



To: The House Committee on Labor & Public Employment Hearing
LABtestimony@Capitol.hawaii.gov

From: Audrey Hidano

Date: February 4, 2008

Subject: HB 2386 Relating to Workers' Compensation
Hearing: Tuesday, February 5, 2008 at 8:30 a.m., Room 309

Honorable Alex Sonson, Chair and Committee Members
State Capitol Room 309
Honolulu, Hawaii 96813

LATE TESTIMONY

Dear Chair Sonson and Members of the Committee

I am Audrey Hidano, Hidano Construction, Inc. testifying in strong OPPOSITION to HB 2386 which would require employers to pay temporary total disability benefits regardless of whether the employer controverts the right to benefits. This bill also specifies the employee's ability to return to work by the employee's treating physician. This is a complete erosion of employer's rights and our costs would increase. This proposed measure would give NO incentive for workers to return to work in a timely manner.

Thank you for the opportunity to testify in OPPOSITION to this bill.

Audrey Hidano



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

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LATE TESTIMONY

February 4, 2008

To: The Honorable Alex Sonson, Chair
and Members of the House Committee on Labor and Public Employment

Date: February 5, 2008
Time: 8:30 a.m.
Place: Conference Room 309, State Capitol

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

**Testimony in Opposition
To
RE: 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 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") understands the intent and purpose of this bill is to provide injured employees with immediate benefits for their industrial injury, but opposes this bill for the following reasons:

1. This proposal requires the employer to pay TTD benefits regardless of whether the employer denies a claim. These TTD benefits could not be terminated until the director issues an order or 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. This may result in payment of TTD benefits to employees for claims determined not to be work related. Employers would have difficulty collecting the overpayment of TTD benefits from the claimant. In addition, if the claim is found to be compensable but there are limited TTD benefits and no permanent partial disability ("PPD") benefits, employer will similarly have difficulty collecting TTD overpayments from the claimant.
2. The Department recommends that this bill be amended to allow the employer to file a request for hearing with the Department to terminate TTD benefits if they believe the employee is able to return to work. Currently, under this same section only employees are allowed to file a request for hearing to determine if TTD benefits should have been terminated. If an employer believes that TTD benefits should be terminated, based upon their independent medical examination, they should be allowed to request a hearing to terminate TTD benefits.

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.



**The Chamber of
Commerce of Hawaii**
Since 1850

LATE TESTIMONY

**Testimony to the House Committee on Labor and Public Employment
Tuesday, February 5, 2008; 8:30 a.m.
Conference Room 309**

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

Chair Sonson, Vice Chair Nakasone, 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"). I am here to state The Chamber's opposition to 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. 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 recognizes that an employee should seek medical treatment when necessary and supports his or her genuine effort in taking the proper steps to improve his or her health; however, it also believes that an employee should return to work if he or she is diagnosed as physically and mentally capable to do so.

Thus, The Chamber has concerns with the language that limits the termination of benefits only if the employee's own treating physician says he can 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 provide authorization that the employee can 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.

This bill may create a disincentive for the injured employee to return to work because he or she will not get penalized for refusing to return to work especially as the measure increases the weekly benefit amount to 70% of the injured employee's average weekly wages. The work that was supposed to be performed by the absent employee goes undone and colleagues are forced to shoulder this additional responsibility. Therefore, the negative consequences of this measure on businesses, especially small

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businesses which operate on limited resources, could lead to a rise in the cost of doing business, an unstable work environment, and potential litigation, which will ultimately impact employees.

Finally, there is no actual loss of care since any employee who wants to continue treatment after an employer terminates TTD coverage due to 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.

Thus, The Chamber respectfully requests this measure be held.

Thank you for the opportunity to testify.