

JAN 20 2023

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 certain adjustments
2 to Hawai'i's workers' compensation law are necessary to better
3 address issues pertaining to the compensation process, including
4 delays, denial of claims, and required notices. The legislature
5 also finds that California's workers' compensation laws offer
6 guidance and have been identified by some Hawai'i practitioners
7 as a useful model.

8 The purpose of this Act is to incorporate certain aspects
9 of California's workers' compensation laws into the State's
10 workers' compensation law, including:

- 11 (1) Establishing notice requirements for employers;
- 12 (2) Requiring employers who deny the compensability of an
13 employee's injury to submit a written report
14 supporting the denial to the director of labor and
15 industrial relations within a specific period;
- 16 (3) Requiring employers to furnish to the injured employee
17 up to \$10,000 for medical care, services, and supplies



1 for the period immediately following the injury and so
2 long as reasonably needed or until the employer files
3 a written report with the director of labor and
4 industrial relations denying the compensability of the
5 injury, whichever is earlier; and

6 (4) Clarifying that failure to give an employer notice of
7 an employee's injury does not bar a claim for
8 compensation if any person having authority in the
9 interest of the employer had knowledge of the injury.

10 SECTION 2. Chapter 386, Hawaii Revised Statutes, is
11 amended by adding four new sections to be appropriately
12 designated and to read as follows:

13 "§386- Income and indemnity benefits; temporary
14 disability; notice by employer. (a) Initial notice of
15 temporary total or partial disability benefits payment. Except
16 where the employer denies or otherwise controverts an injured
17 employee's right to compensation under this chapter in the
18 employer's initial report of industrial injury filed with the
19 director, the employer shall, no later than ten days after the
20 employer obtains knowledge of the employee's injury and
21 disability, provide the injured employee with written notice



1 stating the amount of temporary total or partial disability
2 benefits due to the employee, the method by which the amount was
3 calculated, and the duration and schedule of benefit payments.

4 (b) Notice of delay in temporary total or partial
5 disability benefits payments. If the employer cannot determine
6 the employee's right to any period of temporary total or partial
7 disability benefits within ten days after the employer obtains
8 knowledge of the employee's injury and disability, the employer
9 shall, within the ten-day period, provide the injured employee
10 with written notice informing the employee of the delay; the
11 reasons for the delay; the need, if any, for additional
12 information required to make a determination; and when a
13 determination is likely to be made.

14 If the employer cannot make a determination by the date
15 specified in the notice, the employer shall send a subsequent
16 notice to the employee no later than the determination date
17 specified in the previous notice, notifying the employee of the
18 revised date by which the employer expects the determination to
19 be made. Any notices sent after the initial notice shall comply
20 with all requirements for the initial notice.



1 If the reason for the delay is related to a medical issue
2 and the employer is requesting or has requested the director to
3 issue an order requiring the employee to submit to a medical
4 examination pursuant to section 386-79, the delay notice shall
5 include one of the following statements:

6 (1) If the employee has already submitted to a medical
7 examination pursuant to section 386-79, the notice
8 shall state that:

9 (A) The employee may be asked to return to the
10 physician or surgeon who conducted the
11 examination for a new examination; or

12 (B) The employee shall contact the employer to
13 arrange for the employee to return to the
14 physician or surgeon who conducted the
15 examination for a new examination, if possible;

16 or

17 (2) If the employee has not yet submitted to a medical
18 examination pursuant to section 386-79, the notice
19 shall state that if the employee disagrees with the
20 results of the examination, the employee shall, no
21 later than thirty days after the employee's receipt of



1 the medical examination report, contact the employer
2 to obtain a form prescribed by the director to request
3 the director to appoint a duly qualified, impartial
4 physician to examine the employee pursuant to section
5 386-80.

6 (c) Notice of denial of temporary total or partial
7 disability benefits payment. If the employer denies or
8 otherwise controverts liability for the payment of any temporary
9 total or partial disability benefits for any period for which an
10 employee claims indemnity for temporary total or partial
11 disability, the employer shall, no later than thirty days after
12 the filing of the employer's initial report of industrial
13 injury, provide the employee and the director with a written
14 notice of the employer's denial of liability and the reasons for
15 the denial; provided that, if the employer's denial is based on
16 a medical report, the notice shall be provided no later than
17 thirty days after the employer's receipt of the report,
18 accompanied by a copy of the report, except for psychiatric
19 reports that the psychiatrist has recommended not be provided to
20 the employee.



1 If the employer's denial of liability is related to a
2 medical issue, the notice shall include one of the following
3 statements:

4 (1) If the denial is based on a medical examination
5 conducted pursuant to section 386-79 or 386-80, the
6 notice shall state that if the employee disputes the
7 results of the examination, the employee may:

8 (A) File a claim for workers' compensation benefits
9 using a form prescribed by the director; or

10 (B) Contact the employer to arrange for the employee
11 to return to the physician or surgeon who
12 conducted the examination for a new examination
13 if possible;

14 (2) If the denial is based on the treating physician's
15 evaluation of the employee's temporary total or
16 partial disability status and the employer agrees with
17 the treating physician's findings, the notice shall
18 state that if the employee disagrees with the results
19 of the evaluation, the employee shall, no later than
20 thirty days after the employee's receipt of the
21 evaluation report, contact the employer to obtain a



1 form prescribed by the director to request the
2 director for an appointment of a duly qualified,
3 impartial physician to examine the injured employee
4 pursuant to section 386-80; or

5 (3) If the denial is based on the treating physician's
6 evaluation of the employee's temporary total or
7 partial disability status and the employer disagrees
8 with the treating physician's findings, the notice
9 shall state that the employer disputes the result of
10 the evaluation and if the employee disagrees with the
11 results of the evaluation, the employee shall, no
12 later than thirty days after the employee's receipt of
13 the evaluation report, contact the employer to obtain
14 a form prescribed by the director to request the
15 director to appoint a duly qualified, impartial
16 physician to examine the injured employee pursuant to
17 section 386-80.

18 (d) Notice of changes to temporary total or partial
19 disability benefit rate, payment amount, or payment schedule.
20 Upon any changes to the benefit rate, payment amount, or payment
21 schedule for temporary total or partial disability benefits,



1 before or at the same time as the new payment, the employer
2 shall provide written notice to the employee stating the new
3 benefit rate, new payment amount, and new payment schedule, as
4 applicable, and the reason for the change.

5 (e) Notice of intent to terminate temporary total or
6 partial disability benefits payment. When the employer is of
7 the opinion that the payment of temporary total or partial
8 disability benefits should be terminated, the employer shall, in
9 accordance with section 386-31(b), provide written notice to the
10 employee and the director of the employer's intent to terminate
11 the benefits.

12 (f) Notice of resumed temporary total or partial
13 disability benefits payment. If the payment of temporary total
14 or partial disability benefits is resumed after the termination
15 of any disability benefits, the employer shall, no later than
16 ten days after the employer obtains knowledge of the employee's
17 entitlement to additional benefits, the employer shall provide
18 written notice to the injured employee advising the employee of
19 the amount of temporary total or partial disability benefits due
20 to the employee, the method by which the amount was calculated,
21 and the duration and schedule of benefit payments.



1 §386- Income and indemnity benefits; permanent
2 disability; notice by employer. (a) Notice of monitoring until
3 medical stabilization. If the employee's injury has resulted or
4 may result in permanent total or partial disability but the
5 employee's medical condition is not stabilized, the employer
6 shall, with the final payment of temporary total or partial
7 disability benefits, provide the employee with a written notice
8 stating that:

- 9 (1) The employee may be eligible to receive permanent
10 total or partial disability benefits, but the amount
11 cannot be determined because the employee's medical
12 condition has not yet stabilized;
- 13 (2) The employee's medical condition will be monitored
14 until the employer obtains information indicating that
15 the employee's medical condition is stabilized, at
16 which time the employer will request the director for
17 a declaration of medical stability pursuant to section
18 386-31(b); and
- 19 (3) The estimated date when a determination is likely to
20 be made.



1 If the determination of medical stability is not made by
2 the date specified in the notice, the employer shall send a
3 subsequent notice to the employee no later than the
4 determination date specified in the previous notice, notifying
5 the employee of the revised date by which the employer expects
6 the determination to be made. Any notices sent after the
7 initial notice shall comply with all requirements for the
8 initial notice.

9 (b) Notice of first permanent total or partial disability
10 benefit payment. The employer shall, with the first payment of
11 permanent total or partial disability benefits, provide the
12 injured employee with written notice stating the weekly amount
13 of permanent total or partial disability benefits due to the
14 employee, how the amount was calculated, the duration and
15 schedule of benefit payments, and the employer's reasonable
16 estimate of permanent total or partial disability benefits to be
17 paid.

18 (c) Notice of changes to permanent total or partial
19 disability benefit rate, payment amount, or payment schedule.
20 Upon any changes to the benefit rate, payment amount, or payment
21 schedule for permanent total or partial disability benefits,



1 before or at the same time as the new payment, the employer
2 shall provide written notice to the employee stating the new
3 benefit rate, new payment amount, and new payment schedule, as
4 applicable, and the reason for the change.

5 (d) Notice to terminate permanent total or partial
6 disability benefits payment. When the employer is of the
7 opinion that the payment of permanent total or partial
8 disability benefits should be terminated because the injured
9 employee is able to resume work, the employer shall provide
10 written notice to the employee and the director of the
11 employer's intent to terminate the benefits no later than two
12 weeks before the date when the final payment is to be made;
13 provided that if the decision to terminate payment of benefits
14 was made after the final payment, the employer shall send the
15 notice no later than ten days after the final payment. The
16 notice shall state the reason for stopping payment; make an
17 accounting of all benefits paid to or on behalf of the employee,
18 including the dates and amounts paid and any related penalties;
19 and inform the employee that the employee may file a written
20 request with the director for a hearing if the employee
21 disagrees with the employer.



1 If the employer's determination to terminate payment is
2 based on a medical report, a copy of the medical report shall be
3 provided with the notice, except for psychiatric reports that
4 the psychiatrist has recommended not be provided to the
5 employee.

6 If the employer's determination to terminate payment is
7 related to a medical issue, the notice shall include one of the
8 following statements:

9 (1) If the termination is based on a medical examination
10 conducted pursuant to section 386-79 or 386-80, the
11 notice shall state that, if the employee disputes the
12 results of the examination, the employee may:

13 (A) File a written request with the director for a
14 hearing using a form prescribed by the director;

15 or

16 (B) Contact the employer to arrange for the employee
17 to return to the physician or surgeon who
18 conducted the examination for a new examination
19 if possible; or

20 (2) If the termination is based on the treating
21 physician's evaluation of the employee's permanent



1 total or partial disability status, the notice shall
2 state that, if the employee disagrees with the results
3 of the evaluation, the employee shall, no later than
4 thirty days after the employee's receipt of the
5 evaluation report, contact the employer to obtain a
6 form prescribed by the director to request the
7 director for an appointment of a duly qualified
8 impartial physician to examine the injured employee
9 pursuant to section 386-80.

10 (e) Notice of resumed permanent total or partial
11 disability benefit payments. If the payment of permanent total
12 or partial disability benefits is resumed after the termination
13 of any disability benefits, the employer shall, no later than
14 ten days after the employer obtains knowledge of the employee's
15 right to additional benefits, provide the injured employee with
16 written notice stating the amount of permanent total or partial
17 disability benefit due to the employee, the method by which the
18 amount was calculated, and the duration and schedule of benefit
19 payments.

20 §386- Income and indemnity benefits; death; notice by
21 employer. (a) Where a work injury for which compensation is



1 payable under this chapter causes death of an employee or where
2 an employee who is entitled to weekly permanent total or partial
3 disability benefits dies from any cause other than the
4 compensable work injury, the employer shall provide written
5 notice to the employee's dependents regarding the status of any
6 benefits to which the dependents may be entitled or have claimed
7 as a result of the employee's death, including funeral and
8 burial allowance pursuant to section 386-41(a). The employer
9 shall send to each dependent a copy of all notices concerning
10 benefits claimed by, or which may be payable to, the dependent,
11 including notices sent to other dependents if the benefit amount
12 payable to the different dependent affects payments made to
13 other dependents. If the employer discovers a new dependent
14 after having sent a notice, the employer shall send to that
15 dependent copies of each prior notice concerning benefits to
16 which the newly-discovered dependent may be entitled.

17 (b) Notice of death benefits. If the employer pays death
18 benefits, the employer shall, no later than ten days after the
19 employer obtains knowledge of the employee's death and the
20 identity and address of dependents affected by the death,
21 provide written notice to each affected dependent stating the



1 amount of death benefits due to the dependent, the method by
2 which the amount was calculated, the duration and schedule of
3 benefit payments, and any other information as deemed
4 appropriate by the director.

5 (c) Notice of delay in determining death benefits. If the
6 employer cannot determine the right of dependents to some or all
7 death benefits no later than ten days after the employer obtains
8 knowledge of the employee's death, the identity and address of
9 dependents affected by the death, and the nature of the benefit
10 claimed or which might be due, the employer shall, within the
11 ten-day period, provide written notice informing each affected
12 dependent of any delay; the reasons for the delay; the need, if
13 any, for additional information required to make a
14 determination; and when a determination is likely to be made.

15 If the employer cannot make a determination by the date the
16 employer specified in the initial notice, the employer shall, no
17 later than the determination date specified in the previous
18 notice, notify the affected dependents in writing of the revised
19 date by which the employer expects the determination to be made.
20 Any notices sent after the initial delay notice shall include



1 the employee's remedies and comply with all requirements for the
2 initial notice.

3 (d) Notice of denial of death benefits payment. If the
4 employer denies or otherwise controverts liability for the
5 payment of any or all death benefits, the employer shall, no
6 later than ten days after the determination to deny liability
7 was made, provide each affected dependent with written notice
8 informing the dependent of the denial; the reasons for the
9 denial; and stating that if the dependent disagrees with the
10 employer, the dependent may file a written request with the
11 director for a hearing.

12 (e) Notice of changes to death benefit rate, payment
13 amount, or payment schedule. Upon any changes to the benefit
14 rate, payment amount, or payment schedule for death benefits,
15 the employer shall provide written notice to the employee
16 stating the new benefit rate, new payment amount, and new
17 payment schedule, as applicable, and the reason for the change.
18 The notice shall be sent before or with the changed payment, but
19 no later than ten days after the payment of benefits made
20 immediately before the change.



1 (f) Notice to terminate death benefits payment. When the
2 employer is of the opinion that the payment of death benefits
3 should be terminated for a dependent, the employer shall, no
4 later than ten days before the date when the final payment is to
5 be made, notify the affected dependent and the director in
6 writing of the employer's intent to terminate the benefits;
7 provided that if the decision to terminate payment of benefits
8 was made after the final payment, the employer shall send the
9 notice no later than ten days after the final payment. The
10 notice shall state the reason for stopping payment; make an
11 accounting of all benefits paid to or on behalf of the
12 dependent, including the dates and amounts paid and any related
13 penalties; and state that if the dependent disagrees with the
14 employer, the dependent may file a written request with the
15 director for a hearing.

16 §386- Provisions common to benefits for disability;
17 notice by employer. (a) Notice of delay in determining all
18 liability. If the employer cannot determine whether the
19 employer has any liability for an injury other than an injury
20 causing death, the employer shall, no later than ten days after
21 the employer obtains knowledge of injury, provide the injured



1 employee with written notice informing the employee of the
2 delay; the reasons for the delay; the need, if any, for
3 additional information required to make a determination; and
4 when a determination is likely to be made.

5 If the employer cannot make a determination by the date the
6 employer specified in the notice, or if the reason for the delay
7 has changed, the employer shall send a subsequent notice to the
8 employee as soon as reasonably practical but in no event later
9 than the determination date specified in the previous notice,
10 stating the reason for the additional delay and revised date
11 when the employer expects the determination to be made. Any
12 notices sent after the initial notice shall comply with all
13 requirements for the initial notice.

14 Any notice that is provided to the injured employee with a
15 copy of the employer's report of industrial injury sent to the
16 employee in compliance with section 386-95, shall include an
17 explanation that:

18 (1) Any employer who denies or otherwise controverts the
19 compensability of an injury shall submit a written
20 report to the director supporting the denial no later
21 than thirty days after the date on which the employer



1 filed the employer's initial report of industrial
2 injury; provided that the director may, upon showing
3 of good cause in writing, extend the submittal period;

4 (2) The employer's failure to submit the written report
5 within the required period shall be deemed as the
6 employer's acceptance of compensability, which
7 establishes a presumption that the injury is
8 compensable, which may be rebutted only by evidence
9 discovered after the expiration of the period to file
10 the written report; and

11 (3) Section 386-21.1 requires an employer to furnish the
12 employee with all medical care, services, and supplies
13 as the nature of the injury requires, immediately
14 after a work injury is sustained by the employee and
15 so long as reasonably needed, or until the employer
16 files a written report with the director denying or
17 otherwise controverting the compensability of the
18 injury, whichever is earlier, up to \$10,000.

19 If the reason for the delay is related to a medical issue
20 and the employer is requesting or has requested a medical
21 examination of the injured employee conducted by a duly



1 qualified physician, the notice shall be accompanied by the form
2 prescribed by the director to request the director to appoint a
3 duly qualified, impartial physician to examine the injured
4 employee pursuant to section 386-80; and include the following
5 statement printed in no smaller than ten point in size with the
6 phrase "TEN DAYS" in a bold typeface print:

7 Enclosed is a form that you must submit to the
8 Department of Labor and Industrial Relations'
9 Disability Compensation Division within TEN
10 DAYS to request the Director of Labor and
11 Industrial Relations to appoint a duly
12 qualified impartial physician to conduct your
13 medical examination. If you do not submit the
14 form within TEN DAYS, we will have the right
15 to request the Director of Labor and
16 Industrial Relations to order you to submit to
17 a medical examination conducted by a duly
18 qualified physician or surgeon designated and
19 paid by us. In addition, within TEN DAYS after
20 the Director of Labor and Industrial Relations
21 appoints a duly qualified, impartial



1 physician, you must make an appointment with
2 that physician for an examination and inform
3 us of your appointment date and time. If you
4 do not inform us of your appointment, we will
5 make an appointment on your behalf.

6 (b) Notice accompanying the form to request the director
7 for appointment of a duly qualified, impartial physician. An
8 employee may object to a medical determination made by a
9 treating physician by requesting the employer for a form
10 prescribed by the director to request the director to appoint a
11 duly qualified, impartial physician to examine the injured
12 employee. Upon receiving a request from an employee, the
13 employer shall, no later than ten days after the request,
14 acknowledge receipt of the employee's objection and provide the
15 employee with a copy of the form with a written notice including
16 the following statements printed in no smaller than ten point in
17 size with the phrase "TEN DAYS" in a bold typeface print:

18 If you wish to receive a medical examination
19 conducted by a duly qualified, impartial
20 physician, enclosed is a form that you must
21 submit to the Department of Labor and



1 Industrial Relations' Disability Compensation
2 Division within TEN DAYS to request the
3 Director of Labor and Industrial Relations to
4 appoint a duly qualified impartial physician
5 to conduct your medical examination. If you
6 do not submit the form within TEN DAYS, we
7 will have the right to request the Director of
8 Labor and Industrial Relations to order you to
9 submit to a medical examination conducted by
10 a duly qualified physician or surgeon
11 designated and paid by us. In addition,
12 within TEN DAYS after the Director of Labor
13 and Industrial Relations appoints a duly
14 qualified, impartial physician, you must make
15 an appointment with that physician for an
16 examination and inform us of your appointment
17 date and time. If you do not inform us of
18 your appointment, we will make an appointment
19 on your behalf.
20 (c) Notice denying liability for all compensation
21 benefits. If the employer denies liability for the payment of



1 all workers' compensation benefits for any claim except a claim
2 for death benefits, including claims limited to the furnishing
3 of medical care, services, and supplies, the employer shall, no
4 later than ten days after the denial determination was made,
5 provide written notice informing the employee of the denial and
6 the reasons for the denial.

7 If the employer's denial of liability is based on a medical
8 report, a copy of the medical report shall be provided with the
9 notice, except for psychiatric reports that the psychiatrist has
10 recommended not be provided to the employee.

11 If the employer's denial of liability is related to a
12 medical issue, the notice shall include one of the following
13 statements:

14 (1) If the denial is based on a medical examination
15 conducted pursuant to section 386-79 or 386-80, the
16 notice shall state that, if the employee disputes the
17 results of the examination, the employee may:

18 (A) File an employee's claim for workers'
19 compensation benefits using a form prescribed by
20 the director; or



1 (B) Contact the employer to arrange for the employee
2 to return to the physician or surgeon who
3 conducted the examination for a new examination
4 if possible; or

5 (2) If the employee has not submitted to a medical
6 examination pursuant to section 386-79, the notice
7 shall be accompanied by a form prescribed by the
8 director to request the director to appoint a duly
9 qualified, impartial physician to examine the employee
10 pursuant to section 386-80, and include the following
11 statement printed in no smaller than ten point in size
12 with the phrase "TEN DAYS" in a bold typeface print:

13 If you disagree with the decision to deny
14 your claim and wish to receive a medical
15 examination conducted by a duly qualified
16 impartial physician, enclosed is a form
17 that you must submit to the Department of
18 Labor and Industrial Relations'
19 Disability Compensation Division within
20 TEN DAYS to request the Director of Labor
21 and Industrial Relations to appoint a



1 duly qualified, impartial physician to
2 conduct your medical examination. If you
3 do not submit the form within TEN DAYS,
4 we will have the right to request the
5 Director of Labor and Industrial
6 Relations to order you to submit to a
7 medical examination conducted by a duly
8 qualified physician or surgeon
9 designated and paid by us. In addition,
10 within TEN DAYS after the Director of
11 Labor and Industrial Relations appoints
12 a duly qualified, impartial physician,
13 you must make an appointment with that
14 physician for an examination and inform
15 us of your appointment date and time. If
16 you do not inform us of your appointment,
17 we will make an appointment on your
18 behalf.

19 A copy of the notice denying liability for all compensation
20 benefits shall be sent to all lien claimants; all claimants for
21 costs; and all persons authorized by the employer to furnish



1 benefits, goods, or services for which a lien or claim for costs
2 may be approved by the director or, if appealed, by the appeals
3 board or court deciding the appeal."

4 SECTION 3. Section 386-21.1, Hawaii Revised Statutes, is
5 amended to read as follows:

6 "[~~§~~386-21.1~~]~~ **Medical care, services, and supplies for**
7 **controverted claims; notice; limitations.** [~~In the event of a~~
8 ~~controverted claim, the injured employee's private health care~~
9 ~~plan shall pay for or provide medical care, services, and~~
10 ~~supplies in accordance with the private health care contract.~~
11 ~~When the claim is accepted or determined to be compensable, the~~
12 ~~employer shall reimburse the private health care plan and the~~
13 ~~injured employee in amounts as authorized by this chapter and~~
14 ~~rules adopted by the director.] (a) Immediately after a work
15 injury sustained by an employee and so long as reasonably needed
16 or until the employer files a written report with the director
17 pursuant to section 386-95(c) denying or otherwise controverting
18 the compensability of the injury, whichever is earlier, the
19 employer shall furnish to the employee all medical care,
20 services, and supplies as the nature of the injury requires;
21 provided that the amount of the employer's liability for the~~



1 medical care, services, and supplies under this section shall be
2 limited to \$10,000. The liability for the medical care,
3 services, and supplies shall be subject to the deductible under
4 section 386-100.

5 (b) An employer, upon obtaining knowledge of an employee's
6 injury, shall provide the employee with a written instruction to
7 submit all bills for medical care, services, and supplies
8 provided between the date the employee was injured and the date
9 the employer submitted a written report to the director pursuant
10 to section 386-95(c) denying or otherwise controverting the
11 employer's liability, unless the employee has done so already.
12 The employer shall also inform the employee that the maximum
13 payment for medical care, services, and supplies that were
14 provided in compliance with the requirements of this chapter is
15 \$10,000.

16 (c) The furnishing of medical care, services, and supplies
17 under subsection (a) shall not give rise to a presumption of
18 liability on the part of the employer."

19 SECTION 4. Section 386-31, Hawaii Revised Statutes, is
20 amended to read as follows:



1 "§386-31 Total disability. (a) Permanent total
2 disability. Where a work injury causes permanent total
3 disability, the employer shall pay the injured employee a weekly
4 benefit equal to sixty-six and two-thirds per cent of the
5 employee's average weekly wages, subject to the following
6 limitation:

7 Beginning January 1, 1975, and during each succeeding
8 twelve-month period thereafter, not more than the state average
9 weekly wage last determined by the director, rounded to the
10 nearest dollar, nor less than \$38 or twenty-five per cent of the
11 foregoing maximum amount, rounded to the nearest dollar,
12 whichever is higher.

13 In the case of the following injuries, the disability
14 caused thereby shall be deemed permanent and total:

- 15 (1) The permanent and total loss of sight in both eyes;
16 (2) The loss of both feet at or before the ankle;
17 (3) The loss of both hands at or above the wrist;
18 (4) The loss of one hand and one foot;
19 (5) An injury to the spine resulting in permanent and
20 complete paralysis of both legs or both arms or one
21 leg and one arm; and



1 (6) An injury to the skull resulting in incurable
2 imbecility or insanity.

3 In all other cases the permanency and totality of the
4 disability shall be determined on the facts. No adjudication of
5 permanent total disability shall be made until after [~~two weeks~~
6 ten days from the date of the injury.

7 (b) Temporary total disability. Where a work injury
8 causes total disability not determined to be permanent in
9 character, the employer, for the duration of the disability, but
10 not including the first three calendar days thereof, shall pay
11 the injured employee a weekly benefit at the rate of sixty-six
12 and two-thirds per cent of the employee's average weekly wages,
13 subject to the limitations on weekly benefit rates prescribed in
14 subsection (a), or if the employee's average weekly wages are
15 less than the minimum weekly benefit rate prescribed in
16 subsection (a), at the rate of one hundred per cent of the
17 employee's average weekly wages.

18 If an employee is unable to complete a regular daily work
19 shift due to a work injury, the employee shall be deemed totally
20 disabled for work for that day.



1 The employer shall pay temporary total disability benefits
2 promptly as they accrue to the person entitled thereto without
3 waiting for a decision from the director, unless this right is
4 controverted by the employer in the employer's initial report of
5 industrial injury. The first payment of benefits shall become
6 due and shall be paid no later than on the tenth day after the
7 employer has been notified of the occurrence of the total
8 disability, and thereafter the benefits due shall be paid weekly
9 except as otherwise authorized pursuant to section 386-53.

10 The payment of these benefits shall only be terminated upon
11 order of the director or if the employee is able to resume work.
12 When the employer is of the opinion that the payment of
13 temporary total disability benefits should be terminated because
14 the injured employee is able to resume work, the employer shall
15 notify the employee and the director in writing of [an] the
16 employer's intent to terminate the benefits [at least two weeks]
17 no later than ten days prior to the date when the [last] final
18 payment is to be made[-]; provided that if the decision to
19 terminate payment of benefits was made after the final payment,
20 the employer shall send the notice no later than ten days after
21 the final payment. The notice shall [give] state the reason for



1 stopping payment; make an accounting of all benefits paid to or
2 on behalf of the employee, including the dates and amounts paid
3 and any related penalties; and [shall] inform the employee that
4 the employee may [make] file a written request [to] with the
5 director for a hearing if the employee disagrees with the
6 employer.

7 If the employer's determination to terminate payment is
8 based on a medical report, a copy of the medical report shall be
9 provided with the notice, except for psychiatric reports that
10 the psychiatrist has recommended not be provided to the
11 employee.

12 If the employer's determination to terminate payment is
13 related to a medical issue, the notice shall include one of the
14 following statements:

15 (1) If the termination is based on a medical examination
16 conducted pursuant to section 386-79 or 386-80, the
17 notice shall state that, if the employee disputes the
18 results of the examination, the employee may:

19 (A) File a written request with the director for a
20 hearing using a form prescribed by the director;
21 or



1 (B) Contact the employer to arrange for the employee
2 to return to the physician or surgeon who
3 conducted the examination for a new examination
4 if possible; or

5 (2) If the termination is based on the treating
6 physician's evaluation of the employee's temporary
7 disability status, the notice shall state that if the
8 employee disagrees with the results of the evaluation,
9 the employee shall, no later than thirty days after
10 the employee's receipt of the evaluation report,
11 contact the employer to obtain a form prescribed by
12 the director to request the director for an
13 appointment of a duly qualified, impartial physician
14 to examine the injured employee pursuant to section
15 386-80.

16 Upon receipt of the request for a hearing from the
17 employee, the director shall conduct a hearing as expeditiously
18 as possible and render a prompt decision as specified in section
19 386-86. If the employee is unable to perform light work, if
20 offered, temporary total disability benefits shall not be



1 discontinued based solely on the inability to perform or
2 continue to perform light work.

3 ~~[An employer or insurance carrier who fails to comply with~~
4 ~~this section shall pay not more than \$5,000 into the special~~
5 ~~compensation fund upon the order of the director, in addition to~~
6 ~~other penalties prescribed in section 386-92.~~

7 ~~(1)]~~ (c) The employer, upon obtaining information
8 indicating that the injured employee's medical condition may be
9 stabilized, shall file a written request to the director for a
10 declaration of medical stability. If the director determines,
11 based upon a review of medical records and reports and other
12 relevant documentary evidence, that an injured employee's
13 medical condition may be stabilized and the employee is unable
14 to return to the employee's regular job, the director shall
15 issue a preliminary decision regarding the employee's
16 entitlement and limitation to benefits and rights under Hawaii's
17 workers' compensation laws. The preliminary decision shall be
18 sent to the affected employee ~~[and]~~, the employee's designated
19 representative ~~[and]~~, the employer, and the employer's
20 designated representative, and shall state that any party
21 disagreeing with the director's preliminary findings of medical



1 stabilization and work limitations may request a hearing
2 [~~within~~] no later than twenty days of the date of the decision.
3 [~~The~~] During the twenty-day period, the director shall be
4 available to answer any questions [~~during the twenty-day period~~]
5 from the injured employee and affected employer. If neither
6 party requests a hearing challenging the director's finding, the
7 determination shall be deemed accepted and binding upon the
8 parties. In any case where a hearing is held on the preliminary
9 findings, any person aggrieved by the director's decision and
10 order may appeal under section 386-87.

11 A preliminary decision of the director shall inform the
12 injured employee and the employer of the following
13 responsibilities, benefits, and limitations on vocational
14 rehabilitation benefits that are designed to facilitate the
15 injured employee's early return to suitable gainful employment:

16 (1) That the injured employee may invoke the employee's
17 rights under section 378-2, 378-32, or 386-142, or all
18 of them, in the event of unlawful discrimination or
19 other unlawful employment practice by the employer;
20 and



1 (2) That after termination of temporary total disability
2 benefits, an injured employee who resumes work may be
3 entitled to permanent partial disability benefits,
4 which if awarded, shall be paid regardless of the
5 earnings or employment status of the disabled employee
6 at the time.

7 ~~[(2)]~~ If the rehabilitation unit determines that an
8 injured employee is not a feasible candidate for rehabilitation
9 and that the employee is unable to resume the employee's regular
10 job, it shall promptly certify the same to the director. Soon
11 thereafter, the director shall conduct a hearing to determine
12 whether the injured employee remains temporarily totally
13 disabled, or whether the employee is permanently partially
14 disabled, or permanently totally disabled.

15 (d) An employer or insurance carrier who fails to comply
16 with this section shall pay not more than \$5,000 into the
17 special compensation fund upon the order of the director, in
18 addition to other penalties prescribed in section 386-92."

19 SECTION 5. Section 386-81, Hawaii Revised Statutes, is
20 amended to read as follows:



1 "§386-81 Notice of injury; waiver. (a) No proceedings
2 for compensation under this chapter shall be maintained unless
3 written notice of the injury claimed to have caused the
4 disability or death of the employee has been given to the
5 employer as soon as practicable after the [~~happening thereof.~~]
6 occurrence of the injury. The notice may be given by the
7 injured employee or by some other person on the employee's
8 behalf.

9 (b) Failure to give [~~such~~] notice pursuant to subsection
10 (a) shall not bar a claim under this chapter if[+]:[+]

11 (1) The employer [~~or~~], the injured employee's supervisor,
12 the employer's agent in charge of the work in the
13 place where the injury was sustained, or any other
14 person having authority in the interest of the
15 employer, had knowledge of the injury[+] or knowledge
16 of the assertion of a claim of injury sufficient to
17 afford the employer an opportunity to investigate the
18 matter;

19 (2) Medical, surgical, or hospital service and supplies
20 have been furnished to the injured employee by the
21 employer; or



1 (3) For some satisfactory reason the notice could not be
 2 given and the employer has not been prejudiced by
 3 ~~[such]~~ the failure.

4 (c) Unless the employer is prejudiced thereby, notice of
 5 injury pursuant to subsection (a) shall be deemed to have been
 6 waived by the employer if objection to the failure to give
 7 ~~[such]~~ notice is not raised at the first hearing on a claim in
 8 respect ~~[of such]~~ to the injury of which the employer is given
 9 reasonable notice and opportunity to be heard."

10 SECTION 6. Section 386-95, Hawaii Revised Statutes, is
 11 amended to read as follows:

12 "**§386-95 Reports of injuries**~~[7]~~**;** **other reports**~~[7]~~**;**
 13 **penalty.** (a) Every employer shall keep a record of all
 14 injuries, fatal or otherwise, ~~[received]~~ incurred by the
 15 employer's employees in the course of their employment, when
 16 known to the employer or brought to the employer's attention.

17 (b) Within seven working days after the employer ~~[has]~~
 18 obtains knowledge of ~~[such]~~ an employee's injury causing absence
 19 from work for one day or more or requiring medical treatment
 20 beyond ordinary first aid, the employer shall ~~[make a report~~



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1 ~~thereon to~~ file an employer's report of industrial injury with
2 the director. The report shall ~~[set forth the]~~ include:

3 (1) The name, address, and nature of the employer's
4 business [and the];

5 (2) The name, age, sex, wages, and occupation of the
6 injured employee [and shall state the];

7 (3) The date and hour of the accident[~~7~~] if the injury [is
8 produced thereby, the] was incurred as a result
9 thereof;

10 (4) The nature and cause of the injury[~~7~~ and such other];

11 (5) Information on insurance, including the name of the
12 insurance carrier, whether liability is denied, and if
13 liability is denied, the reason for the denial; and

14 (6) Any other information as the director may require.

15 (c) Any employer who denies or otherwise controverts the
16 compensability of an injury shall submit a written report to the
17 director supporting the denial no later than thirty days after
18 the date on which the employer filed the initial employer's
19 report of industrial injury; provided that the director may,
20 upon showing of good cause in writing, extend the filing
21 deadline. The employer's failure to submit a written report in



1 compliance with this subsection shall be deemed as the
2 employer's acceptance of compensability and the injury shall be
3 presumed compensable. The presumption of compensability
4 established pursuant to this subsection may be rebutted only by
5 evidence discovered after the expiration of the period to file
6 the written report.

7 (d) By January 31 of each year, the employer shall file
8 with the director a report with respect to each injury on which
9 the employer is continuing to pay compensation, showing all
10 amounts paid by the employer on account of the injury.

11 (e) The reports required by this section shall be made on
12 forms to be obtained from the director pursuant to section
13 386-71 and deposit of reports in the United States mail or by
14 electronic means as approved by the director, addressed to the
15 director, within the time specified shall be deemed in
16 compliance with the requirements of this section.

17 (f) When an injury results in immediate death, the
18 employer shall within forty-eight hours notify personally or by
19 telephone a representative of the department in the county where
20 the injury occurred.



S.B. NO. 918

Report Title:

Workers' Compensation; Disability Benefits; Death Benefits;
Notice by Employer; Medical Benefits; Knowledge of Injury

Description:

Establishes notice requirements for employers under Hawaii's Workers' Compensation Law. Requires employers who deny the compensability of an employee's injury to submit a written report supporting the denial to the Director of Labor and Industrial Relations within a specified period. Requires employers to furnish to the injured employee up to \$10,000 for medical care, services, and supplies for the period immediately following the injury and so long as reasonably needed or until the employer files a written report with the Director denying the compensability of the injury, whichever is earlier. Clarifies that failure to give an employer notice of an employee's injury does not bar a claim for compensation if any person having authority in the interest of the employer had knowledge of the injury.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

