



DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS

**News Release**

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**DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS PROPOSES  
AMENDMENTS AND NEW RULES GOVERNING ADMINISTRATION OF  
WORKERS' COMPENSATION**

Director Nelson B. Befitel to Host Public Hearing on Proposed  
Administrative Rules on Monday, February 7<sup>th</sup>.

**HONOLULU-** The Hawaii Department Labor and Industrial Relations (DLIR) is proposing amendments and new administrative rules (Chapters 12-10, 12-14, and 12-15, section 386-25, Hawaii Revised Statutes) relating to the workers' compensation law and vocational rehabilitation.

The proposed amendments reflect several changes in DLIR's internal processing of workers' compensation cases. The proposed new rules and amendments also respond to public comments requesting clarity and transparency in the workers' compensation system. The department's proposed new rules and amendments articulate revised procedures to the workers' compensation system.

The DLIR's proposed administrative rules are scheduled for public comment on February 7<sup>th</sup>, 2005, at 8:30 a.m. at 830 Punchbowl Street, Rooms 310 and 313, Honolulu, Hawaii 96813.

Public comments on the proposed rules should be submitted in writing at the hearing or mailed to Director Nelson B. Befitel at:

Department of Labor and Industrial Relations  
830 Punchbowl Street, Suite 321  
Honolulu, Hawaii 96813.

Public comments can also be faxed to 586-9099. The deadline for the public to submit comments is February 7, 2005.

"We are reminding the public that there are substantial changes being proposed to our workers' compensation system and we want the opportunity to hear from all interested parties so that we can address any concerns or comments they may have," said Director Befitel.

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Nelson B. Befitel, Director  
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## **Public Hearing on Proposed Administrative Rules Relating to Workers' Compensation**

**February 7, 2004, 8:30 a.m. at Keelikolani Building Rooms #310-313  
 830 Punchbowl Street, Honolulu, HI 96813**

(For the complete text of the proposed rules and the official public notice, please visit [www.dlir.state.hi.us](http://www.dlir.state.hi.us))

### **Fact Sheet**

The Department of Labor and Industrial Relations (DLIR) proposes changes to the following chapters of the Hawaii Administrative Rules pertaining to the state workers' compensation laws:

Title 12, Chapter 10, Workers' Compensation Administrative Rules  
 Title 12, Chapter 14, Vocational Rehabilitation Administrative Rules  
 Title 15, Chapter 15, Workers' Compensation Medical Fee Schedule

These proposed rules present a balanced, common sense package of changes that will bring costs under control while ensuring that injured workers receive quality medical care and benefits that they need to return to work as soon as they are able. The following is a summary of the proposed major revisions to the administrative rules.

#### **Ensure injured workers receive necessary quality care based on evidence-based medicine.**

- Injured workers will be entitled to be treated in accordance with the evidence-based medical treatment guidelines of the American College and Occupational and Environment Medicine and the ODG.
- An employer or its insurance carrier cannot deny treatment that is based on the guidelines.
- Further, an injured worker may receive additional treatments or treatment not specified in the medical treatment guidelines if it is shown to be necessary and based on evidence-based medical treatment.
- In denying any treatment, the employer or its insurance carrier must disclose to the treating physician and employee the medically, evidence-based criteria used as the basis of the objection.
- Medical treatment guidelines will eliminate, or, at least reduce delays caused by unnecessary disputes and litigation over treatment plans. It ensures that treatments are based on evidence-based medicine.

#### **Ensure injured workers would receive their benefits in a timelier manner.**

- All hearings would be held within 60 days after a response to an application for a hearing has been filed. *Currently, there are no rules specifying when a hearing should be held, often causing injured workers to suffer economic hardship while they wait for their "day in court."*
- The injured employee, suffering from economic hardship, will be entitled to an expedited hearing if the employer or its insurance carrier fails to respond to his application for a hearing. *Currently, there are no rules that provide injured workers the right to have an expedited hearing.*

#### **Ensure injured workers receive necessary vocational rehabilitation services in the most cost-effective and efficient manner.**

- Encourage the employee, medical provider, vocational counselor and the employer to work cooperatively in designing and monitoring the employee's vocational rehabilitation program.
- Any vocational rehabilitation plan approved by the employer will be immediately and automatically approved by the department.
- The department will approve plans that meet the requirement of the law, regardless whether or not it has been approved by the employer.
- Encourage employers to provide an effective back-to-work program so that employees can return to work at their wages before the injury.
- A vocational rehabilitation plan is initially limited to 104 weeks, but may be revised or extended if circumstances warrant such a change.
- The purpose for vocational rehabilitation in the workers' compensation system is "to restore an injured worker's earning capacity as nearly as possible to the level which the worker was earning at the time of injury and to return the injured worker to suitable work in the active labor force as quickly as possible in a cost-effective manner."

To ensure efficient operation and oversight of the vocational rehabilitation program, the proposed rules provide clear standards:

- In determining whether one is qualified for a vocational rehabilitation program;
  - On the goals of the vocational rehabilitation program;
  - On the objection and approval process; and
  - On the return to work process.
- Ensure the injured worker returns to work as soon as possible at his or her earning capacity at the time of the injury in the most cost-effective manner.
  - Preclude vocational rehabilitation plans that are specifically designed for the injured worker to be self-employed because it is not the most cost-effective and efficient manner in returning the worker to the workforce.

#### **Improve the efficiency of the hearings process, which will result in more cases being resolved in a timely manner.**

- Provide clear directives on the workers' compensation hearings process, including the discovery process, how and when hearings should be scheduled and the manner they should be conducted.
- These basic hearings rules modernize our hearings process, bringing predictability, transparency, and accountability in a hearings system that is plagued with complaints of inefficiency, irregularities and soaring costs.
- *Currently, there are no administrative rules governing the hearings process.* This has led to a hearings process that is unpredictable, provide the appearance of favoritism with regard to calendaring and conducting hearings.
  - Under the current system, an injured employee, representing himself (without an attorney) is at a tremendous disadvantage as our system fails to provide the employee proper notice of his rights regarding the hearings process. Without rules, the process is a moving target.
- Ensure the injured worker will have his or her "day in court" in a timely manner. *There is no such procedure under the current rules.*
- Require all hearings to be recorded. The department would be able to periodically review the recordings to ensure the parties receive a fair and impartial hearing, and to ensure consistency in the department's decisions.
- The interest of keeping the hearings process lax and "informal" must be balanced with keeping the process fair, balanced and efficient. These proposed rules strike that balance.

#### **Provide an alternative resolution of claims.**

- Allow parties to resolve their disputes through a private hearings officer, which will likely lead to claims resolving in a timely and more efficient matter.
- Similar forms of alternative resolution methods have proven to be efficient and cost-effective in resolving claims outside of the workers' compensation system.

#### **Define approval requirements for employers seeking to be self-insured.**

- Self insurance may be a viable option for many employers to reduce their workers' compensation costs.
- Currently there are no rules setting forth the departments' criteria in improving a company to be self-insured. This creates confusion, subjectivity, and inconsistent results.
- Provide objective standards to determine whether a company qualifies to be self-insured. These standards will assist companies contemplating whether or not they qualify to be self-insured.
- Ensure that only those companies that are solvent and have the ability to pay for their workers' compensation claims receive the department's approval for self-insurance. This protects the company's employees and the solvency of the state's special compensation fund.

#### **Define "Disciplinary Action" and other items**

- Clarify what constitutes a "disciplinary action." Any alleged injury resulting from disciplinary action is not compensable under Hawaii's workers' compensation law; however, currently there is no definition of what constitutes a disciplinary action. This change will provide employees, employers and hearings officer clear directives of types of personnel action that are precluded under workers' compensation laws.
- Define other unclear terms used in the workers' compensation law and administrative rules for the effective, efficient, and transparent administration of our workers' compensation laws.