
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 incentive to return to part-time work because the law does not
3 require employers to timely pay the injured workers the
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 employee's workweek to process the
8 temporary partial disability benefits is more than enough time
9 to process temporary partial disability benefits rightfully due
10 and owing to injured workers. Accordingly, this Act creates a
11 late payment penalty to incentivize employers to timely disburse
12 temporary partial 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 that
16 certifies the injured worker is entitled to compensation. This
17 Act clarifies that a determination of eligibility for disability
18 benefits does not depend on a specialized form certified by the



1 treating physician, but rather on a determination by the injured
2 worker's primary care physician's certification of the injured
3 worker's dates of disability or an examination of the injured
4 worker's entire available medical records by another physician
5 in the event the injured worker's primary care physician is not
6 available.

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

9 **"§386-92 Default in payments of compensation, penalty.**

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



1 as defined under section 387-1, there shall be added to the
2 unpaid compensation an amount equal to twenty per cent thereof
3 payable at the same time as, but in addition to, the
4 compensation, unless the nonpayment is excused by the director
5 after a showing by the employer or insurance carrier that the
6 payment of the compensation could not be made on the date
7 prescribed therefor owing to the conditions over which the
8 employer or carrier had no control[-], including compliance with
9 section 78-13.

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

13 (c) An employee's eligibility to receive temporary total
14 disability or temporary partial disability benefits shall be
15 determined by the employee's primary care physician's
16 certification of the employee's dates of disability or by an
17 examination of the employee's entire available medical records
18 by another physician if the employee's primary care physician is
19 not available. The failure of an employee's primary care
20 physician to certify the dates of disability in an interim
21 report as provided in section 386-96, shall not automatically
22 disqualify the employee from temporary total disability or



1 temporary partial disability benefits. Contemporaneous
2 certification of an employee's disability status may be waived
3 and retroactive certification of disability may be allowed;
4 provided that the employee's primary care physician has served
5 as the employee's previous physician or, if the employee's
6 primary care physician is not available, another physician has
7 the opportunity to examine the employee's previous medical
8 records in the pending claim. Retroactive certification of
9 disability may be requested only once for the entire claim and
10 shall be made within twelve months of the date of the request.
11 This subsection shall apply only during the period that an
12 employee's injuries have not reached medical stabilization or
13 the employee is enrolled in the vocational rehabilitation
14 process."

15 SECTION 3. Statutory material to be repealed is bracketed
16 and stricken. New statutory material is underscored.

17 SECTION 4. This Act shall take effect on July 1, 2050.



Report Title:

Workers' Compensation; Penalty; Temporary Partial Disability Benefits; Temporary Total 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. Clarifies that an eligibility determination for disability benefits depends on a determination by the employee's primary care physician's certification of the employee's dates of disability or by an examination of the employee's entire available medical records by another physician in the event the employee's primary care physician is not available. Establishes that failure of the employee's primary care physician to certify the dates of disability in an interim report does not automatically disqualify the employee from disability benefits. Allows contemporaneous certification to be waived and retroactive certification of disability to be allowed under certain conditions. Effective 07/01/50. (SD1)

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