

Effective 10/1/2016

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