

**WORKERS COMPENSATION STATUTE OF  
LIMITATIONS AND BURDEN OF PROOF**

1999 GENERAL SESSION

STATE OF UTAH

**Sponsor: John E. Swallow**

AN ACT RELATING TO LABOR; ADDRESSING TIME LIMITS ON FILING WORKERS COMPENSATION CLAIMS; ADDRESSING ORDERS TO SHOW CAUSE; AND MAKING TECHNICAL CHANGES.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:

**34A-2-410**, as renumbered and amended by Chapter 375, Laws of Utah 1997

**34A-2-411**, as renumbered and amended by Chapter 375, Laws of Utah 1997

**34A-2-417**, as renumbered and amended by Chapter 375, Laws of Utah 1997

**34A-3-109**, as renumbered and amended by Chapter 375, Laws of Utah 1997

*Be it enacted by the Legislature of the state of Utah:*

Section 1. Section **34A-2-410** is amended to read:

**34A-2-410. Temporary disability -- Amount of payments -- State average weekly wage defined.**

(1) (a) In case of temporary disability, so long as the disability is total, the employee shall receive 66-2/3% of that employee's average weekly wages at the time of the injury but:

(i) not more than a maximum of 100% of the state average weekly wage at the time of the injury per week; and

(ii) not less than a minimum of \$45 per week plus \$5 for a dependent spouse and \$5 for each dependent child under the age of 18 years, up to a maximum of four dependent children, not to exceed the average weekly wage of the employee at the time of the injury, but not to exceed 100% of the state average weekly wage at the time of the injury per week.

(b) In no case shall the compensation benefits exceed 312 weeks at the rate of 100% of the state average weekly wage at the time of the injury over a period of [eight] 12 years from the date of the injury.

(2) In the event a light duty medical release is obtained prior to the employee reaching a fixed state of recovery, and when no light duty employment is available to the employee from the employer, temporary disability benefits shall continue to be paid.

(3) The "state average weekly wage" as referred to in this chapter and Chapter 3, Utah Occupational Disease Act, shall be determined by the commission as follows:

(a) On or before June 1 of each year, the total wages reported on contribution reports to the Division of Workforce Information and Payment Services for the preceding calendar year shall be divided by the average monthly number of insured workers determined by dividing the total insured workers reported for the preceding year by 12.

(b) The average annual wage obtained under Subsection (3)(a) shall be divided by 52.

(c) The average weekly wage determined under Subsection (3)(b) is rounded to the nearest dollar.

(4) The state average weekly wage determined under Subsection (3) shall be used as the basis for computing the maximum compensation rate for:

(a) injuries or disabilities arising from occupational disease that occurred during the twelve-month period commencing July 1 following the June 1 determination; and

(b) any death resulting from the injuries or disabilities arising from occupational disease.

Section 2. Section **34A-2-411** is amended to read:

**34A-2-411. Temporary partial disability -- Amount of payments.**

(1) If the injury causes temporary partial disability for work, the employee shall receive weekly compensation equal to:

(a) 66-2/3% of the difference between the employee's average weekly wages before the accident and the weekly wages the employee is able to earn after the accident, but not more than 100% of the state average weekly wage at the time of injury; plus

(b) \$5 for a dependent spouse and \$5 for each dependent child under the age of 18 years, up to a maximum of four such dependent children, but only up to a total weekly compensation that does not exceed 100% of the state average weekly wage at the time of injury.

(2) The commission may order an award for temporary partial disability for work at any time

prior to [eight] 12 years after the date of the injury to an employee:

(a) whose physical condition resulting from the injury is not finally healed and fixed [eight] 12 years after the date of injury; and

(b) who files an application for hearing under Section 34A-2-417.

(3) The duration of weekly payments may not exceed 312 weeks nor continue more than [eight] 12 years after the date of the injury. Payments shall terminate when the disability ends or the injured employee dies.

Section 3. Section **34A-2-417** is amended to read:

**34A-2-417. Claims and benefits -- Time limits for filing -- Burden of proof.**

(1) Except with respect to prosthetic devices, in nonpermanent total disability cases an employee's medical benefit entitlement ceases if for a period of three consecutive years the employee does not:

(a) incur medical expenses reasonably related to the industrial accident; and

(b) submit the medical expenses incurred to the employee's employer or insurance carrier for payment.

(2) (a) A claim [for compensation for temporary total disability benefits, temporary partial disability benefits, permanent partial disability benefits, or permanent total disability benefits] described in Subsection (2)(b) is barred, unless the employee:

(i) files an application for hearing [is filed] with the Division of Adjudication [within] no later than six years [after] from the date of the accident[-]; and

(ii) by no later than 12 years from the date of the accident, is able to meet the employee's burden of proving that the employee is due the compensation claimed under this chapter.

(b) Subsection (2)(a) applies to a claim for compensation for:

(i) temporary total disability benefits;

(ii) temporary partial disability benefits;

(iii) permanent partial disability benefits; or

(iv) permanent total disability benefits.

(c) The commission may enter an order awarding or denying an employee's claim for

compensation under this chapter within a reasonable time period beyond 12 years from the date of the accident, if:

(i) the employee complies with Subsections (2)(a)(i) and (ii); and

(ii) 12 years from the date of the accident:

(A) (I) the employee is fully cooperating in a commission approved reemployment plan; and

(II) the results of that commission approved reemployment plan are not known; or

(B) the employee is actively adjudicating issues of compensability before the commission.

(3) A claim for death benefits is barred unless an application for hearing is filed within one year of the date of death of the employee.

(4) (a) (i) Subject to Subsections (2)(c) and (4)(b), after an employee files an application for hearing within six years from the date of the accident, the Division of Adjudication may enter an order to show cause why the employee's claim should not be dismissed because the employee has failed to meet the employee's burden of proof to establish an entitlement to compensation claimed in the application for hearing.

(ii) The order described in Subsection (4)(a)(i) may be entered on the motion of the:

(A) Division of Adjudication;

(B) employee's employer; or

(C) employer's insurance carrier.

(b) Under Subsection (4)(a), the Division of Adjudication may dismiss a claim:

(i) without prejudice; or

(ii) with prejudice only if:

(A) the Division of Adjudication adjudicates the merits of the employee's entitlement to the compensation claimed in the application for hearing; or

(B) the employee fails to comply with Subsection (2)(a)(ii).

(c) If a claim is dismissed without prejudice under Subsection (4)(b), the employee is subject to the time limits under Subsection (2)(a) to claim compensation under this chapter.

Section 4. Section **34A-3-109** is amended to read:

**34A-3-109. Limitations -- Rights barred if not filed within limits -- Burden of proof.**

(1) The limitation of rights regarding medical benefits provided in Subsection 34A-2-417(1) does not apply to compensable occupational diseases under the terms of this chapter.

(2) (a) A claim [for compensation for temporary total disability benefits, temporary partial disability benefits, permanent partial disability benefits, or permanent total disability benefits] described in Subsection (2)(b) is barred, unless the employee:

(i) files an application for hearing [is filed] with the Division of Adjudication [within] no later than six years [after] from the date the employee's cause of action arose[-]; and

(ii) by no later than 12 years from the date on which the employee's cause of action arose, is able to meet the employee's burden of proving that the employee is due the compensation claimed under this chapter.

(b) Subsection (2)(a) applies to a claim for compensation for:

(i) temporary total disability benefits;

(ii) temporary partial disability benefits;

(iii) permanent partial disability benefits; or

(iv) permanent total disability benefits.

(c) The commission may enter an order awarding or denying an employee's claim for compensation under this chapter within a reasonable time period beyond 12 years from the date on which the employee's cause of action arose, if:

(i) the employee complies with Subsections (2)(a)(i) and (ii); and

(ii) 12 years from the date on which the employee's cause of action arose:

(A) (I) the employee is fully cooperating in a commission approved reemployment plan; and

(II) the results of that commission approved reemployment plan are not known; or

(B) the employee is actively adjudicating issues of compensability before the commission.

(3) (a) [A] Subject to Subsection (3)(b), a claim for death benefits is barred unless an application for hearing is filed within one year of the date the deceased employee's dependents knew, or in the exercise of reasonable diligence should have known, that the employee's death was caused by an occupational disease. [But in no case shall the]

(b) A dependents' claim for death benefits may not be actionable more than six years after

the employee's cause of action arises.

(4) (a) (i) Subject to Subsections (2)(c) and (4)(b), after an employee files an application for hearing within six years from the date on which the cause of action arose, the Division of Adjudication may enter an order to show cause why the employee's claim should not be dismissed because the employee has failed to meet the employee's burden of proof to establish an entitlement to compensation claimed in the application for hearing.

(ii) The order described in Subsection (4)(a)(i) may be entered on the motion of the:

(A) Division of Adjudication;

(B) employee's employer; or

(C) employer's insurance carrier.

(b) Under Subsection (4)(a), the Division of Adjudication may dismiss a claim in an application for hearing:

(i) without prejudice; or

(ii) with prejudice only if:

(A) the Division of Adjudication adjudicates the merits of the employee's entitlement to the compensation claimed in the application for hearing; or

(B) the employee fails to comply with Subsection (2)(a)(ii).

(c) If a claim is dismissed without prejudice under Subsection (4)(b), the employee is subject to the time limits under Subsection (2)(a) to claim compensation under this chapter.