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 to read as follows:

"§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 the employee's average weekly wages, subject to the following limitation:

Beginning January 1, 1975, and during each succeeding twelve-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 twenty-five per cent 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; or
(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 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 to the benefits without waiting for a decision from the director, [unless] regardless of whether 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 only upon order of the director or if the employee's treating physician determines that the employee is able to resume work and the employer has made a bona fide offer of suitable work within the employee's medical restrictions. The order shall only be issued after the director has reviewed the case file and position papers submitted by the employee and the employer. 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] review 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.] direct the employee and employer to submit the position papers within fourteen days of the request from the employee. The director shall then review the case file and position papers and issue a decision, without a hearing, within thirty days, indicating whether temporary total disability benefits should have been discontinued and, if so, a date shall be designated after which temporary total disability benefits should have been discontinued. The employer may request in writing to the director that the director issue a credit for the amount of temporary total disability benefits paid by an employer after the date which temporary total disability benefits should have been discontinued. 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 into the special compensation fund upon the order of the director, in addition to attorney's fees and costs to the employee for enforcement of this section and 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 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.

(c) Subsection (b) notwithstanding, where a work injury causes temporary total disability and payment of compensation due under this chapter does not begin within thirty days of the date of injury, the injured employee shall be entitled to receive a weekly benefit equal to seventy per cent of the injured 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 maximum weekly benefit rate prescribed in subsection (a), at the rate of one hundred percent of the employee's average weekly wages."

SECTION 2. The director of labor and industrial relations shall convene a working group within thirty days of the effective date of this section. The working group shall consist of the director of labor and industrial relations and other members selected by the director from representatives of employer and employee organizations, including labor unions. The number of working group members shall be as determined by the director. The director shall serve as the chairperson of the working group.

The working group shall address and make recommendations to resolve any concerns raised by this Act.

The working group shall submit findings and recommendations, including proposed legislation, to the legislature no later than twenty days prior to the convening of the regular session of 2009.
SECTION 3. This Act shall apply to any employee receiving temporary total disability benefits on or after its effective date.

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 5. This Act shall take effect upon its approval; provided that sections 1, 3, and 4 shall take effect on July 1, 2009, if the working group established in section 2 of this Act submits a report to the legislature that it has not reached a consensus in resolving the concerns raised by this Act.
Report Title:
Workers' Compensation; Temporary Total Disability

Description:
Requires an employer to pay temporary total disability benefits regardless of whether the employer controverts the right to benefits. Specifies that the employee's ability to return to work is to be decided by the employee's treating physician. Convenes a working group. Effective upon approval for the convening of the working group; 7/1/2009 if there is no consensus among the working group. (HB 2386 CD1)