

INTRODUCTION

The Disability Compensation Division (DCD) of the Department of Labor and Industrial Relations prepared the information within this brochure to help you understand temporary disability insurance (TDI). Among other things, the brochure describes benefits, eligibility requirements for receiving benefits, how to file a claim, appeal rights, and other important points relating to the program.

For more information, contact your personnel office or call Employers' Protective Insurance Company.

Highlights of the Hawai'i Temporary Disability Insurance Law

WHAT IS TDI?

TDI, like workers' compensation and unemployment insurance programs, is a "wage replacement" program. If you are unable to work because of an off-the-job sickness or injury and you meet the qualifying conditions of the law, you will be paid disability or sick leave benefits to partially replace the wages you lost. TDI does not include medical care.

WHO PROVIDES TDI BENEFITS?

Your employer must provide TDI (or sick leave) benefits when you are unable to work because of a disability. The State does not pay TDI benefits; it makes sure every employer subject to the law provides benefits for the employer's employees. If your employer does not provide benefits, report this immediately to the DCD Office.

METHODS OF PROVIDING BENEFITS:

Your employer may adopt one or more of the following methods of providing TDI benefits:

1. by purchasing insurance from a licensed insurance carrier, called an "insured" plan.
2. by adopting a sick leave policy which must be approved by DCD, called a "self-insured" plan.
3. by a collective bargaining agreement which contains sick leave benefits at least as favorable as required by the TDI Law.

All plans must be submitted to DCD for review and approval before they can be put into effect. The benefits provided by your employer's plan will fall in one of the following categories:

1. Statutory benefits, meaning benefits which follow the minimum standards set by law.
2. Equivalent benefits, meaning benefits "as favorable as" statutory benefits, as determined by DCD.
3. Better-than-statutory benefits, meaning benefits that are superior to statutory benefits.

WHO PAYS FOR THE COST OF PROVIDING TDI BENEFITS?

The cost of providing TDI benefits may be financed in one of two ways:

1. Your employer may pay the entire cost.
2. Your employer may require you to share in the cost, in which case your employer may deduct one-half the premium cost but not more than 0.5% of your weekly wages up to the maximum set annually by DCD. If your employer deducts more than the law prescribes, notify the DCD Office immediately.

No contributions can be withheld from an employee who does not meet the law's eligibility requirements.

Example: An employee's weekly wage is \$100. The premium cost is 80¢ per \$100 of covered wages. Since the employer cannot charge the employee more than one-half the premium cost, the employee's share is 40¢. To further determine whether this amount is within statutory limit, calculate 0.5% of the employee's weekly wage of \$100. The answer is 50¢. The 40¢ premium withholding is within statutory limit.

No contributions can be withheld from an employee who does not meet the law's eligibility requirements.

WHO IS COVERED BY TDI?

Any worker who meets the eligibility requirements, whether hired on a part-time, intermittent, or full-time basis, must be provided TDI coverage by his/her employer. Excluded from coverage are employees of the federal government, certain domestic workers, insurance agents and real estate salespersons paid solely on commission basis, individuals under 18 years of age in the delivery or distribution of newspapers, certain family employees, student nurses, interns, and workers in other categories specifically exempted by law.

WHAT ARE THE ELIGIBILITY REQUIREMENTS?

You must have been in Hawai'i employment at least 14 weeks during each of which you were paid for 20 hours or more in the 52 weeks preceding the first day of disability and earned at least \$400. The 14 weeks need not be consecutive nor with only one employer.

OTHER REQUIREMENTS THAT MUST BE MET

You must meet the following conditions in addition to meeting the eligibility requirements:

1. Your injury or illness is not work related; not caused by your job.
2. Your injury or illness prevents you from performing your regular work.
3. Your disability is certified by a licensed physician, surgeon, dentist, chiropractor, osteopath, naturopath, or an accredited practitioner of a faith-healing group.
4. You were employed immediately before the date you suffered your injury or illness, or if you were separated from your job, your disability occurred within two weeks from your separation date.

HOW MUCH BENEFIT ARE YOU ENTITLED TO?

Your employer's plan (statutory, equivalent or better-than-statutory) determines how much benefit you will receive each week, how long you will be paid, and whether you have to serve a waiting period.

1. If your employer has a statutory plan; i.e., a plan which provides benefits according to minimum benefit standards, you are entitled to:
 - a. cash benefits up to 58% of your average weekly wage rounded to the next higher dollar, but not more than the maximum weekly benefit amount annually set by DCD.

Example: The maximum weekly benefit amount for 2022* is \$697. Based on 58% of your average weekly wage, your weekly benefit amount for 2022 will range from a minimum of \$14 to a maximum of \$697.

- b. benefits from the eighth day of disability; in other words, there is a seven-consecutive-day waiting period.
- c. a maximum of 26 weeks of payments during a benefit year.

2. If your employer has a sick leave plan which differs from statutory benefits, but which has been approved by DCD as an equivalent or better-than-statutory plan, your weekly benefit amount, duration of payments, and whether or not a waiting period is required will be determined by the plan. Ask your employer for details of the plan.

WHAT DO YOU DO IN CASE YOU SUFFER A DISABILITY?

If you suffer a disabling nonwork-connected injury or sickness and your employer provides insured statutory benefits:

1. Notify your employer immediately of your disability.
2. Ask for Form TDI-45, Claim for Disability Benefits.
3. Complete Part A of the claim form, Claimant's Statement.
4. Take the form to your doctor to complete Part C, Doctor's Statement.
5. Have your employer complete Part B, Employer's Statement.
6. Have your employer mail the form to your employer's TDI insurance company.
7. Your employer or the insurance company will notify you of your entitlement to benefits.

Self-insured employers or employers with union contracts are generally authorized to use their own claim forms or have different reporting requirements. Therefore, disabled employees of self-insured employers or employers with union contracts should inquire at the employer's personnel office regarding claims filing procedures.

HOW SOON SHOULD YOU FILE YOUR CLAIM?

The law requires that you file your claim within 90 days from the date you were disabled. If you file your claim after 90 days, you may lose part of your benefits unless good cause can be shown. If you file your claim 26 or more weeks after your disability, you will not be entitled to any benefits. To avoid partial or complete loss of benefits, file your claim within 90 days.

WHAT IF YOU ARE DENIED BENEFITS OR DISAGREE WITH YOUR WEEKLY BENEFIT AMOUNT?

Your employer or insurance carrier is required to send you written notice (three copies) if your claim is denied. If you disagree with the denial, you may appeal by explaining why you disagree on the notice and send two copies to the DCD Office. You have 20 days in which to appeal.

The DCD Office will notify you of the time and place of the appeal hearing. An impartial referee will hear your case. Although it is not required, you may have an attorney represent you at the hearing. If you do not agree with the referee's decision, you may further appeal to the circuit court.

You may appeal to the DCD Office if you disagree with the amount of benefits paid you by your employer or the TDI insurance carrier. Bring evidence such as pay slips or check stubs to prove you are entitled to more benefits.

INELIGIBILITY FOR BENEFITS

You are not eligible for benefits if:

1. You performed work for pay during your period of disability.
2. You were denied unemployment insurance benefits because of a work stoppage due to a labor dispute.
3. Your injury was willfully and intentionally self-inflicted or it was received while committing a criminal offense.
4. You received or will receive unemployment insurance, workers' compensation or federal disability benefits.

THE SPECIAL DISABILITY FUND AND WHO MAY FILE AGAINST IT

A Special Disability Fund was established through assessments imposed on all employer's subject to the TDI Law. According to the law, this fund can only be used to pay benefits to:

1. employees whose employers have failed to provide TDI coverage or who have gone bankrupt.
2. unemployed claimants who while receiving unemployment insurance benefits became disabled and were held ineligible for further benefits due to disability.

If you fall in either one of the above categories at the time you became disabled, notify the nearest DCD Office immediately. The DCD Office will instruct you on how to file a claim against the Special Disability Fund, and what your weekly benefit amount and benefit duration will be.

NOTICE OF INSURANCE

Your employer should have a "Notice to Employees" poster posted about the employer's place of business which informs all employees that they are being provided TDI coverage in accordance with the TDI Law. If the poster does not contain information on benefit entitlement, ask your employer for details. If no poster is posted, call this to your employer's attention or to that of the nearest DCD Office.

SUBROGATION OF PAYMENTS RECEIVED OR RECEIVABLE FROM OTHER SOURCES

If you were paid or expect to be paid cash benefits from other sources (except your private income protection plan) for a disability which your employer or their insurance carrier has already paid you TDI benefits, the employer or insurance carrier has the right to claim or subrogate the amount they paid you. The following illustration may help you understand what subrogation is:

Suppose while walking in a public restaurant you slipped on wet pavement and suffered a broken ankle. During your disability you received TDI benefits from your employer or the insurance carrier. As a result of a suit you filed against the restaurant, or of an agreement concluded between you and the restaurant, you received a cash settlement which compensated you for wages lost during your disability. Since your employer or the insurance carrier has paid you TDI benefits to replace your lost wages, the employer or the insurance carrier has the right to claim from the cash settlement or to require reimbursement from you for the amount of TDI benefits paid you.

Subrogation may also extend to workers' compensation benefits if such benefits are awarded subsequently and cover the same disability period.

PENALTIES

You will be held ineligible for benefits for an indefinite period if you knowingly make a false statement, misrepresent a fact or fail to disclose a material fact in order to obtain unentitled benefits. You will be required to repay all improperly received benefits.