

JAN 19 2018

A BILL FOR AN ACT

RELATING TO TEMPORARY DISABILITY INSURANCE.

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

SECTION 1. Section 392-26, Hawaii Revised Statutes, is amended by amending its title and subsection (a) to read as follows:

"§392-26 Care by physician, advanced practice registered nurse, or equivalent required. (a) An individual shall be ineligible to receive temporary disability benefits with respect to any period during which the individual is not under the care of a person duly licensed to practice medicine, surgery, dentistry, chiropractic, osteopathy, or naturopathic medicine, or by an advanced practice registered nurse, who shall certify, in the form and manner specified by ~~[regulation]~~ rule of the director, the disability of the claimant, the probable duration thereof, and such other medical facts within the person's knowledge as required by ~~[regulation]~~ rule."

SECTION 2. Section 392-26, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:



1 "(c) The proof of disability duly certified by a person
2 licensed to practice medicine, surgery, dentistry, chiropractic,
3 osteopathy, or naturopathic medicine, or by an advanced practice
4 registered nurse, or an authorized or accredited practitioner of
5 any group which depends for healing upon prayer or other
6 spiritual means shall be submitted by such certifying person to
7 the disabled employee within seven working days after the date
8 on which the employee was examined and found disabled. If the
9 certifying person fails to submit the required proof within
10 seven working days, the director, upon notification by the
11 insurer, may levy a penalty of \$25 for each delinquent
12 certification where the certifying person fails to show good
13 cause for the person's failure to file on time."

14 SECTION 3. Section 392-51, Hawaii Revised Statutes, is
15 amended to read as follows:

16 "~~{}~~\$392-51~~{}~~ **Failure to submit timely wage and**
17 **employment information.** An employer to whom an insurer has sent
18 a request for information on wages, hours, and duration of
19 employment regarding an employee claiming disability benefits
20 shall complete and submit such information within seven days
21 from the date the request was received. If the employer fails



1 to submit such information within seven days, the director upon
2 notification by the insurer shall levy a penalty of [~~\$10~~] \$250
3 for each delinquent request where the employer fails to show
4 good cause for failure to file on time."

5 SECTION 4. Section 392-72, Hawaii Revised Statutes, is
6 amended to read as follows:

7 "**§392-72 Appeals, filing, and hearing.** (a) If a person
8 disputes the amount of benefits, paid under part III or part IV,
9 or the denial of benefits, the claimant may file an appeal, in
10 the form and manner prescribed by [~~regulation~~] rule of the
11 director, at the office of the department [~~in the county in~~
12 ~~which the claimant resides or in the county in which the~~
13 ~~claimant was employed prior to the claimant's disability~~],
14 within twenty days after the date of payment of such disputed
15 benefits or the denial thereof. Notice of the appeal shall be
16 served upon the employer or insurer or the trust fund for
17 disability benefits in the form and manner prescribed by
18 [~~regulation~~] rule of the director. Notice of a hearing of an
19 appeal shall be sent by electronic service or by first-class
20 mail to the claimant and insurer or employer or trust fund for
21 disability benefits at least fifteen calendar days prior to the



1 hearing. If notice sent by electronic service or by first-class
2 mail is attempted but not made, and the department has been
3 unable to ascertain the address of the party after reasonable
4 and diligent inquiry, the notice of hearing may be given to the
5 party by online posting on the department's webpage. The online
6 posting shall appear at least fifteen calendar days prior to the
7 date of the hearing. The online posting shall be removed from
8 the webpage no less than five business days after the date of
9 the hearing.

10 (b) The appeal ~~[shall]~~ may be heard in ~~[the]~~ any county
11 ~~[in which the appeal is filed; provided that the director may by~~
12 ~~regulation provide for good cause for the holding of a hearing~~
13 ~~in another county and]~~, and the parties may appear at the
14 hearing in person, by telephone, or by other communication
15 devices approved by the department, or by a combination of the
16 preceding. The parties shall be provided with notice of the
17 hearing and shall be provided with the opportunity to object to
18 the hearing being held in a county other than the county in
19 which the claimant resides or in which the claimant was employed
20 prior to the claimant's disability. Upon such objection, the
21 hearing shall be heard in the county in which the claimant



1 resides or in which the claimant was employed prior to the
2 claimant's disability. Failure to object to the location of the
3 hearing within the time specified in the notice shall be deemed
4 consent by the parties to the location of the hearing. The
5 department may provide for the taking of depositions. Unless
6 the appeal is withdrawn with the permission of the referee, the
7 referee after affording the parties reasonable opportunity for a
8 fair hearing shall make findings and conclusions and on the
9 basis thereof affirm, modify, or deny the disputed benefits. In
10 the event any party fails to appear at the hearing, the referee
11 shall issue a decision based on the available information. All
12 parties shall be promptly notified of the decision of the
13 referee and shall be furnished with a copy of the decision and
14 the findings and conclusions in support ~~[thereof and the]~~ of the
15 decision. The decision shall be final and shall be binding
16 unless a proceeding for judicial review is initiated pursuant to
17 section 392-75; provided that within the time provided for
18 taking an appeal and prior to the filing of a notice of appeal,
19 the referee may reopen the matter, upon application of the
20 director or any party, or upon the referee's own motion, and
21 thereupon may take further evidence or may modify the referee's



1 decision, findings, or conclusions. In the event the matter is
2 reopened, the referee shall render a further decision in the
3 matter, either reaffirming or modifying the referee's original
4 decision, and notice shall be given thereof in the manner
5 hereinbefore provided. The time to initiate judicial review
6 shall run from the notice of such further decision if the matter
7 has been reopened."

8 SECTION 5. Statutory material to be repealed is bracketed
9 and stricken. New statutory material is underscored.

10 SECTION 6. This Act shall take effect on January 1, 2019.

11
INTRODUCED BY: _____



S.B. NO. 2375

Report Title:

Temporary Disability Insurance; Disability Certification;
Submission of Wage and Employment Information; Hearings; Notice

Description:

Permits advanced practice registered nurses to certify an employee's disability. Increases the penalty for employers who fails to submit timely wage and employment information. Permits filing of an appeal of a decision on temporary disability insurance at the various statewide offices of the department of labor and industrial relations. Allows the department to send notices of hearings electronically or via first-class mail. Permits notice of a hearing to be posted on the department's webpage, when notice cannot be delivered. Allows parties to a hearing to appear in person, by telephone, by other communication device. Takes effect 1/1/2019.

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

