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# 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 ~~[thereto]~~ 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 the director has reviewed the case file and  
20 position papers submitted by the employee and the employer.  
21 When the employer is of the opinion that temporary total  
22 disability benefits should be terminated ~~[because the injured~~



1 ~~employee is able to resume work~~], the employer shall notify the  
2 employee and the director in writing of an intent to terminate  
3 the benefits at least two weeks prior to the date when the last  
4 payment is to be made. The notice shall give the reason for  
5 stopping payment and shall inform the employee that the employee  
6 may make a written request to the director for a ~~[hearing]~~  
7 review if the employee disagrees with the employer. Upon  
8 receipt of the request from the employee, the director shall  
9 ~~[conduct a hearing as expeditiously as possible and render a~~  
10 ~~prompt decision as specified in section 386-86.]~~ direct the  
11 employee and employer to submit the position papers within  
12 fourteen days of the request from the employee. The director  
13 shall then review the case file and position papers and issue a  
14 decision, without a hearing, within thirty days, indicating  
15 whether temporary total disability benefits should have been  
16 discontinued and, if so, a date shall be designated after which  
17 temporary total disability benefits should have been  
18 discontinued. The employer may request in writing to the  
19 director that the director issue a credit for the amount of  
20 temporary total disability benefits paid by an employer after  
21 the date which temporary total disability benefits should have  
22 been discontinued. If the employee is unable to perform light



1 work, if offered, temporary total disability benefits shall not  
2 be discontinued based solely on the inability to perform or  
3 continue to perform light work.

4 An employer or insurance carrier who fails to comply with  
5 this section shall pay not more than \$2,500 into the special  
6 compensation fund upon the order of the director, in addition to  
7 attorney's fees and costs to the employee for enforcement of  
8 this section and other penalties prescribed in section 386-92.

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



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

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

17 (A) That the injured employee may invoke the  
18 employee's rights under section 378-2, 378-32, or  
19 386-142, or all of them, in the event of unlawful  
20 discrimination or other unlawful employment  
21 practice by the employer; and



1 (B) That after termination of temporary total  
2 disability benefits, an injured employee who  
3 resumes work may be entitled to permanent partial  
4 disability benefits, which, if awarded, shall be  
5 paid regardless of the earnings or employment  
6 status of the disabled employee at the time.

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

17 (c) An injured employee shall be entitled to receive a  
18 weekly benefit equal to seventy per cent of the injured  
19 employee's average weekly wages, or a maximum weekly income  
20 benefit based upon the state average weekly wage applicable on  
21 the date compensation was first received if:



- 1       (1) A work injury causes permanent or temporary  
2       disability; and
- 3       (2) Payment of compensation due under this chapter was not  
4       begun within thirty days of or within the same year as  
5       the date of injury, whichever is later."

6           SECTION 2. The director of labor and industrial relations  
7 shall convene a working group within thirty days of the  
8 effective date of this section. The working group shall consist  
9 of the director of labor and industrial relations and other  
10 members selected by the director from representatives of  
11 employer and employee organizations, including labor unions.  
12 The number of working group members shall be as determined by  
13 the director. The director shall serve as the chairperson of  
14 the working group.

15           The working group shall address and make recommendations to  
16 resolve the concerns raised in this Act.

17           The working group shall submit findings and recommendations,  
18 including proposed legislation, to the legislature no later than  
19 twenty days prior to the convening of the regular session of  
20 2009.

21           SECTION 3. This Act shall apply to any employee receiving  
22 temporary total disability benefits on its effective date.





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

3 SECTION 5. This Act shall take effect on July 1, 2050;  
4 provided that section 2 shall take effect upon approval; and  
5 provided further that if the working group in section 2 of this  
6 Act states in its report to the legislature that it has not  
7 reached a consensus in resolving the concerns of this Act, this  
8 Act shall take effect on July 1, 2009.



**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. Convenes a working group. Effective upon approval for the convening of the working group; 7/1/2050 if there is consensus among the working group; and 7/1/2009 if there is no consensus in any case. (SD2)

