
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 also finds that fourteen calendar
7 days from the end of the customary work week to process
8 temporary partial disability benefits is more than sufficient to
9 process the benefits rightfully due and owed to injured workers.
10 The legislature further finds that disabled workers are
11 often unfairly denied disability benefits because their
12 physicians do not complete and sign a specialized form that
13 certifies that the injured worker is entitled to compensation.
14 In addition, temporary total disability and temporary partial
15 disability benefits are treated differently under the law even
16 though both types of benefits are deemed compensation under
17 section 386-1, Hawaii Revised Statutes.



1 The purpose of this Act is to:

2 (1) Create a late payment penalty to incentivize employers
3 to timely disburse temporary partial disability
4 benefits;

5 (2) Ensure that temporary total disability benefits and
6 temporary partial disability benefits are treated in a
7 manner that is consistent with the application of
8 equal protection under the law; and

9 (3) Provide both a more uniform application of workers'
10 compensation case law and statutory entitlements that
11 are due to disabled employees.

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

14 "§386-92 Default in payments of compensation, penalty.

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



1 in the employer's initial report of industrial injury or where
2 temporary total disability benefits are terminated in violation
3 of section 386-31, or if temporary partial disability benefits
4 are not paid by the employer or insurance carrier within
5 fourteen calendar days after the end of the employee's workweek
6 as defined under section 12-10-1, Hawaii Administrative Rules,
7 there shall be added to the unpaid compensation an amount equal
8 to twenty per cent thereof payable at the same time as, but in
9 addition to, the compensation, including any other applicable
10 sanctions, unless the nonpayment is excused by the director
11 after a showing by the employer or insurance carrier that the
12 payment of the compensation could not be made on the date
13 prescribed therefor owing to the conditions over which the
14 employer or carrier had no control[-], including compliance with
15 section 78-13 for a public employer.

16 (b) In addition to the compensation owed by the employer,
17 the penalty imposed under subsection (a) shall be due and
18 payable without the necessity of an order or decision from the
19 director.

20 (c) An employee's eligibility for temporary total
21 disability benefits or temporary partial disability benefits
22 shall be determined by certification from the employee's primary



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

20 SECTION 3. New statutory material is underscored.



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

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INTRODUCED BY:



JAN 23 2015



H.B. NO. 679

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. 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. 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.

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