CIVIL RIGHTS COMMISSION

STATE OF HAWAII

In the Matter of YVETTE SHAW, Complainant, ----------------- SAM TEAGUE, LTD. dba PAGE HAWAII and SAM TEAGUE, Respondents.	Docket No. 94-001-E-P HEARINGS EXAMINER'S FINDINGS OF FACT, CONCLUSIONS OF LAW AND RECOMMENDED ORDER; APPENDIX A; ATTACHMENT 1

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HEARINGS EXAMINER'S FINDINGS OF FACT, CONCLUSIONS OF LAW AND RECOMMENDED ORDER

I. INTRODUCTION

A. Chronology of Case

The procedural history of this case is set forth in the attached Appendix A.

B. Summary of the Parties' Contentions

The Executive Director alleges that Respondents violated H.R.S. § 378-2 and Hawaii Administrative Rules (H.A.R.) §§ 12-46-106, 12-46-107 and 12-46-108 when they: 1) refused to grant Complainant Yvette Shaw maternity leave for a reasonable period of time; 2) harassed Complainant because she was pregnant; 3) terminated Complainant when she took maternity leave; and 4) failed to reinstate Complainant to her former position after taking leave. Alternatively, the Executive Director alleges that Respondents had a "no extended leave" policy which had a disparate impact on Complainant. The Executive Director also contends that

Respondents' actions caused Complainant to suffer lost wages, benefits and emotional distress. Finally, the Executive Director contends that Respondents' violation of the above statute and rules was wanton, wilful and malicious and they are liable for punitive damages.

Respondents Sam Teague Ltd., dba Page Hawaii (hereinafter "Page Hawaii") and Sam Teague (hereinafter "Teague") contend that: 1) Page Hawaii has a "no extended leave" policy that applies to all employees; 2) the "no extended leave" policy is justified by business necessity; 3) if Respondents had a "no maternity leave" policy, such policy is a bona fide occupational qualification; 4) the granting of six weeks maternity leave to Complainant is an unreasonable accommodation; 5) Respondents were justified in not reinstating Complainant because she lied about making a one year commitment and they had hired another permanent employee; 6) Respondents did not harass Complainant; and 7) Respondents' actions were not wanton, malicious or wilful and they are not liable for punitive damages.

Having reviewed and considered the evidence and arguments presented at the hearing together with the entire record of these proceedings, this Hearings Examiner hereby renders the following findings of fact, conclusions of law and recommended order.

II. FINDINGS OF FACT[1]

1. Respondent Page Hawaii is a corporation doing business in the State of Hawaii. It was incorporated in July 1986. (Tr. vol. V at 124; Ex. A)[2]

2. Respondent Sam Teague (hereinafter "Teague") is the president and sole shareholder of Page Hawaii. (Tr. vol. V at 125-126)

3. Page Hawaii is located in Honolulu, Hawaii. The business is primarily engaged in selling and providing services for a large variety of pagers. During Complainant's employment at Page Hawaii, the company had about 400-500 accounts. (Tr. vol. I at 145, vol. III at 168, vol. V at 127)

4. From 1986 to the present, Page Hawaii has been a two employee operation, with Teague functioning as the president/supervisor and the following persons employed as office managers on the dates indicated:

Susan King	4-27-89	-	12-7-89
Jodi Katayama Chee	11-29-89	-	8-22-90
Susan King	8-24-90	-	12-15-90
Jackie Gonzalez Rivera	12-4-90	-	2-14-92
Yvette Shaw (Complainant)	2-2-92	-	9-11-92
Susan Funari	9-15-92	-	10-23-92
Marnie Wolfert	10-25-92	-	11-4-93
Dwayne Richardson	12-5-93	-	present

(Tr. vol. II at 177, 186-188, 190-193, vol. III at 39, 83, 87, 119,

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[1] To the extend that the following findings of fact also contain conclusions of law, they shall be deemed incorporated into the conclusions of law.

[2] Unless otherwise indicated, "Tr." preceding a page number refers to the transcript of the contested case hearing held on August 15-18, 23 and 26, 1994; "Ex." followed by a number refers to the Executive Director's exhibits; "Ex." followed by a letter refers to Respondents' exhibits.

vol. V at 61, 129, 161-162, vol. VI at 246)

5. Prior to being hired as office managers for Page Hawaii, none of the above persons had any experience selling, programming, maintaining or otherwise working with pagers. Susan King had been a customer service representative for Select Temporary Services, a word processor with a security company and did customer service work for some military exchanges. Jodi Katayama Chee received an office administration degree from Cannon's Business College and worked as a secretary for a chiropractor. Jackie Gonzalez Rivera worked as an office manager for a doctor, an administrative assistant at the University of Hawaii, and had other bank and sales experience. Complainant Shaw received a bachelor of arts degree in communications and had advertising and store management experience. Susan Funari had worked as a bartender and rental agent for Thrifty Car Rental. Marnie Wolfert had been a secretary for Kahala Management and a crew worker for Cinnabon's. Dwayne Richardson had been a gas service specialist who worked on turbo engines while in the military. (Tr. vol. III at 75-77, 104-105, 128, 135, vol. V at 79-80, vol. VI at 52, 243; Ex. G)

6. During Susan King's first period of employment with Page Hawaii, she asked Teague for 2-3 weeks leave to take care of personal matters on the mainland. Teague refused to grant her this leave, so King resigned. After Jodi Katayama Chee notified Teague that she was resigning as office manger, Teague contacted King on the mainland and asked her if she wanted the office manager position back. King accepted and returned to work at Page Hawaii

on August 24, 1990. (Tr. vol. III at 39-42)

7. The essential job functions of the office manager position at Page Hawaii are: a) general office duties, such as opening and closing the office, billing, filing, opening and closing customer accounts, receiving cash amounts under $1,000 and giving change, preparing deposits, collecting overdue accounts; b) demonstrating and selling the various pagers, equipment and services provided by the company; c) programming and testing the pagers; d) responding to customer complaints about pagers or billing; and e) general inventory, maintenance and cosmetic repair of pagers. (Tr. vol. III at 45-47, vol V at 58-60, 136; Ex. 8)

8. On the average, it takes about six to nine months for a new employee to learn and become competent in the above mentioned job functions. (Tr. vol. III at 88-89, vol. IV at 194-195, vol. VI at 145-146, 247)

9. Respondent Teague trained each of the office managers to perform the above job functions. During the first six weeks to two months of training, Teague would be in the office full time with the office managers and would not leave them unsupervised. After the initial six weeks to two month training period, Teague would leave an office manager unsupervised for about 1-3 hours per day. During business hours, Teague was usually in the office 5-7 hours per day. (Tr. vol. III at 79-81, 94, 193, vol. V at 108, vol. VI at 73, 144-145)

10. Office managers at Page Hawaii were paid $1,300 per month or about $7.50 an hour. At his discretion, Teague would give

office managers bonuses at the end of the year if their performance was exemplary. (Tr. vol. V at 207-208; vol. VI at 236-237)

11. From 1988 to the present, Page Hawaii has had a "no extended leave" policy for its employees. Since December 1990, Page Hawaii has also had a policy of requiring a one year commitment (working 12 continuous months) from all office manager applicants. This is because it takes Teague 6-9 months to fully train new office managers. (Tr. vol. III at 121, 124-125, vol. IV at 92-93, 107-108, vol. V at 57, vol. VI at 56, 146-149, 151-153, 244-245)

12. On January 29, 1992, Jackie Gonzalez Rivera interviewed Complainant Shaw for the office manager position at Page Hawaii. At the interview, Rivera told Complainant that the company needed a one year commitment and asked Complainant if she could make such commitment. Rivera did not inform Complainant that the company had a "no extended leave" policy and did not explain that a one year commitment meant working 12 continuous months without taking any extended leave. (Tr. vol. I at 92, vol. IV at 50, vol. V at 83-84, 120)

13. Complainant thought that a one year continuous commitment could include taking extended leaves of absences for disability or pregnancy purposes. Complainant told Rivera that her husband was stationed in Hawaii until 1995 and that she would have no problem working at Page Hawaii for at least one year. Complainant intended to work at Page Hawaii until her husband was transferred out of Hawaii. (Tr. vol. I at 193-195, 199, 232-233)

14. Later, Teague interviewed Complainant. Teague also asked Complainant if she could make a one year continuous commitment to the job. Teague also did not inform Complainant of the company's "no extended leave" policy and did not explain that a one year commitment meant working 12 continuous months without taking any extended leave. Complainant also told Teague that a one year commitment would not be a problem. (Tr. vol. I at 173-174, 182-183, vol. IV at 50, vol. VI at 159-160)

15. On January 30, 1992 Complainant took a pregnancy test at Tripler Hospital and was informed that she was pregnant. (Tr. vol. I at 93-94, 190-191)

16. On January 31, 1992 Complainant was offered the office manager position at Page Hawaii and she accepted the offer. If Teague had known that Complainant was pregnant, he would not have hired her. (Tr. vol. V at 86-87, vol. VI at 160-162)

17. Complainant's three month job performance review was scheduled for May 11, 1992. However, because the office was busy that day, Complainant's review was rescheduled for May 12, 1992. (Tr. vol. I at 204)

18. Complainant decided to inform Teague about her pregnancy and request a six week maternity leave after her three month job performance review. This was because she didn't want her pregnancy to be a factor in her review. (Tr. vol. I at 197-198, 205)

19. On May 12, 1992 Teague conducted a job performance review with Complainant. After the review, Complainant informed Teague that she was pregnant, was expecting to deliver in September, and

handed Teague a memorandum requesting a six week maternity leave. (Tr. vol. I at 106-107, vol. VI. at 174; Ex. 10)

20. Teague was shocked and angry. He felt that Complainant was breaking her agreement to work at Page Hawaii for one continuous year. He stated, "How can this be?" "What about your one year commitment to me?" (Tr. vol I at 107, 225, vol. VI at 174-175)

21. Complainant replied that she wasn't breaking her one year commitment and that she planned to return to work at Page Hawaii after taking maternity leave. She suggested that: a temporary worker could be hired, she could shorten her leave to four weeks or she could come in part time during the six week leave period. (Tr. vol. I at 107-109, 226-227, vol. VI at 175-177)

22. Teague stated that a temporary worker would not work out and rejected Complainant's other suggestions. (Tr. vol. I at 107-109, vol. VI at 175-177)

23. Complainant became agitated and upset during this discussion. Teague also became upset and decided to end the discussion, telling Complainant to "go home and sleep on it". (Tr. vol. I at 110-111, vol. VI at 175-178)

24. The next day (May 13, 1992), Complainant again spoke to Teague about her request for maternity leave. Teague again stated that it wouldn't work out. Complainant explained that she and her husband weren't planning to start a family, but that "it happened". Teague stated Complainant and her husband "should have used precautions". Complainant was offended by this comment and told

Teague that it was none of his business. Teague agreed that it was none of his business and immediately apologized to Complainant. Complainant reiterated that she had the right to take maternity leave and she was going to return to her job after her leave. Teague did not respond. (Tr. vol. 1 at 109, 124. vol. VI at 178-183)

25. Teague felt he had made it clear that he was not granting Complainant's request to take maternity leave. Complainant felt the issue of her maternity leave was not resolved. (Tr. vol. IV at 53, vol. V at 34)

26. After both discussions, Complainant became very upset. She went home, cried, and worried about losing her job. Complainant's husband felt that she should have been more forceful in asserting her "rights", and they fought over how she should handle the situation. After the May 13th discussion, Complainant was nervous at work and had knots in her stomach because she was worried about whether Teague would grant her maternity leave. (Tr. vol. I at 110-111, 124-126, 129-130, vol II at 123-126, 131, 209-210)

27. Because Complainant was agitated and upset during the May 12 and 13 discussions, Teague felt uncomfortable around her. He didn't want to upset her again and only spoke to her about business matters. (Tr. vol. VI at 183-184)

28. Complainant's maternity leave was not discussed again until some time in August 1992 when Teague and Complainant determined what her last day of work before giving birth would be.

They agreed that September 18, 1992 would be Complainant's last day. By this time, Complainant had been fully trained by Teague and had mastered about 75%-80% of the office manager duties. (Tr. vol. I at 128-129, vol. VI at 150-151, 188-189)

29. Some time in late August or early September 1992 Teague interviewed Susan Funari and offered her the office manager position. Funari began working at Page Hawaii on September 15, 1992. (Tr. vol. IV at 129, vol. VI at 192-194)

30. On September 14, 1992 Complainant gave birth to a baby girl at Tripler Hospital. (Tr. vol. I at 152; Ex. 16)

31. After delivery, Complainant was examined by Dr. Ben Williams. Complainant did not ask Dr. Williams how long she should take maternity leave from work. If Complainant had asked, Dr. Williams would have recommended 42 days, or six weeks maternity leave based on her normal delivery. (Tr. vol. III at 13, 15-16, 32-33)

32. On September 16, 1992 Complainant phoned Teague and informed him that she had a daughter. Teague congratulated Complainant and told her that he was lucky to find a replacement for her. Complainant thought Teague had found a temporary replacement. (Tr. vol. I at 136-137, vol. IV at 40, vol. VI at 202)

33. On September 18, 1992 Teague wrote Complainant and stated, "it will not be possible to hold open your job. The learning curve for the job is simply too great." Teague again

congratulated Complainant on the birth of her daughter and enclosed a final pay check and a letter of reference. (Tr. vol. I at 137, vol. VI at 202-204; Ex. 12)

34. Teague did not terminate Complainant because of poor work performance or tardiness. (Tr. vol. IV at 135)

35. Complainant was surprised and upset by Teague's September 18, 1992 letter. She called Teague and asked how he could terminate her since he knew that she wanted to return to her job. Teague stated he had already hired a replacement and he couldn't hold the position open since the learning curve was so great. Complainant stated that her termination wasn't fair and she was going to check into the matter. Teague stated that as a small business he could refuse to hold her position open. (Tr. vol. I at 138, vol. IV at 41, 123)

36. Some time in the beginning of October 1992 Funari informed Teague that she was frustrated with the office manager position at Page Hawaii and wanted to resign. Teague asked Funari to stay on as office manager until October 23, 1992 (exactly six weeks after Complainant's last day of work) because he wanted to attend a seminar and needed someone to be in the office. Funari agreed to stay on through that date. (Tr. vol. III at 129-132, vol. VI at 195-197)

37. After Funari gave Teague notice that she was resigning, Teague told friends that he needed a new office manger. Teague did not contact Complainant to let her know the office manager position was available. Some time in October 1992 Teague interviewed Marnie

Wolfert for the office manager position. Teague offered Wolfert the job and began training her on October 25, 1992. (Tr. vol. VI at 197-200)

38. On October 23, 1992 (six weeks after delivery) Complainant had her post partum check up and was cleared to return to work. She felt physically able to return to work the prior week. Complainant could have returned to work at Page Hawaii at least by October 23, 1994. Later that day, Complainant wrote to Teague, asking to be reinstated to the office manager position at Page Hawaii on November 2, 1992. The letter was received by Page Hawaii on October 26, 1992. (Tr. vol. I at 233-234, vol. VI at 200-201; Ex. L)

39. On October 26, 1992 Teague wrote in response to Complainant's October 23, 1992 letter. He stated that there had been a "misunderstanding" and reiterated that it would not be possible to hold open her position or hire temporary help. (Ex. 14)

40. Select Temporary Services Inc. is a company which provides temporary workers to businesses. Select Temporary Services has never had any employees with experience in selling, programming or otherwise working with pagers. However, it has employees with experiences similar to Complainant's pre-Page Hawaii work experience and has employees with office management, sales and customer relations experiences. If supervised, these employees were capable of learning how to sell, program and maintain pagers and could handle cash amounts up to $10,000. They could also work

for periods of six to eight weeks. Therefore, Select Temporary Services had temporary employees who could be trained to perform the Page Hawaii office manager duties. Select Temporary Services would bill a customer approximately $13-$14 per hour for such employees. (Tr. vol. IV at 190-193, vol. V at 171, 194-195, 201, 217-220, 225-227)

41. Teague could operate Page Hawaii by himself for a period of six weeks. In fact, from November 4, 1993 to December 5, 1993 (the 4 week period between Wolfert's last work day and the day Dwayne Richardson was hired), Teague did operate the business by himself. (Tr. vol. IV at 138-139, 192-193, vol. VI at 213)

42. After Wolfert vacated her position at Page Hawaii, Teague offered Complainant the officer manager position on November 23, 1993. Complainant declined the offer because she was again pregnant and believed that Teague would again deny her maternity leave. If Teague had known Complainant was again pregnant, he would have not made the offer. (Tr. vol. VI at 207-210; Ex. S)

43. Complainant was unemployed from October 23, 1992 to September 1993. In September 1993 Complainant was hired as a part-time computer education teacher with FutureKids. In November 1993 Complainant was hired as a substitute teacher with the Department of Education and began substitute teaching in December 1993. (Tr. vol. I at 156-157)

44. During her unemployment, Complainant applied for various administrative, sales, advertising and clerical jobs, some of which were located in downtown Honolulu. However, Complainant did not

apply for jobs with any other paging companies. In February 1993, there were sales, data entry and customer service positions open with RAM Paging Hawaii, the largest paging company in the state, which Complainant was qualified for. Such positions paid $1,500 to $1,600 per month. (Tr. vol. VI at 19-21; Ex. 38)

47. Teague was not aware of this Commission's statutes and rules regarding pregnancy discrimination until after the complaint was filed in this case. (Tr. vol. IV at 123, vol. V at 38-39)

III. CONCLUSIONS OF LAW[3]

A. Jurisdiction

1. Respondent Page Hawaii

During Complainant's employment at Page Hawaii, Respondent Page Hawaii was a corporation with one or more employees. It is therefore an employer under H.R.S. § 387-1 and is subject to the provisions of H.R.S. Chapter 378.

2. Respondent Sam Teague

Respondent Teague, as president, sole stockholder, director and only other employee of Page Hawaii served in a supervisory position over Complainant Shaw. He exercised sole control over her hiring, firing and conditions of employment. He is therefore an agent of Respondent Page Hawaii and an employer under H.R.S. § 378-1. In Re Santos / Hawaiian Flowers Experts, Inc., Docket No. 92-001-E-SH (January 25, 1993).

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[3] To the extent that the following conclusions of law also contain findings of fact, they shall be deemed incorporated into the findings of fact.

Teague argues that the claims against him individually should be dismissed because the amended complaint, which added him as a party, was untimely filed on September 2, 1993 (more than 180 days after the date on which Complainant was terminated).

As stated in the July 19, 1994 Order Denying Respondents' Motion To Dismiss Amended Claim, H.A.R. § 12-46-6.1 allows the Executive Director to amend the original complaint to add Respondent Teague as a party and allows the amendment to relate back to December 17, 1992. The amended complaint was therefore timely filed against Teague.

B. Pregnancy Discrimination

Under H.R.S. § 378-2(1)(A), an employer may not bar, discharge or otherwise discriminate against an individual because of sex. The term "because of sex" includes because of pregnancy, childbirth or related medical conditions. H.R.S. § 378-1.

Under H.A.R. § 12-46-106, an employer may not penalize females in the terms or conditions of employment because they require time away from work on account of disability resulting from pregnancy, childbirth or related medical conditions. Under H.A.R. § 12-46-107(b) an employer may not discharge an employee because she requires time away from work for disabilities due to or resulting from pregnancy, childbirth or related medical conditions. Under H.A.R. 12-46-108, such disabled employee is entitled to leave, with or without pay, for a reasonable period of time. In addition, the rule requires employers to reinstate such employees to their original jobs or to positions of comparable status and

pay, without loss of accumulated service credits and privileges.[4]

1. Disparate Impact Claim

When an employer has a "no leave" policy for all temporary disabilities, such policy has a disparate impact[5] on pregnant employees and constitutes a prima facie violation of the above statute and rules. Miller-Wohl Co. v. Commissioner of Labor & Industry, 692 P.2d 1243, 36 EPD 35,176 at 37,364-37,365 (Mont. 1984), judgment vacated and remanded 479 U.S. 1050, 107 S.Ct. 919, 93 L.Ed.2d 972, 41 EPD 36,699 (1987), judgment reinstated 744 P.2d 871, 45 EPD 37,740 (Mont. 1987) (company's "no leave" policy for employees with less than one year of employment has disparate impact on female employees); Abraham v. Graphic Arts International Union, 660 F.2d 811, 26 EPD 32,041 at 21,726-21,727 (D.C. Cir. 1981) (union's 10 day maximum disability leave policy has disparate impact on women employees); EEOC Regulations Relating to Pregnancy

[4] Our state laws afford more protection to pregnant employees than Title VII. Title VII, as amended by the Pregnancy Discrimination Act of 1978, requires an employer to treat women employees affected by pregnancy, childbirth or related medical conditions the same as other temporarily disabled employees. 42 U.S.C. § 2000e(k). Thus, under this "equity standard", an employer is not required to hold open the job of an employee on pregnancy related leave unless jobs are similarly held open for employees on sick or disability leaves for other reasons. See, Pregnancy Discrimination Act Questions and Answers, 29 CFR § 1604. However, states may enact laws which require employers to provide leave and to reinstate employees disabled by pregnancy, childbirth or related medical conditions. California Federal Savings & Loan Ass'n v. Guerra, 479 U.S. 272, 107 S.Ct. 683, 93 L.Ed.2d 613, 41 EPD 36,641 at 44,893-44,900 (1987). These laws are consistent with and not preempted by Title VII. Id.

[5] I therefore decline to apply the McDonnell-Douglas circumstantial evidence disparate treatment analysis utilized by some courts in cases involving no extended leave / no early leave policies. See, Marafino v. St. Louis County Circuit Court, 707 F.2d 1005, 32 EPD 33,640 (8th Cir. 1983); General Electric Co. v. Iowa Civil Rights Comm., 451 N.W.2d 13, 56 EPD 40,788 (Io. App. 1989); Ahmad v. Loyal American Life Ins. Co., 767 F.Supp 1114, 57 EPD 40,990 (S.D. Ala. 1991); see also cases which involve mixed motives for plaintiffs' discharge: Page v. Chandonnet, 53 EPD 39,816 (D. Md. 1989); Conners v. Univ. of Tennessee Press, 558 F.Supp 38, 31 EPD 33,521 (E.D. Tenn. 1982).

and Childbirth, 29 C.F.R. § 1604.10(c)[6]; 1 Larson Employment Discrimination § 38.22 (1993). Some leave accompanying childbirth is a necessity. A "no leave" policy subjects pregnant women employees to job termination on a basis no man would ever face. Miller-Wohl, 692 P.2d 1242, 1252. Such policy more severely affects women and discriminates based on sex. Miller-Wohl, supra; Abraham, supra; Larson, supra; see also, Dothard v. Rawlinson, 433 U.S. 321, 92 S.Ct. 2720, 53 L.Ed.2d 786, 14 EPD 7632 at 5106 (1977) (evidence on its face can demonstrate a job requirement's grossly discriminatory impact).

An employer may avoid liability by showing that such "no leave" policy is job related and consistent with business necessity. Mitchell v. Board of Trustees of Pickens County, 599 F.2d 582, 19 EPD 9257 at 7522 (4th Cir. 1979). Establishing a business necessity defense is a heavy burden. Chambers v. Omaha Girls Club Inc., 834 F.2d 697, 45 EPD 37,566 at 49,880 (8th Cir. 1987). An employer is required to show that the challenged practice is necessary to safe and efficient job performance. Id.; Harriss v. Pan American World Airways, 649 F.2d 670, 24 EPD 31,425 at 18,485 (9th Cir. 1980). To meet this requirement

> . . . the business purpose must be sufficiently compelling to override any [discriminatory] impact; the challenged practice must effectively carry out the

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6 The regulation states:

Where the termination of an employee who is temporarily disabled is caused by an employment policy under which insufficient or no leave is available, such a termination violates the Act if it has a disparate impact on employees of one sex and is not justified by business necessity.

business purpose it is alleged to serve; and there must be available no acceptable alternative policies or practices which would better accomplish the business purpose advanced, or accomplish it equally well with a lesser [discriminatory] impact.

Harriss, supra, quoting Robinson v. Lorillard Corp., 444 F.2d 791, 3 EPD 8367 (4th Cir. 1971). In the present case, such burden can be met if the employer proves that: 1) its business requires an immediate replacement for the employee's position; 2) it is impossible to hire a temporary substitute worker. Larson, supra.

Respondent Page Hawaii has a "no extended leave" policy which prohibits its office mangers from taking leave for more than 2-3 days for any type of temporary disability, including pregnancy and childbirth. This policy has a disparate impact on women employees because it subjects them to termination on a basis not faced by men employees. Page Hawaii's "no extended leave" policy therefore constitutes a prima facie violation of H.R.S. § 378-2(1)(A) and H.A.R. §§ 12-46-107 and 12-46-108.

Respondents contend that the application of its "no extended leave" policy to terminate Complainant is justified by business necessity because it was impossible for Teague to run Page Hawaii by himself while Complainant was on maternity leave and because it was impossible to hire a temporary substitute worker.

The evidence shows otherwise. Teague could have run Page Hawaii by himself for six weeks. Diane Kim, president of RAM Paging Hawaii, opined that a person with Teague's knowledge and skills could have run Page Hawaii alone for six weeks. Although Kim stated that Page Hawaii might temporarily loose some business

because Teague would not be able to leave the office to do marketing or repair transmitters, Teague would loose such business anyway, since he would similarly not be able to leave the office for a 6-8 week period when training a new permanent replacement. In addition, Teague did run the business alone for a four week period in 1993. While Teague claims that running Page Hawaii during that period "nearly killed me", his hospital records do not indicate that his health worsened at that time. (Tr. vol. VI at 218; Ex. LL) Therefore, Page Hawaii did not require an immediate replacement for Complainant's position.

Furthermore, while it was not possible for Respondents to find a temporary substitute worker experienced in selling and programming pagers, Respondents could have hired temporary employees who: a) had the same pre-Page Hawaii work experiences as other Page Hawaii employees; b) were capable of learning all of the office manager duties; and c) could perform the same functions as a new permanent employee. Complainant's subsequent replacements did not have experience working with pagers and Teague had to spend 6-8 weeks training them full time. Thus, I fail to see any difference in time, effort and effect on customers in Teague's working with and training an inexperienced temporary worker versus his working with and training an inexperienced permanent employee. As the Executive Director notes, Funari, who had no experience working with pagers, worked the six week period after Complainant gave birth without noticeable harm to the company's business.

For these reasons I conclude that Page Hawaii's "no extended leave" policy had a disparate impact on Complainant and was not job related and consistent with business necessity.

2. Whether Respondents' No Maternity Leave Policy was a Bona Fide Occupational Qualification

The Executive Director alleges that Page Hawaii has a facially discriminatory "no maternity leave" policy. Accordingly, Respondents contend that Page Hawaii's "no maternity leave" policy is a bona fide occupational qualification (BFOQ). However, the evidence instead shows that Page Hawaii has a facially neutral "no extended leave" policy that applies to male and female office managers for all types of disabilities or family leave. As discussed above, this "no extended leave" policy had a discriminatory impact upon Complainant and was not justified by business necessity. I therefore conclude that the BFOQ defense is inapplicable to this case.[7]

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[7] Alternatively, if this Commission finds that Page Hawaii has a specific "no maternity leave" policy (as opposed to a "no extended leave" policy), such policy is facially discriminatory on the basis of sex. H.R.S. § 378-1 ("because of sex" includes because of pregnancy, childbirth or related medical conditions); H.A.R. §§ 12-46-107, 12-46-108 (requirement that employers grant leave and reinstatement); see also, Automobile Workers v. Johnson Controls, Inc., 499 U.S. 187, 111 S.Ct. 1196, 113 L.Ed.2d 158, 55 EPD 40,605 at 66,168 (1991) (discrimination based on a women's pregnancy is on its face, discrimination because of her sex). An explicit gender based policy may be defended only as a bona fide occupational qualification (BFOQ). Johnson Controls, 55 EPD 40,605 at 66,169. I would therefore decline to apply the McDonnell-Douglas circumstantial evidence analysis utilized by the Eighth Circuit in Marafino v. St. Louis County Circuit Court, 707 F.2d 1005, 32 EPD 33,640 (8th Cir. 1983), involving the failure to hire a pregnant attorney because she required maternity leave.

Under H.R.S. § 378-3(2), employers may establish and maintain BFOQs reasonably necessary to the normal operation of a particular business or enterprise that have a substantial relationship to the functions and responsibilities of prospective or continued employment. The burden of proving that sex is a BFOQ rests upon the employer and such exception is strictly and narrowly construed. H.A.R. § 12-46-102. To establish BFOQs in Title VII cases,

3. Whether the Granting of Maternity Leave to Complainant is an Unreasonable Accommodation

H.A.R. § 12-46-107(c) requires an employer to make every reasonable accommodation to the needs of females affected by disabilities due to and resulting from pregnancy, childbirth or related medical conditions. Respondents argue that granting six weeks maternity leave to Complainant is an unreasonable accommodation.

H.R.S. Chapter 378 and the above administrative rule do not define what constitutes a "reasonable accommodation". However, the term "reasonable accommodation" and the subsection requiring it are separate and distinct from the sections that: a) require leave for disabilities due to and resulting from pregnancy, childbirth or related medical conditions (§ 12-46-108); and b) prohibit discharge because of leave (§ 12-46-107(b). Therefore, I conclude that "reasonable accommodation" in § 12-46-107(c) is distinct from and does not include the granting of maternity leave. See, Franks v. City and County of Honolulu, 74 Haw. 328, 339 (1993) (courts are bound to give effect to all parts of statute and no clause,

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employers are required to show, inter alia, that the essence of a business operation would be undermined by the hiring or retention of persons in the protected class. Usery v. Tamiami Trail Tours, Inc., 531 F.2d 224, 11 EPD 10,916 at 7856 (5th Cir. 1976); Dothard v. Rawlinson, 14 EPD 7632 at 5106-5107; EEOC v. County of Santa Barbara, 666 F.2d 373, 27 EPD 32,396 at 23,703-23,704 (9th Cir. 1982). The BFOQ defense is therefore more stringent than the business necessity standard. Johnson Controls, supra, at 66,169.

Accordingly, I would conclude that in the present case, the essence of Page Hawaii's business operation would not be undermined by hiring or retention of a pregnant employee who requires six weeks maternity leave. As discussed above, it was possible for Teague to operate Page Hawaii alone for a period of six weeks, or for Respondents to hire a temporary employee for six weeks. Respondents would therefore not meet their burden of showing that Page Hawaii's "no maternity leave" policy is a BFOQ.

sentence or word shall be construed as superfluous, void or insignificant if construction can be legitimately found which will give force to all words of a statute); 1A Singer Statutory Construction §§ 21.01, 21.02 (1993) (each statutory section should stand out separately and contain one and only one idea or proposition). In addition, this Commission recently adopted administrative rules on disability discrimination (H.A.R. Chapter 12-46- Subchapter 9) which define "reasonable accommodations" to mean

> . . . [m]odifications or adjustments to the work environment, or to the manner or circumstances under which the position held . . . is customarily performed, that enable a qualified person with a disability to perform the essential functions of that position . . .

H.A.R. § 12-46-182. Such accommodations can include modifying equipment used or the manner in which job duties are performed, job restructuring, part-time work or modified work schedules. Id. Therefore, I conclude that "reasonable accommodation" as found in § 12-46-107(c) similarly means modifications or adjustments to the work environment, or to the manner or circumstances in which the work is performed that enable a pregnant employee to perform her essential job duties while she is still working. For example, a reasonable accommodation could include allowing a pregnant employee to sit, instead of stand, while working. It does not include the granting of maternity leave and is not an applicable defense to the facts in this case.[8]

[8] If this Commission concludes that a "reasonable accommodation" under H.A.R. § 12-46-107 includes the granting of maternity leave, I would again follow our disability rules and alternatively conclude that such accommodation must be

4. Whether Respondents were Justified in not Reinstating <u>Complainant</u>

Respondents finally argue that they were justified in not reinstating Complainant because: a) she lied about being able to work for at least one year; and b) they had already hired another permanent employee, Marnie Wolfert. These arguments are unsupported by the law and record in this case.

An employer may limit but not avoid liability by showing mixed motives for its adverse action (i.e., that it would have acted as it did without regard to the complainant's protected status). See, In Re Smith / MTL Inc. Docket No. 92-003-PA-R-S (November 9, 1993). Respondents alternatively argue that they would have discharged Complainant for lying about being able to work at Page Hawaii for at least one year. However, the record shows that Complainant did not lie. Complainant testified that she thought a one year

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granted unless the employer can demonstrate that the accommodation would impose an undue hardship on the operation of its business. See, H.A.R. § 12-46-187. H.A.R. § 12-46-182 defines an "undue hardship" to mean a "[s]ignificant difficulty or expense incurred by an employer . . . with respect to the provision of an accommodation. Factors to be considered include but are not limited to: a) the nature and net cost of the accommodation; b) the overall financial resources of the employer; c) the overall size of the business; d) the type of operation and structure of the business; and e) the impact of the accommodation upon the operation of the business. Therefore, in order to show that the maternity leave requested by Complainant is an unreasonable accommodation, Respondents must show that the leave poses an undue hardship on the operation of Page Hawaii.

Accordingly, I would conclude that Respondents did not show that the operation of Page Hawaii by Teague alone or the hiring of a temporary employee would pose an undue hardship. As discussed in section III.B.1. above, Teague could have operated Page Hawaii by himself for six weeks or hired a temporary employee. While the hiring of a temporary employee is more costly than the hiring of a permanent replacement, Respondents did not show how such costs would affect the company's overall financial resources. Furthermore, it would appear to be less burdensome for Respondents to hire a temporary employee, since the six weeks it takes to train an inexperienced temporary employee until Complainant, a fully trained employee, returns to work is much shorter than the 6-9 months required to fully train an inexperienced permanent replacement.

commitment could include taking an extended maternity leave. Teague and Rivera confirmed that Complainant stated she could work at Page Hawaii until her husband was transferred in 1995. Neither Teague nor Rivera informed Complainant of the company's no extended leave policy or that a one year commitment meant working 12 continuous months without taking any extended leave. Therefore, while Complainant had a different understanding of what a "one year commitment" entailed, she did not lie about making such commitment. In addition, Teague didn't know if Complainant had lied at the time he hired Wolfert. He testified that he wasn't sure if Complainant knew that she was pregnant at the time she made the one year commitment. (Tr. vol. VI at 206) Finally, even if Complainant had lied, the fact that Teague offered Complainant the officer manager position in November 1993 shows that he would not have fired Complainant merely for lying. Cf., Lysak v. Seilor Corp., 614 N.E.2d 991, 64 EPD 43,157 (Mass. 1993) (plaintiff fired because she lied, not because she was pregnant).

The hiring of Wolfert to replace Complainant is also not a defense to liability. It only impacts Complainant's remedies by possibly limiting her to an award of front pay instead of reinstatement. See, Lilly v. Harris-Teeter Supermarket, 545 F.Supp 686, 33 BNA 98, 121 (W.D. NC 1982); Wangness v. Watertown School Dist., 541 F.Supp 332, 30 EPD 33,002 at 26,779 (D.S.D. 1982); 2 Larson Employment Discrimination § 55.21 (1994).

Furthermore, the record shows that Teague could have reinstated Complainant. Complainant told Teague on at least three

occasions (May 12, May 13 and September 22, 1992) that she wanted to return to her job at Page Hawaii. When Funari gave Teague notice of her resignation, Teague could have contacted Complainant and offered her the office manager position back. He had previously done so with Susan King after Jodi Katayama Chee resigned. Instead, Teague chose to recruit, hire and train another new, inexperienced permanent replacement.

C. Pregnancy Harassment

The Executive Director alleges that Respondents violated H.A.R. § 12-46-106 when Teague harassed Complainant because she was pregnant. The Executive Director is required to show that: a) discriminatory conduct relating to Complainant's pregnancy took place; b) the conduct was unwelcome in the sense that Complainant did not solicit or incite it and in the sense that the Complainant regarded the conduct as intimidating, hostile or offensive; and c) the conduct was sufficiently severe or pervasive to alter the conditions of employment, such as having the purpose or effect of unreasonably interfering with an individual's work performance or by creating an intimidating, hostile or offensive working environment. The perspective to be used in evaluating the severity or pervasiveness of the harassment is that of the victim. See, In Re Santos / Hawaiian Flowers Exports Inc., supra, H.A.R. § 12-46-175(b).

In the present case, the Executive Director has not met the above burden. Aside from refusing to grant Complainant maternity leave and making one comment about "using precautions", Teague

engaged in no other discriminatory conduct. While Complainant was offended by Teague's "precautions" remark (which he immediately apologized for), I conclude that a reasonable pregnant employee would not consider such conduct sufficiently severe or pervasive to create a hostile, intimidating or offensive work environment.

Respondents therefore did not harass Complainant because of her pregnancy.

D. Liability

Because Respondents Page Hawaii and Teague failed to grant Complainant six weeks maternity leave and failed to reinstate Complainant to the office manager position when such actions were not justified by business necessity, I conclude that Respondents are liable for violating H.R.S. § 378-3 and H.A.R. §§ 12-46-107 and 12-46-108.[9]

E. Remedies

1. Back Pay

Back pay encompasses the amount Complainant would have earned if she had been reinstated by Respondents. Respondents have the burden to prove any offsets to Complainant's expected earnings, including the failure to mitigate damages by seeking comparable employment. Sias v. City Demonstration Agency, 588 F.2d 692, 18 EPD 8773 at 5141 (9th Cir. 1978).

[9] These conclusions of law are limited to the particular facts of this case. There may be other instances in which a "no extended leave" policy or an employer's refusal to grant an extended maternity leave can be justified by business necessity.

Complainant was unemployed from October 23, 1992 to September 1993. Respondents claim that Complainant could have mitigated her damages by immediately obtaining work as a clerical worker for a temporary employment agency. However, a complainant is not required to accept employment that is not substantially equivalent to the job discriminatorily denied. Ford v. Nicks, 866 F.2d 865, 49 EPD 38,659 at 55,600 (6th Cir. 1989). Jobs are substantially equivalent if they are in the same line of work and afford virtually identical compensation, responsibility, working conditions, status and promotional opportunities. Ford, supra (college faculty member not required to seek teaching job in secondary education); Floca v. Homecare Health Services, Inc., 845 F.2d 108, 46 EPD 37,988 at 52,133 (5th Cir. 1988) (nursing director not required to accept position as registered nurse). Working as a temporary clerical worker is not substantially equivalent to being an office manager at Page Hawaii. Therefore, Complainant was not required to seek and obtain such employment. Respondents, however, did show that Complainant could have secured a comparable job, with higher pay, at RAM Paging Hawaii in February 1993.

Complainant was willing to return to work as late as November 2, 1992. I therefore determine that Respondents should be ordered to pay Complainant back pay for the period between November 2, 1992 and January 31, 1993 (3 months). This computes to a total amount of $3,900.

Back pay awards can include bonuses, but are not required when the award of a bonus is at management's option and is based upon

employee performance. Holthous v. Compton & Sons, Inc., 71 FRD 18, 10 EPD 10,455 at 5973 (DC Mo. 1975); Bonura v. Chase Manhattan Bank, 629 F.Supp 353, 40 EPD 36,210 at 42,839 (SD NY 1986). Because Teague gave bonuses at his discretion to certain employees for exemplary work, and Teague considered Complainant's work to be average, I decline to include a bonus in Complainant's back pay award.

Respondents argue that Complainant's back pay should be reduced by any unemployment compensation benefits she received[10]. However, our federal circuit holds, and I conclude, that unemployment benefits paid to Complainant are not offsets to back pay because they are from a collateral source (i.e. the state unemployment compensation fund). Kauffman v. Sidereal Corp., 695 F.2d 343, 29 EPD 32,803 at 25,753-25,754 (9th Cir. 1982). The U.S. Supreme Court has similarly disallowed such offsets in National Labor Relations Act cases. See, NLRB v. Bullett Gin Co., 340 U.S. 361, 71 S.Ct. 337, 95 L.Ed. 337 (1951). Therefore, Complainant's back pay award should not be offset by any unemployment compensation she received.

2. Front Pay

Because I conclude that Complainant could have secured a comparable job with higher pay in February 1993, Complainant is not entitled to any front pay.

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[10] Complainant received $8,322 in unemployment insurance benefits during 1992-1993. (Ex. U)

3. Compensatory Damages

The Executive Director requests that Respondents be ordered by pay Complainant compensatory damages of $20,000[11] for the emotional distress she suffered. The Executive Director must demonstrate the extent and nature of the resultant injury and Respondents must demonstrate any bar or mitigation to this remedy.

The evidence shows that after the March 12 and 13, 1992 discussions about maternity leave, Complainant became very upset. She went home, cried and worried about losing her job. After May 13, 1992 Complainant felt nervous at work and had knots in her stomach, worrying about whether Teague would grant her maternity leave. In addition, the situation created friction between Complainant and her husband as they argued about how Complainant should resolve the matter with Teague. Complainant testified that what should have been a happy period (her first pregnancy), was a time of uncertainty and tension. Complainant again became upset after receiving Teague's September 16, 1992 letter stating that she was terminated.

Considering these circumstances, I determine that $20,000 is appropriate compensation for injury to Complainant's feelings, emotions and mental well-being.

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[11] In its Prehearing Conference Statement and at the July 19, 1994 Prehearing conference, the Executive Director sought $20,000 in compensatory damages for injury to Complainant's feelings, emotional and mental well-being, physical well-being, personal integrity, dignity and privacy, ability to effectively work, capacity to live a successful and happy life and personal and professional reputation. In its post hearing brief, the Executive Director increased this amount to $75,000 without any explanation.

4. Punitive Damages

H.R.S. § 368-17 also authorizes the Commission to award punitive damages. Punitive damages are assessed in addition to compensatory damages to punish a respondent for aggravated or outrageous misconduct and to deter the respondent and others from similar conduct in the future. See, In Re Santos, supra; Masaki v. General Motors Corp., 71 Haw. 1, 6 (1989). The Executive Director is required to show, by clear and convincing evidence, that Respondents acted wantonly, oppressively or with such malice as implies a spirit of mischief or criminal indifference to civil obligations, or where there has been some wilful misconduct or entire want or care which would raise the presumption of a conscious indifference to consequences. Masaki, supra, at 15-17.

The Executive Director does not meet this burden. Teague testified that he was not aware of this Commission's statutes and rules regarding pregnancy discrimination until after the complaint was filed in this case. In September 1992 Teague told Complainant that he believed he could refuse to hold her position open because of the nature and small size of the business. I therefore conclude that the Executive Director has failed to show, by clear and convincing evidence, that Respondents acted wantonly, maliciously or with a conscious disregard for Complainant's rights.

5. Equitable Relief

Finally, the Executive Director asks that the Commission order Respondents to:

a) immediately cease and desist from further discriminatory practices on the basis of sex due to pregnancy;

b) develop and implement a written non-discrimination policy based on sex due to pregnancy and offer training to Page Hawaii employees on such policy;

c) post notices published by the Commission regarding compliance with discrimination laws in conspicuous places on Page Hawaii premises;

d) publish the results of this contested case hearing in a newspaper published in the state and having general circulation in Honolulu, Hawaii.

Because Respondents refused to grant Complainant a six week maternity leave and failed to reinstate her to the office manager position when such actions were not justified by business necessity, I recommend that the Commission order Respondents to immediately cease and desist from further discriminatory practices on the basis of sex due to pregnancy when not justified by business necessity.

Page Hawaii does not have a written non-discrimination policy based on sex due to pregnancy and Respondent Teague is not familiar with this Commission's statue and rules regarding pregnancy discrimination. I recommend that the Commission direct the Executive Director to conduct training for Respondent Teague on the Commission's pregnancy discrimination statute and rules within thirty (30) days of the effective date of the Commission's final decision in this matter. I also recommend that the Commission order Page Hawaii to develop a written non-discrimination policy

within thirty (30) days of such training. I also recommend that the Commission direct the Executive Director to submit its comments on Respondent Company's policy within thirty (30) days of receiving a copy of this policy. I also recommend that the Commission direct Page Hawaii to adopt in substance the Executive Director's comments within fifteen (15) days of receiving such comments.

The Commission should also direct Page Hawaii to post notices provided by the Commission regarding discrimination laws in a conspicuous place on its premises.

The best way to publicize this decision to the public is to require Page Hawaii to publish the attached Public Notice (Attachment 1) in a newspaper published in the State of Hawaii having a general circulation in the City and County of Honolulu.

RECOMMENDED ORDER

Based on the matters set forth above, I recommend that the Commission find and conclude that Respondents Page Hawaii and Teague violated H.R.S. § 378-3 and H.A.R. §§ 12-46-107 and 12-46-108 when they refused to grant Complainant six weeks maternity leave and failed to reinstate Complainant to the office manager position.

For the violations found above, I recommend that pursuant to H.R.S. § 368-17, the Commission should order:

1. Respondent Page Hawaii to pay Complainant back pay in the amount of $3,900.

2. Respondents Page Hawaii and Teague jointly and severally to pay Complainant $20,000 as damages in compensation for her emotional injuries.

3. Respondents to immediately cease and desist from further discriminatory practices on the basis of sex due to pregnancy when such practices are not justified by business necessity.

4. The Executive Director to conduct training for Respondent Teague on the Commission's pregnancy discrimination statute and rules within thirty (30) days of the effective date of the Commission's final decision in this matter.

5. Page Hawaii to develop a written non-discrimination policy consistent with recommendations #3 and #4 above, within thirty (30) days of such training.

6. The Executive Director to submit its comments on Respondent Company's policy within thirty (30) days of receiving a copy of this policy.

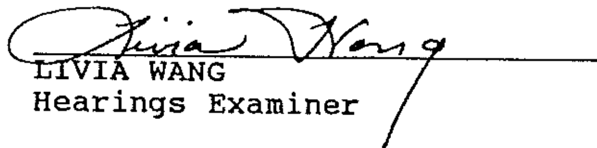
7. Page Hawaii to adopt in substance the Executive Director's comments and accordingly modify its policy within fifteen (15) days of receiving the Executive Director's comments.

8. Page Hawaii to post notices provided by the Commission regarding discrimination laws in a conspicuous place on its premises.

9. Page Hawaii to publish the attached Public Notice (Attachment 1) in a newspaper published in the State of Hawaii having a general circulation in the City and County of Honolulu.

Dated: Honolulu, Hawaii, November 18, 1994.

HAWAII CIVIL RIGHTS COMMISSION



LIVIA WANG
Hearings Examiner

Copies sent to:

Anne Randolph, Esq. HCRC Enforcement Attorney
Dennis King, Esq. Attorney for Respondents

APPENDIX A

On January 11, 1994 the Executive Director sent Respondents Sam Teague Ltd., dba Page Hawaii (hereinafter "Page Hawaii") and Sam Teague (hereinafter "Teague"), a final conciliation demand letter pursuant to Hawaii Administrative Rule (H.A.R.) § 12-46-17.

On January 27, 1994 the complaint was docketed for administrative hearing and a Notice Of Docketing Of Complaint was issued. On February 15, 1994 an Amended Notice of Docket of Complaint was issued.

On February 2, 1994 the Executive Director filed its Scheduling Conference Statement. Respondents filed their Scheduling Conference Statement on February 22, 1994. A Scheduling Conference was held on February 25, 1994 and the Scheduling Conference Order was issued March 1, 1994.

On March 1, 1994 the Hearings Examiner filed a Motion to Extend Hearing Date from July 26, 1994 to August 15, 1994 to accommodate the parties' schedules. On March 31, 1994 the Commission issued an order granting this motion.

On May 18, 1994 the parties filed a Stipulation Regarding Liability for Punitive Damages, stating that if the Hearings Examiner finds that the Executive Director has made a prima facie case of liability for punitive damages, Respondent Teague will disclose the extent and worth of his personal financial conditions.

On July 1, 1994 notices of hearing and prehearing conference were issued. The Executive Director and Respondents filed their

Prehearing Conference Statements on July 12, 1994.

On July 13, 1994 Respondent Teague filed a Motion to Dismiss Amended Claim on the grounds that the amended complaint, which added him as a party, was untimely filed on September 2, 1993 (more than 180 days after the date which Complainant was terminated). A hearing on Teague's motion was held on July 19, 1994 at the Hawaii Civil Rights Commission conference room, 888 Mililani Street, 2nd floor, Honolulu Hawaii. In attendance were Dennis W. King, counsel for Respondent Teague, and Enforcement Attorney Anne Randolph, counsel for the Executive Director and Enforcement Section law clerks Rowena Eberhardt and Sheila Stehouwer. On July 19, 1994 an order denying Teague's Motion to Dismiss Amended Claim was issued.

On July 19, 1994 a Prehearing Conference was held and a Prehearing Conference Order was issued.

On August 11, 1994 the parties filed a stipulation as to the testimonies of Louis Siracusa, Denise Dominguez and Ellis Wyatt.

On August 11, 1994 Respondents filed seven motions in limine. On September 15, 1994 a hearing was held on all seven motions. The Hearings Examiner orally denied Respondents' First Motion In Limine which sought to exclude an Employment Agreement dated December 20, 1993 between Page Hawaii and Dwayne Richardson. Respondents' Second Motion In Limine which sought to exclude the live testimony and/or declaration of Wendelyn H. Aina was orally granted. Respondents' Third Motion In Limine which sought to exclude any affidavits, declarations, deposition transcripts or investigator's notes of discussions with potential witnesses was orally granted in

terms of the declarations of Denise Meir and Leslie Hoeg unless used to refresh recollection and investigator Wesley Woo's notes unless used to impeach a witness; and was orally denied in terms of the depositions. Respondents' Fourth Motion In Limine as to Page Hawaii's 1992 tax returns was orally denied. Respondents' Fifth Motion In Limine to exclude the testimony of investigator Wesley Woo unless used to impeach a witness was orally granted. Respondents' Sixth Motion In Limine to exclude articles published in Small Business Hawaii Newsletter was orally denied as to Exhibit 47 and orally granted as to Exhibit 48. The Hearings Examiner reserved ruling on Respondents' Seventh Motion In Limine, which sought to exclude the affidavit of Dr. Ben Williams, pending the availability of Dr. Williams to testify.

The contested case hearing on this matter was held on August 15, 16, 17, 18, 23 and 26 1994 at the Hawaii Civil Rights Commission conference room, 888 Mililani Street, 2nd floor, Honolulu, Hawaii pursuant to H.R.S. Chapters 91 and 368. The Executive Director was represented by Enforcement Attorney Anne Randolph. Complainant Shaw was present during portions of the hearing. Respondents were represented by Dennis W. King, Esq. Respondent Teague was also present at the hearing. After the presentation of the Executive Director's case, Respondent Teague renewed its Motion To Dismiss Amended Complaint pursuant to H.A.R. § 12-46-48. After considering the arguments presented, the Hearings Examiner orally denied Respondent's motion.

The parties were granted leave to file proposed findings of fact and conclusions of law and/or hearing briefs. On September 2, 1994 the Hearings Examiner filed a Motion to extend Time to File Proposed Decision from October 25, 1994 to November 18, 1994 to allow the parties an extension of time until October 21, 1994 to file post hearings memoranda. On September 26, 1994 the Commission granted this motion. On October 21, 1994 the parties filed their post hearing memorandum / proposed findings of fact and conclusions of law.

ATTACHMENT 1

PUBLIC NOTICE

published by order of the
HAWAII CIVIL RIGHTS COMMISSION
DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS
STATE OF HAWAII

After a full hearing, the Hawaii Civil Rights Commission has found that Respondents Sam Teague Ltd., doing business as Page Hawaii, and Sam Teague, its president, violated Hawaii Revised Statutes Chapter 378, Employment Discrimination, and Hawaii Administrative Rules §§ 12-46-107 and 12-46-108 when they refused to grant an employee six weeks maternity leave and failed to reinstate that employee to her position as office manager.

(In the Matter of Yvette Shaw / Sam Teague Ltd., dba Page Hawaii and Sam Teague, individually, Docket No. 94-001-E-P, [date of final decision] 1994).

The Commission has ordered us to publish this Notice and to:

1) Pay that employee back pay for the period in which she was unable to obtain substantially equivalent work.

2) Pay that employee an award to compensate her for emotional injuries she suffered.

3) Immediately cease and desist from further discriminatory practices on the basis of sex due to pregnancy when not justified by business necessity.

4) Require the Executive Director of the Hawaii Civil Rights Commission to conduct training on the state's pregnancy discrimination laws for Page Hawaii's president, require Page Hawaii to develop a written non-discrimination policy, the Executive Director of the Hawaii Civil Rights Commission to comment on the non-discrimination policy, and require Page Hawaii to modify its non-discrimination policy pursuant to the Executive Director's comments.

5) Post notices provided by the Executive Director regarding discrimination laws in a conspicuous place on company premises.

DATED: ____________________________

BY: ____________________________
Authorized Agent for
Page Hawaii