

LINDA LINGLE
GOVERNOR



MARIE C. LADERTA
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CINDY S. INOUE
DEPUTY DIRECTOR

STATE OF HAWAII
DEPARTMENT OF HUMAN RESOURCES DEVELOPMENT
235 S. BERETANIA STREET
HONOLULU, HAWAII 96813

March 13, 2008

TESTIMONY TO THE
SENATE COMMITTEE ON JUDICIARY AND LABOR
For Hearing on Monday, March 17, 2008
9:00 a.m., Conference Room 016

BY

MARIE C. LADERTA, DIRECTOR

House Bill No. 2386
Relating to Workers' Compensation

TO CHAIR BRIAN T. TANIGUCHI AND MEMBERS OF THE COMMITTEE:

The purpose of H.B. No. 2386 is to amend Section 386-31(b), Hawaii Revised Statutes: (1) requiring an employer to pay temporary total disability benefits promptly regardless of whether the employer controverts the right to those benefits; (2) specifying that benefits shall continue until the employee's treating physician determines that the employee is able to resume work and that the employer has made a bona fide offer of suitable work within the employee's medical restrictions; (3) following a hearing, a decision will be issued indicating whether temporary total disability benefits should have been discontinued and, if so, a date shall be designated after which temporary total disability benefits should have been discontinued; (4) allowing an employer to make a written request to the director for a credit for the amount of temporary total disability benefits paid after the date that the director had determined should have been the last date of payment; allowing for attorney's fees and costs to the employee for enforcement of this section; (5) entitling an injured employee to receive a weekly benefit equal to 70% of the injured employee's average weekly wages subject to certain provisions. **The Department of Human Resources Development is strongly opposed to this bill.**

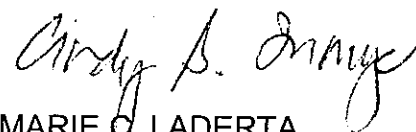
Requiring an employer to pay benefits when the right to those benefits is being denied would cause irreparable harm in cases where it was determined that a claim was not compensable. Furthermore, this amendment is unnecessary as there is already a mechanism in place for an injured worker to present rebuttal evidence that his or her claim is, indeed, compensable.

Further evidence of irreparable harm is the fact that only the employee can request a hearing. There would be no way for a self insured employer or an insurance carrier to even present an argument for the termination of temporary total disability benefits. Even if a hearing was held and the director determined the date that benefits should be terminated, it isn't clear how the credit, allowed by the director, would be applied. It would be a fairly simple process if the employee was awarded permanent partial disability benefits. However, if those benefits were inadequate to cover the credit or if no permanent partial disability benefits were awarded, then the employer would, once again, suffer irreparable harm.

The amendment allowing for the assessment of attorney's fees and costs for the enforcement of the section is totally unnecessary as Section 386-93, Hawaii Revised Statutes, already provides for such an assessment if it is determined that proceedings under Chapter 386, Hawaii Revised Statutes, are brought, prosecuted, or defended without reasonable grounds.

Lastly, the amendment provides for the payment of 70% of an injured employee's average wage applicable on the date compensation was first received if the injury causes permanent or temporary disability and if compensation was not paid within thirty days of or within the same year as the date of injury, whichever is later. Employees have up to two years from manifestation of an injury to file a claim for benefits. Also, it isn't uncommon for an employee to delay the reporting of an injury. This penalizes an employer for something over which they have no control.

Respectfully submitted,


for MARIE O. LADERTA

GOODSILL ANDERSON QUINN & STIFEL

A LIMITED LIABILITY LAW PARTNERSHIP LLP

GOVERNMENT RELATIONS TEAM:

GARY M. SLOVIN, ESQ.
CHRISTOPHER G. PABLO, ESQ.
ANNE T. HORIUCHI, ESQ.
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March 14, 2008

TO: Senator Brian T. Taniguchi
Chair, Committee on Judiciary & Labor
Hawaii State Capitol, Room 219
testimony@capitol.hawaii.gov

FROM: Anne T. Horiuchi, Esq.
H.B. 2386 Relating to Workers' Compensation
Hearing Date: Monday, March 17, 2008 at 9:00 a.m.

Dear Chair Taniguchi and Members of the Committee on Judiciary & Labor:

I am Anne Horiuchi, testifying on behalf of the American Insurance Association (AIA). AIA represents approximately 350 major insurance companies that provide all lines of property and casualty insurance and write more than \$123 billion annually in premiums. AIA members supply 23 percent of the property/casualty insurance sold in Hawaii. The association is headquartered in Washington, D.C., and has representatives in every state.

H.B. 2386 requires an employer to pay temporary total disability benefits regardless of whether the employer controverts the right to benefits. The measure also specifies that the employee's ability to return to work is to be decided by the employee's treating physician.

Where a claim is controverted, employers and their insurers should not be required to pay benefits that they do not believe are owed. AIA opposes H.B. 2386 and respectfully requests that it be held.

Thank you very much for this opportunity to submit testimony.

BIA-HAWAII

BUILDING INDUSTRY ASSOCIATION

Committee on Judiciary and Labor

March 17, 2008

9:00 a.m.

Conference Room 016

Testimony on HB 2386 "Relating to Workers Compensation"

Chair Taniguchi and Members of the Committee on Judiciary and Labor:

I am Karen Nakamura, Chief Executive Officer and Executive Vice President of the Building Industry Association of Hawaii (BIA-Hawaii). Chartered in 1955, the Building Industry Association of Hawaii is a professional trade organization affiliated with the National Association of Home Builders, representing the building industry and its associates. BIA-Hawaii takes a leadership role in unifying and promoting the interests of the industry to enhance the quality of life for the people of Hawaii.

BIA-Hawaii is strongly opposed to HB 2386 "Relating to Workers Compensation".

The bill would require an employer to pay temporary total disability benefits regardless of whether the employer controverts the right to benefits. The bill also specifies that the employee's ability to return to work is to be decided by the employee's treating physician.

The provisions of HB 2386 would erode employers' rights and their ability to control their costs. If passed, this bill would increase the cost of workers compensation by providing another incentive for workers not to return to work because they could determine (with their treating physician) when they choose to return to work. To force employers to continue TTD benefits for a period of time to be determined essentially by the employee is unreasonable.

For these reasons, BIA-Hawaii strongly opposes this bill.

Thank you for the opportunity to share our views with you.

Karen Y. Nakamura



**The Chamber of
Commerce of Hawaii**

Since 1850

**Testimony to the Senate Committee on Judiciary and Labor
Monday, March 17, 2008; 9:00 a.m.
Conference Room 016**

RE: HOUSE BILL NO. 2386 RELATING TO WORKERS' COMPENSATION

Chair Taniguchi, Vice Chair Hee and Members of the Committee:

My name is Jim Tollefson and I am the President and CEO of The Chamber of Commerce of Hawaii ("The Chamber"). The Chamber does not support House Bill No. 2386, relating to Workers' Compensation.

The Chamber is the largest business organization in Hawaii, representing over 1100 businesses. Approximately 80% of our members are small businesses with less than 20 employees. As the "Voice of Business" in Hawaii, the organization works on behalf of members and the entire business community to improve the state's economic climate and to foster positive action on issues of common concern.

This measure requires an employer to pay temporary total disability benefits regardless of whether the employer controverts the right to benefits. The bill also specifies that the employee's ability to return to work is to be decided by the employee's treating physician.

The Chamber has concerns with the language that limits the termination of benefits only if the employee's own treating physician authorizes the return to work. While this is the case in limited situations, it is the employer's physician that often determines if the employee is capable of returning to work. An employee's own doctor will probably not authorize the return to work in any capacity if the employee wants to stay out on disability leave. It's important that these benefits be utilized as intended and not in such a way that benefits are activated simply because they exist.

Another concern is the employer's requirement to pay uninterrupted TTD benefits regardless if the employer disputes the right to benefits. This mandate may serve as a disincentive for an employee to return to work especially as the measure increases the weekly benefit amount to 70% of the injured employee's average weekly wages and does not penalize the employee for refusing to return to work.

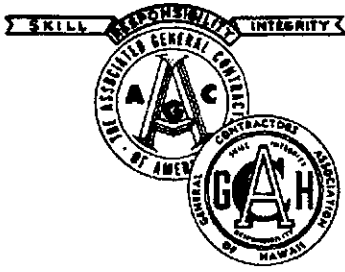
This will hurt employers especially small businesses, which operate on limited resources and smaller staffs. Colleagues of the absent employee will unfairly shoulder additional responsibilities, which could have a domino effect, such as a stressful work environment, lower morale, and lost productivity. As a result, the negative consequences of this measure may hinder than promote progress.

The Chamber of Commerce of Hawaii Testimony on HB 2386
Page 2

Next, the measure does not allow the employer to file a request for hearing with the Department of Labor to terminate TTD benefits if they believe the employee is able to return to work. Instead, it only allows the employee to file a hearing. Thus, we believe this is not a fair and balanced approach.

Finally, there is no actual loss of care. An employee who wants to continue treatment after an employer terminates TTD coverage based on the evaluation that the employee can return to work and was offered work but turned it down, can then use the prepaid health care plan that every employer provides to continue care. If it is eventually determined that workers' compensation should have provided the care, the group health insurer can seek reimbursement/subrogation from the workers' compensation carrier.

In summary, HB 2386, while well-intended, will have unintended consequences and possibly lead to a rise in workers' compensation insurance costs and the overall cost of doing business. Thus, The Chamber respectfully requests this measure be held. Thank you for the opportunity to testify.



GENERAL CONTRACTORS ASSOCIATION OF HAWAII

1065 AHUA STREET • HONOLULU, HAWAII 96819-4493 • PHONE 808-833-1681 • FAX 808-839-4167

E-MAIL ADDRESS: gca@gcahawaii.org • WEBSITE: www.gcahawaii.org

March 14, 2008

TO: THE HONORABLE SENATOR BRIAN T. TANIGUCHI, CHAIR AND
MEMBERS OF THE COMMITTEE ON JUDICIARY AND LABOR

SUBJECT: H.B. 2386 RELATING TO WORKERS COMPENSATION

NOTICE OF HEARING AND DECISION MAKING

DATE: Monday, March 17, 2008
TIME: 9:00 a.m.
PLACE: Conference Room 016

Dear Chair Taniguchi and Members of the Committee on Finance:

The General Contractors Association (GCA), an organization comprised of over five hundred and forty (540) general contractors, subcontractors, and construction related firms, **strongly opposes** the passage of H.B.2386, Relating to Workers Compensation.

The bill would require an employer to pay temporary total disability benefits regardless of whether the employer controverts the right to benefits. The bill also specifies that the employee's ability to return to work is to be decided by the employee's treating physician.

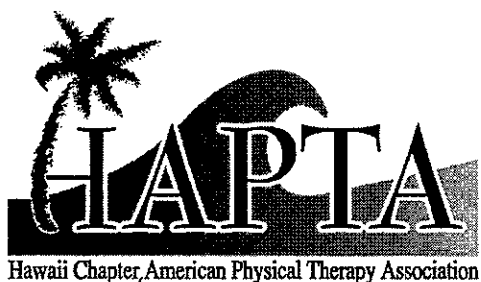
The provisions of HB 2386 would erode employers' rights and their ability to control their costs. If passed, this bill would increase the cost of workers compensation by providing another incentive for workers not to return to work because they could determine (with their treating physician) when they choose to return to work. To force employers to continue TTD benefits for a period of time to be determined essentially by the employee is unreasonable.

For these reasons, the GCA **strongly opposes** this bill.

Thank you for considering our concerns on the above bill.

**Testimony by:
Derrick Ishihara, PT**

**HB 2386, Relating to Workers'
Compensation
Senate JDL, Monday, March 17, 2008
Room 016, 9:00 am**



Position: Support

Dear Senator Taniguchi and Members of the Senate JDL Committee:

I am Derrick Ishihara, P.T., a small business owner/physical therapist and member of HAPTA's Legislative Committee. The Hawaii Chapter – American Physical Therapy Association (HAPTA) is comprised of 300 member physical therapists and physical therapist assistants employed in hospitals and health care facilities, the Department of Education school system, and private practice. We are part of the spectrum of care for Hawaii, and provide rehabilitative services for infants and children, youth, adults and the elderly. Rehabilitative services are a vital part of restoring optimum functioning from neuromusculoskeletal injuries and impairments.

HAPTA supports this proposal to prevent insurers from arbitrarily terminating TTD benefits to injured workers.

Anecdotal evidence from attorneys and claimants presented at previous legislative hearings suggest that insurers have terminated benefits to deserving claimants without good cause. Further, it is reported that inquiries from the claimants and the claimants' attorneys to the insurers have been ignored.

This has resulted in extreme financial hardship for injured workers. In some cases, injured workers are forced to return to their jobs prematurely, creating a hazardous situation not only for the injured worker, but also potentially for that employee's co-workers.

Passing this measure would cause insurers to be more selective when evaluating disputed cases for termination of benefits. Currently, as reported, when cases are awaiting administrative hearing, the insurer many times will not pay TTD benefits. In other words, the current system works to the benefit of the insurer and the larger the backlog of cases at the DOL and the longer time to obtain hearing dates, the more favorable it is for the insurer. Requiring payment of benefits while cases await the Directors decision will effectively remove this incentive for insurers.

I may be reached at 593-2610 if there are any questions. Thank you for the opportunity to present testimony.



HIIA

Hawaii Independent Insurance Agents Association

March 14, 2008

To: Senator Brian T. Taniguchi, Chair
Senator Clayton Hee, Vice- Chair
Judiciary and Labor Committee

From: Sonia M. Leong, Executive Director
Hawaii Independent Insurance Agents Association

Re: HB 2386 – Relating to Workers Compensation
Hearing: Monday, March 17, 2008 9:00 am Conference Room 016

The Hawaii Independent Insurance Agents Association (HIIA) **opposes** HB 2386 which will require employers to pay temporary total disability (TTD) benefits without waiting for a decision from the Director, regardless of whether this right is controverted by the employer. TTD benefits can only be terminated by order of the Director or if the employee's treating physician determines that the employee is able to resume work, and the employer has made a bona-fide offer of suitable work.

Other Points of Concern:

- o The employer will not be able to recoup overpayments if there is no further indemnity benefits payable.
- o There is concern over the penalties and assessment of attorney's fess and cost.
- o There is concern over the increase to 70% of the average weekly wage, or maximum benefit.

HIIA is a non profit trade association of independent insurance producers dedicated to assisting the insurance buying public with their insurance needs. Many of our clients are business owners who will be directly affected if this bill is passed. As you are all aware, workers compensation is a very complex issue with so many interrelated factors that one change could tip the delicate balance. The current business climate is extremely soft and this will put a real burden on many of the businesses.

Thank you for this opportunity to submit testimony.



Pauahi Tower, Suite 2010
1003 Bishop Street
Honolulu, Hawaii 96813
Telephone (808) 525-5877
Facsimile (808) 525-5879

Alison Powers
Executive Director

TESTIMONY OF ALISON POWERS

SENATE COMMITTEE ON JUDICIARY AND LABOR
Senator Brian T. Taniguchi, Chair
Senator Clayton Hee, Vice Chair

Monday, March 17, 2008
9:00 a.m.

HB 2386

Chair Taniguchi, Vice Chair Hee, and members of the committee, my name is Alison Powers, Executive Director of Hawaii Insurers Council. Hawaii Insurers Council is a non-profit trade association of property and casualty insurance companies licensed to do business in Hawaii. Member companies underwrite approximately 60% of all property and casualty insurance premiums in the state.

Hawaii Insurers Council **opposes** HB 2386. This bill will increase costs and encourage abuse by mandating temporary total disability (TTD) benefits to continue until the Director holds a hearing and issues a decision. The overarching theme of a successful system is striking an appropriate balance. We believe the changes proposed in HB 2386 will burden the system with unnecessary costs imposed by those intent on abuse. If the decision is against the employee, the workers' compensation insurer may be unable to recoup these costs and rates will increase accordingly. The only way the employer/insurer would be able to recoup costs if overpaid, would be to take it out of the employee's future settlement. The employer/insurer should not have to request a credit in writing. Credit should be consistent with existing language (see HRS 386-52). There is also no time certain in which the Director must make a decision, which exacerbates unnecessary cost if the employee's benefits should have ceased. Even if there is a time certain for the Director to make a decision, provisions need to be included for benefits to automatically cease if the time limit is exceeded. This provision will encourage injured

workers to stay off work longer than necessary since the injured worker will not be held accountable for any financial reimbursement. If abuse occurs and there is no permanent impairment, the employer is unable to recoup the cost.

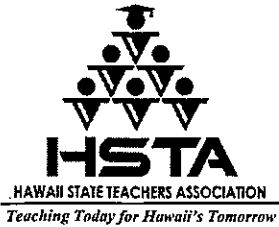
The amendment on page 3, lines 4 through 8 require TTD payments even if an employer denied liability for a claim. If the claim is ultimately found uncompensable, the employer will have paid TTD with no recourse for recovery. Page 3, lines 14 through 21 will also allow an injured worker to refuse to return to work and get paid TTD benefits, even if the treating physician releases the injured worker to return to work and the employer has made a bona fide offer of suitable work.

The requirement for employers or insurance carriers to pay for the injured worker's attorney fees and costs for enforcement of this section also creates an unfair burden on the employer. Why should the employer pay for the injured worker's attorney fees if the Director renders a decision that TTD should have been discontinued?

Finally, the bill increases the wage reimbursement rate to 70% if a work injury causes permanent or temporary disability and payment of compensation was not begun within 30 days or within the same year as the date of injury, whichever is later. This provision unfairly increases the benefit for a certain class of injured workers and within that class, only if payments do not meet certain requirements. For example, if an injury occurs on December 31 and payment is made within 30 days but in the next year, the indemnity rate is 70% and not the 66 2/3% of the employee's average weekly wages. This provision will also encourage injured workers to delay the reporting of work related injuries in order to obtain a higher compensation rate.

We respectfully request that HB 2386 be held.

Thank you for the opportunity to testify.



1200 Ala Kapuna Street λ Honolulu, Hawaii 96819
Tel: (808) 833-2711 λ Fax: (808) 839-7106 λ Web: www.hsta.org

Roger K. Takabayashi
President

Wil Okabe
Vice President

Karolyn Mossman
Secretary-Treasurer

Mike McCartney
Executive Director

**TESTIMONY BEFORE THE SENATE COMMITTEE ON
JUDICIARY & LABOR**

RE: HB 2386 – RELATING TO WORKERS' COMPENSATION.

March 17, 2008

**ROGER TAKABAYASHI, PRESIDENT
HAWAII STATE TEACHERS ASSOCIATION**

Chair Taniguchi and Members of the Committee:

The Hawaii State Teachers Association supports HB 2386 that requires an employer to pay temporary total disability benefits regardless of whether the employer controverts the right to benefits, and specifies that the employee's ability to return to work is to be decided by the employee's treating physician.

Thank you for the opportunity to testify..

TESTIMONY BEFORE THE SENATE COMMITTEE ON
JUDICIARY AND LABOR

Monday, March 17, 2008
9:00 a.m.

HB 2386
RELATING TO WORKERS' COMPENSATION

By Marleen Silva
Director, Workers' Compensation
Hawaiian Electric Company, Inc.

Chair Taniguchi, Vice Chair Hee and Members of the Committee:

I am Marleen Silva, testifying on behalf of Hawaiian Electric Co. Inc., its subsidiaries, Maui Electric Company, LTD., and Hawaii Electric Light Company, Inc. Our companies represent over 2,000 employees. **We respectfully oppose H.B. 2386.**

This bill proposes to amend *Section 386-31(b)*, Hawaii Revised Statutes (HRS), requiring the employer to pay temporary total disability ("TTD") benefits, regardless of whether the employer believes they have a reasonable basis for denying a claim, or discontinuing these benefits. It allows the termination of TTD benefits upon order of the Director, or if/when the employee's treating physician determines the employee can return to work and the employer has made a bona fide offer of suitable work within the employee's restrictions.

We cannot support a measure that requires an employer to pay for lost wages (TTD) during the period when the right to those benefits is in dispute, and until the Director of Labor is able to hold a hearing and issue a decision on the matter. We believe this would have a negative consequence on employers by providing an incentive for employees to not return to work and stay out longer than necessary, since the determination of when to return to work is made by the employee and the treating physician.

Under the current statutes, only employees can request a hearing to determine if TTD benefits should have been terminated. There are no provisions to afford employers the same opportunity. We encourage the committee to consider amending this bill to give employers the same right to a hearing with DLIR. Additionally, scheduling a hearing before the DLIR to resolve disputes is a challenge due to their current workload and full calendar. Decisions on disputed cases may often take 90 days before being rendered, leaving employers to continue paying for loss wages throughout this period.

This bill hurts employers, especially in cases where it is determined that a claim was not compensable. There are no measures in this bill to assist employers with the collection of overpaid TTD benefits from injured employees. While the bill offers employers the option of requesting a credit for the amount of TTD benefits paid from a future settlement, this may not be

realized if it is later determined that the employee has no permanent impairment, and therefore no entitled to a settlement.

Finally, this bill adds a new subsection (c) to *Section 386-31 HRS*, increasing the weekly benefits to 70% (vs. 66 2/3%) or the maximum weekly TTD benefit rate. The bill is unclear as to when and which rate is applicable. It may allow an employee to receive TTD benefits at a rate that exceeds their actual weekly salary. This can significantly increase TTD costs for employers by providing another incentive for employees not to return to work.

If implemented, this bill would substantially increase both direct and indirect costs of workers' compensation claims, hurting businesses across the state, and ultimately, consumers. For these reasons, we respectfully oppose H.B. 2386.

Thank you for the opportunity to testify.

THE SENATE
THE TWENTY-FOURTH LEGISLATURE
REGULAR SESSION OF 2008

COMMITTEE ON JUDICIARY AND LABOR

Sen. Brian T. Taniguchi, Chair
Sen. Clayton Hee, Vice Chair

Date: Monday March 17, 2008
Time: 9:00 am.
Place: Conference Room 016 State Capitol

TESTIMONY FRED GALDONES/ILWU LOCAL 142

RE: HB 2386, RELATING TO WORKERS' COMPENSATION

Thank you for the opportunity to present testimony regarding HB 2386.

This bill seeks to guarantee the payment of temporary total disability to injured workers even if an employer controverts the employee's industrial accident claim. It permits the cessation of such benefits only if the director of the Department of Labor issues an order terminating these benefits, or the employee's treating physician determines he is able to resume work and the employer makes a bonafide offer of suitable work consistent with the employee's medical restriction

When it is determined that benefits should in fact have been discontinued, an employer who has overpaid temporary total disability may request a credit against future benefit payments. Where employers fail to comply with HB 2386, they may be fined not more than \$2500 plus the attorneys' fees and costs of the employee's attorney.

Finally, an injured employee is awarded benefits equal to 70% of the employee's average weekly wage up to the maximum weekly benefit rate in the year of injury if the employee suffers temporary or permanent disability and payment was not commenced "within thirty days of or within the same year as the date of injury, whichever is later."

The idea of making payment of benefits to employees irrespective of whether an employee controverts a claim has the positive effect of encouraging prompt medical treatment and swift adjudication of the industrial accident claim. It also prevents the financial privation and hardship occasioned by disability and the myriad of social problems that may surround the disabled employee and her family.

If payment of temporary total disability is deemed unacceptable where a claim is denied, the bill might be amended to require the payment of temporary disability insurance, sick leave, or some other form of income replacement by the employer so that the employee would at least receive a steady source of financial aid during the employee's incapacitation. As is now the

case, if workers' compensation is eventually approved and paid, TDI or sick leave can easily be repaid by the workers' compensation insurance carrier.

The idea that employers who delay payment of benefits should be penalized by compensating the injured worker at a higher 70% of average weekly wage rather than 66-2/3% is a valuable innovation. However, as presently proposed, HB 2386 requires that payment of compensation must begin "within thirty days of *or within the same year as the date of injury, whichever is later.*" (italics supplied) In some instances, if compensation is not paid until later within the same year that the injury occurs, this might be result in a extreme delay. If a person were injured on New Year's Day, for example, the 70% of average weekly wage penalty would not take effect, as long as compensation was paid within the next 364 days, or by December 31 of the year in which the injury occurred. Delay of this magnitude would be markedly inconsistent with the goal of prompt payment of assuring injured workers a constant source of income replacement. The words "or within the same year as the date of injury, whichever is later" should therefore be deleted, so the sanction for delaying payment is simply effective 30 days after the industrial accident.

When this bill was heard earlier, the Department of Labor and Industrial Relations suggested that only the employee could request a hearing where there is a dispute concerning the payment of temporary total disability benefits. This impression occurred because under the original language of Section 386-31(b) HRS employers could unilaterally terminate TTD. In those circumstances, only the employee would have needed to request a hearing to challenge the cessation of benefits. Assuming the employer may not unilaterally terminate TTD unless an employee is able to resume work and has a bonafide offer of employment after a full hearing is first held, it would be logical to permit employers as well as employees to request hearings. In actual practice, the department now entertains hearing requests from any party who wishes to resolve a disputed issue, except for those rare issues, like orders for independent medical examinations, which are by regulation excluded from hearings.

We support the concept of prompt payment of benefits without interruption and speedy adjudication of claims embodied in HB 2386 and support its passage with the modifications we have suggested.



Before the Senate Committee on Judiciary & Labor

DATE: March 17, 2008
TIME: 9:00 a.m.
PLACE: Conference Room 016

Re: HB 2386 Relating to Workers' Compensation Testimony of Melissa Pavlicek for NFIB Hawaii

Thank you for the opportunity to testify. On behalf of the thousands of business owners who make up the membership of the National Federation of Independent Businesses in Hawaii, we ask that you defer **HB 2386**. NFIB opposes this measure in its current form.

The National Federation of Independent Business is the largest advocacy organization representing small and independent businesses in Washington, D.C., and all 50 state capitals. In Hawaii, NFIB represents more than 1,000 members. NFIB's purpose is to impact public policy at the state and federal level and be a key business resource for small and independent business in America. NFIB also provides timely information designed to help small businesses succeed.

We oppose measures that may tend to increase workers' compensation costs and have unintended negative consequences on employers, employees and the economy. Thank you for the opportunity to testify.



**Property Casualty Insurers
Association of America**

Shaping the Future of American Insurance

1415 L Street, Suite 670, Sacramento, CA 95814-3972

To: The Honorable Brian T. Taniguchi, Chair
Senate Committee on Judiciary and Labor

From: Samuel Sorich, Vice President

RE: **HB 2386 – Relating to Workers’ Compensation**
PCI Position: Oppose

Date: Monday, March 17, 2008
9:00 a.m.; Conference Room 016

The Property Casualty Insurers Association of America (PCI) is an association of property/casualty insurers. There are more than 100 PCI member companies doing business in Hawaii. PCI members are responsible for approximately 45 percent of the property/casualty insurance premiums written in Hawaii.

PCI is opposed to HB 2386 because the bill would unfairly impose additional workers compensation costs on Hawaii employers.

HB 2386 would require an employer to pay temporary total disability benefits even though the employer contests the employee’s right to these benefits. The practical effect of the bill would be that temporary disability payments would have to be paid until there is a termination order after an administrative hearing.

The injustice of this proposed scheme is exacerbated by the fact that under HB 2386, the employer has no express right to request a hearing; the bill leaves in place existing statutory language that a hearing is to be conducted “upon receipt of the request from the employee.” Even when a decision to hold a hearing is made, HB 2386 sets no specific time frame for conducting the hearing.

While this administrative process grinds on, the employer would be required to continue to make benefit payments. HB 2386 offers no real relief when the director decides that the employee was not entitled to temporary disability benefits. The bill offers a "credit" against future benefit payments. But this is an empty offer if the employee has no temporary or permanent disability.

HB 2386 is costly and unfair. PCI requests that the Committee vote No on the bill.



Senator Brian Taniguchi, Chair
Senator Clayton Hee, Vice Chair
Committee on Judiciary & Labor

State Capitol, Honolulu, Hawaii 96813

HEARING Monday, March 17, 2008
9:00 am
Conference Room 016

RE: HB2386 Relating to Workers' Compensation

Chair Taniguchi, Vice Chair Hee, and Members of the Committee:

Retail Merchants of Hawaii (RMH) is a not-for-profit trade organization representing about 200 members and over 2,000 storefronts, and is committed to support the retail industry and business in general in Hawaii. The retail industry is the one of the largest single employer in the state, employing 20% of the labor force.

RMH opposes HB2386, which requires an employer to pay temporary total disability benefits regardless of whether the employer controverts the right to benefits.

We do not dispute that an injured worker should receive quality and appropriate medical care as long as required. However, to compel an employer to continue TTD benefits essentially until the employee decides to return to work is unreasonable. This measure is an affront, both to an employer's rights and to his ability to control business costs.

The members of the Retail Merchants of Hawaii respectfully request that you hold HB2386. Thank you for your consideration and for the opportunity to comment on this measure.

A handwritten signature in cursive script, appearing to read 'Carol Prejile'.

President

RETAIL MERCHANTS OF HAWAII
1240 Ala Moana Boulevard, Suite 215
Honolulu, HI 96814
ph: 808-592-4200 / fax: 808-592-4202



Chair, Senator Brian T. Taniguchi
Vice- Chair, Senator Clayton Hee
Senate Committee on Judiciary & Labor
From: Society for Human Resource Management (SHRM) Hawaii
(808) 447-1840 or e-mail: shrmhawaii@hawaiibiz.rr.com
Testimony date: Monday, March 17, 2008 – 9 a.m. – CR: 016

Opposition to
HB 2386

SHRM Hawaii is local chapter of a National professional organization of Human Resource professionals. Our 1,000+ local memberships include those from small and large companies, in every industry Hawaii has – all tasked with meeting the needs of employees and employers in a balanced manner, while ensuring compliance with laws affecting the workplace. We (HR Professionals) are the people that implement the legislation you pass, on a day-to-day front line level.

SHRM Hawaii Opposes **HB 2386**, which would require 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.

As presently written this bill provides no disincentive for employees that wish to stay out of work longer than medically needed, as they will not be responsible for repaying any of the unnecessary TTD costs if the DLIR Director determines the employee needed no further treatment and should have returned to work.

This bill would create an incentive to stay out of work longer as there are no costs or other negative consequences for the employee.

The financial burden of unnecessary TTD would be borne by the insurance carriers and employers through higher premiums – which would mean less money available for wage increases and training programs for those employees that wish to work.

SHRM Hawaii respectfully urges the committee to HOLD HB 2386, until language is written that holds employees financially responsible for unnecessary TTD

Thank you for the opportunity to testify. SHRM Hawaii offers the assistance of its Legislative Committee members in discussing this matter further.

testimony

From: Joanna Amberger [joanna_amberger@hotmail.com]
Sent: Friday, March 14, 2008 11:01 PM
To: testimony
Subject: Please OPPOSE HB 2386 relating to Workers' Compensation

Chair Taniguchi:

My name is Joanna Amberger and I am the owner of 3 Financial Group LLC, a financial consulting firm. I respectfully request that you do not pass HB 2386 relating to Workers' Compensation.

This measure requires the employer to continue temporary total disability benefits regardless of whether the employer controverts the right to benefits.

Although I understand the intent of the bill, I believe this bill may serve as a disincentive to return to work, which will be counterproductive to its actual purpose.

This measure, if passed, may increase my workers' compensation premiums, and the overall cost of doing business

If you have any questions, please do not hesitate to contact me at 808-489-2813. Thank you for the opportunity to submit written testimony.

Sincerely, Joanna Amberger

Joanna Amberger
1440 Kapiolani Blvd Ste 1525
Honolulu, HI 96814

testimony

From: tj@hawaii-attorney.com
Sent: Friday, March 14, 2008 1:23 PM
To: testimony
Subject: Support for HB 2386 & for HB 2388

To: Honorable Senator Taniguchi, Chair
Honorable Members, Judiciary & Labor Comm.
To be heard 3/17/2008

Dear Senator Taniguchi:

I support the passage of HB 2386 (requiring employer to pay TTD wage loss benefits regardless of whether employer/carrier controverts compensability, and, the ability of the injured worker to return to work is to be determined by the treating physician).

I also support the passage of HB 2388 (requiring employer to continue medical services despite treatment dispute until a DCD hearing decision).

I support both of these bills because as an injured workers/claimants' attorney for 22 years, I have seen many times where the injured worker is denied benefits up front "pending investigation". I represent injured workers currently who have had their benefits denied "pending investigation". Some employers/carriers like HEMIC seem to do this as policy. The denial of benefits to Hawaii's injured workers causes incredible hardship to the workers and their families because the worker cannot get the medical treatment he/she needs and the wage loss income they need to survive, get treated, get rehabilitated, and return to work.

It would seem that the treating physician is the best person to decide when an injured worker can go back to work and not in insurance financed doctor. Injured workers need uninterrupted medical care so that they can get rehabilitated as quickly as possible and return to the workplace as productive workers.

Please pass these bills. I am happy to answer your questions.

T.J. Lane
Claimants attorney
526-4000

T.J. Lane
Law Offices of T.J. Lane
745 Fort Street, 19th Floor
Topa Financial Center
Honolulu, HI 96813
tj@hawaii-attorney.com

tel. 808-526-4000
fax 808-777-1391

testimony

From: Douglas Thomas Moore [Moore4640@hawaiiintel.net]
Sent: Friday, March 14, 2008 10:32 AM
To: testimony
Subject: Support for HB 2386 & for HB 2388

To: Honorable Senator Taniguchi, Chair
Honorable Members, Judiciary & Labor Comm.
To be heard 3/17/2008

Aloha:

I support the passage of HB 2386 (requiring employer to pay TTD wage loss benefits regardless of whether employer/carrier controverts compensability, and, the ability of the injured worker to return to work is to be determined by the treating physician).

I support the passge of HB 2388 (requiring employer to continue medical services despite treatment dispute until a DCD hearing decision).

I support both of these bills because as an injured workers/claimants' attorney, I have seen many times where the injured worker is denied benefits up front "pending investigation". I have cases like this right now. Some employers/carriers seem to do this as policy. The denial of benefits to the injured workers causes incredible hardship because they cannot get the medical treatment they need and the wage loss income they need to survive, get treated, get rehabilitated, and return to work. Further, the treating physician is the best person to decide when an injured worker can go back to work and not in insurance appointed IME doctor.

Injured workers need uninterrupted medical care so that they can get rehabilitated as quickly as possible and return to the workplace as productive workers.

Please pass these bills. I am happy to answer your questions. Mahalo.

Douglas Thomas Moore
Claimants' attorney
526-0056

testimony

From: Katherine Nelson [kdn@hastingsandpleadwell.com]
Sent: Friday, March 14, 2008 2:42 PM
To: testimony
Subject: HB 2386 Testimony

For submission to the Committee on Finance

The Hearing time and date on HB 2386 entitled "A Bill for An Act Relating to Workers' Compensation" is:

DATE: Monday, March 17, 2008

TIME: 9:00 a.m.

PLACE: Conference Room 016 - State Capitol

Honorable Marcus R. Oshiro and Marilyn B. Lee and Fellow Finance Committee Members,

House Bill No. 2386 is an excellent bill that will provide protection to the workforce so vital to the economy of Hawaii. While it is very important to give due consideration to employers, there is ample room presently in the Workers' Compensation System for mischief and abuse toward a bona-fide injured employee who sustains injury at work.

I can attest to this fact because I experienced the abuse of which I am speaking. In 2006 I was working for an employment agency and had been for over a year. I had been a valuable and dependable employee. I was sent on an assignment by this employer without sufficient explanation of the nature of the job. I am a middle age worker who had been performing clerical work for the agency. The job I was sent to do was a data entry job that demanded constant non-stop typing while sitting for eight hours with 3 mandated breaks during the day.

I was unused to such strenuous physical work and within two days I developed sharp pain in my neck and stiffness and pain in my right hand. I informed my employer the second day of my condition but was told to stay on the job until they could replace me. The following day I called my employer and they had no replacement yet and told me to stay again. The implication was that if I left they would not help me with further assignments. But my hand was nearly useless by then and I could not turn my head left or right so I had to leave the end of the third day. I informed my employer and the company I was on assignment to before I left.

Not only did the employer not inform me of my workers' compensation rights, they denied my claim, despite having the documentation of my calls to them and despite a doctor the employer sent me to see at Kaiser affirming that my injury was job related and ordering me to get physical therapy. The therapy was stopped when the workers' compensation insurer intervened and said the case was contested. I was denied workers compensation payments and nearly lost my apartment where I would have become a homeless person, except that I was rescued by Catholic Charities and assisted with rent. I lost at least \$3,000 in income over this and obviously was bitter that such a thing could happen.

Therefore I state that HB 2386 is absolutely essential as a protection to hard working citizens who

3/14/2008

should be protected from corruption on the job.

Thank you for hearing my opinion.

Sincerely,
Katherine Nelson
95-353 Kuahelani Avenue, D1
Mililani, HI 96789

testimony

From: Sharon Ohata [sohata@islandinsurance.com]
Sent: Friday, March 14, 2008 8:45 AM
To: testimony
Subject: HB 2386 and HB2388 H.D.1 Committee: Committee on Judiciary and Labor Hearing Date: March 17, 2008 at 9:00 AM

Good morning.

I would like to submit my objections to both of these bills as I believe it will have a negative impact on employers.

HB 2386:

- Employer's will not be able to recoup any overpaid amounts if there is no further indemnity benefits to be paid or if the claim is denied.
- Employer will not be able to terminate benefits based on multiple independent medical evaluator's opinions that are contrary to the treating physician.
- Will result in increased cost of claims due to the higher compensation rate from 66 2/3% to 70%.

HB 2388 HD1:

- There are already statutory provisions in place where pre-paid health should pay in the event the workers' comp claim is being controverted. Therefore, if the prepaid health provider stepped up to the plate, there would be no interrupted medical care.
- Insurance adjuster's will become "collectors" for medical treatments that are found to be unrelated or unwarranted in the claim.
- If the injured employee has no medical plan, the employers will be liable to eat the cost.
- The reimbursement rate differs among medical plans and workers' comp adjusters will have to expand their knowledge on prepaid health coverage.
- Since the reimbursement rate differs, it is unlikely the employer will be able to recoup 100%.

Thank you very much.

Sharon K. Ohata

 The information in this email is confidential and may be legally privileged. It is intended solely for the addressee. If you have received this communication in error, please contact the sender immediately, return the original message to the sender, and delete the material from your computer. Thank you.



LATE

**STATE OF HAWAII
DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS**

830 PUNCHBOWL STREET, ROOM 321
HONOLULU, HAWAII 96813
www.hawaii.gov/labor
Phone: (808) 586-8842 / Fax: (808) 586-9099
Email: dliir.director@hawaii.gov

March 15, 2008

To: The Honorable Brian Taniguchi, Chair
and Members of the Senate Committee on Judiciary and Labor

Date: March 17, 2008

Time: 9:00 a.m.

Place: Conference Room 016 State Capitol

From: Darwin L.D. Ching, Director
Department of Labor and Industrial Relations

**Testimony in Opposition
to
H.B. 2386 – Relating to Workers’ Compensation**

I. OVERVIEW OF CURRENT PROPOSED LEGISLATION

House Bill 2386 proposes to amend section 386-31(b), Hawaii Revised Statutes (“HRS”), relating to temporary total disability (“TTD”) by requiring the employer to pay initial TTD benefits even if the employer believes the employee’s claim is not work related.

This proposal also allows termination of TTD benefits upon order of the Director or if the employee’s treating physician determines that the employee is able to resume work and the employer has made a bona fide offer of suitable work within the employee’s medical restrictions. The employer may request a credit for the amount of TTD benefits paid after the date in which the Director determines that benefits should have been terminated.

This proposal also adds a new subsection (c) to section 386-31, HRS, to allow employees to receive a weekly benefit equal to seventy per cent (70%) of the employee’s average weekly wages if the injury causes permanent or temporary disability and payment of compensation was not begun within thirty days of or within the same year as the day of injury, whichever is later.

II. CURRENT LAW

Currently section 386-31(b), HRS, mandates the employer to pay temporary total disability benefits promptly as they accrue without waiting for a decision from the

Director, unless the employer controverts the claim. The employer must make payment no later than the tenth day after they have been notified of the occurrence of total disability. The employer may be penalized for late payment of benefits.

Section 386-31(b), HRS, also specifies that only by order of the director or if the employee can resume work, can an employee's TTD benefits be terminated. If the employer is of the opinion that TTD benefits should be terminated because the employee is able to return to work, the employer must notify the employee and the director of their intent to terminate benefits, at least two weeks prior to the date when the last payment was made. The employer's notice must also inform the employee the reason for the termination and that the employee may request the director hold a hearing to address the termination of benefits if they do not agree.

III. HOUSE BILL

The Department of Labor and Industrial Relations ("Department") appreciates the issue that this bill seeks to resolve through ensuring that claimants that are entitled to TTD benefits are not economically harmed during their inability to work. However, the Department opposes the bill due to the effect this measure would have on employers in those cases where a claimant would continue receiving benefits when they are not entitled to them. Specifically, the Department has the following concerns and comments:

1. This bill would result in payment of TTD benefits to employees for claims determined not to be work related.

It would be almost entirely impossible for employers to collect TTD payments that were found to be disallowed. While this bill does allow for the director to provide a "credit" to the employer, it would only apply to those claims in which a permanent partial disability ("PPD") benefit was to be awarded. In those cases where there is no PPD award, or the PPD award is smaller than the amount of TTD benefits that the claimant was not entitled to, then the employer would be required to absorb that loss.

2. Currently, this section of law does not allow for an employer to request a hearing before the director to terminate TTD benefits. Section 386-31, HRS, allows **only employees** to file a request for hearing to determine if TTD benefits should have been terminated. This language, as currently written, would mean that employers would not have an avenue to terminate benefits, as they would need the claimant to file the request for hearing to terminate the benefits they are receiving.

3. The employer is already mandated to make the first payment of benefits no later than on the tenth day after the employer has been notified of the total disability, and further benefits should be paid weekly unless the employer controverts the claim for benefits. Pursuant to section 386-92, HRS, failure to pay benefits in a timely manner or if TTD benefits are terminated in violation of section 386-31, HRS, a twenty percent (20%) penalty may be added to the unpaid benefits due.

The new subsection (c) of this bill would allow injured workers to receive higher weekly benefits (70% vs. 66 and 2/3%) or maximum weekly benefit rates for temporary total disability benefits if the initial payment of benefits are not made within thirty days of or within the same year as the date of injury, whichever is later. This proposal does not specify which rate (70% or maximum) will be applicable but it may allow the injured worker to receive compensation at a weekly benefit rate that may exceed the injured worker's actual weekly salary. This would provide injured workers with a tremendous incentive not to return to work, increasing TTD costs and workers' compensation insurance premiums.

In addition, subsection 386-31(c)(2), HRS, states that the increase in weekly benefit amounts may be applicable if payment of compensation is not begun within thirty days OR within the same year as the date of injury, whichever is later. If an injury is in January, the employer may not be required to make their initial TTD payment until December of the same year.

4. This proposal will increase the cost of doing business in Hawaii at a time when it may not be prudent to do so. The Department estimates that this proposal would add \$21 million in payouts from employer premiums and \$3 million increase for self insured employers.
5. This proposal is identical to two prior measures vetoed by the Governor in 2006 and 2007. Those same objections that the Governor had for vetoing those bills still exist in this proposal. Given this prior history, the Department recommends that the committee hold this bill and instead allow the Department to form a task force and to make recommendations on possible solutions to the 2009 legislature to address the concerns of this bill.

LATE

ASSOCIATED BUILDERS AND CONTRACTORS OF HAWAII

Committee on Judiciary and Labor

March 17, 2008

9:00 a.m.

Conference Room 016

Testimony in Opposition to HB 2386 Relating to Workers Compensation

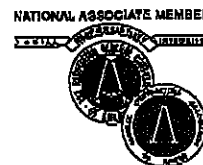
Chair Taniguchi and Members of the Committee on Judiciary and Labor:

I am Karl Borgstrom, president of the Associated Builders and Contractors, representing merit shop contractors throughout the State of Hawaii.

This bill would require an employer to pay temporary total disability benefits regardless of whether the employer controverts the right to benefits. The bill also specifies that the employee's ability to return to work is to be decided by the employee's treating physician.

The provisions of HB 2386 would erode employers' rights and their ability to control their costs. If passed, this bill would increase the cost of workers compensation by providing another incentive for workers not to return to work because they could determine (with their treating physician) when they choose to return to work. To force employers to continue TTD benefits for a period of time to be determined essentially by the employee is unreasonable.

For these reasons, ABC Hawaii strongly opposes this bill.

LATE**KING & NEEL, INC.**1164 Bishop Street • Suite 1710 • Honolulu, Hawaii 96813
Telephone: (808) 521-8311
Fax: (808) 526-3893

March 17, 2008

TO: THE HONORABLE SENATOR BRIAN T. TANIGUCHI, CHAIR AND MEMBERS
OF THE COMMITTEE ON JUDICIARY AND LABOR

SUBJECT: H.B. 2386 RELATING TO WORKERS COMPENSATION

NOTICE OF HEARING AND DECISION MAKING

DATE: Monday, March 17, 2008
TIME: 9:00a.m.
PLACE: Conferenc Room 016

Dear Chair Taniguchi and Members of the Committee on Finance:

The General Contractors Association (GCA), an organization comprised of over five hundred and forty (540) general contractors, subcontractors, and construction related firms, **strongly opposes** the passage of H.B. 2386, Relating to Workers Compensation.

The bill would require an employer to pay temporary total disability benefits regardless of whether the employer controverts the right to benefits. The bill also specifies that the employee's ability to return to work is to be decided by the employee's treating physician.

The provisions of HB 2386 would erode employers' rights and their ability to control their costs. If passed, this bill would increase the cost of workers compensation by providing another incentive for workers not to return to work because they could determine (with their treating physician) when they choose to return to work. To force employers to continue TTD benefits for a period of time to be determined essentially by the employee is unreasonable.

For these reasons, the GCA **strong opposes** this bill.

Thank you for considering our concerns on the above bill.

Sincerely,

John N. Bustard
Executive Vice President



Hawaii State Chiropractic Association

P.O. Box 22668 Honolulu, HI 96823-2668

ph: (808) 926-8883 fx: (808) 926-8884

March 15, 2008

THE SENATE
COMMITTEE ON JUDICIARY AND LABOR

For Hearing on
Date: Monday, March 17
Time: 9:00 am
Place: Conference Room 016

Dear Chair Taniguchi, Vice Chair Hee, and members of the committee:

My name is Gary Saito. I am the President and Executive Director of the Hawaii State Chiropractic Association. Our organization **supports the intent of HB 2386.**

Time and time again, injured workers are denied their workers' compensation benefits because of denials of TTD benefits by the employer and insurance carrier. Insurance carriers often do not give a valid medical reason for denying benefits, nor do they have a valid medical reason to question the worker's claim of injury.

What happens when injured workers are denied benefits?

1. Weeks and months go by without reasonable and appropriate medical care and TTD benefits.
2. Without TTD benefits because of employer denials, workers face unreasonable financial hardship and sacrifice. They are unable to meet mortgage payments, food bills, family expenses, etc.
3. Even though they request a DCD hearing to determine compensability, they do not get hearings scheduled in a timely manner (usually 6 months to a year). Even though the DCD professes that hearings are scheduled within 80 days, I have yet to see it happen.
4. Many legitimately injured employees suffer financial ruin because of a lack of caring by the employer/carrier and a lack of responsiveness to their dilemma from the DCD. Most employees do not have 6-8 months worth of savings to fall back on. Without TTD relief, their financial hardship begins the day they are injured.

For years, carriers have denied benefits "pending investigation". They do not have to say:

1. what is being investigated
2. how the investigation is being conducted
3. when it will be concluded
4. or what the basis of the investigation is.

The system right now fails miserably to protect the injured worker's right to reasonable and appropriate TTD benefits. Denials and delays often have nothing to do with the employee's injury. It has everything to do with denying benefits as a way to limit expenses and liability and to boost profits.

Every employer in the state should insist that their premium dollars go toward the treatment of their injured workers. Unfortunately, many employers subscribe to and encourage the existing pattern of denying their employees their rights under current workers' compensation law.

We ask for legislators to uphold the statutes by requiring the proper treatment of injured workers. This bill is one attempt to protect and preserve injured workers' rights to benefits.

We urge your support of HB 2386. Thank you for your consideration of our position on this issue.

Sincerely,

A handwritten signature in black ink, appearing to read "Gary Saito". The signature is fluid and cursive, with a large loop at the beginning and a long tail extending to the right.

Gary Saito, DC

testimony

From: Leona Christensen, SPHR [lchristensen@johnmullen.com]
Sent: Monday, March 17, 2008 9:39 AM
To: testimony
Subject: Please OPPOSE HB 2386 relating to Workers' Compensation

Chair Taniguchi:

My name is Leona Christensen, SPHR and I am with John Mullen & Co., independent insurance claims adjusters who handle a large number of Workers Compensation claims for many insurance carriers in Hawaii as well as local self-insured companies in Hawaii. I respectfully request that you do not pass HB 2386 relating to Workers' Compensation.

Sincerely,

Leona Christensen, SPHR
677 Ala Moana Blvd Ste 910
Honolulu, HI 96813

LATE

TESTIMONY
OF
RAFAELA W. L. LEWIS
89-346-B KAUWAHI AVENUE
WAIANAE, HAWAII 96792
Nahenahe@hawaiiantel.net
(808)668-6462

Senate Judiciary and Labor Committee
Monday, March 17, at 09:00 a.m., Room 016

Description:

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

To: Senate Judiciary and Labor Committee
Date: March 16, 2008
Re: HB 2386 Workers Compensation; Temporary Total Disability

Dear Honorable Chair and Distinguished Committee Members:

My name is Rafaela Lewis, I am a State of Hawaii Employee, I am a patient of Dr. Scott McCaffrey at Work Star. My injury was in 2002, I have constantly been waiting for Medical Care, Services, Supplies, treatment's to be carried out by Dr. McCafrey along with other specialty Doctors. I've agreed to performed all the Independent Medical Examination as ordered and volunteered on four separate occasions. And as a result I have been denied the above services on behalf of the State of Hawaii, Department of Human Resources Development, State Workers Compensation Division. And what happens to me I wait, and wait, and wait, and till today I am still waiting.

After many attempts of going to work I was taken off of work. I was sent a letter by the Insurance company that I would not be getting paid for my injury, no order, no directive was given to report back to work as I have in the past, once a light duty was found. The letter form the insurance indicated that they would be stopping my pay in two weeks based on an IME, not based on what my doctor's work slip or his recommendation was and is. I wasn't t paid for several month's and it took almost three year's to get that pay back. An order by the Director was given in 2005, but not met, than in 2007 another order was given by the Director, than met. This has caused a hardship on my entire family, along with financial obligation's that are not being able to be met.

I was doing my job when I got hurt. The office that I worked for serviced the entire West Coast with approximately 16,000 mix cases, client's walk in, phones ringing, paper work to be done, support staff call in, etc. Has anyone taken this into consideration, has anyone improved the Lewis, Rafaela W. L.

Senate Judiciary and Labor Committee
Monday, March 17, at 09:00 a.m., Room 016
HB2386 TESTIMONY

work environment? Go and check. But for this I continue to suffer in pain, wait, appeal, win, and still nothing is done, the problem isn't solved. I am a dedicated employee who was doing her job at the time of injury, why are they looking for way's of getting out of the ORDER that was given.

For your information in the past I have won my hearing's and the Director from the State of Hawaii Department of Labor and Industrial Relations, Disability Compensation Division, 830 Punchbowl Street, Room 209, Honolulu, Hawaii 96813, December 02, 2005 and August 13, 2007, has ordered: 1.) Medical care, services and supplies___ as the nature of the ___ injuries may require, etc. 2.) said employer shall pay to claimant weekly compensation ___ for temporary total disability for the ___ beginning __through__ for a total of __. Additional temporary total disability, if any, shall be paid upon receipt of medical certification. 3.) The matters of permanent disability and/or disfigurement, if any, shall be determined at a late date for the _____, and injuries. 4.) Pursuant to Section 386-93(a), HRS, said employer is assessed attorney's fees and costs, subject to the approval of the Director under the _____injuries. 5.) Pursuant to 12-15-32, D. Scott McCaffrey, M. D., shall submit appropriate treatment plans for continued medical care under the ___injuries. BY ORDER OF THE DIRECTOR.

What does this mean if the employer doesn't follow the order. Is it fair to me as the employee who has been back to work and has been trying to get back to work, but Medical Care, Services, Supplies, and Weekly Compensation has been denied or ignored. The constant waiting of the approval is un ethical and is Bad Faith to myself and other's like me.

Please submit this testimony for Monday, March 17, 2008, at 9:00 a.m., at Room 016, on behalf of myself Rafaela W. L. Lewis, State of Hawaii Employee.

Mahalo,

Rafaela W. L. Lewis
March 16, 2008