

STAND. COM. REP. NO. 2436

Honolulu, Hawaii

FEB 14 2014

RE: S.B. No. 2127
S.D. 1

Honorable Donna Mercado Kim
President of the Senate
Twenty-Seventh State Legislature
Regular Session of 2014
State of Hawaii

Madam:

Your Committee on Judiciary and Labor, to which was referred
S.B. No. 2127 entitled:

"A BILL FOR AN ACT RELATING TO WORKERS' COMPENSATION,"

begs leave to report as follows:

The purpose and intent of this measure is to provide an incentive for injured workers to return to part-time work by requiring employers to make timely payment of temporary partial disability benefits to their injured workers. Specifically, this measure:

- (1) Imposes a penalty on an employer or insurance carrier who does not pay an employee temporary partial disability benefits within fourteen calendar days after the end of the employee's customary workweek;
- (2) Requires that such penalty is due and payable to the employee without the necessity of an order or decision from the Director of Labor and Industrial Relations; and
- (3) Clarifies that an eligibility determination for disability benefits shall be based on the employee's entire record and that failure of the attending physician to certify the dates of disability in a specialized form shall not disqualify the employee from disability benefits.



Your Committee received testimony in support of this measure from the Department of Labor and Industrial Relations; Hawaii Injured Worker Association; International Longshore and Warehouse Union, Local 142; and three individuals. Testimony in opposition to this measure was submitted by the Department of Human Resources Development; Department of Accounting and General Services; Hawaiian Electric Co., Inc.; The Chamber of Commerce of Hawaii; National Association of Mutual Insurance Companies; Hawaii Insurers Council; Building Industry Association - Hawaii; and Property Casualty Insurers Association of America.

Your Committee finds that existing law imposes a penalty on an employer or insurance carrier for nonpayment of temporary total disability benefits but does not impose penalties for nonpayment of temporary partial disability benefits. The Department of Labor and Industrial Relations testified that one of the underlying policies in workers' compensation is to encourage an injured employee to promptly return to work. However, existing law discourages an injured worker to return because it is uncertain whether temporary partial disability benefits will be paid in a timely manner. This measure provides an incentive for injured workers to return to part-time work by requiring employers to make timely payment of temporary partial disability benefits to their injured workers.

Your Committee recognizes the testimony received in opposition to this measure that requiring temporary partial disability benefits to be paid within fourteen days imposes a hardship for the employer. The Department of Human Resources Development testified that determining temporary partial disability benefits requires a complicated calculation that takes into account the employee's earnings in a given partial duty week, the employee's weekly earnings before the work injury, and a percentage of the difference between the two. Furthermore, the Department of Accounting and General Services testified that its current payroll system is limited to processing payroll on two scheduled pay days. As a result, processing of payment takes longer than the required fourteen-day period. While your Committee strongly believes that timely payment of temporary partial disability benefits should be encouraged to allow employees to return to work, your Committee recognizes that the criteria to determine a workweek should be clarified. Furthermore, your Committee also recognizes the concerns regarding eligibility determination for disability benefits and availability of a treating physician for certification. As a result, your



Committee requested the Department of Labor and Industrial Relations, Department of Human Resources Development, and other stakeholders to develop language that would address the concerns raised in testimony on this measure.

Accordingly, your Committee has amended this measure by adopting the language developed by the Department of Labor and Industrial Relations, Department of Human Resources Development, and other stakeholders to:

- (1) Clarify that an employer is imposed a penalty if the employer fails to pay an employee temporary partial disability benefits within fourteen calendar after the end of the employee's workweek as defined under section 387-1, Hawaii Revised Statutes;
- (2) Add that a nonpayment of disability benefits is excused if the employer or insurance carrier was unable to make payment due to conditions over which the employer or insurance carrier had no control, including compliance with public employment pay periods;
- (3) Clarify that an eligibility determination for temporary total or partial 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;
- (4) Establish 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;
- (5) Allow contemporaneous certification to be waived and retroactive certification of disability to be allowed under certain conditions;
- (6) Insert an effective date of July 1, 2050, to encourage further discussion; and
- (7) Make technical, nonsubstantive amendments for the purposes of clarity and consistency.



As affirmed by the record of votes of the members of your Committee on Judiciary and Labor that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 2127, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 2127, S.D. 1, and be referred to the Committee on Ways and Means.

Respectfully submitted on
behalf of the members of the
Committee on Judiciary and
Labor,

A handwritten signature in black ink, appearing to read "Clayton Hee", written over a horizontal line.

CLAYTON HEE, Chair



The Senate
 Twenty-Seventh Legislature
 State of Hawai'i

Record of Votes
Committee on Judiciary and Labor
JDL

Bill / Resolution No.:* SB 2127	Committee Referral: JDL, WAM	Date: 2/11/14		
<input type="checkbox"/> The committee is reconsidering its previous decision on this measure. If so, then the previous decision was to: _____				
The Recommendation is: <input type="checkbox"/> Pass, unamended 2312 <input checked="" type="checkbox"/> Pass, with amendments 2311 <input type="checkbox"/> Hold 2310 <input type="checkbox"/> Recommit 2313				
Members	Aye	Aye (WR)	Nay	Excused
HEE, Clayton (C)	✓			
SHIMABUKURO, Maile S.L. (VC)	✓			
GABBARD, Mike	✓			
GALUTERIA, Brickwood	✓			
IHARA, Jr., Les	✓			
SOLOMON, Malama	✓			
SLOM, Sam			✓	
TOTAL	6		1	
Recommendation: <input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted				
Chair's or Designee's Signature:				
Distribution: Original Yellow Pink Goldenrod File with Committee Report Clerk's Office Drafting Agency Committee File Copy				

*Only one measure per Record of Votes