

**STATE OF HAWAII
DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS**

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February 13, 2018

To: The Honorable Roy M. Takumi, Chair,
The Honorable Linda Ichiyama, Vice Chair, and
Members of the House Committee on Consumer Protection & Commerce

Date: Tuesday, February 13, 2018

Time: 2:00 p.m.

Place: Conference Room 329, State Capitol

From: Leonard Hoshijo, Director
Department of Labor and Industrial Relations (DLIR)

Re: H.B. No. 2375, HD1 RELATING TO TEMPORARY DISABILITY INSURANCE

I. OVERVIEW OF PROPOSED LEGISLATION

This proposal seeks to amend chapter 392, Hawaii Revised Statutes (HRS), the Temporary Disability Insurance (TDI) law, by allowing greater flexibility as to who can certify a disability, where an appeal may be filed, where a hearing may be held, in the methods used to send notices of hearing, and in the conduct of hearings. The proposal also seeks to increase the penalty when an employer fails to provide timely information on a claim.

DLIR strongly supports this Departmental measure.

II. CURRENT LAW

Chapter 392, HRS, requires that a physician certify the disability. However, this does not align with the intent of the Legislature to allow an Advanced Practice Registered Nurse (APRN) to serve as a care provider pursuant to Act 183, Session Laws of Hawaii 2016.

The current penalty for employers who do not provide wage and employment information within seven days from an insurance carrier's request is \$10 per delinquent request.

TDI appeals must be filed at the office of the department in the county where the

employee resides or in the county where the employee was employed prior to the disability. The appeal must be heard in the county where the appeal was filed.

The hearing process currently follows the procedures required under chapter 91, HRS, regarding how hearing notices are delivered. Chapter 91, HRS, requires notices to be sent to all parties by registered or certified mail with return receipt requested and requires the department to publish the notice of hearing in a newspaper of general circulation when the notice of hearing is refused or is undeliverable.

III. COMMENTS ON THE HOUSE BILL

DLIR strongly supports the proposal for the following reasons:

- Employees will be allowed to have Advanced Practical Registered Nurses (APRNs) certify the disability after receiving treatment giving workers additional provider choices, especially those residing in rural areas.
- The increased penalty from \$10 to \$250 per request will serve as an incentive to employers to provide prompt information, thus allowing workers to receive prompt benefit payments.
- By removing the requirement to submit an appeal to a specific location, DLIR intends to modernize the process so workers will also be able to submit electronically.
- Similarly, instead of limiting the hearing location to the county office where the worker was employed or resided at the time of the disability, the Department will be able to hold a hearing in another county if the need arises. For example, the worker may be permanently or temporarily living in another county for medical treatment or other reasons.
- In the case a party objects to the location of the hearing, then the hearing "shall be heard in the county in which the employee resides or in which the employee was employed prior to the employee's disability."
- DLIR will be able to send notices of hearing electronically or by first class mail, rather than by registered or certified mail with return receipt requested as currently required by chapter 91, HRS. This will expedite the notice process and may be more convenient for the parties.
- When the notice of hearing cannot be delivered to a party, the notice will be given by online posting on the department's webpage. The online posting provision in the measure mirrors a similar provision in section 371-4, HRS, which allows the Labor and Industrial Relations Appeals Board (LIRAB) to post notices electronically if service by first class mail is not made. For the hearings

held under chapter 392 in 2017, and in the years prior, DLIR staff does not recall a party attending a hearing when noticed by publishing in a newspaper of general circulation pursuant to chapter 91.

- By allowing hearings to be held not only in person but also via telephone or by other communication devices, the Department can accommodate parties that are not located on the same island and reduce travel time and costs for the parties.
- The proposal clarifies that a decision can be issued based on available information if any party to the hearing fails to appear at the hearing, which will help reduce the backlog of untimely appeals in which one of the parties usually fails to appear and benefits are not awarded.

HOUSE OF REPRESENTATIVES
THE TWENTY-NINTH LEGISLATURE
REGULAR SESSION OF 2018

COMMITTEE ON CONSUMER PROTECTION

Rep. Roy Takumi, Chair
Rep. Linda Ichiyama, Vice Chair
State Capitol, Conference Room 329
Tuesday, February 13, 2018

STATEMENT OF ILWU LOCAL 142 RE: HB 2375, H.D. 1

Thank you for the opportunity to present testimony regarding H.B. 2375, H.D. 1. ILWU Local 142 generally supports this bill, though certain aspects of it require modification.

H.B. 2375, H.D. 1 amends Section 392-26 HRS to permit advanced practice registered nurses to certify disability for temporary disability insurance purposes. This is a reasonable amendment as APRN nurses already perform many of functions of physicians. However, we suggest that psychologists should also be permitted to certify TDI disability, as their unique training fully qualifies them to fulfill this function, and it is a long standing anomaly that they are not granted this authority.

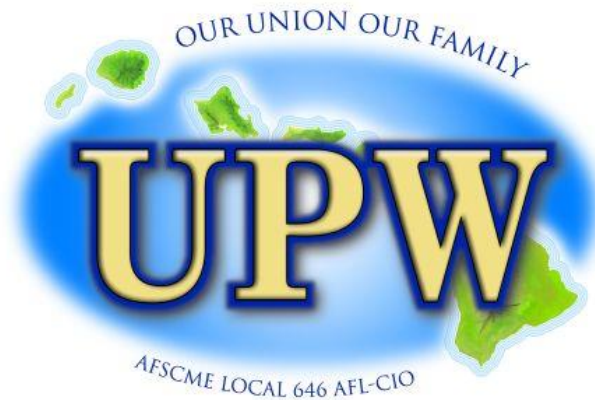
H.B. 2375, H.D. 1 also adds increased penalties for the failure of Employers to follow the procedures outlined by law. This increase is appropriate and reasonable.

We question, however, creating the option of giving notice to Claimants via merely posting notice on the Department of Labor and Industrial Relations website by amendment of Section 392-92(a) HRS, can be done effectively without other modifications to the department's regulations. It is clear that posting on the department's website is a last resort when over methods of normal service of notice fail. However, mere electronic posting may be of little aid to those too poor to own computers, those who are illiterate, or those who cannot read English well enough to understanding the posting.

Given limited government resources, we understand the impetus to hold hearings in counties where the claimant resides or was employed or by telephone and these changes are also useful and would enhance efficiency. However, we suggest that the Department also require by regulation that the Claimant keep the Department informed as to the Claimant's current address and phone and internet contact information. We could find no such requirement in the current administrative rules implementing Chapter 392 HRS or HAR 12-11-41 where one would normally expect a requirement of that nature to be located. Perhaps such a statement could also be inserted on the department's standard TDI Form 45. While this would not solve all difficulties for applicants for benefits who are illiterate or non-English speaking, it would increase the likelihood that when the application is filed that an employer or

representative of the claimant would remind the claimant of the need to provide current contact information.

With incorporation of the suggestions proposed above, ILWU Local 142 supports the enactment of HB 2375, H.D. 1.



THE HAWAII STATE HOUSE OF REPRESENTATIVES
The Twenty-Ninth Legislature
Regular Session of 2018

COMMITTEE ON CONSUMER PROTECTION AND COMMERCE

The Honorable Roy M. Takumi, Chair
The Honorable Linda Ichiyama, Vice Chair

DATE OF HEARING: Friday, February 13, 2018
TIME OF HEARING: 2:00 p.m.
PLACE OF HEARING: State Capitol
Conference Room 329

TESTIMONY ON HOUSE BILL 2375, HD1 RELATING TO TDI

By DAYTON M. NAKANELUA,
State Director of the United Public Workers (UPW),
AFSCME Local 646, AFL-CIO

My name is Dayton M. Nakanelua, State Director of the United Public Workers, AFSCME, Local 646, AFL-CIO. The UPW is the exclusive bargaining representative for approximately 12,000 public employees, which include blue collar, non-supervisory employees in Bargaining Unit 01 and institutional, health and correctional employees in Bargaining Unit 10, in the State of Hawaii and various counties. The UPW also represents about 1,500 members of the private sector.

HB2375, HD1 Relating to TDI permits advanced practice registered nurses to certify an employee's disability. The bill also provides in part, increased penalty for untimely wage and employment information and allows the parties to a hearing in person, via telephone, or by any other communication devices. This bill will provide greater flexibility in certifying a disability of a person in an appeal. The rural areas of the islands in Hawaii will receive improved provider service.

The UPW supports HB2375, HD1.

Thank you for the opportunity to submit this testimony.

