

STAND. COM. REP. NO. 1207

Honolulu, Hawaii

March 25, 2009

RE: S.B. No. 63
S.D. 2
H.D. 1

Honorable Calvin K.Y. Say
Speaker, House of Representatives
Twenty-Fifth State Legislature
Regular Session of 2009
State of Hawaii

Sir:

Your Committee on Labor & Public Employment, to which was referred S.B. No. 63, S.D. 2, entitled:

"A BILL FOR AN ACT RELATING TO WORKERS' COMPENSATION,"

begs leave to report as follows:

The purpose of this bill is to protect the financial welfare of injured workers, while protecting employers from fraud, by:

- (1) Ensuring that injured employees receive temporary total disability (TTD) benefits regardless of whether the employer denies the employee's claim;
- (2) Requiring the Director of the Department of Labor and Industrial Relations (DLIR) to issue an order before TTD benefits can be terminated;
- (3) Stipulating that the Director of DLIR (Director) can only issue the order if:
 - (A) The employee's treating physician determines the employee is able to resume work;
 - (B) The employer has made a bona fide offer of suitable work within the employee's medical restrictions; and



- (C) The Director has reviewed the case file and position papers submitted by the employee and employer;
- (4) Requiring employees and employers to submit position papers to the Director that will assist the Director in determining whether TTD benefits should have been discontinued;
- (5) Providing a reimbursement mechanism for employers in cases where the Director finds TTD benefits should have been discontinued and overpayments were made;
- (6) Increasing the amount of TTD benefits that are payable to an employee in cases where an employer delays TTD benefit payments; and
- (7) Requiring the Director to convene a working group to address and resolve any concerns raised through the enactment of these policies and procedures.

The ILWU Local 142, Hawaii Chapter-American Physical Therapy Association, and United Public Workers, Local 646, testified in support of this bill. The Hawaii Medical Association and Hawaii State Chiropractic Association supported the intent of this measure. The Department of Human Resources Development, DLIR, Department of Human Resources of the City and County of Honolulu, Department of Human Resources of the County of Hawaii, Hawaii Insurers Council, National Federation of Independent Businesses in Hawaii, Property Casualty Insurers Association of America, The Chamber of Commerce of Hawaii, Building Industry Association of Hawaii, American Insurance Association, Hawaiian Airlines, Maui Chamber of Commerce, Retail Merchants of Hawaii, General Contractors Association of Hawaii, Hawaii Developers' Council, Society for Human Resource Management Hawaii, Maui Economic Opportunity, Inc., Bay Realty, Inc., Integrated Broadband Network Solutions, Maui Family YMCA, The Hawaii Automobile Dealers Association, Meadow Gold Dairies, Hawaii, United Airlines, Akimeka, LLC, Halekulani Hotels & Resorts, Aston Shores at Waikoloa, Mokulua Contracting, LLC, Doubletree Alana Hotel-Waikiki, Hawaii USA Federal Credit Union, New Penny Cleaning Service LLC, Pacific Transfer LLC, R.M. Towill Corporation, Pacific LightNet, Pilot Freight Services, Consumer Services Analysis, Inc., and numerous concerned individuals testified in opposition to this bill.



The workers' compensation law was established as a "no-fault" law designed to be a "win-win" situation for all the parties involved -- with a worker giving up the right to file suit against an employer in exchange for receipt of proper medical treatment and disability benefits. However, on occasion this system has proven to be more adversarial in nature than was envisioned.

At times, TTD benefits have been denied or terminated even though a claimant is deserving of those benefits. This often results in a worker, and more often the worker's family, facing serious financial hardship. Moreover, the denial of, or delays in, the payment of TTD benefits may also have a negative impact on cost-effective medical treatments of the injured employee, further delaying the employee's recovery.

However, your Committee recognizes that there may be situations in which an employee receives TTD benefits to which the employee was not entitled. Although this measure allows the Director to render such decisions and further allows an employer to apply for a credit against future benefit payments, your Committee finds that it is more appropriate for the employee to reimburse the employer for this overpayment. Accordingly, your Committee has amended this bill by allowing the employer to request the Director to direct an employee to reimburse the employer for the amount of TTD benefits paid by an employer after the date on which TTD benefits should have been discontinued.

This measure was also amended by:

- (1) Changing its effective date to July 1, 2010; and
- (2) Making technical, nonsubstantive amendments for clarity, consistency, and style.

As affirmed by the record of votes of the members of your Committee on Labor & Public Employment that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 63, S.D. 2, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 63, S.D. 2, H.D. 1, and be referred to the Committee on Finance.



Respectfully submitted on
behalf of the members of the
Committee on Labor & Public
Employment,



KARL RHOADS, Chair



