

Part 4 Compensation and Benefits

34A-2-401 Compensation for industrial accidents to be paid.

- (1) An employee described in Section 34A-2-104 who is injured and the dependents of each such employee who is killed, by accident arising out of and in the course of the employee's employment, wherever such injury occurred, if the accident was not purposely self-inflicted, shall be paid:
 - (a) compensation for loss sustained on account of the injury or death;
 - (b) the amount provided in this chapter for:
 - (i) medical, nurse, and hospital services;
 - (ii) medicines; and
 - (iii) in case of death, the amount of funeral expenses.
- (2) The responsibility for compensation and payment of medical, nursing, and hospital services and medicines, and funeral expenses provided under this chapter shall be:
 - (a) on the employer and the employer's insurance carrier; and
 - (b) not on the employee.
- (3) Payment of benefits provided by this chapter or Chapter 3, Utah Occupational Disease Act, shall commence within 30 calendar days after any final award by the commission.

Amended by Chapter 55, 1999 General Session

34A-2-402 Mental stress claims.

- (1) Physical, mental, or emotional injuries related to mental stress arising out of and in the course of employment shall be compensable under this chapter only when there is a sufficient legal and medical causal connection between the employee's injury and employment.
- (2)
 - (a) Legal causation requires proof of extraordinary mental stress from a sudden stimulus arising predominantly and directly from employment.
 - (b) The extraordinary and sudden nature of the alleged mental stress is judged according to an objective standard in comparison with contemporary national employment and nonemployment life.
- (3) Medical causation requires proof that the physical, mental, or emotional injury was medically caused by the mental stress that is the legal cause of the physical, mental, or emotional injury.
- (4) Good faith employer personnel actions including disciplinary actions, work evaluations, job transfers, layoffs, demotions, promotions, terminations, or retirements, may not form the basis of compensable mental stress claims under this chapter.
- (5) Alleged discrimination, harassment, or unfair labor practices otherwise actionable at law may not form the basis of compensable mental stress claims under this chapter.
- (6) An employee who alleges a compensable industrial accident involving mental stress bears the burden of proof to establish legal and medical causation by a preponderance of the evidence.

Renumbered and Amended by Chapter 375, 1997 General Session

34A-2-403 Dependents -- Presumption.

- (1)

- (a) The following persons are presumed to be wholly dependent for support upon a deceased employee:
 - (i) a child under 18 years of age, subject to the conditions of Subsections (1)(b) and (2)(b);
 - (ii) a child who is 18 years of age or older:
 - (A) if the child is:
 - (I) physically or mentally incapacitated; and
 - (II) dependent upon the parent who is the deceased employee; and
 - (B) subject to the conditions of Subsections (1)(b) and (2)(b); and
 - (iii) for purposes of a payment to be made under Subsection 34A-2-702(5)(b)(i), a surviving spouse with whom the deceased employee lived at the time of the employee's death.
 - (b) Subsections (1)(a)(i) and (ii) require that:
 - (i) the deceased employee be the parent of the child; or
 - (ii)
 - (A) the deceased employee be legally bound to support the child; and
 - (B) the child be living with the deceased employee at the time of the death of the employee.
- (2)
- (a) In a case not provided for in Subsection (1), the question of dependency, in whole or in part, shall be determined in accordance with the facts in each particular case existing at the time of the injury or death of an employee:
 - (i) except for purposes of a dependency review under Subsection 34A-2-702(5)(b)(iv); and
 - (ii) subject to the other provisions of this section.
 - (b) A person may not be considered a dependent unless that person is:
 - (i) a member of the family of the deceased employee;
 - (ii) the spouse of the deceased employee;
 - (iii) a lineal descendant or ancestor of the deceased employee; or
 - (iv) a brother or sister of the deceased employee.

Amended by Chapter 27, 2008 General Session

Amended by Chapter 90, 2008 General Session

34A-2-404 Injuries to minors.

- (1) A minor is considered sui juris for the purposes of this chapter and Chapter 3, Utah Occupational Disease Act, and no other person shall have any cause of action or right to compensation for an injury to the minor employee.
- (2) Notwithstanding Subsection (1), in the event of the award of a lump sum of compensation to a minor employee, the sum shall be paid only to the minor's legally appointed guardian.

Renumbered and Amended by Chapter 375, 1997 General Session

34A-2-405 Employee injured outside state -- Entitled to compensation -- Limitation of time.

- (1) Except as provided in Subsection (2), if an employee who has been hired or is regularly employed in this state receives personal injury by accident arising out of and in the course of employment outside of this state, the employee, or the employee's dependents in case of the employee's death, shall be entitled to compensation according to the law of this state.
- (2) This section applies only to those injuries received by the employee within six months after leaving this state, unless prior to the expiration of the six-month period the employer has filed with the division notice that the employer has elected to extend such coverage a greater period of time.

Renumbered and Amended by Chapter 375, 1997 General Session

34A-2-406 Exemptions from chapter for employees temporarily in state -- Conditions -- Evidence of insurance.

- (1) Any employee who has been hired in another state and the employee's employer are exempt from this chapter and Chapter 3, Utah Occupational Disease Act, while the employee is temporarily within this state doing work for the employee's employer if:
 - (a) the employer has furnished workers' compensation insurance coverage under the workers' compensation or similar laws of the other state;
 - (b) the coverage covers the employee's employment while in this state; and
 - (c)
 - (i) the extraterritorial provisions of this chapter and Chapter 3, Utah Occupational Disease Act, are recognized in the other state and employers and employees who are covered in this state are likewise exempted from the application of the workers' compensation or similar laws of the other state; or
 - (ii) the workers' compensation insurance carrier that provides workers' compensation insurance under Section 31A-22-1001:
 - (A) is an admitted insurance carrier in the other state; or
 - (B) has agreements with an insurance carrier and is able to furnish workers' compensation insurance or similar coverage to Utah employers and their subsidiaries or affiliates doing business in the other state.
- (2) The benefits under the workers' compensation or similar laws of the other state are the exclusive remedy against an employer for any injury, whether resulting in death or not, received by an employee while working for the employer in this state.
- (3) A certificate from an authorized officer of the industrial commission or similar department of the other state certifying that the employer is insured in the other state and has provided extraterritorial coverage insuring the employer's employees while working in this state is prima facie evidence that the employer carries compensation insurance.

Amended by Chapter 363, 2017 General Session

34A-2-407 Reporting of industrial injuries -- Regulation of health care providers.

- (1) As used in this section, "physician" is as defined in Section 34A-2-111.
- (2)
 - (a) An employee sustaining an injury arising out of and in the course of employment shall provide notification to the employee's employer promptly of the injury.
 - (b) If the employee is unable to provide the notification required by Subsection (2)(a), the following may provide notification of the injury to the employee's employer:
 - (i) the employee's next of kin; or
 - (ii) the employee's attorney.
 - (c) An employee claiming benefits under this chapter or Chapter 3, Utah Occupational Disease Act, shall comply with rules adopted by the commission regarding disclosure of medical records of the employee medically relevant to the industrial accident or occupational disease claim.
- (3)
 - (a) An employee is barred for any claim of benefits arising from an injury if the employee fails to notify within the time period described in Subsection (3)(b):

- (i) the employee's employer in accordance with Subsection (2); or
 - (ii) the division.
- (b) The notice required by Subsection (3)(a) shall be made within:
 - (i) 180 days of the day on which the injury occurs; or
 - (ii) in the case of an occupational hearing loss, the time period specified in Section 34A-2-506.
- (4) The following constitute notification of injury required by Subsection (2):
 - (a) an employer's report filed with:
 - (i) the division; or
 - (ii) the employer's workers' compensation insurance carrier;
 - (b) a physician's injury report filed with:
 - (i) the division;
 - (ii) the employer; or
 - (iii) the employer's workers' compensation insurance carrier;
 - (c) a workers' compensation insurance carrier's report filed with the division; or
 - (d) the payment of any medical or disability benefits by:
 - (i) the employer; or
 - (ii) the employer's workers' compensation insurance carrier.
- (5)
 - (a) An employer and the employer's workers' compensation insurance carrier, if any, shall file a report in accordance with the rules made under Subsection (5)(b) of a:
 - (i) work-related fatality; or
 - (ii) work-related injury resulting in:
 - (A) medical treatment;
 - (B) loss of consciousness;
 - (C) loss of work;
 - (D) restriction of work; or
 - (E) transfer to another job.
 - (b) An employer or the employer's workers' compensation insurance carrier, if any, shall file a report required by Subsection (5)(a), and any subsequent reports of a previously reported injury as may be required by the commission, within the time limits and in the manner established by rule by the commission made after consultation with the workers' compensation advisory council and in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act. A rule made under this Subsection (5)(b) shall:
 - (i) be reasonable; and
 - (ii) take into consideration the practicality and cost of complying with the rule.
 - (c) A report is not required to be filed under this Subsection (5) for a minor injury, such as a cut or scratch that requires first aid treatment only, unless:
 - (i) a treating physician files a report with the division in accordance with Subsection (9); or
 - (ii) a treating physician is required to file a report with the division in accordance with Subsection (9).
- (6) An employer and its workers' compensation insurance carrier, if any, required to file a report under Subsection (5) shall provide the employee with:
 - (a) a copy of the report submitted to the division; and
 - (b) a statement, as prepared by the division, of the employee's rights and responsibilities related to the industrial injury.
- (7) An employer shall maintain a record in a manner prescribed by the commission by rule of all:
 - (a) work-related fatalities; or
 - (b) work-related injuries resulting in:

- (i) medical treatment;
 - (ii) loss of consciousness;
 - (iii) loss of work;
 - (iv) restriction of work; or
 - (v) transfer to another job.
- (8)
- (a) Except as provided in Subsection (8)(b), an employer or a workers' compensation insurance carrier who refuses or neglects to make a report, maintain a record, or file a report as required by this section is subject to a civil assessment:
 - (i) imposed by the division, subject to the requirements of Title 63G, Chapter 4, Administrative Procedures Act; and
 - (ii) that may not exceed \$500.
 - (b) An employer or workers' compensation insurance carrier is not subject to the civil assessment under this Subsection (8) if:
 - (i) the employer or workers' compensation insurance carrier submits a report later than required by this section; and
 - (ii) the division finds that the employer or workers' compensation insurance carrier has shown good cause for submitting a report later than required by this section.
 - (c)
 - (i) A civil assessment collected under this Subsection (8) shall be deposited into the Uninsured Employers' Fund created in Section 34A-2-704 to be used for a purpose specified in Section 34A-2-704.
 - (ii) The administrator of the Uninsured Employers' Fund shall collect money required to be deposited into the Uninsured Employers' Fund under this Subsection (8)(c) in accordance with Section 34A-2-704.
- (9)
- (a) A physician attending an injured employee shall comply with rules established by the commission regarding:
 - (i) fees for physician's services;
 - (ii) disclosure of medical records of the employee medically relevant to the employee's industrial accident or occupational disease claim;
 - (iii) reports to the division regarding:
 - (A) the condition and treatment of an injured employee; or
 - (B) any other matter concerning industrial cases that the physician is treating; and
 - (iv) rules made under Section 34A-2-407.5.
 - (b) A physician who is associated with, employed by, or bills through a hospital is subject to Subsection (9)(a).
 - (c) A hospital providing services for an injured employee is not subject to the requirements of Subsection (9)(a) except for rules made by the commission that are described in Subsection (9)(a)(ii) or (iii) or Section 34A-2-407.5.
 - (d) The commission's schedule of fees may reasonably differentiate remuneration to be paid to providers of health services based on:
 - (i) the severity of the employee's condition;
 - (ii) the nature of the treatment necessary; and
 - (iii) the facilities or equipment specially required to deliver that treatment.
 - (e) This Subsection (9) does not prohibit a contract with a provider of health services relating to the pricing of goods and services.
- (10) A copy of the initial report filed under Subsection (9)(a)(iii) shall be furnished to:

- (a) the division;
- (b) the employee; and
- (c)
 - (i) the employer; or
 - (ii) the employer's workers' compensation insurance carrier.

(11)

- (a) As used in this Subsection (11):
 - (i) "Balance billing" means charging a person, on whose behalf a workers' compensation insurance carrier or self-insured employer is obligated to pay medical benefits under this chapter or Chapter 3, Utah Occupational Disease Act, for the difference between what the workers' compensation insurance carrier or self-insured employer reimburses the hospital for covered medical services and what the hospital charges for those covered medical services.
 - (ii) "Covered medical services" means medical services provided by a hospital that are covered by workers' compensation medical benefits under this chapter or Chapter 3, Utah Occupational Disease Act.
 - (iii) "Self-insured employer" means the same as that term is defined in Section 34A-2-201.5.
- (b) Subject to Subsection (11)(d), a workers' compensation insurance carrier or self-insured employer may contract, either in writing or by mutual oral agreement, with a hospital to establish reimbursement rates.
- (c) Subject to Subsection (11)(d), for the time period beginning on May 8, 2018, and ending on July 1, 2021, a workers' compensation insurance carrier or self-insured employer that is reimbursing a hospital for covered medical services shall reimburse the hospital:
 - (i) in accordance with a contract described in Subsection (11)(b); or
 - (ii)
 - (A) if the hospital is located in a county of the first, second, or third class, as classified in Section 17-50-501, at 75% of the billed hospital fees for the covered medical services; or
 - (B) if the hospital is located in a county of the fourth, fifth, or sixth class, as classified in Section 17-50-501, at 85% of the billed hospital fees for the covered medical services.
- (d) A hospital may not engage in balance billing.

(12)

- (a) Subject to appellate review under Section 34A-1-303, the commission has exclusive jurisdiction to hear and determine:
 - (i) whether goods provided to or services rendered to an employee are compensable pursuant to this chapter or Chapter 3, Utah Occupational Disease Act, including:
 - (A) medical, nurse, or hospital services;
 - (B) medicines; and
 - (C) artificial means, appliances, or prosthesis;
 - (ii) except for amounts charged or paid under Subsection (11), the reasonableness of the amounts charged or paid for a good or service described in Subsection (12)(a)(i); and
 - (iii) collection issues related to a good or service described in Subsection (12)(a)(i).
- (b) Except as provided in Subsection (12)(a), Subsection 34A-2-211(6), or Section 34A-2-212, a person may not maintain a cause of action in any forum within this state other than the commission for collection or payment for goods or services described in Subsection (12)(a) that are compensable under this chapter or Chapter 3, Utah Occupational Disease Act.

Amended by Chapter 64, 2021 General Session

34A-2-407.5 Rules regarding treatment protocols and determinations of medical necessity -- Contracts.

- (1) The commission may by rule, made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, establish for purposes of health care goods and services compensable under this chapter and Chapter 3, Utah Occupational Disease Act, reasonable health care treatment protocols, that include determinations of medical necessity, and medical treatment and quality care guidelines that are:
 - (a) scientifically based;
 - (b) peer reviewed; and
 - (c) consistent with any general standards for health care treatment protocols that the commission establishes by rule.
- (2) Notwithstanding Subsection (1), the commission may authorize an insurer or employer to use all or part of reasonable health care treatment protocols, that include determinations of medical necessity, and medical treatment and quality care guidelines that are:
 - (a) scientifically based;
 - (b) peer reviewed; and
 - (c) consistent with any general standards for health care treatment protocols that the commission shall establish by rule.
- (3) Nothing in this section shall be construed to prevent:
 - (a) an insurer or employer from contracting with a provider of health services as permitted by Subsection 34A-2-111(2)(c)(i)(B)(VII);
 - (b) the commission from adjudicating disputes arising under the terms of this section; or
 - (c) a provider of health services from bringing to the commission a dispute arising under protocols, guidelines, or other terms of this section.

Enacted by Chapter 72, 2013 General Session

34A-2-408 Compensation -- None for first three days after injury unless disability extended.

- (1)
 - (a) Except as provided in Subsections (1)(b) and (2), compensation may not be allowed for the first three days after the injury is received.
 - (b) The disbursements authorized in this chapter or Chapter 3, Utah Occupational Disease Act, for medical, nurse and hospital services, and for medicines and funeral expenses are payable for the first three days after the injury is received.
- (2) If the period of total temporary disability lasts more than 14 days, compensation shall also be payable for the first three days after the injury is received.

Renumbered and Amended by Chapter 375, 1997 General Session

34A-2-409 Average weekly wage -- Basis of computation.

- (1) Except as otherwise provided in this chapter or Chapter 3, Utah Occupational Disease Act, the average weekly wage of the injured employee at the time of the injury is the basis upon which to compute the weekly compensation rate and shall be determined as follows:
 - (a) if at the time of the injury the wages are fixed by the year, the average weekly wage shall be that yearly wage divided by 52;
 - (b) if at the time of the injury the wages are fixed by the month, the average weekly wage shall be that monthly wage divided by 4-1/3;

- (c) if at the time of the injury the wages are fixed by the week, that amount shall be the average weekly wage;
- (d) if at the time of the injury the wages are fixed by the day, the weekly wage shall be determined by multiplying the daily wage by the greater of:
 - (i) the number of days and fraction of days in the week during which the employee under a contract of hire was working at the time of the accident, or would have worked if the accident had not intervened; or
 - (ii) three days;
- (e) if at the time of the injury the wages are fixed by the hour, the average weekly wage shall be determined by multiplying the hourly rate by the greater of:
 - (i) the number of hours the employee would have worked for the week if the accident had not intervened; or
 - (ii) 20 hours;
- (f) if at the time of the injury the hourly wage has not been fixed or cannot be ascertained, the average weekly wage for the purpose of calculating compensation shall be the usual wage for similar services where those services are rendered by paid employees;
- (g)
 - (i) if at the time of the injury the wages are fixed by the output of the employee, the average weekly wage shall be the wage most favorable to the employee computed by dividing by 13 the wages, not including overtime or premium pay, of the employee earned through that employer in the first, second, third, or fourth period of 13 consecutive calendar weeks in the 52 weeks immediately preceding the injury; or
 - (ii) if the employee has been employed by that employer less than 13 calendar weeks immediately preceding the injury, the employee's average weekly wage shall be computed as under Subsection (1)(g)(i), presuming the wages, not including overtime or premium pay, to be the amount the employee would have earned had the employee been so employed for the full 13 calendar weeks immediately preceding the injury and had worked, when work was available to other employees, in a similar occupation.
- (2) If none of the methods in Subsection (1) will fairly determine the average weekly wage in a particular case, the commission shall use such other method as will, based on the facts presented, fairly determine the employee's average weekly wage.
- (3) When the average weekly wage of the injured employee at the time of the injury is determined in accordance with this section, it shall be taken as the basis upon which to compute the weekly compensation rate. After the weekly compensation is computed, it shall be rounded to the nearest dollar.
- (4) If it is established that the injured employee was of such age and experience when injured that under natural conditions the employee's wages would be expected to increase, that fact may be considered in arriving at the employee's average weekly wage.

Renumbered and Amended by Chapter 375, 1997 General Session

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

- (1)
 - (a) Subject to Subsections (1)(b) and (5), 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)
 - (A) subject to Subsections (1)(a)(ii)(B) and (C), not less than a minimum of \$45 per week plus:
 - (I) \$20 for a dependent spouse; and
 - (II) \$20 for each dependent child under the age of 18 years, up to a maximum of four dependent children;
 - (B) not to exceed the average weekly wage of the employee at the time of the injury; and
 - (C) 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 12 years from the date of the injury.
- (2) If a light duty medical release is obtained before the employee reaches a fixed state of recovery and 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 Unemployment Insurance Division 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 12-month period commencing July 1 following the June 1 determination; and
 - (b) any death resulting from the injuries or disabilities arising from occupational disease.
- (5) The commission may reduce or terminate temporary disability compensation in accordance with Section 34A-2-410.5.

Amended by Chapter 451, 2018 General Session

34A-2-410.5 Employee cooperation with reemployment.

- (1) As used in this section:
- (a) "Controlled substance" is as defined in Section 58-37-2.
 - (b) "Correctional facility" means:
 - (i) a correctional facility as defined in Section 76-8-311.3; or
 - (ii) a facility operated by or contracting with the federal government to house a criminal offender in either a secure or nonsecure setting.
 - (c) "Disability claim" means a claim for compensation for:
 - (i) a temporary total disability benefit; or
 - (ii) a temporary partial disability benefit.
 - (d) "Local governmental entity" is as defined in Section 34-41-101.
 - (e) "Reemployment" means employment that:
 - (i) is after an accident or occupational disease that is the basis for a disability claim; and

- (ii) in a manner consistent with Subsection (2)(b), offers to an employee an opportunity for earnings, considering the employee's:
 - (A) education;
 - (B) experience; and
 - (C) physical and mental impairment or condition.
 - (f) "State institution of higher education" means an institution listed in Section 53B-3-102.
 - (g) "Valid prescription" is a prescription, as defined in Section 58-37-2, that is:
 - (i) prescribed for a controlled substance for use by the employee for whom it is prescribed; and
 - (ii) not altered or forged.
- (2) In accordance with this section, the commission may reduce or terminate an employee's disability compensation for a disability claim for good cause shown by the employer including if:
 - (a) the employer terminates the employee from the reemployment and the termination is:
 - (i) reasonable;
 - (ii) for cause; and
 - (iii) as a result, in whole or in part, of:
 - (A) criminal conduct;
 - (B) violent conduct; or
 - (C) a violation of a reasonable, written workplace health, safety, licensure, or nondiscrimination rule that is applied in a manner that is reasonable and nondiscriminatory;
 - (b) the employee is incarcerated in a correctional facility for a period of time that would result in the termination of the employee's reemployment in accordance with a reasonable, written workplace rule that is applied in a manner that is reasonable and nondiscriminatory; or
 - (c) subject to Subsection (6), the employee is terminated from the reemployment:
 - (i)
 - (A) for use of a controlled substance that the employee did not obtain under a valid prescription;
 - (B) for intentional abuse of a controlled substance that the employee obtained under a valid prescription, if the employee uses the controlled substance intentionally:
 - (I) in excess of a prescribed therapeutic amount; or
 - (II) in an otherwise abusive manner; or
 - (C) for the use of alcohol that results in intoxication from alcohol with a blood or breath alcohol concentration of .05 grams or greater; and
 - (ii) in accordance with a reasonable, written workplace rule that is applied in a manner that is reasonable and nondiscriminatory.
- (3) Notwithstanding the other provisions of this section, the employee described in Subsection (2) is eligible for medical benefits to the extent otherwise allowed under this title.
- (4)
 - (a) An employer or the employer's insurance carrier may file an application for a hearing with the Division of Adjudication to request that an employee's disability compensation for a disability claim be reduced or terminated under this section.
 - (b) An action under this Subsection (4) is barred if an application for a hearing is not filed within one year from the day on which the employer terminates the employee from reemployment as described in Subsection (2).
 - (c) An employer or the employer's insurance carrier shall notify the employee that the employer or employer's insurance carrier has filed a request for a hearing under this section within three business days of the day on which the filing is made.
- (5)

- (a) The commission may reduce or terminate the disability compensation of an employee for a disability claim if after a hearing requested under Subsection (4), the commission determines that the conditions of Subsection (2) are met.
 - (b) The commission shall issue an order as to whether or not an employee's disability compensation is reduced or terminated under this section by no later than 45 days from the day on which an application for a hearing is filed.
 - (c) A reduction or termination of disability compensation under this Subsection (5) takes effect on the day determined by the commission.
 - (d) If the disability compensation is ordered terminated or reduced, the employer or employer's insurance carrier shall treat a resulting overpayment as an offset against the employer's or employer's insurance carrier's future obligations to pay disability compensation to the employee.
- (6)
- (a) For purposes of Subsection (2)(c), the commission may consider 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 showing that the employee has:
 - (i) in the employee's system during employment:
 - (A) any amount of a controlled substance or its metabolites if the employee did not obtain the controlled substance under a valid prescription; or
 - (B) 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; or
 - (ii) a blood or breath alcohol concentration of .05 grams or greater during employment.
 - (b) A local governmental entity or state institution of higher education shall comply with Title 34, Chapter 41, Local Governmental Entity Drug-Free Workplace Policies, in engaging in a test for a controlled substance that is the basis of a presumption under this section.
- (7) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may make rules:
- (a) describing factors to be considered under Subsection (2); and
 - (b) related to the procedures for a request for a hearing under this section.
- (8) The adjudication of a dispute arising under this section is governed by Part 8, Adjudication.
- (9) An issue related to an employee's cooperation with regard to a claim for compensation for permanent total disability benefits is governed by Section 34A-2-413.

Amended by Chapter 18, 2020 General Session

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) \$20 for a dependent spouse and \$20 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 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 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 12 years after the date of the injury. Payments shall terminate when the disability ends or the injured employee dies.

Amended by Chapter 451, 2018 General Session

34A-2-412 Permanent partial disability -- Scale of payments.

- (1) An employee who sustained a permanent impairment as a result of an industrial accident and who files an application for hearing under Section 34A-2-417 may receive a permanent partial disability award from the commission.
- (2) Weekly payments may not in any case continue after the disability ends, or the death of the injured person.
- (3)
 - (a) In the case of the injuries described in Subsections (4) through (6), the compensation shall be 66-2/3% of that employee's average weekly wages at the time of the injury, but not more than a maximum of 66-2/3% of the state average weekly wage at the time of the injury per week and not less than a minimum of \$45 per week plus \$20 for a dependent spouse and \$20 for each dependent child under the age of 18 years, up to a maximum of four dependent children, but not to exceed 66-2/3% of the state average weekly wage at the time of the injury per week.
 - (b) The compensation determined under Subsection (3)(a) shall be:
 - (i) paid in routine pay periods not to exceed four weeks for the number of weeks provided for in this section; and
 - (ii) in addition to the compensation provided for temporary total disability and temporary partial disability.

(4) For the loss of:	Number of Weeks
(a) Upper extremity	
(i) Arm	
(A) Arm and shoulder (forequarter amputation)	218
(B) Arm at shoulder joint, or above deltoid insertion	187
(C) Arm between deltoid insertion and elbow joint, at elbow joint, or below elbow joint proximal to insertion of biceps tendon	178
(D) Forearm below elbow joint distal to insertion of biceps tendon	168
(ii) Hand	
(A) At wrist or midcarpal or midmetacarpal amputation	168

(B) All fingers except thumb at metacarpophalangeal joints	.....	101
(iii) Thumb		
(A) At metacarpophalangeal joint or with resection of carpometacarpal bone	.....	67
(B) At interphalangeal joint	.....	50
(iv) Index finger		
(A) At metacarpophalangeal joint or with resection of metacarpal bone	.....	42
(B) At proximal interphalangeal joint	.....	34
(C) At distal interphalangeal joint	.....	18
(v) Middle finger		
(A) At metacarpophalangeal joint or with resection of metacarpal bone	.....	34
(B) At proximal interphalangeal joint	.....	27
(C) At distal interphalangeal joint	.....	15
(vi) Ring finger		
(A) At metacarpophalangeal joint or with resection of metacarpal bone	.....	17
(B) At proximal interphalangeal joint	.....	13
(C) At distal interphalangeal joint	.....	8
(vii) Little finger		
(A) At metacarpophalangeal joint or with resection of metacarpal bone	.....	8
(B) At proximal interphalangeal joint	.....	6
(C) At distal interphalangeal joint	.....	4
(b) Lower extremity		
(i) Leg		
(A) Hemipelvectomy (leg, hip and pelvis)	.....	156
(B) Leg at hip joint or three inches or less below tuberosity of ischium	.....	125
(C) Leg above knee with functional stump, at knee joint or Gritti-Stokes amputation or below knee with short stump (three inches or less below intercondylar notch)	.....	112
(D) Leg below knee with functional stump	.....	88

(ii) Foot	
(A) Foot at ankle	88
(B) Foot partial amputation (Chopart's)	66
(C) Foot midmetatarsal amputation	44
(iii) Toes	
(A) Great toe	
(I) With resection of metatarsal bone	26
(II) At metatarsophalangeal joint	16
(III) At interphalangeal joint	12
(B) Lesser toe (2nd -- 5th)	
(I) With resection of metatarsal bone	4
(II) At metatarsophalangeal joint	3
(III) At proximal interphalangeal joint	2
(IV) At distal interphalangeal joint	1
(C) All toes at metatarsophalangeal joints	26
(iv) Miscellaneous	
(A) One eye by enucleation	120
(B) Total blindness of one eye	100
(C) Total loss of binaural hearing	109
(5) Permanent and complete loss of use shall be deemed equivalent to loss of the member. Partial loss or partial loss of use shall be a percentage of the complete loss or loss of use of the member. This Subsection (5) does not apply to the items listed in Subsection (4)(b)(iv).	
(6)	
(a) For any permanent impairment caused by an industrial accident that is not otherwise provided for in the schedule of losses in this section, permanent partial disability compensation shall be awarded by the commission based on the medical evidence.	
(b) Compensation for any impairment described in Subsection (6)(a) shall, as closely as possible, be proportionate to the specific losses in the schedule set forth in this section.	
(c) Permanent partial disability compensation may not:	
(i) exceed 312 weeks, which shall be considered the period of compensation for permanent total loss of bodily function; and	
(ii) be paid for any permanent impairment that existed prior to an industrial accident.	
(7) The amounts specified in this section are all subject to the limitations as to the maximum weekly amount payable as specified in this section, and in no event shall more than a maximum	

of 66-2/3% of the state average weekly wage at the time of the injury for a total of 312 weeks in compensation be required to be paid.

Amended by Chapter 451, 2018 General Session

34A-2-413 Permanent total disability -- Amount of payments -- Rehabilitation.

- (1)
- (a) In the case of a permanent total disability resulting from an industrial accident or occupational disease, the employee shall receive compensation as outlined in this section.
 - (b) To establish entitlement to permanent total disability compensation, the employee shall prove by a preponderance of evidence that:
 - (i) the employee sustained a significant impairment or combination of impairments as a result of the industrial accident or occupational disease that gives rise to the permanent total disability entitlement;
 - (ii) the employee has a permanent, total disability; and
 - (iii) the industrial accident or occupational disease is the direct cause of the employee's permanent total disability.
 - (c) To establish that an employee has a permanent, total disability the employee shall prove by a preponderance of the evidence that:
 - (i) the employee is not gainfully employed;
 - (ii) the employee has an impairment or combination of impairments that reasonably limit the employee's ability to do basic work activities;
 - (iii) the industrial or occupationally caused impairment or combination of impairments prevent the employee from performing the essential functions of the work activities for which the employee has been qualified until the time of the industrial accident or occupational disease that is the basis for the employee's permanent total disability claim; and
 - (iv) the employee cannot perform other work reasonably available, taking into consideration the employee's:
 - (A) age;
 - (B) education;
 - (C) past work experience;
 - (D) medical capacity; and
 - (E) residual functional capacity.
 - (d) Evidence of an employee's entitlement to disability benefits other than those provided under this chapter and Chapter 3, Utah Occupational Disease Act, if relevant:
 - (i) may be presented to the commission;
 - (ii) is not binding; and
 - (iii) creates no presumption of an entitlement under this chapter and Chapter 3, Utah Occupational Disease Act.
 - (e) In determining under Subsections (1)(b) and (c) whether an employee cannot perform other work reasonably available, the following may not be considered:
 - (i) whether the employee is incarcerated in a facility operated by or contracting with a federal, state, county, or municipal government to house a criminal offender in either a secure or nonsecure setting; or
 - (ii) whether the employee is not legally eligible to be employed because of a reason unrelated to the impairment or combination of impairments.

- (2) For permanent total disability compensation during the initial 312-week entitlement, compensation is 66-2/3% of the employee's average weekly wage at the time of the injury, limited as follows:
 - (a) compensation per week may not be more than 85% of the state average weekly wage at the time of the injury;
 - (b)
 - (i) subject to Subsection (2)(b)(ii), compensation per week may not be less than the sum of \$45 per week and:
 - (A) \$20 for a dependent spouse; and
 - (B) \$20 for each dependent child under the age of 18 years, up to a maximum of four dependent minor children; and
 - (ii) the amount calculated under Subsection (2)(b)(i) may not exceed:
 - (A) the maximum established in Subsection (2)(a); or
 - (B) the average weekly wage of the employee at the time of the injury; and
 - (c) after the initial 312 weeks, the minimum weekly compensation rate under Subsection (2)(b) is 36% of the current state average weekly wage, rounded to the nearest dollar.
- (3) This Subsection (3) applies to claims resulting from an accident or disease arising out of and in the course of the employee's employment on or before June 30, 1994.
 - (a) The employer or the employer's insurance carrier is liable for the initial 312 weeks of permanent total disability compensation except as outlined in Section 34A-2-703 as in effect on the date of injury.
 - (b) The employer or the employer's insurance carrier may not be required to pay compensation for any combination of disabilities of any kind, as provided in this section and Sections 34A-2-410 through 34A-2-412 and Part 5, Industrial Noise, in excess of the amount of compensation payable over the initial 312 weeks at the applicable permanent total disability compensation rate under Subsection (2).
 - (c) The Employers' Reinsurance Fund shall for an overpayment of compensation described in Subsection (3)(b), reimburse the overpayment:
 - (i) to the employer or the employer's insurance carrier; and
 - (ii) out of the Employers' Reinsurance Fund's liability to the employee.
 - (d) After an employee receives compensation from the employee's employer, the employer's insurance carrier, or the Employers' Reinsurance Fund for any combination of disabilities amounting to 312 weeks of compensation at the applicable permanent total disability compensation rate, the Employers' Reinsurance Fund shall pay all remaining permanent total disability compensation.
 - (e) Employers' Reinsurance Fund payments shall commence immediately after the employer or the employer's insurance carrier satisfies its liability under this Subsection (3) or Section 34A-2-703.
- (4) This Subsection (4) applies to claims resulting from an accident or disease arising out of and in the course of the employee's employment on or after July 1, 1994.
 - (a) The employer or the employer's insurance carrier is liable for permanent total disability compensation.
 - (b) The employer or the employer's insurance carrier may not be required to pay compensation for any combination of disabilities of any kind, as provided in this section and Sections 34A-2-410 through 34A-2-412 and Part 5, Industrial Noise, in excess of the amount of compensation payable over the initial 312 weeks at the applicable permanent total disability compensation rate under Subsection (2).

- (c) The employer or the employer's insurance carrier may recoup the overpayment of compensation described in Subsection (4) by reasonably offsetting the overpayment against future liability paid before or after the initial 312 weeks.
- (5)
- (a) A finding by the commission of permanent total disability is not final, unless otherwise agreed to by the parties, until:
 - (i) an administrative law judge reviews a summary of reemployment activities undertaken pursuant to Section 34A-2-413.5;
 - (ii) the employer or the employer's insurance carrier submits to the administrative law judge:
 - (A) a reemployment plan as prepared by a qualified rehabilitation provider reasonably designed to return the employee to gainful employment; or
 - (B) notice that the employer or the employer's insurance carrier will not submit a plan; and
 - (iii) the administrative law judge, after notice to the parties, holds a hearing, unless otherwise stipulated, to:
 - (A) consider evidence regarding rehabilitation; and
 - (B) review any reemployment plan submitted by the employer or the employer's insurance carrier under Subsection (5)(a)(ii).
 - (b) Before commencing the procedure required by Subsection (5)(a), the administrative law judge shall order:
 - (i) the initiation of permanent total disability compensation payments to provide for the employee's subsistence; and
 - (ii) the payment of any undisputed disability or medical benefits due the employee.
 - (c) Notwithstanding Subsection (5)(a), an order for payment of benefits described in Subsection (5)(b) is considered a final order for purposes of Section 34A-2-212.
 - (d) The employer or the employer's insurance carrier shall be given credit for any disability payments made under Subsection (5)(b) against its ultimate disability compensation liability under this chapter or Chapter 3, Utah Occupational Disease Act.
 - (e) An employer or the employer's insurance carrier may not be ordered to submit a reemployment plan. If the employer or the employer's insurance carrier voluntarily submits a plan, the plan is subject to Subsections (5)(e)(i) through (iii).
 - (i) The plan may include, but not require an employee to pay for:
 - (A) retraining;
 - (B) education;
 - (C) medical and disability compensation benefits;
 - (D) job placement services; or
 - (E) incentives calculated to facilitate reemployment.
 - (ii) The plan shall include payment of reasonable disability compensation to provide for the employee's subsistence during the rehabilitation process.
 - (iii) The employer or the employer's insurance carrier shall diligently pursue the reemployment plan. The employer's or insurance carrier's failure to diligently pursue the reemployment plan is cause for the administrative law judge on the administrative law judge's own motion to make a final decision of permanent total disability.
 - (f) If a preponderance of the evidence shows that successful rehabilitation is not possible, the administrative law judge shall order that the employee be paid weekly permanent total disability compensation benefits.
 - (g) If a preponderance of the evidence shows that pursuant to a reemployment plan, as prepared by a qualified rehabilitation provider and presented under Subsection (5)(e), an employee could immediately or without unreasonable delay return to work but for the following, an

administrative law judge shall order that the employee be denied the payment of weekly permanent total disability compensation benefits:

- (i) incarceration in a facility operated by or contracting with a federal, state, county, or municipal government to house a criminal offender in either a secure or nonsecure setting; or
 - (ii) not being legally eligible to be employed because of a reason unrelated to the impairment or combination of impairments.
- (6)
- (a) The period of benefits commences on the date the employee acquired the permanent, total disability, as determined by a final order of the commission based on the facts and evidence, and ends:
 - (i) with the death of the employee; or
 - (ii) when the employee is capable of returning to regular, steady work.
 - (b) An employer or the employer's insurance carrier may provide or locate for a permanently totally disabled employee reasonable, medically appropriate, part-time work in a job earning at least minimum wage, except that the employee may not be required to accept the work to the extent that it would disqualify the employee from social security disability benefits.
 - (c) An employee shall:
 - (i) fully cooperate in the placement and employment process; and
 - (ii) accept the reasonable, medically appropriate, part-time work.
 - (d) In a consecutive four-week period when an employee's gross income from the work provided under Subsection (6)(b) exceeds \$500, the employer or insurance carrier may reduce the employee's permanent total disability compensation by 50% of the employee's income in excess of \$500.
 - (e) If a work opportunity is not provided by the employer or the employer's insurance carrier, an employee with a permanent, total disability may obtain medically appropriate, part-time work subject to the offset provisions of Subsection (6)(d).
 - (f)
 - (i) The commission shall establish rules regarding the part-time work and offset.
 - (ii) The adjudication of disputes arising under this Subsection (6) is governed by Part 8, Adjudication.
 - (g) The employer or the employer's insurance carrier has the burden of proof to show that medically appropriate part-time work is available.
 - (h) The administrative law judge may:
 - (i) excuse an employee from participation in any work:
 - (A) that would require the employee to undertake work exceeding the employee's:
 - (I) medical capacity; or
 - (II) residual functional capacity; or
 - (B) for good cause; or
 - (ii) allow the employer or the employer's insurance carrier to reduce permanent total disability benefits as provided in Subsection (6)(d) when reasonable, medically appropriate, part-time work is offered, but the employee fails to fully cooperate.
- (7) When an employee is rehabilitated or the employee's rehabilitation is possible but the employee has some loss of bodily function, the award shall be for permanent partial disability.
- (8) As determined by an administrative law judge, an employee is not entitled to disability compensation, unless the employee fully cooperates with any evaluation or reemployment plan under this chapter or Chapter 3, Utah Occupational Disease Act. The administrative law judge shall dismiss without prejudice the claim for benefits of an employee if the administrative law

judge finds that the employee fails to fully cooperate, unless the administrative law judge states specific findings on the record justifying dismissal with prejudice.

- (9)
- (a) The loss or permanent and complete loss of the use of the following constitutes total and permanent disability that is compensated according to this section:
 - (i) both hands;
 - (ii) both arms;
 - (iii) both feet;
 - (iv) both legs;
 - (v) both eyes; or
 - (vi) any combination of two body members described in this Subsection (9)(a).
 - (b) A finding of permanent total disability pursuant to Subsection (9)(a) is final.
- (10)
- (a) An insurer or self-insured employer may periodically reexamine a permanent total disability claim, except those based on Subsection (9), for which the insurer or self-insured employer had or has payment responsibility to determine whether the employee continues to have a permanent, total disability.
 - (b) Reexamination may be conducted no more than once every three years after an award is final, unless good cause is shown by the employer or the employer's insurance carrier to allow more frequent reexaminations.
 - (c) The reexamination may include:
 - (i) the review of medical records;
 - (ii) employee submission to one or more reasonable medical evaluations;
 - (iii) employee submission to one or more reasonable rehabilitation evaluations and retraining efforts;
 - (iv) employee disclosure of Federal Income Tax Returns;
 - (v) employee certification of compliance with Section 34A-2-110; and
 - (vi) employee completion of one or more sworn affidavits or questionnaires approved by the division.
 - (d) The insurer or self-insured employer shall pay for the cost of a reexamination with appropriate employee reimbursement pursuant to rule for reasonable travel allowance and per diem as well as reasonable expert witness fees incurred by the employee in supporting the employee's claim for permanent total disability benefits at the time of reexamination.
 - (e) If an employee fails to fully cooperate in the reasonable reexamination of a permanent total disability finding, an administrative law judge may order the suspension of the employee's permanent total disability benefits until the employee cooperates with the reexamination.
 - (f)
 - (i) If the reexamination of a permanent total disability finding reveals evidence that reasonably raises the issue of an employee's continued entitlement to permanent total disability compensation benefits, an insurer or self-insured employer may petition the Division of Adjudication for a rehearing on that issue. The insurer or self-insured employer shall include with the petition, documentation supporting the insurer's or self-insured employer's belief that the employee no longer has a permanent, total disability.
 - (ii) If the petition under Subsection (10)(f)(i) demonstrates good cause, as determined by the Division of Adjudication, an administrative law judge shall adjudicate the issue at a hearing.
 - (iii) Evidence of an employee's participation in medically appropriate, part-time work may not be the sole basis for termination of an employee's permanent total disability entitlement, but the evidence of the employee's participation in medically appropriate, part-time work under

Subsection (6) may be considered in the reexamination or hearing with other evidence relating to the employee's status and condition.

- (g) During the period of reexamination or adjudication, if the employee fully cooperates, each insurer, self-insured employer, or the Employers' Reinsurance Fund shall continue to pay the permanent total disability compensation benefits due the employee.
- (11) If any provision of this section, or the application of any provision to any person or circumstance, is held invalid, the remainder of this section is given effect without the invalid provision or application.

Amended by Chapter 273, 2018 General Session

Amended by Chapter 451, 2018 General Session

34A-2-413.5 Injured worker reemployment.

(1) As used in this section:

(a)

(i) "Gainful employment" means employment that:

(A) is reasonably attainable in view of an industrial injury or occupational disease; and

(B) offers to an injured worker, as reasonably feasible, an opportunity for earnings.

(ii) Factors considered in determining gainful employment include an injured worker's:

(A) education;

(B) experience; and

(C) physical and mental impairment and condition.

(b) "Initial written report" means a report described in Subsection (5).

(c) "Injured worker" means an employee who sustains an industrial injury or occupational disease for which benefits are provided under this chapter or Chapter 3, Utah Occupational Disease Act.

(d) "Injured worker with a disability" means an injured worker who:

(i) because of the injury or disease that is the basis of the employee being an injured worker:

(A) is or will be unable to return to work in the injured worker's usual and customary occupation; or

(B) is unable to perform work for which the injured worker has previous training and experience; and

(ii) reasonably can be expected to attain gainful employment after an evaluation provided for in accordance with this section.

(e) "Parties" means:

(i) an injured worker with a disability;

(ii) the employer of the injured worker with a disability;

(iii) the employer's workers' compensation insurance carrier; and

(iv) a rehabilitation or reemployment professional for the employer or the employer's workers' compensation insurance carrier.

(f) "Reemployment plan" means a written:

(i) description or rationale for the manner and means by which it is proposed an injured worker with a disability may return to gainful employment; and

(ii) definition of the voluntary responsibilities of:

(A) the injured worker with a disability;

(B) the employer; and

(C) one or more other parties involved with the implementation of the reemployment plan.

(2)

- (a) This section applies only to an industrial injury or occupational disease that occurs on or after July 1, 1990.
- (b) This section is intended to promote and monitor the state's and the employer's capacity to assist the injured worker in returning to the workforce by evaluating the effectiveness of the voluntary efforts of employers under this section.
- (3) This section does not affect the duties of the Utah State Office of Rehabilitation created in Section 35A-1-202.
- (4) The commission may provide for the administration of this section by rule in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.
- (5) An employer or the employer's workers' compensation insurance carrier may voluntarily prepare an initial written report assessing an injured worker's need or lack of need for vocational assistance in reemployment if:
 - (a) it appears that the injured worker is or will be an injured worker with a disability; or
 - (b) the period of the injured worker's temporary total disability compensation period exceeds 90 days.
- (6)
 - (a) Subject to Subsection (6)(b), an employer or the employer's workers' compensation insurance carrier may serve the initial written report, if one has been prepared, on the injured worker.
 - (b) If an employer or the employer's workers' compensation insurance carrier serves an initial written report on an injured worker, the employer or the employer's workers' compensation insurance carrier shall comply with Subsection (6)(a) by no later than 30 days after the earlier of the day on which:
 - (i) it appears that the injured worker is or will be an injured worker with a disability; or
 - (ii) the 90-day period described in Subsection (5)(b) ends.
- (7) With the initial written report, if one is prepared and used in the determination process, an employer or the employer's workers' compensation insurance carrier shall provide an injured worker information regarding reemployment.
- (8) Subject to the other provisions of this section, if an injured worker is an injured worker with a disability, the employer or the employer's workers' compensation insurance carrier may, within 10 days after the day on which the employer or workers' compensation insurance carrier serves the initial written report on the injured worker, refer the injured worker with a disability to:
 - (a) the Utah State Office of Rehabilitation; or
 - (b) at the employer's or workers' compensation insurance carrier's option, a private rehabilitation or reemployment service.
- (9) An employer or the employer's workers' compensation insurance carrier shall make the referral required by Subsection (8) for the purpose of:
 - (a) providing an evaluation; and
 - (b) developing a reemployment plan.
- (10) The objective of reemployment is to return an injured worker with a disability to gainful employment in the following order of employment priority:
 - (a) same job, same employer;
 - (b) modified job, same employer;
 - (c) same job, new employer;
 - (d) modified job, new employer;
 - (e) new job, new employer; or
 - (f) retraining in a new occupation.
- (11) Nothing in this section or its application is intended to:
 - (a) modify or in any way affect an existing employee-employer relationship; or

- (b) provide an employee with a guarantee or right to employment or continued employment with an employer.
- (12) A rehabilitation counselor to whom a referral is made under Subsection (8) shall have the same or comparable qualifications as those established by the Utah State Office of Rehabilitation for personnel assigned to rehabilitation and evaluation duties.

Amended by Chapter 271, 2016 General Session

34A-2-414 Benefits in case of death -- Distribution of award to dependents -- Death of dependents -- Remarriage of surviving spouse.

- (1)
 - (a) Subject to the other provisions of this section, benefits in case of death of an employee shall be paid to one or more of the dependents of the decedent employee for the benefit of all the dependents.
 - (b) Unless another apportionment is determined by the commission, benefits in case of death of an employee shall be apportioned among the dependents by:
 - (i) dividing the amount of benefits by the number of dependents; and
 - (ii) allotting each dependent an equal share.
 - (c) If one or more of the dependents described in Subsection (1)(a) is partly dependent, the commission may apportion the benefits in a manner different than Subsection (1)(b).
 - (d) In the case of a minor child who is a dependent, a benefit shall be paid to:
 - (i) the minor child's surviving parent; or
 - (ii) if there is no surviving parent, a court appointed custodian or guardian.
- (2) A dependent or a person to whom a benefit is paid for a dependent, shall apply the benefit to the use of the one or more beneficiaries.
- (3) In all cases of death, if:
 - (a) the dependents are a surviving spouse and one or more minor children, it is sufficient for the surviving spouse to apply for benefits on behalf of the surviving spouse and the minor children; and
 - (b) all of the dependents are minor children, a guardian or next friend of the minor dependents shall apply for the benefits.
- (4)
 - (a) An administrative law judge may, for the purpose of protecting the rights and interests of a minor dependent who does not have a surviving parent or court appointed custodian or guardian, direct that the benefits be deposited into an interest bearing account for the purpose of receiving a payment due the minor dependent.
 - (b) Money deposited into an interest bearing account under Subsection (4)(a) shall be released to:
 - (i) a court appointed custodian or guardian of the minor dependent when the custodian or guardian is appointed; or
 - (ii) a minor dependent when the minor dependent becomes 18 years of age.
 - (c) The commission, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, may make rules related to the requirements of an interest bearing account described in Subsection (4)(a).
- (5) If a dependent of a deceased employee dies during the period covered by weekly payments authorized by this section, the right of the deceased dependent to compensation under this chapter or Chapter 3, Utah Occupational Disease Act, ceases.
- (6)

- (a) If a surviving spouse, who is a dependent of a deceased employee and who is receiving the benefits of this chapter or Chapter 3, Utah Occupational Disease Act, remarries, the surviving spouse's sole right after the remarriage to further benefits is the right to receive in a lump sum the lesser of:
 - (i) the balance of the weekly compensation payments unpaid:
 - (A) from the day on which the surviving spouse remarries; and
 - (B) to the end of 312 weeks from the date of the injury from which death resulted; or
 - (ii) an amount equal to 52 weeks of compensation at the weekly compensation rate the surviving spouse is receiving at the time of the remarriage.
- (b) If there are other dependents remaining as of the day on which a surviving spouse remarries, benefits payable under this chapter or Chapter 3, Utah Occupational Disease Act, shall be paid for the use and benefit of the other dependents.
- (7) Weekly benefits to be paid under this section shall be paid at intervals of not less than four weeks.

Amended by Chapter 90, 2008 General Session

34A-2-415 Increase of benefits to a dependent -- Effect of death, marriage, majority, or termination of dependency of children -- Death, divorce, or remarriage of spouse.

If a benefit is made to, or increased because of a dependent spouse or dependent minor child, as provided in this chapter or Chapter 3, Utah Occupational Disease Act, the benefit or increase in amount of the benefit shall cease on the day on which:

- (1) a minor child:
 - (a) dies;
 - (b) marries;
 - (c) becomes 18 years of age; or
 - (d) is no longer dependent; or
- (2) the spouse of the employee:
 - (a) dies;
 - (b) divorces the employee; or
 - (c) subject to Section 34A-2-414 relative to the remarriage of a spouse, remarries.

Amended by Chapter 90, 2008 General Session

34A-2-416 Additional benefits in special cases.

Benefits received by a wholly dependent person under this chapter or Chapter 3, Utah Occupational Disease Act, extend indefinitely if at the termination of the benefits:

- (1) the wholly dependent person is still in a dependent condition; and
- (2) under all reasonable circumstances the wholly dependent person should be entitled to additional benefits.

Amended by Chapter 235, 2016 General Session

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

- (1)
 - (a) Except with respect to prosthetic devices or in a permanent total disability case, an employee is entitled to be compensated for a medical expense if:
 - (i) the medical expense is:

- (A) reasonable in amount; and
 - (B) necessary to treat the industrial accident; and
 - (ii) the employee submits or makes a reasonable attempt to submit the medical expense:
 - (A) to the employee's employer or insurance carrier for payment; and
 - (B) within one year from the later of:
 - (I) the day on which the medical expense is incurred; or
 - (II) the day on which the employee knows or in the exercise of reasonable diligence should have known that the medical expense is related to the industrial accident.
 - (b) For an industrial accident that occurs on or after July 1, 1988, and is the basis of a claim for a medical expense, an employee is entitled to be compensated for the medical expense if the employee meets the requirements of Subsection (1)(a).
- (2)
- (a) A claim described in Subsection (2)(b) is barred, unless the employee:
 - (i) files an application for hearing with the Division of Adjudication no later than six years 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 Subsection (2)(a); 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.
- (5) A claim for compensation under this chapter is subject to a claim or lien for recovery under Section 26-19-401.

Amended by Chapter 443, 2018 General Session

34A-2-418 Awards -- Medical, nursing, hospital, and burial expenses -- Artificial means and appliances.

- (1) In addition to the compensation provided in this chapter or Chapter 3, Utah Occupational Disease Act, and subject to Subsection 34A-2-407(11), the employer or the insurance carrier shall pay reasonable sums for medical, nurse, and hospital services, for medicines, and for artificial means, appliances, and prostheses necessary to treat the injured employee.
- (2) The employer and the insurance carrier are not required to pay or reimburse for cannabis, a cannabis product, or a medical cannabis device, as those terms are defined in Section 26-61a-102.
- (3) If death results from the injury, the employer or the insurance carrier shall pay the burial expenses in ordinary cases as established by rule.
- (4) If a compensable accident results in the breaking of or loss of an employee's artificial means or appliance including eyeglasses, the employer or insurance carrier shall provide a replacement of the artificial means or appliance.
- (5) An administrative law judge may require the employer or insurance carrier to maintain the artificial means or appliances or provide the employee with a replacement of any artificial means or appliance for the reason of breakage, wear and tear, deterioration, or obsolescence.
- (6) An administrative law judge may, in unusual cases, order, as the administrative law judge considers just and proper, the payment of additional sums:
 - (a) for burial expenses; or
 - (b) to provide for artificial means or appliances.

Amended by Chapter 1, 2018 Special Session 3

34A-2-419 Agreements in addition to compensation and benefits.

- (1)
 - (a) Subject to the approval of the division, any employer securing the payment of workers' compensation benefits for its employees under Section 34A-2-201 may enter into or continue any agreement with the employer's employees to provide compensation or other benefits in addition to the compensation and other benefits provided by this chapter or Chapter 3, Utah Occupational Disease Act.
 - (b) An agreement may not be approved if it requires contributions from the employees, unless it confers benefits in addition to those provided under this chapter or Chapter 3, Utah Occupational Disease Act, at least commensurate with the contributions.
 - (c) An agreement for additional benefits may be terminated by the division if:
 - (i) it appears that the agreement is not fairly administered;
 - (ii) its operation discloses defects threatening its solvency; or

- (iii) for any substantial reason it fails to accomplish the purposes of this chapter or Chapter 3, Utah Occupational Disease Act.
 - (d) If the agreement is terminated, the division shall determine the proper distribution of any remaining assets.
 - (e) The termination under Subsection (1)(c) becomes a final order of the commission effective 30 days from the date the division terminates the agreement, unless within the 30 days either the employer or employee files an application for hearing with the Division of Adjudication in accordance with Part 8, Adjudication. The application for hearing may contest:
 - (i) the recommendation to terminate the agreement;
 - (ii) the distribution of remaining assets after termination; or
 - (iii) both the recommendation to terminate and the distribution of remaining assets.
- (2)
- (a) Any employer who makes a deduction from the wages or salary of any employee to pay for the statutory benefits of this chapter or Chapter 3, Utah Occupational Disease Act, is guilty of a class A misdemeanor.
 - (b) Subject to the supervision of the division, nothing in this chapter or Chapter 3, Utah Occupational Disease Act, may be construed as preventing the employer and the employer's employees from entering into mutual contracts and agreements respecting hospital benefits and accommodations, medical and surgical services, nursing, and medicines to be furnished to the employees as provided in this chapter or Chapter 3, Utah Occupational Disease Act, if no direct or indirect profit is made by any employer as a result of the contract or agreement.
- (3) The purpose and intent of this section is that, where hospitals are maintained and medical and surgical services and medicines furnished by the employer from payments by, or assessments on, the employer's employees, the payments or assessments may not be more or greater than necessary to make these benefits self-supporting for the care and treatment of the employer's employees. Money received or retained by the employer from the employees for the purpose of these benefits shall be paid and applied to these services. Any hospitals so maintained in whole or in part by payments or assessment of employees are subject to the inspection and supervision of the division as to services and treatment rendered to the employees.

Renumbered and Amended by Chapter 375, 1997 General Session

34A-2-420 Continuing jurisdiction of commission -- No authority to change statutes of limitation -- Authority to destroy records -- Interest on award -- Authority to approve final settlement claims.

- (1)
- (a) The powers and jurisdiction of the commission over each case is continuing.
 - (b) After notice and hearing, the Division of Adjudication, commissioner, or Appeals Board in accordance with Part 8, Adjudication, may from time to time modify or change a former finding or order of the commission.
 - (c) This section may not be interpreted as modifying the statutes of limitations contained in Section 34A-2-417 or other sections of this chapter or Chapter 3, Utah Occupational Disease Act, or authorizing the commission to change these statutes of limitations.
 - (d) In addition to other settlements permissible under this chapter or Chapter 3, Utah Occupational Disease Act, and notwithstanding Subsection (1)(c), the commission may approve a full and final settlement of an employee's claim for compensation under this chapter or Chapter 3, Utah Occupational Disease Act, including the payment of medical and disability benefits, if:

- (i)
 - (A) the employee's claim for medical benefits is allowed under Subsection 34A-2-417(1), but the payment of disability benefits associated with the medical benefits and resulting treatment is barred pursuant to Subsection 34A-2-417(2); and
 - (B) the full and final settlement is presented to the commission for approval; or
- (ii) an employee's claim for compensation under this chapter or Chapter 3, Utah Occupational Disease Act, is the liability of the Employers' Reinsurance Fund created in Section 34A-2-702 or the Uninsured Employers' Fund created in Section 34A-2-704.
- (2) A record pertaining to a case that has been closed and inactive for 10 years, other than a case of total permanent disability or a case in which a claim has been filed as in Section 34A-2-417, may be destroyed at the discretion of the commission.
- (3) An award made by a final order of the commission shall include interest at the rate of 8% per annum from the date when each benefit payment would have otherwise become due and payable.
- (4) Notwithstanding Subsection (1) and Section 34A-2-108, an administrative law judge shall review and may approve the agreement of the parties to enter into a full and final settlement by means of a:
 - (a) compromise settlement of disputed medical, disability, or death benefit entitlements under this chapter or Chapter 3, Utah Occupational Disease Act; or
 - (b) commutation and settlement of reasonable future medical, disability, or death benefit entitlements under this chapter or Chapter 3, Utah Occupational Disease Act, by means of a lump sum payment, structured settlement, or other appropriate payout.
- (5) A full and final settlement approved under this section shall extinguish the employer's liability to the employee under this chapter and Chapter 3, Utah Occupational Disease Act, except for an issue that is expressly preserved.
- (6) A full and final settlement effectuating a compromise or commutation may provide for payment of benefits:
 - (a) in cash or cash equivalents; or
 - (b) through an insurance contract or by a third party if the commission determines that the payment provisions:
 - (i) are secure and assign, transfer, or reinsure the financial obligation to make benefit payments to a qualified third party in compliance with commission rules; or
 - (ii) do not relieve the parties of their underlying liability for payments required by the full and final settlement agreement.

Amended by Chapter 82, 2014 General Session

34A-2-421 Lump-sum payments.

An administrative law judge, under special circumstances and when the same is deemed advisable, may commute periodic benefits to one or more lump-sum payments.

Renumbered and Amended by Chapter 375, 1997 General Session

34A-2-422 Compensation exempt from execution -- Transfer of payment rights.

- (1) For purposes of this section:
 - (a) "Payment rights under workers' compensation" means the right to receive compensation under this chapter or Chapter 3, Utah Occupational Disease Act, including the payment of a workers' compensation claim, award, benefit, or settlement.

- (b)
 - (i) Subject to Subsection (1)(b)(ii), "transfer" means:
 - (A) a sale;
 - (B) an assignment;
 - (C) a pledge;
 - (D) an hypothecation; or
 - (E) other form of encumbrance or alienation for consideration.
 - (ii) "Transfer" does not include the creation or perfection of a security interest in a right to receive a payment under a blanket security agreement entered into with an insured depository institution, in the absence of any action to:
 - (A) redirect the payments to:
 - (I) the insured depository institution; or
 - (II) an agent or successor in interest to the insured depository institution; or
 - (B) otherwise enforce a blanket security interest against the payment rights.
- (2) Compensation before payment:
 - (a) is exempt from:
 - (i) all claims of creditors; and
 - (ii) attachment or execution; and
 - (b) shall be paid only to employees or their dependents, except as provided in Sections 26-19-401 and 34A-2-417.
- (3)
 - (a) Subject to Subsection (3)(b), beginning April 30, 2007, a person may not:
 - (i) transfer payment rights under workers' compensation; or
 - (ii) accept or take any action to provide for a transfer of payment rights under workers' compensation.
 - (b) A person may take an action prohibited under Subsection (3)(a) if the commission approves the transfer of payment rights under workers' compensation:
 - (i) before the transfer of payment rights under workers' compensation takes effect; and
 - (ii) upon a determination by the commission that:
 - (A) the person transferring the payment rights under workers' compensation received before executing an agreement to transfer those payment rights:
 - (I) adequate notice that the transaction involving the transfer of payment rights under workers' compensation involves the transfer of those payment rights; and
 - (II) an explanation of the financial consequences of and alternatives to the transfer of payment rights under workers' compensation in sufficient detail that the person transferring the payment rights under workers' compensation made an informed decision to transfer those payment rights; and
 - (B) the transfer of payment rights under workers' compensation is in the best interest of the person transferring the payment rights under workers' compensation taking into account the welfare and support of that person's dependents.
 - (c) The approval by the commission of the transfer of a person's payment rights under workers' compensation is a full and final resolution of the person's payment rights under workers' compensation that are transferred:
 - (i) if the commission approves the transfer of the payment rights under workers' compensation in accordance with Subsection (3)(b); and
 - (ii) once the person no longer has a right to appeal the decision in accordance with this title.

Amended by Chapter 443, 2018 General Session

34A-2-423 Survival of claim in case of death.

- (1) As used in this section:
 - (a) "Estate" is as defined in Section 75-1-201.
 - (b) "Personal representative" is as defined in Section 75-1-201.
- (2) The personal representative of the estate of an employee may adjudicate an employee's claim for compensation under this chapter if in accordance with this chapter, the employee files a claim:
 - (a) before the employee dies; and
 - (b) for compensation for an industrial accident or occupational disease for which compensation is payable under this chapter or Chapter 3, Utah Occupational Disease Act.
- (3) If the commission finds that the employee is entitled to compensation under this chapter for the claim described in Subsection (2)(a), the commission shall order that compensation be paid for the period:
 - (a) beginning on the day on which the employee is entitled to receive compensation under this chapter; and
 - (b) ending on the day on which the employee dies.
- (4)
 - (a) Compensation awarded under Subsection (3) shall be paid to:
 - (i) if the employee has one or more dependents on the day on which the employee dies, to the dependents of the employee; or
 - (ii) if the employee has no dependents on the day on which the employee dies, to the estate of the employee.
 - (b) The commission may apportion any compensation paid to dependents under this Subsection (4) in the manner that the commission considers just and equitable.
- (5) If an employee that files a claim under this chapter dies from the industrial accident or occupational disease that is the basis of the employee's claim, the compensation awarded under this section shall be in addition to death benefits awarded in accordance with Section 34A-2-414.

Enacted by Chapter 67, 2003 General Session

34A-2-424 Prescribing policies for certain opioid prescriptions.

- (1) This section applies to a person regulated by this chapter or Chapter 3, Utah Occupational Disease Act.
- (2) A self-insured employer, as that term is defined in Section 34A-2-201.5, an insurance carrier, and a managed health care program under Section 34A-2-111 may implement a prescribing policy for certain opioid prescriptions in accordance with Section 31A-22-615.5.

Enacted by Chapter 53, 2017 General Session