



HAWAI‘I CIVIL RIGHTS COMMISSION

KOMIKINA PONO KIWILA O HAWAI‘I

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MINUTES

Hawai‘i Civil Rights Commission Office

via Zoom

January 25, 2024

1:00 p.m.

Present: Chair Liann Ebesugawa, Commissioner William Puette, Commissioner Jon Matsuoka, Commissioner Arsima Muller, Commissioner Joan Lewis

Staff: Executive Director Marcus Kawatachi, Chief Counsel Constance Yonashiro, Deputy Executive Director Heather McVay, Adjudications Secretary Sandy Yoshimura, Enforcement Attorney Joey Badua

Guest: Peter Fritz

Chair Ebesugawa called the meeting to order.

Approval of Minutes

The Commissioners reviewed the draft minutes of the September 19, 2023, and October 10, 2023 meetings. For the draft minutes of the September 19 meeting, the first sentence on page 1 was corrected to read, “Chair Ebesugawa called the meeting to order at 3:02 pm and noted taking agenda items out of order.” For the draft minutes of the October 10 meeting, two sentences on page 2 were corrected to read, “Pursuant to the request, Commissioner Puette moved for a vote, which was seconded by Commissioner Matsuoka. With there being no objection, the motion was approved.” With these corrections, the minutes were approved.

Executive Director’s Report

Executive Director (ED) Marcus Kawatachi presented an FY 2023 HCRC Mediation Program year-to-date summary.

Summary & Details (7/1/23 through 1/25/24)

| | |
|------------------|-------|
| Referrals | 13 |
| Dispositions: | 9 |
| Settlements: | 5 |
| Non-agreements: | 4 |
| Settlement Rate: | 55.6% |

Dual-filed (EEOC/HCRC and HUD/HCRC) settlements: 3
 State-only settlements: 2

Employment cases settled: 3
 Housing cases settled: 2

Dispositions by Mediation Center

| | | |
|------------------------------------|------------|--------------------------------|
| Mediation Center of the Pacific | 2/2 | (settlement rate 100%) |
| Mediation Services of Maui | | |
| Private Mediators | 1/2 | (settlement rate 50%) |
| Ku'ikahi Mediation Services (Hilo) | | |
| West Hawaii Mediation Center | | |
| Kauai Economic Opportunity, Inc. | | |
| Hawai'i Civil Rights Commission | 2/5 | (settlement rate 40%) |
| OVERALL | 5/9 | (settlement rate 55.6%) |

ED Kawatachi also presented a data and production report showing caseload data through January 25, 2024.

As of January 25, 2024, the written report showed 349 open cases, an increase of 3 cases from the number reported as of September 19, 2023.

Of the 349 open investigation cases, 1 (0.3%) was filed in 2017, 5 (1.4%) in 2018, 20 (5.7%) in 2019, 29 (8.3%) in 2020, 48 (13.8%) in 2021, 84 (24.1%) in 2022, and 162 (46.4%) in 2023.

ED Kawatachi reported a breakdown of the status of the open cases by type of case and investigation stage.

| | 2017 | 2018 | 2019 | 2020 | 2021 | 2022 | 2023 | Total |
|----------------------|----------|----------|-----------|-----------|-----------|-----------|------------|------------|
| Housing Cases | 0 | 0 | 1 | 1 | 4 | 15 | 55 | 76 |
| Response Monitoring | 0 | 0 | 7 | 16 | 28 | 53 | 74 | 179 |
| Mediation | 0 | 0 | 3 | 7 | 8 | 6 | 6 | 30 |
| Pending Assignment | 0 | 0 | 2 | 1 | 6 | 7 | 7 | 23 |
| Active Investigation | 1 | 5 | 7 | 4 | 2 | 3 | 20 | 42 |
| TOTAL | 1 | 5 | 20 | 29 | 48 | 84 | 162 | 349 |

The report indicated no new subpoena enforcement litigation.

Case Aging

- 30.4 % of all cases are 2 years or older
- 11.5 % of all cases are over 18 months, but less than 2 years old
- 14.0 % of all cases are over 12 months, but less than 18 months old
- 21.5 % of all cases are over 6 months but less than 12 months
- 22.6 % of all cases are 6 months or less

The report also covered the year-to-date data for the past five fiscal years:

| Category | 7/1/19 – 1/25/20 | 7/1/20 – 1/25/21 | 7/1/21 – 1/25/22 | 7/1/22 – 1/25/23 | 7/1/23 – 1/25/24 |
|----------------------|-----------------------------|-----------------------------|-----------------------------|-----------------------------|-----------------------------|
| PCQ Received | 348 | 249 | 282 | 268 | 321 |
| Intake Decision | 399 | 213 | 243 | 257 | 321 |
| Complaint Filed | 196 | 116 | 111 | 97 | 103 |
| Investigation Closed | 135 | 117 | 160 | 107 | 121 |
| Notice of Cause | 5 | 7 | 14 | 6 | 2 |
| Enforcement Closure | 3 | 4 | 6 | 1 | 3 |

Chief Counsel’s Report

- Update on ICA summary disposition of *Morning Hill Foods, LLC dba Mana Bu’s v. The Hawaii Civil Rights Commission, Civil No. 18-100034-01*, affirming the circuit court’s decision.
- Update on docketed cases. ED’s attorney has informed adjudications that the parties in the two cases currently docketed for hearing have agreed to settlement and will file motions to dismiss. *DN 23-01-ESH-A-RET, Marcus L. Kawatachi, Executive Director, on behalf of the complaint filed by Cynthia M. Lanting vs. State of Hawai’i, Department of Education, Waipahu Elementary School, and DN 23-02-E-SH-RET Marcus L. Kawatachi, Executive Director, on behalf of the complaint filed by Allison T. Fleischer fka Allison T. Oshiro vs. State of Hawai’i, Department of Education, Waipahu Elementary School.*
- Update on Rulemaking plans. HCRC plans to set a date to hold a public hearing on rule amendments, possibly in March. One or more Commissioners will be in attendance.
- Discussion on legislation on the following measures:

Employment

[HB1791](#) – Reproductive Loss Leave for Employees - [Status](#)

Staff recommendation/Discussion: Support. Adds a new part to HRS § 378 outside HCRC jurisdiction. Part I of HRS § 378 protects individuals with pregnancy-related disabilities/medical conditions, and this bill adds additional requirements for employers to accommodate employees experiencing reproductive loss.

Position: Support.

SB2100 – Discriminatory Practices in Employment Based on Credit/Credit History, Housing - Status

Staff recommendation/Discussion: Support intent with comments. Amends HRS § 368F (source of income) and repeals HRS § 378-2.7 (exemptions). This bill broadens protections for individuals based on credit history. Creditworthiness is not defined in bill.

Position: Support intent with the following reservations: the definition of “creditworthiness” is not clear; and although the intent may be to remedy discriminatory practices in employment and housing, the bill as written may not effectuate that outcome.

SB2930 – Extends Family Leave; Requires HCRC to Amend Rules - Status

Staff recommendation/Discussion: Support intent with comments. The bill amends HRS Chapter 398, family leave law, and HCRC staff strongly support the additional protections granted within that chapter. However, staff have reservations about certain provisions of the bill. Specifically, the bill expands protections to include “neonatal care” where pregnancy/pregnancy-related medical conditions appear in the administrative rules enforced by HCRC. The bill as written would require an amendment of the HCRC’s administrative rules, but it does not amend HRS Chapter 378, which is problematic. Also, staff are concerned that the bill does not define “neonatal care.”

Position: Support intent with Reservations.

HB1713 – Paid Family Leave for State and County Workers - Status

Staff recommendation/Discussion: Support. Paid leave would alleviate some burdens employees feel when caring for a family member with a serious health condition. Outside HCRC jurisdiction.

Position: Support.

SB2225 – Paid Family Leave - Status

Staff recommendation/Discussion: Support. Paid leave would alleviate some burdens employees feel when caring for a family member with a serious health condition. Outside HCRC jurisdiction.

Position: Support.

Additional Commission Action:

Staff Motion – requested to authorize testimony based on recent past positions.

During the 2024 legislative session, for any bills or resolutions that are substantially similar and that were reviewed and acted on by the Commission during previous recent legislative sessions, staff is authorized to submit testimonies consistent with the previous positions taken on those bills or resolutions. Any such testimony will be reported to the Commission at its next scheduled meeting, and the position will be subject to Commission review and action at that time.

Motion Approved.

Housing

SB2073 – Relating to Housing Discrimination (Source of Income), Counties - [Status](#)

Staff recommendation/Discussion: Support. HCRC supported a similar bill, SB327 in 2023. This bill allows the counties to be more expansive in protections for tenants/ prospective tenants in terms of source of income.

Position: Support.

Public Accommodations

SB2059 – Ally’s Law, Public Restrooms, Medical Conditions/Accessibility - [Status](#)

Staff recommendation/Discussion: Support. This bill would allow for more accessibility in public accommodations for individuals with certain medical conditions and nearly 20 states have already passed versions of this bill.

Position: Support.

SB2503 – Universal Changing Stations, Accessibility and Gender Equity - [Status](#)

Staff recommendation/Discussion: Support. Requires all new places of public accommodation and state buildings to provide universal changing accommodations equally accessible regardless of gender. Excluded from HCRC enforcement.

Position: Support.

HB1607 – Algorithmic Discrimination - [Status](#)

Staff recommendation/Discussion: Monitor. Not within HCRC jurisdiction, but prohibits discrimination by users of AI, and mandates disclosure of use of AI.

Position: Support intent.

Access to State and State Funded Services

SB2916 – DHS amend rules, HCRC appropriation for HRS § 368-1.5 cases - [Status](#)

Staff recommendation/Discussion: Support with comments. The bill requires the Department of Human Services (DHS) to ensure that individuals with neurodevelopmental disorders be covered under the state’s medical program. The bill contains an appropriation for HCRC to enforce HRS § 368-1.5. Staff recommends supporting the appropriation but deferring to DHS on implementation.

Position: Support with comments.

Bills Impacting Commission/Civil Rights (General)

SB2105 – UH resident tuition fees, COFA - [Status](#)

Staff recommendation/Discussion: Support. HCRC supports improving access and removing barriers to higher education for COFA individuals.

Position: Support.

[SB2433](#) – Menstrual Equity UH - [Status](#)

Staff recommendation/Discussion: Support. Requires the University of Hawai'i to provide menstrual products free of charge to all students on all campuses, including community colleges and education centers.

Position: Support.

[HB1740](#) – Sex-specific Athletic Teams, DOE - [Status](#)

Staff recommendation/Discussion: Oppose. This bill targets transgender individuals under the guise of sex equality in sports, requiring disputes “regarding a student’s sex” be resolved by the school or institution by requesting the student provide a health examination to verify the student’s biological sex based one or more of three standards (reproductive anatomy, genetic makeup, testosterone levels). Board of Education would have to develop rules to resolve disputes under this section.

Position: Oppose.

The following bills were discussed in conjunction with each other:

[SB2037](#) – State Holidays, Lunar New Year - [Status](#)

[SCR1](#) – State Holidays, Lunar New Year – [Status](#)

[SR1](#) – State Holidays, Lunar New Year – [Status](#)

[HB1555](#) – State Holidays, Lunar New Year - [Status](#)

Staff recommendation/Discussion: Monitor.

Position: Monitor (no motion made).

The following bills were discussed in conjunction with each other:

[HB1600](#) – Open Meetings, Decision-Making by a Board – [Status](#)

[HB1599](#) – Sunshine law, public meeting notices, remote testimony – [Status](#)

[HB1598](#) – Sunshine Law, board packets – [Status](#)

[HB1597](#) – Open Meetings, Right of Action to Challenge OIP – [Status](#)

[SB2116](#) – Board Meetings, interactive technology, archival of minutes – [Status](#)

[SB2199](#) – Public Agency Meetings, Closed Meetings for Trainings – [Status](#)

[SB2198](#) – Public Agency Meetings, Supplemental Packets – [Status](#)

[SB2172](#) – Boards and Commissions, authority & duty of chair, substitute - [Status](#)

Staff recommendation/Discussion: Monitor. HCRC generally defers to the Office of Information Practices on issues relating to boards and commissions, the sunshine law, notices, etc.

These bills, if passed, would impact the HCRC as a commission.

Position: Monitor (no motion made).

Guest Peter Fritz commented on SB2116, regarding interactive technology. He stated that there is an accessibility element to the bill, but there is also an element to allow the public on all islands to participate in meetings.

Next Meeting

Meeting to be continued to January 31, 2024 at 2:00 pm to continue legislative discussions.

Adjournment

**Draft minutes circulated by Marcus Kawatachi, Executive Director.
Approved by Commission, as circulated, on March 28, 2024.**