
A BILL FOR AN ACT

RELATING TO WORKERS' COMPENSATION.

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

1 SECTION 1. Chapter 386, Hawaii Revised Statutes, is
2 amended by adding a new section to be appropriately designated
3 and to read as follows:

4 "§386- Labor-management agreements. (a) Except as
5 provided in subsection (b), the director and the courts of this
6 State shall recognize as valid and binding any labor-management
7 agreement within the construction industry providing workers'
8 compensation benefits that meets the following requirements:

9 (1) The labor-management agreement shall be negotiated
10 separate and apart from any collective bargaining
11 agreement covering affected employees;

12 (2) The labor-management agreement shall be restricted to
13 the establishment of terms and conditions necessary to
14 implement this section; and

15 (3) The labor-management agreement shall be negotiated, in
16 accordance with the authorization of the director
17 pursuant to subsection (e), between an employer or
18 groups of employers and a union that is the exclusive



1 bargaining representative and shall establish the
2 following:
3 (A) An alternative dispute resolution system
4 governing disputes between employees and
5 employers or their insurers that supplements or
6 replaces all or part of dispute resolution
7 processes contained in this chapter, including
8 but not limited to mediation and arbitration.
9 Any system of arbitration shall provide that the
10 decision of the arbitrator or board of
11 arbitration is subject to review by the director.
12 The findings of fact, award, order, or decision
13 of the arbitrator shall have the same force and
14 effect as an award, order, or decision of the
15 director; and
16 (B) A joint labor-management panel that will select
17 providers, an ombudsman, mediators, and
18 arbitrators. The panel shall include at least
19 one representative from the building trade
20 unions.

1 (4) In addition to the requirements of paragraph (3), the
2 labor-management agreement may include one or more of
3 the following:

4 (A) The use of an agreed list of providers of medical
5 treatment that may be the exclusive source of all
6 medical treatment provided under this chapter;

7 (B) The use of an agreed, limited list of impartial
8 physicians that may be the exclusive list of
9 impartial physicians under this chapter;

10 (C) Joint labor-management safety committees; and

11 (D) A vocational rehabilitation or retraining program
12 using an agreed list of providers of
13 rehabilitation services that may be the exclusive
14 source of providers of rehabilitation services
15 under this chapter.

16 (b) Nothing in this section shall be construed to allow a
17 labor-management agreement authorized by this section to
18 diminish the entitlement of an employee or the employee's
19 beneficiary to compensation payments for death or permanent
20 total disability as otherwise provided in this chapter; nor
21 shall any agreement authorized by this section deny to any
22 employee the right to representation by counsel at all stages



1 during the alternative dispute resolution process. Any portion
2 of any agreement that violates this subsection shall be void.

3 (c) The parties to a labor-management agreement may
4 negotiate any aspect of the delivery of workers' compensation
5 benefits.

6 (d) The following entities are authorized to enter into a
7 labor-management agreement pursuant to this section:

8 (1) An employer who has or estimates as having an annual
9 workers' compensation insurance premium in this state
10 of \$20,000 or more;

11 (2) Trade groups of employers who have or estimate as
12 having an annual workers' compensation insurance
13 premium in this state of \$50,000 or more; and

14 (3) Workers' compensation self-insurance groups that meet
15 the requirements of section 386-194.

16 (e) Any exclusive bargaining representative may file a
17 petition with the director seeking permission to negotiate with
18 an employer or group of employers to enter into a labor-
19 management agreement pursuant to this section. The petition
20 shall specify the bargaining unit or units to be included, the
21 names of the employers' or workers' compensation self-insurance
22 group, and shall be accompanied by proof of the union's status



1 as the exclusive bargaining representative. The current
2 collective bargaining agreement or agreements shall be attached
3 to the petition. The petition shall be in the form designated
4 by the director. Upon receipt of the petition, the director
5 shall promptly verify the petitioner's status as the exclusive
6 bargaining representative. If the petition satisfies the
7 requirements set forth in this subsection, the director shall
8 issue a letter advising each employer and exclusive bargaining
9 representative of their eligibility to enter into negotiations,
10 for a period not to exceed one year, for the purpose of reaching
11 an agreement on a labor-management agreement pursuant to this
12 section. The parties may jointly request, and shall be granted
13 by the director, an additional one-year period to negotiate an
14 agreement.

15 (f) No employer may establish or continue a program
16 established under this section until it has provided the
17 director with all of the following:

18 (1) Upon its original application and whenever it is
19 renegotiated thereafter, a copy of the labor-
20 management agreement and the approximate number of
21 employees who will be covered thereby;



1 (2) Upon its original application and annually thereafter,
2 a statement, signed under penalty of perjury, that no
3 action has been taken by any administrative agency or
4 court of the United States to invalidate the labor-
5 management agreement;

6 (3) The name, address, and telephone number of the contact
7 person of the employer; and

8 (4) Any other information that the director deems
9 necessary to further the purposes of this section.

10 (g) No collective bargaining representative may establish
11 or continue to participate in a program established under this
12 section unless all of the following requirements are met:

13 (1) Upon its original application and annually thereafter,
14 it provides to the director a copy of its most recent
15 LM-2 or LM-3 form filed with the United States
16 Department of Labor, where the filing is required by
17 law, along with a statement, signed under penalty of
18 perjury, that the document is a true and correct copy;
19 and

20 (2) It provides to the director the name, address, and
21 telephone number of each contact person of the



1 collective bargaining representative or
2 representatives.

3 (h) If a labor-management agreement established pursuant
4 to subsection (a) is not able to procure workers' compensation
5 coverage from an insurer in the voluntary insurance market and
6 is not authorized to self insure, the Hawaii employers' mutual
7 insurance company established pursuant to article 14A of chapter
8 431 shall serve as the workers' compensation insurer for the
9 labor management-agreement.

10 (i) Commencing July 1, 2007, and annually thereafter, the
11 director shall report to the legislature the number of labor-
12 management agreements received and the number of employees
13 covered by these agreements. The report based upon aggregate
14 data shall include the following:

- 15 (1) Person hours and payroll covered by agreements filed;
16 (2) The number of claims filed;
17 (3) The average cost per claim, reported by cost
18 components whenever practicable;
19 (4) The number of litigated claims, including the number
20 of claims submitted to mediation, the appeals board,
21 or the court of appeal;



1 (5) The number of contested claims resolved prior to
2 arbitration;

3 (6) The projected incurred costs and actual costs of
4 claims;

5 (7) Safety history;

6 (8) The number of workers participating in vocational
7 rehabilitation; and

8 (9) Overall worker satisfaction.

9 The director may require employers' and workers'
10 compensation self-insurance groups participating in labor-
11 management agreements pursuant to this section to provide the
12 data enumerated in this subsection.

13 (j) The data obtained by the director pursuant to this
14 section shall be confidential and shall not be subject to public
15 disclosure under any law of this State. However, the director
16 shall create derivative reports pursuant to subsections (g) and
17 (i) based on the labor-management agreements and data which
18 shall not be confidential and shall be public records. On a
19 monthly basis, the director shall make available an updated list
20 of employers and unions entering into labor-management
21 agreements authorized by this section.



1 (k) For the purposes of this section, "construction
2 industry" means the industry where any person who by oneself or
3 through others offers to undertake, or holds oneself out as
4 being able to undertake, or does undertake to alter, add to,
5 subtract from, improve, enhance, or beautify any realty or
6 construct, alter, repair, add to, subtract from, improve, move,
7 wreck, or demolish any building, highway, road, railroad,
8 excavation, or other structure, project, development, or
9 improvement, or do any part thereof, including the erection of
10 scaffolding or other structures or works in connection
11 therewith."

12 SECTION 2. New statutory material is underscored.

13 SECTION 3. This Act shall take effect upon its approval,
14 shall apply retroactively to January 1, 2006, and shall be
15 repealed on December 31, 2008; provided that any labor-
16 management agreement executed pursuant to this Act prior to
17 December 31, 2008, shall remain in full force and effect until
18 the expiration of the labor-management agreement.



H. B. NO. 2646

Report Title:

Workers' Compensation; Labor-Management Agreements

Description:

Requires the State and the courts to recognize the validity of labor-management agreements that meet certain specified requirements. Requires HEMIC to act as an insurer for labor management agreements in certain instances. (HB2646 HD1)

