
A BILL FOR AN ACT

RELATING TO WORKERS' COMPENSATION.

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

1 PART I

2 SECTION 1. Chapter 386, Hawaii Revised Statutes, is
3 amended by adding a new section to be appropriately designated
4 and to read as follows:

5 **"§386- Medical examinations; selection of physicians.**

6 (a) After an injury and after a claim is filed by the injured
7 employee, the employer, upon mutual agreement of the parties,
8 may appoint a qualified physician, paid by the employer, to
9 conduct an independent medical examination or a permanent
10 impairment rating examination of the injured employee, and make
11 a report to the employer. The employee or the employee's
12 representative shall be promptly provided with a copy of the
13 report of the independent medical examination or permanent
14 impairment rating examination.

15 The director shall keep and maintain a list of qualified
16 physicians and their respective qualifications. If the employer
17 and the employee cannot agree on a physician to perform the



1 independent medical examination or permanent impairment rating
2 examination, the employer or employee may request in writing
3 that the physician be appointed by the director. Within seven
4 calendar days of the receipt of request, the director shall
5 appoint from the director's list of qualified physicians, a
6 physician licensed in a relevant medical specialty, licensed to
7 practice in Hawaii, and willing to undertake the examination.

8 Any physician mutually selected by the employer and
9 employee or appointed by the director shall examine the employee
10 within forty-five calendar days of selection or appointment.

11 In no event shall an independent medical examination and a
12 permanent impairment rating examination be combined into a
13 single medical examination unless the injured employee consents
14 in writing prior to the scheduling of the examinations.

15 In no event shall the director, appellate board, or court
16 order more than one employer-requested independent medical
17 examination and one permanent impairment rating examination per
18 case, unless valid reasons exist with regard to the medical
19 progress of the employee's treatment.

20 If an employee unreasonably refuses to submit to, or in any
21 way unreasonably obstructs an examination, the employee's right
22 to claim compensation for the work injury shall be suspended



1 until the unreasonable refusal or obstruction ceases, and no
2 compensation shall be payable for the period during which the
3 refusal or obstruction continues. The cost of conducting the
4 ordered independent medical examination shall be limited to the
5 complex consultation charges governed by the medical fee
6 schedule established pursuant to section 386-21(c).

7 Every physician selected to perform independent medical
8 examinations or permanent impairment rating examinations, as
9 provided in this subsection, shall be currently licensed in
10 Hawaii; provided that for claimants who do not reside in Hawaii,
11 any physician performing an independent medical examination or
12 permanent impairment rating examination shall have been licensed
13 in the state where the claimant resides for a period of five
14 consecutive years immediately preceding the examination.

15 (b) When an injured employee has attained medical
16 stability as determined by the injured employee's attending
17 physician, the employer may appoint a physician, paid by the
18 employer and selected by agreement of the parties or by
19 appointment by the director as provided in subsection (a), who
20 shall conduct a permanent impairment rating examination of the
21 injured employee pursuant to subsection (a).



1 For the purposes of this subsection, "medical stability"
 2 means that the injured employee's medical condition is well
 3 stabilized so that no further improvement in the injured
 4 employee's work injury can be expected from further medical
 5 treatment and continued medical care will only prevent
 6 deterioration of the condition."

7 SECTION 2. Section 386-79, Hawaii Revised Statutes, is
 8 repealed.

9 [~~§386-79 Medical examination by employer's physician.~~
 10 ~~After an injury and during the period of disability, the~~
 11 ~~employee, whenever ordered by the director of labor and~~
 12 ~~industrial relations, shall submit to examination, at reasonable~~
 13 ~~times and places, by a duly qualified physician or surgeon~~
 14 ~~designated and paid by the employer. The employee shall have~~
 15 ~~the right to have a physician or surgeon designated and paid by~~
 16 ~~the employee present at the examination, which right, however,~~
 17 ~~shall not be construed to deny to the employer's physician the~~
 18 ~~right to visit the injured employee at all reasonable times and~~
 19 ~~under all reasonable conditions during total disability.~~

20 ~~If an employee refuses to submit to, or in any way~~
 21 ~~obstructs such examination, the employee's right to claim~~
 22 ~~compensation for the work injury shall be suspended until the~~



1 ~~refusal or obstruction ceases and no compensation shall be~~
2 ~~payable for the period during which the refusal or obstruction~~
3 ~~continues.~~

4 ~~In cases where the employer is dissatisfied with the~~
5 ~~progress of the case or where major and elective surgery, or~~
6 ~~either, is contemplated, the employer may appoint a physician or~~
7 ~~surgeon of the employer's choice who shall examine the injured~~
8 ~~employee and make a report to the employer. If the employer~~
9 ~~remains dissatisfied, this report may be forwarded to the~~
10 ~~director.~~

11 ~~Employer requested examinations under this section shall~~
12 ~~not exceed more than one per case unless good and valid reasons~~
13 ~~exist with regard to the medical progress of the employee's~~
14 ~~treatment. The cost of conducting the ordered medical~~
15 ~~examination shall be limited to the complex consultation charges~~
16 ~~governed by the medical fee schedule established pursuant to~~
17 ~~section 386-21(e)."]~~

18 PART II

19 SECTION 2. Section 386-1, Hawaii Revised Statutes, is
20 amended by amending the definition of "employment" to read as
21 follows:



1 "Employment" means any service performed by an individual
2 for another person under any contract of hire or apprenticeship,
3 express or implied, oral or written, whether lawfully or
4 unlawfully entered into. It includes service of public
5 officials, whether elected or under any appointment or contract
6 of hire, express or implied.

7 "Employment" does not include:

- 8 (1) Service for a religious, charitable, educational, or
9 nonprofit organization if performed in a voluntary or
10 unpaid capacity;
- 11 (2) Service for a religious, charitable, educational, or
12 nonprofit organization if performed by a recipient of
13 aid therefrom and the service is incidental to or in
14 return for the aid received;
- 15 (3) Service for a school, college, university, college
16 club, fraternity, or sorority if performed by a
17 student who is enrolled and regularly attending
18 classes and in return for board, lodging, or tuition
19 furnished, in whole or in part;
- 20 (4) Service performed by a duly ordained, commissioned, or
21 licensed minister, priest, or rabbi of a church in the
22 exercise of the minister's, priest's, or rabbi's



1 ministry or by a member of a religious order in the
2 exercise of nonsecular duties required by the order;

3 (5) Service performed by an individual for another person
4 solely for personal, family, or household purposes if
5 the cash remuneration received is less than \$225
6 during the current calendar quarter and during each
7 completed calendar quarter of the preceding twelve-
8 month period;

9 (6) Domestic, in-home and community-based services for
10 persons with developmental disabilities and mental
11 retardation under the medicaid home and community-
12 based services program pursuant to [~~title~~] Title 42
13 Code of Federal Regulations [~~sections~~] Sections
14 440.180 and 441.300, and [~~title~~] Title 42 Code of
15 Federal Regulations, [~~part~~] Part 434, [~~subpart~~]
16 Subpart A, as amended, and identified as chore,
17 personal assistance and habilitation, residential
18 habilitation, supported employment, respite, and
19 skilled nursing services, as the terms are defined by
20 the department of human services, performed by an
21 individual whose services are contracted by a
22 recipient of social service payments and who



1 voluntarily agrees in writing to be an independent
2 contractor of the recipient of social service
3 payments;

4 (7) Service performed without wages for a corporation
5 without employees by a corporate officer in which the
6 officer is at least a twenty-five per cent
7 stockholder;

8 (8) Service performed by an individual for a corporation
9 if the individual owns at least fifty per cent of the
10 corporation; provided that no employer shall require
11 an employee to incorporate as a condition of
12 employment; [~~and~~]

13 (9) Service performed by an individual for another person
14 as a real estate salesperson or as a real estate
15 broker, if all the service performed by the individual
16 for the other person is performed for remuneration
17 solely by way of commission[-];

18 (10) Service performed by a member of a limited liability
19 company if the member is an individual and has a
20 distributional interest, as defined in chapter 428, of
21 at least fifty per cent in the company; provided that
22 no employer shall require an employee to form a



1 limited liability company as a condition of
2 employment;

3 (11) Service performed by a partner of a partnership, as
4 defined in chapter 425, if the partner is an
5 individual; provided that no employer shall require an
6 employee to become a partner or form a partnership as
7 a condition of employment;

8 (12) Service performed by a partner of a limited liability
9 partnership if the partner is an individual and has a
10 transferable interest as defined in section 425-127 in
11 the partnership of at least fifty per cent; provided
12 that no employer shall require an employee to form a
13 limited liability partnership as a condition of
14 employment; and

15 (13) Service performed by a sole proprietor.

16 As used in this ~~paragraph~~ definition, "religious, charitable,
17 educational, or nonprofit organization" means a corporation,
18 unincorporated association, community chest, fund, or foundation
19 organized and operated exclusively for religious, charitable, or
20 educational purposes, no part of the net earnings of which inure
21 to the benefit of any private shareholder or individual."



1 PART III

2 SECTION 3. This Act does not affect rights and duties that
3 matured, penalties that were incurred, and proceedings that were
4 begun, before its effective date.

5 SECTION 4. Statutory material to be repealed is bracketed
6 and stricken. New statutory material is underscored.

7 SECTION 5. This Act shall take effect on July 1, 2009, and
8 shall be repealed on July 1, 2012; provided that sections 386-1
9 and 386-79, Hawaii Revised Statutes, shall be reenacted in the
10 form in which they read on the day before the effective date of
11 this Act.



Report Title:

Workers' Compensation; Selection of Physicians; Definitions

Description:

Requires independent medical and permanent impairment rating examinations to be performed by physicians agreed upon by employers and employees, or appointed by the director of labor and industrial relations. Removes services performed by certain persons with ownership interests in a partnership, limited liability company, or limited liability partnership, or sole proprietors, from the definition of "employment" under the Workers' Compensation Law. (SB62 HD2)

