October 27, 1997

The Honorable Lorraine H. Akiba
Director of Labor and Industrial Relations
State of Hawaii
830 Punchbowl Street, Room 321
Honolulu, Hawaii 96813

Attn.: Mr. Gary S. Hamada, Administrator
Disability Compensation Division

Dear Ms. Akiba:

Re: Department of Education's Temporary Disability Insurance Plans for Full-time Teachers and Other Part-time Employees

By memorandum dated June 25, 1997, Mr. Gary S. Hamada, Administrator for the Disability Compensation Division of the Department of Labor and Industrial Relations, inquired whether the Department of Education ("DOE") must pay a full-time teacher, who is also employed by the A+ After-School Child Care Program ("A+"), temporary disability benefits under both its temporary disability insurance ("TDI") plans for full-time employees and its TDI plan for A+ employees.

Under the TDI law, an employer must provide certain benefits to an eligible individual who becomes disabled for work. The eligibility requirements and the amount and duration of benefits are set out in chapter 392, Hawaii Revised Statutes (HRS). An employer may, however, pursuant to section 392-41(a)(4) or (5), submit a plan or agreement to the Director of Labor and Industrial Relations that provides for the payment of benefits if the benefits are "at least as favorable as the disability benefits required by" the TDI law.

In the case of the DOE, we understand that it essentially has two TDI plans. One plan, approved by the Department of Labor and Industrial Relations pursuant to section 392-41(a)(5), covers its full-time teachers and requires payment of three weeks of benefits at full pay without a waiting period. DOE's A+ and other employees are paid benefits in accordance with Hawaii's TDI law found in chapter 392. If an individual is employed by the DOE as both a full-time teacher and an A+ employee and the individual becomes disabled for both jobs, the DOE will pay the individual TDI benefits under the full-time teacher TDI plan but not under the A+ TDI plan.

We believe that the DOE must pay the individual under both TDI plans in order to compensate the individual for the lost wages from both the full-time teacher and A+ employments, because section 392-21(b) states that "the computation and distribution of benefit payments shall correspond to the greatest extent feasible, to the employee's wage loss due to the employee's disability."

The findings and purpose of the Legislature in enacting the TDI law are set forth in section 392-2, HRS, which states in part as follows: "A large portion of the labor force of this State annually is disabled from pursuing gainful employment by reason of nonoccupational sickness or accident and as a result suffers serious loss of income. . . . Since the hardship for workers and their families mounts with the extension of the duration of the disability from whatever cause, there is a need to fill the existing gaps in protection and to provide benefits to individuals in current employment that will afford to them reasonable compensation for wage loss caused by disabling nonoccupational sickness or accident where the disability is temporary in nature."

Once eligible pursuant to sections 392-6 and 392-25, HRS,[1] the individual is, pursuant to sections 392-21

and 392-23, HRS, entitled to benefits calculated on the individual's average weekly wage for a period not to exceed twenty-six weeks. Section 392-7, HRS, requires the average weekly wage to "be based upon the wages that the employee would receive from the employee's employer except for the employee's disability." Section 392-21(b), HRS, declares that "It is the policy of . . . chapter [392] that the computation and distribution of benefit payments shall correspond to the greatest extent feasible, to the employee's wage loss due to the employee's disability."

We seek an answer to your query from the statutory framework of chapter 392. To do so, we apply the following principles of statutory construction.

> When construing a statute, our foremost obligation is to ascertain and give effect to the intention of the legislature, which is obtained primarily from the language contained in the statute itself. Where the language of the statute is plain and unambiguous, our only duty is to give effect to the statute's plain and obvious meaning.

Iddings v. Mee-Lee, 82 Haw. 1, 6-7, 919 P.2d 263, 268-69 (1996) (citations and footnote omitted); Pacific Ins. Co. v. Esperanza, 73 Haw. 403, 406, 833 P.2d 890, 892 (1992). And "[w]here the letter of the law has produced a harsh result contrary to its intendment, we have not hesitated to eschew a strict interpretation and to seek meaning from its policy." Dependents of Crawford v. Financial Plaza Contractors, 64 Haw. 415, 421, 643 P.2d 48, 52 (1982) (quoting Montalvo v. Chang, 64 Haw. 345, 356, 641 P.2d 1321, 1329 (1982)). A "departure from [a] literal construction is justified when such construction would produce an absurd and unjust result and the literal construction in the particular action is clearly inconsistent with the purposes and policies of the act." Hawaiian Ins. & Guar. Co. v. Financial Sec. Ins. Co., 72 Haw. 80, 85, 807 P.2d 1256, 1259 (1991) (quoting Pacific Ins. Co. v. Oregon Auto. Ins. Co., 53 Haw. 208, 211, 490 P.2d 899, 901 (1971)).

The statute and the rules do not expressly address the situation presented and it was probably never contemplated that an employee would be covered by two separate plans when hired by the same employer. It is clear, however, that section 392-7, HRS, requires that an individual be paid TDI benefits based on the individual's average weekly wage. In section 392-21(b), the Legislature declared that benefit payments "shall correspond to the greatest extent feasible, to the employee's wage loss due to the employee's disability." Thus, the average weekly wages from both employments (the full-time teacher position and the A+ job) must be considered in order to pay the correct TDI benefits. Paying the individual only under the full-time teacher TDI plan compensates the individual for the wage loss due to the teaching job only; it does not compensate the individual for the wage loss from the A+ employment.

This approach is consistent with the situation involving an individual concurrently employed with two or more employers. By Hawaii Administrative Rule section 12-11-38(a), which was adopted by the Department of Labor and Industrial Relations, if an individual is unable to perform work for each of the employers, the employee would be entitled to receive benefits under each employer's TDI plans.

We believe that allowing DOE to pay only under one plan would produce a harsh result that is contrary to the legislative intent to provide benefits commensurate with wage loss from all employments and section 392-2's command to construe the statute "liberally . . . in the light of the stated reasons for its enactment." The statutory purpose evinces a policy that a single employer who hires individuals for different jobs should not be able to partially escape its liability to the disabled individual by establishing two separate plans. Requiring the DOE to pay under both plans achieves the Legislature's declared purpose.

Very truly yours,

Frances E. H. Lum
Deputy Attorney General

APPROVED:

Margery S. Bronster
Attorney General

[1]To be eligible for TDI benefits, the employee must be in "current employment" as defined by section 329-6, HRS, and pursuant to section 392-25, HRS, have been in employment for at least fourteen weeks during each of which the employee received remuneration for twenty or more hours and earned wages of at least $400 during the four completed calendar quarters preceding the disability. By Hawaii Administrative Rule section 12-11-38(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."
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