

JAN 23 2009

A BILL FOR AN ACT

RELATING TO WORKERS' COMPENSATION LAW.

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

1 SECTION 1. Section 386-31, Hawaii Revised Statutes, is
2 amended by amending subsection (b) to read as follows:

3 "(b) Temporary total disability. Where a work injury
4 causes total disability not determined to be permanent in
5 character, the employer, for the duration of the disability, but
6 not including the first three calendar days thereof, shall pay
7 the injured employee a weekly benefit at the rate of sixty-six
8 and two-thirds per cent of the employee's average weekly wages,
9 subject to the limitations on weekly benefit rates prescribed in
10 subsection (a), or if the employee's average weekly wages are
11 less than the minimum weekly benefit rate prescribed in
12 subsection (a), at the rate of one hundred per cent of the
13 employee's average weekly wages.

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



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

10 The payment of these benefits shall only be terminated upon
11 order of the director or if the employee is able to resume work.
12 When the employer is of the opinion that temporary total
13 disability benefits should be terminated because the injured
14 employee is able to resume work, the employer shall notify the
15 employee and the director in writing of an intent to terminate
16 the benefits at least two weeks prior to the date when the last
17 payment is to be made. The notice shall give the reason for
18 stopping payment and shall inform the employee that the employee
19 may make a written request to the director for a hearing if the
20 employee disagrees with the employer. Upon receipt of the
21 request from the employee, the director shall conduct a hearing
22 as expeditiously as possible and render a prompt decision as



1 specified in section 386-86. If the employee is unable to
2 perform light work, if offered, temporary total disability
3 benefits shall not be discontinued based solely on the inability
4 to perform or continue to perform light work.

5 No employer shall suspend, deny, or discontinue benefits to
6 an injured employee without an order from the director. The
7 order shall be issued only after a full and fair hearing at
8 which the injured employee shall be provided the opportunity to
9 review the employer's evidence and present rebuttal.

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

15 (1) If the director determines, based upon a review of
16 medical records and reports and other relevant
17 documentary evidence, that an injured employee's
18 medical condition may be stabilized and the employee
19 is unable to return to the employee's regular job, the
20 director shall issue a preliminary decision regarding
21 the claimant's entitlement and limitation to benefits
22 and rights under Hawaii's workers' compensation laws.



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

17 A preliminary decision of the director shall
18 inform the injured employee and the employer of the
19 following responsibilities, benefits, and limitations
20 on vocational rehabilitation benefits that are
21 designed to facilitate the injured employee's early
22 return to suitable gainful employment:



- 1 (A) That the injured employee may invoke the
2 employee's rights under section 378-2, 378-32, or
3 386-142, or all of them, in the event of unlawful
4 discrimination or other unlawful employment
5 practice by the employer; and
- 6 (B) That after termination of temporary total
7 disability benefits, an injured employee who
8 resumes work may be entitled to permanent partial
9 disability benefits, which if awarded, shall be
10 paid regardless of the earnings or employment
11 status of the disabled employee at the time.
- 12 (2) If the rehabilitation unit determines that an injured
13 employee is not a feasible candidate for
14 rehabilitation and that the employee is unable to
15 resume the employee's regular job, it shall promptly
16 certify the same to the director. Soon thereafter,
17 the director shall conduct a hearing to determine
18 whether the injured employee remains temporarily
19 totally disabled, or whether the employee is
20 permanently partially disabled, or permanently totally
21 disabled."



1 SECTION 2. New statutory material is underscored.

2 SECTION 3. This Act shall take effect upon its approval.

3

INTRODUCED BY: *Shiranne Chun Auckland*



Report Title:

Workers' Compensation; Total Temporary Disability Benefits

Description:

Amends workers' compensation law, including limiting an employer's ability to terminate benefits, authorizes the recovery of attorney's fees and costs by the injured employee.

