
A BILL FOR AN ACT

RELATING TO EMPLOYEES' RETIREMENT SYSTEM DISABILITY RETIREMENT.

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

1 SECTION 1. The legislature finds that this Act is
2 necessary to prevent future unwarranted increases to the
3 unfunded liability of the employees' retirement system of the
4 State of Hawaii. The employees' retirement system's service-
5 connected disability retirement and accidental death provisions
6 are intended to provide benefits different than those of
7 Hawaii's workers' compensation program. The paramount purpose
8 of Hawaii's workers' compensation law is to provide compensation
9 for an employee for all work-connected injuries, regardless of
10 questions of negligence, and the legislature has decided that
11 work injuries are among the costs of production that industry is
12 required to bear. Accordingly, the workers' compensation
13 statute is to be construed liberally in favor of awarding
14 compensation and specifically creates a presumption that an
15 employee's claim is for a covered work injury, in exchange for
16 providing an employer with exclusion of all other liability on
17 account of a work injury (except for sexual harassment, sexual



1 assault, and infliction of emotional distress, or invasion of
2 privacy).

3 There are no similar policies or purposes behind the
4 employees' retirement system's service-connected disability
5 retirement and accidental death provisions. Consequently, the
6 employees' retirement system's service-connected disability
7 retirement and accidental death provisions do not contain a
8 presumption favoring coverage and should not be construed
9 liberally in favor of awarding compensation for all injuries and
10 death occurring in the workplace, regardless of questions of
11 employees' retirement system membership position, negligence,
12 proximate cause, the difference between an accident and injury
13 or incapacity, and the burden of proof. Courts in the cases of
14 *Quel v. Bd. of Trustees, Employees' Ret. Sys.*, 146 Haw. 197, 457
15 P.3d 836 (2020); *Pasco v. Bd. of Trustees of the Employees' Ret.*
16 *Sys.*, 142 Haw. 373, 420 P.3d 304 (2018), as corrected (May 29,
17 2018), as corrected (June 4, 2018), as corrected (June 15,
18 2018); *Stout v. Bd. of Trustees of the Employees' Ret. Sys.*, 140
19 Haw. 177, 398 P.3d 766, reconsideration denied, 141 Haw. 90, 404
20 P.3d 1279 (2017); *Panado v. Bd. of Trustees, Employees' Ret.*
21 *Sys.*, 134 Haw. 1, 332 P.3d 144 (2014); and *Fores v. Bd. of*



1 *Trustees of the Employees' Ret. Sys.*, Civ. 14-1-1270-06, Circuit
2 Court of the First Circuit, recently rendered rulings awarding
3 employees' retirement system service-connected disability
4 retirement and accidental death benefits beyond the
5 legislature's original intent.

6 These rulings have required the employees' retirement
7 system to provide service-connected disability retirement and
8 accidental death benefits that were never contemplated in
9 determining employer contributions, employee contributions, and
10 employee benefits (including monthly retirement allowance
11 benefits to be provided for an extended duration and at a higher
12 rate, plus the refund of employee contributions) and
13 consequently, increased the State's unfunded liability as a
14 whole. Furthermore, employees' retirement system members are
15 not foreclosed from collecting service retirement, ordinary
16 disability retirement, ordinary death benefits, workers'
17 compensation, or social security disability; the employees'
18 retirement system service-connected disability retirement and
19 accidental death benefits should not be awarded in a manner
20 similar to an award of service retirement, ordinary disability



1 retirement, ordinary death benefits, workers' compensation, and
2 social security disability benefits.

3 If there is any perceived ambiguity regarding the
4 legislative intent of the employees' retirement system's
5 service-connected disability retirement and accidental death
6 statutes, as reflected in recent court decisions, this Act
7 addresses such perceived ambiguities.

8 SECTION 2. Section 88-21, Hawaii Revised Statutes, is
9 amended as follows:

10 1. By adding five new definitions to be appropriately
11 inserted and to read as follows:

12 "Accident":

13 (1) Means a single traumatic unlooked-for mishap or
14 untoward event that:

15 (A) Is not expected or designed;

16 (B) Is not a risk inherent in the member's
17 performance of routine or normal job duties;

18 (C) Interrupts the member's performance of routine or
19 normal job duties; and

20 (D) Precedes and precipitates:



1 (i) A medical condition, injury, disability, or
2 symptom of the foregoing that naturally and
3 proximately results in the member's
4 permanent incapacity for duty; or

5 (ii) Death of the member; and

6 (2) Does not include:

7 (A) A medical condition, injury, disability, mental
8 or physical incapacity, symptom of the foregoing,
9 or death itself; and

10 (B) An unexpected result of a routine performance of
11 duty, without external force or unusual stress or
12 strain.

13 "Actual performance of duty" means the performance of duty:

14 (1) In the position, appointment, or office on which the
15 member's membership in the system is based, and for
16 which all contributions required to be made to the
17 system by the employee or the employer, or both, have
18 been made;

19 (2) During the work hours of the position, appointment, or
20 office; and

21 (3) At either:



1 (A) The work premises of the position, appointment,
2 or office; or

3 (B) Wherever the member's duties of the position,
4 appointment, or office require the member to be.

5 "Definite and exact time and place" means:

6 (1) An exact time or time period that is identified, is
7 limited and short in duration, and does not include
8 more than a single work shift; and

9 (2) An exact place or geographic location that is
10 identified and is of a limited and small size.

11 "Incapacitated for duty" and "incapacitated for the further
12 performance of duty":

13 (1) Means incapacitated for duties prescribed in the
14 official position description or actual job duties of
15 the position, appointment, or office on which the
16 member's membership in the system is based, and for
17 which all contributions required to be made to the
18 system by the employee or the employer, or both, have
19 been made; and

20 (2) Does not include incapacitated for duties under
21 environmental conditions particular to the member's



1 position, appointment, or office, such as a particular
2 location in proximity to or under the supervision of
3 particular individuals, or under other particular
4 environmental conditions, but not incapacitated for
5 duties of the position, appointment, or office as a
6 whole.

7 "Occupational hazard":

8 (1) Means danger or risk inherent in, and concomitant to,
9 a particular occupation, the causative factors of
10 which are not ordinarily incident to employment in
11 general, and are different in character from those
12 found in the general run of occupations; and

13 (2) Does not include:

14 (A) A job-related condition that results in
15 incapacitation for further performance of duty or
16 death, without a danger or risk inherent in, and
17 concomitant to, a particular occupation;

18 (B) Work activities that are common to many
19 occupations, such as repetitive motion of hands
20 and arms, lifting, and carrying; and



1 (C) Dangers or risks that are particular to a
 2 member's workplace, but not particular to the
 3 member's occupation as a whole, such as a lack of
 4 proper tools or malfunctioning equipment at the
 5 workplace."

6 2. By amending the definition of "accidental death" to
 7 read as follows:

8 ""Accidental death" means death of a member while employed
 9 in a position in which all contributions required to be made to
 10 the system by the employee or the employer, or both, have been
 11 made, that is the natural and proximate result of an accident
 12 occurring at [~~some~~] a definite and exact time and place while
 13 the member [~~was employed in a position in which all~~
 14 ~~contributions required to be made to the employees' retirement~~
 15 ~~system by the employee or the employer, or both, have been~~
 16 ~~made,~~] was in the actual performance of duty[~~]~~ or due to the
 17 result of some occupational hazard[~~]~~ of the position,
 18 appointment, or office upon which the employee's membership is
 19 based, and not caused by wilful negligence on the part of the
 20 member."



1 SECTION 3. Section 88-79, Hawaii Revised Statutes, is
2 amended to read as follows:

3 **"§88-79 Service-connected disability retirement. (a)**
4 Under rules the board of trustees may adopt, upon application of
5 a member, or the person appointed by the family court as
6 guardian of an incapacitated member, any member while employed
7 in a position in which all contributions required to be made to
8 the employees' retirement system by the employee or the
9 employer, or both, have been made, who has been permanently
10 incapacitated for duty as the natural and proximate result of an
11 accident occurring at a definite and exact time and place while
12 in the actual performance of duty [~~at some definite time and~~
13 ~~place~~] or as the cumulative result of [~~some~~] an occupational
14 hazard[7] of the position, appointment, or office upon which the
15 member's membership is based, through no wilful negligence on
16 the member's part, may be retired by the system for service-
17 connected disability; provided that:

18 (1) In the case of an accident occurring after July 1,
19 1963, the employer shall file with the system a copy
20 of the employer's report of the accident submitted to
21 the director of labor and industrial relations;



- 1 (2) An application for retirement is filed with the system
2 within two years of the date of the accident, or the
3 date upon which workers' compensation benefits cease,
4 whichever is later;
- 5 (3) Certification is made by the head of the agency in
6 which the member is employed, stating the time, place,
7 and conditions of the service performed by the member
8 resulting in the member's disability and that the
9 disability was not the result of wilful negligence on
10 the part of the member; and
- 11 (4) The medical board or other entity designated by the
12 board of trustees certifies that the member is
13 incapacitated for the further performance of duty at
14 the time of application and that the member's
15 incapacity is likely to be permanent.
- 16 (b) Permanent incapacity that is primarily caused by the
17 natural deterioration, degeneration, or progression of a pre-
18 existing condition is not the natural and proximate result of an
19 accident occurring at a definite and exact time and place while
20 in the actual performance of duty. Permanent incapacity that is
21 primarily caused by the natural deterioration, degeneration, or



1 progression of a pre-existing condition is not the cumulative
2 result of an occupational hazard of the position, appointment,
3 or office upon which the member's membership is based, unless
4 the pre-existing condition itself was caused by the occupational
5 hazard. In the case of an application for service-connected
6 disability retirement, where there is evidence that the member
7 claiming permanent incapacity had a pre-existing condition, the
8 member shall have the burden of proving by a preponderance of
9 the evidence that the member's permanent incapacity was not
10 primarily caused by the pre-existing condition.

11 ~~[(b)]~~ (c) In the case of firefighters, police officers,
12 and sewer workers, the effect of the inhalation of smoke, toxic
13 gases, chemical fumes, and other toxic vapors on the heart,
14 lungs, and respiratory system shall be construed as an injury
15 received or disease contracted while in the performance of
16 ~~[their]~~ duty in the position and as the result of ~~[some]~~ an
17 occupational hazard of the position for the purpose of
18 determining occupational disability retirement under this
19 section.

20 Notwithstanding any other law to the contrary, any
21 condition of impairment of health caused by any disease of the



1 heart, lungs, or respiratory system, resulting in permanent
2 incapacity to a firefighter, police officer, or sewer worker,
3 shall be presumed to have been suffered in the actual
4 performance of duty in the position, at ~~[some]~~ a definite and
5 exact time and place, through no wilful negligence on the
6 firefighter's, police officer's, or sewer worker's part, and as
7 a result of the inherent occupational hazard of the position, of
8 exposure to and inhalation of smoke, toxic gases, chemical
9 fumes, and other toxic vapors, unless the contrary be shown by
10 competent evidence; provided that ~~[such]~~ the firefighter, police
11 officer, or sewer worker shall have passed a physical
12 examination on entry into ~~[such]~~ service or subsequent to ~~[such]~~
13 entry~~[r]~~ into service, which examination failed to reveal any
14 evidence of ~~[such]~~ the condition.

15 ~~[-e-]~~ (d) The system may waive strict compliance with the
16 time limits within which a report of the accident and an
17 application for service-connected disability retirement must be
18 filed with the system if it is satisfied that the failure to
19 file within the time limited by law was due to ignorance of fact
20 or law, inability, or ~~[te]~~ the fraud, misrepresentation, or
21 deceit of any person, or because the applicant was undergoing



1 treatment for the disability or was receiving vocational
2 rehabilitation services occasioned by the disability.

3 ~~[(d)]~~ (e) The system may determine whether ~~[or not]~~ the
4 disability is the result of an accident occurring while in the
5 actual performance of duty at ~~[some]~~ a definite and exact time
6 and place, and that the disability was not the result of wilful
7 negligence on the part of the member. The system may accept as
8 conclusive:

9 (1) The certification made by the head of the agency in
10 which the member is employed; or

11 (2) A finding to this effect by the medical board or other
12 entity designated by the board of trustees.

13 ~~[(e)]~~ (f) Upon approval by the system, the member shall be
14 eligible to receive a service-connected disability retirement
15 benefit after the member has terminated service. Retirement
16 shall become effective on the first day of a month, except for
17 the month of December when retirement on the first or last day
18 of the month shall be allowed."

19 SECTION 4. Section 88-82, Hawaii Revised Statutes, is
20 amended to read as follows:



1 "§88-82 Petition for contested case hearing regarding
2 disability retirement or accidental death benefits; attorney's
3 fees and costs. (a) A member or applicant who is not satisfied
4 with the preliminary decision of the board to grant or deny an
5 application for disability retirement benefits or accidental
6 death benefits based on the certifications and findings of the
7 medical board may file a petition for contested case hearing
8 with the board within sixty days after receiving written
9 notification of the preliminary decision of the board.

10 (b) The member or applicant initiating the proceeding
11 shall have the burden of proof, including the burden of
12 producing evidence and the burden of persuasion. The degree or
13 quantum of proof shall be a preponderance of the evidence. The
14 member or applicant shall have the responsibility of furnishing
15 all medical evidence available or that can be made available to
16 the member or applicant pertaining to the member's death or
17 disability. Any determination of the disability compensation
18 division of the department of labor and industrial relations,
19 the labor and industrial relations appeals board, and the Social
20 Security Administration relating to the same incapacity for
21 which the applicant or member is claiming a disability or death



1 benefit may be taken into consideration; provided that the
2 determination shall not be binding upon the medical board. The
3 medical board may, at its discretion, subject the member to a
4 physical examination in arriving at its certifications and
5 findings on all matters referred to it; provided that the burden
6 of proof is not shifted to the medical board, and the member or
7 applicant has the burden of proof.

8 ~~(b)~~ (c) If the member or applicant is the prevailing
9 party in the contested case, and disability retirement or
10 accidental death benefits are awarded to the member or applicant
11 by the board or court of the appropriate jurisdiction under
12 section 88-75, 88-79, 88-85, 88-284, 88-285, 88-286(c), 88-334,
13 88-336, or 88-339, the member or applicant shall be paid
14 reasonable attorney's fees together with any costs payable by
15 the system. The attorney's fees and costs shall be subject to
16 the approval of the board or approval by a court of appropriate
17 jurisdiction after evidence has been provided by the member or
18 applicant regarding the reasonableness of the claimed attorney's
19 fees and costs."

20 SECTION 5. Section 88-85.5, Hawaii Revised Statutes, is
21 amended to read as follows:



1 **"§88-85.5 Applications for accidental death benefits;**
2 **approval by the system.** (a) Under rules the board of trustees
3 may adopt, an application for service-connected accidental death
4 benefits may be filed with the system by or on behalf of the
5 claimant pursuant to section 88-85, 88-286, or 88-339, on a form
6 provided by the system. The application shall be filed no later
7 than three years from the date of the member's death.

8 (b) After the claimant files an application for service-
9 connected accidental death benefits, the system shall obtain the
10 following:

- 11 (1) A copy of the employer's report of the accident
12 submitted by the employer to the department of labor
13 and industrial relations, workers' compensation
14 division, and other reports relating to the accident;
- 15 (2) A certified statement from the head of the department
16 in which the deceased member was employed, stating the
17 date, time, and place of the accident, and the nature
18 of the service being performed when the accident
19 occurred. The statement shall also include an opinion
20 as to whether or not the accident was the result of
21 wilful negligence on the deceased member's part;

1 (3) A copy of the latest position description of the
2 deceased member's duties and responsibilities;
3 (4) A certified copy of the death certificate; and
4 (5) A copy of an autopsy report, if performed.
5 (c) Upon the system's receipt of the application and
6 documents specified in subsection (b), the medical board or
7 other entity designated by the board of trustees shall determine
8 and certify to the system whether the member's death was an
9 accidental death as defined in section 88-21.
10 (d) Death that is primarily caused by the natural
11 deterioration, degeneration, or progression of a pre-existing
12 condition is not the natural and proximate result of an accident
13 occurring at a definite and exact time and place while in the
14 actual performance of duty. Death that is primarily caused by
15 the natural deterioration, degeneration, or progression of a
16 pre-existing condition is not the cumulative result of some
17 occupational hazard of the position, appointment, or office upon
18 which the member's membership is based, unless the pre-existing
19 condition itself was caused by the occupational hazard. In the
20 case of an application for accidental death benefits, where
21 there is evidence that the member had a pre-existing condition,



1 the applicant shall have the burden of proving by a
2 preponderance of the evidence that the member's death was not
3 primarily caused by the pre-existing condition.

4 [~~(d)~~] (e) The system may accept as conclusive as to
5 whether [~~or not~~] the member's death was caused by wilful
6 negligence on the part of the member:

7 (1) A certification made by the head of the agency in
8 which the member is employed; or

9 (2) A finding by the medical board or other entity
10 designated by the board of trustees.

11 [~~(e)~~] (f) After the medical board or other entity
12 designated by the board of trustees submits its certification to
13 the system, the system shall approve or disapprove the
14 application. Upon approval of an application, benefits shall be
15 paid as provided in section 88-85, 88-286, or 88-339."

16 SECTION 6. Section 88-261, Hawaii Revised Statutes, is
17 amended by amending subsection (a) to read as follows:

18 "(a) The following words and phrases as used in this part
19 shall have the same meanings as defined in section 88-21, unless
20 a different meaning is plainly required by the context:

21 "accident"; "accidental death"; "accumulated contributions";



1 "actual performance of duty"; "actuarial equivalent"; "average
2 final compensation"; "beneficiary"; "board"; "county"; "definite
3 and exact time and place"; "employee"; "incapacitated for duty";
4 "incapacitated for the further performance of duty"; "medical
5 board"; "occupational hazard"; "retirant"; "retirement
6 allowance"; "service"; and "system"."

7 SECTION 7. Section 88-336, Hawaii Revised Statutes, is
8 amended to read as follows:

9 **"§88-336 Service-connected disability retirement. (a)**
10 Under rules the board of trustees may adopt, upon application of
11 a class H member, or the person appointed by the family court as
12 guardian of an incapacitated member, any class H member,
13 employed in a position in which all contributions required to be
14 made to the employees' retirement system by the employee or the
15 employer, or both, have been made, who has been permanently
16 incapacitated for duty as the natural and proximate result of an
17 accident occurring at a definite and exact time and place while
18 in the actual performance of duty [~~at some definite time and~~
19 ~~place,~~] or as the cumulative result of some occupational
20 hazard[~~r~~] of the position, appointment, or office upon which the
21 member's membership is based, through no wilful negligence on



1 the member's part, may be retired by the system for service-
2 connected disability; provided that:

- 3 (1) In the case of an accident occurring after July 1,
4 1963, the employer shall file with the system a copy
5 of the employer's report of the accident submitted to
6 the director of labor and industrial relations;
- 7 (2) An application for retirement is filed with the system
8 within two years of the date of the accident, or the
9 date upon which workers' compensation benefits cease,
10 whichever is later;
- 11 (3) Certification is made by the head of the agency in
12 which the member is employed, stating the time, place,
13 and conditions of the service performed by the member
14 resulting in the member's disability and that the
15 disability was not the result of wilful negligence on
16 the part of the member; and
- 17 (4) The medical board or other entity designated by the
18 board of trustees certifies that the member is
19 incapacitated for the further performance of duty at
20 the time of application and that the member's
21 incapacity is likely to be permanent.



1 (b) Permanent incapacity that is primarily caused by the
2 natural deterioration, degeneration, or progression of a pre-
3 existing condition is not the natural and proximate result of an
4 accident occurring at some definite and exact time and place
5 while in the actual performance of duty. Permanent incapacity
6 that is primarily caused by the natural deterioration,
7 degeneration, or progression of a pre-existing condition is not
8 the cumulative result of some occupational hazard of the
9 position, appointment, or office upon which the member's
10 membership is based, unless the pre-existing condition itself
11 was caused by the occupational hazard. In the case of an
12 application for service-connected disability retirement, where
13 there is evidence that the member claiming permanent incapacity
14 had a pre-existing condition, the member shall have the burden
15 of proving by a preponderance of the evidence that the member's
16 permanent incapacity was not primarily caused by the pre-
17 existing condition.

18 [~~(b)~~] (c) In the case of sewer workers, the effect of the
19 inhalation of smoke, toxic gases, chemical fumes, and other
20 toxic vapors on the heart, lungs, and respiratory system shall
21 be construed as an injury received or disease contracted while



1 in the performance of [~~their~~] duty in the position and as the
2 result of [~~some~~] an occupational hazard of duty in the position
3 for the purpose of determining occupational disability
4 retirement under this section.

5 Notwithstanding any other law to the contrary, any
6 condition of impairment of health caused by any disease of the
7 heart, lungs, or respiratory system resulting in permanent
8 incapacity to a sewer worker shall be presumed to have been
9 suffered in the actual performance of duty in the position, at
10 [~~some~~] a definite and exact time and place through no wilful
11 negligence on the sewer worker's part, and as a result of the
12 inherent occupational hazard of the position, of exposure to the
13 inhalation of smoke, toxic gases, chemical fumes, and other
14 toxic vapors, unless the contrary be shown by competent
15 evidence; provided that the sewer worker shall have passed a
16 physical examination on entry into [~~such~~] service or subsequent
17 to [~~such~~] entry[~~r~~] into service, which examination failed to
18 reveal any evidence of [~~such~~] the condition.

19 [~~(e)~~] (d) The system may waive strict compliance with the
20 time limits within which a report of the accident and an
21 application for service-connected disability retirement must be



1 filed with the system if it is satisfied that the failure to
 2 file within the time limited by law was due to ignorance of fact
 3 or law, inability, or the fraud, misrepresentation, or deceit of
 4 any person, or because the applicant was undergoing treatment
 5 for the disability, or was receiving vocational rehabilitation
 6 services occasioned by the disability.

7 ~~[(d)]~~ (e) The system may determine whether the disability
 8 is the result of an accident occurring at a definite and exact
 9 time and place while in the actual performance of duty [~~at some~~
 10 ~~definite time and place~~] and that the disability was not the
 11 result of wilful negligence on the part of the member. The
 12 system may accept as conclusive:

13 (1) The certification made by the head of the agency in
 14 which the member is employed; or

15 (2) A finding to this effect by the medical board or other
 16 entity designated by the board of trustees.

17 ~~[(e)]~~ (f) Upon approval by the system, the member shall be
 18 eligible to receive a service-connected disability retirement
 19 benefit after the member has terminated service. Retirement
 20 shall be effective on the first day of a month, except for the



1 month of December when retirement on the first or last day of
2 the month shall be allowed."

3 SECTION 8. Section 88-339, Hawaii Revised Statutes, is
4 amended by amending subsection (b) to read as follows:

5 "(b) Notwithstanding any other law to the contrary, any
6 condition of impairment of health caused by any disease of the
7 heart, lungs, or respiratory system, resulting in death to a
8 sewer worker shall be presumed to have been suffered in the
9 actual performance of duty in the position, at [~~some~~] a definite
10 and exact time and place through no wilful negligence on the
11 sewer worker's part, and as a result of the inherent
12 occupational hazard of the position, of exposure to and
13 inhalation of smoke, toxic gases, chemical fumes, and other
14 toxic vapors, unless the contrary be shown by competent
15 evidence; provided that the sewer worker shall have passed a
16 physical examination on entry into service or subsequent to
17 entry[~~r~~] into service, which examination failed to reveal any
18 evidence of the condition."

19 SECTION 9. This Act does not affect rights and duties that
20 matured, penalties that were incurred, and proceedings that were
21 begun before its effective date.



1 SECTION 10. Statutory material to be repealed is bracketed
2 and stricken. New statutory material is underscored.

3 SECTION 11. This Act shall take effect on June 30, 3000,
4 and shall apply to applications and claims filed after its
5 effective date.

6



Report Title:

Employees' Retirement System; Service-Connected Disability;
Accidental Death

Description:

Clarifies the employees' retirement system's eligibility
requirement definitions for service-connected disability and
accidental death benefits. Effective 6/30/3000. (HD1)

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

