

Worker Protective Labor Laws in Hawai'i, Part 5

Employment Discrimination

Center for Labor Education & Research
University of Hawai'i - West O'ahu
91-1001 Farrington Highway, Kapolei, HI 96707
(808) 689-2760 - FAX (808) 689-2761

E-Mail: clear@hawaii.edu;
To visit CLEAR's [Home Page](#)

[Click here for access to a helpful Glossary of Labor and Legal Terminology](#)

Federal Civil Rights Laws:

Reconstruction Civil Rights Acts (42 U.S.C. §§ 1981, 1982, 1983)

Enacted after the Civil War between 1866 and 1871 in conjunction with the fourteenth amendment to secure the rights of citizenship for emancipated blacks, these laws were revived in the 1960s and permit victims of race (and in some cases ancestry) discrimination to make claims directly in federal court without working through the EEOC. The nineteenth century statutes also permit jury trials and allow compensatory and punitive damages.

The Civil Rights Act of 1870 (42 U.S.C. § 1981) prohibits racial discrimination in all aspects of contractual relationships, including unwritten employment contracts. Both government and private employers may be sued under this act. It covers discrimination based on race, color, or ethnicity. The Civil Rights Act of 1991 amended the statute and made it clear that victims of race discrimination or harassment in hiring decisions as well as in treatment on the job after being hired may bring action under § 1981.

The Civil Rights Act of 1871 (42 U.S.C. § 1983) bars individuals from violating the federal rights of others. It applies to persons acting "under the color" of any state or local law.

Equal Pay Act of 1963 (Chapter 8 of Title 29 U.S.C. § 206(d))

The EPA requires that employers pay their employees "equal pay for equal work." Although it was passed as part of the Fair Labor Standards Act, it is given to the EEOC to enforce along with Title VII violations, but its coverage extends to employers with only two employees. Exceptions to the equal pay standard are allowed for (1) seniority systems; (2) merit systems; (3) incentive systems; and (4) factors other than sex. However, where illegal inequality is found, it may not be remedied by a reduction in the wages of the higher paid sex. An EPA claim can be filed within two or, in the case of a willful violation, three years and its remedies, governed by the FLSA, allow recovery of unlawfully withheld wages (back pay) and an equal amount of "liquidated damages" where the employer has known and violated the Act in reckless disregard. Since 1974 the Act's coverage was extended to state and local government workers.

The Civil Rights Act of 1964 (42 U.S.C. 2000d-h)

Title VII of the Act prohibits discrimination in employment on the basis of race, color, national origin as well as religion and/or sex (but not including age or physical disability discrimination). This title applies to all employers, employment agencies, apprenticeship programs and labor unions whose

activities affect interstate commerce, including state and local governments and including Americans working abroad for US-based employers. To be covered an employer must have 15 or more employees for each working day of 20 or more weeks in the current or prior year.

Though not excluded from all the other forms of discrimination, under section 702 religious corporations, associations, educational institutions and societies are exempt with respect to the employment of individuals of a particular religion to perform work connected with the institutions' activities.

The defenses to unlawful employment practices under this title include: bona fide occupational qualifications based on religion, sex, or national origin (BFOQ); a bona fide seniority, merit or incentive system, not intended to discriminate; reasons of national security; and actions and measures taken against Communists. Enforcement is in the hands of the Equal Employment Opportunity Commission (EEOC) and the Hawai'i Civil Rights Commission (HRCC) whose laws and procedures have been determined to be substantially equivalent to those of the EEOC.

[The EEOC web site](#)

[How to File a Federal Charge of Employment Discrimination](#)

The law requires that claims be filed first with the EEOC or HRCC. Although the 1972 amendments gave the EEOC power to seek judicial relief directly, most judicial action takes the form of private suits in federal district court (usually non jury trials) seeking injunctions, backpay, remedial seniority and attorney's fees. Before a suit can be filed in federal district court, the EEOC must issue the claimant a right to sue letter. This may be requested anytime after 180 days have passed since the original complaint to the EEOC was filed.

The EEOC does not have authority to file suit against governmental agencies. If the charged party is a state or local government body and conciliation fails, the EEOC refers the case to the United States Attorney General.

The EEOC has the same investigative authority under Title VII as the NLRB has under the LMRA, which means it has broad access to documentary evidence and of summoning witnesses and taking testimony. And it may seek the assistance of the U.S. district courts in compelling the production of evidence and the attendance of witnesses.

Federal employees are required to seek administrative relief within their own agency through designated EEO counselors first, but there is a 180-day time limit for agencies to investigate. The EEOC may review agency investigations, and complainants have the right to a hearing before an EEOC administrative law judge on request when appealing an agency's determination.

[The Age Discrimination in Employment Act of 1967](#) (29 U.S.C. 3621-) The ADEA prohibits discrimination on the basis of age against employees or job applicants over the age of 40 years. The Act covers employers who have 20 or more employees for 20 weeks in a year, labor unions with 25 or more members, and employment agencies. In 1974 it was amended to include State and local governments.

Under this Act it is unlawful to discriminate in hiring, firing or classifying of employees or job applicants, also unlawful is bias in want ads and referrals. In 1978 it was amended again to prohibit mandatory forced retirement for those 70 years or under. More recently the 70 year old limit was removed as well. Though the Act is enforced by the EEOC, its procedures and remedies are borrowed from the Fair Labor Standards Act; so, for instance, no "right to sue" letter is required.

1996 and 1997 Amendments

Legislation that permanently reinstates and broadens an exemption in the Age Discrimination in Employment Act for firefighters and law enforcement officers. Included in the Omnibus Consolidated Appropriations Act of 1997, PL 104-208, the Age Discrimination in Employment Amendments of 1996 permanently reinstate the public safety officer exemption retroactive to when it expired in 1993, and broaden the exemption to permit state and local governments to enact new mandatory age requirements for the hiring and retirement of firefighters and law enforcement officers after Sept. 30, 1996. States cannot newly compel retirement before age 55, however.

Pregnancy Discrimination Act of 1978 (42 U.S.C. 32000e(k))

The Pregnancy Discrimination Act is an amendment to Title VII of the Civil Rights Act of 1964. Discrimination on the basis of pregnancy, childbirth, or related medical conditions constitutes unlawful sex discrimination under Title VII, which covers employers with 15 or more employees, including state and local governments. Title VII also applies to employment agencies and to labor organizations, as well as to the federal government. Women who are pregnant or affected by related conditions must be treated in the same manner as other applicants or employees with similar abilities or limitations.

[EEOC fact sheet on Preganancy Discrimination](#)

The Rehabilitation Act of 1973 (29 U.S.C. 3701, et seq.) The Rehab. Act prohibits a federal contractor from discriminating against an employee on the basis of a disability. A disabled individual has been defined as any individual who has a physical or mental impairment which constitutes or results in a substantial curtailment of one or more life activities. Complaints are processed in accordance with the procedures in Title VI of the Civil Rights Act of 1964.

Americans with Disabilities Act of 1990 (ADA) -(42 U.S.C. 312101 et seq.) The Americans with Disabilities Act prohibits discrimination against persons with disabilities in private employment, public accommodations, transportation, state and local government services, and telecommunications. It covers employers in industries affecting commerce that have 15 or more employees for each working day in each of 20 or more calendar weeks in the preceding calendar year.

The employment title of the law (Title I) prohibits employers from discriminating against a "qualified individual with a disability" with regard to job applications, hiring, advancement, discharge, compensation, training, or other job-related privileges. In addition, employers are required to make any reasonable accommodation for such persons provided no "undue hardship" is imposed.

Disability: An individual with a "disability" is one who has, or is regarded as having, a physical or mental impairment that substantially limits one or more major life activities. EEOC interprets an "impairment" to include any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the major body systems, or any mental or psychological disorder.

The law protects not only the blind and people in wheelchairs, but also those with less obvious disabilities, such as hearing impairments, mental illness and conditions like acquired immune deficiency syndrome (AIDS).

Reasonable Accommodation: A "qualified individual with a disability" means one who, with or without reasonable accommodation, can perform the essential functions of the job. It is up to the employer to determine what the essential functions are. ADA provides that an individual who poses a

direct threat to the health or safety of others is not qualified for the job.

A "reasonable accommodation" for an individual with a disability may include making existing facilities readily accessible; job restructuring; modifying work schedules; reassigning to vacant positions; acquiring or modifying examinations, training materials, or policies; providing readers or interpreters, or other similar accommodations.

Pre-employment Physicals: Employers may require medical examinations only if they are job-related and only after an offer of employment has been made to the job applicant. Physicals may be given before the job commences, however, if they are required of all employees and information is kept separate and confidential. Voluntary medical examinations that are part of employee health programs also are permitted, but these, too, must be kept confidential and separate. Inquiries concerning whether an applicant has a disability or the severity of the disability are prohibited. Employers may ask, however, if the employee can perform job-related functions.

Drug Adiction: While current illegal drug users, and alcoholics who cannot safely perform their jobs, are not protected by ADA, those who have been rehabilitated, who are participating in a supervised rehabilitation program and are not currently using drugs, or who are erroneously regarded as engaging in the use of illegal drugs are covered.

Notices and Enforcement: As with Title VII of the Civil Rights Act of 1964, employers are required by ADA to post in a conspicuous place notices summarizing the law's provisions. ADA adopts all of the powers, remedies, and procedures set forth in Title VII, with EEOC designated as the law's enforcement agency. Relief can include hiring or reinstatement with or without back pay, and reasonable attorney's fees and costs as well as awards of compensatory and punitive damages in cases of intentional discrimination.

Public Accommodations: Title III of the ADA addresses the issue of public accommodations. Virtually all businesses serving the public must make their services and establishments accessible to persons with disabilities. Existing facilities must be altered to the extent "readily achievable." This ordinarily requires the removal of such architectural barriers as curbs or stairs and changes in doorways and restrooms.

Genetic Information Nondiscrimination Act of 2008 (GINA), [Public Law No: 110-233](#)

GINA creates a new federal cause of action with the prospect of jury trials and damages, drawing authority directly from Title VII of the Civil Rights Act of 1991 and other federal employment laws. As under Title VII, workers claiming discrimination based on their genetic information must file an Equal Employment Opportunity Commission charge before proceeding to court. EEOC will investigate and try to settle the charge before either suing on behalf of the worker or issuing a right-to-sue letter that permits the individual to sue.

GINA's employment title takes effect 18 months after enactment (May 21, 2008) and the act requires EEOC to issue final regulations within a year of enactment. Though never tested in court, the EEOC position since the 1990s has been that an employer's use or reliance on an individual's genetic data in making an employment decision could support a "regarded as" disabled claim under the ADA.

GINA applies to labor unions as well and prohibits employers from discharging, refusing to hire, or otherwise discriminating against employees on the basis of genetic information. The law amends the Employee Retirement Income Security Act and the Public Service Health Act to preclude discrimination by group health plans and health insurance issuers against individuals based on genetic information and prohibits insurers from requiring genetic tests.

Regarding employment discrimination, the law:

- prohibits discrimination on the basis of genetic information in hiring, compensation, and other personnel processes;
- prohibits the collection of genetic information by employers and allows workplace genetic testing only in very limited circumstances, such as monitoring the adverse effects of hazardous workplace exposures;
- requires genetic information possessed by employers to be confidentially maintained and disclosed only to the employee or under other tightly controlled circumstances;
- prohibits health insurance enrollment restriction and premium adjustment on the basis of genetic information or genetic services;
- prevents health plans and insurers from requesting or requiring that an individual take a genetic test; and
- covers all health insurance programs, including those under ERISA, state-regulated plans, and the individual market.

A worker seeking damages through the [Civil Rights Act of 1991](#), can seek a jury trial in cases of intentional discrimination. As in cases under Title VII and the Americans with Disabilities Act, compensatory and punitive damages for genetic bias would be capped at \$300,000 or lower, depending on the size of the defendant employer. Workers also may recover equitable relief, which includes back pay and front pay.

Unlike Title VII, GINA specifically states that "disparate impact" claims are not recognized in genetic bias cases. Instead, the act provides that six years after enactment, Congress will appoint an eight-member commission to review the developing science of genetics and make recommendations on whether to add liability for neutral employment practices that may have an adverse impact against individuals based on genetic information.

An employer, union, or employment agency that obtains genetic information on an employee or member must treat it as a confidential medical record in a file separate from personnel records. An employer or other covered entity will be considered in compliance with GINA if it adheres to the ADA's confidential medical records provision.

Like Title VII, GINA prohibits retaliation against any individual "who has opposed any act or practice made unlawful" by the act's employment title or who participates in an investigation, proceeding, or hearing under the act. GINA does not preempt other federal or state laws that may provide equal or greater protection against genetic bias, including the ADA and the Rehabilitation Act.

Sexual Harassment Regulations

Sexual Harassment: The unwanted imposition of sexual requirements in the context of a[n employment] relationship of unequal power.

-Catherine MacKinnon.

According to EEOC Guidelines [29 CFR 1604.11; FR Nov. 10, 1980]:

(a) Harassment on the basis of sex in violation of Sec. 703 of Title VII and HRCC rules [HAR 12-46-109]; unwelcome sexual advances, request for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when (1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment, (2) submission to or

rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual, or (3) such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.

...

(c) Applying general Title VII principles, an employer, employment agency, joint apprenticeship committee or labor organization (hereinafter collectively referred to as 'employer) is responsible for its acts and those of its agents and supervisory employees with respect to sexual harassment regardless of whether the specific acts complained of were authorized or even forbidden by the employer and regardless of whether the employer knew or should have known of their occurrence. ...

(d) With respect to conduct between fellow employees, an employer is responsible for acts of sexual harassment in the workplace where the employer (or its agents or supervisory employees) knows or should have known of the conduct, unless it can show that it took immediate and appropriate corrective action. ...

(e) an employer may also be responsible for the acts of non-employees, with respect to sexual harassment of employees in the workplace where the employer (or its agents or supervisory employees) knows or should have known of the conduct and fails to take immediate and appropriate corrective action. ...

(f) Prevention is the best tool for the elimination of sexual harassment. An employer should take all steps necessary to prevent sexual harassment from occurring, such as affirmatively raising the subject, expressing strong disapproval, developing appropriate sanctions, informing employees of their right to raise the issue of harassment under Title VII and Part I, HRS 378, and developing methods to sensitize all concerned.

(g) Other related practices: Where employment opportunities or benefits are granted because of an individual's submission to the employer's sexual advances or requests for sexual favors, the employer may be held liable for unlawful sex discrimination against other persons who were qualified for but denied that employment opportunity or benefit.

The EEOC's Guidelines on Discrimination Because of Sex recognize two types of sexual harassment: "quid pro quo" and "hostile environment." (FEP at 403:213) A hostile work environment claim involves unwelcome behavior of a sexual nature that creates an intimidating, hostile, or abusive work environment or has the effect of unreasonably interfering with an individual's work performance. It may involve such behavior by anyone in the workplace, not just a supervisor.

In *Meritor Savings Bank v. Vinson* (40 FEP Cases 1822), the U.S. Supreme Court ruled that in order to establish hostile work environment harassment, a worker must show that the sexually-oriented conduct was "sufficiently severe or pervasive to alter the conditions of employment and create an abusive work environment." In a 1993 case, *Harris v. Forklift Systems* (63 FEP Cases 225), the Supreme Court decided that the harassment does not have to affect the employee's psychological well-being -- "Title VII comes into play before the harassing conduct leads to a nervous breakdown."

A number of lower courts have reasoned that the severity and pervasiveness referred to in *Meritor* are in an "inverse ratio." That is, the more severe the conduct, the less pervasive it need be to be actionable. Conversely, the more pervasive the conduct, the less severe it need be to be actionable.

Although the general rule is that a single harassment incident does not create a hostile environment, some courts and administrative agencies recognize that a single incident can be sufficient to violate

federal and state laws, particularly when the conduct complained of is physical. In 1990, EEOC issued a sexual harassment policy guidance which presumes that "any unwelcome, intentional touching of a charging party's intimate body areas" is sufficiently offensive to alter her working environment and violate Title VII. (FEP at 405:6681; and BNA's *Fair Employment Practices* 1-23-97.

Hawai'i Employment Practices Act, HRS 378 & HRS 368:

Administrative Regulations

fact sheets and brochures

As described above, federal anti-discrimination statutes prohibit discrimination in employment on the basis of a list of what are known as "protected classes": race, color, national origin, religion, sex, pregnancy, age, disability, etc. The federal laws are enforced by the Equal Employment Opportunity Commission (EEOC) and the Hawai'i Civil Rights Commission (HCRC) through a work-share agreement.

Hawai'i enacted its own employment rights law in 1963 (HEPA) to safeguard employment rights of individuals by making certain 'employment practices' illegal and establishing its own list of "protected classes" that add to the federal "protected classes".

HEPA covers all employers in the State except the federal government. Part I (Discriminatory Practices) is administered by the State's Civil Rights Commission. Parts II and III are administered by the Enforcement Division of the Department of Labor and Industrial Relations (the main office is in Honolulu for O'ahu residents; there are branch offices in Hilo, Kona, Wailuku and Lihu'e for neighbor island residents).

Part I: Unlawful Employment Discrimination

Part I makes unlawful actions taken or not taken because of or in relation to: race, sex, including gender identity or expression, sexual orientation, age, religion, color, ancestry, disability, marital status, or arrest and court record, assignment of income for child support obligations, and National Guard participation.

"Gender identity or expression" was formally added as a protected class by the State legislature in 2011 (Act 34). It 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.

"Arrest and court records" include any information about an individual who has been questioned, apprehended, charged with an offense, served a summons, arrested with or without a warrant, tried, or convicted pursuant to any law or military authority. In 1998 the Hawai'i State Legislature (Act 175) amended this portion of the law to allow prospective employers to investigate a job applicant's criminal record after the employer has made a conditional offer to hire the applicant; the job offer may then be withdrawn if the applicant has a conviction record related to the duties of the position.

"Because of sex" includes, but is not limited to, issues of sexual harassment at the workplace, pregnancy, childbirth, or related medical conditions. This Part (HRS § 378-2) specifically makes it an unlawful discriminatory practice for any employer or labor organization to refuse to hire or employ, or to bar or discharge from employment, or withhold pay, demote, or penalize a lactating employee because an employee breastfeeds or expresses milk at the workplace.

It is unlawful discrimination under the Part I for an employer to refuse to hire, employ, bar or discharge, or otherwise to discriminate against any individual in compensation or in the terms,

conditions, or privileges of employment. Likewise, employment agencies may not classify or refuse to refer or otherwise discriminate or advertise in a way that expresses, directly or indirectly, any limitation, specification, or unlawful discrimination. Nor may a labor union exclude or expel from its membership or refuse to enter into an apprenticeship agreement with anyone (16 years or older) in a discriminatory manner.

Like Title VII of the Civil Rights Act of 1964, Part I of HEPA has several limitations or exceptions. It allows (1) bona fide occupational qualifications (BFOQ's); (2) termination or discharge for reasons relating to the ability of the individual to perform the work in question; (3) religious, charitable or educational institutions to give preference to individuals of the same religion; (4) and certain employers such as schools and financial institutions to consider related criminal convictions. However, the burden of proof falls upon the employer to demonstrate the appropriateness of these exceptions to their particular situation.

The Hawai'i Employment Practices Act does not have the same minimum employee requirements found in the federal law, and covers employers with one or more employees. The time limit to file a charge with the Civil Rights Commission is 180 days. This time period starts from the commission of an alleged discriminatory act. A complainant should not wait until after a grievance or other internal procedure is completed before filing with the Commission.

Like Title VII, HEPA provides for issuance of right-to-sue letters if the investigation determines there is no violation ("no cause"), no settlement or conciliation agreement is reached. But it also permits the Commission to seek relief which may award backpay and compensatory damages. It can also award punitive damages where there is clear and convincing evidence that the employer acted wantonly, oppressively, willfully or with malice.

E-Mail: [Hawai'i Civil Rights Commission](#), or
On O'ahu call 586-8636; FAX 586-8655
From Neighbor Islands, call 1-800-468-4644 (ext 68636)

Hawai'i Civil Rights Commission (HCRC) Claim Filing:

- Obtain, fill out completely and submit to the office of the Hawai'i Civil Rights Commission the [Pre-Complaint Questionnaire for Employment Discrimination](#).
- An HCRC Investigator contacts you for an intake interview, and, if merited, assists in drafting the complaint.
- A complaint must be filed within 180 days of the occurrence of the alleged unlawful discriminatory practice or the last occurrence in an on-going pattern of unlawful discriminatory practices.
- The HCRC must serve a copy of the complaint or a notice thereof on the respondent within 10 days.
- Within 180 days of the filing of the complaint the HCRC must conclude its investigation and determine whether there is 'reasonable cause' to believe that an unlawful discriminatory practice has been committed, provided that the commission may grant an extension of the period for investigation.
- During this investigatory period, a HCRC officer may require the parties to attend a fact-finding conference. The officer may encourage the parties to agree to a written predetermination settlement approved and signed by the HCRC.
- Where it is unable to eliminate the alleged unlawful discrimination informally, the HCRC shall issue a final conciliation demand that the respondent cease the unlawful practice(s) within the 180-day investigation period which may be extended by the HCRC.

- If, 15 days after the service of the final conciliation demand, the HCRC finds that conciliation has not resolved the complaint, the HCRC shall appoint a hearings officer.
- Within 30 days after appointment, the Hearings Examiner shall order the holding of a scheduling conference to plan for the hearing. Following the hearing the Hearings Examiner shall issue a written proposed decision either dismissing the case or ordering the employer to cease the unlawful practice, and awarding an appropriate remedy
- This proposed decision is forwarded to the five-member, Governor-appointed, Commission Board who can accept/reject/modify the Hearings Examiner's proposed decision and issue a final order with appropriate remedies.
- Any time after the filing of the complaint but no later than three days after the conclusion of the scheduling conference, the complainant may request, in writing, a "right to sue" notice. Within 90 days after the receipt of such a notice from the HCRC, the complainant may file a civil suit against the employer in circuit court.

In 1992, the Act was amended to allow employees who are victims of sexual harassment or sexual assault an exemption from the 180 day statute of limitations for filing with HCRC, providing two years to bring civil action against their employers for sexual harassment or sexual assault and the resultant infliction of emotional distress and/or invasion of privacy.

Part II: Polygraphs/Lie Detectors

Part II of HEPA makes it unlawful for a private employer or his/her agent, or an agent of a public employer to require an employee to submit to a polygraph or lie detector test as a condition of employment or to continue employment. Any person who unlawfully requires employees to submit to polygraph or lie detector tests may be fined not more than \$1000.00 or imprisoned not more than one year, or both.

**If you have an *Adobe Acrobat Reader*, you can download
The State Administrative Rules on Lie Detector Tests
[[Title 12, Chapter 26](#)].**

Part III: Unlawful Suspension or Discharge

Part III makes it unlawful for any employer to suspend, discharge or discriminate against any of his/her employees solely because the employer was summoned as a garnishee where the employee is the debtor (in a bankruptcy proceeding); or because the employee suffered a work injury compensable under the Workers' Compensation Law unless the employee is no longer capable of performing his/her work as a result of the work injury and the employer has no other available work which the employee is capable of performing. By law an employee, who is discharged because of inability to perform the work available, must then be given first preference of re-employment by the employer in any position which the employee is capable of performing and which becomes available after the discharge until the employee secures new employment.

PROCEDURES: A written complaint must be filed with the Enforcement Division, Department of Labor & Industrial Relations. For unlawful suspension or discharge, the complaint must be filed within 30 days after action; except that in cases relating to work injury, the 30 day clock begins to toll from date employee is able to return to work.

**If you have an *Adobe Acrobat Reader*, you can download
The State Administrative Rules relating to Unlawful Sspension or Discharge under
this Part
[[Title 12, Chapter 24](#)].**

Part IV: Duty of Fair Representation

Part IV relates to the obligation of a labor organization to provide fair representation to its members. This Part, enacted in 1980, provides: HRS §378-51 Action against labor organization, limitation. Any complaint, whether founded upon any contract obligation or for the recovery of damage or injury to persons or property, by an employee against a labor organization or its alleged failure to fairly represent the employee in an action against an employer shall be filed within 90 days after the cause of action accrues, and not thereafter.

Where the alleged failure to fairly represent an employee arises from a grievance, the cause of action shall be deemed to accrue when an employee receives actual notice that a labor organization either refuses or has ceased to represent the employee in a grievance against an employer. Where the alleged failure is related to negotiations or collective bargaining, the cause of action is deemed to accrue when applicable collective bargaining agreement or amendment thereto is executed.

Part V: Hawai'i's Whistleblowers' Protection Act

Part V: Hawai'i's Whistleblowers' Protection Act: In 1987 the Hawai'i State Legislature enacted a law to protect the employment rights of workers who report their employers for any violations of law. Passed as Act 267 this law went into effect on June 24th, 1987, and has since been codified as Part V of the State's Employment Practices Act (HRS 378). The Act covers private sector workers as well as state and county employees and applies to employers and their agents with one or more employees. It provides that employers shall not discharge, threaten, or otherwise discriminate against an employee because: (1) the employee, or a person acting on behalf of the employee, reports or is about to report to a public body, verbally or in writing, a violation or a suspected violation of a law or rule of the State, County, or the United States, unless the employee knows that the report is false; or (2) An employee is requested by a public body to participate in an investigation, hearing, or inquiry held by that public body, or a court action.

A person who alleges a violation of this chapter may bring a civil action for appropriate injunctive relief, or actual damages, or both within ninety days. The court may order reinstatement of the employee, payment of back wages, full reinstatement of fringe benefits and seniority rights, actual damages, or any combination of these remedies. A court may also award the complainant all or a portion of the costs of litigation, including reasonable attorney's fees and witness fees.

[Back to CLEAR Home Page](#)