

ACT 14

H.B. NO. 921

A Bill for an Act Relating to Proceedings Before the Labor and Industrial Relations Appeals Board.

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

SECTION 1. Section 371-4, Hawaii Revised Statutes, is amended to read as follows:

“§371-4 Labor and industrial relations appeals board. (a) There is created a labor and industrial relations appeals board composed of three members nominated and, by and with the advice and consent of the senate, appointed by the governor for terms of ten years each, except that the terms of members first appointed shall be for six, eight, and ten years respectively as designated by the governor at the time of appointments. The governor shall designate the chairperson of the board, who shall be an attorney at law licensed to practice in all of the courts of this State. Each member shall hold office until the member's successor is appointed and qualified. Because cumulative experience and continuity in office are essential to the proper handling of appeals under workers' compensation law and other labor laws, it is hereby declared to be in the public interest to continue board members in office as long as efficiency is demonstrated. The members shall devote full time to their duties as members of the board. Effective July 1, 2005, the chairperson of the board shall be paid a salary set at eighty-seven per cent of the salary of the director of labor and industrial relations, and the salary of each of the other members shall be ninety-five per cent of the chairperson's salary.

(b) The board shall have power to decide appeals from decisions and orders of the director of labor and industrial relations issued under the workers' compensation law and any other law for which an appeal to the board is provided by law.

(c) For purposes of appeals to the board conducted pursuant to chapter 91, notwithstanding section 91-9.5, all parties shall be given written notice of hearing by first class mail at least fifteen days before the hearing.

(d) Unless otherwise provided by law, if service by first class mail is not made because the board or its agents have been unable to ascertain the address of the party after reasonable and diligent inquiry, the notice of hearing may be given to the party by publication at least once in each of two successive weeks in a newspaper of general circulation. The last published notice shall appear at least fifteen days prior to the date of the hearing.

(e) A decision concurred in by any two members shall constitute a decision of the board.

(f) A vacancy in the board, if there remain two members of it, shall not impair the authority of two members to act.

(g) If any member of the board is unable to act because of absence, temporary disability, or disqualification, the governor may make a temporary

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appointment and the appointee shall have all the powers and duties of a regular member of the board.

(h) The chairperson of the appeal board shall be responsible for the administrative functions of the appeal board. The appeal board may:

- (1) Appoint an executive officer and hearings officer, and employ other employees as it deems necessary in the performance of its functions;
- (2) Set the duties and compensation of the executive officer, hearings officer, and employees; and
- (3) Provide for the reimbursement of actual and necessary expenses incurred by the executive officer, hearings officer, and employees in the performance of their duties, within the amounts made available by appropriations therefor.

Members of the appeal board and employees other than clerical and stenographic employees shall be exempt from chapters 76 and 89. Clerical and stenographic employees shall be employed in accordance with chapter 76.

(i) The board shall be within the department of labor and industrial relations for budgetary and administrative purposes only.

(j) The board may adopt rules [~~and regulations~~] within its area of responsibilities in accordance with chapter 91.

(k) The board may make or issue any order or take other appropriate steps as may be necessary to enforce its rules and orders and to carry into full effect the powers and duties given to it by law. The board may after notice and reasonable opportunity to be heard by the board:

- (1) Impose administrative sanctions; and
- (2) Impose monetary sanctions of not more than \$250 for each offense against any person who is found to have violated the board's rules or orders, which amounts shall be deposited into the special compensation fund created by section 386-151.

The board shall determine and direct the appropriate notice and form for such opportunity to be heard."

SECTION 2. Section 386-88, Hawaii Revised Statutes, is amended to read as follows:

"§386-88 Judicial review. The decision or order of the appellate board shall be final and conclusive, except as provided in section 386-89, unless within thirty days after mailing of a certified copy of the decision or order, the director or any other party appeals to the intermediate appellate court, subject to chapter 602, by filing a written notice of appeal with the appellate board[-], or by electronically filing a notice of appeal in accordance with the Hawaii rules of appellate procedure. A fee in the amount prescribed by section 607-5 for filing a notice of appeal from a circuit court shall be paid to the appellate board for filing the notice of appeal from the board, which together with the appellate court costs shall be deemed costs of the appellate court proceeding. The appeal shall be on the record, and the court shall review the appellate board's decision on matters of law only. No new evidence shall be introduced in the appellate court, except that if evidence is offered that is clearly newly discovered evidence and material to the just decision of the appeal, the court may admit the evidence."

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

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

(Approved April 16, 2013.)