



DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS

News Release

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**GOVERNOR LINDA LINGLE SIGNS WORKERS' COMPENSATION
ADMINISTRATIVE RULES**

**New Administrative Rules Mark the Most Significant Reform to Hawaii's
Workers' Compensation System in a Decade**

HONOLULU- Governor Linda Lingle has signed the Department of Labor and Industrial Relation's (DLIR) new administrative rules to improve the state's workers' compensation law. The Governor's approval implements the most significant workers' compensation reform since 1995. The rules will go into effect on May 12, 2005.

These new rules were formulated to address an outdated workers' compensation system that is both expensive and inefficient. Hawaii's workers' compensation system has been widely criticized by local and national organizations for its inability to appropriately treat injured workers and return them to work in an expeditious manner. The new rules will help modernize the state's hearings and claims resolution process to bring transparency, predictability, and accountability, while ensuring injured workers are provided quality medical treatment. Based on a similar reform measure in California, these rules may eventually result in \$98 million a year in cost savings to Hawaii's workers' compensation system.

Claims' Hearings and Resolution Process

First, the rules will improve the efficiency of the hearings process, which will result in more cases being resolved in a timelier manner. They also will guarantee injured employees an expedited hearing in certain situations where the employer or insurance carrier is unreasonably denying a work-injury claim. The new rules also provide the employee and employer the option to resolve their disputes through an alternative resolution process, similar to arbitration hearings and the mediation process that have proven successful in resolving disputes in other areas of the law.

Medical Guidelines

Second, the new rules also ensure that injured workers are being treated based on the most current medical "best practices" and will apply to cases occurring after May 12, 2005. The rules would allow doctors the flexibility to treat an injured worker more extensively than what the guidelines may indicate, provided that there is an objective medical justification. This would ensure that diagnosis and treatments for workplace injuries conform to practices that have the best chance of producing the correct outcomes.

Twenty-one states rely on treatment guidelines. California enacted guidelines as part of its major workers' comp reform package in 2004. A University of California- Berkeley study estimates that California will realize annually 36.7 percent, or \$3.1 billion, in cost savings to its system due to those guidelines. Potentially, Hawaii could realize the same cost savings - \$98 million – under the DLIR's medical guidelines. To date, insurance carriers in California have dropped their premiums by 17 percent and in April of 2005, the state's rating agency recommended that insurers drop their rates again by another 10.4 percent.

The DLIR had formulated rules relating to vocational rehabilitation but due to the number of testimonies and numerous concerns raised, the DLIR deferred these rules. The DLIR will continue to work with the various stakeholders to discuss the concerns and differences of opinions submitted at the hearing and develop revised administrative rules for public hearing to be scheduled in late 2005.

"These reform measures benefit both employees and employers. Hawaii's injured workers will receive the quality medical care they deserve so they can return to work as soon as they are able, which results in cost-savings to employers," said Nelson B. Befitel, Director of Labor and Industrial Relations. "Although we still need legislation to achieve such cost savings seen in California since their 2004 reforms, these rules are a step of the right direction in bringing workers' compensation reform to Hawaii's employees and employers."

"These reforms allow our businesses to create more jobs and allows our economy to grow stronger every day," continued Befitel.

"The business community has long needed relief from excessively high workers' compensation insurance premiums," said Bill Short, Chairman of the Government Relations Committee of the Building Industry Association-Hawaii. "These new rules make the important first step in providing local business with the relief we are in need of."

The DLIR has released to the public their extensive 111-page report and recommendation titled "Recommendation to the Governor on Proposed Rules for Workers' Compensation Reform 2005" to Governor Lingle and can be downloaded at <http://www.hawaii.gov/labor>.

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OVERVIEW OF 2005 ADMINISTRATIVE RULES RELATIONS TO WORKERS' COMPENSATION

The Department has made 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 15, Chapter 15, Workers' Compensation Medical Fee Schedule

These new 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 to. The following is a summary of the major revisions to the administrative rules.

A. 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.*

B. 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 in which they should be conducted.
- These basic hearings rules modernize the 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 and gives the appearance of favoritism with regard to scheduling 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 that 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 that the parties receive a fair and impartial hearing, and that there is consistency in the Department's decisions.
- The interest of keeping the hearings process lax and "informal" must be balanced with keeping the process fair, equitable and efficient. These proposed rules strike that balance.

C. Provide an Alternative Resolution of Claims

- Allow parties to resolve their disputes through a private hearings officer, which will likely lead to claims being resolved in a more timely and 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.

D. 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 which set forth the Departments' criteria to approve 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.
- 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.

E. 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 the hearings officer with clear directives of the types of personnel action that are precluded under the workers' compensation laws.
- Codify definition used by the Hawaii Labor and Industrial Relations Appeals Board and the Department's Hearings Officers.

- Define other unclear terms used in the workers' compensation law and administrative rules for the effective, efficient, and transparent administration of Hawaii's workers' compensation laws.

F. 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 Official Disability Guidelines ("ODG").
- An employer or its insurance carrier cannot deny treatment that is based on these guidelines.
- Further, an injured worker may receive additional treatments or treatments 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.