

**A STUDY ON IMPLEMENTATION
OF THE CIVIL RIGHTS COMMISSION
FOR THE STATE OF HAWAII**

A Report to the Governor and the Legislature of the State of Hawaii

**Submitted by the
Legislative Auditor of the State of Hawaii
Honolulu, Hawaii**

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FOREWORD

Hawaii has strong statutes prohibiting discrimination in areas such as employment, real estate transactions, and public accommodations. However, enforcement efforts are said to be scattered and inconsistent. In 1988, the Legislature established a Civil Rights Commission to provide a more effective mechanism for enforcing the State's discrimination laws. However, the Legislature found it lacked data on the status of current enforcement and it requested the Office of the Legislative Auditor to review current enforcement efforts and make recommendations on more effective implementation of the State's civil rights statutes. This report responds to that request.

We were assisted in the preparation of this report by two consultants, Ms. Carol Forbes and Ms. Millicent Kim. We were also assisted by the Legislative Reference Bureau which inventoried state statutes prohibiting discrimination.

We wish to express our appreciation to the Office of Affirmative Action, the Department of Labor and Industrial Relations, the Office of Consumer Protection, various civil rights organizations, and others who assisted us in the preparation of this report.

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Chapter 1

INTRODUCTION

Under Act 219, the 1988 Legislature established a Civil Rights Commission for the State of Hawaii. The new Civil Rights Commission is intended to be a more effective mechanism for enforcing the State's discrimination laws.

Testimony presented at hearings indicated that current enforcement efforts are scattered among several agencies and hampered by inadequate fiscal and personnel resources. The Legislature saw a need to consolidate enforcement responsibilities and to establish a uniform procedure for handling all types of discrimination complaints.

To pave the way for the commission, Act 219 directs the Legislative Auditor, with assistance from the Legislative Reference Bureau and other interested parties, to review all state discrimination laws and current policies, procedures, and staffing of state departments and to report to the Legislature on the following:

1. The current status of enforcement of state discrimination laws by state departments and agencies;
2. Recommendations for a statutory mechanism for establishing a systematic and uniform procedure for enforcing state discrimination laws by the Civil Rights Commission and any proposed amendments to the powers and functions of the commission;
3. Recommendations on the staffing requirements of the commission;
4. Recommendations for a transition timetable for the transfer of programs and services to the commission;
5. Recommendations on a proper mechanism to address alleged discrimination within state departments and agencies; and
6. Any relevant recommendations or considerations for the Legislature to fully address the question of effective enforcement of state discrimination laws.

Organization of the Report

This report consists of three chapters. Chapter 1 is this introduction. Chapter 2 provides background information on civil rights at the federal and state levels as well as civil rights here in Hawaii. Chapter 3 presents our review of the status of enforcement in Hawaii and our recommendations on the issues of concern to the Legislature.

Chapter 2

BACKGROUND

In this chapter, we present background information on civil rights activities at the federal level and some emerging national trends. We also present information on civil rights commissions in other states. Finally, we discuss civil rights in Hawaii and current anti-discrimination efforts.

Civil Rights at the National Level

“Civil rights” are those personal liberties guaranteed by the U.S. Constitution and those federal statutes that implement and give force to the constitutional guarantees.¹ There are numerous federal statutes protecting an individual’s civil rights against discrimination. These have produced a significant framework for social change. The major ones are discussed below.

Federal civil rights legislation. The basis for civil rights is found in the U.S. Constitution and the amendments to the Constitution. Article IV, Section 2 of the Constitution gives the citizens of each state all the privileges and immunities of citizens of the several states. Amendments to the Constitution guarantee such personal rights as freedom of speech and freedom of the press.

In 1865, after the Civil War, the 13th Amendment abolished slavery. The 14th Amendment, adopted in 1868, prohibited the making of any state law that would abridge the privileges or immunities of any citizen or deny due process of law or equal protection under the laws to any citizen. The 15th Amendment guaranteed voting rights without regard to race, color, or previous condition of servitude.

Several civil rights statutes were enacted during the Reconstruction era following the Civil War. They were the Civil Rights Act of 1866 which guaranteed certain rights to freed slaves such as the right to make and enforce contracts, the Act of 1870 protecting voting rights, the Act of 1871 on voting rights, the Act of 1871 suppressing the Klu Klux Klan, and the Act of 1875 prohibiting racial discrimination in public accommodations.

Major legislation on civil rights occurred again during the 1960s beginning with the Equal Pay Act of 1963 which prohibits sex-based discrimination in employment. Title VI of the Civil Rights Act of 1964 prohibits discrimination in any program receiving federal financial assistance on the basis of race, color, or national origin. Title VII of the Civil Rights Act of 1964 prohibits

employment discrimination based on race, color, religion, sex, or national origin in terms, conditions, or privileges of employment by public or private employees or labor unions. Title VIII of the Civil Rights Act of 1968 makes it unlawful to discriminate in the sale, rental, and financing of housing or in brokerage services on the basis of race, color, religion, sex, or national origin. The Age Discrimination in Employment Act of 1967 prohibits discrimination against those over 40, and the Rehabilitation Act of 1973 prohibits discrimination against the handicapped and requires federal agencies to take affirmative action in the hiring, placement, and advancement of handicapped employees.

Two recent efforts have been passage of the Civil Rights Restoration Act of 1987 and the 1988 Fair Housing Act Amendments. The Civil Rights Restoration Act revalidates Title IX of the 1972 Education Amendments. Title IX prohibits sex discrimination in educational programs or activities receiving federal financial assistance. It has been broadly interpreted to affect educational institutions as a whole.

Grove City College brought suit contending that the school's federal funds should not be terminated if one program is in noncompliance. In 1984, the Supreme Court held in *Grove City College v. Bell* that the laws were not intended to apply to entire institutions but to particular programs. The Civil Rights Act of 1987 specifically broadens the definition of program or activity to cover all the operations of those schools, certain private organizations, and state and local government units receiving federal assistance.

Under the Fair Housing Act, the U.S. Department of Housing and Urban Development (HUD) was only authorized to investigate and conciliate. The 1988 amendments give HUD enforcement powers.

Implementation. Implementation of civil rights laws is carried out primarily through preventive measures or through enforcement actions. A complex remedial and investigative system has evolved over the years.

A series of executive orders issued by the President provide policy and guidelines for implementing civil rights laws. Executive Order No. 11478 issued by the President in 1969 established the policy of providing equal employment opportunity through the use of affirmative action programs. Executive Order 11246 requires federal contractors to take affirmative action in hiring, promotion, pay, and training to ensure nondiscrimination for women and minority men.

Affirmative action plans use race, sex, or some other "protected class" as a basis for examining employment practices. They are designed to remedy or prevent discrimination through the use of numerical goals and timetables for hiring and promotion. All federal agencies now authorize

the use of affirmative action plans in education, employment, and other aspects of economic life. Federal agencies provide technical assistance to promote voluntary compliance and equal opportunity.

Executive Order 12067 in 1978 gave the Equal Employment Opportunity Commission (EEOC) responsibility for providing direction and requires uniform enforcement standards throughout the federal government. The EEOC receives and investigates discrimination complaints from the public and private sector. It reviews whether employers and institutions are complying with anti-discrimination provisions. Class action suits are brought if statistical data and research show systemic discrimination or a pattern of unlawful discriminatory practices that has an adverse impact upon members of a protected class or classes. Cases are settled through conciliation, public hearings, or litigation.

Federal civil rights enforcement. Civil rights functions are fragmented at the federal level. The U.S. Civil Rights Commission is responsible for studying, researching, and monitoring discrimination. The EEOC is responsible for all compliance and enforcement activities relating to equal employment opportunity. The Department of Justice enforces violations against the handicapped, voting rights, institutionalized persons, and housing; the Department of Health and Human Services also enforces housing complaints. The Department of Health and Human Services and the Department of Education both enforce Title VI of the Civil Rights Act of 1964, the rehabilitation and age discrimination acts, and numerous other non-discrimination provisions of a variety of laws.

The U.S. Civil Rights Commission. President Eisenhower created the Civil Rights Commission in 1957 to investigate, study and collect information, monitor laws, and serve as a clearinghouse for civil rights violations.² The commission has been extended seven times, the last time in 1983. During the Reagan Administration it became controversial for rejecting the prior policy of preferential treatment for minority groups and for questionable management practices.

On the basis of these concerns, the U.S. House eliminated all funding for the commission in 1987 but the U.S. Senate restored it at reduced levels. The commission is due to expire in 1989.

Department of Justice, Division of Civil Rights. The Division of Civil Rights is responsible for enforcing the various voting rights acts and anti-discrimination provisions in voting, credit, use of public facilities and public accommodations, housing, education, and the administration of federally assisted programs. It is also responsible for protecting the constitutional rights of the mentally disabled, state prisoners, and psychiatric hospital patients. The division undertakes investigations and initiates and conducts litigation.

In addition, the division is responsible under Executive Order 12250 to coordinate the efforts of executive agencies to eliminate discrimination in programs receiving federal financial assistance.

U.S. Department of Housing and Urban Development (HUD). The Federal Fair Housing Act, Title VIII of the Civil Rights Act of 1968, forbids discrimination in the sale, rental or financing of housing on the basis of race, color, religion, sex, or national origin. HUD was authorized to investigate and conciliate complaints of discrimination through voluntary compliance.

However, HUD found continuing discrimination against blacks and hispanics in the housing market. It estimated that more than 2 million acts of housing discrimination occur every year.³ Conciliation alone was an inadequate enforcement mechanism and complainants had to carry the burden of private litigation to have their rights enforced. This led to the 1988 amendments which gave HUD new enforcement authority and added handicap and familial status as protected classes.

HUD can now initiate complaints. It is authorized to represent complainants before administrative law judges who can issue cease and desist orders and payments of actual damages as well as civil penalties from \$10,000 for a first violation to \$50,000 for a third violation. HUD can also seek preliminary or temporary relief including temporary restraining orders. If either party chooses a court trial, HUD can authorize a civil action and the Justice Department would file suit in federal district court on behalf of the complainant. Complainants may also file private suits in federal district court. District courts could enjoin discrimination and award actual and punitive damages.

HUD has workshare agreements with state and local agencies that it has certified as meeting the requirements of its Fair Housing Assistance Program (FHAP). FHAP agencies must be substantially equivalent to Title VIII in the substantive rights they protect, the procedures followed, the remedies available, and in providing for judicial review. HUD is required to defer to FHAP agencies investigation and resolution of complaints falling within their jurisdiction.

HUD does not now have a workshare agreement with any Hawaii agency although the State's Discrimination in Real Property Transactions Act has been found to meet the substantial equivalency requirements of Title VIII. Consequently, the Honolulu HUD office investigates all complaints about housing discrimination. The Honolulu office reports that it had 12 cases last year. It found no discrimination in any of the cases. As of December 1988, it had five open cases.

Equal Employment Opportunity Commission (EEOC). The EEOC is an independent agency established by Title VII of the Civil Rights Act of 1964 which prohibits discrimination in employment.⁴ It is responsible for investigating individual charges alleging discrimination in employment based on race, color, religion, sex, or national origin. It is also responsible for investigating charges filed under the Age Discrimination in Employment Act of 1967 and section 501 of the Rehabilitation Act of 1973 which prohibits discrimination against handicapped individuals. It has the authority to require employers to report on the race, sex, and ethnic origin of their employees. It monitors these reports for cases of possible systematic discrimination. It also coordinates federal equal employment efforts and oversees affirmative action plans.

Under Section 706 of the 1964 Civil Rights Act, the EEOC can enter into workshare agreements with local agencies that are responsible for substantially equivalent laws.⁵ The agencies are certified by EEOC as "706 agencies." The purpose is to avoid duplication of effort. Under a workshare agreement, the local agency agrees to process a certain number of cases at about \$400 per case. Agencies must also meet EEOC standards for investigations.

The EEOC had a staff of 3168 and appropriations of \$179.8 million in 1988.⁶ During the federal fiscal year 1986-87, 115,500 charges were filed with EEOC and state and local 706 agencies. More than half of these charges, 55.3 percent, were closed with no-cause determinations. The EEOC found cause in 2.6 percent of the cases. A settlement was reached with the employer in 12.5 percent of the cases without a determination on whether discrimination had occurred. The remainder were closed administratively for various reasons. No cause determinations for a five-year period from 1983-87 ranged from 41 to 59.5 percent. During the same period, determinations of cause ranged from 2.6 to 3.9 percent.⁷

In January 1988, EEOC established an office in Honolulu to take care of the increasing number of complaints. EEOC reported in October 1988 that 200 cases had been filed since it opened its Honolulu office.

The equal employment opportunity (EEO) enforcement process. The EEOC's enforcement responsibilities encompass both private and federal employers. A different process is followed for each.

Complaints against private employers. Complainants in the private sector must file charges of violation of Title VII with the EEOC within 180 days of the alleged violation. The EEOC may defer a charge to a state or local 706 agency to give it an opportunity to remedy the alleged discrimination. If deferred, the agency is given exclusive right to process the charge for a sixty-day period.

An investigator conducts an intake interview with the complainant and obtains a written affidavit on the kind of personal harm suffered by the complainant, the events relating to the harm, and other information relating to the complaint. The respondent is notified and given a summary statement about the complaint.

Settlement and conciliation may occur anytime after the complaint is filed. Any settlement resulting in less than full remedy for the complainant must be reviewed by EEOC's legal department.

If a determination is made that there is no reasonable cause to believe an unlawful event occurred, the complainant is notified of the determination and of his or her right to sue in federal district court. The complainant may request a review of the case by the commission within 14 days. The commission's decision is final.

If a determination is made of probable cause, the respondent is notified and attempts made to conciliate for full relief. If the respondent refuses to comply, EEOC will take the case to court.

The EEOC encourages settlement of charges it handles. It also has a policy of full investigation. It has made several changes over the years in an effort to streamline its procedures and to reduce an increasing backlog. In 1976, the EEOC implemented an expedited charge processing procedure known as the "Thirty Day Turn-Around Project." On-site investigations were eliminated and determinations were made on minimally adequate evidence. The project was discontinued after complaints that the procedures violated the rights of complainants.

In January 1979, EEOC instituted a "rapid charge process" which was designed to offer the involved parties an early opportunity to resolve the dispute by negotiating a no-fault settlement. The process included a short intake to assess the merits of the case, counseling of a complainant, scheduling of a fact finding conference to establish the facts and to encourage settlement discussions.

This process enabled EEOC to cut down its backlog significantly--from 126,000 charges to 31,500 in 1983.⁸ The EEOC encouraged all state and local fair employment practices agencies to adopt rapid charge processing to control and minimize increasing caseloads. However, it was criticized by the U.S. General Accounting Office for overemphasizing the negotiation of charges that had little merit. It was also criticized for evaluating the performance of its investigators on the basis on the number of cases they close, creating a perverse incentive to close cases regardless of their merit. The EEOC acknowledged that it had become primarily a facilitator and claims adjuster.

In 1983, EEOC adopted a full investigation policy instead of rapid charge processing to fulfill its mission of providing a more accurate basis for determining the merits of charges and to provide

better evidence for litigation, if necessary. State and local 706 agencies have been encouraged to conduct full investigations. Under its full investigation policy, the EEOC backlog has increased from 31,500 charges to 62,000 charges at the end of fiscal year 1986-87.⁹

Complaint process for federal employees. Each federal agency must have its own EEO process which must be satisfied before a complainant may seek outside help. The process includes a long series of steps with no deadlines for agency actions for the most part.

The internal federal employee system has been severely criticized for delays and inefficiencies. The U.S. House Committee on Government Operations held a series of three hearings on the processing of EEO complaints in the federal sector.¹⁰ It found that complex agency processes took four times as long and were ten times more costly to resolve than complaints in the private sector.

The average time for closure of all cases in 1985 was 349 days; the average time for decisions on the merits of cases was 630 days.¹¹ The backlog of complaints was increasing but there was no incentive for agencies to meet deadlines or to expedite complaint processing. There were too many levels of review, workers were said to be inadequately trained, and EEOC lacked the power to enforce its rulings over other agencies. Moreover, the authority of federal agencies to handle their own employee complaints raised obvious questions of conflicts of interest.

In November 1987, the Committee on Government Operations issued its findings and recommendations. It recommended that the processing of federal employees' EEO complaints be removed from the agencies and centralized in the EEOC as an independent body and the EEOC be given the power to enforce its decisions over the agencies. The committee said that reasonable deadlines should be established for each stage of complaint processing and a carefully devised transition schedule should be phased in to avoid overwhelming the EEOC.¹²

It also recommended that the agencies retain jurisdiction over a precomplaint counseling process to achieve settlements. The role and skills of counselors should be strengthened. They should be knowledgeable in EEO law, be skilled in mediation, and have the authority to achieve settlements. They should also be required to advise complainant about their rights.

Emerging trends. The national climate is unsettled. Leadership and political changes, policy redirection, increasing Asian immigration, and stronger state roles are influencing the direction of the civil rights movement. Attempts at eliminating job discrimination through the use of affirmative action goals are seen as making progress but very slowly.

The Supreme Court has decided to review *Runyon v. McCrary*, a 1976 civil rights decision that has served as precedent for a wide range of discrimination suits. The Supreme Court had ruled that it was permissible to bring suits charging discrimination under a statute enacted shortly

after the Civil War which gave all persons the same rights as white citizens to make and enforce contracts. Civil rights advocates are concerned that the Supreme Court's decision to reconsider will be a blow to civil rights enforcement.

The recent influx of Asian immigrants is seen as a new force. They are protected under various civil rights laws, and they are expected to be a strain on enforcement capabilities which have historically been geared to black minorities. The U.S. Commission on Civil Rights recently expressed concern that Asian discrimination is taking violent forms and urged greater governmental attention.¹³

Strong state enforcement efforts are emerging alongside the federal system. In the past, the federal body of law preempted state enforcement of civil rights. However, the U.S. Supreme Court has held that state courts may interpret state constitutions to be more protective than the U.S. Constitution. Since 1980, state supreme courts are becoming a leading force by interpreting state constitutions that protect civil rights more broadly.¹⁴ They are supported by state legislatures that are strengthening civil rights guarantees with more detailed amendments to their state constitutions.

State Civil Rights Activities

Almost all states have an office devoted to civil rights. They may be separate commissions on civil rights or human rights; they may be separate divisions or departments of civil rights; or they may be offices within various other state departments. They have varying functions and powers.

We conducted a survey of state civil rights agencies, requesting information on their status and operations and their suggestions for Hawaii's new commission. Thirty-three agencies responded.

Most report that they are successful but hampered by inadequate staff and budgets. They differ in their structure and size of budget but they are alike in purpose. They say that they are closing cases more quickly and achieving more settlements by improving their procedures. They are establishing precedent through litigation.

The commissions report that the bases for discrimination complaints have expanded from the original ones of race, color, national origin, religion, and sex to include blindness, handicapped status, credit, marital status, pregnancy, AIDS, sexual orientation, and maternity status among others.

Most of the commissions are responsible for employment, housing, and public accommodations. Some also cover areas such as education, credit, and law enforcement. All participate in workshare agreements with EEOC and/or HUD.

Eleven of the respondents reported that their state attorneys general sue on their behalf. Ten could sue in their own name. A few commissions have the statutory right to fine discriminating parties for specific kinds of discrimination such as in advertising or public accommodations.

Staffing and budgets for these commissions showed wide variations from three positions in South Dakota to over 229 in Michigan. Budgets ranged from \$90,000 for Vermont to over \$11 million for Michigan.

Commissions are staffed similarly across the nation. They include officials, administrators, and professionals such as investigators, consultants, and attorneys. Many report that well-trained investigators are considered critical to the resolution process.

Commissions report that complaints, especially those in sex discrimination, are increasing. State case profiles show a consistent rate of approximately 50 percent in closing cases for "no probable cause," that is, there were inadequate, insufficient, or non-corroborative facts to show that discrimination occurred and there was no basis for proceeding with a charge. Conciliation settlements ranged from 1 percent to 30 percent.

Many states continue to use the rapid charge processing system initiated by the EEOC. They say that it is the only way they can control the increasing workload. They understand that it results in more superficial investigations. However, they say that it expedites processing and increases settlements. They recognize problems in the process but say that the advantages outweigh the disadvantages. The Michigan Department of Civil Rights states that it is unrealistic for any civil rights agency to investigate fully every charge because of limitations in staff and funding. Moreover, not every charge warrants full investigation.¹⁵

Automation has also helped to accelerate administrative and case processing in most states. Many states link with federal systems.

Several commissions had suggestions for Hawaii. Connecticut suggested that there be a clear delineation between the policy-making responsibilities of commission members and the executive function of the director. The director should have strong administrative and managerial skills as opposed to an emphasis on advocacy for any particular group. Colorado suggested that state statutes meet federal EEOC and HUD standards for equivalency to be eligible for federal funding. Nebraska recommended that the new commission be given adequate funding from the start to enable it to meet public expectations. And Wisconsin recommended clear procedures that are understandable to the public coupled with good basic staff training. It also noted that it is critical to develop specific performance standards on quantity, quality, and time frames for staff.

Civil Rights in Hawaii

A variety of civil rights issues have received attention recently. These have included complaints of discrimination against blacks at Waikiki night clubs and unfair hiring practices in state agencies. Discriminatory job evaluation forms, licensing processes, and some immigration issues have also been successfully challenged.

In Hawaii, discrimination complaints based on sex is at a level similar to that in other states. However, certain groups charge that they continue to be underrepresented in higher paying state jobs. Filipinos, Caucasians, and Hawaiians are underrepresented in full-time jobs, and women hold fewer top level positions than men.

State anti-discrimination activities. Fifteen state departments, including the Office of the Governor and Lieutenant Governor have jurisdiction over 50 anti-discrimination laws. (See Appendix A for a summary of Hawaii discrimination statutes) They cover a wide range of activities including credit, real estate, education, public accommodations, contracts, politics, insurance, employment, housing, and health care.

Many of these laws require compliance with nondiscrimination provisions. For example, the Department of Budget and Finance requires organizations receiving grants, subsidies and purchases of service to comply with federal and state nondiscrimination laws, and the Department of Business and Economic Development prohibits borrower discrimination in mortgage and securities programs. The Department of Land and Natural Resources must put a nondiscrimination use and enjoyment clause in its patents, deeds, leases, licenses, and permits.

The University of Hawaii is responsible for prohibiting sex discrimination in educational or recreational activities. All privileges of the institution must be made available to all persons regardless of race, color, religion, sex, national origin, or physical handicap.

Affirmative action. The Office of the Governor provides leadership in promoting nondiscrimination and affirmative action. The Office of Affirmative Action is in the Governor's Office. Its function is to formulate policies, plans, and coordinate programs to promote equal employment opportunities and practices in state government, provide information and advice to state officials, implement EEO compliance policies and practices, and make recommendations to the Governor and the Legislature on affirmative action. The Office of the Governor is also responsible for helping with violations in long-term care facilities. The director of the Executive Office on Aging is to establish a procedure for complaints.

State enforcement agencies. Several state agencies receive complaints from the public and have enforcement powers. These include the Department of of Commerce and Consumer Affairs

(DCCA), the Department of Education (DOE), the Department of Health (DOH), the Hawaii Housing Authority (HHA), the Department of Human Services (DHS), and the Department of Labor and Industrial Relations (DLIR).

The DCCA is responsible for enforcing Chapter 515, HRS, the Discrimination in Real Property Transactions Act. Discrimination on the basis of race, sex, color, religion, marital status, parental status, ancestry, or physical handicap is prohibited. The responsibility for enforcement was transferred from the DCCA's Regulated Industries Complaints Office in December 1987 to its Office of Consumer Protection (OCP). OCP is required to investigate and conciliate complaints on discrimination in real estate transactions. In cases of discrimination, DCCA may hold hearings and order appropriate remedies. It may file a petition to enforce relief in circuit court.

The OCP is also responsible for bringing civil action to collect fines against those who violate the State's public accommodations law.

The DCCA is responsible for the Fair Credit Extension Act that prohibits discrimination on the basis of marital status with respect to any credit transactions. It also has jurisdiction over discriminatory acts in the business of insurance.

The DOE is responsible for processing complaints pertaining to alleged civil rights violations in the public schools.

The DOH is responsible for protecting the civil rights of patients in psychiatric facilities. It must investigate any complaints and report its findings and recommendations to the complainant within 30 days. The Office of the State Ombudsman is responsible for investigating complaints against public psychiatric facilities.

The HHA investigates complaints of discrimination against lessees on the basis of race, religion, sex, ancestry, or physical handicap.

The DHS may investigate unfair practices in the rooming house business. It also handles complaints from recipients of public services such as food stamps, Medicare, Medicaid, and vocational rehabilitation programs. Each of these programs has its own federal guidelines. Complaints are filed initially with the program administrator. The department has a civil rights coordinator who will investigate and make recommendations to the director if the case is not resolved by the program administrator. Complainants who are not satisfied may file with the appropriate federal agency or file a civil court action.

The DLIR is the major enforcement agency in the State. It is responsible for enforcing Chapter 378, the State's Employment Practices Act which prohibits discriminatory practices by employers or employment agencies, or labor organizations on the basis of race, sex, age, religion,

color, ancestry, physical handicap, marital status, or arrest and court record. The department must investigate complaints, seek to end discriminatory practices by informal means, or it may order appropriate relief including hiring, reinstatement, and upgrading with or without back pay. The department may bring action in circuit court to seek appropriate relief.

Under Chapter 378, DLIR is also responsible for preventing discrimination against employees for refusing to submit to lie detector tests and for complaints charging unlawful suspension, discharge, or discrimination against employees who file for bankruptcy or who are receiving workmens' compensation benefits.

The department is authorized under Chapter 489, the Discrimination in Public Accommodations Act, to receive complaints of discriminatory treatment in public accommodations. It is a discriminatory practice to deny any person full and equal treatment of goods, services, facilities, privileges, advantages, and accommodations in a place of public accommodation on the basis of race, sex, color, religion, ancestry, or handicap. The Attorney General or the Director of the Office of Consumer Protection may bring civil suit to collect fines for violations.

The EEOC has certified DLIR as a 706 agency. Under the agreement, each agency designates the other as its agent for the purpose of receiving and processing employment discrimination complaints. Complainants may file with either or both DLIR and EEOC. Each agency will notify the other of the complaint and one will pursue the investigation. Although DLIR does not have to follow EEOC investigative procedures, it is monitored and audited by EEOC. The workshare agreement with EEOC calls for DLIR to process 118 cases at \$47,640 for the federal fiscal year from October 1988 to September 1989. The agreement is renewed annually from October to September.

These enforcement responsibilities are administered by the employment practices branch in DLIR's enforcement division. The branch consists of a supervising fair employment practices specialist and four full-time fair employment practices specialists who do the intake and full investigations. In December 1987, two temporary specialists and two specialists on loan from other branches within the enforcement division were added to the branch to assist with the backlog of cases. According to DLIR, an experienced investigator can complete about 50 full investigations each year. With the current staff of eight specialists, the branch is able to maintain the current workload as well as reduce the backlog slightly.

Grievance procedures for state employees. State law requires all departments to have grievance procedures. The Department of Personnel Services is to promulgate a uniform plan

for the creation of these procedures in the various departments. All state agencies have established an internal grievance procedure except the Department of Hawaiian Home Lands and the Judiciary.

Most have a basic two-step procedure following that recommended by the State Office of Affirmative Action. Step 1 is the formal filing of an alleged discrimination complaint with an agency EEO officer who investigates the matter. Step 2 provides for a hearing and appeal to the department head.

There is a wide range of agency practices within the two step procedure. Filing deadlines range from 20 days for some departments, such as the Department of Agriculture, to 90 days for the Department of Transportation. Deadlines for decisions by the departments range from within 7 days to 60 days after the complaint has been filed. Some agencies are silent on certain procedures and deadlines.

There is a low level of employee complaints filed with departments. An informal count shows that 15 agencies have less than one pending complaint. The Department of Corrections has the most--40, the Department of Health has 11, and the University of Hawaii has 8. It appears that internal grievance procedures are seldom used by state employees. They appear to prefer other alternatives.

Unlike federal employees, state and county employees have the right to go directly to DLIR, the State Civil Service Commission, the EEOC, their union, and to court for redress. One office noted that a complainant had filed at 17 different agencies, creating enormous amounts of paperwork.

The same kinds of criticism are made of the internal complaint process for state employees as were made of the process for federal employees. Complainants appear to see a conflict of interest in a personnel officer acting as an impartial investigator on behalf of the department head as well as an EEO coordinator who is supposed to look after the employee's interests.

Creation of a Civil Rights Commission

There is general agreement that the State has sound laws prohibiting discrimination. However, there is concern that enforcement of civil rights laws is fragmented and ineffective and that it is not receiving the priority it deserves. There were reports of lengthy delays in processing complaints and in achieving redress.

These concerns led to the introduction of House Bill 3408 establishing a Civil Rights Commission in the Office of the Governor to receive, investigate, and conciliate complaints in employment, public accommodations, and real estate transactions.

Those who testified supported the creation of a Civil Rights Commission. One noted that enforcement responsibilities are divided among several agencies. The responsible agencies lack the resources to effectively investigate and prosecute complex cases; enforcement in the housing and public accommodations area were sporadic; and although agencies were authorized to initiate civil action, this was rarely done, leaving complainants to pursue costly litigation themselves.¹⁶

The DLIR expressed concern that the new commission would be responsible for enforcing statutes relating to employment, public accommodations, and real estate transaction, each with its own enforcement policies and procedures. Instead, it recommended that a uniform and systematic mechanism be established for all three laws. It also expressed concern about an orderly transfer of programs and services to the new commission.¹⁷

Legislative committees found that they lacked data on the full degree and extent to which the State's discrimination laws are being enforced and determined that the commission's role, powers, and functions should be established after a review by the Legislative Auditor on current enforcement practices.

Act 219 (Chapter 368, HRS) the Civil Rights Commission. The legislation created a commission but left out many of the details pending this review. The Legislature states that it finds discrimination because of race, color, religion, age, sex, marital status, national origin, ancestry, handicapped status, or medical condition in employment, housing, or public accommodations is against public policy. The purpose of Act 219 is to provide a mechanism for a uniform procedure for the enforcement of the State's discrimination laws.

The act establishes a Civil Rights Commission consisting of five members appointed by the Governor with the consent of the Senate. The commission is placed within the DLIR for administrative purposes.

The commission has the power to:

- Receive, investigate, and conciliate complaints alleging unlawful discrimination;
- Hold hearings, administer oaths, examine witnesses and documents, issue subpoenas, and delegate such powers to any member of the commission or any persons appointed by the commission;
- Commence civil action in circuit court to obtain appropriate relief;
- Issue the right to sue to a complainant;
- Issue publications and results of its investigations and research to promote goodwill and to eliminate discrimination;
- Submit a written report of its activities to the Governor and the Legislature; and
- Maintain complete records and compile statistical data on complaints.

The commission can penalize whoever intentionally resists, prevents, impedes, or interferes with the commission or any of its authorized agents in the performance of its duties or violates an order of the commission. The penalties are a fine of not more than \$500 or imprisonment for not more than 90 days or both.

Existing rights and remedies relating to enforcement of current discrimination laws are preserved so that any rights currently in existence are not affected by Act 219.

Chapter 3

STRENGTHENING ENFORCEMENT OF STATE DISCRIMINATION LAWS

In this chapter we report on the legislative concerns in Act 219. We discuss the current status of enforcement and make recommendations on establishing a systematic and uniform procedure for enforcing state discrimination laws including a mechanism to address discrimination within state agencies, staffing for the new commission, a transition timetable, and other recommendations for effective enforcement of state discrimination statutes.

Status of Current Enforcement

It is clear that awareness of civil rights is increasing, resulting in a substantial increase in the number of complaints. It is also clear, that the State's enforcement efforts have not been given sufficient attention. Staffing and funding for enforcement have not increased at a level commensurate with the increase in complaints.

Testimony supporting the creation of a Civil Rights Commission indicated frustration with the slow pace of enforcement, with cases taking two or more years. At the same time, there may be a failure to appreciate the time consuming nature of investigations that must take into consideration the burdens of proof and the complex legal theories relating to discrimination cases.

Enforcement of Chapter 378 on employment practices. Formal complaints on discrimination fall almost entirely in the employment area. The Department of Labor and Industrial Relations (DLIR) Employment Practices Branch is the major enforcement agency because of its responsibility for fair employment practices. It reports that 329 complaints were filed in FY 1987-88, an increase of 24 percent over the preceding year. There was a backlog of 350 cases at the beginning of the fiscal year and the branch was able to dispose of 371 complaints. It reports that complaints are increasing by about 25 percent annually. About a third of the complaints were related to sex discrimination and a third related to race discrimination.

The branch has about a 12-month backlog, and it hopes to cut this down to 9 months. It had not been able to keep up with its workload with its four full-time investigators. However, with the help of two temporary investigators and two other investigators on loan from other units within DLIR, it can maintain its current workload and cut slowly into the backlog.

DLIR's disposition of cases falls within the rates of the Equal Employment Opportunity Commission (EEOC) and other state commissions. During the six fiscal years from 1982 to 1988, the branch investigated 835 complaints. It found discrimination in 3.5 percent of the cases, no cause in 59.5 percent, and 37 percent were settled. A total of 335 cases were settled through conciliation. The remedies for complaints included restoration of jobs and benefits and awards totaling approximately \$525,000.

The State does not have a hearing process for charges of discrimination in employment. DLIR works with the Department of the Attorney General if it feels that a case should be litigated in court. Currently, three cases are pending litigation by the Department of the Attorney General.

DLIR also enforces complaints relating to lie detector tests and unlawful suspension and discharge. It had only one complaint relating to lie detectors. It received 94 complaints relating to unlawful suspension and disposed of 108 of them. However, there were 135 complaints pending at the end of the fiscal year.

Enforcement of Chapter 515 on discrimination in real property transactions. The Office of Consumer Protection (OCP) in the Department of Commerce and Consumer Affairs (DCCA) is responsible for administering the Discrimination in Real Property Transactions law. It is staying current with its workload. OCP reports that complaints relating to real property transactions average about one a month. They are a small proportion of its workload which includes landlord tenant matters, deceptive practices, and false advertising among others.

The average time taken to resolve a complaint is two months unless the case goes to hearing, in which case the complaint takes 4 to 6 months to resolve. Since December 1987, OCP has had 10 complaints. OCP says that it is likely that there are more instances of housing discrimination that are not being reported. It is not a highly visible program and public education is needed on its availability and housing rights.

The U.S. Department of Housing and Urban Development (HUD) determined in September 1988 that Hawaii is substantially equivalent and eligible to participate in its Fair Housing Assistance Program. This determination will be valid until January 12, 1992. The State could enter into a memorandum of agreement with HUD under which it would be eligible for a total of \$30,000 to build up its capacity and to do complaint monitoring and reporting. It would also be subject to HUD's monitoring procedures. DCCA chose not to participate in such an agreement with HUD in view of the limited number of complaints and the requirements imposed by HUD.

Enforcement of Chapter 489 on discrimination in public accommodations. There is some confusion about which agency is responsible for enforcing the State's Discrimination in Public Accommodations Act. Under Section 489-6, DLIR must receive all complaints and provide the Legislature with a record of complaints. However, Section 489-8 says that violations of Chapter 489 are *per se* violations of Chapter 480-2 which prohibits unfair methods of competition and unfair or deceptive practices in the conduct of any trade. The Attorney General or the Director of the OCP may bring action based on unfair and deceptive acts. Violators will be fined not less than \$500 or not more than \$10,000 for each violation. So far, OCP reports that it has not received any complaints about discrimination in public accommodations.

Complaints by state employees. Under state law, every agency must have an internal employee grievance procedure. However, there is no requirement for uniformity. Agencies generally have a two-step process following that recommended by the State Office of Affirmative Action. However, they vary in terms of their timetable and in other respects.

Unlike the process in the federal government, state employees do not have to exhaust the administrative remedies within their department before going outside to file a charge. They can file a charge immediately and simultaneously with their own agency, the DLIR, their union, EEOC, and the State Civil Service Commission. Agencies report that their employees seldom file with the agency because of the appearance of conflict of interest. The EEO officer is seen as representing the department instead of being a neutral investigator working on behalf of the employee.

Proposed Uniform Procedure for Enforcement

An effective enforcement procedure must meet several criteria. The procedure must be expeditious, avoiding unnecessary layers of review. It should be fair to all parties and protect their due process rights at every stage. The procedure should include reasonable deadlines without sacrificing full processing to staff production goals.

Other considerations in establishing the procedure are the State's Administrative Procedure Act, existing enforcement procedures, and the requirements of EEOC and the Federal Fair Housing Act. The new uniform procedure should comply with the requirements of the Administrative Procedure Act; it should conform to existing enforcement practices to the extent necessary to avoid disruption; and finally, it should accommodate the two federal requirements so that the commission might establish a workshare agreement with either or both should it so choose.

A review of the procedures for discrimination complaints in various states show that they consist basically of similar steps with some variation in the levels of review and appeal and in deadlines.

Outlined below is a suggested uniform procedure for complaints charging discrimination in employment, real property transactions, and public accommodations. It approximates the procedures in the State's Discrimination in Real Property Transactions Law, Chapter 515, HRS, which has been found to work well by the OCP and by complainants. The procedure in Chapter 515 is based on provisions of the Model Anti-Discrimination Act of the National Conference of Commissioners on Uniform State Laws.

The proposed uniform procedure should replace current provisions in Chapters 378, 489, and 515 that delineate different procedures for each of the three laws.

The suggested procedure consists of five steps: intake, investigation, conciliation, public hearing, appeal. The process is diagrammed in Figure 3.1. While some of the major deadlines for each step should be in the statutes, more specific deadlines and guidelines should be established in the commission's rules. These deadlines should be realistic, fair to all parties, and correspond with federal timelines to the extent possible. The entire process from intake to resolution of the complaint should not exceed 180 days. The five steps are described below.

Intake. Individuals who feel they have been discriminated against file a formal written charge with the commission. We suggest that the deadline for the filing of charges be set at 180 days following the last occurrence of the discriminatory act following the deadline set by EEOC.

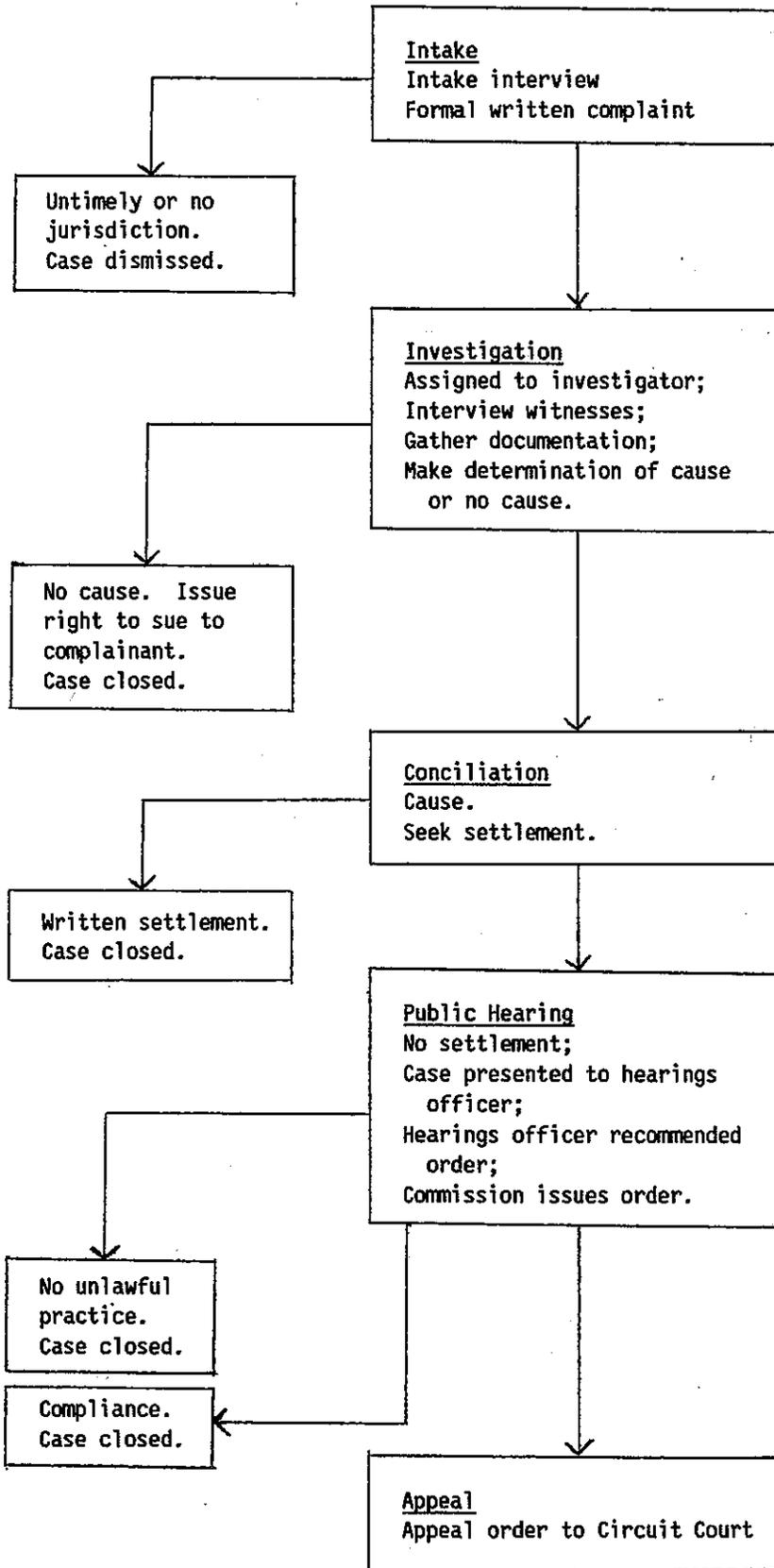
An investigator conducts an intake interview with the complainant taking down the necessary information, such as names, titles, business addresses, telephone numbers, names of witnesses, the harm suffered, and other information relating to the event. The investigator will draft the wording of the charge, identifying the specific acts of discrimination and the basis for the charge. The investigator will also counsel complainants on their rights and the process that will be followed.

If the investigator determines that the complaint has not been filed on a timely basis or is not within the commission's jurisdiction, the complaint will be dismissed. The commission should adopt clear rules on the grounds for dismissal of complaints.

Investigation. The case is docketed to create a case file and assigned to an investigator. The respondent, or the person or organization charged with the discriminatory act, is formally notified within 10 days of the complaint, given a summary of the complaint, and asked to respond to the allegations.

Figure 3.1

Proposed Uniform Procedure for Enforcement



Investigators prepare an investigative plan which would include on-site visits, interviewing witnesses, verifying information, and obtaining additional documentation. During this time, and if the circumstances suggest such a course, the investigator encourages settlement.

A case may be settled at any time after the complaint is filed. Based on their judgment of the situation, investigators may bring the parties together for a fact-finding or no-fault settlement conference at which they serve as neutral mediators. Complainants are free to accept or reject any settlement. If an appropriate settlement is reached, the case will be closed. Settlements that provide less than full remedy to the complainant should be approved by the commission to ensure fairness to the complainant. Settlements will be put in writing and signed by both parties. The commission is responsible for monitoring compliance with the provisions of the settlement.

The outcome of the investigation will either be a determination of “no probable cause” or “probable cause.” Commission rules should clearly establish the grounds for findings of no cause or probable cause. The determination will be reviewed and approved by the director or returned for further investigative work. If no cause is found, the case is dismissed and the complainant and respondent so notified. The complainant is issued a right to sue letter that permits the complainant to pursue the case in circuit court. If probable cause is found, an attempt is made to conciliate.

Conciliation. Commission staff will schedule a conciliation conference. If conciliation is successful, the commission will issue an order stating the terms of the agreement. The agreement will be subject to a compliance review within one year. If conciliation is unsuccessful, the commission will schedule a public hearing.

Public hearing. A hearings examiner appointed by the commission will hear the case and recommend a decision to the commission. The commission will accept the decision of the hearings examiner except for specific grounds stated in its rules. If there is a finding of discrimination, the commission will issue an order requiring the respondent to cease the unlawful practice and to take appropriate remedial action. A compliance review will be made within one year of the order.

Judicial appeal. If either the complainant or the respondent is dissatisfied with the commission’s order, an appeal can be made to circuit court for judicial review.

The current provisions for enforcement in cases charging discrimination in employment, real estate transactions, and public accommodations should be repealed and replaced by the proposed uniform procedure.

Recommendation

We recommend that Chapter 378 HRS on employment practices, Chapter 489 HRS on public accommodations, and Chapter 515 on discrimination in real property transactions be amended to incorporate the uniform procedure described above.

Procedures for public employees. Since state and county employees will be able to file complaints directly with the new commission, they will have the option of using either the uniform procedure described above or the existing internal procedures within their agencies.

All agencies except the Judiciary and the Hawaiian Home Lands now have procedures giving employees the right to discuss their problems with their supervisor, assurances of freedom from coercion, discrimination, or reprisal. However, as noted earlier, these are seldom used. Employees appear to prefer outside avenues.

The U.S. House Committee on Government Operations found that part of the problem is the high volume of complaints that proceed to the formal filing stage and overtax the processing system. Many of these are of limited merit. Some of these complaints could be avoided if agencies are more committed to affirmative action and promoting nondiscrimination and if agency counseling services could resolve grievances before they become formal complaints.

The committee noted that the first step for an employee with a job discrimination problem should be close to the worksite and readily accessible. It also said that statistics showed that about 75 percent of the complaints can be resolved by counseling.¹ Informal counseling at the agencies could be strengthened by giving counselors more authority to settle disputes, more time to spend on counseling, and better training.

We believe that this is sound advice for our state agencies as well. They should adopt an informal counseling process or improve their existing process. Counselors would function as advisors and neutral facilitators who will keep the grievants informed of their rights. Counseling would allow the grievant to be heard and the situation corrected immediately before positions harden. It would reduce paperwork, lead to better morale, and reduce the number of cases that could end up at the commission. Problems which cannot be resolved by counseling would move into the formal enforcement process.

Recommendation. We recommend that agencies institute or improve their counseling function by giving counselors more authority, better training, and more time to spend on counseling.

Organization and Staffing

A review of other state commissions on civil rights shows some consistency in their organization and functions. There are three main functions: policy, administration, and services.

The appointed commissioners serve as the policy setting body. This is followed by a second tier managing director who is responsible to the commissioners for administration and commission services. The next tier consists of field operations such as investigation, regional offices, and hearing officers. These three functions lend themselves to a simple organizational model for Hawaii's commission.

The commissioners. The commissioners will set policies for the commission and its program direction. The law also gives the commission the authority and responsibility to adopt rules, to receive, investigate, and conciliate complaints, hold hearings, commence civil action in circuit court to seek relief, issue publications, and submit written reports of its activities annually to the Governor and the Legislature. The operational responsibilities of the commission should be delegated to commission staff.

The most important decision the commission will make is the appointment of its director who will be responsible for implementing the commission's policies and programs. Before an appointment is made, the commission should develop a clear description of the duties and responsibilities of the position, the qualifications required of applicants, and the guidelines it intends to follow in selecting and appointing the director.

The office of the director. The office of the director will be responsible for staffing the commission, formulating rules, policies, and procedures for commission operations and for supervising actual operations. It will coordinate with other agencies such as the Governor's Office of Affirmative Action. It will be responsible for public information, preparation of the annual report, and other educational materials about the commission. The office will also be responsible for such basic administrative functions as budgeting, purchasing, personnel, and fiscal matters.

Initially, there should be three exempt positions in the director's office: the director, the administrative assistant, and a secretary who can also function as a reporter for commission hearings. The director should be an experienced and skilled manager, knowledgeable about federal and state discrimination statutes, and state operations. The administrative assistant will be responsible for setting up office procedures, case tracking systems, and installing an information system for the office. The assistant will also be responsible for fiscal and personnel functions.

Enforcement services. This is the core of the commission. This section will be responsible for intake, investigations, conciliation, and monitoring. Lack of adequate staff has been cited as the predominant reason for ineffective state commissions. Proper staffing at the outset is particularly critical to prevent further backlog, service new complaints, and administer support services on time.

The investigators will be responsible for intake, investigations, and conciliations. In some jurisdictions, intake is done by technicians. However, interviews with enforcement personnel have indicated that the intake function should be done by those with experience and thorough knowledge of the law. Complainants may be seriously damaged by incorrect information and the State may be found liable. In addition, information in the initial complaint should be complete and properly drafted, saving work in the long run.

It is important that enforcement staff be well trained. Investigators must be knowledgeable about statutes on discrimination and skilled in obtaining relevant evidence, interviewing witnesses, verifying information, and analyzing the information. Investigators must be able to make a determination of whether there is cause for the complaint based on the information gathered. Investigators will also double as conciliators. As such, they must be skilled in interpersonal relationships and mediation techniques.

The current workload is approximately 350 cases per year. Investigators can handle an average of 25 to 35 cases at any given time depending on their experience. They can close about five cases a month. This suggests that there should be at least eight professional investigators supervised by a chief investigator. In addition, there should be three civil service clerk typist positions to support the work of the investigators.

Because of the sensitive nature of the work done by enforcement staff, all investigators and clerical personnel in this section should have civil service protection.

It takes time to become an experienced investigator. The new commission would have a better start if it had a mix of experienced and new investigators. The existing enforcement staff at DLIR's employment practices branch should be given the right to transfer to the new commission. They could assist in training the new investigators. If they do exercise their right to transfer, the existing staff should be protected from any loss of salary, seniority, prior service credit, vacation, sick leave, or any other employee benefit or privilege.

It should be noted that one reason for delays in processing complaints is the turnover in investigators at DLIR's Employment Practices Branch. Except for the branch chief, who is a Fair Employment Specialist VI, the top investigator positions are Specialist IVs who are in salary range 21. Because of the limited number of positions and career opportunities, DLIR investigators transfer to other agencies such as DCCA and its Regulated Industries Complaints Office as soon as openings become available. DCCA has positions for supervising investigators at the SR 24 level and the chief investigator is an SR 26. The new commission should make sure that its positions are pegged at levels comparable to those in other agencies to reduce problems in personnel turnover.

It would be desirable to have field offices on each of the Neighbor Islands to accommodate local complaints. However, this would not be cost effective initially. Other DLIR branches currently provide intake services on the Neighbor Islands. The commission could explore continuing this arrangement even though DLIR will no longer have jurisdiction over enforcement. The commission should also consider installing a toll free number for complainants calling from any location in the islands.

Legal services and hearings examiners. The commission should have the assistance of a full-time deputy attorney general to assist in developing rules for the commission and to answer the day-to-day questions posed by enforcement staff responsible for implementing a new law.

The commission should contract with private attorneys to serve as hearings examiners as needed.

Eventually, depending on the growth in complaints and the data developed by the commission, it may be necessary for the commission to have its own legal staff for its daily operations and to litigate cases of systemic discrimination. Systemic compliance reviews have been found to be a more effective way of enforcing civil rights laws than processing individual complaints.

Cost of proposed staffing. Table 3.1 shows the number and types of staff proposed for the commission and the approximate costs for personnel based on current costs in DLIR's employment practices branch and the cost for comparable personnel in other state agencies. The total personal services cost is estimated to be \$390,000. In addition, there will be start-up costs for equipment and other current expenses.

Table 3.1

Proposed Staffing for the Civil Rights Commission

Position	Position Count	Budget
Office of the Director		
Director	1	\$ 55,000
Administrative Assistant	1	25,000
Secretary/Reporter	1	21,000
Enforcement Section		
Chief Investigator VI	1	45,000
Senior Investigator V	2	65,000
Investigator II-IV	6	125,000
Clerk-Stenographer	3	54,000
Total Personal Services	15	<u>\$390,000</u>

Recommendation

We recommend that the commission be adequately staffed at the outset. Exempt staff should include a director, an administrative assistant, and a secretary. Enforcement staff should have civil service protection. Civil service staff should initially consist of a supervising investigator, eight investigators, and three clerk-stenographers.

At their request, permanent full-time employees of the Department of Labor and Industrial Relations Employment Practices Branch shall be transferred with the same pay and classification to comparable positions with the Commission on Civil Rights. Employees who choose to transfer shall not suffer any loss of salary, seniority, prior service credit, vacation, sick leave, or any other employee benefit or privilege.

Transition Timetable

Chapter 368 on the Civil Rights Commission takes effect on July 1, 1989. However, a number of actions will need to be taken by the commission before it can become fully operational. A possible transitional schedule for implementation of Chapter 368 is shown in Figure 3.2.

Assuming that the Governor appoints commission members promptly and these members are approved by the Senate, the commission will not be able to operate until it has selected its director. It will take at least three months to develop guidelines and use open recruiting procedures to select and appoint a director. In turn, the director has to develop position descriptions for the remaining staff and follow civil service procedures for hiring the staff. It will probably take a minimum of another six months to get new staff on board.

During this period of time, the director will need to work with a deputy attorney general and staff to develop rules, a program, and procedures for commission processes. There should be written procedures for all aspects of enforcement including intake, case processing, and investigations.

It is important that rules be adopted and a procedures manual be in place before the commission begins formal operations. Often once a program begins to operate, staff find that workload demands prevent them from developing a manual on standardized operating procedures. This is the case at DLIR employment practices branch and should be avoided by the new commission if at all possible. Without a procedures manual, complaints will inevitably be processed inconsistently. This lack of uniformity, particularly in investigations, could impact on the quality of investigations or result in unfair treatment of complainants. Inconsistencies are also confusing to staff and make it difficult to train new staff.

Figure 3.2

TRANSITION SCHEDULE FOR IMPLEMENTATION OF ACT 219

	1989	1990
	Jul ! Aug ! Sep ! Oct ! Nov ! Dec ! Jan ! Feb ! Mar ! Apr ! May ! Jun ! Jul ! Aug ! Sep ! Oct ! Nov !	
I STAFFING		
Develop selection guidelines.....		X
Recruit and hire director.....	X	
Develop position descriptions.....		X
Recruit and hire staff.....		X
II Rules		
Formulate rules.....		X
Commission review.....		X
Adopt rules.....		X
III Program and Procedures		
Develop program.....		X
Develop operating policies.....		X
Prepare procedures manual.....		X
Commission review.....		X
IV Operation		
Procure equipment.....		X
Set up personnel and fiscal system.....		X
Set up information system.....		X
Prepare standardized forms.....		X
Apply to EEOC for certification.....		X
Work with DLIR on backlog.....		X
Accept new complaints.....		X

It will also take time to do such things as procuring the necessary equipment, establishing office procedures, designing useful standardized forms, and instituting a case-tracking system.

In addition to the above, the commission will have to apply to EEOC and to HUD for certification if it is interested in entering into workshare agreements. Staff will have to be trained in the federal investigative requirements.

We believe the target date for accepting all new complaints at the commission should be contingent on EEOC certification of the commission as a 706 agency. This should be accomplished by October 1990. The current EEOC agreement with DLIR is renewed on an annual basis each October. The commission will not be ready for such a workshare agreement by October 1989 but an agreement should be in place by October 1990, 15 months after the commission is established.

Prior to October 1990, the director should work with DLIR's employment practices branch on a project to assess the current status of cases and to eliminate the backlog. Existing cases could be transferred to the commission based on criteria such as age of the case or the number of remaining steps to be completed. For example, many older cases could be closed if parties cannot be located or are no longer interested in pursuing the case. Cases could also be closed by concentrating on completing the few steps remaining. Public information should be disseminated about these changes and complainants should be notified of any transfers that are made.

Recommendation. We recommend that the target date for accepting new complaints at the Civil Rights Commission be October 1990 or whenever the commission is certified by EEOC as a 706 agency. Prior to this date, the commission should work with DLIR on eliminating the backlog of complaints.

Recommendations for Strengthening the Commission

The commission was created in skeletal form in Chapter 368 pending the recommendations from this study. In this section, we make several suggestions on how the commission can be strengthened.

Placement of the commission. Act 219 places the commission in DLIR for administrative purposes. We believe that the commission would have greater visibility, authority, and protection if it were placed in the Office of the Governor. This would offer several other advantages. It would be able to coordinate more easily with the Office of Affirmative Action and the Executive Office on Aging which are also in the Office of the Governor. It would also be preferable to provide some separation between the commission and DLIR since it could find itself in an

adversarial position to DLIR in certain complaint cases. Locating the commission in the Governor's office instead of DLIR would provide this separation.

Recommendation. We recommend that Chapter 368 be amended to place the commission in the Office of the Governor instead of DLIR.

Payment of commissioner expenses. Commissioners who volunteer their time should be reimbursed for expenses incurred in carrying out their duties. Statutes relating to other state boards and commissions routinely provide for reimbursements of reasonable expenses for travel and other costs incurred in carrying out their duties.

Recommendation. We recommend that Chapter 368 provide for reimbursement of expenses incurred by commissioners in the course of their duties.

Powers of the commission. Certain additional powers should be given to the commission and existing ones strengthened. The commission should have the power to:

- appoint a director, attorneys, and hearings officers who shall be exempt from the provisions of Chapter 76 and 77;
- appoint investigators and other necessary personnel subject to Chapter 76 and 77;
- require answers to interrogatories, compel the attendance of witnesses, examine witnesses under oath, and require the production of documents relevant to the complaint. The commission may make rules authorizing any individual designated to exercise these powers in the performance of official duties;
- order appropriate relief or affirmative action as may be appropriate;
- file petition in circuit court to enjoin the respondent from engaging in unlawful discriminatory practices and seek appropriate temporary relief.

Recommendation. We recommend that the commission's powers and functions be expanded and strengthened. Chapters 378, 489, and 515, HRS, should be amended to conform with this.

Scope of the commission's jurisdiction. It was suggested at hearings that the commission's authority should not be limited to employment, housing, or public accommodations. Instead, it should have jurisdiction over all areas of discrimination based on non-merit factors. We believe that the scope of the commission's jurisdiction should be clearly and specifically delineated at the outset to give it a sound basis for action.

It should have jurisdiction over the unlawful practices established in Chapter 378 on employment practices, Chapter 489 on public accommodations, and Chapter 515 on real property transactions. Its scope can be expanded later by the Legislature if it finds that the commission is able to carry out its responsibilities effectively and can take on additional duties.

Recommendation. We recommend that the commission's jurisdiction be clearly established as the enforcement of unlawful practices in Chapter 378 on Employment Practices (including lie detector tests and unlawful suspension and discharge), Chapter 489 on Discrimination in Public Accommodations, and Chapter 515 on Discrimination in Real Property Transactions.

Chapters 378, 489, and 515 HRS should be amended to establish the commission's responsibility for enforcement instead of the existing agencies.

Protected classes. The scope of the commission's activities is also defined by the number of protected classes serving as the basis for discrimination complaints. Section 368-1 lists these as race, color, religion, age, sex, marital status, national origin, ancestry, handicapped status, or medical condition. There are several problems with this list. Chapter 378, Chapter 489, and Chapter 515 each cover different protected classes. Chapters 378 and 515 cover some that are not in the above list. The listing also adds classes that are not found in any of the three statutes.

For example, Chapter 378 on employment practices has nine protected classes. These include age and arrest and court record which are not found in the other two chapters. Chapter 515 on real estate transactions also has nine protected classes but these include parental status and HIV (human immunodeficiency virus) infection which are not found in Chapter 378. Chapter 489 on public accommodations has only six protected classes of race, sex, color, religion, ancestry, or handicap.

The listing in Section 368-1 does not include HIV infection, parental status, or arrest and court record. However, it includes national origin (which is essentially the same as ancestry) and medical condition which are not found in the other three discrimination statutes.

To avoid confusion and any problems in coverage, the basis for charges of discrimination should remain those established in Chapters 378, 489, and 515. The listing in the new statute should be repealed.

Recommendation. We recommend that the listing of protected classes be removed from Section 368-1 and the commission be responsible for enforcing the protected classes currently established in Chapters 378, 489, and 515, HRS.

Confidentiality. Chapter 368 has no provision for confidentiality. In view of the State's new Uniform Information Practices Act with its disclosure requirements, it should be made clear that information gathered by the commission during the course of its investigations can be kept confidential. Efforts at conciliation and settlement should also be confidential although the terms of any agreement will be public.

Recommendation. We recommend that a provision be made for the commission to maintain confidentiality over its records.

Penalties. Currently, penalties imposed under Chapters 378, 489, and 515 differ for whoever intentionally resists, prevents, impedes, or interferes with the departments or their authorized agents or representatives in the performance of their duties, or violates orders of the departments.

The specified penalty in the case of the Civil Rights Commission is a fine of not more than \$500 or imprisonment for not more than 90 days. This penalty corresponds with that imposed for discrimination in employment but is less than that for violations of lie detector testing. The various statutes should be amended to require a uniform penalty of \$500 or imprisonment for not more than 90 days for each violation.

Recommendation. We recommend that Chapters 378, 389, and 515, HRS, be amended to impose a uniform penalty of \$500 or imprisonment for not more than 90 days for whoever intentionally interferes with the commission or violates its orders.

Conclusion

Hawaii has strong anti-discrimination statutes. The new Civil Rights Commission, if given adequate support and resources, should give the State's anti-discrimination efforts a new reality. The commission will consolidate responsibilities that had previously been split among various agencies. A single uniform procedure for enforcement will simplify the process and reduce public confusion about procedures to follow. Suggested legislative amendments to strengthen the commission and to clarify its jurisdiction should give it a sound start.

NOTES

Chapter 2

1. *Black's Law Dictionary*, 5th ed., St. Paul, MN, West Publishing Co., 1979.
2. Paul M. Downing, *Extension of the Civil Rights Commission*, Washington, D.C., Congressional Research Service, Library of Congress, updated February 3, 1988.
3. Paul M. Downing, *Fair Housing Act Amendments*, Washington, D.C., Congressional Research Service, August 23, 1988, p. CRS-5.
4. *The United States Government Manual*, 1984-85, Washington, D.C., Government Printing Office, 1984.
5. Code of Federal Regulations, Section 1601-70.
6. "President Requests Highest EEOC Budget Ever," *Nebraska Equal Opportunity Commission*, Vol 10. No. 6, May-June 1988.
7. U.S. General Accounting Office, *Equal Employment Opportunity: EEOC and State Agencies Did Not Fully Investigate Discrimination Charges*, Washington, D.C., October 1988.
8. *Ibid.*, p. 15-16.
9. *Ibid.*, pp. 17.
10. U.S. House Committee on Government Operations, *Overhauling the Federal EEO Complaint Processing System: A New Look at a Persistent Problem*, Washington, D.C., U.S. Government Printing Office, 1987.
11. *Ibid.*, p. 4
12. *Ibid.*
13. U.S. Civil Rights Commission, *Recent Activities Against Citizens and Residents of Asian Descent*, Clearinghouse Publication No. 88, 1987.
14. Elder Witt, "State Supreme Courts: Tilting the Balance Toward Change," *Governing*, August 1988, p. 30-38.
15. U.S. General Accounting Office, *Equal Employment Opportunity*, pp. 74-75.

16. Testimony on House Bill 3408 presented by William Hoshijo, Executive Director, Na Loio No Na Kanaka, before the Honorable Dwight Takamine, House Committee on Labor and Finance, February 16, 1988.
17. Testimony on House Bill 3408, H.D.1 by Mario R. Ramil, Director, Department of Labor and Industrial Relations, to the House Committee on Consumer Protection and Commerce and the House Committee on Judiciary, February 26, 1988.

Chapter 3

1. U.S. House Committee on Government Operations, *Overhauling the Federal EEO Processing System*, p. 6.

RESPONSE OF THE AFFECTED AGENCY

COMMENTS ON AGENCY RESPONSE

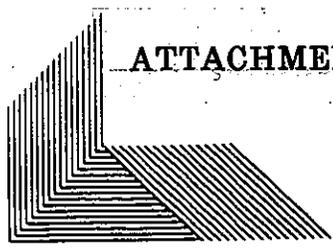
On January 11, 1989, we transmitted a preliminary draft of this report to the Department of Labor and Industrial Relations. A copy of the transmittal letter to the department is included as Attachment 1 of this Appendix. The response from the department is included as Attachment 2.

In its response, the department agrees that the regular civil service staff of its Enforcement Section be transferred to the Civil Rights Commission but it suggests that the clerical staff consist of a supervising secretary and two clerk-stenos.

The department adds that national guard service and child support obligations are protected under the Employment Practices Act. The department also has a policy to cover HIV (human immunodeficiency virus) under handicapped status.

The department does not agree with our recommendation to place the Civil Rights Commission in the Office of the Governor. It says that a smoother transition would be accomplished by placing it in DLIR. It strongly opposes the recommendation to include lie detector test and unlawful suspension and discharge under the commission's jurisdiction.

It is concerned with the workload that would result from increasing the deadline for filing charges from the current 90 days in Chapter 378 to the 180 days in the federal procedure. It says that for its branch offices on the Neighbor Islands to continue to provide intake services would create an increased workload.



ATTACHMENT 1

THE OFFICE OF THE AUDITOR
STATE OF HAWAII
465 S. KING STREET, RM. 500
HONOLULU, HAWAII 96813

January 11, 1989

Mr. Mario R. Ramil
Director
Department of Labor and
Industrial Relations
830 Punchbowl Street
Honolulu, Hawaii 96813

Dear Mr. Ramil:

Enclosed are three copies, numbered 4 to 6, of the preliminary report, **A Study on Implementation of the Civil Rights Commission for the State of Hawaii**. We ask that you telephone us by January 13, 1989, on whether you intend to comment on our recommendations. If you decide to respond, please submit the response by January 20, 1989. We will append the response to the report submitted to the Legislature.

The Governor and the presiding officers of the two houses of the Legislature and the Director of the Legislative Reference Bureau have also been provided copies of this preliminary report.

Since the report is not in final form and changes may be made, access to this report should be restricted to those individuals whom you might wish to call upon to assist you in reviewing the report. Public release of the report will be made solely by our office and only after the report is published in its final form.

We appreciate the continuing assistance and cooperation extended to us by the staff of the Department of Labor and Industrial Relations.

Sincerely,


Newton Sue
Acting Legislative Auditor

Enclosures

ATTACHMENT 2

JOHN WAIHEE
GOVERNOR



MARIO R. RAMIL
DIRECTOR

SHARON Y. MIYASHIRO
DEPUTY DIRECTOR

STATE OF HAWAII
DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS
830 PUNCHBOWL STREET
HONOLULU, HAWAII 96813

January 20, 1989

RECEIVED

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OFFICE OF THE AUDITOR
STATE OF HAWAII

MEMORANDUM

To: The Honorable Newton Sue
Acting Legislative Auditor

From: Mario R. Ramil, Director
Department of Labor and Industrial Relations

Subject: Preliminary Report by Legislative Auditor on Civil
Rights Commission

Following are our comments on statements and recommendations in the preliminary report "A Study on Implementation of the Civil Rights Commission for the State of Hawaii":

1. On page 7, the report states that the EEOC is responsible for investigating charges filed under Section 501 of the Rehabilitation Act of 1973. This should be corrected to read that the Office of Federal Contract Compliance Programs (OFCCP) is responsible for investigating those complaints.
2. On page 14, line 1, "physical handicap" should be changed to "handicapped status" in reference to Chapter 378, Part I, as amended by Act 223, L. 1986. Part I of the law also prohibits discrimination because of participation in national guard service or because an employee's income has been assigned for child support obligations.

3. On page 22, the report suggests that the deadline for filing of charges be set at 180 days after the last discriminatory act. At present, Part I of Chapter 378 has a deadline of 90 days. If this time limit is increased, the projections on workload should take into account an increase in complaints filed.
4. On page 25, the report recommends that Chapter 378, HRS, be amended to incorporate the uniform procedure described in the report. On page 33, the report further recommends that all unlawful practices in Chapter 378, including lie detector tests (Part II) and unlawful suspension or discharge (Part III), be transferred to the commission.

We strongly oppose the above recommendation. Unlawful suspension or discharge was initially under Chapter 386, Hawaii Workers' Compensation Law. It was placed under Chapter 378 because the need to redress the reemployment problems of injured workers would be more appropriately administered by the Enforcement Division of the DLIR. Under unlawful suspension or discharge, a quasi-judicial hearing is held without an investigation. The term "discrimination" was added to the statute to enable an injured worker to be reinstated to his/her regular position. In resolving complaints under unlawful suspension or discharge, the hearing officer considers the returning of an injured worker to his/her rightful place in the employer's workforce, whereas the investigator, in resolving job discrimination complaints, applies the concepts of disparate treatment, which compares an individual's rights as compared with those of other employees or applicants. Part 386-142 of the Hawaii Revised Statutes covers State and county workers who have been injured on the job. This section of the law, together with Part III of Chapter 378, covers all employers except the federal government and certain maritime activities. If Part III is transferred to the commission, investigation of complaints on work injury termination would be fragmented.

Congress recently enacted a federal law prohibiting the use of lie detector tests effective December 27, 1988. This law is assigned to the U.S. Department of Labor for enforcement.

We believe that lie detector tests and unlawful suspension, discharge, or discrimination due to work injury were not intended to be covered by Act 219 under the category of civil rights. The word "discrimination" as it appears in those sections of the law, refers to retaliation for what an individual did in relation to that law. We, therefore, recommend that the administration and enforcement of Parts II and III of Chapter 378 be retained by the DLIR.

Additionally, Appendix A of the report lists Sections 387-12, 388-10, and 396-8, HRS, under Hawaii's anti-discrimination laws. We believe that this type of "discrimination" was also not intended to be covered because the aggrieved in these situations would not be members of a protected class.

Under Appendix A, HRS 378-2, the word "physical handicap" should be changed to "handicapped status", and under remedy/procedure, the time for filing a complaint should be 90 days instead of 30 days.

Title VII of the Federal Civil Rights Act of 1976 is incorrectly listed in Appendix A as one of Hawaii's anti-discrimination laws.

5. On page 26, the report mentions setting up a case tracking system and installation of an information system for the office. At present, DLIR's Enforcement Division has a case tracking system in place. This automated system was designed by EEOC, and information is transmitted weekly to EEOC's national database. It should be noted that if the commission intends to apply for certification as a 706 agency with EEOC, the federal contract requires effective participation in the national database and maintenance of the local database.
6. On page 28, the report suggests that the commission explore the possibility of continuing to have branch offices of DLIR provide intake services. We are concerned about this because the workload, particularly in Maui and Kona, is increasing and additional staff will have to be considered. If arrangements can be worked out to continue these intake services, will the commission provide training for these individuals?

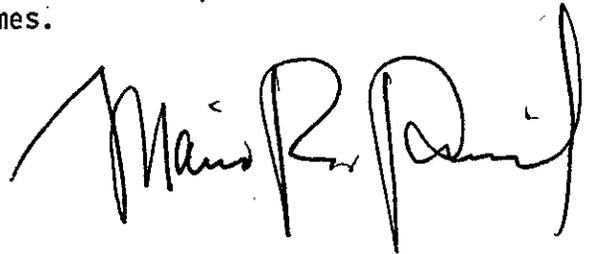
7. In reference to the recommendations on staffing on page 29, we are in complete agreement that the FEP enforcement staff be transferred as regular civil service employees. Our concern necessarily is with our current FEP Branch staff and to ensure that they will be all be transferred to comparable positions. It should be noted that the current staff includes temporary FEP specialists and the permanent civil service Branch secretary. To handle the latter, we suggest that the clerical staff of the Enforcement Section consist of a supervising secretary and two clerk-stenos or typists. Currently, the clerical staff of the Employment Practices Branch consists of a secretary, SR-12; clerk-steno, SR-9; and clerk-typist, SR-8. The auditor's initial staff recommendation does not accommodate our secretary. The clerical support services to the program and staff will be better coordinated by having a secretary supervise a clerical pool of two clerk-stenos or typists.
8. On page 31, the report recommends that the commission be placed in the Office of the Governor. A reason given for that recommendation is that DLIR may find itself in an adversarial position with the commission in certain complaints. This is not necessarily so. The problem could be resolved by continuing the current practice of having a federal agency, such as the EEOC, investigate employment discrimination complaints filed against DLIR to prevent having to investigate itself. Since DLIR is familiar with the administrative functions of the program, we believe that placement of the commission in DLIR for administrative purposes will provide for a smoother transition from the Employment Practices Branch to the commission.
9. On page 33, the report states that Chapter 378 has nine protected classes: race, sex, age, religion, marital status, handicapped status, color, ancestry, and arrest and court record. Section 378-2 also prohibits discrimination on the basis of participation in national guard service and assignment of an individual's income for child support obligations, which are not mentioned in this section.

The report also states that HIV (human immunodeficiency virus) infection is not a protected

The Honorable Newton Sue
January 20, 1989
Page 5

class in Chapter 378. Although not specifically mentioned in the statute, the department's policy is to cover HIV infection under handicapped status.

10. On the bottom of page 33, the report recommends that the commission maintain confidentiality over its records but terms of any agreement be made public. Revealing terms of any agreement may hinder the settlement process because employers often request that terms be kept confidential due to the concern that it may generate other frivolous complaints. We suggest that names of parties in the complaints be kept confidential at all times.

A handwritten signature in black ink, appearing to read "Miss R. Paul". The signature is written in a cursive, flowing style with a large initial "M" and "P".

APPENDICES

APPENDIX A

HAWAII

HAWAII'S ANTI-DISCRIMINATION LAWS

AGENCY	STATUTE	DESCRIPTION	REMEDY/PROCEDURE
Office of the Governor	HRS §349-14	Prohibits long-term care facilities from any form of discrimination against a resident who seeks advocacy assistance or makes a complaint.	Director of Executive Office on Aging to establish a clearinghouse for complaints, investigate complaints, refer to appropriate agency (i.e., police department or attorney general) for corrective action (§349-3 and §349-14).
Judiciary*	HRS §612-2	Prohibits discrimination in selection and service of jurors on the basis of race, color, religion, sex, national origin, economic status, or physical handicap.	
Office of the Ombudsman	HRS §96-8	Defines appropriate subjects for investigations of ombudsman's office to include any administrative act of an agency which might be unnecessarily discriminating.	Any person may file a complaint. The Ombudsman may investigate, report findings to the agency and to the governor, legislature, or public.
Department of Accounting and General Services	HRS §103-50	Requires all plans and specifications for the construction of public buildings and facilities by the State or any political subdivision be prepared so the buildings and facilities are accessible and usable by the physically handicapped.	

* The Judiciary is also bound by the provisions on discrimination of Chapter 76 and Chapter 78.

HAWAII'S ANTI-DISCRIMINATION LAWS

AGENCY	STATUTE	DESCRIPTION	REMEDY/PROCEDURE
Department of Budget & Finance	HRS §42-3*	Requires organizations to whom a grant, subsidy, or purchase of service has been awarded to comply with applicable federal or state laws prohibiting discrimination on the basis of race, color, national origin, religion, creed, sex, age, or physical handicap.	Budget and Finance and the Judiciary are required to monitor all grants, subsidies, and purchase of service agreements for compliance and to evaluate them annually (§42-4 and §42-9).
Department of Business and Economic Development	HRS §201E-60	States that "Eligible borrower" means a person or family, irrespective of race, creed, national origin, or sex. Effectively prohibits discrimination in the Housing Loan and Mortgage ("Hula Mae") program.	
	HRS §201E-110	States that "Eligible borrower" means a person or family, irrespective of race, creed, national origin, or sex. Effectively prohibits discrimination on those grounds in the Taxable Mortgage Securities program.	
	HRS §206E-101	States that "Eligible borrower" means a person or family, irrespective of race, creed, national origin, or sex. Effectively prohibits discrimination on those grounds in the Reserved Housing Loan Program.	

* Also applies to the Judiciary.

HAWAII'S ANTI-DISCRIMINATION LAWS

AGENCY	STATUTE	DESCRIPTION	REMEDY/PROCEDURE
Department of Commerce and Consumer Affairs	HRS §421C-12	Requires the bylaws of consumer cooperative associations to contain a provision that consumer cooperative associations shall not discriminate when accepting membership on the basis of race, gender, religion, income, marital status, or nationality.	
	HRS §421H-2	Requires the incorporation charters and bylaws of limited equity housing cooperatives to prohibit any discrimination on grounds of social and political background, race, religion, age, sex, marital or parental status.	
	HRS §431-643	Defines unfair discriminatory acts or practices in the business of insurance, including refusing to continue to insure, or limiting the amount of coverage available to an individual based solely upon the individual's having taken a human immunodeficiency virus (HIV) test prior to applying for insurance.	Written complaints may be submitted to the insurance commissioner. Three or more complaints received within a 12-month period charging separate violations of §431-643 shall constitute a rebuttable presumption of a business practice. The insurance commissioner may investigate any insurance business, conduct hearings, and order penalties (§431-643 to §431-647).

HAWAII'S ANTI-DISCRIMINATION LAWS

AGENCY	STATUTE	DESCRIPTION	REMEDY/PROCEDURE
Department of Commerce and Consumer Affairs (continued)	HRS §431-693	States that insurance rates should not be unfairly discriminating.	Chapter 431 is enforced by the insurance commissioner who may investigate, hold hearings, and impose fines (§431-705 to §431-707).
	HRS §477E-3	Makes it unlawful for creditors to discriminate against credit applicants on the basis of marital status.	An aggrieved applicant may institute a civil action for relief. A creditor who does not comply is liable for both actual and punitive damages. DCCA shall levy fines up to \$2500 for each violation and collect them in a civil action (§447E-4 and §477E-5).
	HRS §515-3	Prohibits discrimination in real estate transactions (which includes sale, exchange, rental, or lease of real property) on the basis of race, sex, color, religion, marital status, parental status, ancestry, physical handicap, or HIV infection.	Aggrieved person may file a written complaint with DCCA within 90 days of the alleged offense. DCCA must promptly investigate the complaint and, unless the complaint is dismissed as meritless, attempt to resolve the alleged discrimination through conference, conciliations, and persuasion.

HAWAII'S ANTI-DISCRIMINATION LAWS

AGENCY	STATUTE	DESCRIPTION	REMEDY/PROCEDURE
Department of Commerce and Consumer Affairs (continued)		Prohibits refusal to engage in real estate transaction with a blind or deaf person because the person uses the services of a certified guide or signal dog.	DCCA must hold a hearing on the merits of the complaint within 60 days of receiving the complaint if such attempts at resolution fail. DCCA has broad legal and equitable powers to fashion relief if the complaint is deemed to have merit at the hearing. A petition to enforce any relief ordered by DCCA may be filed in circuit court in the manner and time provided by the circuit court rules (§515-10 to §515-12; §515-14 to §515-15).
HRS §515-5		Prohibits discrimination against applicants for financial assistance on the basis of race, sex, color, religion, ancestry, or physical handicap.	Same as above.
HRS §515-6		Voids any oral or written instrument relating to real property which restricts the conveyance, encumbrance, occupancy, or lease to an individual of a specified race, sex, color, religion, ancestry, or physical handicap.	Same as above.

HAWAII'S ANTI-DISCRIMINATION LAWS

AGENCY	STATUTE	DESCRIPTION	REMEDY/PROCEDURE
Department of Commerce and Consumer Affairs (continued)	HRS §515-7	Makes it a discriminatory practice for a person, for the purpose of inducing a real estate transaction from which the person may benefit financially, to represent that a change has occurred or will occur in the composition with respect to race, sex, color religion, ancestry, or a physical handicap of the owners or occupants in the block, neighborhood, or area in which the real property is located.	Same as above.
	HRS §515-16	Includes as discriminatory practices such actions as retaliation against persons who file complaints under Chapter 515.	Same as above.
	HRS §515-17	Includes as discriminatory any attempt to commit a discriminatory practice.	Same as above.
Department of Education	HRS §296-61	Prohibits exclusion on the basis of sex from participation in any educational or recreational program or activity.	
Hawaii Housing Authority	HRS §516-62	Makes it unlawful to discriminate against lessees on the basis of race, religion, sex, ancestry, or physical handicap.	Persons may file complaints to the HHA which will investigate. Persons who violate provisions of Chapter 516 are subject to fines up to \$5000 and one year's imprisonment (§516-5 and §516-7).

HAWAII'S ANTI-DISCRIMINATION LAWS

AGENCY	STATUTE	DESCRIPTION	REMEDY/PROCEDURE
Hawaii Housing Authority (continued)	HRS §516-91	States that "eligible borrower" means any lessee, irrespective of race, creed, national origin, or sex. Effectively prohibits discrimination on those grounds in the fee title acquisition loan program of the Hawaii Housing Authority.	
Department of Health	HRS §321-15.6	Requires the Director of Health to adopt administrative rules to protect civil rights of persons residing in adult care residential homes.	The director may enforce Chapter 321 in either administrative or judicial proceedings.
	HRS §326-2	Requires that every Hansen's disease sufferer at Hale Mohalu and Kalaupapa be accorded a nearly equal care and privilege as is practicable under the different operating conditions of the two institutions.	
	HRS §334-61	States that the admission to a psychiatric facility shall not modify or vary any civil right of a patient in and of itself. Any such modification or variance must be by court order.	

HAWAII'S ANTI-DISCRIMINATION LAWS

AGENCY	STATUTE	DESCRIPTION	REMEDY/PROCEDURE
Department of Health (continued)	HRS §334E-2	Protects patients in psychiatric facilities from discriminatory treatment based on race, color, creed, national origin, age, and sex.	Department of Health investigates complaints and submits report to originator of the complaint; Ombudsman responsible for investigations of complaints against public psychiatric facility (§334E-2(c)).
	HRS §348E-3	States that the Commission on the Handicapped shall review and assess the problems and needs, and the availability of adequate service and resources for the handicapped with regard to civil rights.	
	HRS §572-4	States that the right of a person to be a resident of the State shall not be denied or abridged because of marital status or sex.	
Department of Human Services	HRS §346-102	Prohibits DHS from discrimination in public service employment based on race, color, creed, sex, age, religion, or national origin.	

HAWAII'S ANTI-DISCRIMINATION LAWS

AGENCY	STATUTE	DESCRIPTION	REMEDY/PROCEDURE
Department of Human Services (continued)	HRS §347-13	Provides that the blind, visually handicapped, and otherwise physically disabled are entitled to full and equal accommodations, advantages, facilities, and privileges of all common carriers, airplanes, motor vehicles, railroad trains, motor buses, street cars, boats, or other public conveyances or modes of transportation, hotels, lodging places, places of public accommodation, amusement, or resort.	Any person injured by a violation of §347-13 may bring a civil action to recover three times the person's actual damages or \$1000, whichever is greater, for each violation; costs; and reasonable attorneys' fees. Any person, business, agency, common or public carrier, or officer or employee of a common carrier who violates §347-13 shall be fined up to \$1,000 (§347-14).
	HRS §347-19	Provides that a blind or visually handicapped person not carrying a cane or using a guide dog in any of the accommodations or conveyances listed in §347-13 shall have all of the rights and privileges conferred by law upon other persons.	
	HRS §347-20	States that it is the policy of the State to encourage and enable the blind, visually handicapped, and otherwise physically disabled to participate fully in the social and economic life and engage in remunerative employment. States that the legislature finds that those persons have the same right	

HAWAII'S ANTI-DISCRIMINATION LAWS

AGENCY	STATUTE	DESCRIPTION	REMEDY/PROCEDURE
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Department of Human Services
(continued)

as the able-bodied to the full and free use of the streets, highways, sidewalks, walkways, public buildings, public facilities, and other public places; and declares that it is the policy of the State that those persons shall be employed in the state service, the political subdivisions of the State, public schools, and all other employment supported by public funds.

HRS §445-95.1

Prohibits unfair or deceptive practices in the rooming house business, including denying any prospective resident or evicting any resident from living accommodations solely on the basis of age or disability.

Director of DHS may examine and investigate the affairs of every person, partnership, corporation, or other organization engaged in the rooming house business to determine whether unfair or deceptive practices have been committed. Director of DHS, through the attorney general, may bring an action on behalf of the state to enjoin any violation. Any person injured by a violation has a private right of action and may bring a civil action to recover three times the person's actual damages or \$1000 for each violation, whichever is greater; costs; and attorneys' fees (§445-95.3, §445-95.5).

HAWAII'S ANTI-DISCRIMINATION LAWS

AGENCY	STATUTE	DESCRIPTION	REMEDY/PROCEDURE
Department of Labor and Industrial Relations	HRS §89-13	Prohibits a public employer from discrimination in regard to union membership.	Any interested party may file a written complaint with Hawaii Labor Relations Board must then set a hearing date. After the hearing HLRB "shall promptly" issue a written decision. Appeals from the HLRB decision may be made in accordance with the provisions of HRS Chapter 91 (§89-14 and §377-9).
	HRS §377-6(3)	Makes it an unfair labor practice for an employer to encourage or discourage membership in a labor organization by discrimination in employment.	Any interested party may file a written complaint with HLRB, which must then set a hearing date. After the hearing HLRB "shall promptly" issue a written decision. Appeals from the HLRB decision may be made in accordance with the provisions of HRS Chapter 91 (§377-9).
	HRS §378-2	Prohibits employment discrimination because of race, sex, age, religion, color, ancestry, physical handicap, marital status, arrest and court record, participation in the national guard, or child support obligations. Covers employers, employment agencies, and labor organizations.	Any individual claiming to have been discriminated against may within 30 days of the alleged unlawful practice, file a written, verified complaint with DLIR, which must then investigate the merits of the complaint. Should the complaint be deemed meritorious, DLIR shall take steps to end the discrimination, including filing suit if necessary (§378-4, §378-5).

HAWAII'S ANTI-DISCRIMINATION LAWS

AGENCY	STATUTE	DESCRIPTION	REMEDY/PROCEDURE
Department of Labor and Industrial Relations (continued)	HRS §378-26.5	Prohibits any employer from terminating or discriminating against any employee for refusing to submit to a lie detector test.	Same as above (§378-27.5, §378.28).
	HRS §378-32	Prohibits any employer from suspending, discharging, or discriminating against an employee who files a petition for a Chapter XIII wage earner bankruptcy plan, who is receiving workmen's compensation benefits, or who testifies in a proceeding under this law.	Any employee claiming to have been discriminated against may file a written complaint with DLIR, which must then schedule a hearing on the complaint. An employee who does not agree with DLIR's findings and order is entitled to judicial review (§378-33 to §378-36).
	HRS §378-62	Prohibits an employer from discriminating against an employee because the employee is about to report a violation of a law or the employee is requested to participate in an investigation, hearing, or court action.	Any employee claiming discrimination may bring a civil action within 90 days after the alleged violation. Remedies include reinstatement, repayment of back wages, actual damages, as the court deems appropriate. The employer shall be fined not more than \$500 for each violation (§378-63 to §378-65).
	HRS §383-161	Prohibits an employer from discriminating against an employee for claiming benefits under this chapter.	Any employee who violates this section shall, for each offense, be fined not less than \$100 nor more than \$1000 (§383-161).
	HRS §386-31(b)(1)	Provides that an injured employee may invoke rights in the event of unlawful discrimination.	

HAWAII'S ANTI-DISCRIMINATION LAWS

AGENCY	STATUTE	DESCRIPTION	REMEDY/PROCEDURE
Department of Labor and Industrial Relations (continued)	HRS §386-142	Prohibits employers from suspending or discharging employees who have suffered work injuries compensable under Chapter 386 unless it is shown that the employee is incapable of performing the work and there is no other available work.	
	HRS §387-4	Prohibits wage discrimination on the basis of race, religion, or sex.	DLIR enforces the chapter; may conduct investigations, administer oaths, take depositions of witnesses, subpoena records relative to any matter under investigation. Any employer who violates the chapter or any related rule or who discriminates against an employee who has made a complaint may be fined up to \$500 or imprisoned up to one year (§387-10, §387-12).
	HRS §387-12	Prohibits any discrimination against an employee who has made a complaint.	Same as above.
	HRS §388-10	Prohibits wage discrimination against an employee who has made a complaint.	An employee may seek action in a court of law or file a claim with DLIR who may investigate and file suit (§388-11).
	HRS §396-8	Prohibits discrimination against an employee for exercising certain rights with respect to occupational health and safety.	Any employee may file a complaint with DLIR who investigates (§396-8).

HAWAII'S ANTI-DISCRIMINATION LAWS

AGENCY	STATUTE	DESCRIPTION	REMEDY/PROCEDURE
Department of Labor and Industrial Relations (continued)	HRS §489-3	Prohibits discriminatory practices that deny equal enjoyment of goods, services, facilities, privileges, advantages accommodations of a place of public accommodations on the basis of race, sex, color, religion, ancestry, or handicap.	Any person may file a complaint with DLIR, which must complete a record of all complaints that it has received and provide the legislature annually with the record of complaints (§489-6).
	Title VII of the Federal Civil Rights Act of 1976	Prohibits discrimination on the basis of race, color, national origin, religion, or sex in all aspects of employment, by all employers (including educational institutions), employment agencies and labor organizations with 15 or more employees.	Individuals may file a charge of discrimination with the EEOC. EEOC shall notify the respondent within 10 days after charge is filed. EEOC seeks voluntary negotiated settlement through informal procedures and "fact-finding conferences." If no settlement, EEOC conducts a formal investigation with legal right of access to all relevant documents and makes determination of "reasonable cause" or "no cause."
		Prohibits any practices or procedures which limit or adversely affect employment opportunities on bases cited above, including: advertising, recruitment, referrals, testing, hiring, assignment, transfer, promotion, training, hiring, assignment, transfer, promotion, training, apprenticeship, disciplinary action, layoff and recall, termination, compensation, benefit and all other terms, conditions and privileges of employment. Also	

HAWAII'S ANTI-DISCRIMINATION LAWS

AGENCY	STATUTE	DESCRIPTION	REMEDY/PROCEDURE
Department of Labor and Industrial Relations (continued)		prohibits any reprisals or adverse action against an individual or group of individuals because they have opposed discriminatory practices, participated or assisted in any way in a charge, investigation, or proceeding brought under its provisions.	
Department of Land and Natural Resources	HRS §171-64	Requires the Board of Land and Natural Resources to provide in every patent, deed, lease, agreement, license, or permit that the use, and enjoyment of the premises being granted shall not support any policy which discriminates upon race, creed, color, national origin, sex, or a physical handicap. Prohibits the BLNR from disposing of any public land to any person who practices discrimination.	
Department of Personnel Services	HRS §76-1 *	Provides for equal opportunity of civil service employment for all regardless of race, sex, age, religion, color, ancestry, politics. No discrimination because of any physical handicap.	The various departments are to establish grievance procedures based upon the following principles: ---Employees may discuss any problem with a supervisor; ---Employees shall be assured freedom from coercion, discrimination, or

* Also applies to the Judiciary.

HAWAII'S ANTI-DISCRIMINATION LAWS

AGENCY	STATUTE	DESCRIPTION	REMEDY/PROCEDURE
Department of Personnel Services (continued)	HRS §76-44*	Prohibits suspension, demotion, dismissal on the basis of race, sex, age, religion, ancestry, marital status.	reprisal; —Employees have right to representation; —Proceedings shall so far as practical be conducted during office hours (§76-42).
	HRS §78-2*	Prohibits discrimination for public service employment because of physical or mental handicap.	
	HRS §78-2.5*	Provides that no applicant for public service employment by the State or any political subdivision or agency shall be required to disclose an arrest record.	
	HRS §90-2	Provides that the participation or benefits of any volunteer program shall not be denied on the basis of sex, age, race, color, ancestry, religion, national origin, marital status, physical or mental handicap, or political grounds.	

* Also applies to the Judiciary.

HAWAII'S ANTI-DISCRIMINATION LAWS

AGENCY	STATUTE	DESCRIPTION	REMEDY/PROCEDURE
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Department of Taxation	HRS §246-12.2	Requires that the owner of a golf course covenant not to engage in discrimination in the use of the facilities because of the individual's race, sex, religion, color, or ancestry as a condition of having land assessed in valuation as a golf course.	
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University of Hawaii	HRS §304-1	Requires that all privileges of the institution of the U.H. be made available to all persons regardless of race, color, religion, sex, national origin, physical handicap.	
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Miscellaneous	HRS §518-3	States that it is the public policy of the State to establish community residences in residential areas, and that any restrictive covenant or other legal impediment made which prevents or restricts the establishment in an area zoned for residential use of a facility licensed as an adult residential care home; intermediate care facility/mental retardation-community; or special treatment facility shall be void and unenforceable.	
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