



HAWAI‘I CIVIL RIGHTS COMMISSION

KOMIKINA PONO KIWILA O HAWAI‘I

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SEXUAL HARASSMENT IN THE WORKPLACE

WHAT IS SEXUAL HARASSMENT?

Hawai‘i state law* prohibits sexual harassment in the workplace. Sexual harassment is defined as unwanted sexual advances or other unwanted or offensive visual, verbal or physical conduct of a sexual nature. This definition includes many forms of unlawful behavior such as:

- unwanted sexual advances or propositions.
- offering jobs, promotions, or benefits in exchange for sexual favors.
- threatening to demote, fire, or withhold benefits if an employee protests, refuses, or ignores sexual advances.
- visual conduct such as leering, making sexual gestures, or displaying sexually suggestive objects, pictures, cartoons, or posters.
- verbal conduct such as making or using derogatory comments/ epithets/ slurs/ jokes; verbal abuse of a sexual nature such as graphic commentaries about an individual’s body; sexually degrading words used to describe an individual; suggestive or obscene letters/notes/invitations.
- unwanted physical conduct such as touching, assault, impeding or blocking movements.

EXAMPLES OF SEXUAL HARASSMENT

Examples of sexual harassment include:

- an employee is fired or denied a job offer/ promotion/benefit because she/he refused to grant sexual favors.
- an employee quits because she/he can no longer tolerate the sexual harassment or an offensive work environment.
- an employee is exposed to an offensive work environment that includes pervasive and unwelcome visual, verbal or physical conduct of a sexual nature.
- an employee is fired or denied a job offer/ promotion/benefit because she/he complained about the harassment (retaliation for complaining about harassment is illegal, even if it cannot be demonstrated that the harassment actually occurred).

WHO IS PROTECTED BY STATE LAW?

The law protects both female and male employees who are harassed on the basis of their sex. The harassers can be persons of the same or opposite sex.

WHO IS COVERED BY STATE LAW?

Any government or private employer with one or more employees, except for the federal government.

WHO IS LIABLE FOR SUCH CONDUCT?

Employers are liable for acts of sexual harassment committed by themselves, their agents, or their supervisory employees. Additionally, an employer is liable for:

- Sexual harassment committed by other employees if the employer (or its agents, or its supervisory employees) knows (or should have known) of the conduct and fails to take immediate and appropriate action.
- Sexual harassment committed by non-employees if the employer knows, or should have known, of the unlawful conduct and fails to take immediate and appropriate action.

* Hawai‘i Revised Statutes (HRS) Chapters 368 & 378, Part I and Hawai‘i Administrative Rule (HAR) 12-46-109

HOW CAN SEXUAL HARASSMENT BE PREVENTED?

Prevention is the best tool for the elimination of sexual harassment. A program to eliminate sexual harassment is not only good for business, but it is the most practical way to avoid or limit damages. Such programs should include:

- dissemination of a comprehensive policy statement which defines sexual harassment, explains grievance procedures and disciplinary sanctions against harassers, and states the employer's strong disapproval of sexual harassment.
- a grievance procedure which promptly handles complaints with sensitivity, confidentiality, and fairness.
- taking immediate, appropriate corrective action if sexual harassment is found to have occurred.
- training of supervisory personnel about their specific responsibilities, and training of all employees about the sexual harassment policy and grievance procedures.

FILING A DISCRIMINATION COMPLAINT

If you believe that you are a victim of illegal discrimination, you can file a complaint, at no cost, with the Hawai'i Civil Rights Commission (HCRC). You must file within 180 days after the discriminatory practice has occurred. Call the HCRC at 586-8636 to speak to staff. During the HCRC investigation, you should be prepared to:

- present specific dates and facts about the alleged discrimination;
- identify documents and witnesses, if any, that substantiate charges in the complaint; and
- keep the HCRC updated as to your whereabouts and any phone number or address change.

INVESTIGATIONS / DETERMINATIONS

The HCRC conducts objective investigations of complaints. Where possible, the HCRC encourages parties to settle complaints through mediation or pre-determination settlements. If the HCRC determines that there is reasonable cause to believe discrimination has occurred, it will attempt to correct the discrimination and obtain relief through conciliation.

If conciliation is not successful, the HCRC holds administrative hearings on the complaint. If after the hearing it determines there is a violation of law, the commission will issue final orders to correct any discriminatory practices and to prevent their recurrence. The HCRC can order remedies such as:

- requiring the employer to discipline and/or have the harasser work in a different location away from the complainant.
- back pay, reinstatement, or front pay to the complainant who was fired or who quit because of the sexual harassment.
- actions to prevent future sexual harassment, such as requiring the employer to implement an anti-harassment policy, a grievance procedure, and conducting employee training about sexual harassment.
- money damages to compensate for injuries or hard caused by the sexual harassment.
- punitive damages where there is clear and convincing evidence that an employer, deliberately, or maliciously violated the law.

A person does not need an attorney to file a complaint or be represented through the HCRC's investigation or hearing procedures. However, individuals and businesses have the right to be represented by an attorney, at their own expense, if they so choose.

FURTHER INFORMATION:

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This fact sheet is a general summary of the state's sexual harassment laws and does not have the force or effect of administrative rules or Hawai'i laws. If there are any inconsistencies, the rules and Hawai'i law will control.

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