
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 early intervention
2 is vital to ensure the efficient and effective rehabilitation of
3 employees who suffer a work-related injury. This often begins
4 with the referral of an injured employee for vocational
5 rehabilitation services. Vocational rehabilitation services are
6 intended to help the employee return to work as quickly as
7 possible with pay as close as possible to pre-injury wages.
8 Urgency is needed when initiating the vocational rehabilitation
9 process to avoid prolonged adverse effects on injured employees
10 and minimize costs for employers and insurers.

11 The legislature further finds that it is crucial for
12 injured employees to have access to appropriate vocational
13 rehabilitation services in the State. Many vocational
14 rehabilitation providers have expressed concern regarding the
15 future availability of services as several providers retire or
16 leave the practice. It is important for current and future



1 providers to be properly trained on the vocational
2 rehabilitation process.

3 The purpose of this Act is to:

4 (1) Clarify the process for selecting a certified provider
5 of rehabilitation services; and

6 (2) Require a provider to automatically approve an injured
7 employee for vocational rehabilitation services if the
8 provider determines that the injured employee will
9 likely require vocational rehabilitation services to
10 return to suitable gainful employment.

11 SECTION 2. Section 386-25, Hawaii Revised Statutes, is
12 amended to read as follows:

13 **"§386-25 Vocational rehabilitation.** (a) The purposes of
14 vocational rehabilitation are to restore an injured worker's
15 earnings capacity as nearly as possible to that level that the
16 worker was earning at the time of injury and to return the
17 injured worker to suitable gainful employment in the active
18 labor force as quickly as possible in a cost-effective manner.
19 Vocational rehabilitation shall not be available for public
20 employees who have retired from a public employer, as defined in
21 section 76-11, with whom they sustained their work injury.



1 Employees of public employers, as defined in section 76-11,
2 who are eligible for their respective public employer's return
3 to work program, shall participate in and complete the return to
4 work program, including temporary light duty placement efforts,
5 as a prerequisite to vocational rehabilitation benefits under
6 this section.

7 (b) The director may refer employees who may have or have
8 suffered permanent disability as a result of work injuries and
9 who, in the director's opinion, can be vocationally
10 rehabilitated to the department of human services or to private
11 providers of rehabilitation services for vocational
12 rehabilitation services that are feasible. A referral shall be
13 made upon recommendation of the rehabilitation unit established
14 under section 386-71.5 and after the employee has been deemed
15 physically able to participate in rehabilitation by the
16 employee's attending physician. The unit shall include
17 appropriate professional staff and shall have the following
18 duties and responsibilities:

19 (1) To review and approve rehabilitation plans developed
20 by certified providers of rehabilitation services,
21 whether they be private or public;



1 (2) To adopt rules consistent with this section that shall
2 expedite and facilitate the identification,
3 notification, and referral of industrially injured
4 employees to rehabilitation services, and establish
5 minimum standards for providers providing
6 rehabilitation services under this section;

7 (3) To certify private and public providers of
8 rehabilitation services meeting the minimum standards
9 established under paragraph (2); and

10 (4) To enforce the implementation of rehabilitation plans.

11 (c) Enrollment in a rehabilitation plan or program shall
12 not be mandatory and the approval of a proposed rehabilitation
13 plan or program by the injured employee shall be required. The
14 injured employee ~~[may]~~ shall select a certified provider of
15 rehabilitation services~~[-]~~ within thirty days. Both the
16 certified provider and the injured employee, within a reasonable
17 time after initiating rehabilitation services, shall give proper
18 notice of selection to the employer. If the injured employee
19 fails to select a certified provider within thirty days, the
20 employer shall select the certified provider of rehabilitation
21 services and give proper notice of selection to the employee.



1 The injured employee shall have thirty days after the notice of
2 selection is received to select a different certified provider
3 of rehabilitation services.

4 (d) A provider shall submit an initial evaluation report
5 of the employee to the employer and the director within forty-
6 five days of the date of referral or selection. The evaluation
7 shall determine whether the employee requires vocational
8 rehabilitation services to return to suitable gainful
9 employment, identify the necessary services, and state whether
10 the provider can provide these services. The initial evaluation
11 report shall contain:

12 (1) An assessment of the employee's:

13 (A) Current medical status;

14 (B) Primary disability;

15 (C) Secondary disability;

16 (D) Disabilities that are not related to the work
17 injury; and

18 (E) Physical or psychological limitations or both.

19 If this information is not provided by the treating
20 physician within a reasonable amount of time,
21 information from another physician shall be accepted;



- 1 (2) A job analysis addressing the demands of the
- 2 employee's employment;
- 3 (3) A statement from the provider identifying the
- 4 employee's vocational handicaps in relation to the
- 5 employee's ability to:
- 6 (A) Return to usual and customary employment; and
- 7 (B) Participate in and benefit from a vocational
- 8 rehabilitation program;
- 9 (4) A statement from the provider determining the
- 10 feasibility of vocational rehabilitation services,
- 11 including:
- 12 (A) The provider's ability to assist the employee in
- 13 the employee's efforts to return to suitable
- 14 gainful employment;
- 15 (B) An outline of specific vocational rehabilitation
- 16 services to be provided, justification for the
- 17 necessity of services, and how the effectiveness
- 18 of these services is measured; and
- 19 (C) How the vocational rehabilitation services
- 20 directly relate to the employee obtaining
- 21 suitable gainful employment; and



1 (5) The enrollment form and the statement of worker's
2 rights and responsibilities form obtained from the
3 department.

4 (e) A provider shall automatically approve vocational
5 rehabilitation services for an injured employee if the provider
6 determines that the injured employee will likely require
7 vocational rehabilitation services to return to suitable gainful
8 employment.

9 [~~e~~] (f) A provider shall file the employee's plan with
10 the approval of the employee. Upon receipt of the plan from the
11 provider, an employee shall have ten days to review and sign the
12 plan. The plan shall be submitted to the employer and the
13 employee and be filed with the director within two days from the
14 date of the employee's signature. A plan shall include a
15 statement of the feasibility of the vocational goal, using the
16 process of:

17 (1) First determining if the employee's usual and
18 customary employment represents suitable gainful
19 employment, and, should it not;



1 (2) Next determining if modified work or other work with
2 the same employer represents suitable gainful
3 employment, and, should it not;

4 (3) Next determining if modified or other employment with
5 a different employer represents suitable gainful
6 employment, and finally, should it not;

7 (4) Then providing training to obtain employment in
8 another occupational field. When training to obtain
9 employment in another occupational field is required,
10 the first appropriate option among the following
11 options shall be selected for the employee:

12 (A) On-the-job training;

13 (B) Short-term retraining program (less than fifty-
14 two weeks); or

15 (C) Long-term retraining program (more than fifty-two
16 weeks); and

17 (5) Lastly, if training under paragraph (4) is not
18 feasible, then self-employment may be considered.

19 [~~f~~] (g) A plan may be approved by the director; provided
20 the plan includes:



1 (1) A physician's assessment of the employee's physical
2 limitations, psychological limitations, and ability to
3 return to work. If this information is not provided
4 by the treating physician within a reasonable amount
5 of time, information from another physician shall be
6 accepted;

7 (2) A labor market survey indicating there are reasonable
8 assurances that the proposed occupation for which the
9 employee is to be placed or trained is readily
10 available in the community when placement begins, or
11 there are assurances of reemployment by the employer;

12 (3) A job analysis of the proposed occupation, setting
13 forth its duties, responsibilities, physical demands,
14 environmental working conditions, specific
15 qualifications needed for entry-level employment,
16 reasonable accommodations, expected estimated
17 earnings, and other relevant information;

18 (4) The nature and extent of the vocational rehabilitation
19 services to be provided, including:

20 (A) Specific services to be provided;

21 (B) Justification for the necessity of the services;



- 1 (C) Estimated time frames for delivery of services;
2 (D) The manner in which the effectiveness of these
3 services is to be measured;
4 (E) Criteria for determining successful completion of
5 the vocational rehabilitation plan; and
6 (F) The employee's responsibilities;
- 7 (5) A report of tests and copies thereof that have been
8 administered to the employee, including a statement
9 regarding the need for and use of the tests to
10 identify a vocational goal;
- 11 (6) If retraining, including on-the-job training, is found
12 to be necessary, the estimated cost of retraining, a
13 description of specific skills to be learned or
14 knowledge acquired with specific time periods and
15 clearly defined measurements of success, and the
16 nature, amount, and duration of living expenses;
- 17 (7) The total cost of the plan; and
18 (8) The employee's approval of the plan.
- 19 [~~g~~] (h) The employer shall have ten calendar days from
20 the postmark date on which the plan was mailed to submit in
21 writing to the director any objections to the plan.



1 [~~(h)~~] (i) The director may approve a plan that does not
2 include all of the requirements outlined in subsection [~~(f)~~]
3 (g); provided that the director finds the plan:

4 (1) Is in the best interest of the employee;

5 (2) Contains reasonable assurances that the employee will
6 be placed in suitable gainful employment; and

7 (3) Has been approved by the employee.

8 [~~(i)~~] (j) If the plan requires the purchase of any tools,
9 supplies, or equipment, the purchase deadline shall be included
10 in the plan. Tools, supplies, and equipment shall be considered
11 to be the property of the employer until the plan is determined
12 by the director to be successfully completed, after which it
13 shall become the property of the employee. If the plan requires
14 the purchase, etc., the employer shall purchase the items [~~prior~~
15 ~~to~~] before the purchase deadline in the plan.

16 [~~(j)~~] (k) An employee with an approved plan who is
17 determined as able to return to usual and customary employment
18 may choose to complete the plan or request a new plan of which
19 the goal may be the employee's usual and customary employment.

20 [~~(k)~~] (l) An injured employee's enrollment in a
21 rehabilitation plan or program shall not affect the employee's



1 entitlement to temporary total disability compensation if the
2 employee earns no wages during the period of enrollment. If the
3 employee receives wages for work performed under the plan or
4 program, the employee shall be entitled to temporary total
5 disability compensation in an amount equal to the difference
6 between the employee's average weekly wages at the time of
7 injury and the wages received under the plan or program, subject
8 to the limitations on weekly benefit rates prescribed in section
9 386-31(a). The employee shall not be entitled to temporary
10 total disability compensation for any week during this period
11 where the wages equal or exceed the average weekly wages at the
12 time of injury.

13 [~~(l)~~] (m) The director shall adopt rules for additional
14 living expenses necessitated by the rehabilitation program,
15 together with all reasonable and necessary vocational training.

16 [~~(m)~~] (n) If the rehabilitation unit determines that
17 vocational rehabilitation is not possible or feasible, it shall
18 certify the determination to the director.

19 [~~(n)~~] (o) Except as otherwise provided, determinations of
20 the rehabilitation unit shall be final unless a written request



1 for reconsideration is filed with the rehabilitation unit within
2 ten calendar days of the date of the determination.

3 The rehabilitation unit shall issue a reconsideration
4 determination to affirm, reverse, or modify the determination or
5 refer the request for reconsideration for hearing.

6 [~~(p)~~] (p) A reconsideration determination shall be final
7 unless a written request for hearing is filed within ten
8 calendar days from the date of the reconsideration
9 determination. All hearings shall be held before a hearings
10 officer designated by the director. A written decision shall be
11 issued in the name of the director.

12 [~~(p)~~] (q) The eligibility of any injured employee to
13 receive other benefits under this chapter shall in no way be
14 affected by the employee's entrance upon a course of vocational
15 rehabilitation as herein provided.

16 [~~(p)~~] (r) Vocational rehabilitation services for the
17 purpose of developing a vocational rehabilitation plan may be
18 approved by the director and the director may periodically
19 review progress in each case."


20 SECTION 3. Statutory material to be repealed is bracketed
21 and stricken. New statutory material is underscored.




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

2

INTRODUCED BY:





JAN 17 2025



H.B. NO. 423

Report Title:

Workers' Compensation; Vocational Rehabilitation Services

Description:

Clarifies the process for selecting a certified provider of rehabilitation services. Requires providers to automatically approve vocational rehabilitation services for an injured employee if those services will likely be required for suitable gainful employment.

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