

**WORKERS' COMPENSATION - EMPLOYEES**  
**WILLFUL MISCONDUCT**

2000 GENERAL SESSION

STATE OF UTAH

**Sponsor: Parley Hellewell**

AN ACT RELATING TO LABOR; AMENDING PROVISIONS RELATED TO EMPLOYEE MISCONDUCT AND WORKERS' COMPENSATION; ADDRESSING THE APPLICATION TO STATE INSTITUTIONS OF HIGHER EDUCATION; PROVIDING A SEVERABILITY CLAUSE; AND MAKING TECHNICAL CHANGES.

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

AMENDS:

**34A-2-302**, as last amended by Chapter 187, Laws of Utah 1999

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

Section 1. Section **34A-2-302** is amended to read:

**34A-2-302. Employee's willful misconduct -- Penalty.**

(1) For purposes of this section:

(a) "controlled substance" is as defined in Section 58-37-2;

(b) "local government employee" is as defined in Section 34-41-101;

(c) "local governmental entity" is as defined in Section 34-41-101;

(d) "state institution of higher education" is as defined in Section 34-41-101; and

(e) "valid prescription" is a prescription, as defined in Section 58-37-2, that:

(i) is prescribed for a controlled substance for use by the employee for whom it was prescribed; and

(ii) has not been altered or forged.

~~[(1)]~~ (2) An employee may not:

(a) remove, displace, damage, destroy, or carry away any safety device or safeguard provided for use in any employment or place of employment;

(b) interfere in any way with the use of a safety device or safeguard described in Subsection ~~[(1)]~~ (2)(a) by any other person;

(c) interfere with the use of any method or process adopted for the protection of any employee in the employer's employment or place of employment; or

(d) fail or neglect to follow and obey orders and to do every other thing reasonably necessary to protect the life, health, and safety of employees.

~~[(2)]~~ (3) Except in case of injury resulting in death:

(a) compensation provided for by this chapter shall be reduced 15% when injury is caused by the willful failure of the employee:

(i) to use safety devices when provided by the employer; or

(ii) to obey any order or reasonable rule adopted by the employer for the safety of the employee; and

(b) except when the employer permitted, encouraged, or had actual knowledge of the conduct described in Subsection ~~[(2)]~~ (3)(b)(i) through (iii), disability compensation may not be awarded under this chapter or Title 34A, Chapter 3, Utah Occupational Disease Act, to an employee when the major contributing cause of the employee's injury is the employee's:

(i) use of ~~[illegal substances]~~ a controlled substance that the employee did not obtain under a valid prescription;

(ii) intentional abuse of ~~[drugs]~~ a controlled substance that the employee obtained under a valid prescription if the employee uses the controlled substance intentionally:

(A) in excess of prescribed therapeutic amounts; or

(B) in an otherwise abusive manner; or

(iii) intoxication from alcohol with a blood or breath alcohol concentration of .08 grams or greater as shown by a chemical test.

~~[(3)]~~ (4) (a) For purposes of Subsection ~~[(2)]~~ (3), as shown by a chemical test that conforms to scientifically accepted analytical methods and procedures and includes verification or confirmation of any positive test result by gas chromatography, gas chromatography-mass spectroscopy, or other comparably reliable analytical method, before the result of the test may be used as a basis for the presumption, it is presumed that the major contributing cause of the employee's injury is the employee's conduct described in Subsections ~~[(2)]~~ (3)(b)(i) through (iii) if at the time of the injury[;

as shown by a chemical test]:

(i) the employee has in the employee's system:

(A) any amount of ~~[an illegal substance]~~ a controlled substance or its metabolites if the employee did not obtain the controlled substance under a valid prescription; or

(B) ~~[drugs]~~ a controlled substance the employee obtained under a valid prescription or the metabolites of the controlled substance if the amount in the employee's system is consistent with the employee using the controlled substance intentionally:

(I) in excess of prescribed therapeutic amounts; or

(II) in an otherwise abusive manner.

(ii) the employee has a blood or breath alcohol concentration of .08 grams or greater.

(b) The presumption created under Subsection ~~[(3)]~~ (4)(a) may be rebutted by evidence showing that:

(i) the chemical test creating the presumption is inaccurate because the employer failed to comply with:

(A) Sections 34-38-4 through 34-38-6; or

(B) if the employer is a local governmental entity or state institution of higher education, Section 34-41-104 and Subsection 34-41-103(5);

(ii) the employee did not engage in the conduct described in Subsections ~~[(2)]~~ (3)(b)(i) through (iii);

(iii) the test results do not exclude the possibility of passive inhalation of marijuana because the concentration of total urinary cannabinoids is less than 50 nanograms/ml as determined by a test conducted in accordance with:

(A) Sections 34-38-4 through 34-38-6; or

(B) if the employer is a local governmental entity or state institution of higher education, Section 34-41-104 and Subsection 34-41-103(5);

~~[(iii)]~~ (iv) a competent medical opinion from a physician verifies that the amount in the employee's system of the following does not support a finding that the conduct described in Subsections ~~[(2)]~~ (3)(b)(i) through (iii) was the major contributing cause of the employee's injury [is

not supported by the amount in the employee's system of]:

(A) ~~[illegal substances;]~~ any amount of a controlled substance or its metabolites if the employee did not obtain the controlled substance under a valid prescription; or

(B) ~~[drugs]~~ a controlled substance the employee obtained under a valid prescription or the metabolites of the controlled substance if the amount in the employee's system is consistent with the employee using the controlled substance intentionally:

(I) in excess of prescribed therapeutic amounts; or

(II) in an otherwise abusive manner;

(C) alcohol; or

(D) a combination of Subsections ~~[(3)]~~ (4)(b)(iii)(A) through (C); or

~~[(iv)]~~ (v) the conduct described in Subsections ~~[(2)]~~ (3)(b)(i) through (iii) was not the major contributing cause of the employee's injury.

(c) (i) Except as provided in Subsections ~~[(3)]~~ (4)(c)(ii) and (iii), if a chemical test that creates the presumption under Subsection ~~[(3)]~~ (4)(a) is taken at the request of the employer, the employer shall comply with:

(A) Title 34, Chapter 38, Drug and Alcohol Testing; or

(B) if the employee is a local governmental employee ~~[as defined in Section 34-41-101]~~ or an employee of a state institution of higher education, Title 34, Chapter 41, Local Governmental Entity Drug-Free Workplace Policies.

(ii) Notwithstanding Section 34-38-13, the results of a test taken under Title 34, Chapter 38, may be disclosed to the extent necessary to establish or rebut the presumption created under Subsection ~~[(3)]~~ (4)(a).

(iii) Notwithstanding Section 34-41-103, the results of a test taken under Title 34, Chapter 41, may be disclosed to the extent necessary to establish or rebut the presumption created under Subsection ~~[(3)]~~ (4)(a).

(5) If any provision of this section, or the application of any provision of this section to any person or circumstance, is held invalid, the remainder of this section shall be given effect without the invalid provision or application.

