
A BILL FOR AN ACT

RELATING TO EMPLOYEES' RETIREMENT SYSTEM DISABILITY RETIREMENT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The employees' retirement system's service-
2 connected disability retirement and accidental death provisions
3 are intended to provide benefits different than those of
4 Hawaii's workers' compensation program. The paramount purpose
5 of Hawaii's workers' compensation law is to provide compensation
6 for an employee for all work-connected injuries, regardless of
7 questions of negligence. The legislature has decided that work
8 injuries are among the costs of production that industry is
9 required to bear.

10 Accordingly, the workers' compensation statute is to be
11 construed liberally in favor of awarding compensation, and
12 specifically creates a presumption that an employee's claim is
13 for a covered work injury, in exchange for providing an employer
14 with exclusion of all other liability on account of a work
15 injury, except for sexual harassment, sexual assault and
16 infliction of emotional distress, or invasion of privacy.



1 There are no similar policies or purposes behind the
2 employees' retirement system's service-connected disability
3 retirement and accidental death provisions. Consequently, the
4 employees' retirement system's service-connected disability
5 retirement and accidental death provisions do not contain a
6 presumption favoring coverage and should not be construed
7 liberally in favor of awarding compensation for all injuries and
8 death occurring in the workplace, regardless of questions of
9 employees' retirement system membership position, negligence,
10 proximate cause, the difference between an accident and
11 injury/incapacity, and the burden of proof. However, several
12 recent court rulings have awarded employees' retirement system
13 service-connected disability retirement and accidental death
14 benefits beyond the legislature's original intent.

15 These rulings have required the employees' retirement
16 system to provide service-connected disability retirement and
17 accidental death benefits that were never contemplated in
18 determining employer contributions, employee contributions, and
19 employee benefits, including monthly retirement allowance
20 benefits to be provided for an extended duration and at a higher
21 rate, plus the refund of employee contributions, and



1 consequently, have increased the State's unfunded liability as a
2 whole. Furthermore, employees' retirement system members are
3 not foreclosed from collecting employees' retirement system
4 service retirement, employees' retirement system ordinary
5 disability retirement, employees' retirement system ordinary
6 death, workers' compensation, or social security disability.
7 The employees' retirement system's service-connected disability
8 retirement and accidental death programs should therefore not be
9 awarded in a manner similar to an award of employees' retirement
10 system service retirement, employees' retirement system ordinary
11 disability retirement, employees' retirement system ordinary
12 death, workers' compensation, and social security disability
13 benefits.

14 The purpose of this Act is to address any perceived
15 ambiguity regarding the legislative intent of the employees'
16 retirement system's service-connected disability retirement and
17 accidental death statutes.

18 SECTION 2. Section 88-21, Hawaii Revised Statutes, is
19 amended:

20 (1) By adding five new definitions to be appropriately
21 inserted and to read as follows:



1 "Accident" means a single traumatic unlooked-for mishap or
2 untoward event which:

3 (1) Is not expected or designed;

4 (2) Is not a risk inherent in the member's performance of
5 routine or normal job duties;

6 (3) Interrupts the member's performance of routine or
7 normal job duties; and

8 (4) Precedes and precipitates:

9 (A) Medical condition, injury, disability, or symptom
10 of the foregoing that naturally and proximately
11 results in the member's permanent incapacity for
12 duty; or

13 (B) Death of the member.

14 "Accident" does not include:

15 (1) A medical condition, injury, disability, mental or
16 physical incapacity, symptom of the foregoing, or
17 death itself; and

18 (2) An unexpected result of a routine performance of duty,
19 without external force, unusual stress or strain.

20 "Actual performance of duty" means the performance of duty:



- 1 (1) Of the position, appointment, or office on which the
2 member's membership in the system is based, and for
3 which all contributions required to be made to the
4 system by the employee or the employer, or both, have
5 been made;
- 6 (2) During the working hours of the position, appointment,
7 or office; and
- 8 (3) At either:
- 9 (A) The work premises of the position, appointment,
10 or office; or
- 11 (B) Wherever the member's duties of such the
12 position, appointment, or office require the
13 member to be.
- 14 "Incapacitated for duty" and "incapacitated for the further
15 performance of duty" means incapacitated for duties prescribed
16 in the official position description, or actual job duties, of
17 the position, appointment, or office on which the member's
18 membership in the system is based, and for which all
19 contributions required to be made to the system by the employee
20 or the employer, or both, have been made.



1 "Incapacitated for duty" and "incapacitated for the further
2 performance of duty" does not include incapacitated for duties
3 under environmental conditions particular to the member's
4 position, appointment, or office, but not incapacitated for
5 duties of the position, appointment, or office as a whole, such
6 as an incapacitated for duties at a particular location, in
7 proximity to or under the supervision of particular individuals,
8 or under other particular environmental conditions.

9 "Occupational hazard" means danger or risk inherent in, and
10 concomitant to, a particular occupation, the causative factors
11 of which are not ordinarily incident to employment in general
12 and are different in character from those found in the general
13 run of occupations.

14 "Occupational hazard" does not include:

- 15 (1) A job-related condition that results in incapacitation
16 for the further performance of duty or death, without
17 a danger or risk inherent in, and concomitant to, a
18 particular occupation;
- 19 (2) Work activities that are common to many occupations,
20 such as repetitive motion of hands and arms, lifting,
21 and carrying; and



1 (3) Dangers or risks that are particular to a member's
2 workplace, but not particular to the member's
3 occupation as a whole, such as a lack of proper tools
4 or malfunctioning equipment at the workplace.

5 "Some definite time and place" means:

6 (1) A specific time or time period that is identified and
7 is of a limited and short duration; and

8 (2) A specific place or geographic location that is
9 identified and is of a limited and small size.

10 "Some definite time and place" does not include a time period
11 more than a single work shift."

12 (2) By amending the definition of "accidental death" to
13 read as follows:

14 "'Accidental death" means death that is the natural and
15 proximate result of an accident occurring at some definite time
16 and place while the member [~~was employed in a position in which~~
17 ~~all contributions required to be made to the employees'~~
18 ~~retirement system by the employee or the employer, or both, have~~
19 ~~been made,~~] was in the actual performance of duty, or due to the
20 result of some occupational hazard, and not caused by wilful
21 negligence on the part of the member."



1 SECTION 3. Section 88-79, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "§88-79 Service-connected disability retirement. (a)
4 Under rules the board of trustees may adopt, upon application of
5 a member, or the person appointed by the family court as
6 guardian of an incapacitated member, any member while employed
7 in a position in which all contributions required to be made to
8 the employees' retirement system by the employee or the
9 employer, or both, have been made, who has been permanently
10 incapacitated for duty as the natural and proximate result of an
11 accident occurring while in the actual performance of duty at
12 some definite time and place, or as the cumulative result of
13 some occupational hazard, through no wilful negligence on the
14 member's part, may be retired by the system for service-
15 connected disability; provided that:

16 (1) In the case of an accident occurring after July 1,
17 1963, the employer shall file with the system a copy
18 of the employer's report of the accident submitted to
19 the director of labor and industrial relations;

20 (2) An application for retirement is filed with the system
21 within two years of the date of the accident, or the



1 date upon which workers' compensation benefits cease,
2 whichever is later;

3 (3) Certification is made by the head of the agency in
4 which the member is employed, stating the time, place,
5 and conditions of the service performed by the member
6 resulting in the member's disability and that the
7 disability was not the result of wilful negligence on
8 the part of the member; and

9 (4) The medical board or other entity designated by the
10 board of trustees certifies that the member is
11 incapacitated for the further performance of duty at
12 the time of application and that the member's
13 incapacity is likely to be permanent.

14 (b) The member or applicant initiating the proceeding
15 shall have the burden of proof, including the burden of
16 producing evidence as well as the burden of persuasion. The
17 degree or quantum of proof shall be a preponderance of the
18 evidence. The member or applicant shall have the responsibility
19 of furnishing all medical evidence available or which can be
20 made available to the member or applicant pertaining to the
21 member's death or disability. Any determination of the



1 disability compensation division of the department of labor and
2 industrial relations, labor and industrial relations appeals
3 board, and Social Security Administration relating to the same
4 incapacity for which the applicant or member is claiming a
5 disability or death benefit may be taken into consideration;
6 provided that determination shall not be binding upon the
7 medical board. The medical board may or may not, at its
8 discretion, subject the member to a physical examination in
9 arriving at its certifications and findings on all matters
10 referred to the medical board; provided that the burden of proof
11 is not shifted to the medical board, and the member or applicant
12 has the burden of proof.

13 [~~(b)~~] (c) In the case of firefighters, police officers,
14 and sewer workers, the effect of the inhalation of smoke, toxic
15 gases, chemical fumes, and other toxic vapors on the heart,
16 lungs, and respiratory system shall be construed as an injury
17 received or disease contracted while in the performance of their
18 duty and as the result of some occupational hazard for the
19 purpose of determining occupational disability retirement under
20 this section.



1 Notwithstanding any other law to the contrary, any
2 condition of impairment of health caused by any disease of the
3 heart, lungs, or respiratory system, resulting in permanent
4 incapacity to a firefighter, police officer, or sewer worker,
5 shall be presumed to have been suffered in the actual
6 performance of duty at some definite time and place through no
7 wilful negligence on the firefighter's, police officer's, or
8 sewer worker's part, and as a result of the inherent
9 occupational hazard of exposure to and inhalation of smoke,
10 toxic gases, chemical fumes, and other toxic vapors, unless the
11 contrary be shown by competent evidence; provided that such
12 firefighter, police officer, or sewer worker shall have passed a
13 physical examination on entry into such service or subsequent to
14 such entry, which examination failed to reveal any evidence of
15 such condition.

16 [~~(e)~~] (d) The system may waive strict compliance with the
17 time limits within which a report of the accident and an
18 application for service-connected disability retirement must be
19 filed with the system if it is satisfied that the failure to
20 file within the time limited by law was due to ignorance of fact
21 or law, inability, or to the fraud, misrepresentation, or deceit



1 of any person, or because the applicant was undergoing treatment
2 for the disability or was receiving vocational rehabilitation
3 services occasioned by the disability.

4 ~~[(d)]~~ (e) The system may determine whether or not the
5 disability is the result of an accident occurring while in the
6 actual performance of duty at some definite time and place and
7 that the disability was not the result of wilful negligence on
8 the part of the member. The system may accept as conclusive:

- 9 (1) The certification made by the head of the agency in
10 which the member is employed; or
11 (2) A finding to this effect by the medical board or other
12 entity designated by the board of trustees.

13 ~~[(e)]~~ (f) Upon approval by the system, the member shall be
14 eligible to receive a service-connected disability retirement
15 benefit after the member has terminated service. Retirement
16 shall become effective on the first day of a month, except for
17 the month of December when retirement on the first or last day
18 of the month shall be allowed."

19 SECTION 4. Section 88-82, Hawaii Revised Statutes, is
20 amended to read as follows:



1 "§88-82 Petition for contested case hearing regarding
2 disability retirement or accidental death benefits; attorney's
3 fees and costs. (a) A member or applicant who is not satisfied
4 with the preliminary decision of the board to grant or deny an
5 application for disability retirement benefits or accidental
6 death benefits based on the certifications and findings of the
7 medical board may file a petition for contested case hearing
8 with the board within sixty days after receiving written
9 notification of the preliminary decision of the board.

10 (b) Permanent incapacity that is primarily caused by the
11 natural deterioration, degeneration, or progression of a pre-
12 existing condition is not the natural and proximate result of an
13 accident occurring while in the actual performance of duty at
14 some definite time and place. Permanent incapacity that is
15 primarily caused by the natural deterioration, degeneration, or
16 progression of a pre-existing condition is not the cumulative
17 result of some occupational hazard, unless the pre-existing
18 condition itself was caused by the occupational hazard. In the
19 case of an application for service-connected disability
20 retirement, where there is evidence that the member claiming
21 permanent incapacity had a pre-existing condition, the member



1 shall have the burden of proving by a preponderance of the
2 evidence that the member's permanent incapacity was not
3 primarily caused by the pre-existing condition.

4 ~~[(b)]~~ (c) If the member or applicant is the prevailing
5 party in the contested case, and disability retirement or
6 accidental death benefits are awarded to the member or applicant
7 by the board or court of the appropriate jurisdiction under
8 section 88-75, 88-79, 88-85, 88-284, 88-285, 88-286(c), 88-334,
9 88-336, or 88-339, the member or applicant shall be paid
10 reasonable attorney's fees together with any costs payable by
11 the system. The attorney's fees and costs shall be subject to
12 the approval of the board or approval by a court of appropriate
13 jurisdiction after evidence has been provided by the member or
14 applicant regarding the reasonableness of the claimed attorney's
15 fees and costs."

16 SECTION 5. Section 88-85.5, Hawaii Revised Statutes, is
17 amended to read as follows:

18 "**§88-85.5 Applications for accidental death benefits;**
19 **approval by the system.** (a) Under rules the board of trustees
20 may adopt, an application for service-connected accidental death
21 benefits may be filed with the system by or on behalf of the



1 claimant pursuant to section 88-85, 88-286, or 88-339, on a form
2 provided by the system. The application shall be filed no later
3 than three years from the date of the member's death.

4 (b) After the claimant files an application for service-
5 connected accidental death benefits, the system shall obtain the
6 following:

- 7 (1) A copy of the employer's report of the accident
8 submitted by the employer to the department of labor
9 and industrial relations, workers' compensation
10 division, and other reports relating to the accident;
- 11 (2) A certified statement from the head of the department
12 in which the deceased member was employed, stating the
13 date, time, and place of the accident, and the nature
14 of the service being performed when the accident
15 occurred. The statement shall also include an opinion
16 as to whether or not the accident was the result of
17 wilful negligence on the deceased member's part;
- 18 (3) A copy of the latest position description of the
19 deceased member's duties and responsibilities;
- 20 (4) A certified copy of the death certificate; and
- 21 (5) A copy of an autopsy report, if performed.



1 (c) Upon the system's receipt of the application and
2 documents specified in subsection (b), the medical board or
3 other entity designated by the board of trustees shall determine
4 and certify to the system whether the member's death was an
5 accidental death as defined in section 88-21.

6 (d) Death that is primarily caused by the natural
7 deterioration, degeneration, or progression of a pre-existing
8 condition is not the natural and proximate result of an accident
9 occurring while in the actual performance of duty at some
10 definite time and place. Death that is primarily caused by the
11 natural deterioration, degeneration, or progression of a pre-
12 existing condition is not the cumulative result of some
13 occupational hazard, unless the pre-existing condition itself
14 was caused by the occupational hazard. In the case of an
15 application for accidental death benefits, where there is
16 evidence that the member had a pre-existing condition, the
17 applicant shall have the burden of proving by a preponderance of
18 the evidence that the member's death was not primarily caused by
19 the pre-existing condition.



1 [~~d~~] (e) The system may accept as conclusive as to
2 whether or not the member's death was caused by wilful
3 negligence on the part of the member:

4 (1) A certification made by the head of the agency in
5 which the member is employed; or

6 (2) A finding by the medical board or other entity
7 designated by the board of trustees.

8 [~~e~~] (f) After the medical board or other entity
9 designated by the board of trustees submits its certification to
10 the system, the system shall approve or disapprove the
11 application. Upon approval of an application, benefits shall be
12 paid as provided in section 88-85, 88-286, or 88-339."

13 SECTION 6. Section 88-261, Hawaii Revised Statutes, is
14 amended by amending subsection (a) to read as follows:

15 "(a) The following words and phrases as used in this part
16 shall have the same meanings as defined in section 88-21, unless
17 a different meaning is plainly required by the context:

18 "accident"; "accidental death"; "accumulated contributions";

19 "actual performance of duty"; "actuarial equivalent"; "average
20 final compensation"; "beneficiary"; "board"; "county";

21 "employee"; "medical board"; "occupational hazard"; "retirant";



1 "retirement allowance"; "service"; "some definite time and
2 place"; and "system".

3 SECTION 7. Section 88-336, Hawaii Revised Statutes, is
4 amended to read as follows:

5 "**§88-336 Service-connected disability retirement.** (a)

6 Under rules the board of trustees may adopt, upon application of
7 a class H member, or the person appointed by the family court as
8 guardian of an incapacitated member, any class H member who has
9 been permanently incapacitated for duty as the natural and
10 proximate result of an accident occurring while in the actual
11 performance of duty at some definite time and place, or as the
12 cumulative result of some occupational hazard, through no wilful
13 negligence on the member's part, may be retired by the system
14 for service-connected disability; provided that:

15 (1) In the case of an accident occurring after July 1,
16 1963, the employer shall file with the system a copy
17 of the employer's report of the accident submitted to
18 the director of labor and industrial relations;

19 (2) An application for retirement is filed with the system
20 within two years of the date of the accident, or the



1 date upon which workers' compensation benefits cease,
2 whichever is later;

3 (3) Certification is made by the head of the agency in
4 which the member is employed, stating the time, place,
5 and conditions of the service performed by the member
6 resulting in the member's disability and that the
7 disability was not the result of wilful negligence on
8 the part of the member; and

9 (4) The medical board or other entity designated by the
10 board of trustees certifies that the member is
11 incapacitated for the further performance of duty at
12 the time of application and that the member's
13 incapacity is likely to be permanent.

14 (b) Permanent incapacity that is primarily caused by the
15 natural deterioration, degeneration, or progression of a pre-
16 existing condition is not the natural and proximate result of an
17 accident occurring while in the actual performance of duty at
18 some definite time and place. Permanent incapacity that is
19 primarily caused by the natural deterioration, degeneration, or
20 progression of a pre-existing condition is not the cumulative
21 result of some occupational hazard, unless the pre-existing



1 condition itself was caused by the occupational hazard. In the
2 case of an application for service-connected disability
3 retirement, where there is evidence that the member claiming
4 permanent incapacity had a pre-existing condition, the member
5 shall have the burden of proving by a preponderance of the
6 evidence that the member's permanent incapacity was not
7 primarily caused by the pre-existing condition.

8 [~~b~~] (c) In the case of sewer workers, the effect of the
9 inhalation of smoke, toxic gases, chemical fumes, and other
10 toxic vapors on the heart, lungs, and respiratory system shall
11 be construed as an injury received or disease contracted while
12 in the performance of their duty and as the result of some
13 occupational hazard for the purpose of determining occupational
14 disability retirement under this section.

15 Notwithstanding any other law to the contrary, any
16 condition of impairment of health caused by any disease of the
17 heart, lungs, or respiratory system resulting in permanent
18 incapacity to a sewer worker shall be presumed to have been
19 suffered in the actual performance of duty at some definite time
20 and place through no wilful negligence on the sewer worker's
21 part, and as a result of the inherent occupational hazard of



1 exposure to the inhalation of smoke, toxic gases, chemical
2 fumes, and other toxic vapors, unless the contrary be shown by
3 competent evidence; provided that the sewer worker shall have
4 passed a physical examination on entry into such service or
5 subsequent to such entry, which examination failed to reveal any
6 evidence of such condition.

7 ~~[(e)]~~ (d) The system may waive strict compliance with the
8 time limits within which a report of the accident and an
9 application for service-connected disability retirement must be
10 filed with the system if it is satisfied that the failure to
11 file within the time limited by law was due to ignorance of fact
12 or law, inability, or the fraud, misrepresentation, or deceit of
13 any person, or because the applicant was undergoing treatment
14 for the disability, or was receiving vocational rehabilitation
15 services occasioned by the disability.

16 ~~[(d)]~~ (e) The system may determine whether the disability
17 is the result of an accident occurring while in the actual
18 performance of duty at some definite time and place and that the
19 disability was not the result of wilful negligence on the part
20 of the member. The system may accept as conclusive:



- 1 (1) The certification made by the head of the agency in
2 which the member is employed; or
3 (2) A finding to this effect by the medical board or other
4 entity designated by the board of trustees.

5 [~~e~~] (f) Upon approval by the system, the member shall be
6 eligible to receive a service-connected disability retirement
7 benefit after the member has terminated service. Retirement
8 shall be effective on the first day of a month, except for the
9 month of December when retirement on the first or last day of
10 the month shall be allowed."

11 SECTION 8. Statutory material to be repealed is bracketed
12 and stricken. New statutory material is underscored

13 SECTION 9. This Act shall take effect on January 1, 2050.



Report Title:

Employees' Retirement System; Service-Connected Disability;
Accidental Death

Description:

Clarifies the employees' retirement system's eligibility
requirement definitions for service-connected disability and
accidental death benefits. Effective 1/1/2050. (HD1)

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not legislation or evidence of legislative intent.*

