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# A BILL FOR AN ACT

RELATING TO EMPLOYMENT RELATIONS.

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

1           SECTION 1. Section 378-1, Hawaii Revised Statutes, is  
2 amended by adding a new definition to be appropriately inserted  
3 and to read as follows:

4           "Domestic or sexual violence victim" or "victim" means an  
5 individual who is the victim of domestic or sexual violence as  
6 defined in section 378-71."

7           SECTION 2. Section 378-2, Hawaii Revised Statutes, is  
8 amended to read as follows:

9           "**§378-2 Discriminatory practices made unlawful; offenses**  
10 **defined.** (a) It shall be an unlawful discriminatory practice:  
11 (1) Because of race, sex, sexual orientation, age,  
12 religion, color, ancestry, disability, marital status,  
13 [~~or~~] arrest and court record[+], or domestic or sexual  
14 violence victim status if the domestic or sexual  
15 violence victim provides notice to the victim's  
16 employer of such status or the employer has actual  
17 knowledge of such status:



- 1           (A) For any employer to refuse to hire or employ or  
2           to bar or discharge from employment, or otherwise  
3           to discriminate against any individual in  
4           compensation or in the terms, conditions, or  
5           privileges of employment;
- 6           (B) For any employment agency to fail or refuse to  
7           refer for employment, or to classify or otherwise  
8           to discriminate against, any individual;
- 9           (C) For any employer or employment agency to print,  
10          circulate, or cause to be printed or circulated  
11          any statement, advertisement, or publication or  
12          to use any form of application for employment or  
13          to make any inquiry in connection with  
14          prospective employment, which expresses, directly  
15          or indirectly, any limitation, specification, or  
16          discrimination;
- 17          (D) For any labor organization to exclude or expel  
18          from its membership any individual or to  
19          discriminate in any way against any of its  
20          members, employer, or employees; or
- 21          (E) For any employer or labor organization to refuse  
22          to enter into an apprenticeship agreement as



1 defined in section 372-2; provided that no  
2 apprentice shall be younger than sixteen years of  
3 age;

4 (2) For any employer, labor organization, or employment  
5 agency to discharge, expel, or otherwise discriminate  
6 against any individual because the individual has  
7 opposed any practice forbidden by this part or has  
8 filed a complaint, testified, or assisted in any  
9 proceeding respecting the discriminatory practices  
10 prohibited under this part;

11 (3) For any person, whether an employer, employee, or not,  
12 to aid, abet, incite, compel, or coerce the doing of  
13 any of the discriminatory practices forbidden by this  
14 part, or to attempt to do so;

15 (4) For any employer to violate the provisions of section  
16 121-43 relating to nonforfeiture for absence by  
17 members of the national guard;

18 (5) For any employer to refuse to hire or employ or to bar  
19 or discharge from employment [7] any individual because  
20 of assignment of income for the purpose of satisfying  
21 the individual's child support obligations as provided  
22 for under section 571-52;



- 1           (6) For any employer, labor organization, or employment  
2           agency to exclude or otherwise deny equal jobs or  
3           benefits to a qualified individual because of the  
4           known disability of an individual with whom the  
5           qualified individual is known to have a relationship  
6           or association;
- 7           (7) For any employer or labor organization to refuse to  
8           hire or employ or to bar or discharge from employment,  
9           or withhold pay, demote, or penalize a lactating  
10          employee because [~~an~~] the employee breastfeeds or  
11          expresses milk at the workplace. For purposes of this  
12          paragraph, the term "breastfeeds" means the feeding of  
13          a child directly from the breast; or
- 14          (8) For any employer to refuse to hire or employ or to bar  
15          or discharge from employment, or otherwise to  
16          discriminate against any individual in compensation or  
17          in the terms, conditions, or privileges of employment  
18          of any individual because of the individual's credit  
19          history or credit report, unless the information in  
20          the individual's credit history or credit report  
21          directly relates to a bona fide occupational  
22          qualification under section 378-3(2).



1        (b) For purposes of subsection (a) (1):

2        (1) An employer may verify that an employee is a victim of  
3        domestic or sexual violence by requesting that the  
4        employee provide:

5        (A) A signed written statement from a person listed  
6        below from whom the employee or the employee's  
7        minor child has sought assistance in relation to  
8        the domestic or sexual violence:

9        (i) An employee, agent, or volunteer of a victim  
10       services organization;

11       (ii) The employee's attorney or advocate;

12       (iii) The attorney or advocate of the employee's  
13       minor child;

14       (iv) A medical or other health care professional;  
15       or

16       (v) A member of the clergy; or

17       (B) A police or court record supporting the  
18       occurrence of the domestic or sexual violence;  
19       and

20       (2) An employer may verify an employee's status as a  
21       domestic or sexual violence victim not more than once  
22       every six months following the date the employer:



- 1           (A) Was provided notice by the employee of the
- 2                   employee's status as a domestic or sexual
- 3                   violence victim;
- 4           (B) Has actual knowledge of the employee's status as
- 5                   a domestic or sexual violence victim; or
- 6           (C) Received verification that the employee is a
- 7                   domestic or sexual violence victim;
- 8           provided that where the employee provides verification
- 9                   in the form of a protective order related to the
- 10                  domestic or sexual violence with an expiration date,
- 11                  the employer may not request any further form of
- 12                  verification of the employee's status as a domestic or
- 13                  sexual violence victim until the date of the
- 14                  expiration or any extensions of the protective order,
- 15                  whichever is later."

16           SECTION 3. Chapter 378, Hawaii Revised Statutes, is  
 17 amended as follows:

- 18           1. By amending the title of part VI to read:
- 19                   " [+]PART VI. [}] VICTIMS [~~LEAVE~~ PROTECTIONS"
- 20           2. By designating section 378-71, as a new subpart and
- 21 inserting a title before section 378-71 to read:
- 22                   "                  . GENERAL PROVISIONS"

1           3. By designating sections 378-72 to 378-74 as a new  
2 subpart and inserting a title before section 378-72 to read:

3                           "           . VICTIMS LEAVE"

4           4. Adding a new subpart to read as follows:

5                           "           . REASONABLE ACCOMMODATIONS IN THE WORKPLACE

6           §378- Reasonable accommodations. An employer shall make  
7 reasonable accommodations in the workplace for an employee who  
8 is a victim of domestic or sexual violence, including:

- 9           (1) Changing the contact information, such as telephone  
10           numbers, fax numbers, or electronic-mail addresses, of  
11           the employee;  
12           (2) Screening the telephone calls of the employee;  
13           (3) Restructuring the job functions of the employee;  
14           (4) Changing the work location of the employee;  
15           (5) Installing locks and other security devices; and  
16           (6) Allowing the employee to work flexible hours;

17 provided that an employer shall not be required to make the  
18 reasonable accommodations if they cause undue hardship on the  
19 work operations of the employer.

20           (b) Prior to making the reasonable accommodations under  
21 this section, an employer may verify that an employee is a



1 victim of domestic or sexual violence as provided in section  
2 378-2(b).

3 (c) As used in this section, "undue hardship" means an  
4 action requiring significant difficulty or expense on the  
5 operation of an employer, when considered in light of the  
6 following factors:

7 (1) The nature and cost of the reasonable accommodation  
8 needed under this section;

9 (2) The overall financial resources of the employer; the  
10 number of employees of the employer; and the number,  
11 type, and placement of the work locations of an  
12 employer; and

13 (3) The type of operation of the employer, including the  
14 composition, structure, and functions of the workforce  
15 of the employer, the geographic separateness of the  
16 victim's work location from the employer, and the  
17 administrative or fiscal relationship of the work  
18 location to the employer.

19 §378- Civil actions. Any employee denied reasonable  
20 accommodations by an employer in violation of this subpart may  
21 file a civil action against the employer to enforce this subpart





1 and recover costs, including reasonable attorney's fees,  
2 incurred in the civil action."

3 SECTION 4. Statutory material to be repealed is bracketed  
4 and stricken. New statutory material is underscored.

5 SECTION 5. This Act shall take effect on January 1, 2012.



**Report Title:**

Employment Practices; Domestic Violence

**Description:**

Prohibits employers from discriminating against victims of domestic or sexual violence in certain employment-related situations if the victim notifies the employer of such status or the employer has actual knowledge. Requires an employer to make reasonable accommodations for an employee who is a victim of domestic or sexual violence; provided that it does not cause undue hardship to the operations of the employer. Allows an employer to request verification of an employee's continued status within specified time frames. Creates a civil remedy for employee-victims denied reasonable accommodations. Effective January 1, 2012. (CD1)

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

