

**Effective 5/10/2016**

**34A-2-104.5 Nongovernment entity volunteers.**

- (1) As used in this section:
  - (a)
    - (i) "Intern" means a student or trainee who works without pay at a trade or occupation in order to gain work experience.
    - (ii) Notwithstanding Subsection (1)(a)(i), "intern" does not include an intern described in Section 53A-29-103 or 53B-16-403.
  - (b) "Nongovernment entity" means an entity or individual that:
    - (i) is an employer as provided in Section 34A-2-103; and
    - (ii) is not a government entity.
  - (c) "Utah minimum wage" means the highest wage designated as Utah's minimum wage under Title 34, Chapter 40, Utah Minimum Wage Act.
  - (d)
    - (i) "Volunteer" means an individual who donates service without pay or other compensation except expenses actually and reasonably incurred as approved by the supervising nongovernment entity.
    - (ii) "Volunteer" includes an intern of a nongovernment entity.
    - (iii) "Volunteer" does not include an individual participating in human subjects research to the extent that the participation is governed by federal law or regulation inconsistent with this chapter.
- (2) A volunteer for a nongovernment entity is not an employee of the nongovernment entity for purposes of this chapter and Chapter 3, Utah Occupational Disease Act, unless the nongovernment entity elects in accordance with this section to provide coverage under this chapter and Chapter 3, Utah Occupational Disease Act.
- (3)
  - (a) A nongovernment entity may elect to secure coverage for all of the nongovernment entity's volunteers by obtaining coverage for the volunteers in accordance with Section 34A-2-201 under the same policy it uses to cover the nongovernment entity's employees.
  - (b) If a nongovernment entity obtains coverage under Section 34A-2-201 for the nongovernment entity's volunteers, for purposes of receiving benefits under this chapter and Chapter 3, Utah Occupational Disease Act:
    - (i) a volunteer is considered an employee of the nongovernment entity; and
    - (ii) these benefits are the exclusive remedy of the volunteer in accordance with Section 34A-2-105 for an industrial injury or disease covered by this chapter and Chapter 3, Utah Occupational Disease Act.
- (4) A nongovernment entity shall keep sufficient records of the nongovernment entity's volunteers and the volunteers' duties to determine compliance with this section.
- (5) To compute the disability compensation benefits under Subsection (3), the disability compensation shall be calculated in accordance with Part 4, Compensation and Benefits, with the average weekly wage of the nongovernment volunteer assumed to be the Utah minimum wage at the time of the industrial accident or occupational disease that is the basis for the volunteer's workers' compensation claim.
- (6) A workers' compensation insurer shall calculate the premium for a nongovernment entity's volunteer on the basis of the Utah minimum wage on the actual hours the volunteer provides service to the nongovernment entity, except that a workers' compensation insurer may assume 30 hours worked per week if the nongovernment entity does not provide a record of actual

hours worked. The imputed wages shall be assigned to the class code on the policy that best describes the volunteer's duties.

- (7) The failure or refusal of a nongovernment entity to make an election under this section in regard to volunteers does not alter, have an effect on, or give rise to any implication or presumption regarding:
  - (a) the nongovernment entity's duties or liabilities with respect to volunteers; or
  - (b) the rights of volunteers.
- (8) Subject to Subsection (3)(b)(ii), nothing in this section affects a volunteer's right to seek remedies available to the volunteer through a personal insurance policy that the volunteer obtains for the volunteer in addition to any workers' compensation benefits obtained under this section.
- (9) A nongovernment entity shall notify a volunteer of an election under Subsection (3)(a) by posting:
  - (a) printed notices where volunteers are likely to see the notices in conspicuous places about the nongovernment entity's place of business; and
  - (b) notices on a website that the nongovernment entity uses to recruit or provide information to volunteers.

Enacted by Chapter 390, 2016 General Session