
A BILL FOR AN ACT

RELATING TO CONTINUED TEMPORARY TOTAL DISABILITY BENEFITS TO
INJURED EMPLOYEES.

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 the cessation of
10 compensation may be cured simply by requiring prior review of
11 the termination action by the director of labor and industrial
12 relations.

13 The purpose of this Act is to revise the procedure for
14 terminating temporary total disability benefits to reduce the
15 adverse consequences for injured workers when these benefits are
16 improperly terminated.



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

3 "(b) Temporary total disability. Where a work injury
4 causes total disability not determined to be permanent in
5 character, the employer, for the duration of the disability, but
6 not including the first three calendar days thereof, shall pay
7 the injured employee a weekly benefit at the rate of sixty-six
8 and two-thirds per cent of the employee's average weekly wages,
9 subject to the limitations on weekly benefit rates prescribed in
10 subsection (a), or if the employee's average weekly wages are
11 less than the minimum weekly benefit rate prescribed in
12 subsection (a), at the rate of one hundred per cent of the
13 employee's average weekly wages.

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

17 The employer shall pay temporary total disability benefits
18 promptly as they accrue to the person entitled ~~[thereto]~~ to the
19 benefits without waiting for a decision from the director,
20 unless this right is controverted by the employer in the
21 employer's initial report of industrial injury. The first
22 payment of benefits shall become due and shall be paid no later



1 than on the tenth day after the employer has been notified of
2 the occurrence of the total disability, and thereafter the
3 benefits due shall be paid weekly except as otherwise authorized
4 pursuant to section 386-53.

5 The payment of these benefits shall [~~only~~] be terminated
6 only upon order of the director or if the employee is able to
7 resume work. When the employer is of the opinion that temporary
8 total disability benefits should be terminated because the
9 injured employee is able to resume work, the employer shall
10 notify the employee and the director in writing of an intent to
11 terminate the benefits at least two weeks prior to the date when
12 the last payment is to be made[-]; provided that if the injured
13 employee has not actually resumed work, temporary total
14 disability benefits shall continue to be paid until a decision
15 by the director to terminate the benefits. The notice shall
16 give the reason for stopping payment and shall inform the
17 employee that the employee may make a written request to the
18 director for a hearing if the employee disagrees with the
19 employer. Upon receipt of the request from the employee, the
20 director shall conduct a hearing as expeditiously as possible
21 and render a prompt decision as specified in section 386-86[-]
22 indicating if temporary total disability benefits should have



1 been discontinued and if so designate the date after which
2 temporary total disability benefits should have been
3 discontinued. If the employee is unable to perform light work,
4 if offered, temporary total disability benefits shall not be
5 discontinued based solely on the inability to perform or
6 continue to perform light work.

7 An employer or insurance carrier [~~who~~] that fails to comply
8 with this section shall pay not more than \$2,500 into the
9 special compensation fund upon the order of the director, in
10 addition to other penalties prescribed in section 386-92.

11 (1) If the director determines, based upon a review of
12 medical records and reports and other relevant
13 documentary evidence, that an injured employee's
14 medical condition may be stabilized and the employee
15 is unable to return to the employee's regular job, the
16 director shall issue a preliminary decision regarding
17 the claimant's entitlement and limitation to benefits
18 and rights under Hawaii's workers' compensation laws.
19 The preliminary decision shall be sent to the affected
20 employee and the employee's designated representative
21 and the employer and the employer's designated
22 representative and shall state that any party



1 disagreeing with the director's preliminary findings
2 of medical stabilization and work limitations may
3 request a hearing within twenty days of the date of
4 the decision. The director shall be available to
5 answer any questions during the twenty-day period from
6 the injured employee and affected employer. If
7 neither party requests a hearing challenging the
8 director's finding the determination shall be deemed
9 accepted and binding upon the parties. In any case
10 where a hearing is held on the preliminary findings,
11 any person aggrieved by the director's decision and
12 order may appeal under section 386-87.

13 A preliminary decision of the director shall
14 inform the injured employee and the employer of the
15 following responsibilities, benefits, and limitations
16 on vocational rehabilitation benefits that are
17 designed to facilitate the injured employee's early
18 return to suitable gainful employment:

19 (A) That the injured employee may invoke the
20 employee's rights under section 378-2, 378-32, or
21 386-142, or all of them, in the event of unlawful



1 discrimination or other unlawful employment
2 practice by the employer; and
3 (B) That after termination of temporary total
4 disability benefits, an injured employee who
5 resumes work may be entitled to permanent partial
6 disability benefits, which if awarded, shall be
7 paid regardless of the earnings or employment
8 status of the disabled employee at the time.
9 (2) If the rehabilitation unit determines that an injured
10 employee is not a feasible candidate for
11 rehabilitation and that the employee is unable to
12 resume the employee's regular job, it shall promptly
13 certify the same to the director. Soon thereafter,
14 the director shall conduct a hearing to determine
15 whether the injured employee remains temporarily
16 totally disabled, or whether the employee is
17 permanently partially disabled, or permanently totally
18 disabled."

19 SECTION 3. Statutory material to be repealed is bracketed
20 and stricken. New statutory material is underscored.

21 SECTION 4. This Act shall take effect on January 1, 2007.

SB3035, SDI, HDI, CD1

Report Title:

Workers' Compensation; TTD Benefits

Description:

Prevents the termination of temporary total disability benefits until the director of labor and industrial relations decides to terminate them. (CD1)

