



HAWAI‘I CIVIL RIGHTS COMMISSION

KOMIKINA PONO KIWILA O HAWAI‘I

HAWAI‘I LAW* PROHIBITS DISCRIMINATION BASED ON SEXUAL ORIENTATION†, GENDER IDENTITY OR GENDER EXPRESSION‡ IN EMPLOYMENT, HOUSING AND PUBLIC ACCOMMODATIONS

EMPLOYMENT:

In 1991 the legislature made it unlawful to discriminate in employment because of a person’s sexual orientation. Most recently, in 2011, the legislature clarified that sex discrimination in employment includes discrimination based on gender identity or expression. It is illegal for an employer§ or labor organization, based on a person’s sexual orientation or gender identity or expression, to:

- refuse to hire, fail to promote or discharge from employment
- exclude or expel from membership or refuse to enter into an apprenticeship agreement
- harass a person or retaliate against that person for complaining about illegal discrimination
- print or circulate an advertisement which expresses such limitations, specifications, or discrimination

Example: You cannot be fired for changing your gender identity.

What are the obligations of employers regarding bathrooms, showers and locker rooms?

All employees have a right to safe and appropriate restroom and locker room facilities. This includes the right to use a restroom or locker room that corresponds to the employee’s gender identity, regardless of the employee’s assigned sex at birth. In addition, where possible, an employer should provide an easily accessible unisex single stall bathroom for use by any employee who desires increased privacy, regardless of the underlying reason. A private restroom of this type can also be used by an employee who does not want to share a restroom with a transgender co-worker. However, use of a unisex single stall restroom should always be a matter of choice. No employee should be forced to use one either as a matter of policy or due to continuing harassment in a gender-appropriate facility.

* Hawaii Revised Statutes Chapters 378, 515 and 489

† Sexual Orientation is defined as having a preference for heterosexuality, homosexuality, or bisexuality, having a history of any one or more of these preferences, or being identified with any one or more of these preferences.

‡ **Gender identity or expression** includes a person’s actual or perceived gender, as well as a person’s gender identity, gender related self-image, gender-related appearance, or gender-related expression, regardless of whether that gender identity, gender related self-image, gender-related appearance, or gender related expression is different from that traditionally associated with the person’s sex at birth.

§ Religious institutions or organizations may give preference to persons of the same religion or may make a selection calculated to promote that institution’s religious principles.

HOUSING:

In 2005 the legislature extended protections against sexual orientation discrimination to state fair housing laws. It also clarified that discrimination based on sex includes discrimination based on gender identity or expression. It is illegal for an owner or anyone else engaging in a real estate transaction**, because of a person's gender identity, expression, or sexual orientation to:

- refuse to negotiate or engage in a real estate transaction
- represent that a property is not available for inspection, sale, rental or lease when it is in fact available
- print, circulate, publish, post or mail an advertisement or use an application for a real estate transaction that has an intent to make a limitation.

Example: A landlord cannot refuse to rent to you because you and your partner are of the same sex.

PUBLIC ACCOMMODATIONS:

In 2006 the legislature added sexual orientation to its laws regarding public accommodations. It also clarified that sex discrimination in places of public accommodation includes discrimination based on gender identity or expression. It is illegal to deny a person the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of a place of public accommodation on the basis of a person's sexual orientation or gender identity or expression.

Example: You can not be refused service at a restaurant because you are gay or transgendered.

If you believe you have been subjected to discrimination and want to file a complaint, or if you want additional information, contact:

Example: A transgendered person has the right to use a restroom or locker room that corresponds to the person's gender identity, regardless of the person's assigned sex at birth.

FURTHER INFORMATION:

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This fact sheet is a general summary of the state's sexual orientation, gender identity or gender expression 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.

Updated and revised: 7/5/2017 (2023)

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