

JAN 21 2011

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# A BILL FOR AN ACT

RELATING TO WORKERS' COMPENSATION.

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

1 SECTION 1. Section 386-86, Hawaii Revised Statutes, is  
2 amended to read as follows:

3 **"§386-86 Proceedings upon claim; hearings.** (a) If a  
4 claim for compensation is made, the director shall [~~make such~~]  
5 further [~~investigation as deemed necessary~~] investigate the  
6 facts surrounding the claim and render a decision in writing  
7 within sixty days after the conclusion of the hearing awarding  
8 or denying compensation, stating the findings of fact and  
9 conclusions of law. The director may extend the due date for  
10 decisions for good cause provided all parties agree. The  
11 decision shall be filed with the record of the proceedings and a  
12 copy of the decision shall be sent immediately to each party.

13 (b) When the employer denies compensability or indicates  
14 compensability is not accepted, the employer, within thirty  
15 calendar days of the employer's denial of, or indication to not  
16 accept, compensability, which includes the period of time that  
17 the employer is conducting any internal investigation, shall  
18 submit a written report to the director and the claimant that



1 describes the employer's internal investigation and supporting  
2 details that substantiate the employer's denial of, or  
3 indication to not accept, compensability. The due date for the  
4 employer's written report shall not be extended.

5 [~~b~~] (c) The hearing shall be informal and shall afford  
6 the parties a full and fair opportunity to present the facts and  
7 evidence to be considered. Hearings under this section shall  
8 not be subject to chapter 91. No stenographic or tape recording  
9 shall be allowed.

10 [~~e~~] (d) The order of presentation shall not alter the  
11 burden of proof, including the burden of producing evidence and  
12 the burden of persuasion. The party or parties who bear these  
13 burdens shall be determined by law consistent with the purposes  
14 of this section.

15 [~~d~~—Should] (e) If the injured employee or injured  
16 employee's representative, or the employer or employer's  
17 representative fail to appear at the hearing, the director may  
18 issue a decision based on the information on file. The decision  
19 shall be final unless appealed pursuant to section 386-87. In  
20 all other circumstances, a decision shall not be rendered by the  
21 director without a hearing, which may not be waived by the  
22 parties.



1           ~~(e)~~ (f) For the purpose of obtaining any matter, not  
2 privileged, which is relevant to the subject matter involved in  
3 the pending action, the director, upon application and for good  
4 cause shown, may order the taking of relevant testimony by  
5 deposition, upon oral examination, or written interrogatories,  
6 or by other means of discovery in the manner and effect  
7 prescribed by the Hawaii rules of civil procedure; provided that  
8 when the claimant's deposition is taken, the employer shall pay  
9 for the cost to the claimant of attending the deposition, any  
10 costs associated with having the deposition transcribed and  
11 copied, and any and all reasonable attorney's fees and costs  
12 incurred by the claimant with respect to the deposition.

13           ~~(f)~~ (g) Subpoenas requiring the attendance of witnesses  
14 at a hearing before a hearings officer or for the taking of a  
15 deposition or the production of documentary evidence from any  
16 place within the State at any designated place of hearing may be  
17 issued by the director or a duly authorized representative. The  
18 employer shall serve a claimant with a copy of a medical record  
19 subpoena unless the employer has previously obtained the  
20 claimant's authorization to examine the claimant's medical  
21 records. Should the claimant subpoena medical records, the  
22 employer shall be served a copy. The party subpoenaing the



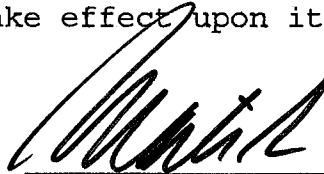
1 records shall provide these records within fifteen calendar days  
2 of their receipt to the employer, claimant, and the special  
3 compensation fund if a joinder has been filed, or their  
4 representatives. These records shall be submitted by the party  
5 requesting the subpoena to the director within seven calendar  
6 days of the date of the notice of hearing or upon request by the  
7 director. A party who desires to enforce the director's  
8 subpoena shall seek enforcement from a court of competent  
9 jurisdiction."

10 SECTION 2. Statutory material to be repealed is bracketed  
11 and stricken. New statutory material is underscored.

12 SECTION 3. This Act shall take effect upon its approval.

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INTRODUCED BY: \_\_\_\_\_

A handwritten signature in black ink, appearing to be "M. Smith", is written over a horizontal line.

**Report Title:**

Worker Claim; Proceedings; Investigation; Decision Due Date

**Description:**

Requires an employer who denies compensability, or indicates compensability is not accepted, to submit a written report to the director and claimant within thirty days of its denial of, or indication not to accept, compensability that substantiates its denial of compensability; prohibits the due date for the employer's written report to be extended.

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

