
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 that meets the
8 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 the terms and conditions
14 necessary to 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 utilizing 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 to diminish the entitlement of an
18 employee or the employee's beneficiary to compensation payments
19 for death or permanent total disability as otherwise provided in
20 this chapter; nor shall any agreement authorized by this section
21 deny to any employee the right to representation by counsel at
22 all stages during the alternative dispute resolution process.



1 Any portion of any agreement that violates this subsection shall
2 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) Subsection (a) shall apply to the following:

7 (1) An employer who has or estimates to have an annual
8 workers' compensation insurance premium in this State
9 of \$20,000 or more;

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

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

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



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

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

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

21 (2) Upon its original application and annually thereafter,
22 a statement, signed under penalty of perjury, that no



1 action has been taken by any administrative agency or
2 court of the United States to invalidate the labor-
3 management agreement;

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

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

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

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

18 (2) It has provided to the director the name, address, and
19 telephone number of the contact person or persons of
20 the collective bargaining representative or
21 representatives.



1 (h) Commencing July 1, 2007, and annually thereafter, the
2 director shall report to the legislature the number of labor-
3 management agreements received and the number of employees
4 covered by these agreements. The report based upon aggregate
5 data shall include the following:

6 (1) Person hours and payroll covered by agreements filed;

7 (2) The number of claims filed;

8 (3) The average cost per claim shall be reported by cost
9 components whenever practicable;

10 (4) The number of litigated claims, including the number
11 of claims submitted to mediation, the appeals board,
12 or the court of appeal;

13 (5) The number of contested claims resolved prior to
14 arbitration;

15 (6) The projected incurred costs and actual costs of
16 claims;

17 (7) Safety history;

18 (8) The number of workers participating in vocational
19 rehabilitation; and

20 (9) Overall worker satisfaction.

21 The director may require employers' and workers'
22 compensation self-insurance groups participating in labor-



1 management agreements pursuant to this section to provide the
2 data enumerated in this subsection.

3 (i) The data obtained by the director pursuant to this
4 section shall be confidential and not subject to public
5 disclosure under any law of this State. However, the director
6 shall create derivative reports pursuant to subsections (g) and
7 (h) based on the labor-management agreements and data. Those
8 derivative reports shall not be confidential, but shall be
9 public. On a monthly basis, the director shall make available
10 an updated list of employers and unions entering into labor-
11 management agreements authorized by this section.

12 (j) For purposes of this section, "construction industry"
13 means the industry where any person who by oneself or through
14 others offers to undertake, or holds oneself out as being able
15 to undertake, or does undertake to alter, add to, subtract from,
16 improve, enhance, or beautify any realty or construct, alter,
17 repair, add to, subtract from, improve, move, wreck, or demolish
18 any building, highway, road, railroad, excavation, or other
19 structure, project, development, or improvement, or do any part
20 thereof, including the erection of scaffolding or other
21 structures or works in connection therewith."

22 SECTION 2. New statutory material is underscored.



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

7

INTRODUCED BY: Kirk Caldwell

Jan 4, 2006

John R. Horan

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JAN 24 2006



HB2646

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.

