



*The Judiciary, State of Hawai'i*

**Testimony to the House Committee on Labor & Public Employment**

Representative Mark M. Nakashima, Chair

Representative Mark J. Hashem, Vice Chair

Tuesday, January 29, 2013, 9:00 a.m.

State Capitol, Conference Room 209

by

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The Judiciary, State of Hawai'i

**WRITTEN TESTIMONY ONLY**

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**Bill No. and Title:** House Bill 272, Relating to Abusive Work Environment; Public Employment

**Purpose:** House Bill 272 proposes to make abusive conduct against a public employee a workplace safety and health violation, as well as a work injury for which workers' compensation benefits may be paid; and the basis for legal action.

**Judiciary's Position:**

The Judiciary values our workforce and is committed to maintaining a safe working environment where all discussions and interactions between employees are done with respect, civility and without threats. The Judiciary agrees with the legislature that "healthy and productive employees" are an integral part of managing a successful operation and servicing the public. However, we respectfully oppose House Bill 272, for the following reasons:

**Overly broad definitions**

We have concerns that the definition of "abusive conduct" and "abusive workplace" are overly broad and may subject the Judiciary to numerous unwarranted complaints and workers' compensation claims, even in situations where the employer has no part in co-workers' personal friendships that may have gone sour, or where our supervisors are



responsibly attempting to address employees' inappropriate behavior and/or substandard work performance.

### **Established Policies and Procedures**

The Judiciary has established policies and procedures to address the type of "abusive" behavior being described in this bill. This includes our General Guidelines of the Rules/Laws Governing Conduct of Judiciary Employees which require that Judiciary employees "treat all people in a courteous, responsive and evenhanded manner;" and our Discrimination/Harassment-Free Workplace Policy which states, in part, that "the Judiciary will act to curb protected class discrimination or harassment without regard to its severity or pervasiveness..." Our Discrimination/Harassment-Free Workplace Policy also prohibits retaliation against individuals who make a complaint, participate in an investigation, or otherwise provides information; and provides procedures for reporting alleged discrimination, harassment or retaliation in workplace. The Judiciary has previously investigated complaints of alleged violations of the aforementioned policies and has taken appropriate corrective action, including disciplinary actions, where warranted.

Judiciary employees receive training on the policies and procedures for reporting complaints; and our managers and supervisors are instructed to follow-up on all employee complaints, including those that may include allegations of contentious work environments and inappropriate behavior which may affect employees' health and well-being, in a timely manner with consideration of employees' due process rights.

### **Resources Currently Available**

The Judiciary has resources available to address and attempt to resolve interpersonal conflicts between employees, including conflict resolution training and workplace mediation which is supported by our Center for Alternative Dispute Resolution.

### **Lack of Jurisdiction**

This bill charges the State Department of Human Resources Development (DHRD) with handling the education, complaint hearing, and adjudicative processes for all instances of purported abusive conduct. As DHRD is an agency of the State of Hawaii Executive Branch, we do not believe that DHRD should have jurisdiction over Judiciary employees.



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### **Existing Workers' Compensation Provisions**

This bill appears to elevate “abusive conduct” work injuries above all other types of injuries as the potential basis for workers’ compensation claims. Each claim must be examined on its own merits to determine compensability; regardless of how the injury occurred. The existing Chapter 386, HRS, already provides for an investigative process under the Director of the Department of Labor and Industrial Relation’s exclusive jurisdiction.

The language in proposed Section 78-K(b), HRS, is unnecessary because workers’ compensation benefits are already the exclusive remedy for an employee against his or her employer for most work injuries. The creation of a new cause of action for “abusive conduct,” with the option of either civil or administrative remedies, unnecessarily expands the scope of potential liabilities for public employers.

The Judiciary appreciates the concerns that appear to be prompting the proposed legislation. However, for the reasons discussed above, we respectfully request that this measure be held.

Thank you for the opportunity to testify on this measure.