
A BILL FOR AN ACT

RELATING TO WORKERS' COMPENSATION.

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

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

4 "§386- Medical examinations; selection of physicians.

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

14 The director shall keep and maintain a list of qualified
15 physicians and their respective qualifications. If the employer
16 and the employee cannot agree on a physician to perform the
17 independent medical examination or permanent impairment rating
18 examination, the employer or employee may request in writing



1 that the physician be appointed by the director. Within seven
2 calendar days of the receipt of request, the director shall
3 appoint from the director's list of qualified physicians, a
4 physician licensed in a relevant medical specialty, licensed to
5 practice in Hawaii, and willing to undertake the examination.

6 Any physician mutually selected by the employer and
7 employee or appointed by the director shall examine the employee
8 within thirty calendar days of selection or appointment.

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

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

18 If an employee unreasonably refuses to submit to or in any
19 way unreasonably obstructs an examination, the employee's right
20 to claim compensation for the work injury shall be suspended
21 until the unreasonable refusal or obstruction ceases and no
22 compensation shall be payable for the period during which the



1 refusal or obstruction continues. The cost of conducting the
2 ordered independent medical examination or permanent impairment
3 rating examination shall be limited to the complex consultation
4 charges governed by the medical fee schedule established
5 pursuant to section 386-21(c).

6 A physician selected to perform independent medical
7 examinations or permanent impairment rating examinations, as
8 provided in this subsection, shall be currently licensed
9 pursuant to chapter 453; provided that for claimants who do not
10 reside in Hawaii, any physician performing an independent
11 medical examination or permanent impairment rating examination
12 shall have been licensed in the state where the claimant resides
13 for a period of five consecutive years immediately preceding the
14 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, who shall
19 conduct a permanent impairment rating examination of the injured
20 employee pursuant to subsection (a).

21 For the purposes of this subsection, "medical stability"
22 means that the injured employee's medical condition is well



1 stabilized so that no further improvement in the injured
2 employee's work injury can be expected from further medical
3 treatment and continued medical care will only prevent
4 deterioration of the condition."

5 SECTION 2. Section 386-79, Hawaii Revised Statutes, is
6 repealed.

7 [~~§386-79 Medical examination by employer's physician.~~
8 ~~After an injury and during the period of disability, the~~
9 ~~employee, whenever ordered by the director of labor and~~
10 ~~industrial relations, shall submit to examination, at reasonable~~
11 ~~times and places, by a duly qualified physician or surgeon~~
12 ~~designated and paid by the employer. The employee shall have~~
13 ~~the right to have a physician or surgeon designated and paid by~~
14 ~~the employee present at the examination, which right, however,~~
15 ~~shall not be construed to deny to the employer's physician the~~
16 ~~right to visit the injured employee at all reasonable times and~~
17 ~~under all reasonable conditions during total disability.~~

18 ~~If an employee refuses to submit to, or in any way~~
19 ~~obstructs such examination, the employee's right to claim~~
20 ~~compensation for the work injury shall be suspended until the~~
21 ~~refusal or obstruction ceases and no compensation shall be~~



1 ~~payable for the period during which the refusal or obstruction~~
2 ~~continues.~~

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

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

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

20 SECTION 4. Statutory material to be repealed is bracketed
21 and stricken. New statutory material is underscored.



1 SECTION 5. This Act shall take effect upon its approval.

2

INTRODUCED BY: Paul Rhode

JAN 21 2011



Report Title:

Workers' Compensation; Medical Examinations

Description:

Requires independent medical examinations and permanent impairment rating examinations for workers' compensation claims to be performed by physicians mutually agreed upon by employers and employees or appointed by the DLIR director.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

