

# Hawai'i Employer Legislation

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## HAWAI'I ADOPTS THREE EMPLOYMENT LAWS IN 2020

The Hawai'i legislature passed 82 bills in 2020, down from a typical year of 200 – 300 bills. The suspended session, virtual meetings, and anticipated state revenue shortfall all due to the pandemic played a part in the low number of bills finalized by legislators. On August 31, Governor David Ige announced his intent to veto six bills, none of which were directly labor- and employment-law related. Three bills important to private sector employers were adopted:

### **ACT 17 (HOUSE BILL 2054) NON-DISCLOSURE AGREEMENTS**

Key Concept: Employers Are Prohibited from Requiring Certain Non-Disclosure Agreements

This new law, effective as of September 15, 2020, prohibits Hawai'i employers from requiring an employee to enter into, as a condition of employment, a nondisclosure agreement that prevents the employee from disclosing or discussing sexual harassment or sexual assault occurring in the workplace, at work-related events, between employees, or between an employer and an employee; and retaliating against an employee for disclosing or discussing sexual harassment or sexual assault. Introduced by members of the legislature's Women's Legislative Caucus, the bill was supported by the Hawai'i Civil Rights Commission, the American Association of University Women of Hawaii, Hawaii Women's Coalition, and Hawai'i Women Lawyers, among other organizations and individuals.



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FOR A COPY  
OF ACT 17](#)

Members of the legislature stated that nondisclosure agreements that prevent disclosure of sexual assault and sexual harassment as a condition of employment silence victims of sexual harassment, sometimes allowing harassers to continue sexual harassment of other employees. Legislators noted their concern that nondisclosure agreements enable repeat offenders to engage in a pattern of sexual harassment. Some victims of sexual assault and harassment, legislators said, do not report it because of fear of retaliation. This measure is intended to “end the silencing of victims” by banning nondisclosure agreements that prevent disclosure of sexual assault and harassment and prohibiting employers from retaliating against an employee for disclosing sexual harassment and assault.

According to the American Association of University Women of Hawaii, 53% of women and 42% of men experienced workplace sexual harassment while working in Hawaii, citing a survey by Safe Spaces & Workplaces. AAUW noted that fifteen states passed new laws since 2017 to protect workers from sexual harassment; thirteen states now limit or prohibit employers from requiring employees to sign non-disclosure agreements as a condition of employment or as part of a settlement agreement. It urged the adoption of HB 2054 so that Hawaii would join Arizona, California, Illinois, Louisiana, Maryland, Nevada, New Jersey, New York, Oregon, Tennessee, Vermont, Virginia, and Washington in adopting such legislation.



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OF ACT 40](#)

### **ACT 40 (HOUSE BILL 2148) LEAVE FOR GRANDPARENTS**

Key Concept: Certain Employers Must Provide Leave for Employees to Care for their Grandchildren

Act 40 extends Hawai'i family leave law to include unpaid leave for an employee to care for the employee's grandchildren. The Senate's Judiciary Committee noted that Hawai'i's multi-generational households consist of grandparents who are often the primary caregivers of their grandchildren. Prior to adoption of Act 40, Hawai'i law did not allow protected leave for grandparents to care for their grandchildren. The Senate Judiciary Committee said that by providing grandparents protected leave, the struggle with the decision to forgo employment and income to care for a family member with a serious health condition would be alleviated, affording economic security to families during difficult life situations. The bill was supported by the state Department of Human Services, state Department of Labor and Industrial Relations, and Hawai'i State Commission on the Status of Women, among others, while concerns were raised by at least one employer organization. For more information about the applicability of Hawai'i Family Leave Law (e.g. which employers and when leave must be granted), visit the state Department of Labor at <https://labor.hawaii.gov/wsd/hawaii-family-leave/>



[CLICK HERE  
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OF ACT 51](#)

### **ACT 51 (SB 2193) CRIMINAL HISTORY**

Key Concept: Limits the Convictions That May Be Used in Employment Decisions

Also effective as of September 15, 2020, Act 51 reduces the number of years to seven that an employer is authorized to inquire about an employee's or prospective employee's criminal history when they have been convicted of a felony or misdemeanor. The bill was supported by Office of Hawaiian Affairs; Department of Human Resources Development; Drug Policy Forum of Hawaii; LGBT Caucus of the Democratic Party of Hawaii; Kauai Women's Caucus; Common Cause Hawaii; among others. It was intended to reduce the stigma and bias of a criminal record which can negatively affect an individual's ability to find employment, even for those who have demonstrated years of lawful behavior. This bill reduces the ten-year "lookback" period to seven years in the hopes that it will broaden opportunities for formerly incarcerated individuals to obtain employment that, in turn, will better enable them to obtain and maintain housing and health care, support themselves and their families, and integrate back into the community as productive citizens.

For information about legislation enacted in Hawai'i in 2020 go to:

[https://www.capitol.hawaii.gov/advreports/advreport.aspx?year=2020&report=deadline&rpt\\_type=gov\\_act\\_s&measuretype=HB,SB&title=Acts](https://www.capitol.hawaii.gov/advreports/advreport.aspx?year=2020&report=deadline&rpt_type=gov_act_s&measuretype=HB,SB&title=Acts)

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