

ACT 153

H.B. NO. 2297-74

A Bill for an Act Relating to Workmen's Compensation.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 386-1, Hawaii Revised Statutes, is amended to read:

“Section 386-1 Definitions. In this chapter, unless the context otherwise requires:

‘Appellate board’ means the labor and industrial relations appeals board.

‘Compensation’ means all benefits accorded by this chapter to an employee or his dependents on account of a work injury as defined in this section; it includes medical and rehabilitation benefits, income and indemnity benefits in cases of disability or death, and the allowance for funeral and burial expenses.

‘Covered employment’ means employment of an employee as defined in this section or of a person for whom the employer has provided voluntary coverage pursuant to section 386-4.

‘Director’ means the director of labor and industrial relations.

‘Disability’ means loss or impairment of a physical or mental function.

‘Department’ means the department of labor and industrial relations.

‘Employee’ means any individual in the employment of another person except where such employment is solely for personal, family, or household purposes.

Where an employee is loaned or hired out to another person for the purpose of furthering the other person's trade, business, occupation, or profession, the employee shall, beginning with the time when the control of the employee is transferred to the other person and continuing until the control is returned to the original employer, be deemed to be the employee of the other person regardless of whether he is paid directly by the other person or by the original employer. The employee shall be deemed to remain in the sole employment of the original employer if the other person fails to secure compensation to the employee as provided in section 386-121.

Whenever an independent contractor undertakes to perform work for another person pursuant to contract, express or implied, oral or written, the independent contractor shall be deemed the employer of all employees performing work in the execution of the contract, including employees of his subcontractors and their subcontractors. However, the liabilities of the direct employer of an employee who suffers a work injury shall be primary and that of the others secondary in their order. An employer secondarily liable who satisfies a liability under this chapter shall be entitled to indemnity against loss from the employer primarily liable.

'Employee in comparable employment' means a person, other than the injured employee, who is employed in the same grade in the same type of work by the same employer or, if there is no person so employed, a person, who is employed in the same grade in the same type of work by another employer in the same district.

'Employer' means any person having one or more persons in his employment. It includes the legal representative of a deceased employer and the State, any county or political subdivision of the State, and any other public entity within the State.

The insurer of an employer is subject to the employer's liabilities and entitled to his rights and remedies under this chapter as far as applicable.

'Employment' means any service performed by an individual for another person under any contract of hire or apprenticeship, express or implied, oral or written, whether lawfully or unlawfully entered into. It includes service of public officials, whether elected or under any appointment or contract of hire express or implied.

'Employment' does not include the following service:

- (1) Service for a religious, charitable, educational, or nonprofit organization if performed in a voluntary or unpaid capacity;
- (2) Service for a religious, charitable, educational, or nonprofit organization if performed by a recipient of aid therefrom and the service is incidental to or in return for the aid received;
- (3) Service for a school, college, university, college club, fraternity, or sorority if performed by a student who is enrolled and regularly attending classes and in return for board, lodging, or tuition furnished, in whole or in part;
- (4) Service performed by a duly ordained, commissioned, or licensed minister, priest, or rabbi of a church in the exercise of his ministry or by a member of a religious order in the exercise of nonsecular duties required by the order.

As used in this paragraph 'religious, charitable, educational or non-profit organization' means a corporation, unincorporated association, community chest, fund, or foundation organized and operated exclusively for religious, charitable, or educational purposes, no part of the net earnings of which inure to the benefit of any private shareholder or individual.

'Personal injury' includes death resulting therefrom.

'Total disability' means disability of such an extent that the disabled employee has no reasonable prospect of finding regular employment of any kind in the normal labor market.

'Trade, business, occupation, or profession' means all commercial, occupational, or professional activities, whether conducted for pecuniary gain or not. It includes all activities of nonprofit organizations conducted in pursuit of their purposes.

'Wages' means all remuneration for services constituting employment. It includes the market value of board, lodging, fuel, and other advantages having a cash value which the employer has paid as a part of the employee's remuneration and gratuities received in the course of employment from others than the employer to the extent that they are customary and expected in that type of employment or accounted for by the employee to the employer.

'Work injury' means a personal injury suffered under the conditions specified in section 386-3.

'Medical care', 'medical services', or 'medical supplies', means every type of care, treatment, surgery, hospitalization, attendance, service, and supplies as the nature of the work injury requires, and includes such care, services and supplies rendered or furnished by a licensed or certified physician, dispensing optician, podiatrist, physical therapist, nurse, or masseur.

'Physician' includes a doctor of medicine, a dentist, a chiropractor, an osteopath, a naturopath, and an optometrist.

'State average weekly wage' means the amount determined by the director under Section 383-22, Hawaii Revised Statutes, as the average weekly wage."

SECTION 2. Section 386-31, Hawaii Revised Statutes, is amended to read:

"Section 386-31 Total disability. (a) Permanent total disability. Where a work injury causes permanent total disability the employer shall pay the injured employee a weekly benefit equal to sixty-six and two-thirds per cent of his average weekly wages, subject to the following limitation:

Beginning January 1, 1975, and during each succeeding 12 month period thereafter, not more than the state average weekly wage last determined by the director, rounded to the nearest dollar, nor less than \$38 or 25% of the foregoing maximum amount, rounded to the nearest dollar, whichever is higher.

In the case of the following injuries, the disability caused thereby shall be deemed permanent and total:

- (1) The permanent and total loss of sight in both eyes;
- (2) The loss of both feet at or before the ankle;
- (3) The loss of both hands at or above the wrist;

- (4) The loss of one hand and one foot;
- (5) An injury to the spine resulting in permanent and complete paralysis of both legs or both arms or one leg and one arm;
- (6) An injury to the skull resulting in incurable imbecility or insanity.

In all other cases the permanency and totality of the disability shall be determined on the facts. No adjudication of permanent total disability shall be made until after two weeks from the date of the injury.

(b) Temporary total disability. Where a work injury causes total disability not determined to be permanent in character, the employer, for the duration of the disability but not including the first two days thereof shall pay the injured employee a weekly benefit at the rate of sixty-six and two-thirds per cent of his average weekly wages, subject to the limitations on weekly benefit rates prescribed in section 386-31, or if his average weekly wages are less than the minimum weekly benefit rate prescribed in section 286-31, at the rate of one hundred per cent of his average weekly wages. In case the total disability exceeds seven days, the compensation shall be allowed from the date of disability.

Temporary total disability benefits shall be paid promptly as it accrues and directly to the person entitled thereto without waiting for a decision from the director, unless the right to the benefits is controverted by the employer. The first payment of benefits shall become due and shall be paid no later than on the tenth day after the employer has been notified of the occurrence of the total disability, and thereafter the benefits due shall be paid weekly except as otherwise authorized pursuant to section 386-53.”

SECTION 3. Section 386-32, Hawaii Revised Statutes, is amended to read:

“**Section 386-32 Partial disability.** (a) Permanent partial disability. Where a work injury causes permanent partial disability the employer shall pay the injured worker a weekly benefit at the rate of sixty-six and two-thirds per cent of his average weekly wages, subject to the limitations on weekly benefit rates prescribed in section 386-31, for the period named in the schedule as follows:

Thumb. For the loss of thumb, seventy-five weeks;

First finger. For the loss of a first finger, commonly called index finger, forty-six weeks;

Second finger. For the loss of a second finger, commonly called the middle finger, thirty weeks;

Third finger. For the loss of a third finger, commonly called the ring finger, twenty-five weeks;

Fourth finger. For the loss of a fourth finger, commonly called the little finger, fifteen weeks;

Phalanx of thumb or finger. Loss of the first phalanx of the thumb shall be equal to the loss of three-fourths of the thumb, and compensation shall be three-fourths of the amount above specified for the loss of the thumb. The loss of the first phalanx of any finger shall be equal to the loss of one-half of the finger, and compensation shall be one-half of the amount above speci-

fied for loss of the finger. The loss of more than one phalanx of the thumb or any finger shall be considered as loss of the entire thumb or finger;

Great toe. For the loss of a great toe, thirty-eight weeks;

Other toes. For the loss of one of the toes other than the great toe, sixteen weeks;

Phalanx of toe. Loss of the first phalanx of any toe shall be equal to the loss of one-half of the toe; and the compensation shall be one-half of the amount specified for the loss of the toe. The loss of more than one phalanx of any toe shall be considered as the loss of the entire toe;

Hand. For the loss of hand, two hundred and forty-four weeks;

Arm. For the loss of an arm, three hundred and twelve weeks;

Foot. For the loss of a foot, two hundred and five weeks;

Leg. For the loss of a leg, two hundred and eighty-eight weeks;

Eye. For the loss of an eye by enucleation, one hundred and sixty weeks.

For the loss of vision in an eye, one hundred and forty weeks. Loss of binocular vision or of eighty per cent of the vision of an eye shall be considered loss of vision of the eye;

Ear. For the permanent and complete loss of hearing in both ears, two hundred weeks. For the permanent and complete loss of hearing in one ear, fifty-two weeks. For the loss of both ears, eighty weeks. For the loss of one ear, forty weeks;

Loss of use. Permanent loss of the use of a hand, arm, foot, leg, thumb, finger, toe or phalanx shall be equal to and compensated as the loss of a hand, arm, foot, leg, thumb, finger, toe or phalanx;

Partial loss or loss of use of member named in schedule. Where a work injury causes permanent partial disability resulting from partial loss of use of a member named in this schedule, and where such disability is not otherwise compensated in this schedule, compensation shall be paid for a period which stands in the same proportion to the period specified for the total loss or loss of use of such member as the partial loss or loss of use of that member stands to the total loss or loss of use thereof;

More than one finger or toe of same hand or foot. In cases of permanent partial disability resulting from simultaneous injury to the thumb and one or more fingers of one hand, or to two or more fingers of one hand, or to the great toe and one or more toes other than the great toe of one foot, or to two or more toes other than the great toe of one foot, the disability may be rated as a partial loss or loss of use of the hand or the foot and the period of benefit payments shall be measured accordingly. In no case shall the compensation for loss or loss of use of more than one finger or toe of the same hand or foot exceed the amount provided in this schedule for the loss of a hand or foot;

Amputation. Amputation between the elbow and the wrist shall be rated as the equivalent of the loss of a hand. Amputation between the knee and the ankle shall be rated as the equivalent of the loss of a foot. Amputation at or above the elbow shall be rated as the loss of an arm. Amputation at or above the knee shall be rated as the loss of a leg.

Disfigurement. In cases of personal injury resulting in disfigurement

the director of labor and industrial relations may, in his discretion, award such compensation as he deems proper and equitable in view of the disfigurement but not to exceed \$15,000. Disfigurement is separate from other permanent partial disability and includes scarring and other disfiguring consequences caused by medical, surgical, and hospital treatment of the employee.

Other cases. In all other cases of permanent partial disability resulting from the loss or loss of use of a part of the body or from the impairment of any physical function, weekly benefits shall be paid at the rate and subject to the limitations specified in this subsection for a period which bears the same relation to a period named in the schedule as the disability sustained bears to a comparable disability named in the schedule. In cases in which the permanent partial disability must be rated as a percentage of total loss or impairment of physical or mental function of the whole man the maximum compensation shall be computed on the basis of the corresponding percentage of the product of 312 times the effective maximum weekly benefit rate prescribed in section 386-31.

Unconditional nature and time of commencement of payment. Compensation for permanent partial disability shall be paid regardless of the earnings of the disabled employee subsequent to the injury. Payments shall not commence until after termination of any temporary total disability that may be caused by the injury.

(b) Temporary partial disability. Where a work injury causes partial disability, not determined to be permanent, which diminishes the employee's capacity for work, the employer, beginning with the first day of the disability and during the continuance thereof, shall pay the injured employee weekly benefits equal to sixty-six and two-thirds per cent of the difference between his average weekly wages before the injury and his weekly earnings thereafter, subject to the schedule for the maximum and minimum weekly benefit rates prescribed in section 386-31.

(c) Provisions common to permanent and temporary partial disability. No determination of partial disability shall be made until two weeks from the date of the injury."

SECTION 4. Section 386-41, Hawaii Revised Statutes, is amended to read:

"Section 386-41 Entitlement to and rate of compensation. (a) Funeral and burial allowance. Where a work injury causes death, the employer shall pay funeral expenses not to exceed \$1,000 to the mortician and burial expenses not to exceed \$500 to the cemetery selected by the family or next of kin of the deceased or in the absence of such family or next of kin, by the employer. Such payments shall be made directly to the mortician and cemetery.

(b) Weekly benefits for dependents. In addition, the employer shall pay weekly benefits to the deceased's dependents at the percentages of the deceased's average weekly wages specified below, taking into account not more than the maximum weekly benefit rate prescribed in section 386-31 divided by .667 and not less than the minimum prescribed in said section divided by .667.

To the dependent widow or widower, if there be no dependent children, fifty per cent.

To the dependent widow or widower, if there be one or more dependent children of the deceased, sixty-six and two-thirds per cent. The compensation to the widow or widower shall be for the use and benefit of the widow or widower and of the dependent children, and the director of labor and industrial relations may from time to time apportion the compensation between them in such way as he deems best.

If there be no dependent widow or widower, but a dependent child, then to the child forty per cent, and if there be more than one dependent child, then to the children in equal parts sixty-six and two-thirds per cent.

If there be no dependent widow, widower, or child, but there be a dependent parent, then to the parent, if wholly dependent fifty per cent, or if partially dependent twenty-five per cent; if both parents be dependent, then one-half of the foregoing compensation to each of them; if there be no dependent parent, but one or more dependent grandparents, then to each of them the same compensation as to a parent.

If there be no dependent widow, widower, child, parent or grandparent, but there be a dependent grandchild, brother, or sister, or two or more of them, then to such dependents thirty-five per cent for one dependent, increased by fifteen per cent for each additional dependent, to be divided equally among the dependents if more than one.

(c) Maximum weekly amounts. The sum of all weekly benefits payable to the dependents of the deceased employee shall not exceed sixty-six and two-thirds per cent of his average weekly wages, computed by observing the limits specified in subsection (b), if necessary, the individual benefits shall be proportionally reduced.

(d) Liability to special compensation fund in the absence of dependents. If there be no dependents who are entitled to benefits under this section, the employer shall pay the sum of \$8,775.00 for any one death into the special compensation fund, pursuant to an order made by the director. The employer, pursuant to an order made by the director, shall pay any remaining balance into the special compensation fund, if the weekly benefits to which dependents are entitled terminate without totalling the sum of \$8,775.00."

SECTION 5. Section 386-43, Hawaii Revised Statutes, is amended to read:

"Section 386-43 Duration of dependents' weekly benefits. (a) The weekly benefits to dependents shall continue:

To a widow, until death or remarriage, with two years' compensation in one sum upon remarriage.

To a widower, until termination of his incapability of self-support or until remarriage.

To or for a child, (1) so long as unmarried, until attainment of the age of eighteen, or (2) so long as unmarried, until attainment of the age of twenty if he is a full-time student at a high school, business school, technical school, or college, or (3) so long as unmarried, until termination of his incapability of

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self-support, or (4) until marriage, except that in the case of a married child under eighteen, weekly benefits shall continue during the period of actual dependency until attainment of the age of eighteen.

To a parent or grandparent, for the duration, whether continuous or not, of such actual dependency, provided that the amount of the weekly benefits shall at no time exceed the amount payable at the time of death.

To or for a grandchild, brother, or sister, for the period in which he or she remains actually and wholly dependent until attainment of the age of eighteen or termination of the incapability of self-support.

(b) The aggregate weekly benefits payable on account of any one death shall not exceed the product of 312 times the effective maximum weekly benefit rate prescribed in section 386-31, but this limitation shall not apply with respect to benefits to a widow who is physically or mentally incapable of self-support and unmarried as long as she remains in that condition and to benefits to a child except in the case of an unmarried child over eighteen incapable of self-support as long as he or she is otherwise entitled to such compensation.

(c) Upon the cessation under this section of compensation to or for any person, the benefits of the remaining dependents in the same class for any further period during which they are entitled to weekly payments shall be in the amounts which they would have received, had they been the only dependents entitled to benefits at the time of the employee's death."

SECTION 6. Statutory material to be repealed is bracketed. New material is underscored. In printing this Act, the revisor of statutes need not include the brackets, the bracketed material, or the underscoring.*

SECTION 7. This Act shall take effect on January 1, 1975.

(Approved June 4, 1974.)

*Edited accordingly.