

HAWAII ADMINISTRATIVE RULES

TITLE 12 DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS

SUBTITLE 3

DISABILITY COMPENSATION DIVISION

CHAPTER 11

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Historical Note: Chapter 11 of Title 12 is based substantially upon Regulation XXXIV relating to Hawaii temporary disability insurance, Department of Labor and Industrial Relations. 12/25/69; am 10/14/71; am 2/3/78; R 5/11/8]

SUBCHAPTER 1

GENERAL

§12-11-1 Definitions. As used herein:

"Benefits at least as favorable " means benefits under a plan which meet the requirements of section 12-11-16. A plan shall provide each employee, or each employee of the class or classes of employees included under the plan, cash disability "benefits at least as favorable" as the disability benefits under the law.

"Benefit year" shall be as defined in section 392-3, HRS.

A "class of employees" for whom benefits are provided under a plan that is submitted for acceptance under section 392-41(a)(4) or (5), HRS, shall not be a class determined arbitrarily. In order to constitute a class of employees within the provisions of the statutes, there shall be a reasonable basis of classification including, without limitation, type of work performed, work location, salary or wage scale, seniority or length of service, or other conditions pertaining to employment.

"Complete claims service office" means an office which receives and processes temporary disability insurance claims and issues such benefit payments.

"Contributions" shall be as defined in section 392-3, HRS.

"Current employment" includes the period any employee is receiving workers' compensation benefits for temporary total disability, vacation or sick leave pay, or temporary disability insurance benefits.

"Department" means the department of labor and industrial relations.

"Director" shall be as defined in section 392-3, HRS.

"Disability" shall be as defined in section 392-3, HRS.

"Disability during employment" means the total inability of an employee, as a result of injury or sickness not arising out of and in the course of the individual's employment, to perform the regular

duties of the individual's employment or the duties of any other employment which the employer may offer the individual at the individual's regular wages.

"Disability during unemployment" means the inability of a claimant to qualify for benefits under chapters 383 and 384, HRS, as a result of injury or sickness not arising out of and in the course of an employment.

"Domestic service in a private home" means service in or about the home of the individual's employer.

"Employee" means any individual who performs services in employment for an employer.

"Employer" shall be as defined in section 392-3, HRS.

"Employment" as defined in section 392-3, HRS, includes services performed by an individual for wages or under any contract of hire irrespective of whether the common-law relationship of master and servant exists unless and until it is shown to the satisfaction of the director that:

- (1) The individual has been and will continue to be free from control or direction over the performance of the service, both under the individual's contract of hire and in fact; and
- (2) The service is either outside the usual course of the business for which the service is performed or that the service is performed outside of all the places of business of the enterprise for which the service is performed; and
- (3) The individual is customarily engaged in an independently established trade, occupation, profession, or business of the same nature as that involved in the contract of service.

"Injury or sickness" means accidental injury, disease, infection, or illness. Sickness includes the total inability of an employee to perform the duties of her or usual employment because of pregnancy or the normal incidents of pregnancy or the termination thereof.

"Insurer" as used in section 392-42.5, HRS, means any insurance company authorized by the insurance commissioner to underwrite, sell, or transact temporary disability insurance in the State of Hawaii and any employer or association of employers who has been granted self-insured status under section 392-41, HRS, beginning January 1, 1992.

A "plan" includes any definitive insured or properly self-insured program, effectively providing for employees cash disability benefits that differ from the benefits required to be provided under the statute, either as to rate, waiting period, maximum or minimum benefits, duration of benefit period, or in any other respect. A plan may provide benefits for all of the employees of an employer, or for some class or classes of the employees of an employer.

"Purchase of insurance" means the acceptance as of a specific date of approval of an employer's temporary disability insurance application by an insurance company licensed to sell temporary disability insurance in Hawaii.

"Regular wages" means the wages that the employee would have earned if the disability had not prevented the employee from working.

"Statute" means chapter 392, HRS, entitled temporary disability insurance law.

"Wages" shall be as defined in section 392-3, HRS.

"Week" means a period of seven consecutive days.

"Weekly benefit amount" shall be as defined in section 392-3, HRS. [Eff 5/11/81; am 1/13/92; am 1/16/93; am and] (Auth: HRS §392-91) (Imp: HRS §§392-1, 392-3, 392-5, 392-6, 392-41, 392-42.5)

§12-11-2 Special disability fund assessment. When a special fund assessment is made, refunds due to an insurance carrier's or self-insured employer's computational errors shall not be made unless an application is filed with the director within ninety days from the date of payment. [Eff 5/11/81] (Auth: HRS §392-91) (Imp: HRS §392-67)

§12-11-3 Financial solvency. Financial statements required by section 392-41, HRS, shall be filed annually not later than three months after the close of the self-insurer's fiscal year, or as requested by the director. [Eff 5/11/81] (Auth: HRS §392-91) (Imp: HRS §392-41)

§12-11-4 Filing date. If not mailed, the filing date shall be the date the document is received by the addressee; or, if mailed, the postmark date unless another date is specified in the statutes or this chapter. [Eff 5/11/81] (Auth: HRS §392-91) (Imp: HRS §§392-26, 392-42, 392-45)

§12-11-5 Oaths and subpoenas. The director or the director's authorized representative may administer oaths, take or cause to be taken the depositions of witnesses, and require the attendance and production of all books, records, and other evidence relative to any matter under investigation or audit. The subpoena shall be signed and issued by the director or director's authorized representative. In case of failure of any person to comply with any subpoena lawfully issued under this section, the circuit court of any circuit, upon application by the director or the director's representative, shall have the power to enforce by proper proceedings the attendance and testimony of any witness so subpoenaed. [Eff 11/3/89] (Auth: HRS §392-91) (Imp: HRS §392-91)

§§12-11-6 to 12-11-10 (Reserved)

SUBCHAPTER 2

PLANS

§12-11-11 Plans which were in existence June 30, 1969. A plan which was in existence on June 30, 1969 and which continues in existence on January 1, 1970 is an existing plan and shall be accepted by the director as complying with the obligation of the employer to provide disability benefits for the employees, or for the class or classes of employees entitled to benefits under the plan, provided:

- (1) The employer was on June 30, 1969 obligated not to discontinue the provisions of the plan or the contribution toward its cost during some period of time after June 30, 1969, provided that the acceptance of the plan shall be limited to the period of the obligation; or
 - (2) That if the plan is one under which the employer is not obligated, as of June 30, 1969, to continue the provisions of the plan or the contribution toward its cost during some period after June 30, 1969, the plan either
 - (A) Has been found by the director to meet the requirements of section 12-11-16 and the employer has entered into the required agreements and otherwise complied with section 12-11-21 the period for which the plan may be accepted shall be limited to the period provided in section 12-11-21(3); or
 - (B) Has been agreed to by an association of employees or through collective bargaining and the employer has, prior to January 1, 1970, entered into the required agreements and otherwise complied with section 12-11-21 the period for which such plan may be accepted shall be the term of the plan as so agreed.
- [Eff 5/11/81] (Auth: HRS §392-91) (Imp: HRS §392-41)

§12-11-12 Existing plans which are extended or modified. (a) An existing plan may, after June 30, 1969, be extended with or without modification, or modified with or without extension, by agreement with an association of employees or through collective bargaining and, as so extended or modified, the plan during the period of the extension or modification shall continue to be accepted as complying provided that benefits are at least as favorable as required under section 392-41, HRS. If the extension or modification is not effective prior to the expiration of the period during which the employer is obligated not to discontinue the plan or the contribution to its cost, the employer shall be required to make provision of benefits between the expiration of the period and the

day when the agreement of extension or modification is made and becomes effective; but when so extended or modified, the plan shall continue to be accepted as complying provided benefits are at least as favorable as required under section 392-41, HRS, during the period of the extension or modification.

(b) An existing plan that, after June 30, 1969, is extended by an employer with or without modification, or modified with or without extension, other than by agreement with an association of employees or through collective bargaining, may be continued as an existing plan and may be accepted as complying with the obligation of the employer under section 392-41, HRS, during the period of extension or modification only if the plan, as so extended or modified, is found by the director to meet the requirements of section 12-11-16. [Eff 5/11/81] (Auth: HRS §392-91) (Imp: HRS §392-41)

§12-11-13 Successor employers. An existing plan shall be deemed continued and may be accepted as the plan of an employer who, after June 30, 1969, has acquired all or substantially all, or an identifiable portion, of the assets or employment and has assumed liabilities, including liabilities under the plan, of an employer who immediately preceding such acquisition had an acceptable existing plan. [Eff 5/11/81] (Auth: HRS §392-91) (Imp: HRS §392-41)

§12-11-14 Wage or salary continuance plans. (a) Arrangements for wage or salary continuance during disability in effect on June 30, 1969 may be accepted as an existing plan, provided the plan formed part of the employer's regular contract of hiring, either under written agreement or by established custom and practice.

(b) A wage or salary continuance plan in effect on June 30, 1969, but not then under written agreement, may be accepted as a plan if it is reduced to a written agreement and if proof satisfactory to the director is submitted that the plan was actually in existence on June 30, 1969 as the employer's established custom and practice.

(c) Wage and salary continuance may be offered by an employer as the employer's plan and, if found to be "at least as favorable" as the statutory benefits schedule, the plan may be accepted as the employer's compliance with the benefit provisions of the law for the class or classes of employees covered by the plan. In such case, the employer may insure or have approved self-insurance for disability benefits, paying the excess over the benefits under the employer's continuance agreement as wages or salary or the employer may continue wages or salary and provide, through insurance or approved self-insurance, for benefits to commence on the first day of disability following the last day to which wages or salary are continued. [Eff 5/11/81;] (Auth: HRS §392-91) (Imp: HRS §392-41)

§12-11-15 Plans which were not in existence on June 30, 1969. Any plan which was not in existence on June 30, 1969, but which is in

existence on or after January 1, 1970, is a new plan and, if the benefits provided meet the requirements of section 12-11-16, may be accepted by the director under section 392-41, HRS, provided:

- (1) The benefits are to be provided under the plan for a fixed term; the acceptable period of the plan shall be such term; or
- (2) The employer has filed with the director the required agreements and otherwise complied with section 12-11-21; the acceptable period of the plan shall be limited to the period provided in section 12-11-21(3). [Eff 5/11/81]
(Auth: HRS §392-91) (Imp: HRS §392-41)

§12-11-16 Existing and new plans. (a) Benefits under any plan shall, in the aggregate, be deemed to be "at least as favorable" only if:

- (1) A waiting period of no more than seven days is required; and
- (2) The aggregate actuarial value, as determined under section 12-11-17, of the cash disability benefits for each employee is equivalent to the aggregate actuarial value, as determined under section 12-11-17, of the disability benefits under section 392-41, HRS; and
- (3) Cash disability payments are payable at the rate of 100 per cent of wages and for at least three weeks in a benefit year under a plan with no waiting period, and cash disability payments are payable for at least fifteen weeks in a benefit year under a plan with a two-day waiting period which provides cash disability payments at the rate of 58 per cent of wages. [Eff 5/11/81; am 1/16/93]
(Auth: HRS §392-91) (Imp: HRS §§°392-22, 392-41)

§12-11-17 Method of evaluating benefits under plans. (a) Benefits provided under a plan which meets the minimum requirements of section 12-11-16 will be evaluated, to assist in determining whether the plan benefits are "at least as favorable" as the benefits provided by law, by the use of tables established by the insurance commissioner which reflect the actuarial relationship between different types and amounts of benefits.

(b) In evaluating weekly cash disability benefits, the following will be considered:

- (1) Maximum period during which benefits are payable during fifty-two consecutive weeks or during a single period of disability.
- (2) Non-compensable waiting period after disability for illness and for accident commences before benefits are payable.
- (3) Benefit rate, which for evaluation purposes will be the percentage obtained by dividing the weekly benefit by the

weekly wage as defined in section 12-11-18. [Eff 5/11/81;] (Auth: HRS §392-91) (Imp: HRS §392-41)

§12-11-18 Wages to be used in determining benefit rate. (a)

In determining the benefit rate for plan evaluation, the normal weekly earnings paid under regular employment practices will generally be used as "weekly wages". However, if for any extended period of time employees regularly receive extra wages including, without limitation, overtime or premium pay, it may be required that benefits be determined on the total of normal and such extra wages.

(b) If, under a plan, benefits are to be provided in accordance with classification will generally be used as the weekly wage in determining the benefit rate for plan evaluation. For those employees whose average weekly wages is \$20 or more and less than \$40 per week, the benefit rate for plan evaluation will be computed by dividing the actual cash benefit to which the employee is entitled by \$40. If the employer submits a wage schedule showing for each wage classification a distribution of employees by wages (up to weekly wages equal to the maximum weekly wage base), the weekly wage to be used for plan evaluation will be the average wage of the employees included in the classification, but not less than \$5 under the maximum wage of the classification. [Eff 5/11/81] (Auth: HRS §392-91)(Imp: HRS §392-22)

§12-11-19 Employees not covered under a plan. If an employee who is eligible for benefits under the statute is not eligible for benefits under the plan for any of the following reasons:

- (1) The eligibility or probationary period under the plan is longer than that provided by law; or
- (2) There is an eligibility or probationary period under the plan for employees who are entitled by law to immediate coverage; or
- (3) The plan does not provide for payment of benefits for disability occurring while the person is an "individual in current employment" as that term is defined in section 392-6, HRS; or
- (4) The employee is not of the class or any of the classes of employees entitled to benefits under the plan; then, and in any one or more of the foregoing circumstances, the employer shall be required to provide for the payment of benefits to the employee in one or more of the ways set forth in section 392-41, HRS. The employer, may, however, modify the plan so as to extend the plan benefits for the statutory periods referred to in paragraphs (1), (2), and (3) above, and the extension shall not be deemed a material modification of the plan. [Eff 5/11/81] (Auth: HRS §392-91) (Imp: HRS §392-41)

§12-11-20 Benefits less favorable with respect to certain employees eligible under a plan. If the benefits under a plan, other than a plan under section 12-11-11(1) or 12-11-11(2) (B), do not meet the requirements of section 12-11-16 as to any class of employees eligible for the benefits, but do meet such requirements as to another class or other classes of employees, the plan may be accepted under section 392-41, HRS, with respect to the class or classes of employees as to whom the benefits provided do meet the requirements of section 12-11-16. The employer may provide statutory benefits for the class or classes of employees for whom the plan benefits do not meet the requirements of section 12-11-16 or may supplement the plan benefits by another plan, in order that the total benefits provided for all employees entitled to benefits under the plan shall meet the requirements of section 12-11-16. [Eff 5/11/81] (Auth: HRS §392-91) (Imp: HRS §392-41)

§12-11-21 Procedure for obtaining acceptance of plans under section 392-41(a)(4) and (5), HRS. An employer who has an existing plan or a new plan, and who desires to be permitted to provide benefits thereunder in lieu of the statutory benefits for a class or classes of employees, shall apply in writing to the director to have the plan accepted. The employer shall, as a part of the application, and in a form prescribed by the director, file with the director:

- (1) A statement setting forth the provisions of the plan and, if required by the director, a copy of the plan.
- (2) An agreement with the director to pay assessments for the special disability fund by the employer or the employer's carrier as the case may be pursuant to section 392-67(a) or (b), HRS.
- (3) A written agreement, satisfactory to the director, if the plan is one that under section 12-11-11(2), 12-11-12(b), or 12-11-15 requires an agreement, that the benefits under the plan will be continued with respect to all employees included under the plan for disabilities occurring prior to the date the employer files with the director written notice of termination of the plan.
- (4) Evidence satisfactory to the director that the obligation to pay benefits under the plan has been insured and is kept insured with an insurer duly authorized to transact the business of accident and health insurance in this State or proof satisfactory to the director of the financial ability to pay the benefits and otherwise complying with section 392-41(a)(2) and (3), HRS. [Eff 5/11/81;](Auth: HRS §392-91) (Imp: HRS §§392-41, 392-67)

§12-11-22 Substitution of new carrier under a plan. If the agreement filed with the director under section 12-11-21(2) is the

agreement of a carrier and not of the employer, acceptance of the plan shall terminate forthwith whenever the carrier's obligation to pay benefits shall terminate, unless prior thereto an acceptable new carrier, assuming fully the obligations of the employer under the plan, has duly filed with the director notice thereof and has filed also the agreement with the director required under section 12-11-21. [Eff 5/11/81; comp] (Auth: HRS §392-91) (Imp: HRS §392-41)

§12-11-23 Default in payment of assessments. If the agreement filed with the director under section 12-11-21(2) is the agreement of an employer, or of an association of employers, or an association of employees authorized to pay benefits, or a trust or trustee under a plan paying benefits, the acceptance of the plan shall terminate forthwith on default, after notice, in any payment required to be made to the director in accordance with section 392-47 or 392-67, HRS. [Eff 5/11/81;] (Auth: HRS §392-91) (Imp: HRS §392-67)

§12-11-24 Notices and reports required with respect to plans.
(a) Whenever a plan accepted by the director shall thereafter be modified or extended, written notice of the modification or extension, in form approved by the director, shall be filed forthwith with the director, and except as to modifications which are not material modifications and except for the extension of a new plan without material modification for a fixed period of time specified in the agreement of extension, no such modification shall be effective until it has been accepted by the director, and when accepted shall be effective as of the date requested, and no extension shall be effective until notice of extension has been filed with the director.

(b) A material modification of a plan shall be effective on acceptance by the director, and, without limitation, any modification which reduces the class or classes of employees to which the plan is applicable or the rate of weekly benefits or the period during which benefits are payable, or which increases the waiting period or the contribution of employees to the cost of benefits, shall be deemed a material modification. [Eff 5/11/81;] (Auth: HRS §392-91) (Imp: HRS §392-41)

§12-11-25 Accepted plans. The director shall give to the employer or association of employers or association of employees by whom the application for acceptance was filed, and also to the applicant, written notice that the plan is accepted as satisfying the obligation of the employer or employers to provide for the payment of benefits, or that it is not accepted. From and after the effective date of notice of acceptance, the provision for benefits and employee contributions under the plan shall be effective for the employees, or the class or classes of employees, entitled to benefits under the

plan, in lieu of the provisions for benefits under the statute, and for employee contributions under section 392-43, HRS. [Eff 5/11/81;] (Auth: HRS §392-91) (Imp: HRS §§392-41, 392-43)

§12-11-26 Reconsideration of denial of application for plan acceptance; appeal. (a) When an application for acceptance of a plan has been denied on the ground that the benefits under the plan do not meet the requirements of section 12-11-16, the applicant, within fifteen days after notice of denial has been given, may apply in writing to the director for reconsideration. In support of the employer's application for reconsideration, and as a part of the application, the applicant shall submit a memorandum of the facts on the basis of which applicant contends that the benefits provided under the plan are at least as favorable as the disability benefits under the statute.

(b) The director, or an officer or employee designated by the director for that purpose, shall reconsider the application and plan, and the director may direct that a hearing be held for the taking of evidence and for any other consideration as the proofs warrant to conform with the purpose and intent of the statute.

(c) The filing of an application for reconsideration or an appeal of the decision upon reconsideration shall not relieve the applicant, or any employer if the applicant is an association of employers or employees, of its responsibility to provide statutory benefits as required by the law pending a final decision thereon. [Eff 5/11/81;] (Auth: HRS §392-91) (Imp: HRS §392-41)

§12-11-27 Minimum coverage standards for an association of employers. (a) The minimum standards which an insured association of employers shall meet to qualify its members for obtaining temporary disability insurance coverage are:

- (1) The association must be a bona fide organization a charter, constitution, and by-laws or other documentation identifying its purpose, scope, and function. It must have a stable roster of members and assured continuity of operation.
- (2) The association's membership must be in the same or a closely related industry or have some common interest binding the membership. It must have been formed for a purpose other than obtaining coverage under the statute.
- (3) The association shall submit a certification in the format prescribed by the department.

(b) The minimum standards which a self-insured association of employers shall meet to qualify its members for temporary disability insurance coverage are:

- (1) The association shall meet all requirements of section 12-11-27(a).
- (2) The association shall establish a special temporary

disability insurance fund in its treasury from which payments received from members for coverage shall be deposited and disbursements paid out.

- (3) The association shall have a central office staffed by association personnel to administer temporary disability insurance functions such as: collect and remit premiums; receive, process, and pay claims; and prepare reports to the director.
- (4) The association shall meet the self-insurance requirements of section 392-41, HRS, and this chapter.
- (5) The association shall provide the name of its authorized representatives to the director.

(c) Participation in any association plan does not release an employer from any obligation under the statute. The association's plan of benefits shall be accepted as the employer's method of providing benefits. The association shall act as the employer's agent only for those functions relating to the providing of benefits.

(d) There shall be no individual underwriting in an association plan. [Eff 5/11/81] (Auth: HRS §392-91) (Imp: HRS §§392-3, 392-41)

§§12-11-28 to 12-11-34 (Reserved)

SUBCHAPTER 3

BENEFITS AND CLAIMS PROCEDURES

§12-11-35 Claim for disability benefits. (a) The employee claiming for disability benefits or a person acting on the employee's behalf shall file a claim for disability benefits with the employer on a form prescribed by the director, or in the case where section 392-66, HRS, is applicable, with the director, within ninety days after commencement of the period of disability or as soon thereafter as is reasonably possible. Proof of disability shall be furnished to the employer, or, in the case where section 392-66, HRS, is applicable to the director, not later than ninety days after commencement of the period of disability and thereafter from time to time as the employer or director may require, but not more often than once each week. In the event the claimant has a controverted workers' compensation claim, the ninety-day filing period for temporary disability insurance is waived if the employee gave notice to the employer of a workers' compensation claim within ninety days after the date on which disability commenced. In such event, the date of notice of the workers' compensation claim shall be accepted as the filing date under this section.

(b) The claim for disability benefits shall include statements

furnished by the claimant and the claimant's attending physician on a form prescribed for the purpose by the director. A carrier, employer, or the director may investigate a claim and for cause require additional information.

(c) Failure to file a claim for disability benefits within the time and in the manner above provided shall not invalidate the claim, but no benefits shall be required to be paid for any period more than fourteen days prior to the date on which the required claim for disability benefits is filed. However, if it is shown not to have been reasonably possible for the claimant to file the claim within the time above provided and that the claim was filed as soon thereafter as reasonably possible, benefits may be payable for the full period of disability, provided that no benefits shall be paid unless the required claim is filed within twenty-six weeks after commencement of the period of disability.

(d) In the case of an employer who has received approval from the department of its sick leave plan or a collective bargaining agreement where either or both require further disability benefit payments from an insurer upon the exhaustion of sick leave payments, the employer shall initiate the filing of the claim for disability benefits with the insurer within ninety days of the last date sick leave payments were made. [Eff 5/11/81; am 11/3/89] (Auth: HRS §392-91) (Imp: HRS §392-25, 392-26, 392-27, 392-44)

§12-11-36 Responsibility of employer to provide benefits. (a) An employer shall provide benefits for disabilities that occur during the period of employment and while the employee is an "individual in current employment" as defined in section 392-6, HRS, provided that if during the two-week period following termination of employment the employee enters into new employment, the responsibility of the first employer to provide benefits ceases on the first day of the new employment if the new employer is subject to the statute. Thereafter, the new employer shall be responsible for providing benefits as required by the statute.

(b) An employer of an employee who is eligible shall provide benefits for that employee for any disability which occurs during the period of continued eligibility whether the employment is on a full-time or part-time basis. [Eff 5/11/81] (Auth: HRS §392-91) (Imp: HRS §§392-6, 392-41)

§12-11-37 Part-time employment. If an individual is employed concurrently by more than one employer and is a part-time employee of one or more of the employers, in order to be eligible for benefits from employers for whom the individual is a part-time employee, the employee must give written notice to all of the individual's employers of other employment, giving sufficient details as will enable the employers to ascertain whether the employee is in fact eligible for benefits. [Eff 5/11/81] (Auth: HRS §392-91) (Imp:

HRS §§392-3, 392-25)

§12-11-38 Concurrent employment. (a) An employee is in concurrent employment when the individual is regularly and customarily in the employ of more than one covered employer within the same calendar week and is concurrently eligible for disability benefits from each of the employments.

(b) Hours of employment with two or more employers, concurrently, full-time or part-time, and wages earned therefrom, shall be aggregated for purposes of determining eligibility for benefits. [Eff 5/11/81; comp] (Auth: HRS §392-91) (Imp: HRS §§392-25, 392-43.5)

§12-11-39 Two-week period following termination of employment. The period of two consecutive weeks after termination of employment shall end on the fourteenth consecutive calendar day following the last day worked. [Eff 5/11/81] (Auth: HRS §392-91) (Imp: HRS §392-6)

§12-11-40 Claim for reimbursement out of workers' compensation benefits. (a) If an employee who is eligible for benefits under the statute is disabled and has claimed or subsequently claims benefits under the workers' compensation law, and if the claim is denied by the director on the ground that the employee's disability was not caused by an accident that arose out of and in the course of the individual's employment or by an occupational disease under the workers' compensation law, the individual's employer or the employer's disability benefits carrier or the director shall forthwith pay benefits under the statute to the employee for the disability.

(b) If an employee who is eligible for benefits under the statute has claimed or subsequently claims benefits for an alleged disability under the statutes and under the workers' compensation law, and if the claim is disputed on the ground that the employee was not in fact disabled, the individual's employer or the employer's disability benefits carrier or the director shall forthwith file a statement to this effect with the department. Whereupon the claims under the statute and the workers' compensation law shall be combined and considered jointly in all subsequent proceedings for the purpose of determining the fact of disability. [Eff 5/11/81] (Auth: HRS §392-91) (Imp: HRS §392-41)

§12-11-41 Denial of claim. (a) If an employee's claim for benefits is denied in whole or in part by the employer or employer's disability benefits carrier, a copy of the notice of denial, in the form prescribed by the director, shall be sent to the department. The department shall review the denial within ten days of receipt and request the employer or insurer to reconsider the denial if it

considers it to be erroneous, without proper legal basis, or without sufficient evidence. If the employer or insurer still decides to deny disability benefits, the employee and the department shall be so notified.

(b) If an employee desires a review of any action of the claim for benefits, the employee shall file with the director two copies of the notice of denial, the employee's request for appeal, and a statement in duplicate giving specific reasons for the request. The request for appeal shall be filed within twenty days from the date denial was mailed to the claimant. The appeal shall be filed at the office of the department in the county in which the claimant resides or in the county in which the claimant was employed prior to the disability. The director shall forthwith notify the employer or the employer's disability benefits carrier or the special fund for disability benefits, as the case may be, of the claimant's request for appeal, enclosing a copy of the claimant's statement of reasons therefor. Determination of the appeal shall be made in accordance with the provisions of Part V of chapter 392, Hawaii Revised Statutes. [Eff 5/11/81] (Auth: HRS §392-91) (Imp: HRS §392-44.5)

§12-11-42 Disqualification for benefits. An individual shall be disqualified for disability benefits under section 392-66, HRS, during any period that the individual is disqualified for unemployment insurance benefits under section 383-30, HRS. [Eff 5/11/81] (Auth: HRS §392-91) (Imp: HRS §§392-28, 392-66)

§12-11-43 No waiting period required for benefits from special fund. An individual who is eligible for disability benefits under section 392-66, HRS, shall be paid the benefits without serving a waiting period. [Eff 5/11/81] (Auth: HRS §392-91) (Imp: HRS §392-66)

§12-11-44 Disposition of accrued benefits upon death. If any benefits due an employee are unpaid at the time of the employee's death, the benefits shall be payable to the employee's estate or, at the option of the carrier, may be paid to the surviving spouse, parent, child, or children of the deceased employee. Benefits that are due but are not so paid shall, after the expiration of one year from the date of employee's death, be paid into the special fund for disability benefits established pursuant to section 392-61, HRS. Upon making the payment into the special fund, the carrier shall immediately and thereafter be held harmless from all liability to the extent of the payment, and any claim thereafter for the benefits shall be filed with the director who shall determine the validity thereof. [Eff 5/11/81] (Auth: HRS §392-91) (Imp: HRS §392-61)

§12-11-45 Authorized physician, surgeon, dentist, chiropractor, osteopath, naturopath, or equivalent. Pursuant to

section 392-26(a) and (b), HRS, an authorized physician, surgeon, dentist, chiropractor, osteopath, or naturopath includes any person duly licensed to practice medicine, surgery, dentistry, chiropractic, osteopathy, or naturopathy in this State; or a duly authorized or accredited practitioner or any group which depends for healing upon prayer or other spiritual means. If a claimant is a bona fide resident of another state, nation, or other recognized unit of government, or if a claimant is disabled while temporarily in another state, nation, or other recognized unit of government, the medical statement and necessary reports of the attending physician duly licensed under its laws to practice medicine, surgery, dentistry, chiropractic, osteopathy, or naturopathy may be accepted as proof of disability. [Eff 5/11/81] (Auth: HRS §392-91) (Imp: HRS §392-26)

§12-11-46 Average weekly wage. (a) Except as otherwise provided herein or when shown to be inappropriate or unfeasible, for the purpose of computing the amount of disability benefits of a non-salaried employee during any period of disability, "average weekly wage" shall be the amount determined by dividing the total wages earned by the employee in the employment of the employee's last employer for the eight weeks or portion thereof that the employee was in the employment immediately preceding and including the employee's last day worked prior to commencement of the disability, by the number of weeks or portion thereof of the employment.

(b) If an employee's remuneration consists of commissions or piece-work pay, the commissions or piece-work pay earned by the employee during the fifty-two consecutive weeks immediately preceding the date of the employee's disability shall be used in determining the employee's average weekly wage. [Eff 5/11/81] (Auth: HRS §392-91) (Imp: HRS §§392-3, 392-7)

§12-11-47 Cash value of remuneration in kind. (a) Board, lodging, or any other payment in kind received by an employee from the individual's employer in addition to or in lieu of (rather than as a deduction from) money wages shall be deemed to be wages paid by the individual's employer.

(b) The reasonable cash value of such payments in kind, as established by the department, shall be used in determining the wages paid to the employee and in computing contributions due from the employer and the employee.

(c) Where a money value for such payments in kind is agreed upon in a contract of hire, the amount so agreed upon shall, if more than the rates specifically determined by the department or the rates prescribed herein, be deemed the cash value of such payment.

(d) Effective January 1, 1978 and until amendments to rule 2 of Regulation I relating to the administration and enforcement of the Hawaii employment security law are promulgated, board and lodging

furnished as payment in kind shall be deemed to have not less than the following values:

Full board and room, weekly	\$28.00
Meals, per week	18.90
per day	2.70
per meal90
Lodging, per week	9.10
per day	1.30

(e) When amendments to rule 2 of Regulation I relating to the administration and enforcement of the Hawaii employment security law are promulgated, subsection (d) shall be deemed to have been amended to reflect such change. [Eff 5/11/81] (Auth: HRS §392-91) (Imp: HRS §392-3)

§12-11-48 Change in average weekly wage. In the event a claimant is disabled at the end of a calendar year and the claimant's disability continues into the next calendar year, the claimant's disability payment shall be calculated on the basis of the established rate at the time the claimant's disability commenced. [Eff 5/11/81] (Auth: HRS §393-91) (Imp: HRS §§392-21, 392-22)

§12-11-49 Failure to provide coverage. Should an employer fail to provide coverage after deducting and withholding contributions from the individual employees, the employer shall deposit such contributions not to exceed 0.5 per cent of the employees' weekly wages, as determined pursuant to section 392-43, HRS, into the special fund when ordered by the director. Contributions in excess of 0.5 per cent of the employees' weekly wages shall be refunded to the employees. The employer's compliance with this section shall not hold the employer immune to the requirements of the statute. [Eff 5/11/81] (Auth: HRS §392-91) (Imp: HRS §§392-41, 392-43, 392-61)

§12-11-50 Deductions greater than authorized. Pursuant to section 392-43(f), HRS, contributions of those employees, deducted and withheld in amounts greater than those authorized, who are no longer with the employer and cannot be located, shall be deposited at the end of each calendar year in the special fund for disability benefits by the employer. The employer shall provide the director with a list containing the employee's full name, social security account number, last known address, the amount due, and any other information requested by the director. The director shall endeavor to locate such employees to return such deductions. If such employees cannot be located for a period of two years from the date of deposit, the director shall cause such monies to become a part of the special fund. [Eff 5/11/81] (Auth: HRS §392-91) (Imp: HRS

§§392-43, 392-61)

§§12-11-51 to 12-11-55 (Reserved)

SUBCHAPTER 4

REQUIREMENTS FOR INSURED COVERAGE

§12-11-56 Posting of notice of coverage. Each employer shall post and maintain in a conspicuous place or places in and about the employer's places of business typewritten or printed notices stating that the employer has obtained insurance to provide for the payment of disability benefits required by law, in the form as may be prescribed by the director. [Eff 5/11/81] (Auth: HRS §392-91) (Imp: HRS §392-91)

§12-11-57 The insurance contract. (a) Every contract of insurance, including any amendment, endorsement, or rider to a contract of insurance, which provides for employee benefits under the statute shall be approved by the insurance commissioner.

(b) Nothing in the statute or in this chapter is intended to amend, modify, or change any policy form approval requirements prescribed in the State insurance law. [Eff 5/11/81] (Auth: HRS §392-91) (Imp: HRS §392-48)

§12-11-58 Cancellation of an insurance contract. (a) No insurer shall cancel a contract of insurance providing in whole or in part for disability benefits required by the statute prior to the expiration date of the contract unless notice of intention to cancel on a specified date has been filed with and served on the employer and the director at least ten days prior to the specified cancellation date.

(b) The ten-day advance notice requirement in subsection (a) need not be complied with when a new insurer is substituted. In the event of the substitution, the previous insurer shall immediately file with and serve on the employer and the director notice that the contract was cancelled as of a specified date because the obligation to pay benefits for disabilities incurred after the date was assumed by a new insurer which shall be specifically identified if its identity is known by the previous insurer.

(c) The insurer need not file an additional notice of the termination date prescribed in a contract of insurance, unless the date was not shown in the notice of insurance filed with the director pursuant to section 392-42, HRS.

(d) If a plan provides by its terms for an expiration date, acceptance of the plan by the director is notice thereof. Additional

notice by the insurer of cancellation of the insurance contract as of the expiration date of the plan is not necessary. [Eff 5/11/81]
(Auth: HRS §392-91) (Imp: HRS §§392-42, 392-50)

§12-11-59 Employee contributions toward the cost of coverage under insurance contracts. (a) If an employer provides for disability benefits under the statute by a contract of insurance, the premium charged therefor shall represent the cost of providing the benefits. The employees' contributions shall not exceed one-half of the cost but not more than 0.5 per cent of the employees' weekly wage as determined pursuant to section 392-43, HRS.

(b) If, after the end of a policy year, the employer receives an experience rating credit or a dividend back from the insurer, the employees' share of the experience rating credit or dividend shall be refunded or credited to the employees by the employer. "Employees' share" means one-half of the excess remaining, if any, after the employer has deducted (1) any expenses of the employer directly allocable to the cost of administering the insurance contract, and (2) the amount, if any, by which the employer's contribution to the premium charged during the prior policy years exceeded the employees' contributions. At the employer's option, the employer may refund in cash each employee's proportionate share of the employees' share, or may credit the total employees' share of the experience rating credit or dividend from the prior policy year against the total amount contributable by the employees during the current policy year.

(c) The applicable provisions of a collectively bargained agreement shall prevail in the event of a conflict between those provisions and this chapter. [Eff 5/11/81] (Auth: HRS §392-91)
(Imp: HRS §§392-43, 392-61)

§12-11-60 Refusal to insure. If an insurance company refuses to cover any employer-applicant, the insurance company shall notify the employer-applicant in writing of the name and address of the pool manager of the Hawaii temporary disability insurance risk spreading plan. A copy of the letter shall be kept in a separate file at the insurance company for the department's reference. [Eff 5/11/81]
(Auth: HRS §392-91) (Imp: HRS §392-41)

§§12-11-61 to 12-11-65 (Reserved)

SUBCHAPTER 5

REQUIREMENTS FOR SELF-INSURED COVERAGE

§12-11-66 Posting of notice of coverage. Each employer who has been granted self-insured status pursuant to the statute and this

chapter shall post and maintain in a conspicuous place or places in and about the employer's places of business typewritten or printed notices stating that the employer is providing directly for the payment of disability benefits required by law, in the form prescribed by the director. [Eff 5/11/81] (Auth: HRS §392-91) (Imp: HRS §392-91)

§12-11-67 Application. (a) Every employer and every association of employers, or trustee or trustees paying benefits under a plan or agreement authorized under section 392-41, HRS, desiring to provide for the payment of benefits through approved self-insurance, shall apply to the director to become a self-insurer. The application shall be in the form prescribed by the director.

(b) If the applicant is an association of employers or of employees, or a trustee or trustees, each employer of employees for whom benefits under a plan pursuant to section 392-41, HRS, are to be provided by the applicant shall apply, on a form prescribed by the director, for acceptance of the plan of the association of employers or employees, trustee or trustees, as the plan of the employer.

(c) If the director is satisfied as to the financial and administrative ability of the applicant to make payment of the benefits provided and that the applicant's tangible assets make reasonably certain the payment of all obligations that may arise under the law, the application may be granted on the conditions herein provided and such other conditions as, in the discretion of the director, may be necessary or desirable in any case. [Eff 5/11/81] (Auth: HRS §392-91) (Imp: HRS §392-41)

§12-11-68 Agreement. Each applicant for self-insurance shall execute and file with the director an agreement, on a form prescribed by the director, :

- (1) To pay benefits to employees eligible under the law:
 - (A) As provided in the statute, if there is no plan applicable to the employees;
 - (B) As provided by a plan qualifying under section 392-41, HRS, for employees covered by the plan.
- (2) To pay all obligations, including benefits, fines, expenses, and assessments imposed pursuant to the statute.
- (3) To permit the director's authorized representative access to the premises of applicant and of each employer, for the purpose of examining operations and records pertaining to financial conditions and all obligations under the statutes
- (4) To authorize the director in the event of neglect or refusal of the self-insurer to pay any obligation, including benefits, fines, expenses and assessments, to sell without notice all or any part of the deposited securities or require the surety to pay forthwith to the

director the penal sum of the bond.

- (5) Beginning January 1, 1992, to maintain a complete claims service office or engage an independent claims adjusting service as a claims agent in the State of Hawaii with draft authority for the processing of temporary disability insurance payments. [Eff 5/11/81; am 1/13/92] (Auth: HRS §392-91) (Imp: HRS §§392-41, 392-42.5)

§12-11-69 Requirements for self-insurance. An applicant for self-insurance shall:

- (1) Deposit with the State director of finance, and keep on deposit, securities which are obligations of the United States, or any other state, Hawaii or any of its counties, provided that the securities were issued pursuant to law and the faith and credit of the issuing governmental agency is pledged for their payment, in an amount acceptable to the director, but in no event less than \$2,000. Securities deposited shall be registered in the name of "Director of Labor and Industrial Relations, State of Hawaii". Interest paid on securities deposited with the director of finance will be remitted to the applicant for whose account they are deposited, as long as the applicant complies with the law and with this chapter; or,
- (2) In lieu of securities and at the discretion of the director, file with the director of finance the bond of a surety company authorized to do business in this State, in a manner and penal sum acceptable to the director. Each surety bond shall be undertaken and may be enforced in the name of "Director of Labor and Industrial Relations, State of Hawaii", or
- (3) Upon furnishing satisfactory proof to the director of the employer's solvency and financial ability to pay the temporary disability benefits herein provided, no insurance or security or surety bond shall be required, and the employer shall make payments directly to the individual employees, as they become entitled to receive the same under the terms and conditions of the statute. [Eff 5/11/81] (Auth: HRS §392-91) (Imp: HRS §392-41)

§12-11-70 Amount of securities or bond. The amount of securities or of the penal sum of the surety bond which a self-insurer is required to deposit pursuant to section 12-11-69 shall be determined by the director. The number of employees involved, the exposure, the financial standing of the applicant, and other factors which the director may deem proper shall be given effect in fixing the amount. In the director's discretion, a deposit in excess of the minimum under section 12-11-69 may be required. [Eff 5/11/81] (Auth: HRS §392-91) (Imp: HRS §392-41)

§12-11-71 Proof of ability to process claims. Each applicant shall submit proof satisfactory to the director that adequate provision has been made by the applicant, and by each employer, to comply with the obligation to pay benefits, and from time to time, upon request, shall satisfy the director that the provision is kept effective. [Eff 5/11/81] (Auth: HRS §392-91) (Imp: HRS §392-41)

§12-11-72 Termination of self-insurer's status and withdrawal of security deposit. (a) A self-insurer who has terminated self-insured status, or as to whom approval for self-insurance has been revoked, may apply to the director for return of the security deposit or cancellation of the surety bond.

(b) After the lapse of twenty-four months from termination of self-insurer status and proof satisfactory to the director that all claims have been finally adjudicated and paid, that all fines, penalties, expenses, and assessments have been paid, and satisfactory disposition made of the balance of employee contributions, and otherwise complying with the applicable provisions of law, this chapter, and provisions of the self-insurer's agreement, the director may release the securities deposited or permit cancellation of the surety bond. [Eff 5/11/81] (Auth: HRS §392-91) (Imp: HRS §392-41)

§12-11-73 Self-insurance deposit credit. If an employer has deposited securities under the workers' compensation law, the director in his discretion may reduce the amount of deposit required under the statute provided the employer has, by agreement satisfactory to the director, made available all deposited securities for all obligations of the employer under both laws. [Eff 5/11/81] (Auth: HRS §392-91) (Imp: HRS §392-41)

§12-11-74 Obligations. The obligations of a self-insurer shall include all obligations and those of each and every employer with respect to those employees for whom the self-insurer provides benefits under the statute. [Eff 5/11/81] (Auth: HRS §392-91) (Imp: HRS §392-41)

§12-11-75 Revocation of self-insurance status. The director may revoke the approval to self-insure at any time for good cause. Failure to comply with this chapter, or with any award, order, or directive of the director, either by the self-insurer or an employer or employers for whose employees benefits are provided by the self-insurer, is cause for revocation. [Eff 5/11/81] (Auth: HRS §392-91) (Imp: HRS §392-91)

§12-11-76 Employee contributions towards the cost of coverage by a self-insurer. (a) If an employer provides for disability benefits under the statute through self-insurance, the cost of the benefits shall include any expenses of the employer directly

allocable to the cost of administering and providing the benefits. The employees' contributions shall not exceed one-half the cost but not more than 0.5 per cent of the employees' weekly wage as determined pursuant to section 392-43, HRS.

(b) If, at the end of a calendar year, the self-insurer determines that an amount in excess of one-half the cost has been contributed by employees, the excess shall be refunded or credited to the employees by the self-insurer. At its option, the self-insurer may refund in cash to each employee the proportionate share of the excess or may credit the excess from the prior year to the total amount contributable by employees during the current year.

(c) The applicable provisions of a collectively bargained agreement shall prevail in the event of a conflict between those provisions and this section.

(d) Employees' contributions shall be kept in a separate fund maintained by the employer. [Eff 5/11/81] (Auth: HRS §392-91) (Imp: HRS §§392-43, 392-61)

§12-11-77 Limitation of fund. The separate fund provided by section 12-11-76 shall not exceed five per cent of the employer's highest monthly payroll in the last twelve completed calendar months. No further deductions shall be made from employees until the fund falls below the five per cent indicated above. The additional withholdings plus the fund balance shall not exceed five per cent of the employer's highest payroll in the last twelve completed calendar months. The director may, based on the actuarial experience of an employer or group of employers, reduce the limitation prescribed by this section. [Eff 5/11/81] (Auth: HRS §392-91) (Imp: HRS §392-67)

§§12-11-78 to 12-11-84 (Reserved)

SUBCHAPTER 6

REPORTS

§12-11-85 Periodic reports. (a) On March 1 of each year, the employer's insurance carrier, self-insured employers, employers with collective bargaining agreements, or an association of employers shall file an annual report covering the most recently completed calendar year in a form prescribed by the director for each employer and for each plan, furnishing the following information:

- (1) Number of covered employees for each month of the year (number of individuals employed during the pay period including the 12th day of the month).
- (2) Amount of total wages paid in the year.
- (3) Amount of taxable wages paid in the year.
- (4) Amount of employer contributions paid in the year, if

applicable.

- (5) Amount of employee contributions paid in the year, if applicable.
- (6) Amount of benefits paid in the year.
- (7) Number of different persons paid disability benefits during the year.
- (8) Number of weeks for which benefits were paid.
- (9) Number of separate periods of disability for which benefits were paid.
- (10) Number of claims denied.
- (11) Amount of subrogated payments received.

(b) On March 1 of each year, the employer's insurance carrier, self-insured employers, employers with collective bargaining agreements, or an association of employers shall file an annual report for each employer and for each plan the information listed in subsection (a) and, in addition, furnish by sex, information listed in items (1) and (6) through (10) of subsection (a) covering the most recently completed calendar year in a form prescribed by the director. [Eff 5/11/81](Auth: HRS §392-91) (Imp: HRS §392-91)

§12-11-86 Other employer reports. Every employer for whom services are performed in employment shall file a report on a form prescribed by the director to determine liability for coverage within ten days after being mailed by the department. This report shall provide information such as: Under an insured plan, the insurance carrier name, number of employees covered, effective date of coverage, and the amount, if there is any employee contributions toward premium payments; under a self-insured plan, furnishing copies of the plan and financial statement, effective date of plan, number and classes of employees covered, and the amount, if there is any employee contributions toward premium payments; under a sick leave plan covered under an employer-employee collective bargaining agreement, the name of union, copy of agreement, effective and expiration date of agreement, and number and classes of employees covered. [Eff 5/11/81] (Auth: HRS §392-91) (Imp: HRS §392-91)