

OCCUPATIONAL SAFETY AND HEALTH AMENDMENTS

2013 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Luz Robles

House Sponsor: _____

LONG TITLE

General Description:

This bill modifies the Utah Occupational Safety and Health Act to address inspections of workplaces.

Highlighted Provisions:

This bill:

- ▶ requires the creation of a program of investigations;
- ▶ modifies where civil penalties are to be deposited;
- ▶ creates the Occupational Safety and Health Restricted Account; and
- ▶ makes technical and conforming amendments.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

34A-6-301, as last amended by Laws of Utah 2011, Chapter 297

34A-6-307, as last amended by Laws of Utah 2008, Chapter 382

ENACTS:

34A-6-308, Utah Code Annotated 1953



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

29 Section 1. Section **34A-6-301** is amended to read:

30 **34A-6-301. Inspection and investigation of workplace, worker injury, illness, or**
31 **complaint -- Warrants -- Attendance of witnesses -- Recordkeeping by employers --**
32 **Employer and employee representatives -- Request for inspection -- Compilation and**
33 **publication of reports and information -- Rules.**

34 (1) (a) The division or its representatives, upon presenting appropriate credentials to
35 the owner, operator, or agent in charge, may:

36 (i) enter without delay at reasonable times [~~any~~] a workplace where work is performed
37 by an employee of an employer;

38 (ii) inspect and investigate during regular working hours and at other reasonable times
39 in a reasonable manner, [~~any~~] a workplace, worker injury, occupational disease, or complaint
40 and [~~all~~] the pertinent methods, operations, processes, conditions, structures, machines,
41 apparatus, devices, equipment, and materials in the workplace; and

42 (iii) question privately [~~any such~~] an employer, owner, operator, agent, or employee.

43 (b) The division shall establish a program for inspections of workplaces in this state
44 under which at least 35% of the inspections conducted by the division in a fiscal year are
45 conducted notwithstanding that a notice, report, or complaint of a hazardous condition or injury
46 at the workplace has not been made.

47 [~~(b)~~] (c) The division, upon an employer's refusal to permit an inspection, may seek a
48 warrant pursuant to the Utah Rules of Criminal Procedure.

49 (2) (a) The division or its representatives may require the attendance and testimony of
50 [~~witnesses~~] a witness and the production of evidence under oath.

51 (b) [~~Witnesses~~] A witness shall receive fees and mileage in accordance with Section
52 78B-1-119.

53 (c) (i) If [~~any~~] a person fails or refuses to obey an order of the division to appear, any
54 district court within the jurisdiction of which [~~such~~] the person is found, or resides or transacts
55 business, upon the application by the division, shall have jurisdiction to issue to [~~any~~] a person
56 an order requiring that person to:

57 (A) appear to produce evidence if, as, and when so ordered; and

58 (B) give testimony relating to the matter under investigation or in question.

59 (ii) [~~Any~~] A failure to obey an order of the court described in this Subsection (2)(c)
60 may be punished by the court as a contempt.

61 (3) (a) The commission shall make rules in accordance with Title 63G, Chapter 3, Utah
62 Administrative Rulemaking Act, requiring [~~employers~~] an employer:

63 (i) to keep records regarding activities related to this chapter considered necessary for
64 enforcement or for the development of information about the causes and prevention of
65 occupational accidents and diseases; and

66 (ii) through posting of notices or other means, to inform employees of their rights and
67 obligations under this chapter including applicable standards.

68 (b) The commission shall make rules in accordance with Title 63G, Chapter 3, Utah
69 Administrative Rulemaking Act, requiring [~~employers~~] an employer to keep records regarding
70 any work-related death and injury and any occupational disease as provided in this Subsection
71 (3)(b).

72 (i) [~~Each~~] An employer shall investigate or cause to be investigated all work-related
73 injuries and occupational diseases and any sudden or unusual occurrence or change of
74 conditions that pose an unsafe or unhealthful exposure to employees.

75 (ii) [~~Each~~] An employer shall, within eight hours of occurrence, notify the division of
76 any:

77 (A) work-related fatality;

78 (B) disabling, serious, or significant injury; or

79 (C) occupational disease incident.

80 (iii) (A) [~~Each~~] An employer shall file a report with the Division of Industrial
81 Accidents within seven days after the occurrence of an injury or occupational disease, after the
82 employer's first knowledge of the occurrence, or after the employee's notification of the same,
83 in the form prescribed by the Division of Industrial Accidents, of any work-related fatality or
84 any work-related injury or occupational disease resulting in:

85 (I) medical treatment;

86 (II) loss of consciousness;

87 (III) loss of work;

88 (IV) restriction of work; or

89 (V) transfer to another job.

90 (B) (I) ~~[Each]~~ An employer shall file a subsequent report with the Division of
91 Industrial Accidents of any previously reported injury or occupational disease that later resulted
92 in death.

93 (II) The subsequent report shall be filed with the Division of Industrial Accidents
94 within seven days following the death or the employer's first knowledge or notification of the
95 death.

96 (iv) A report is not required for minor injuries, such as cuts or scratches that require
97 first-aid treatment only, unless a treating physician files, or is required to file, the Physician's
98 Initial Report of Work Injury or Occupational Disease with the Division of Industrial
99 Accidents.

100 (v) A report is not required:

101 (A) for occupational diseases that manifest after the employee is no longer employed
102 by the employer with which the exposure occurred; or

103 (B) ~~[where]~~ when the employer is not aware of an exposure occasioned by the
104 employment ~~[which]~~ that results in a compensable occupational disease as defined by Section
105 34A-3-103.

106 (vi) ~~[Each]~~ An employer shall provide the employee with:

107 (A) a copy of the report submitted to the Division of Industrial Accidents; and

108 (B) a statement, as prepared by the Division of Industrial Accidents, of the employee's
109 rights and responsibilities related to the industrial injury or occupational disease.

110 (vii) ~~[Each]~~ An employer shall maintain a record in a manner prescribed by the
111 commission of all work-related fatalities or work-related injuries and of all occupational
112 diseases resulting in:

113 (A) medical treatment;

114 (B) loss of consciousness;

115 (C) loss of work;

116 (D) restriction of work; or

117 (E) transfer to another job.

118 (viii) The commission shall make rules in accordance with Title 63G, Chapter 3, Utah
119 Administrative Rulemaking Act, to implement this Subsection (3)(b) consistent with nationally
120 recognized rules or standards on the reporting and recording of work-related injuries and

121 occupational diseases.

122 (c) (i) The commission shall make rules in accordance with Title 63G, Chapter 3, Utah
123 Administrative Rulemaking Act, requiring [~~employers~~] an employer to keep records regarding
124 exposures to potentially toxic materials or harmful physical agents required to be measured or
125 monitored under Section 34A-6-202.

126 (ii) (A) The rules made under Subsection (3)(c)(i) shall provide for employees or their
127 representatives:

128 (I) to observe the measuring or monitoring; and

129 (II) to have access to the records of the measuring or monitoring, and to records that
130 indicate [~~their~~] employees' exposure to toxic materials or harmful agents.

131 (B) [~~Each~~] An employer shall promptly notify [~~employees~~] an employee being exposed
132 to toxic materials or harmful agents in concentrations that exceed prescribed levels and inform
133 [~~any such~~] the employee of the corrective action being taken.

134 (4) Information obtained by the division shall be obtained with a minimum burden
135 upon employers, especially those operating small businesses.

136 (5) A representative of the employer and a representative authorized by employees
137 shall be given an opportunity to accompany the division's authorized representative during the
138 physical inspection of any workplace. If there is no authorized employee representative, the
139 division's authorized representative shall consult with a reasonable number of employees
140 concerning matters of health and safety in the workplace.

141 (6) (a) (i) (A) [~~Any~~] An employee or representative of employees who believes that a
142 violation of an adopted safety or health standard exists that threatens physical harm, or that an
143 imminent danger exists, may request an inspection by giving notice to the division's authorized
144 representative of the violation or danger. The notice shall be:

145 (I) in writing, setting forth with reasonable particularity the grounds for notice; and

146 (II) signed by the employee or representative of employees.

147 (B) A copy of the notice shall be provided the employer or the employer's agent no
148 later than at the time of inspection.

149 (C) Upon request of the person giving notice, the person's name and the names of
150 individual employees referred to in the notice may not appear in the copy or on any record
151 published, released, or made available pursuant to Subsection (7).

152 (ii) (A) If upon receipt of the notice the division's authorized representative determines
153 there are reasonable grounds to believe that a violation or danger exists, the authorized
154 representative shall make a special inspection in accordance with this section as soon as
155 practicable to determine if a violation or danger exists.

156 (B) If the division's authorized representative determines there are no reasonable
157 grounds to believe that a violation or danger exists, the authorized representative shall notify
158 the employee or representative of the employees in writing of that determination.

159 (b) (i) [~~Prior to~~] Before or during [~~any~~] an inspection of a workplace, [~~any~~] an
160 employee or representative of employees employed in the workplace may notify the division or
161 its representative of any violation of a standard that [~~they have~~] the individual has reason to
162 believe exists in the workplace.

163 (ii) The division shall:

164 (A) by rule, establish procedures for informal review of any refusal by a representative
165 of the division to issue a citation with respect to [~~any~~] an alleged violation; and

166 (B) furnish the [~~employees~~] employee or representative of employees requesting
167 review a written statement of the reasons for the division's final disposition of the case.

168 (7) (a) The division may compile, analyze, and publish, either in summary or detailed
169 form, all reports or information obtained under this section, subject to the limitations set forth
170 in Section 34A-6-306.

171 (b) The commission shall make rules in accordance with Title 63G, Chapter 3, Utah
172 Administrative Rulemaking Act, necessary to carry out its responsibilities under this chapter,
173 including rules for information obtained under this section, subject to the limitations set forth
174 in Section 34A-6-306.

175 (8) [~~Any~~] An employer who refuses or neglects to make reports, to maintain records, or
176 to file reports with the commission as required by this section is guilty of a class C
177 misdemeanor and subject to citation under Section 34A-6-302 and a civil assessment as
178 provided under Section 34A-6-307, unless the commission finds that the employer has shown
179 good cause for submitting a report later than required by this section.

180 Section 2. Section **34A-6-307** is amended to read:

181 **34A-6-307. Civil and criminal penalties.**

182 (1) The commission may assess civil penalties against any employer who has received

183 a citation under Section 34A-6-302 as follows:

184 (a) Except as provided in Subsections (1)(b) through (d), the commission may assess
185 up to \$7,000 for each cited violation.

186 (b) The commission may not assess less than \$250 nor more than \$7,000 for each cited
187 serious violation. A violation is serious only if:

188 (i) it arises from a condition, practice, method, operation, or process in the workplace
189 of which the employer knows or should know through the exercise of reasonable diligence; and

190 (ii) there is a substantial possibility that the condition, practice, method, operation, or
191 process could result in death or serious physical harm.

192 (c) The commission may not assess less than \$5,000 nor more than \$70,000 for each
193 cited willful violation.

194 (d) The commission may assess up to \$70,000 for each cited violation if the employer
195 has previously been found to have violated the same standards, code, rule, or order.

196 (e) After the expiration of the time permitted to an employer to correct a cited
197 violation, the commission may assess up to \$7,000 for each day the violation continues
198 uncorrected.

199 (2) The commission may assess a civil penalty of up to \$7,000 for each violation of any
200 posting requirement under this chapter.

201 (3) In deciding the amount to assess for a civil penalty, the commission shall consider
202 all relevant factors, including:

203 (a) the size of the employer's business;

204 (b) the nature of the violation;

205 (c) the employer's good faith or lack of good faith; and

206 (d) the employer's previous record of compliance or noncompliance with this chapter.

207 (4) Any civil penalty collected under this chapter shall be paid into the [~~General Fund~~]
208 Occupational Safety and Health Restricted Account, created by Section 34A-6-308.

209 (5) Criminal penalties under this chapter are as follows:

210 (a) [~~Any~~] An employer who willfully violates [~~any~~] a standard, code, rule, or order
211 issued under Section 34A-6-202, or [~~any~~] a rule made under this chapter, is guilty of a class A
212 misdemeanor if the violation caused the death of an employee. If the violation causes the death
213 of more than one employee, each death is considered a separate offense.

214 (b) [~~Any~~] A person who gives advance notice of any inspection conducted under this
215 chapter without authority from the administrator or the administrator's representatives is guilty
216 of a class A misdemeanor.

217 (c) [~~Any~~] A person who knowingly makes a false statement, representation, or
218 certification in any application, record, report, plan, or other document filed or required to be
219 maintained under this chapter is guilty of a class A misdemeanor.

220 (6) After a citation issued under this chapter and an opportunity for a hearing under
221 Title 63G, Chapter 4, Administrative Procedures Act, the division may file an abstract for any
222 uncollected citation penalty in the district court. The filed abstract shall have the effect of a
223 judgment of that court. The abstract shall state the amount of the uncollected citation penalty,
224 reasonable [~~attorneys'~~] attorney fees as set by commission rule, and court costs.

225 Section 3. Section **34A-6-308** is enacted to read:

226 **34A-6-308. Occupational Safety and Health Restricted Account.**

227 (1) There is created in the General Fund a restricted account known as the
228 "Occupational Safety and Health Restricted Account."

229 (2) The Occupational Safety and Health Restricted Account shall consist of the civil
230 penalties collected under Section 34A-6-307.

231 (3) Subject to appropriation by the Legislature, the division shall use the money in the
232 Occupational Safety and Health Restricted Account to fund the program of investigations
233 established under Subsection 34A-6-301(1)(b).

Legislative Review Note
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Office of Legislative Research and General Counsel