
A BILL FOR AN ACT

RELATING TO WORKERS' COMPENSATION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The legislature finds that improper termination
2 of ongoing temporary total disability benefits is a source of
3 much disruption and vexation to injured workers and those
4 medical and vocational providers who seek to restore them to
5 gainful employment. The legislature finds that premature
6 termination of such benefits causes both economic and
7 psychological hardship to the injured worker and interferes with
8 attempts to help them attain full medical and vocational
9 recovery. However, the adverse consequences of such cessation
10 of compensation may be cured simply by requiring prior review of
11 such action by the director of labor and industrial relations.

12 The purpose of this Act is to implement this procedural
13 modification and to ameliorate these adverse consequences.

14 SECTION 2. Section 386-31, Hawaii Revised Statutes, is
15 amended by amending subsection (b) to read as follows:

16 "(b) Temporary total disability. Where a work injury
17 causes total disability not determined to be permanent in
18 character, the employer, for the duration of the disability, but



1 not including the first three calendar days thereof, shall pay
2 the injured employee a weekly benefit at the rate of sixty-six
3 and two-thirds per cent of the employee's average weekly wages,
4 subject to the limitations on weekly benefit rates prescribed in
5 subsection (a), or if the employee's average weekly wages are
6 less than the minimum weekly benefit rate prescribed in
7 subsection (a), at the rate of one hundred per cent of the
8 employee's average weekly wages.

9 If an employee is unable to complete a regular daily work
10 shift due to a work injury, the employee shall be deemed totally
11 disabled for work for that day.

12 The employer shall pay temporary total disability benefits
13 promptly as they accrue to the person entitled thereto without
14 waiting for a decision from the director, unless this right is
15 controverted by the employer in the employer's initial report of
16 industrial injury. The first payment of benefits shall become
17 due and shall be paid no later than on the tenth day after the
18 employer has been notified of the occurrence of the total
19 disability, and thereafter the benefits due shall be paid weekly
20 except as otherwise authorized pursuant to section 386-53.

21 The payment of these benefits shall only be terminated upon
22 order of the director or if the employee is able to resume work.



1 When the employer is of the opinion that temporary total
2 disability benefits should be terminated because the injured
3 employee is able to resume work, the employer shall notify the
4 employee and the director in writing of an intent to terminate
5 the benefits at least two weeks prior to the date when the last
6 payment is to be made[-]; provided that if the injured employee
7 has not actually resumed work, temporary total disability
8 benefits shall continue to be paid until a decision by the
9 director terminates the benefits. The notice shall give the
10 reason for stopping payment and shall inform the employee that
11 the employee may make a written request to the director for a
12 hearing if the employee disagrees with the employer. Upon
13 receipt of the request from the employee, the director shall
14 conduct a hearing as expeditiously as possible and render a
15 prompt decision as specified in section 386-86. If the employee
16 is unable to perform light work, if offered, temporary total
17 disability benefits shall not be discontinued based solely on
18 the inability to perform or continue to perform light work.

19 An employer or insurance carrier who fails to comply with
20 this section shall pay not more than \$2,500 into the special
21 compensation fund upon the order of the director, in addition to
22 other penalties prescribed in section 386-92.



1 (1) If the director determines, based upon a review of
2 medical records and reports and other relevant
3 documentary evidence, that an injured employee's
4 medical condition may be stabilized and the employee
5 is unable to return to the employee's regular job, the
6 director shall issue a preliminary decision regarding
7 the claimant's entitlement and limitation to benefits
8 and rights under Hawaii's workers' compensation laws.
9 The preliminary decision shall be sent to the affected
10 employee and the employee's designated representative
11 and the employer and the employer's designated
12 representative and shall state that any party
13 disagreeing with the director's preliminary findings
14 of medical stabilization and work limitations may
15 request a hearing within twenty days of the date of
16 the decision. The director shall be available to
17 answer any questions during the twenty-day period from
18 the injured employee and affected employer. If
19 neither party requests a hearing challenging the
20 director's finding the determination shall be deemed
21 accepted and binding upon the parties. In any case
22 where a hearing is held on the preliminary findings,



1 any person aggrieved by the director's decision and
2 order may appeal under section 386-87.

3 A preliminary decision of the director shall
4 inform the injured employee and the employer of the
5 following responsibilities, benefits, and limitations
6 on vocational rehabilitation benefits that are
7 designed to facilitate the injured employee's early
8 return to suitable gainful employment:

9 (A) That the injured employee may invoke the
10 employee's rights under section 378-2, 378-32, or
11 386-142, or all of them, in the event of unlawful
12 discrimination or other unlawful employment
13 practice by the employer; and

14 (B) That after termination of temporary total
15 disability benefits, an injured employee who
16 resumes work may be entitled to permanent, partial
17 disability benefits, which if awarded, shall be
18 paid regardless of the earnings or employment
19 status of the disabled employee at the time.

20 (2) If the rehabilitation unit determines that an injured
21 employee is not a feasible candidate for
22 rehabilitation and that the employee is unable to

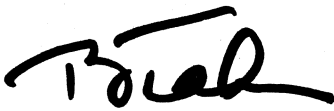


1 resume the employee's regular job, it shall promptly
 2 certify the same to the director. Soon thereafter,
 3 the director shall conduct a hearing to determine
 4 whether the injured employee remains temporarily
 5 totally disabled, or whether the employee is
 6 permanently partially disabled, or permanently totally
 7 disabled."

8 SECTION 3. Statutory material to be repealed is bracketed
 9 and stricken. New statutory material is underscored.

10 SECTION 4. This Act shall take effect upon its approval.

11

INTRODUCED BY: 
Kirk Caldwell

JAN 19 2006

HB 1892

Report Title:

Work Comp; TTD

Description:

Prevents the termination of temporary total disability benefits until the director of labor decides to terminate them.

