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Hawai‘i County Settles Lawsuit Over Pre-Employment Medical Testing

County will no longer force workers to submit to urinalysis, reveal private medical history

Honolulu – The American Civil Liberties Union of Hawai‘i Foundation and the law firm of Peiffer Rosca Wolf Abdullah Kane & Carr today announced settlement of a lawsuit against Hawai‘i County over its practice of urinalyses and other invasive medical screenings as a condition of employment. The County will cease the practice, except for the approximately 3% of employees defined as “safety-sensitive” workers (such as police officers).

The federal lawsuit was filed March 9 on behalf of Rebekah Taylor-Failor, a Kailua-Kona woman who was about to begin working for the County as a Legal Clerk II (an administrative position). After giving Taylor-Failor a conditional job offer, the County required her to complete a detailed, personal questionnaire about her medical history, and then demanded she give a urine sample for analysis – just as the County required of all its prospective employees. Taylor-Failor asked the Court to allow her to start working without submitting to a urinalysis; on March 13, the Court granted that request, ruling that “the urinalysis would violate Taylor-Failor’s Fourth Amendment rights[.]”

The lawsuit challenged the County’s requirement that all prospective employees submit to urinalysis and answer questions about their medical histories, regardless of the physical duties the applicant would perform on the job. The ACLU argued that urinalysis testing reveals highly sensitive private medical information – such as whether an individual is diabetic, pregnant, is biologically male or female, has high cholesterol, or has a sexually transmitted disease – and that the tests were not related to actual job requirements of a particular occupation.

The ACLU’s attempts to resolve these problems without litigation (in 2013) were rebuffed by Hawai‘i County, so the ACLU and co-counsel Adam Wolf filed the lawsuit asking the Court for a Temporary Restraining Order to prevent the County from violating Taylor-Failor’s constitutional rights to privacy.

The Court granted the request, noting in its order that “the County has proffered no explanation as to why it is entitled to search Taylor-Failor’s urine before she may begin employment in her light duty, clerical, non-safety-sensitive position.... Employment requirements cannot stand where they violate rights of a constitutional dimension.”

As part of the settlement agreement, the County will suspend the urinalysis and medical screening requirement for all prospective County employees, with the exception of a very small percentage of County employees, like police officers, who perform “safety-sensitive” tasks. The County has also agreed to pay \$115,000 in attorneys’ fees and costs.

Mr. Wolf said, “The Constitution protects government employees from invasive medical examinations, and the County has no need to demand that its clerks reveal what medical conditions they have. Today’s settlement ensures that the County will respect its employees’ privacy for many years to come.”

Rebekah Taylor-Failor began working for the County as scheduled in March, and continues to do so. She said, “I am grateful that I was able to begin working for the County without having to sacrifice the privacy of my medical information. I will proudly continue to work hard every day on behalf of the people of Hawai‘i County.”

ACLU of Hawai‘i Legal Director **Daniel Gluck** said, “Medical data is some of our most privately held information, and it is critical that we protect it from government overreach. The government has no right to perform invasive searches of bodily fluids to determine whether an office worker can perform his/her job.”

The ACLU has shared a copy of the settlement agreement in this case with Maui County and Kauai County, both of which have had similar pre-employment medical examination requirements.

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The mission of the Hawai‘i affiliate of the ACLU is to protect the civil liberties contained in the state and federal constitutions through litigation, legislative and public education programs statewide. The ACLU is funded primarily through private donations and offers its services at no cost to the public. The ACLU does not accept any government funds.