



HAWAI'I STATE ETHICS COMMISSION

State of Hawai'i · Bishop Square, 1001 Bishop Street, ASB Tower 970 · Honolulu, Hawai'i 96813

July 20, 2023

Via-Email: brickwoodg@oha.org

Brickwood Galuteria
Trustee
Office of Hawaiian Affairs
560 N. Nimitz Hwy #200
Honolulu, Hawai'i 96817

Re: *Request for a Good Cause Exception to Nepotism Prohibition*

Dear Mr. Galuteria,

Thank you for contacting our office to request a good cause exception to the nepotism prohibition. This prohibition restricts you from taking employment actions, such as supervising or retaining, your daughter, Sommer Soares. We understand Ms. Soares serves as your office aide and reports directly to you.

Based on the information you provided, it is our opinion that good cause does not exist for a blanket exception to the nepotism law. Nonetheless, recognizing the complexities of restructuring an existing employment arrangement, we extend a temporary exception of three months from the date of this letter to allow you and your office to make alternative accommodations.

Background:

Hawai'i recently implemented a ban on nepotism that applies to all state employees, except those working in the legislative or judicial branches of government.¹ *See* Act 261.² As of July 12, 2023, no employee subject to Act 261 shall “[a]ppoint, hire, promote, or retain a relative or household member to, or demote, discharge, or terminate a relative or household member from . . . a paid position in the employee’s employing agency”

¹ The Office of Hawaiian Affairs does not appear to fall under either the legislative or judicial branch of government and, thus, is subject to Act 261.

² Available at https://www.capitol.hawaii.gov/session/measure_indiv.aspx?billtype=HB&billnumber=717&year=2023

“Employee” means “any nominated, appointed, or elected officer or employee of the State, including members of board, commissions, and committees, and employees under contract to the State” Haw. Rev. Stat. § 84-3.

The Commission “may grant an exception to an employee or agency that is unable to comply with this section for good cause, including a demonstrated lack of qualified personnel or applicants.” Act 261 at (g). On May 17, 2023, the Commission delegated “the initial decision on any good cause exception application to the Executive Director.”³ Such a decision shall be publicly available on the Commission’s website. Further, should the “application raise novel issues or should the applicant disagree with the Executive Director’s decision, the matter shall be referred to the Commission for a decision”⁴.

Analysis:

Recognizing that compliance with the new nepotism prohibition may have unavoidable consequences that impact your office, and in particular, Ms. Soares, a current state employee, we acknowledge the delicate nature and significance of this subject. We fully grasp the seriousness of your request and address it with due gravity.

In addition, we understand the central issue. The dynamic between an elected official and their employees differs from that of a typical state worker. An elected official is directly accountable to their community. A close relative brings with them a sense of familiarity and trust, shared values and vision, and the potential to strike a harmonious balance between loyalty and effectiveness. Furthermore, if the public expresses discontent with the performance of an elected official and their team, there exists an active political solution: voters retain the power to elect a different candidate. This differs from a traditional civil servant or at-will state employee.

Nonetheless, Act 261 establishes a bright-line restriction, forbidding most state employees from hiring or retaining a relative or household member. The law does not differentiate between elected officials, civil servants, or at-will employees. Consequently, this unambiguous language establishes that no state employee subject to the law, irrespective of their elected status, is permitted to oversee or recruit a family member or household member due to the strict nepotism prohibition.

³ Order Regarding Applications for Good Cause Exceptions to the Nepotism Law, May 17, 2023 at 2.

⁴ *Id.*

Moreover, looking to the legislature itself, it is notable that both the Senate⁵ and House of Representatives⁶ enacted rules prohibiting the hiring or employment of a close relative.⁷ This supports the conclusion that the legislature intended a firm prohibition of nepotism, regardless of elected status.

Finally, public policy further supports drawing a narrow line around possible good cause exceptions. The nepotism prohibition:

- Eliminates favoritism, and establishes an equal playing field for other qualified individuals seeking an employment opportunity;
- Avoids conflicts of interest by ensuring state employees can make unbiased decisions in the best interest of the public;
- Helps maintain public confidence in the public integrity and impartiality of elected officials and government as a whole; and
- Prevents abuses of power, that is, the risk of elected officials misusing their authority to benefit family members and expend public resources improperly.

Conclusion:

As established above, state employees subject to the Nepotism law (Act 261) are covered without regard to elected status, and the fact that one is elected does not establish good cause for an exception. Nonetheless, recognizing that the law directly and significantly impacts your office as a whole and in particular, Ms. Soares, an existing state employee, a temporary good cause exception is granted for three months following the date of this letter to allow for corrective action, such as transitioning Ms. Soares into a new position, assigning her to a different supervisor, or other steps that would achieve full compliance with the Nepotism law.

⁵ “A Senator or employing staff member may not appoint, employ, promote, advance or advocate for appointment, employment, promotion, or advancement in or to a position in the Senate any individual who is a close relative of the Senator or employing staff member.” *Administrative and Financial Manual of the Senate*, adopted January 15, 2020, at 60 (available at <https://www.capitol.hawaii.gov/sessions/session2023/docs/SenateAdminManual2023.pdf>).

⁶ “For permanent staff who being employment on January 18, 2023, and thereafter, each member and support agency head is prohibited from appointing, employing, promoting, or advocating for the appointment, employment, or promotion of any relative to a position that the member or support agency head exercise authority or control over in an official capacity.” *House Administrative and Financial Manual*, House of Representatives, Thirty-Second Legislature 2023-2024, at 71 (available at <https://www.capitol.hawaii.gov/docs/HouseAdminManual.pdf>).

⁷ Employees of the judicial branch are also subject to a longstanding nepotism prohibition preventing them from appointing or hiring a family member. Haw. Rev. R. of Jud. Cond., Rule 2.13.

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If you need assistance in determining how to comply with the Nepotism law moving forward, please review our Quick Guide (attached) or contact our office.

Thank you for your inquiry and if you have questions or would like to discuss this matter further, please contact me at 587-0460.

Sincerely,

A handwritten signature in black ink, appearing to read "RDH", written in a cursive style.

Robert D. Harris

Executive Director and General Counsel

Attachment: Nepotism Quick Guide

RDH/ls