



GOV. MSG. NO. 808

EXECUTIVE CHAMBERS
HONOLULU

LINDA LINGLE
GOVERNOR

May 1, 2007

The Honorable Colleen Hanabusa, President
and Members of the Senate
Twenty-Fourth State Legislature
State Capitol, Room 409
Honolulu, Hawaii 96813

Dear Madam President and Members of the Senate:

I am transmitting herewith HB854 HD1 SD1, without my approval, and with the statement of objections relating to the measure.

HB854 HD1 SD1

A BILL FOR AN ACT RELATING TO CONTINUED
TEMPORARY TOTAL DISABILITY BENEFITS TO
INJURED EMPLOYEES.

Sincerely,

A handwritten signature in black ink, appearing to read "L. Lingle".

LINDA LINGLE

EXECUTIVE CHAMBERS

HONOLULU

May 1, 2007

STATEMENT OF OBJECTIONS TO HOUSE BILL NO. 854

Honorable Members
Twenty-Fourth Legislature
State of Hawaii

Pursuant to Section 16 of Article III of the Constitution of the State of Hawaii, I am returning herewith, without my approval, House Bill No. 854, entitled "A Bill for an Act Relating to Continued Temporary Total Disability Benefits to Injured Employees."

This bill allows the continuation of temporary total disability (TTD) benefits until the Director of Labor and Industrial Relations (Director) issues a decision terminating the benefits or until the employee's treating physician determines that the employee is able to resume work and the employer has made a bona fide offer of work within the employee's medical restrictions.

Currently, pursuant to section 386-31(b), Hawaii Revised Statutes, an employer/insurance carrier (employer) may terminate TTD benefits upon order of the Director or if an employee is able to return to work. The existing law provides that an employer must notify the employee and the Director of its intent to terminate TTD benefits at least two weeks prior to the date when the last payment is to be made. Section 386-31(b) also requires the notice to inform the employee that the employee may make a written request to the Director for a hearing if the employee disagrees with the employer's decision to terminate TTD benefits. Current law protects against unwarranted early termination of benefits by allowing the Labor Director to assess a twenty percent penalty against an employer who fails to

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continue paying an injured worker.

While I support the intent to ensure that injured workers collecting TTD benefits receive their benefits in a timely manner while preventing employers from unreasonably denying or delaying payment of TTD benefits, this bill is objectionable for the following reasons:

(1) It does not recognize that the twenty percent penalty already deters employers from terminating TTD benefits unless there is a valid and good faith basis to do so.

(2) Although this bill entitles an employer to a credit, any credit is limited to the amount paid to the employee after notification by the Director of the Director's determination. Any benefits paid prior to the decision of the Director are specifically not recoverable by the employer. Because most employers will immediately terminate benefits once they receive notice of the Director's decision, the period of credit allowed by the bill is an extremely short period of time, and more importantly, specifically excludes the period in which the employee collected benefits to which the employee was not entitled. In other words, even if the Director determines that TTD benefits should have been terminated at some prior date, an employer would not be entitled to a credit nor would it be allowed to recover any of the TTD benefits paid prior to the decision of the Director, thereby allowing a employee to retain benefits to which the employee was not entitled.

(3) The bill would needlessly increase the costs of workers' compensation claims and would also create a disincentive to return to work. More specifically, it may encourage certain employees to continue to contest returning to work because even if the Director determines the employee should and could have

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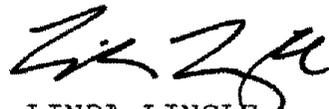
returned to work, the employee bears no risk for failing to do so, as the benefits the employee was paid are non-recoverable by the employer.

(4) It provides a process for an employee, but not an employer, to request a hearing. Pursuant to this bill, an employer cannot terminate TTD benefits unless the Director orders the termination of benefits or the employee's treating physician determines that the employee is able to resume work and the employer has made a bona fide offer of work within the employee's medical restrictions. The bill, however, does not provide a specific process for the employer to request a hearing, establishing inequitable treatment of the employer versus the employee through this provision.

(5) Finally, this bill establishes disincentives for an employee to return to work within a reasonable time since their wage benefits continue as long as they stay away from their job and their treating medical provider allows them to do so. Since the employee must initiate the request for a Department of Labor and Industrial Relations hearing, the bill is silent as to what happens if the employee fails to request a hearing.

For the foregoing reasons, I am returning House Bill No. 854 without my approval.

Respectfully,



LINDA LINGLE
Governor of Hawaii

A BILL FOR AN ACT

RELATING TO CONTINUED TEMPORARY TOTAL DISABILITY BENEFITS TO
INJURED EMPLOYEES.

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

1 SECTION 1. The legislature finds that improper termination
2 of ongoing temporary total disability benefits is a source of
3 much disruption and vexation to injured workers and those
4 medical and vocational providers who seek to restore them to
5 gainful employment. The legislature finds that premature
6 termination of such benefits causes both economic and
7 psychological hardship to the injured worker and interferes with
8 attempts to help them attain full medical and vocational
9 recovery. However, the adverse consequences of the cessation of
10 compensation may be cured simply by requiring prior review of
11 the termination action by the director of labor and industrial
12 relations.

13 The purpose of this Act is to revise the procedure for
14 terminating temporary total disability benefits to reduce the
15 adverse consequences for injured workers when these benefits are
16 improperly terminated.



1 SECTION 2. Section 386-31, Hawaii Revised Statutes, is
2 amended by amending subsection (b) to read as follows:

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

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

17 The employer shall pay temporary total disability benefits
18 promptly as they accrue to the person entitled ~~[thereto]~~ to the
19 benefits without waiting for a decision from the director,
20 unless this right is controverted by the employer in the
21 employer's initial report of industrial injury. The first
22 payment of benefits shall become due and shall be paid no later



1 than on the tenth day after the employer has been notified of
2 the occurrence of the total disability, and thereafter the
3 benefits due shall be paid weekly except as otherwise authorized
4 pursuant to section 386-53.

5 The payment of these benefits shall [~~only~~] be terminated
6 only upon order of the director or if the employee's treating
7 physician determines that the employee is able to resume work
8 and the employer has made a bona fide offer of work within the
9 employee's medical restrictions. When the employer is of the
10 opinion that temporary total disability benefits should be
11 terminated [~~because the injured employee is able to resume~~
12 ~~work,~~] the employer shall notify the employee and the director
13 in writing of an intent to terminate the benefits at least two
14 weeks prior to the date when the last payment is to be made.
15 The notice shall give the reason for stopping payment and shall
16 inform the employee that the employee may make a written request
17 to the director for a hearing if the employee disagrees with the
18 employer. Upon receipt of the request from the employee, the
19 director shall conduct a hearing as expeditiously as possible
20 and render a prompt decision as specified in section 386-86[~~-~~]
21 indicating if temporary total disability benefits should have
22 been discontinued and, if so, designate the date after which



1 temporary total disability benefits should have been
2 discontinued. The employer may request in writing to the
3 director that the director issue a credit for the amount of
4 temporary total disability benefits paid by the employer after
5 the date of notification by the director to the employer and the
6 employee of the date that the director has determined should
7 have been the last date of payment. All previously paid
8 temporary total disability benefits prior to the effective date
9 of the director's decision shall not be recoverable by the
10 employer. If the employee is unable to perform light work, if
11 offered, temporary total disability benefits shall not be
12 discontinued based solely on the inability to perform or
13 continue to perform light work.

14 An employer or insurance carrier [~~who~~] that fails to comply
15 with this section shall pay not more than \$2,500 into the
16 special compensation fund upon the order of the director, in
17 addition to other penalties prescribed in section 386-92.

18 (1) If the director determines, based upon a review of
19 medical records and reports and other relevant
20 documentary evidence, that an injured employee's
21 medical condition may be stabilized and the employee
22 is unable to return to the employee's regular job, the



1 director shall issue a preliminary decision regarding
2 the claimant's entitlement and limitation to benefits
3 and rights under Hawaii's workers' compensation laws.
4 The preliminary decision shall be sent to the affected
5 employee and the employee's designated representative
6 and the employer and the employer's designated
7 representative and shall state that any party
8 disagreeing with the director's preliminary findings
9 of medical stabilization and work limitations may
10 request a hearing within twenty days of the date of
11 the decision. The director shall be available to
12 answer any questions during the twenty-day period from
13 the injured employee and affected employer. If
14 neither party requests a hearing challenging the
15 director's finding the determination shall be deemed
16 accepted and binding upon the parties. In any case
17 where a hearing is held on the preliminary findings,
18 any person aggrieved by the director's decision and
19 order may appeal under section 386-87.

20 A preliminary decision of the director shall
21 inform the injured employee and the employer of the
22 following responsibilities, benefits, and limitations



1 on vocational rehabilitation benefits that are
2 designed to facilitate the injured employee's early
3 return to suitable gainful employment:

4 (A) That the injured employee may invoke the
5 employee's rights under section 378-2, 378-32, or
6 386-142, or all of them, in the event of unlawful
7 discrimination or other unlawful employment
8 practice by the employer; and

9 (B) That after termination of temporary total
10 disability benefits, an injured employee who
11 resumes work may be entitled to permanent partial
12 disability benefits, which if awarded, shall be
13 paid regardless of the earnings or employment
14 status of the disabled employee at the time.

15 (2) If the rehabilitation unit determines that an injured
16 employee is not a feasible candidate for
17 rehabilitation and that the employee is unable to
18 resume the employee's regular job, it shall promptly
19 certify the same to the director. Soon thereafter,
20 the director shall conduct a hearing to determine
21 whether the injured employee remains temporarily
22 totally disabled, or whether the employee is



