a competent  
13 psychologist, psychiatrist, or psychotherapist, or supported by  
14 competent expert evidence at trial.

15 **§396-B Abusive conduct as an occupational safety and**  
16 **health violation; workers' compensation.** Abusive conduct shall  
17 constitute an occupational safety and health violation under  
18 this part, as well as a workers' compensation claim as provided  
19 in section 396-G.

20 **§396-C Liability; limitations.** An employee who is  
21 subjected to abusive conduct shall have a cause of action under  
22 this part for emotional distress against:



1 (1) Another employee who is claimed to have made the  
2 abusive conduct; provided that the employer shall be  
3 vicariously liable for the acts of the employee who is  
4 claimed to have made the abusive conduct; provided  
5 that the employer shall be vicariously liable up to  
6 \$25,000 under this paragraph; or

7 (2) The employer:

8 (A) Who directly commits abusive conduct; provided  
9 that the employer shall not be liable for  
10 punitive damages if the abusive conduct did not  
11 result in a negative employment decision; or

12 (B) Whose workplace is an abusive work environment.

13 **§396-D Affirmative defenses.** It shall be an affirmative  
14 defense to an action claiming an abusive work environment that:

15 (1) The employer exercised reasonable care to prevent and  
16 promptly correct the abusive conduct and the aggrieved  
17 employee unreasonably failed to take advantage of  
18 appropriate preventive or corrective opportunities  
19 provided by the employer; provided that the defense is  
20 not available when abusive conduct culminates in a  
21 negative employment decision; and



1           (2) The complaint is grounded primarily upon a negative  
2           employment decision made consistent with an employer's  
3           legitimate business interests, including a termination  
4           or demotion based on the aggrieved employee's poor  
5           performance, or that the complaint is grounded  
6           primarily upon an employer's reasonable investigation  
7           of potentially illegal or unethical activity.

8           **§396-E Statute of limitations.** An action under this part  
9           shall be commenced no later than three years after the last act  
10          that constitutes or comprises the alleged unlawful safety and  
11          health violation.

12          **§396-F Education.** (a) The department shall develop and  
13          disseminate, at no cost to employers, information on abusive  
14          work environments and the legal consequences that employees or  
15          employers encounter if they contribute to the creation or  
16          perpetuation of abusive work environments.

17          (b) Employers shall be responsible for:

18          (1) Posting or providing the information provided by the  
19          department under subsection (a) in a prominent place  
20          in the workplace that is readily accessible to  
21          employees; and



1           (2) Educating supervisors and employees on abusive work  
2           environments and the legal consequences provided under  
3           this part.

4           **§396-G Remedies.** (a) In addition to an award of damages  
5 under section 396-C, the court may enjoin an employee or  
6 employer from engaging in conduct constituting abusive conduct  
7 and order any other relief that is deemed appropriate, including  
8 but not limited to reinstatement, removal of the offending party  
9 from the complainant's work environment, back pay, front pay,  
10 medical expenses, and attorney's fees.

11           (b) An employee making a claim under section 396-C, may  
12 elect to accept workers' compensation benefits under chapter 386  
13 for a work injury in lieu of bringing an action under this  
14 part. An employee who elects to accept workers' compensation  
15 benefits shall be barred from bringing an action under this part  
16 for the same abusive conduct. For purposes of chapter 386,  
17 emotional distress suffered by an employee shall be deemed to  
18 constitute a work injury.

19           (c) In any action brought under this part, the court, in  
20 addition to any judgment awarded to the plaintiff or plaintiffs,  
21 shall allow costs of the action, including costs or fees of any



1 nature and reasonable attorney's fees, to be paid by the  
2 defendant."

3 SECTION 3. Section 386-1, Hawaii Revised Statutes, is  
4 amended by amending the definition of "work injury" to read as  
5 follows:

6 "Work injury" means a personal injury suffered under the  
7 conditions specified in section 386-3[-] or as provided in  
8 section 396-G."

9 SECTION 4. Chapter 396, Hawaii Revised Statutes, is  
10 amended by designating sections 396-1 through 396-20 as part I,  
11 entitled "General Provisions".

12 SECTION 5. In codifying the new sections added by section  
13 2 of this Act, the revisor of statutes shall substitute  
14 appropriate section numbers for the letters used in designating  
15 the new sections in this Act.

16 SECTION 6. Statutory material to be repealed is bracketed  
17 and stricken. New statutory material is underscored.

18 SECTION 7. This Act shall take effect upon its approval.

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INTRODUCED BY:

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**Report Title:**

Occupational Safety; Abusive Work Environments

**Description:**

Makes abusive conduct against an employee in the workplace a violation of occupational safety and health law.

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

