HAWAII — State Laws by Topic

➤ AGE

Employers are prohibited from discriminating against an individual based on age, except where age is a bona fide occupational qualification. Note: State law does not define a protected age group.

It’s considered a discriminatory practice, unless a bona fide occupational qualification exists, for an employer to express a preference in help-wanted ads for individuals of a particular age or range of ages. Such phrases and terms to be avoided in help-wanted ads include, but are not limited to: “young,” “recent college grad,” and “retired person.”

For purposes of state law, an employer is defined as anyone employing one or more employees.

➤ AIDS

Discrimination: An individual cannot be compelled to consent to release records indicating he/she has AIDS, ARC, or HIV, or to disclose whether he/she has been tested for HIV in order to obtain or retain employment.

Testing: Informed, written consent must be obtained before an individual is tested for AIDS.

➤ ARRESTS/CONVICTIONS

The Hawaii Fair Employment Practices statute prohibits discrimination in employment because of an “arrest and court record,” which it defines as “any information about an individual having been questioned, apprehended, taken into custody or detention, held for investigation, charged with an offense, served a summons, arrested with or without a warrant, or tried or convicted pursuant to any law enforcement or military authority.”

The Hawaii Pre-Employment Inquiry Guide prohibits employers from inquiring into an applicant’s arrest or conviction record until after a conditional job offer has been made, unless the offense is “substantially related to the functions and responsibilities” of the position in question.

➤ BREAKS

Minors: Minors must be provided with a 30-minute meal break during shifts of five or more hours.

➤ BREAST-FEEDING

For one year after the birth of a child, employers must provide reasonable break time and a location shielded from view and intrusion by co-workers for employees who are breast-feeding to express milk. Employers with fewer than 20 employees don’t have to comply if they can show

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that compliance would impose an undue hardship by causing them significant difficulty or expense in relation to their size, financial resources, nature, or structure of the business.

It is discriminatory for an employer to treat a breast-feeding woman differently from any other employee — including refusing to hire or employ, barring or discharging from employment, withholding pay, demoting, or otherwise penalizing a lactating employee — because she breast-feeds or expresses milk at the workplace.

➢ CHILD LABOR ➢

Click on the following link [http://labor.hawaii.gov/wsd/find-a-law/](http://labor.hawaii.gov/wsd/find-a-law/) to access Hawaii’s Department of Labor and Industrial Relations, Wage Standards Division administrative rules home page, which includes a link to Hawaii’s child labor laws.

➢ CHILD SUPPORT ➢

Employers served with a child support order must begin withholding with the first pay period occurring after seven days after the order is mailed. Amounts are remitted within five working days of payday. Notify the court immediately if the employee-obligor terminates. Withheld child support must be remitted to the state; remitting checks to custodial parents is no longer allowed.

**Note:** Under the Hawaii Employment Practices Act, employers with one or more employees are prohibited from discriminating against an individual because of child support obligations.

➢ COURT ATTENDANCE ➢

Employers may not discriminate against or threaten employees who are called as witnesses.

See also violence.

➢ DISABILITIES ➢

Employers with one or more employees are prohibited from refusing to hire; limiting, segregating, or classifying; discharging; or otherwise discriminating against an individual with respect to compensation or terms, conditions, or privileges of employment based on disability.

Employers must make reasonable accommodation to the known physical or mental limitations of an otherwise qualified applicant or employee with a disability, unless they can demonstrate that the accommodation would impose an undue hardship.

➢ DRUG TESTING ➢

Employers may conduct portable, on-site substance abuse screening provided they comply with the following.

1. The employer administers the on-site substance abuse test according to the package insert, i.e., the manufacturer’s instructions, that accompanies the test.
2. The employer does not use any presence of drugs, alcohol, or the metabolites of drugs to deny or deprive a person of employment or any benefit, or to take any adverse action against the employee or prospective employee.

3. The employer requires the employee or prospective employee to report to a licensed laboratory within four hours of the indication of drugs, alcohol, or the metabolites of drugs from the on-site screening test, and bears the cost for the referral.

It is unlawful for any employer to suspend, discharge, or discriminate against an employee because he/she tested positive for the presence of drugs, alcohol, or the metabolites of drugs in a substance abuse on-site screening test, unless the employee refuses or fails to report for a laboratory test as required.

Notification: An employer may deny or deprive employment or any benefit, or take adverse action against an employee or prospective employee for refusing or failing to report for a laboratory substance abuse test if it provides written notice that: 1) it followed the procedures under this section; 2) the employee or prospective employee was informed that he/she may refuse to submit to the substance abuse test; and 3) it may take adverse action against the employee or prospective employee for failing or refusing to submit to a substance abuse test.

➤ FAMILIAL/MARITAL STATUS ➤

Employers are prohibited from discriminating against an individual based on marital status, including beginning January 1, 2012, employees who enter into civil unions.

For purposes of state law, an employer is defined as anyone employing one or more employees.

➤ FAMILY/MEDICAL LEAVE ➤

Coverage: Employers of 100 or more employees for each working day during each of 20 or more calendar weeks in the current or preceding calendar year.

Employee eligibility: Employees who have worked for the employer from whom leave is sought for at least six consecutive months. Beginning January 1, 2012, employees include those who have entered into civil unions.

Length of leave: Covered employers must provide eligible employees with a total of four weeks of family leave during any calendar year or 12-month period.

Reasons for leave: 1) the birth or adoption of a child, or 2) the serious health condition of the employee’s child, spouse, or parent.

Paid leave: Leave may consist of unpaid leave, paid leave, or a combination of both. If paid leave is less than four weeks, the additional period of leave may be unpaid. An employee may elect to substitute any of his/her accrued paid leaves (sick, vacation, personal, or family leave) for any part of the four-week period.

Note: Public and private employers that provide sick leave for employees are required to permit employees to use any accrued and available sick leave above the amount required under
the temporary disability insurance law for family leave purposes. State law defines “sick leave” as accrued increments of compensated leave provided by an employer to an employee for use by the employee for illness, injury, or medical conditions.

**Benefits:** The taking of leave may not result in the loss of any employment benefit accrued before the date on which the leave began, except for any paid leave which may have been expended on the leave.

**Notification:** Where the need for family leave is foreseeable, the employee must provide the employer with reasonable prior notice. Requests for leave must include evidence that the employee has submitted the request and provided required data in accordance with the state’s family leave data collection system.

**Certification:** The employer may require that a request for leave be supported by certification of the birth or adoption by a health care provider, family court, adoption agency, adoption attorney, or representative of the birth parent.

**Reinstatement:** The employee, at the end of the leave period, is entitled to be restored to the position held when leave began or to an equivalent position with equivalent benefits, pay, and other terms and conditions of employment. If the employer experiences a layoff or reduction-in-force during an employee’s leave, and the employee would have been laid off if not on leave, the employee is not entitled to reinstatement, but retains all rights related to recall.

**Anti-retaliation.** Employers can’t bar or discharge from employment, withhold pay from, or demote an employee because he/she uses accrued and available sick leave. After the employee takes at least three consecutive days of sick leave, he/she may be required to present a doctor’s note, indicating that the employee was ill when the sick leave was used.

**GENETIC TESTING**

State law prohibits discrimination in employment based on an individual’s genetic information.

**HEALTH CARE CONTINUATION COVERAGE**

No general health care continuation coverage provision.

**JURY DUTY**

Employers may not discriminate against or threaten employees who receive and respond to a summons, serve as jurors, or attend court for prospective jury service.

State employees who are summoned as jurors or witnesses are entitled to leave of absences with pay. State employees may not have jury service fees offset from their salaries.

**LIFESTYLE DISCRIMINATION**

Hawaii adopted a resolution that requests that employers respect employees’ right to use lawful consumables off their employer’s premises during non-working hours.
➤ MASS LAYOFF NOTIFICATION ➤

Employers that employ at least 50 workers any time within the preceding 12 months must provide 60 days’ written notice of a closing, partial closing, or relocation to each affected employee and the state Department of Labor and Industrial Relations. Notice must also be given when a divestiture occurs. A divestiture is defined to mean the transfer of any covered establishment from one employer to another because of the sale, transfer, merger, bankruptcy, or other business takeover or transaction of business interests that causes the covered establishment’s employees to becomes dislocated workers.

Written notification to affected employees must include: 1) the date of the proposed closing, partial closing, or relocation, and 2) information that, upon layoff or termination, employees may be eligible for a dislocated worker allowance.

Written notification to the Department of Labor and Industrial Relations must include: 1) the name and address of the employer; 2) the name of a contact person; 3) the date of the closing, partial closing, or relocation; 4) the number of employees at the covered establishment; and 5) the approximate number of employees to be laid off or terminated.

➤ MEDICAL DONATION LEAVE ➤

State employees are entitled to up to seven days of paid leave per calendar year to serve as a bone marrow donor and up to 30 days of paid leave per calendar year to serve as an organ donor.

Employers that have at least 50 employees must allow employees to take up to seven days’ leave in order to donate bone marrow or peripheral blood stem cells; employees who are organ donors must be allowed to take up the 30 days’ leave. Employers must provide written verification to their employers that they are donors, and that medical necessity requires their donations. Employers may require that employees use up to three days’ of sick leave, vacation, or paid or unpaid time off for these leaves of absence.

Employers must maintain employees’ group health benefits during their absence. Employers may not discriminate against or discipline employees who take leave and must restore employees to their former positions upon their return to work. Employees have a private right of action against their employers to enforce these provisions.

➤ MILITARY LEAVE ➤

No employer may refuse to allow an employee to take a leave of absence to fulfill National Guard duties.

Reinstatement: Employees absent for military leave must be restored or reemployed, without loss of seniority or any benefits to which they are entitled, to their original job or another position most similar to the original job, unless the employer’s circumstances have so changed as to make it impossible or unreasonable to do so.

Employees may not be discharged without cause for one year after reinstatement.

Note: Under the Hawaii Employment Practices Act, employees with one or more employees are prohibited from discriminating against an individual based on National Guard service.
MINIMUM WAGE


Basis for overtime: Over 40 hours/week.

Opportunity wage for under 20-year-olds: None.

NATIONAL ORIGIN

Employers are prohibited from discriminating against an individual based on ancestry, including linguistic characteristics, except where it is a bona fide occupational qualification.

For purposes of state law, an employer is defined as anyone employing one or more employees.

NEW-HIRE REPORTING

Data to be reported: Employee’s name, address, SSN, first day of work; employer’s name, address, federal EIN, state UC number.

Employers must report as new hires employees who have been off the payroll for at least 60 consecutive days.

Reporting deadline/form: Within 20 days of hire or rehire; on W-4s.

OVERTIME

Basis for overtime: Over 40 hours in a workweek.

PAY STATEMENTS

Information required: The employee’s name; address and phone number of employer; total hours worked; regular and overtime hours; straight-time and overtime compensation; any other compensation, including allowances claimed as part of the minimum wage; total pay; amount and purpose of each deduction; net pay; date of payment; pay period; and the rate or rates of pay; and the basis upon which the employee is paid (i.e., whether paid by the hour, shift, day, week, salary, piece, commission, or some other basis).

PERSONNEL FILES

State agency employees may have access to their personnel records relating to employment history and other state agency personal record information. Employees may not have access, however, to: 1) information related to criminal investigations; 2) information that would identify a source of information under confidentiality; 3) test scores and examination materials that would affect the test’s effectiveness or the examination process; 4) information related to investigations.
concerning current or pending actions against the employee; and 5) any other information required to be withheld by law.

Each agency that maintains any accessible personnel record must make that record available to the individual to whom it pertains in a reasonably prompt manner and in a reasonably intelligible form. Where necessary, the agency must provide a translation into common terms of any machine readable code or any code or abbreviation employed for internal agency use.

➢ POLYGRAPH TESTING ➢

It is unlawful for any employer to:
1. require a current or future employee to submit to a lie detector test as a condition of employment or continued employment;
2. terminate or otherwise discriminate against any current or future employee for refusing to submit to a lie detector test;
3. ask a current or future employee whether the individual is willing to submit to a lie detector test, unless the individual is informed orally and in writing that the test is voluntary and that the refusal to submit to the test will not result in termination or will not jeopardize a future employee’s chance of employment;
4. subject a future employee to a lie detector test that includes inquiries deemed unlawful by law;
5. utilize any device that intrudes into any part or cavity of the body for the purpose of truth verification; or
6. discharge or otherwise discriminate against any current or future employee because such person has filed a complaint, testified, or assisted in any proceeding respecting the unlawful practices prohibited under this law.

➢ POSTING REQUIREMENTS ➢

Notice to Employees — All employers

No Smoking — All employers except those exempted by law

Notice to employees who breast-feed regarding the right to express milk — Employers with at least 20 employees

➢ PREGNANCY ➢

Coverage: All employers of one or more persons.

Length of leave: Disability due to and resulting from pregnancy, childbirth, or related medical conditions is justification for a leave by female employees for a reasonable period. Reasonable is determined by the employee’s physician, with regard for the employee’s physical condition and the job requirements.


Reasons for leave: Disability due to and resulting from pregnancy, childbirth, or related medical conditions must be considered justification for a leave, with or without pay, for a reasonable period of time.

Certification: Employers may request a doctor’s certificate estimating the length of leave and the estimated commencement and termination dates of leave required by employees. Employers may also request, prior to the employees’ return, a medical certificate from the employees’ physicians attesting to their physical condition and approving their return to work.

Reinstatement: Employees must be reinstated to their original jobs or to positions of comparable status and pay, without loss of accumulated service credits and privileges, at the end of pregnancy leave.

Note: Discrimination because of sex includes, but is not limited to, pregnancy, childbirth, or related medical conditions. Women affected by pregnancy, childbirth, or related medical conditions must be treated the same for all employment-related purposes as other individuals not so affected but similar in their ability or inability to work.

See also family/medical leave.

➤ RACE ➤

Employers are prohibited from discriminating against an individual based on race or color.

For purposes of state law, an employer is defined as anyone employing one or more employees.

➤ REFERENCES ➤

Blacklisting: It is an unfair labor practice for an employer to make, circulate, or cause to be circulated a blacklist.

References: Employers that, in good faith, candidly provide information or opinions about former employees to prospective employers are protected from defamation claims.

Under the state’s Rap Back law, employers may request notification from the state if job applicants are arrested in the future.

Salary history: Employers may not inquire into job applicants’ wage or salary history or rely on wage or salary history during the hiring process to determine applicants’ salary, benefits, or other compensation. However, employers may discuss applicants’ expectations regarding salary, benefits, or other compensation. Applicants may voluntarily disclose their salary histories and employers may then verify that salary history.

➤ RELIGION ➤

Employers are prohibited from discriminating against an individual based on religion, except where religion is a bona fide occupational qualification.

For purposes of state law, an employer is defined as anyone employing one or more employees.
➢ REPORTING PAY ➢

No provision.

➢ SAFETY ➢

Click on the following link http://labor.hawaii.gov/hiosh/home/for-employers/ to access Hawaii’s Occupational Safety and Health home page.

➢ SCHOOL VISITATION LEAVE ➢

Government employees are limited to two hours of paid leave during normal business hours to attend a mutually scheduled parent-teacher conference for the employee’s minor child attending a public or private school in grades kindergarten through 12 or for preschool-aged children attending a licensed group child care center.

➢ SEX DISCRIMINATION ➢

Employers are prohibited from discriminating against an individual based on sex.

For purposes of state law, an employer is defined as anyone employing one or more employees.

➢ SEXUAL HARASSMENT ➢

State law prohibits harassment on the basis of sex. The law defines sexual harassment as unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature from any person directed towards, or in the presence of, an employee or applicant when:

- submission to the conduct is either explicitly or implicitly a term or condition of the individual’s employment;
- submission to or rejection of the conduct by the individual is used as the basis for employment decisions affecting the individual; or
- such conduct has the purpose or effect of unreasonably interfering with the individual’s work performance or creating an intimidating, hostile, or offensive working environment.

Employers are responsible for acts of sexual harassment by supervisors regardless of whether the complained-about acts were authorized or even forbidden, and regardless of whether the employer knew or should have known of their occurrence. Employers are responsible for acts of sexual harassment by co-workers and non-employees if they knew or should have known of the harassment and failed to take immediate remedial action.

➢ SEXUAL ORIENTATION DISCRIMINATION ➢

Employers are prohibited from discriminating against an individual based on sexual orientation or gender identity or expression.
An employer is defined as having one or more employees. Sexual orientation means 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.

**Note:** The Hawaii Civil Rights Commission has held that employment discrimination based on transgender or transsexual status is discrimination based on sex under Hawaii law.

➤ **SMOKING**

The Hawaii Smoke-Free Law prohibits smoking in enclosed or partially enclosed facilities that are: 1) owned by the state or the counties; 2) open to the public; and 3) places of employment, with limited exceptions. To prevent second-hand smoke from drifting into smoke-free facilities, smoking is prohibited within 20 feet of doorways, windows, and ventilation intakes.

Clearly legible signs that include the words “smoking prohibited by law” with letters of not less than one inch in height or the international “no smoking” symbol must be conspicuously posted at the entrance to every place open to the public and place of employment where smoking is prohibited.

See also lifestyle discrimination.

➤ **SOCIAL SECURITY NUMBER PRIVACY**

Social Security numbers may not be made available to the general public; printed on any card required to access products or services provided by the employer; transmitted over unsecured Internet connections; or used to access an Internet site unless accompanied by an authentication device (a unique password or personal identification number, for example). In addition, Social Security numbers should not be printed on any materials that are mailed to an individual, with limited exceptions.

Employers must: 1) destroy records that contain personal information (e.g., Social Security numbers) and that are no longer to be retained, and 2) disclose “without unreasonable delay” unauthorized access to personal information to those individuals whose information may have been accessed.

➤ **UNEMPLOYMENT INSURANCE**

Click on the following link [http://hawaii.gov/labor/ui/index.shtml](http://hawaii.gov/labor/ui/index.shtml) to access the Hawaii Department of Labor and Industrial Relations unemployment insurance home page.

➤ **VACATION PAY UPON TERMINATION**

Although there is no provision requiring the payment of vacation pay following an employee’s termination, courts have interpreted that wages be paid in lieu of vacation benefits upon termination if an employer’s handbook so provides. All employers are statutorily required to notify employees of the policy regarding vacation pay either in writing or by posting it.
Domestic violence: An employer of 50 or more employees must allow an employee to take up to 30 days of unpaid victim leave from work per calendar year, or an employer of not more than 49 employees must allow an employee to take up to five days of unpaid leave from work per calendar year, if the employee or the employee’s minor child is a victim of domestic or sexual violence — provided the leave is to:

- seek medical attention for the employee or employee’s minor child to recover from physical or psychological injury or disability caused by domestic or sexual violence;
- obtain services from a victim services organization;
- obtain psychological or other counseling;
- temporarily or permanently relocate; or
- 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, or other actions to enhance the physical, psychological, or economic health or safety of the employee or the employee’s minor child, or to enhance the safety of those who associate with or work with the employee.

An employer can’t discriminate against victims of domestic or sexual violence, if the employee notifies the employer or the employer has actual knowledge of the employee’s status. The employer must make reasonable accommodations for the employee, provided the accommodations don’t cause the employer’s operations to suffer an undue hardship. Examples of reasonable accommodations include the following:

- changing the employee’s contact information (e.g., phone numbers, fax numbers, or e-mail address);
- screening the employee’s telephone calls;
- restructuring the employee’s job functions;
- changing the employee’s work location;
- installing locks and other security devices; and
- allowing the employee to work flexible hours

Once every six months, the employer may verify that an employee is a victim of domestic or sexual violence by requesting that the employee provide a signed written statement from an employee, agent, or volunteer of a victim services organization; the employee’s attorney or advocate; the attorney or advocate of the employee’s minor child; a medical or other health care professional; or a police or court record supporting the occurrence of the domestic or sexual violence.
Employees are entitled to two consecutive hours off to vote if they don’t have two consecutive non-working hours to vote (excluding lunch and rest periods) while the polls are open. No time off needs to be granted if employees have two consecutive non-working hours to vote during the time the polls are open. Rescheduling of normal work hours is prohibited if an employee is lawfully absent for the purpose of voting.

Wages: Employers are prohibited from making wage deductions for time off to vote. Employees must present employers proof that a vote was cast. If employees fail to vote during the two hours granted, then wages may be deducted.

No employer may deduct, retain, or otherwise require to be paid any part or portion of any compensation earned by any employee except where required by federal or state statute or by court process or when such deductions or retentions are authorized in writing by the employee.

The amount subject to garnishment is determined on a sliding scale: 5% of the first $100 of an employee’s disposable pay earned in a month; 10% of the next $100; and 20% of all amounts exceeding $200 a month. Employers may not terminate or otherwise discipline an employee because his/her disposable pay is subject to a creditor garnishment.

Employee who quits: Next payday or at once if worker gave pay period’s notice.

Employee who’s fired: At once for employee who’s fired; next regular payday for employee who’s laid off.

Payday requirements: At least twice a month on regular, predesignated paydays; less frequently with approval of state labor department.

Direct deposit: Employers may not require employees to be paid electronically. Employee must be given written explanation of direct deposit program.

Employers are prohibited from retaliating or discriminating against employees who discuss their wages with other employees, inquire about the wages of other employees, or aid or encourage other employees to do the same.
WHISTLEBLOWING

Employers that employ one or more employees may not discharge, threaten, or otherwise discriminate against an employee with respect to compensation, terms, conditions, location, or privileges of employment because:

- the employee or individual acting on behalf of the employee reports or is about to report to a public body, verbally or in writing, a violation or suspected violation of a law or rule of the state, a political subdivision of the state, or the United States, unless the employee knows the report is false; or
- a public body requests that the employee participate in an investigation, hearing, inquiry, or court action.

WORK AUTHORIZATION

All individuals seeking employment with the state government or in the service of any county must be citizens, nationals, or permanent resident aliens of the United States, or eligible for unrestricted employment in the United States under federal law, and shall become residents of the state within 30 days after beginning their employment and as a condition of eligibility for continued employment.

Contractors are prohibited from employing persons not eligible to work in the United States. The contractors license board is authorized to suspend or revoke a license if a civil judgment is entered against the contractor on a complaint alleging that the contractor knowingly or intentionally hired ineligible workers.

WORKERS’ COMPENSATION

Click on the following link http://hawaii.gov/labor/dcd/aboutwc.shtml to access the Hawaii Department of Labor’s home page for employers.