



**STATE OF HAWAII  
DEPARTMENT OF HUMAN RESOURCES  
DEVELOPMENT  
POLICIES AND PROCEDURES**

POLICY NO. 501.006 ERD/PTO	NO. of PAGES 8 2 Attachments
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TITLE:  <b>VICTIMS PROTECTIONS</b>	APPROVED:   Barbara A. Kridg, Interim Director
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**I. POLICY**

As required by law, departments shall allow up to thirty (30) days of unpaid victims leave per calendar year and make reasonable accommodations in the workplace for employees who are victims of domestic or sexual violence.

**II. RATIONALE**

Departments have an interest and legal obligation to enable employees who are victims of domestic or sexual violence to maintain their employment and financial independence necessary to leave abusive situations, find safety and security, minimize the physical and emotional injuries from domestic or sexual violence, and participate in criminal and/or civil justice processes without also facing the loss of their jobs and its adverse economic consequences.

**III. DEFINITIONS**

“Accommodation file” means a separate confidential and secure file stored alongside an employee’s medical file which contains documentation of the accommodation process. This includes all supporting documentation from the request for reasonable accommodation to its provision.

“Child” means an individual who is a biological, adopted, hanai, or foster son or daughter; a stepchild; or a legal ward of an employee.

“Course of conduct” means acts over any period of time of repeatedly maintaining a visual or physical proximity to a person or conveying verbal or written threats, including threats conveyed through electronic communications or threats implied by conduct.

“Decision maker” means any management representative within a department responsible for deciding whether a request for accommodation is reasonable and implementing it.

“Department” means any employing agency, department, or office within the State of Hawaii’s executive branch.

“Domestic abuse” means conduct defined in section 586-1, Hawai’i Revised Statutes.

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“Domestic or sexual violence” means domestic abuse, sexual assault, or stalking.

“Electronic communications” means communications via telephone, mobile phone, computer, e-mail, video recorder, fax machine, telex, or pager.

“Employee” means a person who performs services for hire for not fewer than six (6) consecutive months for the State.

“Health care professional” means an individual who by education, training, certification, or licensure is qualified to and is engaged in providing health and/or medical care.

“Interactive process” means a good faith, flexible communication process between an employee requesting a reasonable accommodation and a decision maker to determine the appropriate accommodation.

“Reasonable accommodation” means a modification or adjustment to the work environment of an employee who is a victim of domestic and/or sexual violence in accordance with Chapter 378, Part VI, Hawaii Revised Statutes, that does not cause undue hardship upon a department’s work operations.

“Reasonable period of time” means (1) where due to physical or psychological injury or disability to the employee or employee’s minor child, the period of time determined to be necessary by a health care professional, considering the condition of the employee or employee’s minor child, and the job requirements; and (2) where due to an employee’s need to take legal or other actions, including preparing for or participating in any civil or criminal legal proceeding, obtaining services from a victim services organization, or permanently or temporarily relocating, the period of time necessary to complete the activity as determined by the employee’s or employee’s minor child’s attorney or advocate, court, or personnel of the relevant victim services organization.

“Sexual assault” means any conduct proscribed by Chapter 707, Part V, Hawai’i Revised Statutes.

“Stalking” means engaging in a course of conduct directed at a specifically targeted person that would cause a reasonable person to suffer substantial emotional distress or to fear bodily injury, sexual assault, or death to the person or to the person’s spouse, parent, child, or any other person who regularly resides in the person’s household, and where the conduct does cause the targeted person to have such distress or fear.

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"Undue hardship" means an action requiring significant difficulty or expense on the operation of a department, when considered in light of (1) the nature and cost of the requested accommodation; (2) the overall financial resources of the department, the number of employees of the department, and the number, type, and placement of the work locations of the department; and (3) the type of operation of the department, including the composition, structure, and functions of the workforce of the department, the geographic separateness of the victim's work location from the department, and the administrative or fiscal relationship of the work location to the department.

"Victim services organization" means (1) a non-profit, nongovernmental organization that provides assistance to victims of domestic or sexual violence or to advocates for such victims, including a rape crisis center; (2) an organization operating a shelter or providing professional counseling services; or (3) an organization providing assistance through the legal process.

#### **IV. SCOPE**

This policy applies to all employees who have been employed for at least six (6) months in the executive branch under the jurisdiction of the Department of Human Resources Development.

#### **V. GENERAL PROVISIONS**

- A. A department may verify that an employee is a victim of domestic or sexual violence, solely for the purpose of determining whether to grant leave to the employee and/or to make reasonable accommodations in the workplace, by requesting that the employee provide:
1. A signed written statement from an individual listed below from whom the employee or the employee's minor child has sought assistance in relation to the domestic or sexual violence:
    - a. An employee, agent, or volunteer of a victim services organization;
    - b. The employee's attorney or advocate;
    - c. The attorney or advocate of the employee's minor child;
    - d. A health care professional; or

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- e. A member of the clergy; or
  2. A police or court record supporting the occurrence of the domestic or sexual violence.
- B. A department may verify an employee's status as a domestic or sexual violence victim not more than once every six (6) months following the date:
1. An employee provides notice of the employee's status as a domestic or sexual violence victim;
  2. The department has actual knowledge of the employee's status as a domestic or sexual violence victim; and/or
  3. The department receives verification that the employee is a domestic or sexual violence victim.

When the employee provides verification in the form of a protective order related to the domestic or sexual violence with an expiration date, the department may not request any further form of verification of the employee's status as a domestic or sexual violence victim until the date of the expiration or any known extensions of the protective order, whichever is later.

- C. A department shall maintain all information associated with victims protections matters in the strictest confidence and shall not disclose such information, except when specific disclosure is either:
1. Requested or consented to by the employee;
  2. Ordered by a court or administrative agency; or
  3. Otherwise required by applicable federal or state law.

## VI. VICTIMS LEAVE REQUIREMENTS

- A. A department shall grant an eligible employee up to thirty (30) days of unpaid leave from work per calendar year, if the employee or the employee's minor child is a victim of domestic or sexual violence, provided the leave is to:
1. Seek medical attention for the employee or employee's minor child to recover from physical or psychological injury or disability caused by domestic or sexual violence;

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2. Obtain services from a victim services organization;
  3. Obtain psychological or other counseling;
  4. Temporarily or permanently relocate; and/or
  5. Take legal action, including preparing for or participating in any civil or criminal legal proceeding related to or resulting from the domestic or sexual violence, or other actions to enhance the physical, psychological, or economic health or safety of the employee or the employee's minor child or to enhance the safety of those who associate with or work with the employee.
- B. An employee's absence from work that is due to or resulting from domestic or sexual violence against the employee or the employee's minor child as provided in this procedure shall be considered by a department to be a justification for leave for a reasonable period of time, not to exceed thirty (30) days per calendar year.
- C. An employee shall provide a department with reasonable notice of the employee's intention to take victims leave, unless providing that notice is not practicable due to imminent danger to the employee or the employee's minor child.
- D. Upon return from victims leave, an employee shall return to the employee's original job or to a position of comparable status and pay, without loss of accumulated service credits and privileges, except that nothing in this subsection shall be construed to entitle any restored employee to the accrual of:
1. Any seniority or employment benefits during any period of leave, unless the seniority or benefits would be provided to a similarly situated employee who was on leave due to a reason other than domestic or sexual violence; or
  2. Any right, benefit, or position of employment to which the employee would not have otherwise been entitled.
- E. In lieu of taking victims leave on an unpaid basis, an employee may concurrently utilize up to thirty (30) days of any combination of vacation leave, sick leave, and/or compensatory time off. The substitution of paid leave for unpaid leave does not extend the employee's maximum allowable victims leave protection for a given calendar year.

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### VII. VICTIMS LEAVE PROCEDURES

- A. An employee requesting victims leave shall complete a Form G-1 and a HRD Form VP-1 and immediately submit both documents per applicable departmental practices and procedures for requesting leave.
- B. A department receiving a victims leave request shall:
  - 1. Review the requesting employee's Form G-1 and HRD Form VP-1 to ensure compliance with subsection VII.A. above; and
  - 2. Record victims leave on the State DHRD Form 7, *Attendance and Leave Record* by using the following leave codes, as applicable:
    - a. "VCV" if leave period is to be charged to vacation;
    - b. "VCS" if leave period is to be charged to sick leave;
    - c. "VCT" if leave period is to be charged to compensatory time off; and/or
    - d. "VCL" if leave period is to be charged to leave without pay.

### VIII. REASONABLE ACCOMMODATION REQUIREMENTS

- A. A department shall make reasonable accommodations in the workplace for an employee who is a victim of domestic or sexual violence, to include but not limited to:
  - 1. Changing the contact information, such as telephone numbers, fax numbers, or electronic-mail addresses, of the employee;
  - 2. Screening the telephone calls of the employee;
  - 3. Restructuring the job functions of the employee;
  - 4. Changing the work location of the employee;
  - 5. Installing locks and other security devices; and/or
  - 6. Allowing the employee to work flexible hours.

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- B. A department is not required to provide accommodations that cause undue hardship on its work operations.

### IX. REASONABLE ACCOMMODATION REQUEST PROCEDURES

- A. An employee requesting an accommodation shall:
  - 1. Complete numbers 1 through 3 of HRD Form VP-2 and immediately submit the request per applicable departmental practices and procedures for requesting an accommodation;
  - 2. Cooperate and participate in the interactive process as necessary to assist the decision maker who is considering the request for accommodation;
  - 3. Cooperate in providing appropriate documentation when asked for by the decision maker who is considering the request for accommodation; and
  - 4. If necessary, immediately inform the decision maker considering the request for accommodation of any relevant changes in circumstance and/or need.
- B. A department receiving an accommodation request from an employee shall:
  - 1. Immediately refer the accommodation request to an appropriate decision maker, create an accommodation file, engage in the interactive process if necessary, and keep the employee who requested the accommodation informed of the status of the request;
  - 2. If necessary, conduct research to assist with expediting the disposition of the accommodation request;
  - 3. Make a prompt decision on the accommodation request by completing number 4 of HRD Form VP-2;
  - 4. Provide the employee who requested the accommodation a copy of the completed HRD Form VP-2; and
  - 5. Store the original completed HRD Form VP-2 and all other documentation or relevant information concerning the accommodation in the accommodation file.

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**X. AUTHORITIES AND REFERENCES**

Chapter 378, Part VI, Victims Protections, Hawai'i Revised Statutes.

**XI. ATTACHMENTS**

Application for Victims Protections-Victims Leave, HRD Form VP-1

Application for Victims Protections-Reasonable Accommodation, HRD Form VP-2