

TESTIMONY

HB 1390

HD2 SD1



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 18, 2010

To: The Honorable Dwight Takamine, Chair
and Members of the Senate Committee on Labor

Date: Thursday, March 18, 2010

Time: 3:00 p.m.

Place: Conference Room 224, State Capitol

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

Testimony in OPPOSITION

to

H.B. 1390 H.D.2 S.D.1 – Relating to Workers' Compensation

I. DEPARTMENT POSITION

The Department objects to the proposed amendment to Section 386-86, HRS, since it does not allow for any extensions past thirty calendar days for the employer to submit their reasons for and supporting documentation to substantiate their denial of the claim. Extensions are often granted to obtain medical reports and occasionally second opinions from other physicians to substantiate a claim for workers' compensation. If an injured worker has a pre-existing condition, such as a heart problem, back problem, etc., the employer has a right to investigate whether the claimed work injury/illness is directly related to their employment. By not allowing for any extensions, the employer may not receive the medical reports before the thirty-day deadline and therefore not have sufficient documentation to substantiate their denial. The department's determination that follows will then have to be made without sufficient evidence, resulting in increased requests for hearings, slowdowns in the adjudication process, and ultimately delays in the potential payments and treatments to the injured worker.

The Department, therefore, opposes the proposed amendment for the reasons cited above.

II. OVERVIEW OF CURRENT PROPOSED LEGISLATION

H.B. 1390 H.D. 2 S.D. 1 proposes to amend Section 386-86, HRS, by requiring the employer to submit a written report to the director and the claimant within thirty calendar days of their denial of, or indication to not accept, compensability of a workers' compensation claim. The report shall describe the employer's internal investigation and supporting details that substantiate the employer's denial of, or indication to not accept, compensability. The due date for the employer's written report shall not be extended.

III. CURRENT LAW

Section 12-10-73, Hawaii Administrative Rule, currently requires the employer to submit a written report to the director and the injured employee within thirty calendar days supporting their denial of compensability of a workers' compensation claim. Failure to submit a written report to support the denial shall indicate acceptance of the injury by the employer. The director may grant extensions for filing the employer's written report upon showing of good cause in writing.

Based on the employer's report, the director then determines whether or not the claim should be accepted. If the claim should be accepted, the employer is given thirty calendar days to request a hearing. If the director believes the denial of compensability is proper, the employee is given the option to file a claim for industrial injury that then results in a workers' compensation hearing to be held.

TESTIMONY BEFORE THE SENATE COMMITTEE ON

LABOR

Thursday, March 18, 2010
3:00 p.m.

HB 1390, HD 2, SD1
RELATING TO WORKERS' COMPENSATION

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

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

Hawaiian Electric Co. Inc., its subsidiaries, Maui Electric Company, LTD., and Hawaii Electric Light Company, Inc. **respectfully oppose H.B. 1390, HD2, SD1.** Our companies represent over 2,000 employees.

This revised bill proposes to amend Section 386-86, HRS and requires an employer to submit a written report within thirty days of their denial of, or indication to not accept compensability. This report must describe their internal investigation and provide supporting details that substantiate the employer's position. The proposed bill also prohibits the extension of the due date for the submission of the employer's written report.

We can appreciate the intent of the bill and recognize the importance of the need for a timely decision from the employer on a pending workers' compensation claim. However, we cannot support a bill that removes the ability of the employer to request an extension to conduct a fair investigation of the alleged claim and to determine the liability, or scope of liability, due them under the workers' compensation system. Currently, the allowance of an extension also protects the interest of the injured employee since the request to the Director must be supported by good cause and with consent from the injured employee.

Under the current statute, the burden of proof is on the employer by presuming all claims are compensable in the absence of substantial evidence to the contrary. In some cases, it may take more than thirty calendar days for the employer to gather the necessary information to develop their position on a claim. In practice, it may take at least ninety (90) calendar days to receive all subpoenaed records from the various facilities and providers, to get an appointment and have an independent medical examination performed, and to receive the written report of this independent medical examination.

A majority of requests for extensions are already performed by mutual agreement between the parties, without any mandate by legislation. As testified by the Director of Labor and Industrial Relations, of the 1547 cases heard in 2009, only 22 extension waivers were granted.

We believe this bill will increase the number of appeals to the Labor Appeals Board, which may then be remanded back to the Director to hear new evidence that was not previously available or allowed. It will cause even further delays in the adjudication process and increase workers' compensation costs due to more litigation and subsequent delays in the delivery of benefits to injured employees.

For these reasons, we respectfully oppose H.B. 1390, HD2, SD1.

Thank you for the opportunity to testify.