



HAWAI‘I CIVIL RIGHTS COMMISSION

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EFFECTIVE JANUARY 1, 2012, NEW STATE LAW PROHIBITS EMPLOYMENT DISCRIMINATION AGAINST VICTIMS OF DOMESTIC OR SEXUAL VIOLENCE

Act 206*, enacted in 2011, amends our state fair employment law to protect victims of domestic and sexual violence against employment discrimination.

Act 206 also amends the current victims leave law, now titled the victims protection law, to add a requirement that employers make reasonable accommodations for employees who are victims of domestic or sexual violence.

WHO IS PROTECTED BY THE NEW LAW?

The new state law protects employees and prospective employees who are victims of domestic or sexual violence, as well as those who have a minor child who is a victim of domestic or sexual violence. A victim of domestic or sexual violence means a victim of domestic abuse, sexual assault, or stalking.

The law allows an employer to verify that an employee is a victim of domestic or sexual violence by requesting:

- A signed written statement from one of the following persons, from whom the employee or the employee’s minor child has sought assistance in relation to the domestic or sexual violence: 1) an employee, agent, or volunteer of a victim services organization; 2) the employee’s attorney or advocate; 3) the attorney or advocate for the employee’s minor child; 4) a medical or other health care professional; or 5) a member of the clergy.

OR

- A police or court record supporting the occurrence of the domestic or sexual violence.

An employer may verify that the employee is a victim of domestic or sexual violence not more than once every six months after being put on notice of the employee’s status as a victim of domestic or sexual violence. An employer can be put on notice either by having actual knowledge of the employee’s status of being a victim of domestic or sexual violence or by receiving written verification that the employee is a victim of domestic or sexual violence. However, if the employee provides verification of victim status in the form of a protective order, the employer may not request any further form of verification until the date of the expiration of the protective order, or any extension, whichever is later.

WHAT KIND OF DISCRIMINATION IS PROHIBITED?

Effective January 1, 2012, it is illegal for an employer to “refuse to hire or employ or to bar or discharge from employment, or otherwise to discriminate against any individual in compensation or in the terms, conditions, or privileges of employment ...” based on domestic or sexual violence victim status. The law also prohibits discrimination by employment agencies and labor organizations.

Refusal to make a reasonable accommodation for a victim of domestic or sexual violence, including denial of leave as a reasonable accommodation, may be prohibited discrimination under Hawai‘i Revised Statutes § 378-2.

* Act 206, 2011 Session, amending Hawai‘i Revised Statutes chapter 378, part I, §378-2, and part VI.
http://www.capitol.hawaii.gov/session2011/bills/GM1310_.PDF

ARE EMPLOYERS REQUIRED TO PROVIDE LEAVE AND REASONABLE ACCOMMODATIONS FOR VICTIMS OF DOMESTIC OR SEXUAL VIOLENCE?

Hawai'i's current victims leave law requires employers to allow an employee who is a victim or the parent of a minor child who is a victim of domestic or sexual violence to take unpaid leave to seek medical attention, obtain services from a victim services organization, obtain psychological or other counseling services, temporarily or permanently relocate, or to take legal action, including preparing for or participating in any civil or criminal legal proceeding related to or resulting from the domestic or sexual violence. Large employers (who have ≥ 50 employees) are required to give up to 30 days of unpaid leave per calendar year. Small employers (who have ≤ 49 employees) are required to give up to five days of unpaid leave per calendar year.

The new law requires employers to make reasonable accommodations for the safety of victims of domestic and sexual abuse.

Examples of reasonable accommodations include:

- Changing contact information, such as telephone numbers, fax numbers, or e-mail addresses.
- Screening telephone calls.
- Restructuring job functions.
- Changing work location.
- Installing locks or other security measures.
- Allowing flexible or modified work schedules.

An employer is not required to make a reasonable accommodation if it would cause an undue hardship on its work operations. "Undue hardship" means the requested reasonable accommodation would impose significant difficulty or expense to the employer, taking into consideration the following factors:

- The nature and cost of the reasonable accommodation.
- The financial resources of the employer, the number of employees, and the number, type, and placement of the employer's workplaces.
- The type of operation of the employer, including the composition, structure, and functions of the workforce, geographic location of the employee's work location, and the relationship of the work location to the employer.

When an employee who is a victim of domestic or sexual violence requests an accommodation, an employer should engage in an interactive process with the employee to find an effective and workable reasonable accommodation.

FOR MORE INFORMATION, CONTACT:

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