
A BILL FOR AN ACT

RELATING TO WORKERS' COMPENSATION.

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

1 SECTION 1. Section 386-31, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "**§386-31 Total disability.** (a) Permanent total
4 disability. Where a work injury causes permanent total
5 disability the employer shall pay the injured employee a weekly
6 benefit equal to sixty-six and two-thirds per cent of the
7 employee's average weekly wages, subject to the following
8 limitation:

9 Beginning January 1, 1975, and during each succeeding
10 twelve-month period thereafter, not more than the state average
11 weekly wage last determined by the director, rounded to the
12 nearest dollar, nor less than \$38 or twenty-five per cent of the
13 foregoing maximum amount, rounded to the nearest dollar,
14 whichever is higher.

15 In the case of the following injuries, the disability
16 caused thereby shall be deemed permanent and total:

- 17 (1) The permanent and total loss of sight in both eyes;
18 (2) The loss of both feet at or before the ankle;



- 1 (3) The loss of both hands at or above the wrist;
- 2 (4) The loss of one hand and one foot;
- 3 (5) An injury to the spine resulting in permanent and
- 4 complete paralysis of both legs or both arms or one
- 5 leg and one arm; or
- 6 (6) An injury to the skull resulting in incurable
- 7 imbecility or insanity.

8 In all other cases the permanency and totality of the
9 disability shall be determined on the facts. No adjudication of
10 permanent total disability shall be made until after two weeks
11 from the date of the injury.

12 (b) Temporary total disability. Where a work injury
13 causes total disability not determined to be permanent in
14 character, the employer, for the duration of the disability, but
15 not including the first three calendar days thereof, shall pay
16 the injured employee a weekly benefit at the rate of sixty-six
17 and two-thirds per cent of the employee's average weekly wages,
18 subject to the limitations on weekly benefit rates prescribed in
19 subsection (a), or if the employee's average weekly wages are
20 less than the minimum weekly benefit rate prescribed in
21 subsection (a), at the rate of one hundred per cent of the
22 employee's average weekly wages.

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

4 The employer shall pay temporary total disability benefits
5 promptly as they accrue to the person entitled ~~[therein]~~ to the
6 benefits without waiting for a decision from the director,
7 ~~[unless]~~ regardless of whether this right is controverted by the
8 employer in the employer's initial report of industrial injury.
9 The first payment of benefits shall become due and shall be paid
10 no later than on the tenth day after the employer has been
11 notified of the occurrence of the total disability, and
12 thereafter the benefits due shall be paid weekly except as
13 otherwise authorized pursuant to section 386-53.

14 The payment of these benefits shall ~~[only]~~ be terminated
15 only upon order of the director or if the employee's treating
16 physician determines that the employee is able to resume work~~[=]~~
17 and the employer has made a bona fide offer of suitable work
18 within the employee's medical restrictions. The order shall
19 only be issued after a full and fair hearing at which the
20 injured employee shall be provided the opportunity to review the
21 employer's evidence and present rebuttal evidence. When the
22 employer is of the opinion that temporary total disability



1 benefits should be terminated [~~because the injured employee is~~
2 ~~able to resume work~~], the employer shall notify the employee and
3 the director in writing of an intent to terminate the benefits
4 at least two weeks prior to the date when the last payment is to
5 be made. The notice shall give the reason for stopping payment
6 and shall inform the employee that the employee may make a
7 written request to the director for a hearing if the employee
8 disagrees with the employer. Upon receipt of the request from
9 the employee, the director shall conduct a hearing as
10 expeditiously as possible and render a prompt decision as
11 specified in section 386-86[-], indicating whether temporary
12 total disability benefits should have been discontinued and, if
13 so, a date shall be designated after which temporary total
14 disability benefits should have been discontinued. The employer
15 may request in writing to the director that the director issue a
16 credit for the amount of temporary total disability benefits
17 paid by an employer after the date that the director had
18 determined should have been the last date of payment. If the
19 employee is unable to perform light work, if offered, temporary
20 total disability benefits shall not be discontinued based solely
21 on 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 attorney's fees and costs to the employee for enforcement of
5 this section and other penalties prescribed in section 386-92.

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



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

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

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

19 (B) That after termination of temporary total
20 disability benefits, an injured employee who
21 resumes work may be entitled to permanent partial
22 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 (c) An injured employee shall be entitled to receive a
14 weekly benefit equal to seventy per cent of the injured
15 employee's average weekly wages, or a maximum weekly income
16 benefit based upon the state average weekly wage applicable on
17 the date compensation was first received if:

18 (1) A work injury causes permanent or temporary
19 disability; and

20 (2) Payment of compensation due under this chapter was not
21 begun within thirty days of or within the same year as
22 the date of injury, whichever is later."



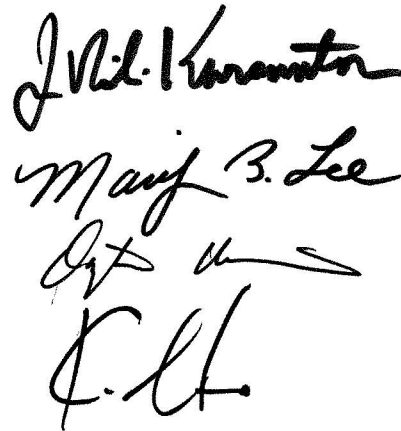
1 SECTION 2. This Act shall apply to any employee receiving
2 temporary total disability benefits on its effective date.

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

5 SECTION 4. This Act shall take effect on July 1, 2008.

6

INTRODUCED BY:

A handwritten signature in black ink, appearing to be "J. Phil. Karaman", written over a horizontal line.A collection of handwritten signatures in black ink, including "J. Phil. Karaman", "Mary B. Lee", and "F. H.", arranged vertically.

JAN 16 2008



Report Title:

Workers' Compensation; Temporary Total Disability

Description:

Requires an employer to pay temporary total disability benefits regardless of whether the employer controverts the right to benefits. Specifies that the employee's ability to return to work is to be decided by the employee's treating physician.

