

JAN 23 2009

A BILL FOR AN ACT

RELATING TO THE WORKERS' COMPENSATION INJURED WORKERS BILL OF RIGHTS.

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

SECTION 1. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

"CHAPTER

WORKERS' COMPENSATION INJURED WORKERS BILL OF RIGHTS

§ - Purpose and intent. This chapter shall serve as a guide for the administration of workers' compensation claims under chapter 386. The intent of this chapter is that injured workers be protected to the fullest possible extent under laws existing at the time of the processing of claims for work injuries.

In case of conflict between any provision of chapter 386 and this chapter, the provision of chapter 386 shall take precedent. If no provision of chapter 386 applies to an injured workers' claim, then the applicable provision of this chapter shall apply. If there is a discretionary decision to be made by the director of labor and industrial relations with regard to a



1 claim under chapter 386, this chapter shall serve as a guideline
2 in making the decision.

3 **§ - Bill of rights.** The workers' compensation injured
4 workers bill of rights includes the following:

- 5 (1) An injured worker may select an attending physician,
6 as defined in section 386-1; provided that the injured
7 worker may select another attending physician within
8 thirty days of commencing treatment with the initial
9 attending physician;
- 10 (2) In addition to section 386-86, an injured worker shall
11 be entitled to a prompt hearing upon a claim within
12 ninety days from the date of filing a claim, if
13 possible under the circumstances of the particular
14 claim; provided that if the injured worker receives
15 emergency medical services, as defined in section
16 386-1, the hearing shall be conducted within thirty
17 days from the date of the injury in order to make
18 appropriate provisional orders if necessary;
- 19 (3) An injured worker shall be entitled to simultaneous
20 consideration of loss of earning capacity along with
21 any physical or mental impairment in determining
22 disability benefits;



1 (4) An injured worker unable to return to the trade or
2 occupation as a result of a work injury, as defined in
3 section 386-1, shall be entitled to an independent
4 vocational assessment, and to vocational
5 rehabilitation services as defined in section 386-1
6 and as provided in section 386-25, with the goal of
7 restoring the injured worker's earnings capacity as
8 nearly as possible to the level that the worker was
9 earning at the time of injury and to return the injured
10 worker to suitable gainful employment in the active
11 labor forces as quickly as possible in a cost-effective
12 manner;

13 (5) An injured worker shall receive an impairment rating
14 and disability determination that includes an
15 assessment of chronic pain and depression, as well as
16 physical impairment; provided that if a work injury,
17 as defined in section 386-1, contributes to, results
18 in, or aggravates pain, any resulting limitation or
19 impairment may be compensable;

20 (6) An injured worker unable to return to substantial
21 gainful employment may receive permanent total



1 disability benefits under section 386-31, for the
2 duration of the disability;

3 (7) An injured worker shall be entitled to a non-party
4 independent medical examination under section 386-80;
5 provided that fees for the independent medical
6 examination shall not be borne by the injured worker;

7 (8) An injured worker may receive disability income
8 benefits based upon the injured worker's actual take
9 home pay, including overall wage benefits, and
10 permanent disability benefits based upon the
11 disability and not upon the impairment;

12 (9) If surgery resulting from a work injury is
13 recommended, the injured worker shall be entitled to a
14 second medical opinion, paid for by the workers'
15 compensation insurer of the employer, by a medical
16 provider licensed under chapter 453 or chapter 460 as
17 selected by the injured worker; provided that the
18 injured worker may decline recommended surgery without
19 affect to any benefits under chapter 386;

20 (10) An injured worker shall be entitled to be treated with
21 dignity and respect by all persons involved in the
22 administration or processing of a claim under chapter



1 386, with the goal of obtaining medical recovery of
2 the injured worker;

3 (11) There shall be a rebuttable presumption that the
4 attending physician, as defined in section 386-1, has
5 the authority to order appropriate diagnostic tests or
6 evaluations; provided that the presumption may be
7 overcome by clear and convincing evidence to the
8 contrary if evidence is furnished to the department of
9 labor and industrial relations within twenty days of
10 any denial of appropriate diagnostic tests or
11 evaluations;

12 (12) An injured worker shall be entitled, as provided by
13 law, to the panoply of benefits under chapter 386;

14 (13) In addition to the benefit adjustment under section
15 386-35, an injured worker may receive a realistic cost
16 of living increase in those benefits, as determined by
17 the department of labor and industrial relations;
18 provided that in addition to the payment after death
19 benefits under section 386-34, the cost of living
20 increases shall devolve to the benefit of the injured
21 worker's dependents, as may be provided by law;



1 (14) An injured worker shall be entitled to be informed of
2 the following information on a health care provider,
3 as defined in section 386-1, who renders treatment to
4 the injured worker: education and experience, as well
5 as any contractual arrangements between the health
6 care provider and the workers' compensation insurer of
7 the employer at the time of the commencement of the
8 treatment; provided that for the purpose of this
9 paragraph, the department of labor and industrial
10 relations shall:

11 (A) Maintain a listing of health care providers
12 against whom complaints have been lodged by
13 injured workers; and

14 (B) Remove any health care provider from the list if
15 the department determines that numerous or major
16 complaints have been made against the health care
17 provider by injured workers; and

18 (15) An injured worker shall be entitled to privacy of
19 medical records relating to the diagnosis, treatment,
20 or rehabilitation of a work injury, as defined in
21 section 386-1, except for purposes of:

22 (A) The administration of a claim under chapter 386;



1 (B) Gathering statistics; or

2 (C) Finding employment for the injured worker.

3 § - Director's duty to provide and require display of
4 workers' compensation injured workers bill of rights; rules. The
5 director of the department of labor and industrial relations
6 shall adopt rules:

7 (1) For the distribution of the workers' compensation
8 injured workers bill of rights to employers and
9 employees in the State of Hawaii; and

10 (2) Requiring the display of the workers' compensation
11 injured workers bill of rights by employers in
12 locations accessible to employees."

13 SECTION 2. This Act shall take effect upon its approval.

14 INTRODUCED BY: Shianne Chun Aakuland

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DSJJ



Report Title:

Workers' Compensation; Injured Workers Bill of Rights

Description:

Enacts the workers' compensation injured workers bill of rights as guidelines for the handling of workers' compensation claims.

