
A BILL FOR AN ACT

RELATING TO WORKERS' COMPENSATION.

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

1 SECTION 1. The legislature finds that early intervention
2 is vital to ensure the efficient and effective rehabilitation of
3 employees who suffer a work-related injury. This often begins
4 with the referral of an injured employee for vocational
5 rehabilitation services. Vocational rehabilitation services are
6 intended to help the employee return to work as quickly as
7 possible with pay as close as possible to pre-injury wages.
8 Urgency is needed when initiating the vocational rehabilitation
9 process to avoid prolonged adverse effects on injured employees
10 and minimize costs for employers and insurers.

11 The legislature further finds that it is crucial for
12 injured employees to have access to appropriate vocational
13 rehabilitation services in the State. Many vocational
14 rehabilitation providers have expressed concern regarding the
15 future availability of services as providers retire or leave the
16 practice. It is important for current and future providers to
17 be properly trained on the vocational rehabilitation process.



1 Accordingly, the purpose of this Act is to:

2 (1) Clarify the process for selecting a certified provider
3 of vocational rehabilitation services;

4 (2) Require a provider to automatically approve an injured
5 employee for vocational rehabilitation services if the
6 provider determines that the injured employee will
7 likely require vocational rehabilitation services to
8 return to suitable gainful employment; and

9 (3) Clarify the process for an employer to object to a
10 vocational rehabilitation plan.

11 SECTION 2. Section 386-25, Hawaii Revised Statutes, is
12 amended to read as follows:

13 "**§386-25 Vocational rehabilitation.** (a) The purposes of
14 vocational rehabilitation are to restore an injured worker's
15 earnings capacity as nearly as possible to that level that the
16 worker was earning at the time of injury and to return the
17 injured worker to suitable gainful employment in the active
18 labor force as quickly as possible in a cost-effective manner.
19 Vocational rehabilitation shall not be available for public
20 employees who have retired from a public employer, as defined in
21 section 76-11, with whom they sustained their work injury.



1 Employees of public employers, as defined in section 76-11,
2 who are eligible for their respective public employer's return
3 to work program, shall participate in and complete the return to
4 work program, including temporary light duty placement efforts,
5 as a prerequisite to vocational rehabilitation benefits under
6 this section.

7 (b) The director may refer employees who may have or have
8 suffered permanent disability as a result of work injuries and
9 who, in the director's opinion, can be vocationally
10 rehabilitated to the department of human services or to private
11 providers of rehabilitation services for vocational
12 rehabilitation services that are feasible. A referral shall be
13 made upon recommendation of the rehabilitation unit established
14 under section 386-71.5 and after the employee has been deemed
15 physically able to participate in rehabilitation by the
16 employee's attending physician. The unit shall include
17 appropriate professional staff and shall have the following
18 duties and responsibilities:

19 (1) To review and approve vocational rehabilitation plans
20 developed by certified providers of vocational



1 rehabilitation services, whether they be private or
2 public;

3 (2) To adopt rules consistent with this section that shall
4 expedite and facilitate the identification,
5 notification, and referral of industrially injured
6 employees to vocational rehabilitation services, and
7 establish minimum standards for providers providing
8 vocational rehabilitation services under this section;

9 (3) To certify private and public providers of vocational
10 rehabilitation services meeting the minimum standards
11 established under paragraph (2); and

12 (4) To enforce the implementation of vocational
13 rehabilitation plans.

14 (c) Enrollment in a vocational rehabilitation plan or
15 program shall not be mandatory and the approval of a proposed
16 vocational rehabilitation plan or program by the injured
17 employee shall be required. [~~The~~] If the injured employee
18 elects to enroll in a vocational rehabilitation plan or program,
19 the injured employee [may] shall select a certified provider of
20 vocational rehabilitation services[. — Both] no later than thirty
21 days after the referral is made. Once the injured employee



1 selects a certified provider, both the certified provider and
2 the injured employee~~[, within a reasonable time after initiating~~
3 ~~rehabilitation services,]~~ shall give proper notice of selection
4 to the employer~~[.]~~ within seven days. If the injured employee
5 fails to select a certified provider within thirty days, the
6 employer shall select a certified provider of vocational
7 rehabilitation services and give proper notice of selection to
8 the injured employee.

9 (d) A provider shall submit an initial evaluation report
10 of the employee to the employer and the director within
11 forty-five days of the date of referral or selection. The
12 evaluation shall determine whether the employee requires
13 vocational rehabilitation services to return to suitable gainful
14 employment, identify the necessary services, and state whether
15 the provider can provide these services. The initial evaluation
16 report shall contain:

- 17 (1) An assessment of the employee's:
- 18 (A) Current medical status;
 - 19 (B) Primary disability;
 - 20 (C) Secondary disability;



- 1 (D) Disabilities that are not related to the work
2 injury; and
- 3 (E) Physical or psychological limitations, or both.
4 If this information is not provided by the treating
5 physician within a reasonable amount of time,
6 information from another physician shall be accepted;
- 7 (2) A job analysis addressing the demands of the
8 employee's employment;
- 9 (3) A statement from the provider identifying the
10 employee's vocational handicaps in relation to the
11 employee's ability to:
- 12 (A) Return to usual and customary employment; and
13 (B) Participate in and benefit from a vocational
14 rehabilitation plan or program;
- 15 (4) A statement from the provider determining the
16 feasibility of vocational rehabilitation services,
17 including:
- 18 (A) The provider's ability to assist the employee in
19 the employee's efforts to return to suitable
20 gainful employment;



1 (B) An outline of specific vocational rehabilitation
2 services to be provided, justification for the
3 necessity of services, and how the effectiveness
4 of these services is measured; and

5 (C) How the vocational rehabilitation services
6 directly relate to the employee obtaining
7 suitable gainful employment; and

8 (5) The enrollment form and the statement of worker's
9 rights and responsibilities form obtained from the
10 department.

11 (e) A provider shall automatically approve vocational
12 rehabilitation services for an injured employee; provided that
13 the provider determines that the injured employee will likely
14 require vocational rehabilitation services to return to suitable
15 gainful employment, and the initial evaluation report finds the
16 injured employee feasible to participate.

17 [~~e~~] (f) A provider shall file the employee's vocational
18 rehabilitation plan with the approval of the employee[-] no
19 later than one hundred twenty days after the provider submits an
20 initial evaluation report; provided that the director may grant
21 an extension in the director's discretion. Upon receipt of the



1 vocational rehabilitation plan from the provider, an employee
2 shall have ten days to review and sign the vocational
3 rehabilitation plan. The vocational rehabilitation plan shall
4 be submitted to the employer and the employee and be filed with
5 the director within two days from the date of the employee's
6 signature. A vocational rehabilitation plan shall include a
7 statement of the feasibility of the vocational goal, using the
8 process of:

- 9 (1) First determining if the employee's usual and
10 customary employment represents suitable gainful
11 employment, and, should it not;
- 12 (2) Next determining if modified work or other work with
13 the same employer represents suitable gainful
14 employment, and, should it not;
- 15 (3) Next determining if modified or other employment with
16 a different employer represents suitable gainful
17 employment, [~~and finally,~~] and, should it not;
- 18 (4) Then providing training to obtain employment in
19 another occupational field. When training to obtain
20 employment in another occupational field is required,



1 the first appropriate option among the following
2 options shall be selected for the employee:
3 (A) On-the-job training;
4 (B) Short-term retraining program (less than
5 fifty-two weeks); or
6 (C) Long-term retraining program (more than fifty-two
7 weeks); and
8 (5) [~~Lastly, if~~] If training under paragraph (4) is not
9 feasible, then self-employment may be considered.
10 [~~f~~] (g) A vocational rehabilitation plan may be approved
11 by the director; provided that the vocational rehabilitation
12 plan includes:
13 (1) A physician's assessment of the employee's physical
14 limitations, psychological limitations, and ability to
15 return to work. If this information is not provided
16 by the treating physician within a reasonable amount
17 of time, information from another physician shall be
18 accepted;
19 (2) A labor market survey indicating there are reasonable
20 assurances that the proposed occupation for which the
21 employee is to be placed or trained is readily



- 1 available in the community when placement begins, or
2 there are assurances of reemployment by the employer;
- 3 (3) A job analysis of the proposed occupation, setting
4 forth its duties, responsibilities, physical demands,
5 environmental working conditions, specific
6 qualifications needed for entry-level employment,
7 reasonable accommodations, expected estimated
8 earnings, and other relevant information;
- 9 (4) The nature and extent of the vocational rehabilitation
10 services to be provided, including:
- 11 (A) Specific services to be provided;
12 (B) Justification for the necessity of the services;
13 (C) Estimated time frames for delivery of services;
14 (D) The manner in which the effectiveness of these
15 services is to be measured;
16 (E) Criteria for determining successful completion of
17 the vocational rehabilitation plan; and
18 (F) The employee's responsibilities;
- 19 (5) A report of tests and copies thereof that have been
20 administered to the employee, including a statement



- 1 regarding the need for and use of the tests to
2 identify a vocational goal;
- 3 (6) If retraining, including on-the-job training, is found
4 to be necessary, the estimated cost of retraining, a
5 description of specific skills to be learned or
6 knowledge acquired with specific time periods and
7 clearly defined measurements of success, and the
8 nature, amount, and duration of living expenses;
- 9 (7) The total cost of the vocational rehabilitation plan;
10 and
- 11 (8) The employee's approval of the vocational
12 rehabilitation plan.
- 13 [~~g~~] (h) The employer shall have ten calendar days from
14 [~~the postmark date on which the plan was mailed~~] the receipt of
15 the vocational rehabilitation plan to submit in writing to the
16 director any objections to the vocational rehabilitation plan.
17 A vocational rehabilitation plan shall be deemed received by an
18 employer when it is transmitted with reasonable evidence of
19 receipt.
- 20 [~~h~~] (i) The director may approve a vocational
21 rehabilitation plan that does not include all of the



1 requirements outlined in subsection [~~(f)~~] (g); provided that
2 the director finds the vocational rehabilitation plan:

- 3 (1) Is in the best interest of the employee;
4 (2) Contains reasonable assurances that the employee will
5 be placed in suitable gainful employment; and
6 (3) Has been approved by the employee.

7 [~~(i)~~] (j) If the vocational rehabilitation plan requires
8 the purchase of any tools, supplies, or equipment, the purchase
9 deadline shall be included in the vocational rehabilitation
10 plan. Tools, supplies, and equipment shall be considered to be
11 the property of the employer until the vocational rehabilitation
12 plan is determined by the director to be successfully completed,
13 after which it shall become the property of the employee. If
14 the vocational rehabilitation plan requires the purchase,
15 [~~etc.~~] the employer shall purchase the items [~~prior to~~] before
16 the purchase deadline in the vocational rehabilitation plan.

17 [~~(j)~~] (k) An employee with an approved vocational
18 rehabilitation plan who is determined as able to return to usual
19 and customary employment may choose to complete the vocational
20 rehabilitation plan or request a new vocational rehabilitation



1 plan of which the goal may be the employee's usual and customary
2 employment.

3 ~~[(k)]~~ (l) An injured employee's enrollment in a vocational
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. If the
7 employee receives wages for work performed under the vocational
8 rehabilitation plan or program, the employee shall be entitled
9 to temporary total disability compensation in an amount equal to
10 the difference between the employee's average weekly wages at
11 the time of injury and the wages received under the vocational
12 rehabilitation plan or program, subject to the limitations on
13 weekly benefit rates prescribed in section 386-31(a). The
14 employee shall not be entitled to temporary total disability
15 compensation for any week during this period where the wages
16 equal or exceed the average weekly wages at the time of injury.

17 ~~[(l)]~~ (m) The director shall adopt rules for additional
18 living expenses necessitated by the vocational rehabilitation
19 plan or program, together with all reasonable and necessary
20 vocational training.



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

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

8 The rehabilitation unit shall issue a reconsideration
9 determination to affirm, reverse, or modify the determination or
10 refer the request for reconsideration for hearing.

11 ~~[(o)]~~ (p) A reconsideration determination shall be final
12 unless a written request for hearing is filed within ten
13 calendar days from the date of the reconsideration
14 determination. All hearings shall be held before a hearings
15 officer designated by the director. A written decision shall be
16 issued in the name of the director.

17 ~~[(p)]~~ (q) The eligibility of any injured employee to
18 receive other benefits under this chapter shall in no way be
19 affected by the employee's ~~[entrance upon a course of]~~
20 enrollment in a vocational rehabilitation plan or program as
21 ~~[herein]~~ provided~~[-]~~ in this section.



1 [~~(a)~~] (r) Vocational rehabilitation services for the
2 purpose of developing a vocational rehabilitation plan may be
3 approved by the director and the director may periodically
4 review progress in each case."

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

7 SECTION 4. This Act shall take effect on January 1, 2077.



Report Title:

Department of Labor and Industrial Relations; Workers' Compensation; Vocational Rehabilitation Services; Certified Providers; Automatic Approval

Description:

Clarifies the process for selecting a certified provider of vocational rehabilitation services. Requires certified providers to automatically approve vocational rehabilitation services for an injured employee if those services will likely be required for suitable gainful employment and the initial evaluation report finds the injured employee feasible to participate. Requires providers to file an employee's vocational rehabilitation plan no later than one hundred twenty days after submitting an initial evaluation report, unless extended by the Director of Labor and Industrial Relations. Clarifies the process for an employer to object to a vocational rehabilitation plan. Effective 1/1/2077. (SD1)

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