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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           The legislature further finds that temporary total  
18 disability and temporary partial disability benefits are treated



1 differently under the law even though both types of benefits are  
2 deemed compensation under section 386-1, Hawaii Revised  
3 Statutes. This Act ensures that both forms of temporary  
4 disability benefits are treated in a manner that is consistent  
5 with the application of equal protection under the law.  
6 Furthermore, this Act is an attempt to provide a more uniform  
7 application of workers' compensation case law and provide  
8 statutory entitlements that are due to disabled employees.

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

11 **"§386-92 Default in payments of compensation, penalty.**

12 (a) If any compensation payable under the terms of a final  
13 decision or judgment is not paid by a self-insured employer or  
14 an insurance carrier within thirty-one days after it becomes  
15 due, as provided by the final decision or judgment, or if any  
16 temporary total disability benefits are not paid by the employer  
17 or carrier within ten days, exclusive of Saturdays, Sundays, and  
18 holidays, after the employer or carrier has been notified of the  
19 disability, and where the right to benefits are not controverted  
20 in the employer's initial report of industrial injury or where  
21 temporary total disability benefits are terminated in violation  
22 of section 386-31, or if temporary partial disability benefits



1 are not paid by the employer or insurance carrier within  
2 fourteen calendar days after the end of the employee's workweek  
3 as defined under section 12-10-1, Hawaii Administrative Rules,  
4 there shall be added to the unpaid compensation an amount equal  
5 to twenty per cent thereof payable at the same time as, but in  
6 addition to, the compensation, including sanctions under section  
7 386-92(a), unless the nonpayment is excused by the director  
8 after a showing by the employer or insurance carrier that the  
9 payment of the compensation could not be made on the date  
10 prescribed therefor owing to the conditions over which the  
11 employer or carrier had no control[-], including compliance with  
12 section 78-13.

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

16 (c) An employee's eligibility for temporary total  
17 disability benefits or temporary partial disability benefits  
18 shall be determined by certification from the employee's primary  
19 care physician every thirty days or by an examination of the  
20 employee's available medical records by another physician who  
21 has been involved in the employee's treatment and approved by  
22 the director if the employee's primary care physician is not



1 available. The failure of an employee's primary care physician  
2 to certify the dates of disability in an interim report, as  
3 required under section 386-96, shall not disqualify the employee  
4 from receiving temporary total disability benefits or temporary  
5 partial disability benefits. Contemporaneous certification of  
6 an employee's disability status may be waived and retroactive  
7 certification of disability may be allowed; provided that the  
8 employee's primary care physician certifies the disability or if  
9 the primary care physician is not available, another physician  
10 who has been involved in the employee's treatment and approved  
11 by the director has an opportunity to examine the employee's  
12 previous medical records in the current pending claim.  
13 Retroactive certification of disability may be requested only  
14 once for the entire claim and shall be made within twelve months  
15 of the date of the request. This subsection shall apply only  
16 during the period that an employee's injuries have not reached  
17 medical stabilization or the employee is enrolled in the  
18 vocational rehabilitation process."

19 SECTION 3. New statutory material is underscored.

20 SECTION 4. This Act shall take effect upon its approval.



**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 workweek as defined by administrative rule. Clarifies that an eligibility determination for disability benefits depends on the primary care physician to certify the employee's disability every thirty days. Clarifies that the failure of the employee's primary care physician to certify the dates of disability in an interim report does not disqualify the employee from disability benefits. Allows contemporaneous certification of an employee's disability status to be waived under certain conditions. Allows a one-time retroactive certification. Clarifies that certification requirements only apply during the period that an employee's injuries have not reach medical stabilization or the employee is enrolled in the vocational rehabilitation process. (SD1)

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