



Hawaii Employers Council

Suggestions For Supporting Testimony

The following are some suggested points to raise in your supporting testimony. The points could be raised in any order, and please add any details or comments which would “individualize” the testimony. Please also feel free to add any other arguments or comments which you believe would support elimination of strict liability for supervisor harassment.

1. It is unreasonable to make employers strictly liable for any and all sex or ancestry harassment committed by supervisors. When an employer communicates policies strictly prohibiting unlawful harassment, has a reasonable complaint procedure, and strives to create a workplace free of unlawful discrimination and harassment, a supervisor clearly is not acting as an agent of the employer, and is acting outside the scope of his/her authority.
2. Under the current rules, employees who believe they been subjected to sex or ancestry harassment by a supervisor can sue their employers without ever raising a prior complaint with their employer. This makes no sense, because an employer is in the best position to investigate and promptly remedy unlawful harassment, but it cannot do so if an employee never brings the harassment to its attention.
3. The current rules encourage false claims of harassment. Because employers may be liable for supervisor harassment regardless of whether the alleged victim ever complains, disgruntled employees may file charges of harassment describing conduct which allegedly occurred months or even years prior to the filing of their charge. Because of the passage of time, employers are usually prejudiced in defending themselves against such allegations.
4. Employers expend significant amounts of money, time, and effort in communicating their anti-harassment policies and providing training to employees. However, under the current rules on liability for supervisor harassment, responsible employers are treated no differently than careless and irresponsible employers.
5. The proposed rules will provide a valuable incentive for employers to reaffirm their commitment to prohibiting unlawful harassment, to review their policies and practices, and to provide more anti-harassment training for employees.