

ACT 37

S.B. NO. 2823

A Bill for an Act Relating to Workers' Compensation.

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

SECTION 1. Section 386-31, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(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 three calendar days thereof, shall pay the injured employee a weekly benefit at the rate of sixty-six and two-thirds per cent of the employee’s average weekly wages, subject to the limitations on weekly benefit rates prescribed in subsection (a), or if the employee’s average weekly wages are less than the minimum weekly benefit rate prescribed in subsection (a), at the rate of one hundred per cent of the employee’s average weekly wages.

The employer shall pay temporary total disability benefits promptly as they accrue to the person entitled thereto without waiting for a decision from the director, unless such right is controverted by the employer in the employer’s initial report of industrial injury. 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.

The payment of such benefits shall only be terminated upon order of the director or if the employee is able to resume work. When the employer is of the opinion that temporary total disability benefits should be terminated because the injured employee is able to resume work, the employer shall notify the employee and the director in writing of an intent to terminate such benefits at least two weeks prior to the date when the last payment is to be made. The notice shall give the reason for stopping payment and shall inform the employee that the employee may make a written request to the director for a hearing if the employee disagrees with the employer. Upon receipt of the request from the employee, the director shall

conduct a hearing as expeditiously as possible and render a prompt decision as specified in section 386-86.

An employer or insurance carrier who fails to comply with this section shall pay [\$250] not more than \$2,500 into the special compensation fund upon the order of the director, in addition to other penalties prescribed in section 386-92.

- (1) In any case where the director determines based upon a review of medical records and reports and other relevant documentary evidence that an injured employee's medical condition may be stabilized and the employee is unable to return to the employee's regular job, the director shall issue a preliminary decision regarding the claimant's entitlement and limitation to benefits and rights under Hawaii's workers' compensation laws. The preliminary decision shall be sent to the affected employee and the employee's designated representative and the employer and the employer's designated representative and shall state that any party disagreeing with the director's preliminary findings of medical stabilization and work limitations may request a hearing within twenty days of the date of the decision. The director shall be available to answer any questions during the twenty-day period from the injured employee and affected employer. If neither party requests a hearing challenging the director's finding the determination shall be deemed accepted and binding upon the parties. In any case where a hearing is held on the preliminary findings, any person aggrieved by the director's decision and order may appeal under section 386-87.

A preliminary decision of the director shall inform the injured employee and the employer of the following responsibilities, benefits, and limitations on vocational rehabilitation benefits which are designed to facilitate the injured employee's early return to suitable gainful employment:

- (A) That the injured employee may invoke the employee's rights under section 378-2, 378-32, or 386-142, or all of them, in the event of unlawful discrimination or other unlawful employment practice by the employer.
 - (B) That after termination of temporary total disability benefits an injured employee who resumes work may be entitled to permanent partial disability benefits, which if awarded, shall be paid regardless of the earnings or employment status of the disabled employee at the time.
- (2) In any case in which the rehabilitation unit determines that an injured employee is not a feasible candidate for rehabilitation and that the employee is unable to resume the employee's regular job, it shall promptly certify the same to the director. Soon thereafter, the director shall conduct a hearing to determine whether the injured employee remains temporarily totally disabled, or whether the employee is permanently partially disabled, or permanently totally disabled."

SECTION 2. Section 386-94, Hawaii Revised Statutes, is amended to read as follows:

"§386-94 Attorneys, physicians, other health care providers, and other fees. Claims of attorneys and physicians and other health care providers for services under this chapter and claims for any other services rendered in respect of a claim for compensation, to or on account of any person shall not be valid unless approved by the director [of labor and industrial relations] or, if an appeal is had, by the appellate board or court deciding the appeal. Any claims so approved shall be a

lien upon such compensation in the manner and to the extent fixed by the director, the appellate board, or the court.

Any person who receives any fee, other consideration, or gratuity on account of services so rendered, without approval of such fee, other consideration, or gratuity in conformity with the preceding paragraph shall be fined not more than [\$1,000,] \$10,000, or imprisoned not more than one year, or both."

SECTION 3. Section 386-95, Hawaii Revised Statutes, is amended to read as follows:

"§386-95 Reports of injuries, other reports, penalty. Every employer shall keep a record of all injuries, fatal or otherwise, received by the employer's employees in the course of their employment, when known to the employer or brought to the employer's attention.

Within seven working days after the employer has knowledge of such injury causing absence from work for one day or more or requiring medical treatment beyond ordinary first aid, the employer shall make a report thereon to the director [of labor and industrial relations]. The report shall set forth the name, address, and nature of the employer's business and the name, age, sex, wages, and occupation of the injured employee and shall state the date and hour of the accident, if the injury is produced thereby, [and] the nature and cause of the injury, and such other information as the director may require.

On December 31 of each year, the employer shall make a report to the director with respect to each injury on which the employer is continuing to pay compensation, showing all amounts [theretofore] paid by the employer on account of the injury.

The reports required by this section shall be made on forms to be obtained from the director pursuant to section 386-71 and deposit of reports in the United States mail, addressed to the director, within the time specified shall be deemed compliance with the requirements of this section.

When an injury results in immediate death, the employer shall within forty-eight hours notify personally or by telephone a representative of the department [of labor and industrial relations] in the county where the injury occurred.

Within thirty days after final payment of compensation for an injury, the employer shall make a final report to the director showing the total payments made, the date of termination of temporary total disability, and such other information as the director may require.

Any employer who wilfully refuses or neglects to make any of the reports or give any notice required by this section shall be fined not more than [\$100,] \$1,000, or imprisoned not more than ninety days, or both.

Copies of all reports, other than those of fatal injuries, filed with the director as required by this section shall be sent to the injured employee by the employer."

SECTION 4. Section 386-96, Hawaii Revised Statutes, is amended to read as follows:

"§386-96 Reports of physicians, surgeons, and hospitals. Any physician, surgeon, or hospital that has given any treatment or rendered any service to an injured employee shall make a report of the injury and treatment on forms prescribed by and to be obtained from the department as follows:

- (1) Within seven days after the date of first attendance or service rendered, an initial report shall be made to the department and to the employer of the injured employee in the manner prescribed by the department.
- (2) Interim reports to the same parties and in the same manner as prescribed

in paragraph (1) shall be made at intervals of twenty-one days or less during continuing treatment.

- (3) Final report to the same parties and in the same manner as prescribed in paragraph (1) shall be made within seven days after termination of treatment.

No claim under this chapter for medical or surgical treatment, or hospital services and supplies, shall be valid and enforceable unless the reports are made as provided in this section, except that the director may excuse the failure to make the report within the prescribed period or a nonsubmission of said report when the director finds it in the best interest of justice to do so. If the director does not excuse the submission of: (a) an initial or interim report within the time prescribed in (1) and (2) above, the delinquent physician shall be fined in an amount not to exceed [~~\$25.~~] \$250; (b) a final report which is thirty days late or a nonsubmission, the delinquent physician shall be fined in an amount not to exceed [~~\$25.~~] \$250.

The director shall furnish to the injured employee a copy of the final report of the attending physician or surgeon or, if more than one physician or surgeon should treat or examine the employee, a copy of the final report of each physician or surgeon.

Within fifteen days after being requested to do so by the injured employee or the employee's duly authorized representative, the employer shall furnish the employee or the employee's duly authorized representative with copies of all medical reports relating to the employee's injury which are in the possession of the employer. The copies shall be furnished at the expense of the employer. The employer shall allow the employee or the employee's duly authorized representative to inspect and copy transcripts of depositions of medical witnesses, relating to the employee's injury, in the possession of the employer. Any employer who fails to furnish medical reports or to allow inspection and copying of transcripts of depositions of medical witnesses, as required by this paragraph shall be fined in an amount not to exceed [~~\$100.~~] \$1,000.

Deposit of the records required by the first paragraph of this section in the United States mail, addressed to the director and to the employer, within the time limit specified, shall be deemed to be in compliance with the requirements of this section."

SECTION 5. Section 386-123, Hawaii Revised Statutes, is amended to read as follows:

"§386-123 Failure to give security for compensation; penalty; injunction. If an employer fails to comply with section 386-121, the employer shall be liable [to] for a penalty of not less than [~~\$25~~] \$250 or of [~~\$1~~] \$10 for each employee for every day during which such failure continues, whichever sum is greater, to be recovered in an action brought by the director [of labor and industrial relations] in the name of the State, and the amount so collected shall be paid into the special compensation fund created by section 386-151. The director may, however, in the director's discretion, for good cause shown, remit all or any part of the penalty in excess of [~~\$25.~~] \$250, provided the employer in default [forthwith] complies with section 386-121. With respect to such actions, the attorney general or any county attorney or public prosecutor shall prosecute the same if so requested by the director.

[Furthermore,] In addition, if any employer is in default under section 386-121[,] for a period of thirty days, the employer may be enjoined, by the circuit court of the circuit in which the employer's principal place of business is located, from carrying on the employer's business [any place] anywhere in the State so long as the default continues, such action for injunction to be prosecuted by the attorney general or any county attorney if so requested by the director."

SECTION 6. Section 386-129, Hawaii Revised Statutes, is amended to read as follows:

“§386-129 Employees not to pay for insurance; penalty. No agreement by an employee to pay any portion of the premium paid by the employee’s employer, or to contribute to a benefit fund or department maintained by the employer, or to the cost of mutual or other insurance maintained for or carried for the purpose of securing compensation as herein required, shall be valid; and any employer who makes a deduction for that purpose from the wages or salary of any employee entitled to the benefits of this chapter shall be fined not more than [\$250.] \$2,500.”

SECTION 7. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 8. This Act shall take effect upon its approval.

(Approved May 10, 1988.)