

## SURVIVOR STATE EMPLOYMENT GUIDE

# HAWAII

### INTRODUCTION

The resource below is for informational purposes only and may not reflect new protections enacted after its publication date. While this resource is not intended to provide legal advice, it can be used as a starting point to guide you in identifying workplace protections for survivors of domestic violence, sexual assault, and stalking in your state. Note that in addition to possible other protections enacted since this resource was last updated, there may be local or federal protections available. Employers may also provide additional protections that may be reflected in employee handbooks or policies.

### ANTI-DISCRIMINATION PROTECTIONS

Under Hawai'i law ([Hawaii Rev. Stat. 378-2](#)), it is illegal for an employer to refuse to hire, employ, fire, discriminate, or retaliate against a current or potential employee on the basis of the employee's status as a victim of domestic or sexual violence if the employee provided notice to the employer of their status or the employer had actual knowledge of their status.

Employers are allowed to verify that the employee is a victim by requesting that the employee provide them with police or a court record or with a signed written statement from a victim services organization, attorney or advocate, a health care provider or a member of the clergy from whom the employee has sought assistance in connection with the violence. Employers may seek recertification every six months from the date they first became aware of the employee's status. There is an exception to recertifying every six months if an employee used a protective order to verify their status. Under that exception, the employer must use the date of the protective order or six months, whichever is later, to recertify the employee's status.

Note that federal law, local law and/or employers' internal policies may provide other applicable protections.

### REASONABLE ACCOMMODATIONS

Under Hawai'i law ([Hawaii Rev. Stat. 378-81](#)), employers are required to provide reasonable accommodation to an employee who is a victim of domestic or sexual violence unless it would cause an "undue hardship" on the employer. An "undue hardship" is an accommodation that would be significantly expensive or difficult based on the employer's size, budget, and work performed at the organization.

- *Examples of reasonable accommodation?* Under Hawai'i law ([Hawaii Rev. Stat. 378-81](#)) and [Hawaii Civil Rights Commission Guidance](#), examples of reasonable accommodations include, but are not limited to, changing employee's contact information, screening employee's telephone calls, restructuring job function, changing work location, installing locks or other security measures, and allowing the employee to work flexible hours or a modified schedule.
- *Do I need to show proof of domestic violence?* Employers are allowed to verify that the employee is a victim by requesting that the employee provide them with police or a court record or with a signed written statement from a victim services organization, attorney or advocate, a health care provider or a member of the clergy from whom the employee has sought assistance in connection with the violence.

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Individuals may also be eligible for reasonable accommodations under other laws or policies, including those that might afford reasonable accommodations for a disability related to domestic violence or sexual assault. Note that federal law, local law and/or employers' internal policies may provide other applicable protections.

## **LEAVE/TIME OFF WORK**

- **Time Off for Victims of Domestic and Sexual Violence:** Under Hawai'i law (**Hawaii Rev. Stat. 378-72**), an employee may take unpaid leave for up to 30 days per calendar year (employer has 50 or more employees) or up to five days per calendar year (employer has 49 employees or less), if the employee or the employee's minor child is a victim of domestic or sexual violence. Under Hawai'i law (**Hawaii Rev. Stat. 378-73**), an employee must use all other unpaid or paid leave before they can use domestic or sexual violence leave.

Under Hawai'i law (**Hawaii Rev. Stat. 378-72**), domestic or sexual violence leave must be taken for one of the following reasons:

- For the employee or their minor child to seek medical attention for physical or psychological injuries related to domestic or sexual violence;
- Obtain victim services from a victim services organization;
- Obtain counseling;
- Temporarily or permanently relocate;
- Take legal action, including preparing or participating in criminal or civil legal proceedings related to the domestic or sexual violence; or
- Other actions for the health or safety of the employee, the employee's minor child, or the safety of those who associate with or work with the employee.

When the leave is sought for medical attention, the employer may request a health care provider's certificate estimating how many days off is necessary and approving the employee's return to work. When the employee takes leave for non-medical reasons the leave doesn't last more than five days, the employee must provide a signed statement stating the leave was taken for one of the reasons listed above.

If the non-medical leave lasts longer than five days, the employee must provide one of the following to their employer:

- Certified or exemplified restraining orders, injunctions against harassment, and documents from criminal cases;
- Documentation from a victim services organization or domestic or sexual violence program; or
- Documentation from a medical professional, mental health care provider, attorney, advocate, social worker, or member of the clergy that the employee or employee's minor child got help from in response to the domestic or sexual violence.

If certification or documentation of leave for domestic or sexual violence is required by law, the employee's leave is not protected until they provide it to their employer. The employee shall provide reasonable notice of intention to take leave unless "not practicable due to imminent danger." All information provided to the employer is confidential unless the employee consents or if disclosure is required by law. The employer cannot discriminate against or take retaliatory action against an employee who exercises these rights.

- **Time Off for Crime Victims:** Under Hawai'i law ([Hawaii Rev. Stat. 621-10.5](#)), an employer can't fire or interfere with an employee's employment or threaten to do so because an employee complies with a subpoena, serves as a witness, or attends court as a prospective witness.

Note that individuals may also be eligible to take time off under their employer's policy, including vacation time, sick time, and personal days, under other state laws or protections, or under federal protections such as the Family and Medical Leave Act, which may afford unpaid leave for a severe medical condition.

## **UNEMPLOYMENT INSURANCE**

Under Hawai'i law ([Hawaii Rev. Stat 383-7.6](#)), individuals who separate from employment due to "compelling family reasons," such as domestic or sexual violence, can seek unemployment benefits. The individual's domestic or sexual violence must be verified by reasonable and confidential documentation and cause the individual to reasonably believe that their continued employment may jeopardize their safety or that any member of their immediate family in the following ways:

- The individual has a reasonable fear of the occurrence of future domestic or sexual violence at, going to, or leaving the individual's place of employment, including being a victim of stalking;
  - The anxiety of the individual to relocate to avoid future domestic or sexual violence against the individual or the individual's minor child prevents the individual from going to work;
  - The need of the individual or the individual's minor child to obtain treatment to recover from the physical or psychological effects of violence prevents the individual from going to work;
  - The employer's refusal to grant the individual's request for leave to address domestic or sexual violence and its effects on the individual or the individual's minor child; or
  - Any other circumstance in which domestic or sexual violence causes the individual to reasonably believe that separation from employment is necessary for the future safety of the individual, the individual's minor child, or other individuals who may be present in the employer's workplace.
- *Do I have to show proof of domestic violence?* Under Hawaii law ([Hawaii Rev. Stat 383-7.6](#)), the Department may request "reasonable and confidential" documentation of the domestic or sexual violence. These are all considered "reasonable and confidential" documentation under the law:
    - A notarized written statement of the individual certifying their status or the individual's minor child as a victim of domestic or sexual violence and explaining how continued employment creates an unreasonable risk of further violence;
    - A signed written statement from a victim services organization, domestic or sexual violence program, a medical professional, mental health care provider, attorney, advocate, social worker, or member of the clergy from whom the individual or the individual's minor child has sought help in relation to the domestic or sexual violence attesting to the domestic or sexual violence and explaining how the continued employment creates an unreasonable risk of further violence; or
    - Certified or exemplified restraining orders, injunctions against harassment, and documents from criminal cases suggesting or demonstrating that continued employment may cause an unreasonable risk of further violence.

## **OTHER RESOURCES**

[Hawaii Civil Rights Commission FAQ on Employment Laws for Employees Impacted by Domestic and Sexual Violence](#)