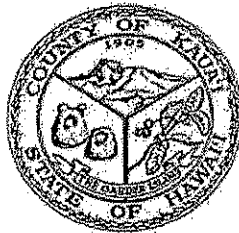


COUNTY COUNCIL

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Lani T. Kawahara
Derek S. K. Kawakami



Council Services Division
3371-A Wilcox Road
Lihu'e, Kaua'i, Hawai'i 96766

OFFICE OF THE COUNTY CLERK

Peter A. Nakamura, County Clerk
Eduardo Topenio, Jr., Deputy County Clerk

Telephone (808) 241-4188
Fax (808) 241-6349
Email cokcouncil@kauai.gov

October 13, 2010

The Honorable Councilmembers
County of Kaua'i
Lihu'e, Kaua'i, Hawai'i 96766

Dear Members of the Council:

The Hiraikawa case and several others in the last few years lead to the inevitable conclusion that the county of Kaua'i has repeatedly failed to respond appropriately to allegations of sexual harassment and hostile workplace environment. The Hiraikawa case has had an unusual level of public disclosure, but most cases settle prior to open court proceedings being filed and are shielded from public scrutiny. The County has paid millions of taxpayers' dollars to settle claims; managers and supervisors continue to make the same fundamental mistakes; and the County has yet to take any action to correct the situation

The repeated failures that have occurred at the highest levels of County leadership can only be described as a total and systemic breakdown. This has resulted in a climate where many employees, particularly women, feel unsafe in the workplace and have no faith that their concerns will be responded to appropriately, if at all. Managers who have reportedly engaged in behaviors that led to the claims have been protected from any consequence because, in violation of County policy, personnel inquiries are not even initiated. Thus, no investigations are conducted and the actions of these supervisors are effectively covered-up and their accountability is non-existent. When there is no follow through in implementing our workplace violence/sexual harassment policies, a strong and valid argument can and has been made that the county protects supervisors who harass and threaten their employees.

Since 1998 when the Supreme Court issued rulings in two cases (Faragher-Ellerth), the County has known that in sexual harassment/hostile work environment cases, an employer may be held liable when the person doing the harassing is the plaintiff's direct supervisor or higher. However, in those cases in which no tangible adverse employment action is taken against the plaintiff in the context of the alleged harassment, employers are allowed to assert a defense to liability and damages if they are able to prove that:

(1) the employer had a published anti-harassment policy prohibiting the conduct in question and provided employees with channels to report the conduct;

(2) the harassed employee unreasonably failed to report the conduct using those reporting channels; and

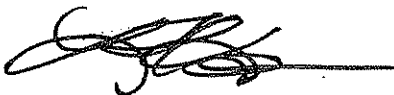
(3) the employer, on learning of the harassment, promptly took action to stop the problem behavior.

Although the County's anti-harassment policy is deeply flawed, one does exist, yet to our knowledge not even one sexual harassment training session has been conducted and not one investigation, required by policy, into sexual harassment has been conducted. Most of the liability the County has incurred has come not from the alleged harassment but from the failure of any manager to take any action. So not only are supervisors who are accused of misconduct not investigated and no corrective action taken, other supervisors who fail to fulfill their responsibility to follow the policy are not held accountable.

Although the County's failure to address issues of sexual harassment/hostile work environment have resulted in huge liability for the county, the more important question is what kind of message does this situation send to the employees of the County?

On a brighter note, the current administration has recognized this problem and the Mayor and County Attorney are in the process of revamping the County policies and issues of accountability. We trust that comprehensive, annual training in sexual harassment/hostile work environment issues is on the horizon for employees and managers. Discussion is ensuing about revamping the Personnel Department into a Human Resource Department which would not just hire employees and manage their records but would also recognize our employees as our most valuable resource and be tasked specifically to protect our employees' rights to work in a safe environment, free from sexual harassment and workplace violence.

Sincerely,



LANI T. KAWAHARA



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