

JAN 22 2010

## A BILL FOR AN ACT

RELATING TO VOCATIONAL REHABILITATION.

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

SECTION 1. Section 386-25, Hawaii Revised Statutes, is amended to read as follows:

"§386-25 Vocational rehabilitation. (a) The purposes of vocational rehabilitation are to restore an injured worker's earnings capacity as nearly as possible to that level that the worker was earning at the time of injury and to return the injured worker to suitable gainful employment in the active labor force as quickly as possible in a cost-effective manner.

(b) The director may refer employees who may have or have suffered permanent disability as a result of work injuries and who, in the director's opinion, can be vocationally rehabilitated to the department of human services or to private providers of rehabilitation services for vocational rehabilitation services that are feasible. If it is subsequently determined that the injured employee has no permanent disability, but suffers from permanent work restrictions, the injured employee shall be allowed only direct placement services. A referral shall be made upon



1 recommendation of the rehabilitation unit established under  
2 section 386-71.5 and after the employee has been deemed  
3 physically able to participate in rehabilitation by the  
4 employee's attending physician. The unit shall include  
5 appropriate professional staff and shall have the following  
6 duties and responsibilities:

7 (1) To order the injured employee, providers of  
8 rehabilitation services, or the employer, based upon a  
9 written request that demonstrates delay or untimely  
10 responses to comply with this section;

11 (2) To review and approve rehabilitation plans developed  
12 by certified providers of rehabilitation services,  
13 whether they be private or public;

14 [~~+2~~] (3) To adopt rules consistent with this section that  
15 shall expedite and facilitate the identification,  
16 notification, and referral of industrially injured  
17 employees to rehabilitation services, and establish  
18 minimum standards for providers providing  
19 rehabilitation services under this section;

20 [~~+3~~] (4) To certify private and public providers of  
21 rehabilitation services meeting the minimum standards



1           established under paragraph ~~[(2)]~~ (3) and to adopt a  
2           fee schedule for those providers; and

3       ~~[(4)]~~ (5) To enforce the implementation of rehabilitation  
4           plans.

5           (c) Enrollment in a rehabilitation plan or program shall  
6       not be mandatory and the approval of a proposed rehabilitation  
7       plan or program by the injured employee shall be required. The  
8       injured employee may select a certified provider of  
9       rehabilitation services. Both the certified provider and the  
10      injured employee, within ~~[a reasonable time]~~ fourteen days after  
11      initiating rehabilitation services, shall give proper notice of  
12      selection to the employer. If the injured employee does not  
13      select a provider within thirty days of notice of the right of  
14      referral to vocational rehabilitation, the rehabilitation unit  
15      shall assign a counselor on the injured employee's behalf.

16           (d) A provider shall submit an initial evaluation report  
17      of the employee to the employer and the director within forty-  
18      five days of the date of referral or selection. The evaluation  
19      shall determine whether the employee requires vocational  
20      rehabilitation services to return to suitable gainful  
21      employment, identify the necessary services, and state whether



1 the provider can provide these services. The initial evaluation  
2 report shall contain:

3 (1) An assessment of the employee's:

4 (A) Current medical status[+] and work capabilities;

5 (B) Primary disability;

6 (C) Secondary disability;

7 (D) Disabilities that are not related to the work  
8 injury; and

9 (E) Physical or psychological limitations or both.

10 If this information is not provided by the treating  
11 physician within [~~a reasonable amount of time,~~] thirty  
12 days of the injured worker's selection of a provider,  
13 information from another physician shall be accepted;

14 (2) A job analysis addressing the demands of the  
15 employee's employment;

16 (3) A statement from the provider identifying the  
17 employee's vocational handicaps in relation to the  
18 employee's ability to:

19 (A) Return to usual and customary employment; and

20 (B) Participate in and benefit from a vocational  
21 rehabilitation program;



1 (4) A statement from the provider determining the  
2 feasibility of vocational rehabilitation services,  
3 including:

4 (A) The provider's ability to assist the employee in  
5 the employee's efforts to return to suitable  
6 gainful employment;

7 (B) An outline of specific vocational rehabilitation  
8 services to be provided, justification for the  
9 necessity of services, and how the effectiveness  
10 of these services is measured; and

11 (C) How the vocational rehabilitation services  
12 directly relate to the employee obtaining  
13 suitable gainful employment; and

14 (5) The enrollment form and the statement of worker's  
15 rights and responsibilities form obtained from the  
16 department.

17 (e) After submission of the initial evaluation, the  
18 provider shall have:

19 (1) Thirty days to allow any adjustments to disability;

20 (2) Thirty additional days to conduct labor market  
21 research and any functional capacity evaluation or  
22 other necessary skills or limitation testing; and



1        (3) Ninety additional days to prepare and submit a  
2        vocational rehabilitation plan; provided that:

3        (A) One extension of not more than forty-five days  
4        shall be allowed based upon a written request  
5        supported by evidence submitted to and approved  
6        by the unit; and

7        (B) The employer is given the opportunity to object  
8        to and be heard regarding the extension.

9        (f) A provider shall file the employee's plan with the  
10       approval of the employee. Upon receipt of the plan from the  
11       provider, an employee shall have ten days to review and sign the  
12       plan. The plan shall be submitted to the employer and the  
13       employee and be filed with the director within two days from the  
14       date of the employee's signature. A plan shall include a  
15       statement of the feasibility of the vocational goal, using the  
16       process of:

17       (1) First determining if the employee's usual and  
18       customary employment represents suitable gainful  
19       employment, and, should it not;

20       (2) Next determining if modified work or other work with a  
21       [~~different~~] same employer represents suitable gainful  
22       employment, and, should it not;



1 (3) Next determining if modified or other employment with  
2 a different employer, using transferrable skills by  
3 way of direct placement represents suitable gainful  
4 employment, and finally, should it not;

5 (4) Then providing training to obtain employment in  
6 another occupational field.

7 [~~f~~] (g) A plan may be approved by the director; provided  
8 the plan includes:

9 (1) A physician's assessment of the employee's physical  
10 limitations, psychological limitations, and ability to  
11 return to work. If this information is not provided  
12 by the treating physician within a reasonable amount  
13 of time, information from another physician shall be  
14 accepted;

15 (2) A labor market survey indicating there are reasonable  
16 assurances that the proposed occupation for which the  
17 employee is to be placed or trained is readily  
18 available in the community when placement begins, or  
19 there are assurances of reemployment by the employer;

20 (3) A job analysis of the proposed occupation, setting  
21 forth its duties, responsibilities, physical demands,  
22 environmental working conditions, specific



1 qualifications needed for entry-level employment,  
2 reasonable accommodations, expected estimated  
3 earnings, and other relevant information;

4 (4) The nature and extent of the vocational rehabilitation  
5 services to be provided, including:

6 (A) Specific services to be provided;

7 (B) Justification for the necessity of the services;

8 (C) Estimated time frames for delivery of services;

9 (D) The manner in which the effectiveness of these  
10 services is to be measured;

11 (E) Criteria for determining successful completion of  
12 the vocational rehabilitation plan; and

13 (F) The employee's responsibilities;

14 (5) A report of tests and copies thereof that have been  
15 administered to the employee, including a statement  
16 regarding the need for and use of the tests to  
17 identify a vocational goal;

18 (6) If retraining, including on-the-job training, is found  
19 to be necessary, the estimated cost of retraining, a  
20 description of specific skills to be learned or  
21 knowledge acquired with specific time periods and





1 clearly defined measurements of success, and the  
2 nature, amount, and duration of living expenses;

3 (7) The total cost of the plan~~[+]~~ and a contingency plan  
4 for direct placement, not more than one hundred and  
5 twenty days, or case closure if the employee does not  
6 comply with the approved plan; and

7 (8) The employee's approval of the plan.

8 ~~[(g)]~~ (h) The employer shall have ten calendar days from  
9 the postmark date on which the plan was mailed to submit in  
10 writing to the director any objections to the plan.

11 ~~[(h)]~~ (i) The director may approve a plan ~~[that does not~~  
12 ~~include all of the requirements outlined in subsection (f);~~  
13 ~~provided that the director finds the plan:~~

14 ~~(1) Is in the best interest of the employee;~~

15 ~~(2) Contains reasonable assurances that the employee will~~  
16 ~~be placed in suitable gainful employment; and~~

17 ~~(3) Has been approved by the employee.]~~ provided that the  
18 plan meets the vocational rehabilitation requirements  
19 of this section. If at any time during the vocational  
20 rehabilitation program, an injured worker suffers an  
21 intervening medical condition, related or unrelated to  
22 the industrial claim, that renders the claimant again



1           temporarily totally disabled, the vocational  
2           rehabilitation counselor shall immediately suspend the  
3           program pending the employee's clearance to return to  
4           work.

5           ~~[(i)]~~ (j) If the plan requires the purchase of any tools,  
6 supplies, or equipment, the purchase deadline shall be included  
7 in the plan. Tools, supplies, and equipment shall be considered  
8 to be the property of the employer until the plan is determined  
9 by the director to be successfully completed, after which it  
10 shall become the property of the employee. If the plan requires  
11 the purchase, etc., the employer shall purchase the items prior  
12 to the purchase deadline in the plan~~[-]~~; provided that  
13 documentation is submitted to the employer showing the cost and  
14 description of the items to be purchased. Payment shall be made  
15 directly to the vendor and a receipt shall be submitted to the  
16 employer for file documentation purposes.

17           ~~[(j)]~~ (k) An employee with an approved plan who is  
18 determined as able to return to usual and customary employment  
19 ~~[may choose to complete the plan or request a new plan of which~~  
20 ~~the goal may be the employee's usual and customary employment.]~~  
21 shall default into direct placement not more than sixty days



1 after the employee receives notice of a release to full duty or  
2 the completion of the plan, whichever occurs first.

3       ~~[(\*)]~~ (1) An injured employee's enrollment in a  
4 rehabilitation plan or program shall not affect the employee's  
5 entitlement to temporary total disability compensation if the  
6 employee earns no wages during the period of enrollment~~[-]~~;

7 provided that an employee who is enrolled in a plan that has not  
8 been approved by the director but who is determined to be able  
9 to return to usual and customary employment shall not be

10 entitled to temporary total disability benefits and the employer  
11 shall notify the employee and the director in writing of an

12 intent to terminate benefits at least two weeks prior to the  
13 date when the last payment is to be made pursuant to section

14 386-31(b) and vocational rehabilitation services shall cease on  
15 the date that the employee is cleared for full duty and a

16 closing report is submitted by the counselor within fourteen

17 days. If the employee receives wages for work performed under

18 the plan or program, the employee shall be entitled to temporary

19 total disability compensation in an amount equal to the

20 difference between the employee's average weekly wages at the

21 time of injury and the wages received under the plan or program,

22 subject to the limitations on weekly benefit rates prescribed in



1 section 386-31(a). The employee shall not be entitled to  
2 temporary total disability compensation for any week during this  
3 period where the wages equal or exceed the average weekly wages  
4 at the time of injury. Temporary total disability compensation  
5 shall cease upon the closure of vocational rehabilitation. The  
6 vocational rehabilitation counselor shall submit a closing  
7 report to the vocational rehabilitation unit within fourteen  
8 days of the date of plan closure.

9 ~~[(1)]~~ (m) The director shall adopt rules for additional  
10 living expenses necessitated by the rehabilitation program,  
11 together with all reasonable and necessary vocational training.

12 ~~[(m)]~~ (n) If the rehabilitation unit determines that  
13 vocational rehabilitation is not possible or feasible, it shall  
14 certify the determination to the director.

15 ~~[(n)]~~ (o) Except as otherwise provided, determinations of  
16 the rehabilitation unit shall be final unless a written request  
17 for reconsideration is filed with the rehabilitation unit within  
18 ten calendar days of the date of the determination.

19 The rehabilitation unit shall issue a reconsideration  
20 determination to affirm, reverse, or modify the determination or  
21 refer the request for reconsideration for hearing.



1        [~~(p)~~] (p) A reconsideration determination shall be final  
2 unless a written request for hearing is filed within ten  
3 calendar days from the date of the reconsideration  
4 determination. All hearings shall be held before a hearings  
5 officer designated by the director. A written decision shall be  
6 issued in the name of the director.

7        [~~(q)~~] (q) The eligibility of any injured employee to  
8 receive other benefits under this chapter shall in no way be  
9 affected by the employee's entrance upon a course of vocational  
10 rehabilitation as herein provided.

11        [~~(r)~~] (r) Vocational rehabilitation services for the  
12 purpose of developing a vocational rehabilitation plan may be  
13 approved by the director and the director may periodically  
14 review progress in each case. Any party may request a review of  
15 the vocational rehabilitation program if it is determined that  
16 no progress is being made to establish a viable vocational  
17 rehabilitation plan. The vocational rehabilitation unit shall  
18 respond to the request within thirty days and shall issue a  
19 directive to the vocational rehabilitation provider based upon  
20 the available file documentation, provided that the case remains  
21 pending before the director."



1       SECTION 2. This Act does not affect rights and duties that  
2 matured, penalties that were incurred, and proceedings that were  
3 begun before its effective date.

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

6       SECTION 4. This Act shall take effect upon its approval.  
7

INTRODUCED BY:

Randy H. Baker

Norman Sakon

Robert Dunn

Carol Johnson

TSOJL



**Report Title:**

Workers' Compensation; Vocational Rehabilitation

**Description:**

Expands duties of the rehabilitation unit and providers of rehabilitation services. Allows employer to terminate temporary total disability benefits when the employee is able to return to work and is enrolled in a non-approved plan.

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

