
A BILL FOR AN ACT

RELATING TO WORKERS' COMPENSATION LAW.

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

1 SECTION 1. Chapter 386, Hawaii Revised Statutes, is
2 amended by adding two new sections to be appropriately
3 designated and to read as follows:

4 "§386- Alternative dispute resolution. (a) In lieu
5 of a hearing before the director, at anytime after a claim for
6 compensation is made and before the director renders a decision,
7 the parties may agree in writing to have any controversy arising
8 under this chapter be decided by a referee paid for by the
9 parties.

10 (b) Before a referee can conduct a hearing, the parties
11 shall submit the agreed upon referee's name to the director for
12 appointment to serve as a referee. The referee shall be a
13 neutral person. An individual who has a known, direct, and
14 material interest in the outcome of the controversy or a known,
15 existing, and substantial relationship with a party may not
16 serve as a referee, unless that interest is disclosed, and any
17 conflict is waived by the parties.



1 (c) Unless the parties otherwise agree, the costs and fees
2 of the alternative resolution process shall be divided equally
3 between the parties.

4 (d) If the parties agree to have any controversy referred
5 to a referee, the director shall stay all actions or proceedings
6 until the referee issues a recommended decision.

7 (e) This chapter and its rules remain applicable to
8 proceedings before the referee, except that requests shall be
9 directed to and recommended decisions shall be made by the
10 referee instead of the director.

11 (f) The referee shall issue and submit the referee's
12 recommended decision to the director no later than five days
13 after the hearing and shall deliver the recommended decision to
14 all parties personally or by registered or certified mail.

15 (g) The director shall review the referee's recommended
16 decision to determine whether the recommended decision is in
17 compliance with this chapter.

18 If the recommended decision is in compliance with this
19 chapter, the director shall approve the recommended decision
20 within ten days of receiving the recommendation. Upon the
21 director's approval, the recommended decision shall have the
22 same force and effect as a director's decision rendered under



1 this chapter, and it may be enforced as if it had been rendered
2 in an action before the director. If the recommended decision
3 does not comply with this chapter, the director may modify or
4 vacate the recommended decision within ten days of receiving the
5 recommendation. If the director vacates the recommended
6 decision, the parties may resubmit the controversy to the
7 referee.

8 (h) The parties may appeal the director's decision in
9 accordance with section 386-87.

10 (i) This chapter and Hawaii administrative rules title 12,
11 chapters 10, 14, and 15 shall govern the proceedings before the
12 referee.

13 (j) At anytime after a claim for compensation is made and
14 before the director renders a decision, the parties may agree to
15 resolve any controversy under the jurisdiction of this chapter
16 through mediation by a mediator agreed upon by the parties.
17 Unless otherwise provided in the agreement to mediate, the costs
18 and fees of mediation shall be divided equally between the
19 parties. Upon the successful conclusion of the mediation, the
20 parties shall submit the settlement agreement to the director
21 for approval. If any controversy remains unresolved after the



1 mediation, the parties may request the director to resolve the
2 controversy.

3 §386- Alternative guidelines on frequency of treatment
4 and reasonable use of health care and services. (a) This
5 section establishes the use of evidence-based treatment
6 guidelines for medical providers to provide treatment to injured
7 workers as an option to section 386-26 and its applicable Hawaii
8 administrative rules. The use of this alternative treatment
9 guideline from the guidelines issued under section 386-26 shall
10 be optional and in the sole discretion of the medical provider.

11 (b) Frequency and extent of treatment shall be in
12 accordance with the most current edition of the ODG Treatment in
13 Workers' Comp issued by the Work Loss Data Institute, Hawaii
14 State Chiropractic Association Treatment Guidelines, or any
15 other medical guidelines approved by the director. In addition
16 to the most current edition of the ODG Treatment in Workers'
17 Comp, this section references Chapters 1-7 of the practice
18 guides issued by the American College of Occupational and
19 Environmental Medicine, 2nd Edition, and any other medical
20 guidelines approved by the director.

21 (c) The alternative treatment guidelines required by this
22 section are presumed medically necessary and correct, and



1 therefore, the attending physician is not required to provide a
2 treatment plan to the employer and may begin treatment, so long
3 as the diagnosis is correct and medical treatment conforms to
4 subsection (b). However, the attending physician shall inform
5 the employer, on a form prescribed by the department, of a
6 diagnosis of the injury.

7 (d) The presumption in subsection (c) may be rebutted by a
8 preponderance of medical evidence establishing that the
9 alternative treatment guideline is not reasonably required to
10 cure and relieve the employee from the effects of the injury
11 condition. The attending physician may choose not to use the
12 alternative treatment guidelines by submitting written
13 notification to the employer, and provide treatment as covered
14 by section 386-26.

15 (e) For all injuries not covered by subsection (b), or in
16 cases in which the attending physician believes that additional
17 treatments beyond that provided by subsection (b) are necessary,
18 or that a treatment guideline different than that specified in
19 subsection (b) is necessary, the attending physician shall mail
20 a treatment plan to the employer at least fourteen calendar days
21 prior to the start of treatment. The treatment plan shall
22 detail:



- 1 (1) Projected commencement and termination dates of
2 treatment;
- 3 (2) A clear statement as to the impression or diagnosis;
4 (3) Number and frequency of treatments;
5 (4) Modalities and procedures to be used; and
6 (5) An estimated total cost of services.

7 With the exception of emergency medical services, any
8 provider who provides medical treatment without proper
9 authorization shall be denied compensation for the unauthorized
10 services. Unless agreed to by the employee, disallowed fees
11 shall not be charged to the injured employee.

12 (f) The employer may file an objection to the proposed
13 treatment plan within ten calendar days with documentary
14 evidence supporting the denial and a copy of the denied
15 treatment plan or treatment guideline with the director, sending
16 a copy to the attending physician and the injured employee.
17 Both the front page of the denial and the envelope in which the
18 denial is filed shall be clearly identified as a "TREATMENT PLAN
19 DENIAL" in capital letters. The employer shall be responsible
20 for payment for treatment until the date the objection is filed
21 with the director. Furthermore, the employer's objection letter
22 shall explicitly state that if the attending physician or the



1 injured employee does not agree with the denial, the attending
2 physician or injured employee may request a review by the
3 director of the employer's denial. In denying medical
4 treatment, the employer shall disclose to the attending
5 physician and employee the medically, evidenced-based criteria
6 used as the basis of the objection.

7 (g) The attending physician, injured employee, employer,
8 or insurance carrier may request in writing that the director
9 review the denial of the treatment plan or continuation of
10 services. The request for review shall be filed with the
11 director within fourteen calendar days after postmark of the
12 denial. A copy of the denied treatment plan or order for
13 continued services shall be submitted with the request for
14 review. Both the front page of the request for review and the
15 envelope in which the request is filed shall be clearly
16 identified as a "REQUEST FOR REVIEW OF TREATMENT PLAN DENIAL" or
17 "REQUEST FOR REVIEW OF ORDER OF CONTINUED TREATMENT" in capital
18 letters. For cases not under the jurisdiction of the director
19 at the time of the request, the injured employee shall be
20 responsible to have the case remanded to the director's
21 jurisdiction. Failure to file a request for review of the
22 denial or continuation of services with the director within



1 fourteen calendar days after postmark of the denial or order of
2 continued services shall be deemed acceptance of the decision.

3 (h) For treatments and services by providers of service
4 other than physicians, treatment shall be in accordance with
5 subsection (a)."

6 SECTION 2. Section 91-3, Hawaii Revised Statutes, is
7 amended by amending subsection (a) to read as follows:

8 "(a) Except as provided in section 386-72, and subsection
9 (f), prior to the adoption of any rule authorized by law, or the
10 amendment or repeal thereof, the adopting agency shall:

11 (1) Give at least thirty days' notice for a public
12 hearing. The notice shall include:

13 (A) A statement of the topic of the proposed rule
14 adoption, amendment, or repeal or a general
15 description of the subjects involved; [~~and~~]

16 (B) A statement that a copy of the proposed rule to
17 be adopted, the proposed rule amendment, or the
18 rule proposed to be repealed will be mailed to
19 any interested person who requests a copy, pays
20 the required fees for the copy and the postage,
21 if any, together with a description of where and
22 how the requests may be made;



1 (C) A statement of when, where, and during what times
2 the proposed rule to be adopted, the proposed
3 rule amendment, or the rule proposed to be
4 repealed may be reviewed in person; and

5 (D) The date, time, and place where the public
6 hearing will be held and where interested persons
7 may be heard on the proposed rule adoption,
8 amendment, or repeal.

9 The notice shall be mailed to all persons who
10 have made a timely written request of the agency for
11 advance notice of its rulemaking proceedings, given at
12 least once statewide for state agencies and in the
13 county for county agencies. Proposed state agency
14 rules shall also be posted on the Internet as provided
15 in section 91-2.6; and

16 (2) Afford all interested persons opportunity to submit
17 data, views, or arguments, orally or in writing. The
18 agency shall fully consider all written and oral
19 submissions respecting the proposed rule. The agency
20 may make its decision at the public hearing or
21 announce then the date when it intends to make its
22 decision. Upon adoption, amendment, or repeal of a

1 rule, the agency, if requested to do so by an
2 interested person, shall issue a concise statement of
3 the principal reasons for and against its
4 determination."

5 SECTION 3. Section 386-1, Hawaii Revised Statutes, is
6 amended by amending the definition of "employment" to read as
7 follows:

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

14 "Employment" does not include the following service:

- 15 (1) Service for a religious, charitable, educational, or
16 nonprofit organization if performed in a voluntary or
17 unpaid capacity;
- 18 (2) Service for a religious, charitable, educational, or
19 nonprofit organization if performed by a recipient of
20 aid therefrom and the service is incidental to or in
21 return for the aid received;



- 1 (3) Service for a school, college, university, college
2 club, fraternity, or sorority if performed by a
3 student who is enrolled and regularly attending
4 classes and in return for board, lodging, or tuition
5 furnished, in whole or in part;
- 6 (4) Service performed by a duly ordained, commissioned, or
7 licensed minister, priest, or rabbi of a church in the
8 exercise of the minister's, priest's, or rabbi's
9 ministry or by a member of a religious order in the
10 exercise of nonsecular duties required by the order;
- 11 (5) Service performed by an individual for another person
12 solely for personal, family, or household purposes if
13 the cash remuneration received is less than \$225
14 during the current calendar quarter and during each
15 completed calendar quarter of the preceding twelve-
16 month period;
- 17 (6) Domestic, which includes attendant care, and day care
18 services authorized by the department of human
19 services under the Social Security Act, as amended,
20 performed by an individual in the employ of a
21 recipient of social service payments;



1 (7) Service performed without wages for a corporation
2 without employees by a corporate officer in which the
3 officer is at least a twenty-five per cent
4 stockholder;

5 ~~[(8) Service performed by an individual for a corporation~~
6 ~~if the individual owns at least fifty per cent of the~~
7 ~~corporation; provided that no employer shall require~~
8 ~~an employee to incorporate as a condition of~~
9 ~~employment; and]~~

10 (8) Service performed by an individual who holds an
11 ownership interest of at least fifty per cent in the
12 employing unit, including but not limited to
13 corporations, partnerships, limited liability
14 companies, and limited liability partnerships;
15 provided that:

16 (A) The individual elects to be excluded from
17 coverage under this chapter and files an
18 application with the director;

19 (B) The election for exclusion shall be irrevocable
20 for five years;



- 1 (C) The individual presents to the director proof
2 that the individual has paid federal unemployment
3 insurance taxes as required by federal law; and
- 4 (D) The election to be excluded from coverage shall
5 take effect on the first day of the calendar
6 quarter in which the application and all
7 substantiating documents requested by the
8 director have been filed with the director;
- 9 (9) Service performed by an individual for another person
10 as a real estate salesperson or as a real estate
11 broker, if all the service performed by the individual
12 for the other person is performed for remuneration
13 solely by way of commission[-];
- 14 (10) Service performed by a partner of a partnership for
15 the partnership, as defined in section 425-101, if the
16 partner is an individual; provided that no employer
17 shall require an employee to become a partner as a
18 condition of employment;
- 19 (11) Service performed by a partner of a limited liability
20 partnership, if the partner is an individual and has a
21 transferable interest, as defined in section 425-127
22 in the partnership of at least fifty per cent;



1 provided that no employer shall require an employee to
2 form a limited liability partnership as a condition of
3 employment; and

4 (12) Service performed by a sole proprietor for the sole
5 proprietorship.

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

12 SECTION 4. Section 386-21, Hawaii Revised Statutes, is
13 amended by amending subsection (c) to read as follows:

14 "(c) The liability of the employer for medical care,
15 services, and supplies shall be limited to the charges computed
16 as set forth in this section. The director shall make
17 determinations of the charges and adopt fee schedules based upon
18 those determinations. [~~Effective January 1, 1997, and for each~~
19 ~~succeeding calendar year thereafter, the] The charges shall not
20 exceed one hundred ten per cent of fees prescribed in the
21 Medicare Resource Based Relative Value Scale system applicable
22 to Hawaii as prepared by the United States Department of Health~~



1 and Human Services, except as provided in this subsection. The
2 rates or fees provided for in this section shall be adequate to
3 ensure at all times the standard of services and care intended
4 by this chapter to injured employees.

5 If the director determines that an allowance under the
6 medicare program is not reasonable, or if a medical treatment,
7 accommodation, product, or service existing as of June 29, 1995,
8 is not covered under the medicare program, the director, at any
9 time, may establish an additional fee schedule or schedules not
10 exceeding the prevalent charge for fees for services actually
11 received by providers of health care services to cover charges
12 for that treatment, accommodation, product, or service. If no
13 prevalent charge for a fee for service has been established for
14 a given service or procedure, the director shall adopt a
15 reasonable rate that shall be the same for all providers of
16 health care services to be paid for that service or procedure.

17 The director shall update the schedules required by this
18 section every three years or annually, as required. The updates
19 shall be based upon:

- 20 (1) Future charges or additions prescribed in the Medicare
21 Resource Based Relative Value Scale system applicable



1 to Hawaii as prepared by the United States Department
2 of Health and Human Services; or

3 (2) A statistically valid survey by the director of
4 prevalent charges for fees for services actually
5 received by providers of health care services or based
6 upon the information provided to the director by the
7 appropriate state agency having access to prevalent
8 charges for medical fee information.

9 When a dispute exists between an insurer or self-insured
10 employer and a medical services provider regarding the amount of
11 a fee for medical services, the director may resolve the dispute
12 in a summary manner as the director may prescribe; provided that
13 a provider shall not charge more than the provider's private
14 patient charge for the service rendered.

15 When a dispute exists between an injured employee and the
16 employer or the employer's insurer regarding the proposed
17 treatment plan or whether medical services should be continued,
18 the injured employee shall continue to receive essential medical
19 services prescribed by the treating physician necessary to
20 prevent deterioration of the injured employee's condition or
21 further injury until the director issues a decision on whether
22 the injured employee's medical treatment should be continued.



1 The director shall make a decision within thirty days of the
2 filing of a dispute. If the director determines that medical
3 services pursuant to the treatment plan should be or should have
4 been discontinued, the director shall designate the date after
5 which medical services for that treatment plan are denied. The
6 employer or the employer's insurer, may recover from the
7 claimant's personal health care provider pursuant to section
8 386-27, or from any other appropriate occupational or non-
9 occupational insurer, all the sums paid for medical services
10 rendered after the date designated by the director. Under no
11 circumstances shall the claimant be charged for the disallowed
12 services, unless the services were obtained in violation of
13 section 386-98. The attending physician, injured employee,
14 employer, or insurance carrier may request in writing that the
15 director review the denial of the treatment plan or the
16 continuation of medical services."

17 SECTION 5. Section 386-25, Hawaii Revised Statutes, is
18 amended by amending subsection (b) to read as follows:

19 "(b) The director may refer employees who may have or have
20 suffered permanent disability as a result of work injuries or
21 who have otherwise been deemed unable to return to their regular
22 jobs after they have achieved maximum medical improvement, where



1 the employer has made no offer of suitable work that would
2 restore the earnings capacity as nearly as possible to the level
3 that the employee was earning at the time of injury, and who, in
4 the director's opinion, can be vocationally rehabilitated to the
5 department of human services or to private providers of
6 rehabilitation services for vocational rehabilitation services
7 that are feasible. A referral shall be made upon recommendation
8 of the rehabilitation unit established under section 386-71.5
9 and after the employee has been deemed physically able to
10 participate in rehabilitation by the employee's attending
11 physician. The unit shall include appropriate professional
12 staff and shall have the following duties and responsibilities:

- 13 (1) To review and approve rehabilitation plans developed
14 by certified providers of rehabilitation services,
15 whether they [~~be~~] are private or public;
- 16 (2) To adopt rules consistent with this section that shall
17 expedite and facilitate the identification,
18 notification, and referral of industrially injured
19 employees to rehabilitation services[~~r~~] and establish
20 minimum standards for providers providing
21 rehabilitation services under this section;



- 1 (3) To certify private and public providers of
- 2 rehabilitation services meeting the minimum standards
- 3 established under paragraph (2); and
- 4 (4) To enforce the implementation of rehabilitation
- 5 plans."

6 SECTION 6. Section 386-31, Hawaii Revised Statutes, is
7 amended to read as follows:

8 **"§386-31 Total disability.** (a) Permanent total
9 disability. Where a work injury causes permanent total
10 disability the employer shall pay the injured employee a weekly
11 benefit equal to sixty-six and two-thirds per cent of the
12 employee's average weekly wages, subject to the following
13 limitation:

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

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

- 22 (1) The permanent and total loss of sight in both eyes;



- 1 (2) The loss of both feet at or before the ankle;
- 2 (3) The loss of both hands at or above the wrist;
- 3 (4) The loss of one hand and one foot;
- 4 (5) An injury to the spine resulting in permanent and
- 5 complete paralysis of both legs or both arms or one
- 6 leg and one arm; or
- 7 (6) An injury to the skull resulting in incurable
- 8 imbecility or insanity.

9 In all other cases the permanency and totality of the
10 disability shall be determined on the facts. No adjudication of
11 permanent total disability shall be made until after two weeks
12 from the date of the injury.

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



1 subsection (a), at the rate of one hundred per cent of the
2 employee's average weekly wages.

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

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

15 The payment of these benefits shall only be denied,
16 suspended, or terminated upon order of the director or if the
17 employee's treating physician determines that the employee is
18 able to resume work[-] and the employer has made a bona fide
19 offer of suitable work within the employee's medical
20 restrictions. The order shall only be issued after a full and
21 fair hearing at which the injured employee shall be provided the
22 opportunity to review the employer's evidence and present



1 rebuttal evidence. When the employer is of the opinion that
2 temporary total disability benefits should be terminated
3 [~~because the injured employee is able to resume work~~], the
4 employer shall notify the employee and the director in writing
5 of an intent to terminate the benefits at least two weeks prior
6 to the date when the last payment is to be made. The notice
7 shall give the reason for stopping payment and shall inform the
8 employee that the employee may make a written request to the
9 director for a hearing if the employee disagrees with the
10 employer. Upon receipt of the request from the employee, the
11 director shall conduct a hearing as expeditiously as possible
12 and render a prompt decision as specified in section 386-86[~~7~~],
13 indicating whether temporary total disability benefits should
14 have been discontinued and, if so, a date shall be designated
15 after which temporary total disability benefits should have been
16 discontinued. The employer may request in writing to the
17 director that the director issue a credit for the amount of
18 temporary total disability benefits paid by an employer after
19 the date that the director had determined should have been the
20 last date of payment. If the employee is unable to perform
21 light work, if offered, temporary total disability benefits



1 shall not be discontinued based solely on the inability to
2 perform or continue to perform light work.

3 An employer or insurance carrier who fails to comply with
4 this section shall pay not more than \$2,500 into the special
5 compensation fund upon the order of the director, in addition to
6 attorney's fees and costs to the employee for enforcement of
7 this section and other penalties prescribed in section 386-92.

8 (1) If the director determines, based upon a review of
9 medical records and reports and other relevant
10 documentary evidence, that an injured employee's
11 medical condition may be stabilized and the employee
12 is unable to return to the employee's regular job, the
13 director shall issue a preliminary decision regarding
14 the claimant's entitlement and limitation to benefits
15 and rights under Hawaii's workers' compensation laws.
16 The preliminary decision shall be sent to the affected
17 employee and the employee's designated representative
18 and the employer and the employer's designated
19 representative and shall state that any party
20 disagreeing with the director's preliminary findings
21 of medical stabilization and work limitations may
22 request a hearing within twenty days of the date of



1 the decision. The director shall be available to
2 answer any questions during the twenty-day period from
3 the injured employee and affected employer. If
4 neither party requests a hearing challenging the
5 director's finding the determination shall be deemed
6 accepted and binding upon the parties. In any case
7 where a hearing is held on the preliminary findings,
8 any person aggrieved by the director's decision and
9 order may appeal under section 386-87.

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

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

21 (B) That after termination of temporary total
22 disability benefits, an injured employee who



1 resumes work may be entitled to permanent partial
2 disability benefits, which if awarded, shall be
3 paid regardless of the earnings or employment
4 status of the disabled employee at the time.

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

15 SECTION 7. Section 386-72, Hawaii Revised Statutes, is
16 amended to read as follows:

17 "**§386-72 Rulemaking powers.** (a) In conformity with and
18 subject to chapter 91[7] and this section, the director of labor
19 and industrial relations shall make rules, not inconsistent with
20 this chapter, which the director deems necessary for or
21 conducive to its proper application and enforcement[; ~~provided~~
22 ~~that the rules were adopted prior to January 1, 2005.~~ No rules



1 ~~adopted or amended on or after January 1, 2005, pertaining to~~
2 ~~any workers' compensation standard or procedure arising under~~
3 ~~this chapter shall have the force and effect of law; provided,~~
4 ~~however, that annual].~~

5 (b) Beginning June 30, 2007, the director, prior to
6 submitting any proposed adoption, amendment, or repeal of rules
7 under this chapter to the governor for approval, shall first
8 submit those proposed rules to both houses of the legislature
9 for approval. The rules shall be deemed disapproved unless the
10 legislature approves the submitted rules in their entirety by
11 concurrent resolution within three hundred sixty-five days of
12 submission to the legislature. If the proposed rules are not
13 approved by the legislature as provided in this subsection, then
14 the rules shall not be sent to the governor for final approval.

15 (c) Notwithstanding subsection (b), annual updates in the
16 medical fee schedules specific to the amount paid to medical
17 providers as provided in section 386-21(c) may be made
18 consistent with this chapter[-] and subject solely to the
19 requirements of chapter 91."

20 SECTION 8. Section 386-79, Hawaii Revised Statutes, is
21 amended to read as follows:



1 **"§386-79 Medical examination by employer's physician.**

2 After an injury and during the period of disability, the
3 employee, whenever ordered by the director [~~of labor and~~
4 ~~industrial relations~~], shall submit to examination, at
5 reasonable times and places, by a duly qualified physician or
6 surgeon designated and paid by the employer. [~~The~~] Physicians
7 selected to perform independent medical examinations as provided
8 by this section shall:

9 (1) Be licensed in Hawaii;

10 (2) Be subject to peer review;

11 (3) Currently hold and have held an active professional
12 and occupational license under title 25 for the five
13 consecutive years prior to the examination; and

14 (4) Be certified by the American Board of Independent
15 Medical Examiners or any other certification
16 organization approved by the director.

17 The independent medical examiner shall be selected by mutual
18 agreement between the employee and the employer within fourteen
19 calendar days of a request by either party for an independent
20 medical examination; provided that if no mutual agreement is
21 reached, the director shall provide the parties with the names
22 of three duly qualified independent medical examiners within ten



1 calendar days from the notification of failure to reach mutual
2 agreement, compiled and maintained by the director, to the
3 employer and employee from which they shall choose. If the
4 employer and employee are unable to choose an independent
5 medical examiner, then the director shall appoint one
6 independent medical examiner from the list provided to the
7 employer and employee, within ten calendar days. For these
8 examinations, the employee shall have the right to have a
9 physician or surgeon designated by the employee and paid by the
10 [employee] employer present at the examination, which right,
11 however, shall not be construed to deny to the employer's
12 physician the right to visit the injured employee at all
13 reasonable times and under all reasonable conditions during
14 total disability.

15 If an employee unreasonably refuses to submit to, or in any
16 way obstructs [~~such~~] the independent medical examination, the
17 employee's right to claim compensation for the work injury
18 [~~shall~~] may be suspended, only upon order of the director, until
19 the refusal or obstruction ceases and no compensation shall be
20 payable for the period during which the refusal or obstruction
21 continues. The employee and the employee's physician may record
22 the examination and ask reasonable questions relating to the



1 examining physician's experience, education, certification, and
2 qualifications. Exercising these rights shall not be construed
3 as obstruction.

4 In cases where the employer is dissatisfied with the
5 progress of the case or where major and elective surgery, or
6 either, is contemplated, the employer may appoint a physician or
7 surgeon of the employer's choice who shall examine the injured
8 employee and make a report to the employer. If the employer
9 remains dissatisfied, this report may be forwarded to the
10 director.

11 Employer requested examinations under this section shall
12 not exceed more than one per case unless good and valid reasons
13 exist with regard to the medical progress of the employee's
14 treatment. The cost of conducting the ordered medical
15 examination shall be limited to the complex consultation charges
16 governed by the medical fee schedule established pursuant to
17 section 386-21(c)."

18 SECTION 9. Section 386-94, Hawaii Revised Statutes, is
19 amended to read as follows:

20 "**§386-94** [~~Attorneys~~] **Claimants' attorneys, defense**
21 **attorneys, physicians, other health care providers, and other**
22 **fees.** Claims for services shall not be valid unless approved by



1 the director or, if an appeal is had, by the appellate board or
2 court deciding the appeal. Any claim so approved shall be a
3 lien upon the compensation in the manner and to the extent fixed
4 by the director, the appellate board, or the court.

5 In approving fee requests, the director, appeals board, or
6 court may consider factors such as ~~[the]~~:

7 (1) The attorney's skill and experience in state workers'
8 compensation matters~~[, the]~~;

9 (2) The amount of time and effort required by the
10 complexity of the case~~[, the]~~;

11 (3) The novelty and difficulty of issues involved~~[, the]~~;

12 (4) The amount of fees awarded in similar cases~~[, and the]~~;
13 benefits];

14 (5) Benefits obtained for the claimant~~[, and the]~~;

15 (6) The hourly rate customarily awarded attorneys
16 possessing similar skills and experience.

17 In all cases, reasonable attorney's fees shall be awarded.

18 Any person who receives any fee, other consideration, or
19 gratuity on account of services so rendered, without approval,
20 in conformity with the preceding paragraph, shall be fined by
21 the director not more than \$10,000."



1 SECTION 10. Section 386-96, Hawaii Revised Statutes, is
2 amended by amending subsection (a) to read as follows:

3 "(a) Any physician, surgeon, or hospital that has given
4 any treatment or rendered any service to an injured employee
5 shall make a report of the injury and treatment on forms
6 prescribed by and to be obtained from the department as follows:

7 (1) Within seven days after the date of first attendance
8 or service rendered, an initial report shall be made
9 to the department and to the employer of the injured
10 employee in the manner prescribed by the department;

11 (2) Interim reports to the same parties and in the same
12 manner as prescribed in paragraph (1) shall be made at
13 appropriate intervals to verify [~~the~~]:

14 (A) The claimant's current diagnosis and prognosis [~~7~~
15 ~~that~~];

16 (B) That the information as to the nature of the
17 examinations and treatments performed is
18 complete, including the dates of those treatments
19 and the results obtained within the current
20 reporting period [~~7~~ the];



1 SECTION 11. Section 386-124, Hawaii Revised Statutes, is
2 amended to read as follows:

3 **"§386-124 The insurance contract~~[+]~~; annual reports. (a)**

4 Every policy of insurance issued by an insurer of an employer
5 referred to in section 386-1 which covers the liability of the
6 employer for compensation shall cover the entire liability of
7 the employer to the employer's employees covered by the policy
8 or contract, and provide for the deductible under section 386-
9 100, at the option of the insured. The policy also shall
10 contain a provision setting forth the right of the employees to
11 enforce in their own names either by filing a separate claim or
12 by making the insurance carrier a party to the original claim,
13 the liability of the insurance carrier in whole or in part for
14 the payment of the compensation. Payment in whole or in part of
15 compensation by either the employer or the insurance carrier
16 shall, to the extent thereof, be a bar to the recovery against
17 the other of the amount so paid.

18 All insurance policies shall be of a standard form, the
19 form to be designated and approved by the insurance
20 commissioner. No policy of insurance different in form from the
21 designated and approved form shall be approved by the director.

22 (b) Every insurer of an employer referred to in section



1 386-1 shall provide to the director and to the insurance
2 commissioner on or before March 1 of each calendar year an
3 annual report of the costs of its policies, which includes:

- 4 (1) Costs of independent medical examinations;
- 5 (2) Costs for legal services relating to administration of
6 claims; and
- 7 (3) Administrative costs.

8 All annual reports shall be of a standard form, the form to
9 be designated and approved by the insurance commissioner."

10 SECTION 12. Act 11, Special Session Laws of Hawaii 2005,
11 is amended by amending section 14 to read as follows:

12 "SECTION 14. This Act shall take effect upon its approval;
13 provided that sections 2, 3, and 7 of this Act shall take effect
14 on January 1, 2005[; ~~provided further that section 7 shall be~~
15 ~~repealed on July 1, 2007, and section 386-72, Hawaii Revised~~
16 ~~Statutes, shall be reenacted in the form in which it read on~~
17 ~~December 31, 2004]."~~

18 SECTION 13. Statutory material to be repealed is bracketed
19 and stricken. New statutory material is underscored.

20 SECTION 14. This Act shall take effect on July 1, 2020.



Report Title:

Workers' Compensation Law

Description:

Amends workers' compensation law, including limiting an employer's ability to terminate benefits, authorizing the recovery of attorney's fees and costs by the injured employee, specifying procedures for medical examinations by the employer's physician, establishing fines for violations, requiring the reporting of denials of claims and relevant information, and further restricting the director of labor and industrial relations' rulemaking authority. Effective July 1, 2020.
(SB1060 HD2)

