



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,

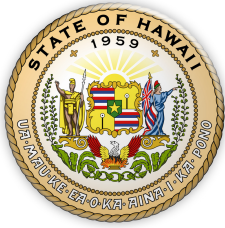
A handwritten signature in black ink, appearing to read 'RDH', written in a cursive style.

Robert D. Harris

Executive Director and General Counsel

Attachment: Nepotism Quick Guide

RDH/ls



HAWAI'I STATE ETHICS COMMISSION

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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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