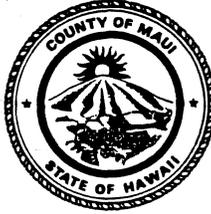


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March 23, 2004

MEMO TO: Gary Gates, Risk Manager

F R O M: <sup>WM</sup>Laureen L. Martin, Deputy Corporation Counsel

SUBJECT: **Time off from work to attend treatment appointments for workers' compensation claimants**

On February 13, 2004, you requested an opinion as to what type of leave should be utilized when workers' compensation claimants attend medical appointments during work hours.

A letter dated November 20, 1995, from the Department of Labor and Industrial Relations states the following:

In situations when employees are unable to schedule their appointments during off-hours, allowing employees to have appointments during regular working hours without utilizing their accumulated sick leave would be appropriate (emphasis added).

Therefore, the Department of Labor has clearly stated that an injured employee's sick leave is not to be utilized in attending medical appointments for treatment arising out of workers' compensation injuries. This conclusion is consistent with the benefits outlined in Chapter 386 of Hawaii Revised Statutes.

H.R.S. § 386-31 provides wage replacement benefits for "total disability". Temporary total disability ("TTD") provides wage replacement benefits for an injured worker for a temporary amount of time when the individual is unable to return to his job as a result of a work-related injury. The employer is required to provide the wage replacement benefits outlined in Chapter 386,

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regardless of any accumulated sick and vacation time.

Workers who attend a medical appointment during work hours would not be considered "totally disabled". Rather, the employee is working, but is unable to complete his entire work shift. Therefore, TTD pursuant to H.R.S. § 386-31 does not appear to be the appropriate classification for these periods of time.

In contrast, H.R.S. § 386-32 provides benefits for partial disability. Temporary partial disability ("TPD") provides benefits when a worker temporarily is unable to work his entire shift. For example, a worker who is able to work only six hours out of an eight-hour shift as a result of a compensable injury.

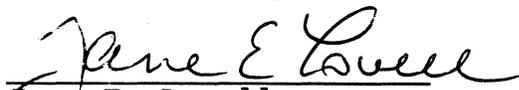
In Stanton v. Hawaiian Independent Refinery, Inc., AB 83-001 (August 9, 1989), the Labor Appeals Board held that the claimant was entitled to TPD for two hours a day, three days a week for approximately two months while attending physical therapy. Therefore, the Labor Appeals Board has determined that time missed from work for medical appointments related to a workers' compensation injury should be treated as temporary partial disability.

Therefore, it appears that TPD benefits are the most appropriate classification for time missed as a result of attending necessary medical appointments.<sup>1</sup> If you have any questions or concerns, please feel free to call me.

LLM:ma

S:\ALL\llm\wc\3-5-04 memo to risk manager re sick leave for doctors appointments5.wpd

APPROVAL RECOMMENDED:

  
Jane E. Lovell  
Deputy Corporation Counsel

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<sup>1</sup>This opinion assumes that the applicable collective bargaining contracts do not contain provisions relative to this issue. Therefore, it is important to note that this opinion may differ if this assumption is incorrect.