
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 action by the director of labor and industrial relations.

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

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



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

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

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



1 benefits due shall be paid weekly except as otherwise authorized
2 pursuant to section 386-53.

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



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

5 (1) If the director determines, based upon a review of
6 medical records and reports and other relevant
7 documentary evidence, that an injured employee's
8 medical condition may be stabilized and the employee
9 is unable to return to the employee's regular job, the
10 director shall issue a preliminary decision regarding
11 the claimant's entitlement and limitation to benefits
12 and rights under Hawaii's workers' compensation laws.
13 The preliminary decision shall be sent to the affected
14 employee and the employee's designated representative
15 and the employer and the employer's designated
16 representative and shall state that any party
17 disagreeing with the director's preliminary findings
18 of medical stabilization and work limitations may
19 request a hearing within twenty days of the date of
20 the decision. The director shall be available to
21 answer any questions during the twenty-day period from
22 the injured employee and affected employer. If



1 neither party requests a hearing challenging the
2 director's finding the determination shall be deemed
3 accepted and binding upon the parties. In any case
4 where a hearing is held on the preliminary findings,
5 any person aggrieved by the director's decision and
6 order may appeal under section 386-87.

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

13 (A) That the injured employee may invoke the
14 employee's rights under section 378-2, 378-32, or
15 386-142, or all of them, in the event of unlawful
16 discrimination or other unlawful employment
17 practice by the employer; and

18 (B) That after termination of temporary total
19 disability benefits, an injured employee who
20 resumes work may be entitled to permanent partial
21 disability benefits, which if awarded, shall be



1 paid regardless of the earnings or employment
2 status of the disabled employee at the time.

3 (2) If the rehabilitation unit determines that an injured
4 employee is not a feasible candidate for
5 rehabilitation and that the employee is unable to
6 resume the employee's regular job, it shall promptly
7 certify the same to the director. Soon thereafter,
8 the director shall conduct a hearing to determine
9 whether the injured employee remains temporarily
10 totally disabled, or whether the employee is
11 permanently partially disabled, or permanently totally
12 disabled."

13 SECTION 3. Statutory material to be repealed is bracketed
14 and stricken. New statutory material is underscored.

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

Report Title:
Work Comp; TTD

Description:
Prevents the termination of temporary total disability benefits until the director of labor and industrial relations decides to terminate them. (SD1)

