

DISABILITY COMPENSATION DIVISION
P.O. Box 3769
Honolulu, Hawaii 96812-3769

Oahu: 586-9161

Hilo: 974-6464

West Hawaii: 322-4808

Maui: 984-2072

Kauai: 274-3351

DIGEST OF CHAPTERS 386, 392 and 393
HAWAII WORKERS' COMPENSATION, TEMPORARY DISABILITY
INSURANCE AND PREPAID HEALTH CARE LAWS

TO THE EMPLOYER: The Disability Compensation Division (DCD) of the Department of Labor and Industrial Relations administers three important labor laws which directly concern all employers with one or more employees working part-time or full-time. We have prepared this digest to inform you of some of the highlights of the Workers' Compensation (WC), Temporary Disability Insurance (TDI) and Prepaid Health Care (PHC) Laws (Chapters 386, 392 and 393 of the Hawaii Revised Statutes), and to assist you in complying with the requirements of the three laws. For details or answers to specific questions, please refer to the three laws or contact the nearest Disability Compensation Office.

The three laws require you to provide for your employees:

- **WC** - Wage replacement benefits and medical/hospital care for work-related illness or injury by purchasing insurance from a Hawaii-licensed insurance carrier or adopting an approved self-insurance plan.
- **TDI** - Wage replacement benefits for nonwork-related disabling illness or injury by the same methods listed above or by negotiating a collective bargaining agreement which provides sick leave benefits as favorable as required by this chapter.
- **PHC** - Medical and hospital care for nonwork-related illness or injury by: (1) purchasing an approved health care plan from a health care contractor such as Kaiser, HMSA, or a Hawaii-licensed insurance carrier, (2) by adopting an approved self-insured health care plan, or (3) negotiating a collective bargaining agreement which provides health care benefits at least equivalent to that mandated by this chapter.

Workers Excluded from Coverage. Except for those specifically excluded from coverage, almost everyone hired to work is covered by one, two or all of the three laws. Refer to the three laws for a complete list of services excluded from WC, TDI, or PHC coverage. Listed below are the more familiar services which are excluded:

- **WC** - Federal government workers; certain domestic workers earning less than \$225 a calendar quarter; domestic workers of public welfare recipients; unpaid or volunteer workers for a religious, charitable or nonprofit organization; students working for a school or university in return for board, lodging or tuition; duly ordained or licensed ministers or rabbis.
- **TDI** - In addition to the above exemptions, insurance agents emunerated solely by way of commission; individuals under 18 years of age in the delivery or distribution of newspapers; individuals working for son, daughter or spouse; children under age 21 working for father or mother.
- **PHC** - Federal, state and county workers; workers employed for less than 20 hours a week; agricultural seasonal workers; insurance and real estate salesmen paid solely by way of commission; individuals working for son, daughter or spouse; children under age 21 working for father or mother; workers covered as dependents under a qualified health care plan; workers covered by State-governed medical assistance; workers receiving public assistance.

Eligibility Requirements

- **WC** - The only requirement is that the worker is in covered employment and the injury or illness is work-connected.
- **TDI** - Worker must have been in covered employment with any Hawaii employer for at least 14 weeks with remuneration of 20 or more hours in each week, and earned wages of at least \$400 during the 52 weeks immediately preceding the first day of disability.
- **PHC** - Worker in covered employment must have worked four consecutive weeks of 20 or more hours a week and earned monthly wages of at least 86.67 times the Hawaii minimum hourly wage, rounded off to the next higher dollar. Coverage must be provided at the earliest enrollment date of the health care contractor selected pursuant to this chapter.

Filing A Claim

- **WC** - You should complete Form WC-1 "Employer's Report for Industrial Injury" as soon as you have knowledge of disability.
- **TDI** - Your employee obtains claim form (TDI-45) from employer and completes **Part A -- Claimant's Statement**. Employer completes **Part B -- Employer's Statement**. Worker must then have **Part C -- Doctor's Statement** certified by a licensed doctor, dentist, chiropractor, osteopath or naturopath. Completed claim form must be filed with insurer within 90 days of disability date.
- **PHC** - Your employee should present a health care membership card whenever health care services are required.

Benefit Provisions

- **WC**- For work-related injury or illness - all required medical, surgical and hospital services and supplies including drugs; weekly benefits from the fourth day of disability to replace wage loss, representing 66.66% of the worker's average weekly wage but not more than the maximum weekly benefit amount annually set by the DCD; additional benefits if injury results in permanent disability or disfigurement; funeral and burial expenses if work injury results in death; and additional weekly benefits to surviving widow and other dependents.
- **TDI** - For nonwork-related injury or illness - wage replacement benefits representing 58% of the worker's average weekly wage rounded off to the next higher dollar with the maximum amount correlated with the State unemployment insurance maximum, and payable from the eighth day of disability for a maximum duration of 26 weeks in a benefit year. A plan providing benefits deviating from the above must be reviewed and adjudged equivalent by the DCD.
- **PHC** - For nonwork-related injury or illness the following benefits: hospital (including in-patient care for at least 120 days of confinement in each calendar year), surgical, medical, diagnostic laboratory services and maternity. For more information, see Section 393-7 of the law. All health care plans must be approved by DCD.

Premium Costs

- **WC** - The employer pays the entire premium cost; sharing it with workers is prohibited.
- **TDI** - The employer may pay the entire premium cost or share it with the workers. You can deduct one-half of the cost but not more than .5% of the worker's weekly taxable wages up to the maximum set annually by the Division. You pay the remaining portion exceeding the prescribed limitation. If a worker does not meet the eligibility requirements, you cannot withhold any deductions until such time the worker meets the eligibility requirements. No premium payments required for employees who are not eligible for benefits.
- **PHC** - The employer may pay the entire premium cost or share it with the workers. You can deduct one-half of the cost but not more than 1.5% of the worker's monthly wages. You pay the remaining portion exceeding the prescribed limitation.

Appeals

- **WC** - You (your carrier) or your worker have the right to file an appeal with the Labor and Industrial Relations Appeals Board against any decision rendered by the DCD. The appeal must be filed within 20 days after the decision has been sent by the division.
- **TDI** - When denying TDI benefits to a worker, you (or your insurer) should send the **Notice of Denial (Form TDI-46)** to the DCD for review. If no communication is received from the division within ten days, send three copies of the denial to the worker. The worker has 20 days in which to appeal the denial with the division.
- **PHC** - When denying health care benefits to your worker, you or your health care contractor shall promptly mail a notice of denial to your worker, who then has 20 days in which to request a review by the DCD. If the affected parties are not satisfied with the division's findings, the case will be referred to the Prepaid Health Care Appeals Referee. The referee's decision is final, but may be appealed to the circuit courts.

Special Funds

- **WC** - Self-insured employers and insurance carriers are subject to special assessment whenever the Special Compensation Fund dips below a prescribed fund balance deemed insufficient to meet payment requirements. Among other legal stipulations, the fund is used to pay benefits to a worker whose employer defaulted in providing workers' compensation coverage. Benefits paid from the fund shall be recovered from the defaulting employers.
- **TDI** - The TDI Special Disability Fund is established by special assessment and is used to pay benefits to disabled workers of bankrupt and noncomplying employers, and to the disabled unemployed claimants who have been held ineligible for further unemployment benefits. Benefits paid from the fund shall be recovered from defaulting employers.
- **PHC** - The PHC Premium Supplementation Fund is established by general fund appropriation and is used to defray the cost of providing health care benefits for employers with less than 8 workers entitled to and covered under this Chapter. To qualify for premium supplementation, you must meet the criteria set forth in Section 393-45, and be determined a "hardship" case by the division. The fund may also reimburse health care expenses to workers of bankrupt and noncomplying employers. Benefits paid from the fund shall be recovered from defaulting employers.

Penalty Provisions

- **WC** - Imposes on an employer who fails to provide the required coverage a penalty of not less than \$250, or \$10 for each worker for every day during which such failure continues, whichever sum is greater.
- **TDI** - Imposes on an employer who fails to provide the required coverage a penalty of not less than \$25, or \$1 for each worker for every day during which such failure continues, whichever sum is greater.
- **PHC** - Imposes on an employer who fails to provide the required coverage a penalty of not less than \$25, or \$1 for each worker for every day during which such failure continues, whichever sum is greater.

For all three laws, if such default extends for 30 days the employer's business may be closed for as long as the default continues. The three laws also impose penalties for other violations.