

ACT 187

H.B. NO. 2363

A Bill for an Act Relating to Labor.

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.

If an employee is unable to complete a regular daily work shift due to a work injury, the employee shall be deemed totally disabled for work for that day.

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 this 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 these 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 the 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. If the employee is unable to perform light work, if offered, temporary total disability benefits shall not be discontinued based solely on the inability to perform or continue to perform light work.

An employer or insurance carrier who fails to comply with this section shall pay not more than [~~\$2,500~~] \$5,000 into the special compensation fund upon the order of the director, in addition to other penalties prescribed in section 386-92.

- (1) If 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~~ employee’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 that 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; and
 - (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) If 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 386-95, 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. 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, the nature and cause of the injury, and such other information as the director may require.

By January 31 of each year, the employer shall file with the director a report with respect to each injury on which the employer is continuing to pay compensation, showing all amounts 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[;] or by electronic means as approved by the director, 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 in the county where the injury occurred.

Within thirty days after final payment of compensation for an injury, the employer shall file a final report with 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 file any of the reports or give any notice required by this section shall be fined by the director not more than \$5,000.

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

“§386-96 Reports of physicians, surgeons, and hospitals. (a) 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 appropriate intervals to verify the claimant’s current diagnosis and prognosis, that the information as to the nature of the examinations and treatments performed is complete, including the dates of those treatments and the results obtained within the current reporting period, the execution of all tests performed within the current reporting period and the results of the tests, whether the injured employee is improving, worsening, or if “medical stabilization” has been reached, the dates of disability, any work restrictions, and the return to work date. When an injured employee is returned to full-time, regular, light, part-time, or restricted work, the attending physician shall submit a report to the employer within seven calendar days indicating the date of release to work or medical stabilization; and
- (3) A 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 physician, surgeon, or hospital that has given any treatment or rendered any service to an injured employee shall be required to provide any additional reports not otherwise mandated by this section.

(b) No claim under this chapter for medical treatment, 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 the report when the director finds it in the best interest of justice to do so. If the director does not excuse the submission of:

- (1) An initial or interim report within the time prescribed in subsection (a)(1) and (2); or
 - (2) A final report that is thirty days late or a nonsubmission,
- the delinquent physician shall be fined not more than [~~\$250.~~] **\$500.**

(c) 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.

(d) Within fifteen days after being requested to do so by the injured employee or the employee’s duly authorized representative, the employer shall fur-

nish the employee or the employee's duly authorized representative with copies of all medical reports relating to the employee's injury that 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]~~ subsection, shall be fined in an amount not to exceed ~~[\$1,000.]~~ \$5,000.

(e) Deposit of the records required by subsection (a)(1) in the United States mail~~;~~ or by electronic means as approved by the director, addressed to the director and to the employer, within the time limit specified, shall be deemed in compliance with the requirements of this section."

SECTION 4. 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 for a penalty of not less than ~~[\$250]~~ \$500 or of ~~[\$10]~~ \$100 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 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 ~~[\$250,]~~ \$500; provided that the employer in default 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.

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 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 5. 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 ~~[\$2,500.]~~ \$5,000."

SECTION 6. Section 392-5, Hawaii Revised Statutes, is amended to read as follows:

"§392-5 Excluded services. "Employment" as defined in section 392-3 shall not include:

- (1) Domestic service in a private home, local college club, or local chapter of a college fraternity or sorority, performed in any calendar

- quarter by an individual if the cash remuneration paid by the employer for such service is less than \$225;
- (2) Service not in the course of the employer's trade or business performed in any calendar quarter by an individual, unless the cash remuneration paid for the service is \$50 or more and the service is performed by an individual who is regularly employed by the employer to perform the service. An individual shall be deemed to be regularly employed to perform service not in the course of the employer's trade or business during a calendar quarter only if:
 - (A) On each of some twenty-four days during the quarter the individual performs the service for some portion of the day; or
 - (B) The individual was regularly employed, as determined under subparagraph (A), by the employer in the performance of the service during the preceding calendar quarter;
 - (3) Service performed on or in connection with a vessel not an American vessel, if the individual performing the service is employed on and in connection with the vessel when outside the United States;
 - (4) Service performed by an individual in (or as an officer or member of the crew of a vessel while it is engaged in) the catching, taking, harvesting, cultivating, or farming of any kind of fish, shellfish, crustacea, sponges, seaweeds, or other aquatic forms of animal and vegetable life, including service performed as an ordinary incident thereto, except:
 - (A) The service performed in connection with a vessel of more than ten net tons (determined in the manner provided for determining the register tonnage of merchant vessels under the laws of the United States);
 - (B) The service performed in connection with a vessel of ten net tons or less (determined in the manner provided for determining the register tonnage of merchant vessels under the laws of the United States) by an individual who is employed by an employer who, for some portion in each of twenty different calendar weeks in either the current or preceding calendar year, had in the employer's employ one or more persons performing the service, whether or not the weeks were consecutive and whether or not the same individuals performed the service in each week; and
 - (C) The service performed in connection with the catching or taking of salmon or halibut for commercial purposes;
 - (5) Service performed by an individual in the employ of the individual's son, daughter, or spouse, and service performed by a child under the age of twenty-one in the employ of the child's father or mother;
 - (6) Service performed in the employ of the United States government or an instrumentality of the United States exempt under the Constitution of the United States from the contributions imposed by this chapter;
 - (7) Service performed in the employ of any other state, or any political subdivision thereof, or any instrumentality of any one or more of the foregoing that is wholly owned by one or more such states or political subdivisions; and any service performed in the employ of any instrumentality of one or more other states or their political subdivisions to the extent that the instrumentality is, with respect to such service, exempt from the tax imposed by section 3301 of the Internal Revenue Code;

- (8) Service with respect to which temporary disability compensation is payable for sickness under a temporary disability insurance system established by an act of Congress;
- (9) Service performed in any calendar quarter in the employ of any nonprofit organization exempt from income tax under section 501 of the Internal Revenue Code, if:
 - (A) The remuneration for such service is less than \$50;
 - (B) The service is performed by a student who is enrolled and is regularly attending classes at a school, college, or university;
 - (C) The service is performed by a duly ordained, commissioned, or licensed minister or licensed minister of a church in the exercise of the minister's ministry or by a member of a religious order in the exercise of nonsecular duties required by the order; or
 - (D) The service is performed for a church by an employee who fails to meet the eligibility requirements of section 392-25;
- (10) Service performed in the employ of a voluntary employees' beneficiary association providing for the payment of life, sick, accident, or other benefits to the members of the association or their dependents, if:
 - (A) No part of its net earnings inures (other than through such payments) to the benefit of any private shareholder or individual; and
 - (B) Eighty-five per cent or more of its income consists of amounts collected from members and amounts contributed by the employer of the members for the sole purpose of making such payments and meeting expenses;
- (11) Service performed in the employ of a voluntary employees' beneficiary association providing for the payment of life, sick, accident, or other benefits to the members of the association or their dependents or their designated beneficiaries, if:
 - (A) Admission to membership in the association is limited to individuals who are officers or employees of the United States government; and
 - (B) No part of the net earnings of the association inures (other than through such payments) to the benefit of any private shareholder or individual;
- (12) Service performed in the employ of a school, college, or university, not exempt from income tax under section 501 of the Internal Revenue Code, if the service is performed by a student who is enrolled and is regularly attending classes at the school, college, or university;
- (13) Service performed in the employ of any instrumentality wholly owned by a foreign government, if:
 - (A) The service is of a character similar to that performed in foreign countries by employees of the United States government or of an instrumentality thereof; and
 - (B) The United States Secretary of State has certified or certifies to the United States Secretary of the Treasury that the foreign government, with respect to whose instrumentality exemption is claimed, grants an equivalent exemption with respect to similar service performed in the foreign country by employees of the United States government and of instrumentalities thereof;
- (14) Service performed as a student nurse in the employ of a hospital or a nurses' training school by an individual who is enrolled and is

- regularly attending classes in a nurses' training school chartered or approved pursuant to state law; and service performed as an intern in the employ of a hospital by an individual who has completed a four years' course in a medical school chartered or approved pursuant to state law;
- (15) Service performed by an individual for an employer as an insurance producer, if all such service performed by the individual for the employer is performed for remuneration solely by way of commission;
 - (16) Service performed by an individual under the age of eighteen in the delivery or distribution of newspapers or shopping news, not including delivery or distribution to any point for subsequent delivery or distribution;
 - (17) Service covered by an arrangement between the department and the agency charged with the administration of any other state or federal unemployment compensation law pursuant to which all services performed by an individual for an employer during the period covered by the employer's duly approved election, are deemed to be performed entirely within the agency's state;
 - (18) Service performed by an individual who, pursuant to the federal Economic Opportunity Act of 1964, is not subject to the federal laws relating to unemployment compensation;
 - (19) Domestic in-home and community-based services for persons with developmental and intellectual disabilities under the medicaid home and community-based services program pursuant to title 42 Code of Federal Regulations sections 440.180 and 441.300, and title 42 Code of Federal Regulations, part 434, subpart A, as amended, or when provided through state funded medical assistance to individuals ineligible for medicaid, and identified as chore, personal assistance and habilitation, residential habilitation, supported employment, respite, and skilled nursing services, as the terms are defined by the department of human services, performed by an individual whose services are contracted by a recipient of social service payments and who voluntarily agrees in writing to be an independent contractor of the recipient of social service payments;
 - (20) Domestic services, which include attendant care, and day care services authorized by the department of human services under the Social Security Act, as amended, or when provided through state-funded medical assistance to individuals ineligible for medicaid, when performed by an individual in the employ of a recipient of social service payments. For the purposes of this paragraph only, a "recipient of social service payments" is a person who is an eligible recipient of social services such as attendant care or day care services;
 - (21) Service performed by a vacuum cleaner salesperson for an employing unit, if all such services performed by the individual for such employing unit are performed for remuneration solely by way of commission; ~~[ø]~~
 - (22) Service performed by an individual for an employer as a real estate salesperson or as a real estate broker, if all the service performed by the individual for the employer is performed for remuneration solely by way of commission~~[-]~~;
 - (23) Service performed by an individual for a corporation if the individual owns at least fifty per cent of the corporation; provided that

no employer shall require an employee to incorporate as a condition of employment;

- (24) Service performed by a member of a limited liability company if the member is an individual and has a distributional interest, as defined in section 428-101, of not less than fifty per cent in the company; provided that no employer shall require an employee to form a limited liability company as a condition of employment;
 - (25) Service performed by a partner of a partnership, as defined in section 425-101, if the partner is an individual; provided that no employer shall require an employee to become a partner or form a partnership as a condition of employment;
 - (26) Service performed by a partner of a limited liability partnership if the partner is an individual and has a transferable interest as described in section 425-127 in the partnership of not less than fifty per cent; provided that no employer shall require an employee to form a limited liability partnership as a condition of employment;
- OR
- (27) Service performed by a sole proprietor.”

SECTION 7. Section 392-47, Hawaii Revised Statutes, is amended to read as follows:

“§392-47 Failure to give security for payment of benefits; penalty; injunction. If an employer fails to comply with section 392-41 the employer shall be subject to a penalty of not less than ~~[\$25]~~ \$500 or of ~~[\$1]~~ \$100 for each employee for every day during which such failure continues, whichever sum is greater, to be recovered in an action brought in the discretion of the director and the amount so collected shall be paid into the trust fund for disability benefits created by section 392-61. 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,]~~ \$500; provided ~~that~~ the employer in default ~~[forthwith]~~ complies with section 392-41.

Furthermore, if any employer is in default under section 392-41, 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 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 8. This Act does not affect the rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

SECTION 9. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 10. This Act shall take effect on July 1, 2016.

(Approved July 1, 2016.)