
A BILL FOR AN ACT

RELATING TO THE EMPLOYEES' RETIREMENT SYSTEM.

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

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



1 account of a work injury, except for sexual harassment, sexual
2 assault, and infliction of emotional distress, or invasion of
3 privacy.

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



1 *Employees' Ret. Sys.*, 134 Hawai'i. 1, 332 P.3d 144 (2014); and
2 *Fores v. Bd. of Trustees of the Employees' Ret. Sys.*, Civ. No.
3 14-1-1270-06, Circuit Court of the First Circuit, recently
4 rendered rulings awarding employees' retirement system service-
5 connected disability retirement and accidental death benefits
6 beyond the legislature's original intent.

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

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

13 1. By adding five new definitions to be appropriately
14 inserted and to read:

15 "Accident":

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

18 (A) Is not expected or designed;

19 (B) Is not a risk inherent in the member's

20 performance of routine or normal job duties;



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

3 (D) Precedes and precipitates:

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

8 (ii) Death of the member; and

9 (2) Does not include:

10 (A) A medical condition, injury, disability, mental
11 or physical incapacity, symptom of the foregoing,
12 or death itself; and

13 (B) An unexpected result of a routine performance of
14 duty, without external force or unusual stress or
15 strain.

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

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



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

3 (3) At either:

4 (A) The work premises of the position, appointment,
5 or office; or

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

8 "Definite and exact time and place" means:

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

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

14 "Incapacitated for duty" and "incapacitated for the further
15 performance of duty":

16 (1) Means incapacitated for duties prescribed in the
17 official position description or actual job duties of
18 the position, appointment, or office on which the
19 member's membership in the system is based, and for
20 which all contributions required to be made to the



1 system by the employee or the employer, or both, have
2 been made; and

3 (2) Does not include incapacitated for duties under
4 environmental conditions particular to the member's
5 position, appointment, or office, such as a particular
6 location in proximity to or under the supervision of
7 particular individuals, or under other particular
8 environmental conditions, but not incapacitated for
9 duties of the position, appointment, or office as a
10 whole.

11 "Occupational hazard":

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

17 (2) Does not include:

18 (A) A job-related condition that results in
19 incapacitation for further performance of duty or
20 death, without a danger or risk inherent in, and
21 concomitant to, a particular occupation;



1 (B) Work activities that are common to many
2 occupations, such as repetitive motion of hands
3 and arms, lifting, and carrying; and

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

9 2. By amending the definition of "accidental death" to
10 read:

11 "Accidental death" means death of a member while employed
12 in a position in which all contributions required to be made to
13 the system by the employee or the employer, or both, have been
14 made, that is the natural and proximate result of an accident
15 occurring at [some] a definite and exact time and place while
16 the member [was employed in a position in which all
17 contributions required to be made to the employees' retirement
18 system by the employee or the employer, or both, have been
19 made,] was in the actual performance of duty[.] or due to the
20 result of some occupational hazard[.] of the position,
21 appointment, or office upon which the employee's membership is



1 based, and not caused by wilful negligence on the part of the
2 member."

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

5 "**§88-79 Service-connected disability retirement.** (a)

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

20 (1) In the case of an accident occurring after July 1,
21 1963, the employer shall file with the system a copy



1 of the employer's report of the accident submitted to
2 the director of labor and industrial relations;

3 (2) An application for retirement is filed with the system
4 within two years of the date of the accident, or the
5 date upon which workers' compensation benefits cease,
6 whichever is later;

7 (3) Certification is made by the head of the agency in
8 which the member is employed, stating the time, place,
9 and conditions of the service performed by the member
10 resulting in the member's disability and that the
11 disability was not the result of wilful negligence on
12 the part of the member; and

13 (4) The medical board or other entity designated by the
14 board of trustees certifies that the member is
15 incapacitated for the further performance of duty at
16 the time of application and that the member's
17 incapacity is likely to be permanent.

18 (b) Permanent incapacity that is primarily caused by the
19 natural deterioration, degeneration, or progression of a pre-
20 existing condition shall not be the natural and proximate result
21 of an accident occurring at a definite and exact time and place



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

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



1 determining occupational disability retirement under this
2 section.

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

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



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

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

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

14 (b) The member or applicant initiating the proceeding
15 shall have the burden of proof, including the burden of
16 producing evidence and the burden of persuasion. The degree or
17 quantum of proof shall be a preponderance of the evidence. The
18 member or applicant shall have the responsibility of furnishing
19 all medical evidence available or that can be made available to
20 the member or applicant pertaining to the member's death or
21 disability. Any determination of the disability compensation



1 division of the department of labor and industrial relations,
2 labor and industrial relations appeals board, and Social
3 Security Administration relating to the same incapacity for
4 which the applicant or member is claiming a disability or death
5 benefit may be taken into consideration; however, that
6 determination shall not be binding upon the medical board. The
7 medical board may or may not, at its discretion, subject the
8 member to a physical examination in arriving at its
9 certifications and findings on all matters referred to it;
10 provided that the burden of proof is not shifted to the medical
11 board, and the member or applicant has the burden of proof.

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



1 applicant regarding the reasonableness of the claimed attorney's
2 fees and costs."

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

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

12 (b) After the claimant files an application for service-
13 connected accidental death benefits, the system shall obtain the
14 following:

- 15 (1) A copy of the employer's report of the accident
16 submitted by the employer to the department of labor
17 and industrial relations, workers' compensation
18 division, and other reports relating to the accident;
- 19 (2) A certified statement from the head of the department
20 in which the deceased member was employed, stating the
21 date, time, and place of the accident, and the nature



1 of the service being performed when the accident
2 occurred. The statement shall also include an opinion
3 as to whether or not the accident was the result of
4 wilful negligence on the deceased member's part;

5 (3) A copy of the latest position description of the
6 deceased member's duties and responsibilities;

7 (4) A certified copy of the death certificate; and

8 (5) A copy of an autopsy report, if performed.

9 (c) Upon the system's receipt of the application and
10 documents specified in subsection (b), the medical board or
11 other entity designated by the board of trustees shall determine
12 and certify to the system whether the member's death was an
13 accidental death as defined in section 88-21.

14 (d) Death that is primarily caused by the natural
15 deterioration, degeneration, or progression of a pre-existing
16 condition shall not be 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. Death that is primarily
19 caused by the natural deterioration, degeneration, or
20 progression of a pre-existing condition shall not be the
21 cumulative result of some occupational hazard of the position,



1 appointment, or office upon which the member's membership is
2 based, unless the pre-existing condition itself was caused by
3 the occupational hazard. In the case of an application for
4 accidental death benefits, where there is evidence that the
5 member had a pre-existing condition, the applicant shall have
6 the burden of proving by a preponderance of the evidence that
7 the member's death was not primarily caused by the pre-existing
8 condition.

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

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

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

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



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

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

6 "accident"; "accidental death"; "accumulated contributions";
7 "actual performance of duty"; "actuarial equivalent"; "average
8 final compensation"; "beneficiary"; "board"; "county"; "definite
9 and exact time and place"; "employee"; "incapacitated for duty";
10 "incapacitated for the further performance of duty"; "medical
11 board"; "occupational hazard"; "retirant"; "retirement
12 allowance"; "service"; and "system".

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

15 "**§88-336 Service-connected disability retirement.** (a)

16 Under rules the board of trustees may adopt, upon application of
17 a class H member, or the person appointed by the family court as
18 guardian of an incapacitated member, any class H member,
19 employed in a position in which all contributions required to be
20 made to the employees' retirement system by the employee or the
21 employer, or both, have been made, who has been permanently



1 incapacitated for duty as the natural and proximate result of an
2 accident occurring at a definite and exact time and place while
3 in the actual performance of duty [~~at some definite time and~~
4 ~~place~~] or as the cumulative result of some occupational
5 hazard^[7] of the position, appointment, or office upon which the
6 member's membership is based, through no wilful negligence on
7 the member's part, may be retired by the system for service-
8 connected disability; provided that:

- 9 (1) In the case of an accident occurring after July 1,
10 1963, the employer shall file with the system a copy
11 of the employer's report of the accident submitted to
12 the director of labor and industrial relations;
- 13 (2) An application for retirement is filed with the system
14 within two years of the date of the accident, or the
15 date upon which workers' compensation benefits cease,
16 whichever is later;
- 17 (3) Certification is made by the head of the agency in
18 which the member is employed, stating the time, place,
19 and conditions of the service performed by the member
20 resulting in the member's disability and that the



1 disability was not the result of wilful negligence on
2 the part of the member; and

3 (4) The medical board or other entity designated by the
4 board of trustees certifies that the member is
5 incapacitated for the further performance of duty at
6 the time of application and that the member's
7 incapacity is likely to be permanent.

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



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

4 ~~[(b)]~~ (c) In the case of sewer workers, the effect of the
5 inhalation of smoke, toxic gases, chemical fumes, and other
6 toxic vapors on the heart, lungs, and respiratory system shall
7 be construed as an injury received or disease contracted while
8 in the performance of ~~[their]~~ duty in such position and as the
9 result of ~~[some]~~ an occupational hazard of duty in such position
10 for the purpose of determining occupational disability
11 retirement under this section.

12 Notwithstanding any other law to the contrary, any
13 condition of impairment of health caused by any disease of the
14 heart, lungs, or respiratory system resulting in permanent
15 incapacity to a sewer worker shall be presumed to have been
16 suffered in the actual performance of duty in such position, at
17 ~~[some]~~ a definite and exact time and place through no wilful
18 negligence on the sewer worker's part, and as a result of the
19 inherent occupational hazard of such position, of exposure to
20 the inhalation of smoke, toxic gases, chemical fumes, and other
21 toxic vapors, unless the contrary be shown by competent



1 evidence; provided that the sewer worker shall have passed a
2 physical examination on entry into such service or subsequent to
3 such entry, which examination failed to reveal any evidence of
4 such condition.

5 [~~(e)~~] (d) The system may waive strict compliance with the
6 time limits within which a report of the accident and an
7 application for service-connected disability retirement must be
8 filed with the system if it is satisfied that the failure to
9 file within the time limited by law was due to ignorance of fact
10 or law, inability, or the fraud, misrepresentation, or deceit of
11 any person, or because the applicant was undergoing treatment
12 for the disability, or was receiving vocational rehabilitation
13 services occasioned by the disability.

14 [~~(d)~~] (e) The system may determine whether the disability
15 is the result of an accident occurring at a definite and exact
16 time and place while in the actual performance of duty [~~at some~~
17 ~~definite time and place~~] and that the disability was not the
18 result of wilful negligence on the part of the member. The
19 system may accept as conclusive:

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



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

3 [~~e~~] (f) Upon approval by the system, the member shall be
4 eligible to receive a service-connected disability retirement
5 benefit after the member has terminated service. Retirement
6 shall be effective on the first day of a month, except for the
7 month of December when retirement on the first or last day of
8 the month shall be allowed."

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

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



1 physical examination on entry into service or subsequent to
2 entry, which examination failed to reveal any evidence of the
3 condition."

4 SECTION 9. This Act does not affect rights and duties that
5 matured, penalties that were incurred, and proceedings that were
6 begun before its effective date.

7 SECTION 10. Statutory material to be repealed is bracketed
8 and stricken. New statutory material is underscored.

9 SECTION 11. This Act shall take effect on July 1, 2050,
10 and shall apply to applications and claims filed after its
11 effective date.



Report Title:

ERS; Service-Connected Disability; Accidental Death; Eligibility

Description:

Clarifies the Employees' Retirement System's eligibility requirement definitions for service-connected disability and accidental death benefits. Takes effect 7/1/2050. (SD1)

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

