

## THIS IS NOT LEGAL ADVICE

### State Resources

Hawaii

Civil Rights Commission

<https://labor.hawaii.gov/hcrc/>

Reviewing Your

**HAWAII**

Job Offer

### Federal Resources

Equal Employment

Opportunity Commission

<http://www.eeoc.gov>

### Does your job offer require that you sign a non-compete agreement?

Under Hawaii Code section 480-4, non-compete agreements are generally enforceable so long as they are drafted in compliance with Hawaiian law. For example, the statute states that with regard to employment, is permissible to have a "covenant or agreement by an employee or agent not to use the trade secrets of the employer or principal in competition with the employee's or agent's employer or principal, during the term of the agency or thereafter, or after the termination of employment, within such time as may be reasonably necessary for the protection of the employer or principal, without imposing undue hardship on the employee or agent."

Additionally, as an exception to the above, this statute prohibits a non-compete clause to be used in any employment contract relating to an employee of a technology business.

### Does your salary match the salary of your co-workers?

Hawaii's Act 203 prohibits employers from discriminating between employees based on any protected category established under state law regarding payment of wages to employees at a rate less than wages to other employees for substantially similar work. Act 203 provides an update to some aspects of Hawaii's Equal Pay Act, which allows for pay differentials that are based on permissible factors other than a protected classification, including a seniority system or a merit system.

Additionally, the National Labor Relations Act prohibits the rights of any employee covered by the Act to discuss wages in face-to-face conversations and written messages. While employers may have policies against the use of company equipment when using some types of electronic communications, like social media, it is still the case that policies that specifically prohibit the discussion of wages are themselves unlawful.

### Assuming your employment is "at will," can you negotiate for contractual protections?

It is not common to negotiate for additional contractual protections, but this is a question that should especially be reviewed for potential employees seeking executive level positions as well as positions that require an employee with specialized skills. For these situations, it is recommended to seek advice of an attorney. And further to these general factors, employees may also be able to negotiate for various job benefits, such as training opportunities. Even when it is not possible to negotiate for benefits that are governed by company-wide policies, such as perhaps retirement benefits or health benefits, it is often beneficial to compare and consider these benefits when assessing multiple job offers.

### Have you properly excluded your individual inventions prior to accepting your job offer?

As an initial matter, inventor(s) are presumed to be owners of any patent rights that stem from their invention unless those patent rights have otherwise been properly assigned. See 37 CFR 1.41 Inventorship; See Manual of Patent Examination Procedure 2109 Inventorship.

With that said, it is not unusual for employers to ask employees to sign an agreement requiring employees to assign inventions created during the course of their employment to the employer. It is often beneficial for employees who have their own inventions to identify any and all inventions and other intellectual property (IP) to which they intend to retain ownership rights. It is highly encouraged to consult with a lawyer when employees are looking to negotiate a contract that involves the assignment of individual inventions.

### Does your job offer require that you sign a forced arbitration agreement?

On March 3, 2022, President Biden signed into law the Ending Forced Arbitration of Sexual Assault and Sexual Harassment Act of 2021, prohibiting employers from enforcing predispute arbitration agreements and class action waivers that concern sexual harassment and sexual assault claims. As a result of this act, employers are not allowed to require claims of sexual harassment or sexual assault be brought in arbitration. Those types of claims may be brought in court, either individually or as collective or class claims, regardless of the existence of an arbitration agreement.

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