

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 .08 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 .08 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.

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