

ACT 68

H.B. NO. 152

A Bill for an Act Relating to Workmen's Compensation.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 386-1, Hawaii Revised Statutes, is amended to read:

“Sec. 386-1 Definitions. In this chapter, unless the context otherwise requires:

“Appellate board” means the labor and industrial relations appeal board.

“Compensation” means all benefits accorded by this chapter to an employee or his dependents on account of a work injury as defined in this section; it includes medical and rehabilitation benefits, income and indemnity benefits in cases of disability or death, and the allowance for funeral and burial expenses.

“Covered employment” means employment of an employee as defined in this section or of a person for whom the employer has provided voluntary coverage pursuant to section 386-4.

“Director” means the director of labor and industrial relations.

“Disability” means loss or impairment of a physical or mental function.

“Department” means the department of labor and industrial relations.

“Employee” means any individual in the employment of another person.

Where an employee is loaned or hired out to another person for the purpose of furthering the other person's trade, business, occupation, or profession, the employee shall, beginning with the time when the control of the employee is transferred to the other person and continuing until the control is returned to the original employer, be deemed to be the employee of the other person regardless of whether he is paid directly by the other person or by the original employer. The employee shall be deemed to remain in the sole employment of the original employer if the other person fails to secure compensation to the employee as provided in section 386-121.

Whenever an independent contractor undertakes to perform work for another person pursuant to contract, express or implied, oral or written, the independent contractor shall be deemed the employer of all employees performing work in the execution of the contract, including employees of his sub-contractors and their subcontractors. However, the liabilities of the direct employer of an employee who suffers a work injury shall be primary and that of the others secondary in their order. An employer secondarily liable who satisfies a liability under this chapter shall be entitled to indemnity against loss from the employer primarily liable.

"Employee in comparable employment" means a person, other than the injured employee, who is employed in the same grade in the same type of work by the same employer or, if there is no person so employed, a person, who is employed in the same grade in the same type of work by another employer in the same district.

"Employer" means any person having one or more persons in his employment. It includes the legal representative of a deceased employer and the State, any county or political subdivision of the State, and any other public entity within the State.

The insurer of an employer is subject to the employer's liabilities and entitled to his rights and remedies under this chapter as far as applicable.

"Employment" means any service performed by an individual for another person under any contract of hire or apprenticeship, express or implied, oral or written, whether lawfully or unlawfully entered into. It includes service of public officials, whether elected or under any appointment or contract of hire express or implied.

"Employment" does not include the following service:

- (1) Service for a religious, charitable, educational, or nonprofit organization if performed in a voluntary or unpaid capacity;
- (2) Service for a religious, charitable, educational, or nonprofit organization if performed by a recipient of aid therefrom and the service is incidental to or in return for the aid received;
- (3) Service for a school, college, university, college club, fraternity, or sorority if performed by a student who is enrolled and regularly attending classes and in return for board, lodging, or tuition furnished, in whole or in part;
- (4) Service performed by a duly ordained, commissioned, or licensed minister, priest, or rabbi of a church in the exercise of his ministry or by a member of a religious order in the exercise of nonsecular

duties required by the order.

- (5) Service performed by an individual for another person solely for personal, family, or household purposes if the cash remuneration received is less than \$225 during the current calendar quarter and during each completed calendar quarter of the preceding twelve month period.

As used in this paragraph "religious, charitable, educational, or nonprofit organization" means a corporation, unincorporated association, community chest, fund, or foundation organized and operated exclusively for religious, charitable, or educational purposes, no part of the net earnings of which inure to the benefit of any private shareholder or individual.

"Medical care," "medical services," or "medical supplies," means every type of care, treatment, surgery, hospitalization, attendance, service, and supplies as the nature of the work injury requires, and includes such care, services and supplies rendered or furnished by a licensed or certified physician, dispensing optician, podiatrist, physical therapist, nurse, or masseur.

"Personal injury" includes death resulting therefrom.

"Physician" includes a doctor of medicine, a dentist, a chiropractor, an osteopath, a naturopath, and an optometrist.

"State average weekly wage" means the amount determined by the director under section 383-22 as the average weekly wage.

"Total disability" means disability of such an extent that the disabled employee has no reasonable prospect of finding regular employment of any kind in the normal labor market.

"Trade, business, occupation, or profession" means all commercial, occupational, or professional activities, whether conducted for pecuniary gain or not. It includes all activities of nonprofit organizations conducted in pursuit of their purposes.

"Wages" means all remuneration for services constituting employment. It includes the market value of board, lodging, fuel, and other advantages having a cash value which the employer has paid as a part of the employee's remuneration and gratuities received in the course of employment from others than the employer to the extent that they are customary and expected in that type of employment or accounted for by the employee to the employer.

"Work injury" means a personal injury suffered, under the conditions specified in section 386-3."

SECTION 2. Statutory material to be repealed is bracketed. New material is underscored. In printing this Act, the revisor of statutes need not include the brackets, the bracketed material or the underscoring.*

SECTION 3. This Act shall take effect upon its approval.

(Approved May 10, 1975.)

*Edited accordingly.