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# A BILL FOR AN ACT

RELATING TO WORKERS' COMPENSATION.

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

1           SECTION 1. The legislature finds that injured workers lack  
2 the incentive to return to part-time work because the law does  
3 not require employers to timely pay the injured workers  
4 temporary partial disability benefits. When injured workers do  
5 not return to part-time work, the costs of doing business  
6 increase. The legislature further finds that fourteen calendar  
7 days from the end of the customary work week to process  
8 temporary partial disability benefits is more than enough time  
9 to process the benefits rightfully due and owed to injured  
10 workers. Accordingly, this Act creates a late payment penalty  
11 to incentivize employers to timely disburse temporary partial  
12 disability benefits.

13           The legislature further finds that disabled workers are  
14 often unfairly denied disability benefits because their  
15 physicians do not complete and sign a specialized form which  
16 certifies that the injured worker is entitled to compensation.  
17 This Act clarifies that a determination of eligibility for  
18 disability benefits does not depend on a specialized form



1 certified by the treating physician, but rather an examination  
2 of the injured employee's entire file.

3 SECTION 2. Section 386-92, Hawaii Revised Statutes, is  
4 amended to read as follows:

5 "§386-92 Default in payments of compensation, penalty.

6 (a) If any compensation payable under the terms of a final  
7 decision or judgment is not paid by a self-insured employer or  
8 an insurance carrier within thirty-one days after it becomes  
9 due, as provided by the final decision or judgment, or if any  
10 temporary total disability benefits are not paid by the employer  
11 or carrier within ten days, exclusive of Saturdays, Sundays, and  
12 holidays, after the employer or carrier has been notified of the  
13 disability, and where the right to benefits are not controverted  
14 in the employer's initial report of industrial injury or where  
15 temporary total disability benefits are terminated in violation  
16 of section 386-31, or if temporary partial disability benefits  
17 are not paid by the employer or insurance carrier within  
18 fourteen calendar days after the end of the employee's customary  
19 work week, there shall be added to the unpaid compensation an  
20 amount equal to twenty per cent thereof payable at the same time  
21 as, but in addition to, the compensation, unless the nonpayment  
22 is excused by the director after a showing by the employer or



1 insurance carrier that the payment of the compensation could not  
2 be made on the date prescribed therefor owing to the conditions  
3 over which the employer or carrier had no control.

4 (b) In addition to the compensation owed by the employer,  
5 the penalty shall be due and payable without the necessity of an  
6 order or decision from the director.

7 (c) An employee's eligibility for temporary total  
8 disability benefits or temporary partial disability benefits  
9 shall be determined by certification from the employee's  
10 attending physician every thirty days or by an examination of  
11 the entirety of the employee's available medical records by  
12 another physician, if the employee's attending physician is not  
13 available. The failure of an employee's attending or treating  
14 physician to certify the dates of disability in an interim  
15 report, as required under section 386-96, shall not  
16 automatically disqualify the employee from receiving temporary  
17 total disability benefits or temporary partial disability  
18 benefits. Contemporaneous certification of an employee's  
19 disability status may be waived and retroactive certification of  
20 disability may be allowed; provided that the employee's  
21 attending physician has served as the employee's previous  
22 attending physician or, if the previous attending physician is



1 not available, another physician has an opportunity to examine  
2 the employee's previous medical records with regard to the  
3 current pending claim. Retroactive certification of disability  
4 may be requested only once and shall not be for a period  
5 exceeding twelve months prior to the date of the request. This  
6 subsection shall apply only during the period that the  
7 employee's injuries have not reached medical stabilization or  
8 the employee is enrolled in the vocational rehabilitation  
9 process."

10 SECTION 3. New statutory material is underscored.

11 SECTION 4. This Act shall take effect on July 1, 2300.



**Report Title:**

Workers' Compensation; Penalty; Temporary Partial Disability Benefits; Eligibility Determination

**Description:**

Imposes a penalty on an employer who does not pay an employee temporary partial disability benefits within fourteen calendar days after the end of the employee's customary work week. Clarifies that an eligibility determination for disability benefits depends on the attending physician to certify the employee's disability every thirty days. Clarifies that the failure of the employee's physician to certify does not disqualify the employee from disability benefits. Allows one-time retroactive certification. Effective July 1, 2300.

(HB1973 HD1)

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

