

HAWAI'I STATE ETHICS COMMISSION

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

August 14, 2023

Via-Email: darakaki@hawaii.edu

Mr. Daniel Arakaki
Auxiliary & Faculty Services Officer
University of Hawai'i Athletics
2123 Anianiku Street
Honolulu, Hawai'i 96813

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

Dear Mr. Arakaki:

Thank you for contacting Hawai'i State Ethics Commission to request a good cause exception to the Nepotism Law. As we understand it, you work for the University of Hawai'i at Manoa, Office of Intercollegiate Athletics. You requested a good cause exception so that your stepson, Kekoa Po'okela Feliciano, may fill an exempt, temporary, part-time position ("Pool Position") maintaining the University's swimming pools. Based on the information provided, it is our opinion that good cause has not yet been demonstrated.

Based on the information provided by you and the Assistant Athletics Director (Facilities/Events), I understand the Pool Position in question is responsible for cleaning UH Manoa's two pools. Mr. Feliciano filled this position in the past and did an admirable job. While you are not responsible for hiring candidates for the Pool Position, you assign daily activities, take corrective action, and oversee the work performed. You do not make personnel decisions (such as promotion or termination), but act in a managerial role and provide recommendations. The Assistant Athletics Director relies on your recommendations in making personnel decisions.

You indicate that the Pool Position has been difficult to fill. Advertisement has been by word of mouth. You request a good cause exemption because Mr. Feliciano is a high-performing employee.

The Nepotism Law prohibits state employees from taking employment action affecting relatives or household members.¹ The definition of relative includes a "stepchild," "foster child" or "adopted child."

¹ The Nepotism Law can be found at:
https://www.capitol.hawaii.gov/session/measure_indiv.aspx?billtype=HB&billnumber=717&year=2023

Employment action includes such things as hiring, evaluating, demoting, or supervising a relative or household member. In this case, you oversee the work performed and are responsible for taking corrective actions as needed. The active management of a relative, such as being the primary provider of daily assignments and being the principal source of information impacting personnel decisions, meets the definition of a “supervisor.”² Accordingly, the Nepotism Law appears applicable to this situation.

The Ethics Commission may grant an exception to this law upon good cause shown. And yet, the purpose of the Nepotism Law is to eliminate favoritism in hiring and employment decisions, promote public confidence in state employees and state government, and prevent abuses of power by prohibiting state officials and employees from using their positions to benefit family members. Given the strong public policy supporting the law, the Ethics Commission believes the threshold standard of “good cause” is a high bar. Because limited recruitment efforts have been made here – primarily word of mouth – it does not appear that good cause exists. Should more extensive recruitment efforts occur and no qualified candidates are found, good cause may be established in the future.³

Thank you for your request for an exemption. This letter is based on the information provided by you and Assistant Athletic Director. If any of this information is inaccurate, please inform us as soon as possible as this may affect our decision.

If you have questions or would like to discuss this matter further, please contact me at (808) 587-0460.

Sincerely,



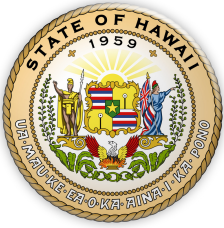
Robert D. Harris
Executive Director and General Counsel

Attachment: Nepotism Quick Guide

RDH/lis

² “Supervision” is defined as the “act of managing, directing, or overseeing persons or projects.” *Black’s Law Dictionary* at 1479 (8th ed. 2004).

³ For good cause to be found, the application should meet or exceed reasonable expectations in recruiting employee candidates. While recruitment efforts would naturally vary based on the market conditions and the specific job requirements, it is anticipated that a variety of recruitment channels (in addition to word of mouth) would be pursued, such as job boards, social media, network events, and industry-specific platforms. Other facts should also be considered such as whether the job requirements are realistic and aligned with the position needs and whether external assistance (specialized recruitment agency or headhunter) is reasonable. To receive a good cause exemption, an applicant should demonstrate how these considerations were addressed.



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THE STATE ETHICS CODE - A QUICK GUIDE ON THE NEPOTISM LAW

DOES THE NEPOTISM LAW APPLY TO ME?

The nepotism law applies to almost all state employees (including board members). Exceptions include employees in the legislative or judicial branches.

The Commission encourages all state employees to comply with this law.

What does the nepotism law prohibit?

If the nepotism law applies to you, there are two restrictions:

1. You cannot take employment action affecting relatives or household members.

- This means you cannot appoint, hire, promote, retain, demote, discharge, terminate, or supervise a relative or household member from a paid position in your agency.
- This also means you cannot participate in an interview or discussion regarding a relative or household member's potential hiring, promotion, or retention to a paid position in your agency.
- There is an exception for supervising a relative where you have a physical impairment requiring the hiring of a particular relative or household member and the employment is disclosed to the Commission before the hire is made.

2. You cannot be involved in contracts awarded to businesses owned by relatives or household members.

- You may not award or be involved in administering/supervising a contract to a business where a relative or household member:
 - is an executive officer of that business or
 - owns a substantial interest in the business.
- For example, an employee could not sit on the selection panel of a request for proposals if one of the applicants was owned by a relative.
- **Narrow exception:** if you are legally required to take action affecting a relative or family member's business, you may do so when you file a notice with the Commission at least five days in advance.

What is a Relative?

A "Relative" includes parents, grandparents, children, grandchildren, siblings, uncles/aunts, cousins, in-laws, and step-relationships.

A "household member" is anyone who resides in the same dwelling.

THE STATE ETHICS CODE - A QUICK GUIDE ON THE NEPOTISM LAW

What should I do if I supervise a relative at work?

Employees generally cannot supervise their relatives, and agencies and employees should work together to comply with the nepotism law. For instance, a supervisor could delegate all employment decisions affecting a relative to another person in the agency. To avoid the appearance of impropriety, it will be important to document that employment decisions are being made by someone else and be public about that delegation.

If that is not possible, you may apply to the Commission for an exception to the nepotism law where there is good cause. You must prove good cause, which might include a lack of qualified applicants, in a public and transparent manner. An exception form can be found at ethics.hawaii.gov.

How do I establish good cause?

When applying for a good cause exception, it is important that the employee or agency produce evidence that they are unable to comply with the nepotism law. For hiring decisions, this could include ensuring that the job description was reviewed for general applicability; meaningfully advertising in relevant locations; advertising for a reasonable period; acting quickly to review and consider potential candidates; and generally going above and beyond to recruit applicants into the state system.

For existing state employees taking action affecting relatives, a good cause exception application should include proof of why the agency and employee are unable to delegate those duties to another employee and the efforts that were made to comply with the nepotism law absent an exception.

What should I do if I am asked to interview a relative for a job opportunity?

Employees may not interview or promote their relatives. An employee that is asked to do so should disclose their relationship to their agency and refrain from participating in the hiring process.

What are the penalties for a violation?

Employees violating the nepotism law face fines of up to \$1,000 per violation, any favorable treatment received by a relative or household member is potentially voidable.

Contact Us:

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