Chapter 2
Workers' Compensation Act

Part 1
General Provisions

34A-2-101 Title.

This chapter shall be known as the "Workers' Compensation Act."

Renumbered and Amended by Chapter 375, 1997 General Session

34A-2-102 Definition of terms.

(1) As used in this chapter:

(a) "Average weekly wages" means the average weekly wages as determined under Section 34A-2-409.

(b) "Award" means a final order of the commission as to the amount of compensation due:

(i) an injured employee; or

(ii) a dependent of a deceased employee.

(c) "Compensation" means the payments and benefits provided for in this chapter or Chapter 3, Utah Occupational Disease Act.

(d)

(i) "Decision" means a ruling of:

(A) an administrative law judge; or

(B) in accordance with Section 34A-2-801:

(I) the commissioner; or

(II) the Appeals Board.

(ii) "Decision" includes:

(A) an award or denial of a medical, disability, death, or other related benefit under this chapter or Chapter 3, Utah Occupational Disease Act; or

(B) another adjudicative ruling in accordance with this chapter or Chapter 3, Utah Occupational Disease Act.

(e) "Director" means the director of the division, unless the context requires otherwise.

(f) "Disability" means an administrative determination that may result in an entitlement to compensation as a consequence of becoming medically impaired as to function. Disability can be total or partial, temporary or permanent, industrial or nonindustrial.

(g) "Division" means the Division of Industrial Accidents.

(h) "First responder" means:

(i) a law enforcement officer, as defined in Section 53-13-103;

(ii) an emergency medical technician, as defined in Section 53-2e-101;

(iii) an advanced emergency medical technician, as defined in Section 53-2e-101;

(iv) a paramedic, as defined in Section 53-2e-101;

(v) a firefighter, as defined in Section 34A-3-113;

(vi) a dispatcher, as defined in Section 53-6-102; or

(vii) a correctional officer, as defined in Section 53-13-104.

(i) "Impairment" is a purely medical condition reflecting an anatomical or functional abnormality or loss. Impairment may be either temporary or permanent, industrial or nonindustrial.

(j) "Order" means an action of the commission that determines the legal rights, duties, privileges, immunities, or other interests of one or more specific persons, but not a class of persons.
(k)
(i) "Personal injury by accident arising out of and in the course of employment" includes an injury caused by the willful act of a third person directed against an employee because of the employee's employment.
(ii) "Personal injury by accident arising out of and in the course of employment" does not include a disease, except as the disease results from the injury.
(l) "Safe" and "safety," as applied to employment or a place of employment, means the freedom from danger to the life or health of employees reasonably permitted by the nature of the employment.
(2) As used in this chapter and Chapter 3, Utah Occupational Disease Act:
(a) "Brother or sister" includes a half brother or sister.
(b) "Child" includes:
(i) a posthumous child; or
(ii) a child legally adopted prior to an injury.

Amended by Chapter 310, 2023 General Session
Amended by Chapter 328, 2023 General Session

34A-2-103 Employers enumerated and defined -- Regularly employed -- Statutory employers -- Exceptions.
(1)
(a) The state, and each county, city, town, and school district in the state are considered employers under this chapter and Chapter 3, Utah Occupational Disease Act.
(b) For the purposes of the exclusive remedy in this chapter and Chapter 3, Utah Occupational Disease Act, prescribed in Sections 34A-2-105 and 34A-3-102, the state is considered to be a single employer and includes any office, department, agency, authority, commission, board, institution, hospital, college, university, or other instrumentality of the state.
(2)
(a) Subject to the other provisions of this section, each person, including each public utility and each independent contractor, who regularly employs one or more workers or operatives in the same business, or in or about the same establishment, under any contract of hire, express or implied, oral or written, is considered an employer under this chapter and Chapter 3, Utah Occupational Disease Act.
(b) As used in this Subsection (2):
(i) "Independent contractor" means any person engaged in the performance of any work for another who, while so engaged, is:
(A) independent of the employer in all that pertains to the execution of the work;
(B) not subject to the routine rule or control of the employer;
(C) engaged only in the performance of a definite job or piece of work; and
(D) subordinate to the employer only in effecting a result in accordance with the employer's design.
(ii) "Regularly" includes all employments in the usual course of the trade, business, profession, or occupation of the employer, whether continuous throughout the year or for only a portion of the year.
(3)

(a) The client under a professional employer organization agreement regulated under Title 31A, Chapter 40, Professional Employer Organization Licensing Act:
(i) is considered the employer of a covered employee; and
(ii) subject to Section 31A-40-209, shall secure workers' compensation benefits for a covered employee by complying with Subsection 34A-2-201(1) and commission rules.
(b) The division shall promptly inform the Insurance Department if the division has reason to believe that a professional employer organization is not in compliance with Subsection 34A-2-201(1) and commission rules.
(4) A domestic employer who does not employ one employee or more than one employee at least 40 hours per week is not considered an employer under this chapter and Chapter 3, Utah Occupational Disease Act.
(5)
(a) As used in this Subsection (5):
(i)
(A) "Agricultural employer" means a person who employs agricultural labor as defined in Subsections 35A-4-206(1) and (2) and does not include employment as provided in Subsection 35A-4-206(3).
(B) Notwithstanding Subsection (5)(a)(i)(A), only for purposes of determining who is a member of the employer's immediate family under Subsection (5)(a)(ii), if the agricultural employer is a corporation, partnership, or other business entity, "agricultural employer" means an officer, director, or partner of the business entity.
(ii) "Employer's immediate family" means:
(A) an agricultural employer's:
(I) spouse;
(II) grandparent;
(III) parent;
(IV) sibling;
(V) child;
(VI) grandchild;
(VII) nephew; or
(VIII) niece;
(B) a spouse of any person provided in Subsections (5)(a)(ii)(A)(II) through (VIII); or
(C) an individual who is similar to those listed in Subsection (5)(a)(ii)(A) or (B) as defined by rules of the commission.
(iii) "Nonimmediate family" means a person who is not a member of the employer's immediate family.
(b) For purposes of this chapter and Chapter 3, Utah Occupational Disease Act, an agricultural employer is not considered an employer of a member of the employer's immediate family.
(c) For purposes of this chapter and Chapter 3, Utah Occupational Disease Act, an agricultural employer is not considered an employer of a nonimmediate family employee if:
(i) for the previous calendar year the agricultural employer's total annual payroll for all nonimmediate family employees was less than $8,000; or
(ii)
(A) for the previous calendar year the agricultural employer's total annual payroll for all nonimmediate family employees was equal to or greater than $8,000 but less than $50,000; and
(B) the agricultural employer maintains insurance that covers job-related injuries of the employer's nonimmediate family employees in at least the following amounts:

(I) $300,000 liability insurance, as defined in Section 31A-1-301; and
(II) $5,000 for health care benefits similar to benefits under health care insurance as defined in Section 31A-1-301.

(d) For purposes of this chapter and Chapter 3, Utah Occupational Disease Act, an agricultural employer is considered an employer of a nonimmediate family employee if:
(i) for the previous calendar year the agricultural employer's total annual payroll for all nonimmediate family employees is equal to or greater than $50,000; or
(ii)
(A) for the previous year the agricultural employer's total payroll for nonimmediate family employees was equal to or exceeds $8,000 but is less than $50,000; and
(B) the agricultural employer fails to maintain the insurance required under Subsection (5)(c)(ii)(B).

(6) An employer of agricultural laborers or domestic servants who is not considered an employer under this chapter and Chapter 3, Utah Occupational Disease Act, may come under this chapter and Chapter 3, Utah Occupational Disease Act, by complying with:
(a) this chapter and Chapter 3, Utah Occupational Disease Act; and
(b) the rules of the commission.

(7)
(a)
(i) As used in this Subsection (7)(a), "employer" includes any of the following persons that procures work to be done by a contractor notwithstanding whether or not the person directly employs a person:
(A) a sole proprietorship;
(B) a corporation;
(C) a partnership;
(D) a limited liability company; or
(E) a person similar to one described in Subsections (7)(a)(i)(A) through (D).
(ii) If an employer procures any work to be done wholly or in part for the employer by a contractor over whose work the employer retains supervision or control, and this work is a part or process in the trade or business of the employer, the contractor, all persons employed by the contractor, all subcontractors under the contractor, and all persons employed by any of these subcontractors, are considered employees of the original employer for the purposes of this chapter and Chapter 3, Utah Occupational Disease Act.
(b) Any person who is engaged in constructing, improving, repairing, or remodeling a residence that the person owns or is in the process of acquiring as the person's personal residence may not be considered an employee or employer solely by operation of Subsection (7)(a).
(c) A partner in a partnership or an owner of a sole proprietorship is not considered an employee under Subsection (7)(a) if the employer who procures work to be done by the partnership or sole proprietorship obtains and relies on either:
(i) a valid certification of the partnership's or sole proprietorship's compliance with Section 34A-2-201 indicating that the partnership or sole proprietorship secured the payment of workers' compensation benefits pursuant to Section 34A-2-201; or
(ii) if a partnership or sole proprietorship with no employees other than a partner of the partnership or owner of the sole proprietorship, a workers' compensation coverage waiver issued pursuant to Part 10, Workers' Compensation Coverage Waivers Act, stating that:
(A) the partnership or sole proprietorship is customarily engaged in an independently established trade, occupation, profession, or business; and

(B) the partner or owner personally waives the partner's or owner's entitlement to the benefits of this chapter and Chapter 3, Utah Occupational Disease Act, in the operation of the partnership or sole proprietorship.

(d) A director or officer of a corporation is not considered an employee under Subsection (7)(a) if the director or officer is excluded from coverage under Subsection 34A-2-104(4).

(e) A contractor or subcontractor is not an employee of the employer under Subsection (7)(a), if the employer who procures work to be done by the contractor or subcontractor obtains and relies on either:

(i) a valid certification of the contractor's or subcontractor's compliance with Section 34A-2-201; or

(ii) if a partnership, corporation, or sole proprietorship with no employees other than a partner of the partnership, officer of the corporation, or owner of the sole proprietorship, a workers' compensation coverage waiver issued pursuant to Part 10, Workers' Compensation Coverage Waivers Act, stating that:

(A) the partnership, corporation, or sole proprietorship is customarily engaged in an independently established trade, occupation, profession, or business; and

(B) the partner, corporate officer, or owner personally waives the partner's, corporate officer's, or owner's entitlement to the benefits of this chapter and Chapter 3, Utah Occupational Disease Act, in the operation of the partnership's, corporation's, or sole proprietorship's enterprise under a contract of hire for services.

(f)

(i) For purposes of this Subsection (7)(f), "eligible employer" means a person who:

(A) is an employer; and

(B) procures work to be done wholly or in part for the employer by a contractor, including:

(I) all persons employed by the contractor;

(II) all subcontractors under the contractor; and

(III) all persons employed by any of these subcontractors.

(ii) Notwithstanding the other provisions in this Subsection (7), if the conditions of Subsection (7)(f)(iii) are met, an eligible employer is considered an employer for purposes of Section 34A-2-105 of the contractor, subcontractor, and all persons employed by the contractor or subcontractor described in Subsection (7)(f)(i)(B).

(iii) Subsection (7)(f)(ii) applies if the eligible employer:

(A) under Subsection (7)(a) is liable for and pays workers' compensation benefits as an original employer under Subsection (7)(a) because the contractor or subcontractor fails to comply with Section 34A-2-201;

(B)

(I) secures, in accordance with Section 34A-2-201, the payment of workers' compensation coverage for the contractor or subcontractor;

(II) procures work to be done that is part or process of the trade or business of the eligible employer; and

(III) does the following with regard to a written workplace accident and injury reduction program that meets the requirements of Subsection 34A-2-111(3)(d):

(Aa) adopts the workplace accident and injury reduction program;

(Bb) posts the workplace accident and injury reduction program at the work site at which the eligible employer procures work; and

(Cc) enforces the workplace accident and injury reduction program according to the terms of the workplace accident and injury reduction program; or

(C)

(I) obtains and relies on:
(Aa) a valid certification described in Subsection (7)(c)(i) or (7)(e)(i);
(Bb) a workers' compensation coverage waiver described in Subsection (7)(c)(ii) or (7)(e)(ii); or
(Cc) proof that a director or officer is excluded from coverage under Subsection 34A-2-104(4);
(II) is liable under Subsection (7)(a) for the payment of workers' compensation benefits if the contractor or subcontractor fails to comply with Section 34A-2-201;
(III) procures work to be done that is part or process in the trade or business of the eligible employer; and
(IV) does the following with regard to a written workplace accident and injury reduction program that meets the requirements of Subsection 34A-2-111(3)(d):
(Aa) adopts the workplace accident and injury reduction program;
(Bb) posts the workplace accident and injury reduction program at the work site at which the eligible employer procures work; and
(Cc) enforces the workplace accident and injury reduction program according to the terms of the workplace accident and injury reduction program.

(8)
(a) For purposes of this Subsection (8), "unincorporated entity" means an entity organized or doing business in the state that is not:
(i) an individual;
(ii) a corporation; or
(iii) publicly traded.
(b) For purposes of this chapter and Chapter 3, Utah Occupational Disease Act, an unincorporated entity that is required to be licensed under Title 58, Chapter 55, Utah Construction Trades Licensing Act, is presumed to be the employer of each individual who holds, directly or indirectly, an ownership interest in the unincorporated entity. Notwithstanding Subsection (7)(c) and Subsection 34A-2-104(3), the unincorporated entity shall provide the individual who holds the ownership interest workers' compensation coverage under this chapter and Chapter 3, Utah Occupational Disease Act, unless the presumption is rebutted under Subsection (8)(c).
(c) Pursuant to rules made by the commission in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, an unincorporated entity may rebut the presumption under Subsection (8)(b) for an individual by establishing by clear and convincing evidence that the individual:
(i) is an active manager of the unincorporated entity;
(ii) directly or indirectly holds at least an 8% ownership interest in the unincorporated entity; or
(iii) is not subject to supervision or control in the performance of work by:
(A) the unincorporated entity; or
(B) a person with whom the unincorporated entity contracts.
(d) As part of the rules made under Subsection (8)(c), the commission may define:
(i) "active manager";
(ii) "directly or indirectly holds at least an 8% ownership interest"; and
(iii) "subject to supervision or control in the performance of work."

(9)
(a) As used in this Subsection (9), "home and community based services" means one or more of the following services provided to an individual with a disability or to the individual's family that helps prevent the individual with a disability from being placed in a more restrictive setting:

(i) respite care;
(ii) skilled nursing;
(iii) nursing assistant services;
(iv) home health aide services;
(v) personal care and attendant services;
(vi) other in-home care, such as support for the daily activities of the individual with a disability;
(vii) specialized in-home training for the individual with a disability or a family member of the individual with a disability;
(viii) specialized in-home support, coordination, and other supported living services; and
(ix) other home and community based services unique to the individual with a disability or the family of the individual with a disability that help prevent the individual with a disability from being placed in a more restrictive setting.

(b) Notwithstanding Subsection (4) and subject to Subsection (9)(c), an individual with a disability or designated representative of the individual with a disability is considered an employer under this chapter and Chapter 3, Utah Occupational Disease Act, of an individual who provides home and community based services if the individual with a disability or designated representative of the individual with a disability:
(i) employs the individual to provide home and community based services for seven hours per week or more; and
(ii) pays the individual providing the home and community based services from state or federal money received by the individual with a disability or designated representative of the individual with a disability to fund home and community based services, including through a person designated by the Secretary of the Treasury in accordance with Section 3504, Internal Revenue Code, as a fiduciary, agent, or other person who has the control, receipt, custody, or disposal of, or pays the wages of, the individual providing the home and community based services.

(c) The state and federal money received by an individual with a disability or designated representative of an individual with a disability shall include the cost of the workers' compensation coverage required by this Subsection (9) in addition to the money necessary to fund the home and community based services that the individual with a disability or family of the individual with a disability is eligible to receive so that the home and community based services are not reduced in order to pay for the workers' compensation coverage required by this Subsection (9).

(10)
(a) For purposes of this Subsection (10), "federal executive agency" means an executive agency, as defined in 5 U.S.C. Sec. 105, of the federal government.
(b) For purposes of determining whether two or more persons are considered joint employers under this chapter or Chapter 3, Utah Occupational Disease Act, an administrative ruling of a federal executive agency may not be considered a generally applicable law unless that administrative ruling is determined to be generally applicable by a court of law, or adopted by statute or rule.

(11)
(a) As used in this Subsection (11):
(i) "Franchise" means the same as that term is defined in 16 C.F.R. Sec. 436.1.
(ii) "Franchisee" means the same as that term is defined in 16 C.F.R. Sec. 436.1.
(iii) "Franchisor" means the same as that term is defined in 16 C.F.R. Sec. 436.1.
(b) For purposes of this chapter, a franchisor is not considered to be an employer of:
(i) a franchisee; or

(ii) a franchisee's employee.

(c) With respect to a specific claim for relief under this chapter made by a franchisee or a franchisee's employee, this Subsection (11) does not apply to a franchisor under a franchise that exercises a type or degree of control over the franchisee or the franchisee's employee not customarily exercised by a franchisor for the purpose of protecting the franchisor's trademarks and brand.

Amended by Chapter 286, 2021 General Session

34A-2-104 "Employee," "worker," and "operative" defined -- Specific circumstances -- Exemptions.

(1) As used in this chapter and Chapter 3, Utah Occupational Disease Act, "employee," "worker," and "operative" mean:

(a)

(i) an elective or appointive officer and any other person:

(A) in the service of:

(I) the state;

(II) a county, city, or town within the state; or

(III) a school district within the state;

(B) serving the state, or any county, city, town, or school district under:

(I) an election;

(II) appointment; or

(III) any contract of hire, express or implied, written or oral; and

(ii) including:

(A) an officer or employee of the state institutions of learning; and

(B) a member of the Utah National Guard or Utah State Defense Force while on state active duty; and

(b) a person in the service of any employer, as defined in Section 34A-2-103, who employs one or more workers or operatives regularly in the same business, or in or about the same establishment:

(i) under any contract of hire:

(A) express or implied; and

(B) oral or written;

(ii) including aliens and minors, whether legally or illegally working for hire; and

(iii) not including any person whose employment:

(A) is casual; and

(B) not in the usual course of the trade, business, or occupation of the employee's employer.

(2)

(a) Unless a lessee provides coverage as an employer under this chapter and Chapter 3, Utah Occupational Disease Act, any lessee in mines or of mining property and each employee and sublessee of the lessee shall be:

(i) covered for compensation by the lessor under this chapter and Chapter 3, Utah Occupational Disease Act;

(ii) subject to this chapter and Chapter 3, Utah Occupational Disease Act; and

(iii) entitled to the benefits of this chapter and Chapter 3, Utah Occupational Disease Act, to the same extent as if the lessee, employee, or sublessee were employees of the lessor drawing the wages paid employees for substantially similar work.

(b) The lessor may deduct from the proceeds of ores mined by the lessees an amount equal to the insurance premium for that type of work.

(3)

(a)

(i) Except as provided in Subsection (3)(b), a partnership or sole proprietorship may elect to include any partner of the partnership or owner of the sole proprietorship as an employee of the partnership or sole proprietorship under this chapter and Chapter 3, Utah Occupational Disease Act.

(ii) If a partnership or sole proprietorship makes an election under Subsection (3)(a), the partnership or sole proprietorship shall serve written notice upon its insurance carrier naming the persons to be covered.

(iii) A partner of a partnership or owner of a sole proprietorship may not be considered an employee of the partner's partnership or the owner's sole proprietorship under this chapter or Chapter 3, Utah Occupational Disease Act, until the notice described in Subsection (3)(a)(ii) is given.

(iv) For premium rate making, the insurance carrier shall assume the salary or wage of the partner or sole proprietor electing coverage under Subsection (3)(a)(i) to be 100% of the state's average weekly wage.

(b) A partner of a partnership or an owner of a sole proprietorship is an employee of the partnership or sole proprietorship under this chapter and Chapter 3, Utah Occupational Disease Act, if:

(i) the partnership or sole proprietorship:

(A) is a motor carrier; and

(B) employs at least one individual who is not a partner or an owner; and

(ii) the partner or owner personally operates a motor vehicle for the motor carrier.

(4)

(a) Except as provided in Subsection (4)(g), a corporation may elect not to include any director or officer of the corporation as an employee under this chapter and Chapter 3, Utah Occupational Disease Act.

(b) If a corporation makes an election under Subsection (4)(a), the corporation shall serve written notice naming the individuals who are directors or officers to be excluded from coverage:

(i) upon its insurance carrier, if any; or

(ii) upon the commission if the corporation is self-insured or has no employee other than the one or more directors or officers being excluded.

(c) A corporation may exclude no more than five individuals who are directors or officers under Subsection (4)(b)(ii).

(d) An exclusion under this Subsection (4) is subject to Subsection 34A-2-103(7)(d).

(e) A director or officer of a corporation is considered an employee under this chapter and Chapter 3, Utah Occupational Disease Act, until the notice described in Subsection (4)(b) is given.

(f) The commission may make rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, regarding the form of the notice described in Subsection (4)(b)(ii), including a requirement to provide documentation, if any.

(g) Subsection (4)(a) does not apply to a director or an officer of a motor carrier if the director or officer personally operates a motor vehicle for the motor carrier.

(5) As used in this chapter and Chapter 3, Utah Occupational Disease Act, "employee," "worker," and "operative" do not include:

(a) a sales agent or associate broker, as defined in Section 61-2f-102, who performs services in that capacity for a principal broker if:
(i) substantially all of the sales agent's or associate broker's income for services is from real estate commissions; and
(ii) the sales agent's or associate broker's services are performed under a written contract that provides that:
(A) the real estate agent is an independent contractor; and
(B) the sales agent or associate broker is not to be treated as an employee for federal income tax purposes;
(b) an offender performing labor under Section 64-13-16 or 64-13-19, except as required by federal statute or regulation;
(c) an individual who for an insurance producer, as defined in Section 31A-1-301, solicits, negotiates, places, or procures insurance if:
(i) substantially all of the individual's income from those services is from insurance commissions; and
(ii) the services of the individual are performed under a written contract that states that the individual:
(A) is an independent contractor;
(B) is not to be treated as an employee for federal income tax purposes; and
(C) can derive income from more than one insurance company; or
(d) subject to Subsections (6), (7), and (8), an individual who:
(i)
(A) owns a motor vehicle; or
(B) leases a motor vehicle to a motor carrier;
(ii) personally operates the motor vehicle described in Subsection (5)(d)(i);
(iii) operates the motor vehicle described in Subsection (5)(d)(i) under a written agreement with the motor carrier that states that the individual operates the motor vehicle as an independent contractor; and
(iv)
(A) provides to the motor carrier at the time the written agreement described in Subsection (5)(d)(iii) is executed or as soon after the execution as provided by the commission, a copy of a workers' compensation coverage waiver issued pursuant to Part 10, Workers' Compensation Coverage Waivers Act, to the individual; and
(B) provides to the motor carrier at the time the written agreement described in Subsection (5)(d)(iii) is executed or as soon after the execution as provided by an insurer, proof that the individual is covered by occupational accident related insurance with the coverage and benefit limits listed in Subsection (7)(c).
(6) An individual described in Subsection (5)(d) may become an employee under this chapter and Chapter 3, Utah Occupational Disease Act, if the employer of the individual complies with:
(a) this chapter and Chapter 3, Utah Occupational Disease Act; and
(b) commission rules.
(7) As used in this section:
(a) "Motor carrier" means a person engaged in the business of transporting freight, merchandise, or other property by a commercial vehicle on a highway within this state.
(b) "Motor vehicle" means a self-propelled vehicle intended primarily for use and operation on the highways, including a trailer or semitrailer designed for use with another motorized vehicle.
(c) "Occupational accident related insurance" means insurance that provides the following coverage at a minimum aggregate policy limit of $1,000,000 for all benefits paid, including

medical expense benefits, for an injury sustained in the course of working under a written agreement described in Subsection (5)(d)(iii):
(i) disability benefits;
(ii) death benefits; and
(iii) medical expense benefits, which include:
(A) hospital coverage;
(B) surgical coverage;
(C) prescription drug coverage; and
(D) dental coverage.
(8) For an individual described in Subsection (5)(d):
(a) if the individual is not covered by a workers' compensation policy, the individual shall obtain:
(i) occupational accident related insurance; and
(ii) a waiver in accordance with Part 10, Workers' Compensation Coverage Waivers Act; and
(b) the commission shall verify the existence of occupational accident insurance coverage with the coverage and benefit limits listed in Subsection (7)(c) before the commission may issue a workers' compensation coverage waiver to the individual pursuant to Part 10, Workers' Compensation Coverage Waivers Act.

Amended by Chapter 299, 2019 General Session

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 53G-7-903 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.

Amended by Chapter 415, 2018 General Session

34A-2-105 Exclusive remedy against employer, and officer, agent, or employee of employer.
(1) The right to recover compensation pursuant to this chapter for injuries sustained by an employee, whether resulting in death or not, is the exclusive remedy against the employer and is the exclusive remedy against any officer, agent, or employee of the employer and the liabilities of the employer imposed by this chapter is in place of any and all other civil liability whatsoever, at common law or otherwise, to the employee or to the employee's spouse, widow, children, parents, dependents, next of kin, heirs, personal representatives, guardian, or any other person whomsoever, on account of any accident or injury or death, in any way contracted, sustained, aggravated, or incurred by the employee in the course of or because of or arising out of the employee's employment, and an action at law may not be maintained

against an employer or against any officer, agent, or employee of the employer based upon any accident, injury, or death of an employee. Nothing in this section prevents an employee, or the employee's dependents, from filing a claim for compensation in those cases in accordance with Chapter 3, Utah Occupational Disease Act.

(2) The exclusive remedy provisions of this section apply to both the client and the professional employer organization in a coemployment relationship regulated under Title 31A, Chapter 40, Professional Employer Organization Licensing Act.

(3)

(a) For purposes of this section:

(i) "Temporary employee" means an individual who for temporary work assignment is:

(A) an employee of a temporary staffing company; or

(B) registered by or otherwise associated with a temporary staffing company.

(ii) "Temporary staffing company" means a company that engages in the assignment of individuals as temporary full-time or part-time employees to fill assignments with a finite ending date to another independent entity.

(b) If the temporary staffing company secures the payment of workers' compensation in accordance with Section 34A-2-201 for all temporary employees of the temporary staffing company, the exclusive remedy provisions of this section apply to both the temporary staffing company and the client company and its employees and provide the temporary staffing company the same protection that a client company and its employees has under this section for the acts of any of the temporary staffing company's temporary employees on assignment at the client company worksite.

Amended by Chapter 318, 2008 General Session

34A-2-106 Injuries or death caused by wrongful acts of persons other than employer, officer, agent, or employee of employer -- Rights of employer or insurance carrier in cause of action -- Maintenance of action -- Notice of intention to proceed against third party -- Right to maintain action not involving employee-employer relationship -- Disbursement of proceeds of recovery -- Exclusive remedy.

(1) When any injury or death for which compensation is payable under this chapter or Chapter 3, Utah Occupational Disease Act is caused by the wrongful act or neglect of a person other than an employer, officer, agent, or employee of the employer:

(a) the injured employee, or in case of death, the employee's dependents, may claim compensation; and

(b) the injured employee or the employee's heirs or personal representative may have an action for damages against the third person.

(2)

(a) If compensation is claimed and the employer or insurance carrier becomes obligated to pay compensation, the employer or insurance carrier:

(i) shall become trustee of the cause of action against the third party; and

(ii) may bring and maintain the action either in the employer or insurance carrier's own name or in the name of the injured employee, or the employee's heirs or the personal representative of the deceased.

(b) Notwithstanding Subsection (2)(a), an employer or insurance carrier may not settle and release a cause of action of which the employer or insurance carrier is a trustee under Subsection (2)(a) without the consent of the commission.

(3)

(a) Before proceeding against a third party, to give a person described in Subsections (3)(a) (i) and (ii) a reasonable opportunity to enter an appearance in the proceeding, the injured employee or, in case of death, the employee's heirs, shall give written notice of the intention to bring an action against the third party to:
(i) the carrier; and
(ii) any other person obligated for the compensation payments.
(b) The injured employee, or, in case of death, the employee's heirs, shall give written notice to the carrier and other person obligated for the compensation payments of any known attempt to attribute fault to the employer, officer, agent, or employee of the employer:
(i) by way of settlement; or
(ii) in a proceeding brought by the injured employee, or, in case of death, the employee's heirs.
(4) For the purposes of this section and subject to Section 34A-2-103, the injured employee or the employee's heirs or personal representative may also maintain an action for damages against any of the following persons who do not occupy an employee-employer relationship with the injured or deceased employee at the time of the employee's injury or death and who are not considered eligible employers under Section 34A-2-103:
(a) a subcontractor;
(b) a general contractor;
(c) an independent contractor;
(d) a property owner; or
(e) a lessee or assignee of a property owner.
(5) If any recovery is obtained against a third person, it shall be disbursed in accordance with Subsections (5)(a) through (c).
(a)
(i) The reasonable expense of the action, including attorney fees, shall be paid and charged proportionately against the parties as their interests may appear.
(ii) Any fee chargeable to the employer or carrier is to be a credit upon any fee payable by the injured employee or, in the case of death, by the dependents, for any recovery had against the third party.
(b) The person liable for compensation payments shall be reimbursed, less the proportionate share of costs and attorney fees provided for in Subsection (5)(a), for the payments made as follows:
(i) without reduction based on fault attributed to the employer, officer, agent, or employee of the employer in the action against the third party if the combined percentage of fault attributed to persons immune from suit is determined to be less than 40% prior to any reallocation of fault under Subsection 78B-5-819(2); or
(ii) less the amount of payments made multiplied by the percentage of fault attributed to the employer, officer, agent, or employee of the employer in the action against the third party if the combined percentage of fault attributed to persons immune from suit is determined to be 40% or more prior to any reallocation of fault under Subsection 78B-5-819(2).
(c) The balance shall be paid to the injured employee, or the employee's heirs in case of death, to be applied to reduce or satisfy in full any obligation thereafter accruing against the person liable for compensation.
(6)
(a) The apportionment of fault to the employer in a civil action against a third party is not an action at law and does not impose any liability on the employer.
(b) The apportionment of fault does not alter or diminish the exclusiveness of the remedy provided to an employee, the employee's heirs, or the employee's personal representatives,

or the immunity provided an employer pursuant to Section 34A-2-105 or 34A-3-102 for injuries sustained by an employee, whether resulting in death or not.

(c) Any court in which a civil action is pending shall issue a partial summary judgment to an employer with respect to the employer's immunity as provided in Section 34A-2-105 or 34A-3-102, even though the conduct of the employer may be considered in allocating fault to the employer in a third-party action in the manner provided in Sections 78B-5-817 through 78B-5-823.

Amended by Chapter 286, 2021 General Session

34A-2-107 Appointment of workers' compensation advisory council -- Composition -- Terms of members -- Duties -- Compensation.

(1) There is created a workers' compensation advisory council composed of:

(a) the following voting members whom the commissioner shall appoint:

(i) five employer representatives; and

(ii) five employee representatives;

(b) the following nonvoting members whom the commissioner shall appoint:

(i) a representative of the workers' compensation insurance carrier that provides workers' compensation insurance under Section 31A-22-1001;

(ii) a representative of a workers' compensation insurance carrier different from the workers' compensation insurance carrier listed in Subsection (1)(b)(i);

(iii) a representative of health care providers;

(iv) the Utah insurance commissioner or the insurance commissioner's designee;

(v) the commissioner or the commissioner's designee; and

(vi) a representative of hospitals; and

(c) the following nonvoting members:

(i) a member of the Senate whom the president of the Senate shall appoint; and

(ii) a member of the House of Representatives whom the speaker of the House of Representatives shall appoint.

(2) Employers and employees shall consider nominating members of groups who historically may have been excluded from the council, such as women, minorities, and individuals with disabilities.

(3)

(a) Except as required by Subsection (3)(b), as terms of current council members expire, the commissioner, the president of the Senate, or the speaker of the House of Representatives shall appoint in accordance with Subsection (1) each new member or reappointed member to a two-year term beginning July 1 and ending June 30.

(b) Notwithstanding the requirements of Subsection (3)(a), the commissioner shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of council members are staggered so that approximately half of the council is appointed every two years.

(4)

(a) When a vacancy occurs in the membership for any reason, the replacement shall be appointed for the unexpired term.

(b) The commissioner shall terminate the term of a council member who ceases to be representative as designated by the member's original appointment.

(5) The council shall confer at least quarterly for the purpose of advising the commission, the division, and the Legislature on:

(a) the Utah workers' compensation and occupational disease laws;
(b) the administration of the laws described in Subsection (5)(a); and
(c) rules related to the laws described in Subsection (5)(a).
(6) Regarding workers' compensation, rehabilitation, and reemployment of employees who acquire a disability because of an industrial injury or occupational disease the council shall:
(a) offer advice on issues requested by:
(i) the commission;
(ii) the division; and
(iii) the Legislature; and
(b) make recommendations to:
(i) the commission; and
(ii) the division.
(7) The commissioner or the commissioner's designee shall serve as the chair of the council and call the necessary meetings.
(8) The commission shall provide staff support to the council.
(9)
(a) Except as provided in Subsections (9)(b) and(c), a member may not receive compensation or benefits for the member's service.
(b) A member who is not a legislator may receive per diem and travel expenses in accordance with:
(i) Section 63A-3-106;
(ii) Section 63A-3-107; and
(iii) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.
(c) A member who is a legislator may receive compensation and travel expenses in accordance with Section 36-2-2 and Legislative Joint Rules, Title 5, Legislative Compensation and Expenses.

Amended by Chapter 32, 2022 General Session

34A-2-108 Void agreements between employers and employees.
(1) Except as provided in Section 34A-2-420, an agreement by an employee to waive the employee's rights to compensation under this chapter or Chapter 3, Utah Occupational Disease Act, is not valid.
(2) An agreement by an employee to pay any portion of the premium paid by the employee's employer is not valid.
(3) Any employer who deducts any portion of the premium from the wages or salary of any employee entitled to the benefits of this chapter or Chapter 3, Utah Occupational Disease Act:
(a) is guilty of a class B misdemeanor; and
(b) shall be fined not more than $100 for each such offense.

Amended by Chapter 148, 2018 General Session

34A-2-109 Interstate and intrastate commerce.
(1) Except as provided in Subsection (2), this chapter and Chapter 3, Utah Occupational Disease Act, apply to employers and their employees engaged in:
(a) intrastate commerce;
(b) interstate commerce; and
(c) foreign commerce.

(2) If a rule of liability or method of compensation is established by the Congress of the United States as to interstate or foreign commerce, this chapter and Chapter 3, Utah Occupational Disease Act, apply only to the extent that:
(a) this chapter and Chapter 3, Utah Occupational Disease Act, have a mutual connection with intrastate work; and
(b) the connection to intrastate work is clearly separable and distinguishable from interstate or foreign commerce.

Amended by Chapter 354, 2020 General Session

34A-2-110 Workers' compensation insurance fraud -- Elements -- Penalties -- Notice.
(1) As used in this section:
(a) "Corporation" means the same as that term is defined in Section 76-2-201.
(b) "Intentionally" means the same as that term is defined in Section 76-2-103.
(c) "Knowingly" means the same as that term is defined in Section 76-2-103.
(d) "Person" means the same as that term is defined in Section 76-1-101.5.
(e) "Recklessly" means the same as that term is defined in Section 76-2-103.
(f) "Thing of value" means one or more of the following obtained under this chapter or Chapter 3, Utah Occupational Disease Act:
(i) workers' compensation insurance coverage;
(ii) disability compensation;
(iii) a medical benefit;
(iv) a good;
(v) a professional service;
(vi) a fee for a professional service; or
(vii) anything of value.
(2)
(a) A person is guilty of workers' compensation insurance fraud if that person intentionally, knowingly, or recklessly:
(i) devises a scheme or artifice to do the following by means of a false or fraudulent pretense, representation, promise, or material omission:
(A) obtain a thing of value under this chapter or Chapter 3, Utah Occupational Disease Act;
(B) avoid paying the premium that an insurer charges, for an employee on the basis of the underwriting criteria applicable to that employee, to obtain a thing of value under this chapter or Chapter 3, Utah Occupational Disease Act; or
(C) deprive an employee of a thing of value under this chapter or Chapter 3, Utah Occupational Disease Act; and
(ii) communicates or causes a communication with another in furtherance of the scheme or artifice.
(b) A violation of this Subsection (2) includes a scheme or artifice to:
(i) make or cause to be made a false written or oral statement with the intent to obtain insurance coverage as mandated by this chapter or Chapter 3, Utah Occupational Disease Act, at a rate that does not reflect the risk, industry, employer, or class code actually covered by the insurance coverage;
(ii) form a business, reorganize a business, or change ownership in a business with the intent to:

(A) obtain insurance coverage as mandated by this chapter or Chapter 3, Utah Occupational Disease Act, at a rate that does not reflect the risk, industry, employer, or class code actually covered by the insurance coverage;
(B) misclassify an employee as described in Subsection (2)(b)(iii); or
(C) deprive an employee of workers' compensation coverage as required by Subsection 34A-2-103(8);
(iii) misclassify an employee as one of the following so as to avoid the obligation to obtain insurance coverage as mandated by this chapter or Chapter 3, Utah Occupational Disease Act:
(A) an independent contractor;
(B) a sole proprietor;
(C) an owner;
(D) a partner;
(E) an officer; or
(F) a member in a limited liability company;
(iv) use a workers' compensation coverage waiver issued under Part 10, Workers' Compensation Coverage Waivers Act, to deprive an employee of workers' compensation coverage under this chapter or Chapter 3, Utah Occupational Disease Act; or
(v) collect or make a claim for temporary disability compensation as provided in Section 34A-2-410 while working for gain.

(3)
(a) Workers' compensation insurance fraud under Subsection (2) is punishable in the manner prescribed in Subsection (3)(c).
(b) A corporation or association is guilty of the offense of workers' compensation insurance fraud under the same conditions as those set forth in Section 76-2-204.
(c)
(i) In accordance with Subsection (3)(c)(ii), the determination of the degree of an offense under Subsection (2) shall be measured by the following on the basis of which creates the greatest penalty:
(A) the total value of all property, money, or other things obtained or sought to be obtained by the scheme or artifice described in Subsection (2); or
(B) the number of individuals not covered under this chapter or Chapter 3, Utah Occupational Disease Act, because of the scheme or artifice described in Subsection (2).
(ii) A person is guilty of:
(A) a class A misdemeanor:
(I) if the value of the property, money, or other thing of value described in Subsection (3)(c)(i)(A) is less than $1,000; or
(II) for each individual described in Subsection (3)(c)(i)(B), if the number of individuals described in Subsection (3)(c)(i)(B) is less than five;
(B) a third degree felony:
(I) if the value of the property, money, or other thing of value described in Subsection (3)(c)(i)(A) is equal to or greater than $1,000, but is less than $5,000; or
(II) for each individual described in Subsection (3)(c)(i)(B), if the number of individuals described in Subsection (3)(c)(i)(B) is equal to or greater than five, but is less than 50; and
(C) a second degree felony:
(I) if the value of the property, money, or other thing of value described in Subsection (3)(c)(i)(A) is equal to or greater than $5,000; or

(II) for each individual described in Subsection (3)(c)(i)(B), if the number of individuals described in Subsection (3)(c)(i)(B) is equal to or greater than 50.

(4) The following are not a necessary element of an offense described in Subsection (2):

(a) reliance on the part of a person;

(b) the intent on the part of the perpetrator of an offense described in Subsection (2) to permanently deprive a person of property, money, or anything of value; or

(c) an insurer or self-insured employer giving written notice in accordance with Subsection (5) that workers' compensation insurance fraud is a crime.

(5)

(a) An insurer or self-insured employer who, in connection with this chapter or Chapter 3, Utah Occupational Disease Act, prints, reproduces, or furnishes a form described in Subsection (5)(b) shall cause to be printed or displayed in comparative prominence with other content on the form the statement: "Any person who knowingly presents false or fraudulent underwriting information, files or causes to be filed a false or fraudulent claim for disability compensation or medical benefits, or submits a false or fraudulent report or billing for health care fees or other professional services is guilty of a crime and may be subject to fines and confinement in state prison."

(b) Subsection (5)(a) applies to a form upon which a person:

(i) applies for insurance coverage;

(ii) applies for a workers' compensation coverage waiver issued under Part 10, Workers' Compensation Coverage Waivers Act;

(iii) reports payroll;

(iv) makes a claim by reason of accident, injury, death, disease, or other claimed loss; or

(v) makes a report or gives notice to an insurer or self-insured employer.

(c) An insurer or self-insured employer who issues a check, warrant, or other financial instrument in payment of compensation issued under this chapter or Chapter 3, Utah Occupational Disease Act, shall cause to be printed or displayed in comparative prominence above the area for endorsement a statement substantially similar to the following: "Workers' compensation insurance fraud is a crime punishable by Utah law."

(d) This Subsection (5) applies only to the legal obligations of an insurer or a self-insured employer.

(e) A person who violates Subsection (2) is guilty of workers' compensation insurance fraud, and the failure of an insurer or a self-insured employer to fully comply with this Subsection (5) is not:

(i) a defense to violating Subsection (2); or

(ii) grounds for suppressing evidence.

(6) In the absence of malice, a person, employer, insurer, or governmental entity that reports a suspected fraudulent act relating to a workers' compensation insurance policy or claim is not subject to civil liability for libel, slander, or another relevant cause of action.

(7)

(a) In an action involving workers' compensation, this section supersedes Title 31A, Chapter 31, Insurance Fraud Act.

(b) Nothing in this section prohibits the Insurance Department from investigating violations of this section or from pursuing civil or criminal penalties for violations of this section in accordance with Section 31A-31-109 and this title.

Amended by Chapter 430, 2022 General Session

34A-2-111 Managed health care programs -- Other safety programs.

(1) As used in this section:

(a)

(i) "Health care provider" means a person who furnishes treatment or care to persons who have suffered bodily injury.

(ii) "Health care provider" includes:

(A) a hospital;

(B) a clinic;

(C) an emergency care center;

(D) a physician;

(E) a nurse;

(F) a nurse practitioner;

(G) a physician's assistant;

(H) a paramedic; or

(I) an emergency medical technician.

(b) "Physician" means any health care provider licensed under:

(i) Title 58, Chapter 5a, Podiatric Physician Licensing Act;

(ii) Title 58, Chapter 24b, Physical Therapy Practice Act;

(iii) Title 58, Chapter 67, Utah Medical Practice Act;

(iv) Title 58, Chapter 68, Utah Osteopathic Medical Practice Act;

(v) Title 58, Chapter 69, Dentist and Dental Hygienist Practice Act;

(vi) Title 58, Chapter 70a, Utah Physician Assistant Act;

(vii) Title 58, Chapter 71, Naturopathic Physician Practice Act;

(viii) Title 58, Chapter 72, Acupuncture Licensing Act;

(ix) Title 58, Chapter 73, Chiropractic Physician Practice Act; and

(x) Title 58, Chapter 31b, Nurse Practice Act, as an advanced practice registered nurse.

(c) "Preferred health care facility" means a facility:

(i) that is a health care facility as defined in Section 26B-2-201; and

(ii) designated under a managed health care program.

(d) "Preferred provider physician" means a physician designated under a managed health care program.

(e) "Self-insured employer" is as defined in Section 34A-2-201.5.

(2)

(a) A self-insured employer and insurance carrier may adopt a managed health care program to provide employees the benefits of this chapter or Chapter 3, Utah Occupational Disease Act, beginning January 1, 1993. The plan shall comply with this Subsection (2).

(b)

(i) A preferred provider program may be developed if the preferred provider program allows a selection by the employee of more than one physician in the health care specialty required for treating the specific problem of an industrial patient.

(ii)

(A) Subject to the requirements of this section, if a preferred provider program is developed by an insurance carrier or self-insured employer, an employee is required to use:

(I) preferred provider physicians; and

(II) preferred health care facilities.

(B) If a preferred provider program is not developed, an employee may have free choice of health care providers.

(iii) The failure to do the following may, if the employee has been notified of the preferred provider program, result in the employee being obligated for any charges in excess of the preferred provider allowances:
(A) use a preferred health care facility; or
(B) initially receive treatment from a preferred provider physician.
(iv) Notwithstanding the requirements of Subsections (2)(b)(i) through (iii), a self-insured employer or other employer may:
(A)
(I)
(Aa) have its own health care facility on or near its worksite or premises; and
(Bb) continue to contract with other health care providers; or
(II) operate a health care facility; and
(B) require employees to first seek treatment at the provided health care or contracted facility.
(v) An employee subject to a preferred provider program or employed by an employer having its own health care facility may procure the services of any qualified health care provider:
(A) for emergency treatment, if a physician employed in the preferred provider program or at the health care facility is not available for any reason;
(B) for conditions the employee in good faith believes are nonindustrial; or
(C) when an employee living in a rural area would be unduly burdened by traveling to:
(I) a preferred provider physician; or
(II) a preferred health care facility.
(c)
(i)
(A) An employer, insurance carrier, or self-insured employer may enter into contracts with the following for the purposes listed in Subsection (2)(c)(i)(B):
(I) health care providers;
(II) medical review organizations; or
(III) vendors of medical goods, services, and supplies including medicines.
(B) A contract described in Subsection (2)(c)(i)(A) may be made for the following purposes:
(I) insurance carriers or self-insured employers may form groups in contracting for managed health care services with health care providers;
(II) peer review;
(III) methods of utilization review;
(IV) use of case management;
(V) bill audit;
(VI) discounted purchasing; and
(VII) the establishment of a reasonable health care treatment protocol program including the implementation of medical treatment and quality care guidelines that are:
(Aa) scientifically based;
(Bb) peer reviewed; and
(Cc) consistent with standards for health care treatment protocol programs that the commission shall establish by rules made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, including the authority of the commission to approve a health care treatment protocol program before it is used or disapprove a health care treatment protocol program that does not comply with this Subsection (2)(c)(i)(B)(VII).
(ii) An insurance carrier may make any or all of the factors in Subsection (2)(c)(i) a condition of insuring an entity in its insurance contract.

(3)
(a) In addition to a managed health care program, an insurance carrier may require an employer to establish a work place safety program if the employer:
(i) has an experience modification factor of 1.00 or higher, as determined by the National Council on Compensation Insurance; or
(ii) is determined by the insurance carrier to have a three-year loss ratio of 100% or higher.
(b) A workplace safety program may include:
(i) a written workplace accident and injury reduction program that:
(A) promotes safe and healthful working conditions; and
(B) is based on clearly stated goals and objectives for meeting those goals; and
(ii) a documented review of the workplace accident and injury reduction program each calendar year delineating how procedures set forth in the program are met.
(c) A written workplace accident and injury reduction program permitted under Subsection (3)(b)
(i) should describe:
(i) how managers, supervisors, and employees are responsible for implementing the program;
(ii) how continued participation of management will be established, measured, and maintained;
(iii) the methods used to identify, analyze, and control new or existing hazards, conditions, and operations;
(iv) how the program will be communicated to all employees so that the employees are informed of work-related hazards and controls;
(v) how workplace accidents will be investigated and corrective action implemented; and
(vi) how safe work practices and rules will be enforced.
(d) For the purposes of a workplace accident and injury reduction program of an eligible employer described in Subsection 34A-2-103(7)(f), the workplace accident and injury reduction program shall:
(i) include the provisions described in Subsections (3)(b) and (c), except that the employer shall conduct a documented review of the workplace accident and injury reduction program at least semiannually delineating how procedures set forth in the workplace accident and injury reduction program are met; and
(ii) require a written agreement between the employer and all contractors and subcontractors on a project that states that:
(A) the employer has the right to control the manner or method by which the work is executed;
(B) if a contractor, subcontractor, or any employee of a contractor or subcontractor violates the workplace accident and injury reduction program, the employer maintains the right to:
(I) terminate the contract with the contractor or subcontractor;
(II) remove the contractor or subcontractor from the work site; or
(III) require that the contractor or subcontractor not permit an employee that violates the workplace accident and injury reduction program to work on the project for which the employer is procuring work; and
(C) the contractor or subcontractor shall provide safe and appropriate equipment subject to the right of the employer to:
(I) inspect on a regular basis the equipment of a contractor or subcontractor; and
(II) require that the contractor or subcontractor repair, replace, or remove equipment the employer determines not to be safe or appropriate.
(4) The premiums charged to any employer who fails or refuses to establish a workplace safety program pursuant to Subsection (3)(b)(i) or (ii) may be increased by 5% over any existing current rates and premium modifications charged that employer.

Amended by Chapter 328, 2023 General Session

34A-2-112 Administration of this chapter and Chapter 3.

(1) Administration of this chapter and Chapter 3, Utah Occupational Disease Act, is vested in the commission to be administered through the division, the Division of Adjudication, and for administrative appeals through the commissioner and the Appeals Board.

(2) The commission:

(a) has jurisdiction over every workplace in the state and may administer this chapter and Chapter 3, Utah Occupational Disease Act, and any rule or order issued under these chapters, to ensure that every employee in this state has a safe workplace in which employers have secured the payment of workers' compensation benefits for their employees in accordance with this chapter and Chapter 3, Utah Occupational Disease Act;

(b) through the division under the supervision of the director, has the duty and full authority to take any administrative action authorized under this chapter or Chapter 3, Utah Occupational Disease Act; and

(c) through the Division of Adjudication, commissioner, and Appeals Board, provide for the adjudication and review of an administrative action, decision, or order of the commission in accordance with this title.

Enacted by Chapter 375, 1997 General Session

34A-2-113 Designated agent required.

Each workers' compensation insurance carrier writing insurance in this state shall maintain a designated agent in this state that is:

(1) registered with the division; and

(2) authorized to receive on behalf of the workers' compensation insurance carrier all notices or orders provided for under this chapter or Chapter 3, Utah Occupational Disease Act.

Enacted by Chapter 295, 2006 General Session

34A-2-114 Unlawful interference -- Penalties.

(1) An employer may not knowingly or intentionally:

(a) impede or diminish an employee's efforts to make a claim or receive workers' compensation benefits under this chapter or Chapter 3, Utah Occupational Disease Act; or

(b) intimidate, coerce, or harass an employee with the intent of preventing the employee from making a claim or receiving workers' compensation benefits under this chapter or Chapter 3, Utah Occupational Disease Act.

(2) An employer may not suspend, discharge, discipline, threaten to discharge or discipline, or otherwise retaliate against an employee solely because the employee:

(a) claims or attempts to claim workers' compensation benefits under this chapter or Chapter 3, Utah Occupational Disease Act;

(b) reports an employer's noncompliance with a provision of this chapter or Chapter 3, Utah Occupational Disease Act; or

(c) testifies or intends to testify in a workers' compensation proceeding.

(3) In accordance with Title 63G, Chapter 4, Administrative Procedures Act, the division may impose a fine of up to $5,000 against an employer for each violation of Subsection (1) or (2).

(4) The division shall deposit any money collected under this section into the Uninsured Employers' Fund created in Section 34A-2-704.

(5) This section does not affect the rights or obligations of an employee or employer under common law.

Enacted by Chapter 225, 2018 General Session

Part 2
Securing Workers' Compensation Benefits for Employees

34A-2-201 Employers to secure workers' compensation benefits for employees -- Methods.

An employer shall secure the payment of workers' compensation benefits for its employees by:

(1) insuring, and keeping insured, the payment of this compensation with an insurer authorized under Title 31A, Insurance Code, to transact the business of workers' compensation insurance in this state; or

(2) obtaining approval from the division in accordance with Section 34A-2-201.5 to pay direct compensation as a self-insured employer in the amount, in the manner, and when due as provided for in this chapter or Chapter 3, Utah Occupational Disease Act.

Amended by Chapter 363, 2017 General Session

34A-2-201.3 Direct payments prohibited except by self-insured employer.

(1) An employer who is not a self-insured employer, as defined in Section 34A-2-201.5, may not pay a benefit provided for under this chapter and Chapter 3, Utah Occupational Disease Act, directly:
  (a) to an employee; or
  (b) for the employee.

(2)
  (a) Subject to Title 63G, Chapter 4, Administrative Procedures Act, if the division finds that an employer is violating or has violated Subsection (1), the division shall send written notice to the employer of the requirements of this section and Section 34A-2-201.
  (b) The division shall send the notice described in Subsection (2)(a) to the last address on the records of the commission for the employer.

(3)
  (a) If, after the division mails the notice required by Subsection (2) to an employer, the employer again violates Subsection (1), the division may impose a penalty against the employer of up to $1,000 for each violation.
  (b) If, after the division imposes a penalty under Subsection (3)(a) against the employer, the employer again violates Subsection (1), the division may impose a penalty of up to $5,000 for each violation.

(4)
  (a) The division shall deposit a penalty imposed under Subsection (3) into the Uninsured Employers' Fund created by Section 34A-2-704 to be used for the purposes of the Uninsured Employers' Fund specified in Section 34A-2-704.
  (b) The administrator of the Uninsured Employers' Fund shall collect money required to be deposited into the Uninsured Employers' Fund under this Subsection (4) in accordance with Section 34A-2-704.

(5) A penalty under this section is in addition to any other penalty imposed under this chapter or Chapter 3, Utah Occupational Disease Act, against an employer who fails to comply with Section 34A-2-201.
(6) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission shall adopt rules to implement this section.

Amended by Chapter 288, 2009 General Session

34A-2-201.5 Self-insured employer -- Acceptable security -- Procedures.

(1) As used in this section:
(a) "Acceptable security" means one or more of the following:
(i) cash;
(ii) a surety bond issued:
(A) by a person acceptable to the division; and
(B) in a form approved by the division;
(iii) an irrevocable letter of credit issued:
(A) by a depository institution acceptable to the division; and
(B) in a form approved by the division;
(iv) a United States Treasury Bill;
(v) a deposit in a depository institution that:
(A) has an office located in Utah; and
(B) is insured by the Federal Deposit Insurance Corporation; or
(vi) a certificate of deposit in a depository institution that:
(A) has an office located in Utah; and
(B) is insured by the Federal Deposit Insurance Corporation.
(b) "Compensation" is as defined in Section 34A-2-102.
(c) "Depository institution" is as defined in Section 7-1-103.
(d) "Member of a public agency insurance mutual" means a political subdivision or public agency that is included within a public agency insurance mutual.
(e) "Public agency insurance mutual" is as defined in Section 31A-1-103.
(f) "Self-insured employer" means one of the following that is authorized by the division to pay direct workers' compensation benefits under Subsection (2):
(i) an employer; or
(ii) a public agency insurance mutual.
(2)
(a) If approved by the division as a self-insured employer in accordance with this section:
(i) an employer may directly pay compensation in the amount, in the manner, and when due as provided for in this chapter and Chapter 3, Utah Occupational Disease Act; and
(ii) a public agency insurance mutual may directly pay compensation:
(A) on behalf of the members of the public agency insurance mutual; and
(B) in the amount, in the manner, and when due as provided in this chapter and Chapter 3, Utah Occupational Disease Act.
(b) If an employer's or a public agency insurance mutual's application to directly pay compensation as a self-insured employer is approved by the division, the application is considered acceptance:
(i) of the conditions, liabilities, and responsibilities imposed by this chapter and Chapter 3, Utah Occupational Disease Act, including the liability imposed pursuant to Subsection 34A-2-704(14);

(ii) by:
(A) the employer; or
(B)
(I) the public agency insurance mutual; and
(II) the members of the public agency insurance mutual.
(c) The division's denial under this Subsection (2) of an application to directly pay compensation as a self-insured employer becomes a final order of the commission 30 calendar days from the date of the denial unless within that 30 days the employer or the public agency insurance mutual that filed the application files an application for a hearing in accordance with Part 8, Adjudication.
(3) To qualify as a self-insured employer, an employer or a public agency insurance mutual shall:
(a) submit a written application requesting to directly pay compensation as a self-insured employer;
(b) annually provide the division proof of the employer's or the public agency insurance mutual's ability to directly pay compensation in the amount, manner, and time provided by this chapter and Chapter 3, Utah Occupational Disease Act; and
(c) if requested by the division, deposit acceptable security in the amounts determined by the division to be sufficient to secure the employer's or the public agency insurance mutual's liabilities under this chapter and Chapter 3, Utah Occupational Disease Act.
(4)
(a) Acceptable security deposited by a self-insured employer in accordance with Subsection (3)(c) shall be:
(i) deposited on behalf of the division by the self-insured employer with the state treasurer; and
(ii) withdrawn only upon written order of the division.
(b) The self-insured employer has no right, title, interest in, or control over acceptable security that is deposited in accordance with this section.
(c) If the division determines that the amount of acceptable security deposited in accordance with this section is in excess of that needed to secure payment of the self-insured employer's liability under this chapter and Chapter 3, Utah Occupational Disease Act, the division shall return the amount that is determined to be excess to the self-insured employer.
(5)
(a) The division may at any time require a self-insured employer to:
(i) increase or decrease the amount of acceptable security required to be deposited under Subsection (3)(c); or
(ii) modify the type of acceptable security to be deposited under Subsection (3)(c).
(b)
(i) If the division requires a self-insured employer to take an action described in Subsection (5)(a), a perfected security interest is created in favor of the division in the assets of the self-insured employer to the extent necessary to pay any amount owed by the self-insured employer under this chapter and Chapter 3, Utah Occupational Disease Act, that cannot be paid by acceptable security deposited in accordance with this section.
(ii) The perfected security interest created in Subsection (5)(b)(i) ends when the self-insured employer complies with the division's request under Subsection (5)(a) to the satisfaction of the division.
(6)
(a) If an employer or a public agency insurance mutual is approved under Subsection (2) to directly pay compensation as a self-insured employer, the division may revoke the employer's or the public agency insurance mutual's approval.

(b) The division's revocation of the employer's or the public agency insurance mutual's approval under Subsection (6)(a) becomes a final order of the commission 30 calendar days from the date of the revocation unless within that 30 days the employer or the public agency insurance mutual files an application for a hearing in accordance with Part 8, Adjudication.

(7) If the division finds that a self-insured employer has failed to pay compensation that the self-insured employer was liable to pay under this chapter or Chapter 3, Utah Occupational Disease Act, the division may use the acceptable security deposited and any interest earned on the acceptable security to pay:

(a) the self-insured employer's liability under this chapter and Chapter 3, Utah Occupational Disease Act; and

(b) any costs, including legal fees, associated with the administration of the compensation incurred by:

(i) the division;

(ii) a surety;

(iii) an adjusting agency; or

(iv) the Uninsured Employers' Fund.

(8)

(a) If the division determines that the acceptable security deposited under Subsection (3)(c) should be available for payment of the self-insured employer's liabilities under Subsection (7), the division shall:

(i) determine the method of claims administration, which may include administration by:

(A) a surety;

(B) an adjusting agency;

(C) the Uninsured Employers' Fund; or

(D) any combination of Subsections (8)(a)(i)(A) through (C); and

(ii) audit the self-insured employer's liabilities under this chapter and Chapter 3, Utah Occupational Disease Act.

(b) The following shall cooperate in the division's audit under Subsection (8)(a)(ii) and provide any relevant information in its possession:

(i) the self-insured employer;

(ii) if the self-insured employer is a public agency insurance mutual, a member of the public agency insurance mutual;

(iii) any excess insurer;

(iv) any adjusting agency;

(v) a surety;

(vi) an employee of a self-insured employer if the employee makes a claim for compensation under this chapter or Chapter 3, Utah Occupational Disease Act; and

(vii) an employee of a member of a public agency insurance mutual that is approved as a self-insured employer under this section, if the employee makes a claim for compensation under this chapter or Chapter 3, Utah Occupational Disease Act.

(9)

(a) Payment by a surety is a full release of the surety's liability under the bond to the extent of that payment, and entitles the surety to full reimbursement by the principal or the principal's estate including reimbursement of:

(i) necessary attorney's fees; and

(ii) other costs and expenses.

(b) A payment, settlement, or administration of benefits made in good faith pursuant to this section by a surety, an adjusting agency, the Uninsured Employers' Fund, or this division is valid and binding as between:
(i)
(A) the surety;
(B) adjusting agency;
(C) the Uninsured Employers' Fund; or
(D) the division;
(ii) the self-insured employer; and
(iii) if the self-insured employer is a public agency insurance mutual, the members of the public agency insurance mutual.
(10)
(a) The division shall resolve any dispute concerning:
(i) the depositing, renewal, termination, exoneration, or return of all or any portion of acceptable security deposited under this section;
(ii) any liability arising out of the depositing or failure to deposit acceptable security;
(iii) the adequacy of the acceptable security; or
(iv) the reasonableness of administrative costs under Subsection (7)(b), including legal fees.
(b) The division's decision under Subsection (10)(a) becomes a final order of the commission 30 calendar days from the date of the decision, unless within that 30 days the employer or public agency insurance mutual files an application for hearing in accordance with Part 8, Adjudication.

Amended by Chapter 71, 2002 General Session

34A-2-202 Assessment on self-insured employers including the state, counties, cities, towns, or school districts paying compensation direct.
(1)
(a)
(i) A self-insured employer, including a county, city, town, or school district, shall pay annually, on or before March 31, an assessment in accordance with this section and rules made by the commission under this section.
(ii) For purposes of this section, "self-insured employer" is as defined in Section 34A-2-201.5, except it includes the state if the state self-insures under Section 34A-2-203.
(b) The assessment required by Subsection (1)(a) is:
(i) to be collected by the State Tax Commission;
(ii) paid by the State Tax Commission into the state treasury as provided in Subsection 59-9-101(2); and
(iii) subject to the offset provided in Section 34A-2-202.5.
(c) The assessment under Subsection (1)(a) shall be based on a total calculated premium multiplied by the premium assessment rate established pursuant to Subsection 59-9-101(2).
(d) The total calculated premium, for purposes of calculating the assessment under Subsection (1)(a), shall be calculated by:
(i) multiplying the total of the standard premium for each class code calculated in Subsection (1)(e) by the self-insured employer's experience modification factor; and
(ii) multiplying the total under Subsection (1)(d)(i) by a safety factor determined under Subsection (1)(g).
(e) A standard premium shall be calculated by:

(i) multiplying the advisory loss cost for the year being considered, as filed with the insurance department pursuant to Section 31A-19a-406, for each applicable class code by 1.10 to determine the manual rate for each class code; and

(ii) multiplying the manual rate for each class code under Subsection (1)(e)(i) by each $100 of the self-insured employer's covered payroll for each class code.

(f)

(i) Each self-insured employer paying compensation direct shall annually obtain the experience modification factor required in Subsection (1)(d)(i) by using:

(A) the rate service organization designated by the insurance commissioner in Section 31A-19a-404; or

(B) for a self-insured employer that is a public agency insurance mutual, an actuary approved by the commission.

(ii) If a self-insured employer's experience modification factor under Subsection (1)(f)(i) is less than 0.50, the self-insured employer shall use an experience modification factor of 0.50 in determining the total calculated premium.

(g) To provide incentive for improved safety, the safety factor required in Subsection (1)(d)(ii) shall be determined based on the self-insured employer's experience modification factor as follows:

EXPERIENCE MODIFICATION FACTOR	SAFETY FACTOR
Less than or equal to 0.90	0.56
Greater than 0.90 but less than or equal to 1.00	0.78
Greater than 1.00 but less than or equal to 1.10	1.00
Greater than 1.10 but less than or equal to 1.20	1.22
Greater than 1.20	1.44

(h)

(i) A premium or premium assessment modification other than a premium or premium assessment modification under this section may not be allowed.

(ii) If a self-insured employer paying compensation direct fails to obtain an experience modification factor as required in Subsection (1)(f)(i) within the reasonable time period established by rule by the State Tax Commission, the State Tax Commission shall use an experience modification factor of 2.00 and a safety factor of 2.00 to calculate the total calculated premium for purposes of determining the assessment.

(iii) Before calculating the total calculated premium under Subsection (1)(h)(ii), the State Tax Commission shall provide the self-insured employer with written notice that failure to obtain an experience modification factor within a reasonable time period, as established by rule by the State Tax Commission:

(A) shall result in the State Tax Commission using an experience modification factor of 2.00 and a safety factor of 2.00 in calculating the total calculated premium for purposes of determining the assessment; and

(B) may result in the division revoking the self-insured employer's right to pay compensation direct.

(i) The division may immediately revoke a self-insured employer's certificate issued under Sections 34A-2-201 and 34A-2-201.5 that permits the self-insured employer to pay compensation direct if the State Tax Commission assigns an experience modification factor

and a safety factor under Subsection (1)(h) because the self-insured employer failed to obtain an experience modification factor.

(2) Notwithstanding the annual payment requirement in Subsection (1)(a), a self-insured employer whose total assessment obligation under Subsection (1)(a) for the preceding year was $10,000 or more shall pay the assessment in quarterly installments in the same manner provided in Section 59-9-104 and subject to the same penalty provided in Section 59-9-104 for not paying or underpaying an installment.

(3)

(a) The State Tax Commission shall have access to all the records of the division for the purpose of auditing and collecting any amounts described in this section.

(b) Time periods for the State Tax Commission to allow a refund or make an assessment shall be determined in accordance with Title 59, Chapter 1, Part 14, Assessment, Collections, and Refunds Act.

(4)

(a) A review of appropriate use of job class assignment and calculation methodology may be conducted as directed by the division at any reasonable time as a condition of the self-insured employer's certification of paying compensation direct.

(b) The State Tax Commission shall make any records necessary for the review available to the commission.

(c) The commission shall make the results of any review available to the State Tax Commission.

Amended by Chapter 32, 2020 General Session

34A-2-202.5 Offset for occupational health and safety related donations.

(1) As used in this section:

(a) "Occupational health and safety center" means the Rocky Mountain Center for Occupational and Environmental Health created in Title 53B, Chapter 30, Part 2, Rocky Mountain Center for Occupational and Environmental Health.

(b) "Qualified donation" means a donation that is:

(i) cash;

(ii) given directly to an occupational health and safety center; and

(iii) given exclusively for the purpose of:

(A) supporting graduate level education and training in fields of:

(I) safety and ergonomics;

(II) industrial hygiene;

(III) occupational health nursing;

(IV) occupational injury prevention; and

(V) occupational medicine;

(B) providing continuing education programs for employers designed to promote workplace safety; and

(C) paying reasonable administrative, personnel, equipment, and overhead costs of the occupational health and safety center.

(c) "Self-insured employer" is a self-insured employer as defined in Section 34A-2-201.5 that is required to pay the assessment imposed under Section 34A-2-202.

(2)

(a) A self-insured employer may offset against the assessment imposed under Section 34A-2-202 an amount equal to the lesser of:

(i) the total of qualified donations made by the self-insured employer in the calendar year for which the assessment is calculated; and
(ii) .20% of the self-insured employer's total calculated premium calculated under Subsection 34A-2-202(1)(d) for the calendar year for which the assessment is calculated.
(b) The offset provided under this Subsection (2) shall be allocated in proportion to the percentages provided in Subsection 59-9-101(2)(c).
(3) An occupational health and safety center shall:
(a) provide a self-insured employer a receipt for any qualified donation made by the self-insured employer to the occupational health and safety center;
(b) expend money received by a qualified donation:
(i) for the purposes described in Subsection (1)(b)(iii); and
(ii) in a manner that can be audited to ensure that the money is expended for the purposes described in Subsection (1)(b)(iii); and
(c) in conjunction with the report required by Section 59-9-102.5, report to the Office of the Legislative Fiscal Analyst for review by the Higher Education Appropriations Subcommittee by no later than August 15 of each year:
(i) the qualified donations received by the occupational health and safety center in the previous calendar year; and
(ii) the expenditures during the previous calendar year of qualified donations received by the occupational health and safety center.

Amended by Chapter 425, 2021 General Session

34A-2-203 Payment of premiums for workers' compensation.
(1) The state shall secure the payment of workers' compensation benefits for its employees:
(a) by:
(i) insuring, and keeping insured, the payment of this compensation with an insurer authorized under Title 31A, Insurance Code, to transact the business of workers' compensation insurance in this state; or
(ii) paying direct compensation as a self-insured employer in the amount, in the manner, and when due as provided for in this chapter or Chapter 3, Utah Occupational Disease Act;
(b) in accordance with Title 63A, Chapter 4, Risk Management; and
(c) subject to Subsection (2).
(2)
(a) If the state determines to secure the payment of workers' compensation benefits for its employees by paying direct compensation as a self-insured employer in the amount, in the manner, and due as provided for in this chapter or Chapter 3, Utah Occupational Disease Act, the state is:
(i) exempt from Section 34A-2-202.5 and Subsection 34A-2-704(14); and
(ii) required to pay a premium assessment as provided in Section 34A-2-202.
(b) If the state chooses to pay workers' compensation benefits for its employees through insuring under Subsection (1)(a)(i), the state shall obtain that insurance in accordance with Title 63G, Chapter 6a, Utah Procurement Code.

Amended by Chapter 363, 2017 General Session

34A-2-204 Compliance with chapter -- Notice to employees.

(1) Each employer providing insurance, or electing directly to pay compensation to the employer's injured workers, or the dependents of the employer's killed employees, in accordance with this chapter and Chapter 3, Utah Occupational Disease Act, shall post in conspicuous places about the employer's place of business typewritten or printed notices stating, that:
  (a) the employer has complied with this chapter and Chapter 3, Utah Occupational Disease Act, and all the rules of the commission made under this chapter and Chapter 3, Utah Occupational Disease Act; and
  (b) if such is the case, the employer has been authorized by the division directly to compensate the employees or dependents.
(2) The notice required in Subsection (1) when posted in accordance with Subsection (1), shall constitute sufficient notice to the employer's employees of the fact that the employer has complied with the law as to securing compensation to the employer's employees and their dependents.

Renumbered and Amended by Chapter 375, 1997 General Session

34A-2-205 Notification of workers' compensation insurance coverage to division -- Cancellation requirements -- Penalty for violation.

(1)
  (a) An insurance carrier writing workers' compensation insurance coverage in this state or for this state, regardless of the state in which the policy is written, shall file notification of that coverage with the division or the division's designee within 30 days after the inception date of the policy in the form prescribed by the division.
  (b) A policy described in Subsection (1)(a) is in effect from inception until canceled by filing with the division or the division's designee a notification of cancellation in the form prescribed by the division within 10 days after the cancellation of a policy.
  (c) Failure to notify the division or its designee under Subsection (1)(b) results in the continued liability of the carrier until the date that notice of cancellation is received by the division or the division's designee.
  (d) An insurance carrier described in this Subsection (1) shall make a filing within 30 days of:
    (i) the reinstatement of a policy;
    (ii) the changing or addition of a name or address of the insured; or
    (iii) the merger of an insured with another entity.
  (e) A filing under this section shall include:
    (i) the name of the insured;
    (ii) the principal business address;
    (iii) any and all assumed name designations;
    (iv) the address of all locations within this state where business is conducted; and
    (v) all federal employer identification numbers or federal tax identification numbers.
(2) Noncompliance with this section is grounds for revocation of an insurance carrier's certificate of authority in addition to the grounds specified in Title 31A, Insurance Code.
(3)
  (a) The division may assess an insurer up to $150 if the insurer fails to comply with this section.
  (b) The division shall deposit an amount assessed under Subsection (3)(a) into the Uninsured Employers' Fund created in Section 34A-2-704 to be used for the purposes of the Uninsured Employer's Fund specified in Section 34A-2-704.

(c) The administrator of the Uninsured Employers' Fund shall collect money required to be deposited into the Uninsured Employers' Fund under this Subsection (3) in accordance with Section 34A-2-704.

(4)

(a) The notification of workers' compensation insurance coverage required to be filed under Subsection (1) is a protected record under Section 63G-2-305.

(b) The commission or any of its divisions may not disclose the information described in Subsection (4)(a) except as provided in:

(i) Title 63G, Chapter 2, Government Records Access and Management Act, for a protected record; or

(ii) Subsection (4)(c), notwithstanding whether Title 63G, Chapter 2, Government Records Access and Management Act, permits disclosure.

(c) The commission may disclose the information described in Subsection (4)(a) if:

(i) the information is disclosed on an individual case basis related to a single employer;

(ii) the information facilitates the:

(A) coverage of subcontractors by identifying the insurance carrier providing workers' compensation coverage for an employer;

(B) filing of a claim by an employee; or

(C) payment of services rendered on an employee's claim by a medical practitioner; and

(iii) promotes the purposes of this chapter or Chapter 3, Utah Occupational Disease Act.

(d) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission shall make rules concerning when information may be disclosed under Subsection (4)(c).

Amended by Chapter 288, 2009 General Session

34A-2-206 Furnishing information to division -- Employers' annual report -- Rights of division -- Examination of employers under oath -- Penalties.

(1)

(a) Every employer shall furnish the division, upon request, all information required by it to carry out the purposes of this chapter and Chapter 3, Utah Occupational Disease Act.

(b) In the month of July of each year every employer shall prepare and mail to the division a statement containing the following information:

(i) the number of persons employed during the preceding year from July 1, to June 30, inclusive;

(ii) the number of the persons employed at each kind of employment;

(iii) the scale of wages paid in each class of employment, showing the minimum and maximum wages paid; and

(iv) the aggregate amount of wages paid to all employees.

(2)

(a) The information required under Subsection (1) shall be furnished in the form prescribed by the division.

(b) Every employer shall:

(i) answer fully and correctly all questions and give all the information sought by the division under Subsection (1); or

(ii) if unable to comply with Subsection (2)(b)(i), give to the division, in writing, good and sufficient reasons for the failure.

(3)

(a) The division may require the information required to be furnished by this chapter or Chapter 3, Utah Occupational Disease Act, to be made under oath and returned to the division within the period fixed by it or by law.
(b) The division, or any person employed by the division for that purpose, shall have the right to examine, under oath, any employer, or the employer's agents or employees, for the purpose of ascertaining any information that the employer is required by this chapter or Chapter 3, Utah Occupational Disease Act, to furnish to the division.

(4)
(a) The division may seek a penalty of not to exceed $500 for each offense to be recovered in a civil action brought by the commission or the division on behalf of the commission against an employer who:
(i) within a reasonable time to be fixed by the division and after the receipt of written notice signed by the director or the director's designee specifying the information demanded and served by certified mail or personal service, refuses to furnish to the division:
(A) the annual statement required by this section; or
(B) other information as may be required by the division under this section; or
(ii) willfully furnishes a false or untrue statement.
(b) All penalties collected under Subsection (4)(a) shall be paid into:
(i) the Employers' Reinsurance Fund created in Section 34A-2-702; or
(ii) if the commissioner has made the notification described in Subsection 34A-2-702(7), the Uninsured Employers' Fund created in Section 34A-2-704.

Amended by Chapter 194, 2019 General Session

34A-2-207 Noncompliance -- Civil action by employees.

(1)
(a) Employers who fail to comply with Section 34A-2-201 are not entitled to the benefits of this chapter or Chapter 3, Utah Occupational Disease Act, during the period of noncompliance, but shall be liable in a civil action to their employees for damages suffered by reason of personal injuries arising out of or in the course of employment caused by the wrongful act, neglect, or default of the employer or any of the employer's officers, agents, or employees, and also to the dependents or personal representatives of such employees when death results from such injuries.
(b) In any action described in Subsection (1)(a), the defendant may not avail himself of any of the following defenses:
(i) the fellow-servant rule;
(ii) assumption of risk; or
(iii) contributory negligence.

(2) Proof of the injury shall constitute prima facie evidence of negligence on the part of the employer and the burden shall be upon the employer to show freedom from negligence resulting in the injury.

(3) An employer who fails to comply with Section 34A-2-201 is subject to Sections 34A-2-208 and 34A-2-212.

(4) In any civil action permitted under this section against the employer, the employee shall be entitled to necessary costs and a reasonable attorney fee assessed against the employer.

Amended by Chapter 13, 1998 General Session

34A-2-208 Right to compensation when employer fails to comply.

(1) Any employee, or the employee's dependents if death has ensued, may, in lieu of proceeding against the employee's employer by civil action in the courts as provided in Section 34A-2-207, file an application with the Division of Adjudication for compensation in accordance with this chapter or Chapter 3, Utah Occupational Disease Act, when:
  (a) the employee's employer failed to comply with Section 34A-2-201;
  (b) the employee has been injured by accident arising out of or in the course of the employee's employment, wherever the injury occurred; and
  (c) the injury described in Subsection (1)(b) was not purposely self-inflicted.

(2) An application for compensation filed under Subsection (1) shall be treated by the commission, including for purposes of appeal to the commissioner or Appeals Board, as an application for hearing under Section 34A-2-801.

(3)
  (a) If an application for compensation is filed under Subsection (1), in accordance with Part 8, Adjudication, the commission shall determine the award due to:
    (i) the injured employee; or
    (ii) the employee's dependents in case death has ensued.
  (b) The employer shall pay the award determined under Subsection (3)(a) to the persons entitled to the compensation within 10 days after receiving notice from the commission of the amount of the award determined under Subsection (3)(a).

Renumbered and Amended by Chapter 375, 1997 General Session

34A-2-209 Employer's penalty for violation -- Notice of noncompliance -- Proof required -- Admissible evidence -- Criminal prosecution.

(1)
  (a)
    (i) An employer who fails to comply, and every officer of a corporation or association that fails to comply, with Section 34A-2-201 is guilty of a class B misdemeanor.
    (ii) Each day's failure to comply with Subsection (1)(a)(i) is a separate offense.
  (b) If the division sends written notice of noncompliance by certified mail or personal service to the last-known address of an employer, a corporation, or an officer of a corporation or association, and the employer, corporation, or officer does not within 10 days of the day on which the notice is delivered provide to the division proof of compliance, the notice and failure to provide proof constitutes prima facie evidence that the employer, corporation, or officer is in violation of this section.

(2)
  (a) If the division has reason to believe that an employer is conducting business without securing the payment of compensation in a manner provided in Section 34A-2-201, the division may give notice of noncompliance by certified mail or personal service to the following at the last-known address of the following:
    (i) the employer; or
    (ii) if the employer is a corporation or association:
      (A) the corporation or association; or
      (B) the officers of the corporation or association.
  (b) If an employer, corporation, or officer described in Subsection (2)(a) does not, within 10 days of the day on which the notice is delivered, provide to the division proof of compliance, the

employer and every officer of an employer corporation or association is guilty of a class B misdemeanor.

(c) Each day's failure to comply with Subsection (2)(a) is a separate offense.

(3) A fine, penalty, or money collected or assessed under this section shall be:

(a) deposited in the Uninsured Employers' Fund created by Section 34A-2-704;

(b) used for the purposes of the Uninsured Employers' Fund specified in Section 34A-2-704; and

(c) collected by the Uninsured Employers' Fund administrator in accordance with Section 34A-2-704.

(4) A form or record kept by the division or its designee pursuant to Section 34A-2-205 is admissible as evidence to establish noncompliance under this section.

(5) The commission or division on behalf of the commission may prosecute or request the attorney general or district attorney to prosecute a criminal action in the name of the state to enforce this chapter or Chapter 3, Utah Occupational Disease Act.

Amended by Chapter 156, 2018 General Session

34A-2-210 Power to bring suit for noncompliance.

(1)

(a) The commission or the division on behalf of the commission may maintain a suit in any court of the state to enjoin any employer, within this chapter or Chapter 3, Utah Occupational Disease Act, from further operation of the employer's business, when the employer fails to provide for the payment of benefits in one of the ways provided in Section 34A-2-201.

(b) Upon a showing of failure to provide for the payment of benefits, the court shall enjoin the further operation of the employer's business until the payment of these benefits has been secured by the employer as required by Section 34A-2-201. The court may enjoin the employer without requiring bond from the commission or division.

(2) If the division has reason to believe that an employer is conducting a business without securing the payment of compensation in one of the ways provided in Section 34A-2-201, the division may give the employer five days written notice by registered mail of the noncompliance and if the employer within the five days written notice does not remedy the default:

(a) the commission or the division on behalf of the commission may file suit under Subsection (1); and

(b) the court may, ex parte, issue without bond a temporary injunction restraining the further operation of the employer's business.

Amended by Chapter 363, 2017 General Session

34A-2-211 Notice of noncompliance to employer -- Enforcement power of division -- Penalty.

(1)

(a) In addition to the remedies described in Section 34A-2-210, if the division has reason to believe that an employer is conducting business without securing the payment of benefits in accordance with Section 34A-2-201, the division shall deliver written notice of the noncompliance to the employer by certified mail or personal service to the employer's last-known address.

(b) If the employer does not demonstrate compliance with Section 34A-2-201 to the division within 15 days after the day on which the notice is delivered, the division shall issue an order requiring the employer to appear before the division and show cause why the employer should not be ordered to comply with Section 34A-2-201.

(c) If the division finds that an employer has failed to comply with Section 34A-2-201, the division shall require the employer to comply with Section 34A-2-201.

(2)

(a) Except as provided in Subsection (2)(d), after the division makes a finding of noncompliance described in Subsection (1)(c), the division shall, in accordance with Title 63G, Chapter 4, Administrative Procedures Act, and this Subsection (2), impose a penalty against the employer.

(b) Except as provided in Subsection (2)(e), a penalty imposed under Subsection (2)(a) shall be the greater of:

(i) $1,000; or

(ii) three times the amount of the premium the employer would have paid for workers' compensation insurance based on the rate filing of the workers' compensation insurance carrier that provides workers' compensation insurance under Section 31A-22-1001, during the period of noncompliance.

(c) For purposes of Subsection (2)(b)(ii):

(i) the premium is calculated by applying rates and rate multipliers to the payroll basis under Subsection (2)(c)(ii), using the highest rated employee class code applicable to the employer's operations; and

(ii) the payroll basis is 150% of the state's average weekly wage multiplied by the highest number of workers employed by the employer during the period of the employer's noncompliance multiplied by the number of weeks of the employer's noncompliance up to a maximum of 156 weeks.

(d) The division may waive the penalty described in this Subsection (2) if:

(i)

(A) the finding of noncompliance is the first finding of noncompliance against the employer under this section;

(B) the period of noncompliance was less than 180 days;

(C) the employer is currently in compliance with Section 34A-2-201; and

(D) no injury was reported to the division in accordance with Section 34A-2-407 during the period of noncompliance; or

(ii)

(A) the employer is a corporation;

(B) each employee of the corporation is an officer of the corporation; and

(C) the employer is currently in compliance with Section 34A-2-201.

(e)

(i) The division may reduce the penalty described in this Subsection (2) if:

(A) the finding of noncompliance is the first finding of noncompliance against the employer under this section;

(B) the employer is currently in compliance with Section 34A-2-201;

(C) no injury was reported to the division in accordance with Section 34A-2-407 during the period of noncompliance; and

(D) upon request from the division, the employer submits to the division the employer's payroll records related to the period of noncompliance.

(ii)

(A) The reduced penalty shall be an amount equal to the premium the employer would have paid for workers' compensation insurance based on the rate filing of the workers' compensation insurance carrier that provides workers' compensation insurance under Section 31A-22-1001, during the period of noncompliance.

(B) The division shall calculate the amount described in Subsection (2)(e)(ii)(A) using the payroll records described in Subsection (2)(e)(i)(D).

(f) The division may reinstate the full penalty amount against an employer if the Uninsured Employers' Fund is ordered to pay benefits for an injury that occurred but was not reported during the period of noncompliance for which the division waived or assessed a reduced penalty under this subsection.

(3) A penalty imposed under Subsection (2) shall be:

(a) deposited in the Uninsured Employers' Fund created by Section 34A-2-704;

(b) used for the purposes of the Uninsured Employers' Fund specified in Section 34A-2-704; and

(c) collected by the Uninsured Employers' Fund administrator in accordance with Section 34A-2-704.

(4)

(a) An employer who disputes a determination, imposition, or amount of a penalty imposed under Subsection (2) shall request a hearing before an administrative law judge within 30 days of the date of issuance of the administrative action imposing the penalty or the administrative action becomes a final order of the commission.

(b) An employer's request for a hearing under Subsection (4)(a) shall specify the facts and grounds that are the basis of the employer's objection to the determination, imposition, or amount of the penalty.

(c) An administrative law judge's decision under this Subsection (4) may be reviewed pursuant to Part 8, Adjudication.

(5) An administrative action issued by the division under this section shall:

(a) be in writing;

(b) be sent by certified mail or personal service to the last-known address of the employer;

(c) state the findings and administrative action of the division; and

(d) specify its effective date, which may be:

(i) immediate; or

(ii) at a later date.

(6) A final order of the commission under this section, upon application by the commission made on or after the effective date of the order to a court of general jurisdiction in any county in this state, may be enforced by an order to comply:

(a) entered ex parte; and

(b) without notice by the court.

Amended by Chapter 156, 2018 General Session

34A-2-212 Docketing awards in district court -- Enforcing judgment.

(1)

(a) Except as provided in Subsection (3), an abstract of a final order of the commission providing an award may be filed under this chapter or Chapter 3, Utah Occupational Disease Act, in the office of the clerk of the district court of any county in the state when all administrative and appellate remedies are exhausted.

(b) The abstract shall be docketed in the judgment docket of the district court where the abstract is filed. The time of the receipt of the abstract shall be noted on the abstract by the clerk of the district court and entered in the docket.

(c) When filed and docketed under Subsections (1)(a) and (b), the order shall constitute a lien from the time of the docketing upon the real property of the employer situated in the county,

for a period of eight years from the date of the order unless the award provided in the final order is satisfied during the eight-year period.

(d) The district court may issue an execution or a renewal on the order within the same time and in the same manner and with the same effect as if the order were a judgment issued by the district court.

(2)

(a) If the employer was uninsured at the time of the injury, the county attorney for the county in which the applicant or the employer resides, depending on the district in which the final order is docketed, shall enforce the judgment when requested by the commission or division on behalf of the commission.

(b) In an action to enforce an order docketed under Subsection (1), reasonable attorney fees and court costs shall be allowed in addition to the award.

(3) Unless stayed pursuant to Section 63G-4-405, or set aside by the court of appeals, a preliminary or final decision of the commissioner or Appeals Board awarding permanent total disability compensation under Section 34A-2-413 is enforceable by abstract filed in the office of the clerk of the district court of any county in the state.

Amended by Chapter 461, 2017 General Session

Part 3
Protection of Life, Health, and Safety

34A-2-301 Places of employment to be safe -- Willful neglect -- Penalty.

(1) An employer may not:

(a) construct, occupy, or maintain any place of employment that is not safe;

(b) require or knowingly permit any employee to be in any employment or place of employment that is not safe;

(c) fail to provide and use safety devices and safeguards;

(d) remove, disable, or bypass safety devices and safeguards;

(e) fail to obey orders of the commission;

(f) fail to obey rules of the commission;

(g) fail to adopt and use methods and processes reasonably adequate to render the employment and place of employment safe; or

(h) fail or neglect to do every other thing reasonably necessary to protect the life, health, and safety of the employer's employees.

(2) Compensation as provided in this chapter shall be increased 15%, except in case of injury resulting in death, when injury is caused by the willful failure of an employer to comply with:

(a) the law;

(b) a rule of the commission;

(c) any lawful order of the commission; or

(d) the employer's own written workplace safety program.

Amended by Chapter 131, 2003 General Session

34A-2-302 Employee's willful misconduct -- Penalty.

(1) For purposes of this section:

(a) "Controlled substance" is as defined in Section 58-37-2.
(b) "Local government employee" is as defined in Section 34-41-101.
(c) "Local governmental entity" is as defined in Section 34-41-101.
(d) "State institution of higher education" is as defined in Section 34-41-101.
(e) "Valid prescription" is a prescription, as defined in Section 58-37-2, that:
(i) is prescribed for a controlled substance for use by the employee for whom it was prescribed; and
(ii) has not been altered or forged.
(2) An employee may not:
(a) remove, displace, damage, destroy, or carry away any safety device or safeguard provided for use in any employment or place of employment;
(b) interfere in any way with the use of a safety device or safeguard described in Subsection (2)(a) by any other person;
(c) interfere with the use of any method or process adopted for the protection of any employee in the employer's employment or place of employment; or
(d) fail or neglect to follow and obey orders and to do every other thing reasonably necessary to protect the life, health, and safety of employees.
(3) Except in case of injury resulting in death:
(a) compensation provided for by this chapter shall be reduced 15% when injury is caused by the willful failure of the employee:
(i) to use safety devices when provided by the employer; or
(ii) to obey any order or reasonable rule adopted by the employer for the safety of the employee; and
(b) except when the employer permitted, encouraged, or had actual knowledge of the conduct described in Subsection (4):
(i) disability compensation may not be awarded under this chapter or Chapter 3, Utah Occupational Disease Act, to an employee when the major contributing cause of the employee's injury is the employee's conduct described in Subsection (4); or
(ii) disability compensation to an employee under this chapter or Chapter 3, Utah Occupational Disease Act, shall be reduced by 15% when the employee's conduct is a contributing cause of the employee's injury but not the major contributing cause.
(4) The conduct described in Subsection (3)(b) is the employee's:
(a) knowing use of a controlled substance that the employee did not obtain under a valid prescription;
(b) 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 prescribed therapeutic amounts; or
(ii) in an otherwise abusive manner; or
(c) intoxication from alcohol with a blood or breath alcohol concentration of .05 grams or greater as shown by a chemical test.
(5)
(a) For purposes of Subsections (3) and (4), as shown by 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, before the result of the test may be used as a basis for the presumption, it is presumed that the major contributing cause of the employee's injury is the employee's conduct described in Subsection (4) if at the time of the injury:

(i) the employee has in the employee's system:
(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) the employee has a blood or breath alcohol concentration of .05 grams or greater.
(b) The presumption created under Subsection (5)(a) may be rebutted by a preponderance of the evidence showing that:
(i) the chemical test creating the presumption is inaccurate because the employer failed to comply with:
(A) Sections 34-38-4 through 34-38-6; or
(B) if the employer is a local governmental entity or state institution of higher education, Section 34-41-104, Subsection 34-41-103(7), or, if applicable, Subsection 34-41-103(6);
(ii) the employee did not engage in the conduct described in Subsection (4);
(iii) the test results do not exclude the possibility of passive inhalation of marijuana because the concentration of total urinary cannabinoids is less than 50 nanograms/ml as determined by a test conducted in accordance with:
(A) Sections 34-38-4 through 34-38-6; or
(B) if the employer is a local governmental entity or state institution of higher education, Section 34-41-104, Subsection 34-41-103(7), or, if applicable, Subsection 34-41-103(6);
(iv) a competent medical opinion from a physician verifies that the amount of controlled substances, metabolites, or alcohol in the employee's system does not support a finding that the conduct described in Subsection (4) was the major contributing cause of the employee's injury or a contributing cause of the employee's injury; or
(v)
(A) the conduct described in Subsection (4) was not a contributing cause of the employee's injury; or
(B) the employee's mental and physical condition were not impaired at the time of the injury.
(c)
(i) Except as provided in Subsections (5)(c)(ii) and (iii), if a chemical test that creates the presumption under Subsection (5)(a) is taken at the request of the employer, the employer shall comply with:
(A) Title 34, Chapter 38, Drug and Alcohol Testing; or
(B) if the employee is a local governmental employee or an employee of a state institution of higher education, Title 34, Chapter 41, Local Governmental Entity Drug-Free Workplace Policies.
(ii) Notwithstanding Section 34-38-13, the results of a test taken under Title 34, Chapter 38, Drug and Alcohol Testing, may be disclosed to the extent necessary to establish or rebut the presumption created under Subsection (5)(a).
(iii) Notwithstanding Section 34-41-103, the results of a test taken under Title 34, Chapter 41, Local Governmental Entity Drug-Free Workplace Policies, may be disclosed to the extent necessary to establish or rebut the presumption created under Subsection (5)(a).
(6)
(a) A test sample taken pursuant to this section shall be taken as a split sample.

(b) One part of the sample is to be used by the employer for testing pursuant to Subsection (5)(a):
(i) at a testing facility selected by the employer; and
(ii) at the employer's or the employer's workers' compensation carrier's expense.
(c) The testing facility selected under Subsection (6)(b) shall hold the part of the sample not used under Subsection (6)(b) until the sooner of:
(i) six months from the date of the original test; or
(ii) when the employee requests that the sample be tested.
(d) The employee has only six months from the date of the original test to have the remaining sample tested:
(i) at the employee's expense; and
(ii) at the testing facility selected by the employee, except that the test shall meet the requirements of Subsection (5)(a).
(7) If any provision of this section, or the application of any provision of this section to any person or circumstance, is held invalid, the remainder of this section shall be given effect without the invalid provision or application.

Amended by Chapter 352, 2024 General Session

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 26B-3-1009.

Amended by Chapter 328, 2023 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 26B-4-201.
(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 328, 2023 General Session

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 26B-3-1009 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 328, 2023 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.

Amended by Chapter 381, 2024 General Session

Part 5
Industrial Noise

34A-2-501 Definitions.

(1) "Harmful industrial noise" means:

(a) sound that results in acoustic trauma such as sudden instantaneous temporary noise or impulsive or impact noise exceeding 140 dB peak sound pressure levels; or

(b) the sound emanating from equipment and machines during employment exceeding the following permissible sound levels, dBA slow response, and corresponding durations per day, in hours:

Sound level	Duration
90	8
92	6
95	4
97	3
100	2
102	1.5
105	1.0
110	0.5
115	0.25 or less

(2) "Loss of hearing" means binaural hearing loss measured in decibels with frequencies of 500, 1,000, 2,000, and 3,000 cycles per second (Hertz). If the average decibel loss at 500, 1,000, 2,000, and 3,000 cycles per second (Hertz) is 25 decibels or less, usually no loss of hearing exists.

Amended by Chapter 43, 2017 General Session

34A-2-502 Intensity tests.

(1) The commission may conduct tests to determine the intensity of noise at places of employment.

(2) An administrative law judge may consider tests conducted by the commission, and any other tests taken by authorities in the field of sound engineering, as evidence of harmful industrial noise.

Renumbered and Amended by Chapter 375, 1997 General Session

34A-2-503 Loss of hearing -- Occupational hearing loss due to noise to be compensated.

(1) Permanent hearing loss caused by exposure to harmful industrial noise or by direct head injury shall be compensated according to the terms and conditions of this chapter or Chapter 3, Utah Occupational Disease Act.
(2) A claim for compensation for hearing loss for harmful industrial noise may not be paid under this chapter or Chapter 3, Utah Occupational Disease Act, unless it can be demonstrated by a professionally controlled sound test that the employee has been exposed to harmful industrial noise as defined in Section 34A-2-501 while employed by the employer against whom the claim is made.

Renumbered and Amended by Chapter 375, 1997 General Session

34A-2-504 Hearing loss -- Extent of employer's liability.

(1) An employer is liable only for the hearing loss of an employee that arises out of and in the course of the employee's employment for that employer.
(2) If previous occupational hearing loss or nonoccupational hearing loss is established by competent evidence, the employer may not be liable for the prior hearing loss so established, whether or not compensation has previously been paid or awarded. The employer is liable only for the difference between the percentage of hearing loss presently established and that percentage of prior hearing loss established by preemployment audiogram or other competent evidence.
(3) The date for compensation for occupational hearing loss shall be determined by the date of direct head injury or the last date when harmful industrial noise contributed substantially in causing the hearing loss.

Amended by Chapter 43, 2017 General Session

34A-2-505 Loss of hearing -- Compensation for permanent partial disability.

(1) Compensation for permanent partial disability for binaural hearing loss shall be determined by multiplying the percentage of binaural hearing loss by 109 weeks of compensation benefits as provided in this chapter or Chapter 3, Utah Occupational Disease Act.
(2) When an employee files one or more claims for hearing loss the percentage of hearing loss previously found to exist shall be deducted from any subsequent award by the commission.
(3) In no event shall compensation benefits be paid for total or 100% binaural hearing loss exceeding 109 weeks of compensation benefits.

Renumbered and Amended by Chapter 375, 1997 General Session

34A-2-506 Loss of hearing -- Time for filing claim.

An employee's occupational hearing loss shall be reported to the employer pursuant to Section 34A-2-407 within 180 days of the date the employee:
(1) first suffered altered hearing; and

(2) knew, or in the exercise of reasonable diligence should have known, that the hearing loss was caused by employment.

Renumbered and Amended by Chapter 375, 1997 General Session

34A-2-507 Measuring hearing loss.

(1) The degree of hearing loss shall be established, no sooner than six weeks after termination of exposure to the harmful industrial noise, by audiometric determination of hearing threshold level performed by medical or paramedical professionals recognized by the commission, as measured from 0 decibels on an audiometer calibrated to ANSI-S3.6-1969, American National Standard "Specifications for Audiometers" (1969).

(2)

(a) In any evaluation of occupational hearing loss, only hearing levels at frequencies of 500, 1,000, 2,000, and 3,000 cycles per second (Hertz) shall be considered. The individual measurements for each ear shall be added together and then shall be divided by four to determine the average decibel loss in each ear.

(b) To determine the percentage of hearing loss in each ear, the average decibel loss for each decibel of loss exceeding 25 decibels shall be multiplied by 1.5% up to the maximum of 100% which is reached at 91.7 decibels.

(3) Binaural hearing loss or the percentage of binaural hearing loss is determined by:

(a) multiplying the percentage of hearing loss in the better ear by five;

(b) adding the amount under Subsection (3)(a) with the percentage of hearing loss in the poorer ear; and

(c) dividing the number calculated under Subsection (3)(b) by six.

Renumbered and Amended by Chapter 375, 1997 General Session

Part 6
Medical Evaluations

34A-2-601 Medical panel, director, or consultant -- Findings and reports -- Objections to report -- Hearing -- Expenses.

(1)

(a) The Division of Adjudication may refer the medical aspects of a case described in this Subsection (1)(a) to a medical panel appointed by an administrative law judge:

(i) upon the filing of a claim for compensation arising out of and in the course of employment for:

(A) disability by accident; or

(B) death by accident; and

(ii) if the employer or the employer's insurance carrier denies liability.

(b) An administrative law judge may appoint a medical panel upon the filing of a claim for compensation based upon disability or death due to an occupational disease.

(c) A medical panel appointed under this section shall consist of one or more physicians specializing in the treatment of the disease or condition involved in the claim.

(d) A member of a medical panel appointed under this section, when acting within the scope of duties of a medical panel member, is considered an employee of this state for purposes of indemnification under Title 63G, Chapter 7, Governmental Immunity Act of Utah.

(e) As an alternative method of obtaining an impartial medical evaluation of the medical aspects of a controverted case, the division may employ a medical director or one or more medical consultants:

(i) on a full-time or part-time basis; and

(ii) for the purpose of:

(A) evaluating medical evidence; and

(B) advising an administrative law judge with respect to the administrative law judge's ultimate fact-finding responsibility.

(f) If all parties agree to the use of a medical director or one or more medical consultants, the medical director or one or more medical consultants is allowed to function in the same manner and under the same procedures as required of a medical panel.

(2)

(a) A medical panel, medical director, or medical consultant may do the following to the extent the medical panel, medical director, or medical consultant determines that it is necessary or desirable:

(i) conduct a study;

(ii) take an x-ray;

(iii) perform a test; or

(iv) if authorized by an administrative law judge, conduct a post-mortem examination.

(b) A medical panel, medical director, or medical consultant shall make:

(i) a report in writing to the administrative law judge in a form prescribed by the Division of Adjudication; and

(ii) additional findings as the administrative law judge may require.

(c) In an occupational disease case, in addition to the requirements of Subsection (2)(b), a medical panel, medical director, or medical consultant shall certify to the administrative law judge:

(i) the extent, if any, of the disability of the claimant from performing work for remuneration or profit;

(ii) whether the sole cause of the disability or death, in the opinion of the medical panel, medical director, or medical consultant results from the occupational disease; and

(iii)

(A) whether any other cause aggravated, prolonged, accelerated, or in any way contributed to the disability or death; and

(B) if another cause contributed to the disability or death, the extent in percentage to which the other cause contributed to the disability or death.

(d)

(i) An administrative law judge shall promptly distribute full copies of a report submitted to the administrative law judge under this Subsection (2) by mail to:

(A) the applicant;

(B) the employer;

(C) the employer's insurance carrier; and

(D) an attorney employed by a person listed in Subsections (2)(d)(i)(A) through (C).

(ii) Within 20 days after the day on which the report described in Subsection (2)(d)(i) is deposited in the United States post office, the following may file with the administrative law judge a written objection to the report:

(A) the applicant;
(B) the employer; or
(C) the employer's insurance carrier.
(iii) If no written objection is filed within the period described in Subsection (2)(d)(ii), the report is considered admitted in evidence.
(e)
(i) An administrative law judge may base the administrative law judge's finding and decision on the report of:
(A) a medical panel;
(B) the medical director; or
(C) one or more medical consultants.
(ii) Notwithstanding Subsection (2)(e)(i), an administrative law judge is not bound by a report described in Subsection (2)(e)(i) if other substantial conflicting evidence in the case supports a contrary finding.
(f)
(i) If a written objection to a report is filed under Subsection (2)(d), the administrative law judge may set the case for hearing to determine the facts and issues involved.
(ii) At a hearing held pursuant to this Subsection (2)(f), any party may request the administrative law judge to have any of the following present at the hearing for examination and cross-examination:
(A) the chair of the medical panel;
(B) the medical director; or
(C) the one or more medical consultants.
(iii) For good cause shown, an administrative law judge may order the following to be present at the hearing for examination and cross-examination:
(A) a member of a medical panel, with or without the chair of the medical panel;
(B) the medical director; or
(C) a medical consultant.
(g)
(i) A written report of a medical panel, medical director, or one or more medical consultants may be received as an exhibit at a hearing described in Subsection (2)(f).
(ii) Notwithstanding Subsection (2)(g)(i), a report received as an exhibit under Subsection (2)(g)(i) may not be considered as evidence in the case except as far as the report is sustained by the testimony admitted.
(h) For a claim referred under Subsection (1) to a medical panel, medical director, or medical consultant before July 1, 1997, the commission shall pay out of the Employers' Reinsurance Fund established in Section 34A-2-702:
(i) expenses of a study or report of the medical panel, medical director, or medical consultant; and
(ii) the expenses of the medical panel's, medical director's, or medical consultant's appearance before an administrative law judge.
(i)
(i) For a claim referred under Subsection (1) to a medical panel, medical director, or medical consultant on or after July 1, 1997, the commission shall pay out of the Uninsured Employers' Fund established in Section 34A-2-704 the expenses of:
(A) a study or report of the medical panel, medical director, or medical consultant; and
(B) the medical panel's, medical director's, or medical consultant's appearance before an administrative law judge.

(ii) Notwithstanding Section 34A-2-704, the expenses described in Subsection (2)(i)(i) shall be paid from the Uninsured Employers' Fund whether or not the employment relationship during which the industrial accident or occupational disease occurred is localized in Utah as described in Subsection 34A-2-704(20).

(3)

(a) The commission may employ a qualified physician as medical panel director who, in addition to the other duties outlined in this section for a medical director, is responsible for:

(i) assisting the commission in creating and enforcing standards for medical panels and medical consultants;

(ii) training members of medical panels or medical consultants;

(iii) increasing the number of physicians who participate on medical panels;

(iv) ensuring medical panels include appropriate specialists; and

(v) monitoring the quality of medical panel and medical consultant reports.

(b) The commission shall pay the expenses of employing a medical panel director described in this Subsection (3) out of the Uninsured Employers' Fund established in Section 34A-2-704.

Amended by Chapter 375, 2022 General Session

34A-2-602 Physical examinations.

(1) The division or an administrative law judge may require an employee claiming the right to receive compensation under this chapter to submit to a medical examination at any time, and from time to time, at a place reasonably convenient for the employee, and as may be provided by the rules of the commission.

(2) If an employee refuses to submit to an examination under Subsection (1), or obstructs the examination, the employee's right to have the employee's claim for compensation considered, if the employee's claim is pending before an administrative law judge, commissioner, or Appeals Board, or to receive any payments for compensation theretofore granted by a final order of the commission, shall be suspended during the period of the refusal or obstruction.

Renumbered and Amended by Chapter 375, 1997 General Session

34A-2-603 Autopsy in death cases -- Certified pathologist -- Attending physicians -- Penalty for refusal to permit -- Liability.

(1)

(a) On the filing of a claim for compensation for death under this chapter or Chapter 3, Utah Occupational Disease Act, when, in the opinion of the commissioner or the commissioner's designee it is necessary to accurately and scientifically ascertain the cause of death, an autopsy may be ordered by the commissioner or the commissioner's designee.

(b) The commissioner or the commissioner's designee shall:

(i) designate the certified pathologist to make the autopsy; and

(ii) determine who shall pay the charge of the certified pathologist making the autopsy.

(2) Any person interested may designate a duly licensed physician to attend the autopsy ordered under Subsection (1).

(3) The findings of the certified pathologist performing the autopsy shall be filed with the commission.

(4) All proceedings for compensation shall be suspended upon refusal of a claimant or claimants to permit such autopsy when ordered under Subsection (1).

(5) When an autopsy has been performed pursuant to an order of the commissioner or the commissioner's designee no cause of action shall lie against any person, firm, or corporation for participating in or requesting the autopsy.

Renumbered and Amended by Chapter 375, 1997 General Session

34A-2-604 Employee leaving place of treatment.

(1) An injured employee who desires to leave the locality in which the employee has been employed during the treatment of the employee's injury, or to leave this state, shall:
  (a) report to the employee's attending physician for examination;
  (b) notify the division in writing of the intention to leave; and
  (c) accompany the notice with a certificate from the attending physician setting forth:
    (i) the exact nature of the injury;
    (ii) the condition of the employee; and
    (iii) a statement of the probable length of time disability will continue.
(2) An employee may leave the locality in which the employee was employed only after:
  (a) complying with Subsection (1); and
  (b) receiving the written consent of the division.
(3) If an employee does not comply with this section, compensation may not be allowed during the absence.

Renumbered and Amended by Chapter 375, 1997 General Session

Part 7
Funds

34A-2-701 Premium assessment restricted account for safety.

(1) There is created in the General Fund a restricted account known as the "Workplace Safety Account."
(2)
  (a) An amount equal to 0.25% of the premium income remitted to the state treasurer pursuant to Subsection 59-9-101(2)(c)(ii) shall be deposited in the Workplace Safety Account in the General Fund for use as provided in this section.
  (b) Beginning with fiscal year 2008-09, if the balance in the Workplace Safety Account exceeds $500,000 at the close of a fiscal year, the excess shall be transferred to:
    (i) the Employers' Reinsurance Fund, created under Subsection 34A-2-702(1); or
    (ii) if the commissioner has made the notification described in Subsection 34A-2-702(7), the Uninsured Employers' Fund created in Section 34A-2-704.
(3) The Legislature shall appropriate from the restricted account money to one or both of the following:
  (a) money to the commission for use by the commission to:
    (i) improve safety consultation services available to Utah employers; or
    (ii) provide for electronic or print media advertising campaigns designed to promote workplace safety; and
  (b) subject to Subsection (7), money known as the "Eddie P. Mayne Workplace Safety and Occupational Health Funding Program":

(i) to an institution within the state system of higher education, as defined in Section 53B-1-102; and
(ii) to be expended by an education and research center that is:
(A) affiliated with the institution described in Subsection (3)(b)(i); and
(B) designated as an education and research center by the National Institute for Occupational Safety and Health.
(4) From money appropriated by the Legislature from the restricted account to the commission for use by the commission, the commission may fund other safety programs or initiatives recommended to it by its state workers' compensation advisory council created under Section 34A-2-107.
(5)
(a) The commission shall annually report to the governor, the Legislature, and its state council regarding:
(i) the use of the money appropriated to the commission under Subsection (3) or (4); and
(ii) the impact of the use of the money on the safety of Utah's workplaces.
(b) By no later than August 15 following a fiscal year in which an education and research center receives money from an appropriation under Subsection (3)(b), the education and research center shall report:
(i) to:
(A) the governor;
(B) the Legislature;
(C) the commission; and
(D) the state workers' compensation advisory council created under Section 34A-2-107; and
(ii) regarding:
(A) the use of the money appropriated under Subsection (3)(b); and
(B) the impact of the use of the money on the safety of Utah's workplaces.
(6) The money deposited in the restricted account:
(a) shall be:
(i) used only for the activities described in Subsection (3) or (4); and
(ii) expended according to processes that can be verified by audit; and
(b) may not be used by the commission for:
(i) administrative costs unrelated to the restricted account; or
(ii) any activity of the commission other than the activities of the commission described in Subsection (3) or (4).
(7) The total of appropriations under Subsection (3)(b) may not exceed for a fiscal year an amount equal to 20% of the premium income remitted to the state treasurer pursuant to Subsection 59-9-101(2)(c) and deposited in the Workplace Safety Account during the previous fiscal year.

Amended by Chapter 194, 2019 General Session

34A-2-702 Employers' Reinsurance Fund -- Injury causing death -- Burial expenses -- Payments to dependents.
(1)
(a) There is created an Employers' Reinsurance Fund for the purpose of making a payment for an industrial accident or occupational disease occurring on or before June 30, 1994. A payment made under this section shall be made in accordance with this chapter or Chapter 3, Utah Occupational Disease Act. The Employers' Reinsurance Fund has no liability for an industrial accident or occupational disease occurring on or after July 1, 1994.

(b) The Employers' Reinsurance Fund succeeds to all money previously held in the "Special Fund," the "Combined Injury Fund," or the "Second Injury Fund."
(c) The commissioner shall appoint an administrator of the Employers' Reinsurance Fund.
(d) The state treasurer shall be the custodian of the Employers' Reinsurance Fund.
(e) The administrator shall make provisions for and direct a distribution from the Employers' Reinsurance Fund.
(f) Reasonable costs of administering the Employers' Reinsurance Fund or other fees may be paid from the Employers' Reinsurance Fund.
(2) The state treasurer shall:
(a) receive workers' compensation premium assessments from the State Tax Commission; and
(b) invest the Employers' Reinsurance Fund to ensure maximum investment return for both long and short term investments in accordance with Section 34A-2-706.
(3)
(a) The administrator may employ, retain, or appoint counsel to represent the Employers' Reinsurance Fund in a proceeding brought to enforce a claim against or on behalf of the Employers' Reinsurance Fund.
(b) If requested by the commission, the attorney general shall aid in representation of the Employers' Reinsurance Fund.
(4) The liability of the state, its departments, agencies, instrumentalities, elected or appointed officials, or other duly authorized agents, with respect to payment of compensation benefits, expenses, fees, medical expenses, or disbursement properly chargeable against the Employers' Reinsurance Fund, is limited to the cash or assets in the Employers' Reinsurance Fund, and they are not otherwise, in any way, liable for the operation, debts, or obligations of the Employers' Reinsurance Fund.
(5)
(a) If injury causes death within a period of 312 weeks from the date of the accident, the employer or insurance carrier shall pay:
(i) the burial expenses of the deceased as provided in Section 34A-2-418; and
(ii) benefits in the amount and to a person provided for in this Subsection (5).
(b)
(i) If there is a wholly dependent person at the time of the death, the payment by the employer or the employer's insurance carrier shall be:
(A) subject to Subsections (5)(b)(i)(B) and (C), 66-2/3% of the decedent's average weekly wage at the time of the injury;
(B) not more than a maximum of 85% of the state average weekly wage at the time of the injury per week; and
(C)
(I) not less than a minimum of $45 per week, plus:
(Aa) $20 for a dependent spouse; and
(Bb) $20 for each dependent minor child under the age of 18 years, up to a maximum of four such dependent minor children; and
(II) not exceeding:
(Aa) the average weekly wage of the employee at the time of the injury; and
(Bb) 85% of the state average weekly wage at the time of the injury per week.
(ii) Compensation shall continue during dependency for the remainder of the period between the date of the death and the expiration of 312 weeks after the date of the injury.
(iii)

(A) The payment by the employer or the employer's insurance carrier to a wholly dependent person during dependency following the expiration of the first 312-week period described in Subsection (5)(b)(ii) shall be an amount equal to the weekly benefits paid to the wholly dependent person during the initial 312-week period, reduced by 50% of the federal social security death benefits the wholly dependent person:

(I) is eligible to receive for a week as of the first day the employee is eligible to receive a Social Security death benefit; and

(II) receives.

(B) An employer or the employer's insurance carrier may not reduce compensation payable under this Subsection (5)(b)(iii) on or after May 5, 2008, to a wholly dependent person by an amount related to a cost-of-living increase to the social security death benefits that the wholly dependent person is first eligible to receive for a week, notwithstanding whether the employee is injured on or before May 4, 2008.

(C) For purposes of a wholly dependent person whose compensation payable is reduced under this Subsection (5)(b)(iii) on or before May 4, 2008, the reduction is limited to the amount of the reduction as of May 4, 2008.

(iv) The issue of dependency is subject to review at the end of the initial 312-week period and annually after the initial 312-week period. If in a review it is determined that, under the facts and circumstances existing at that time, the applicant is no longer a wholly dependent person, the applicant:

(A) may be considered a partly dependent or nondependent person; and

(B) shall be paid the benefits as may be determined under Subsection (5)(d)(iii).

(c)

(i) For purposes of a dependency determination, a surviving spouse of a deceased employee is conclusively presumed to be wholly dependent for a 312-week period from the date of death of the employee. This presumption does not apply after the initial 312-week period.

(ii)

(A) In determining the annual income of the surviving spouse after the initial 312-week period, there shall be excluded 50% of a federal social security death benefit that the surviving spouse:

(I) is eligible to receive for a week as of the first day the surviving spouse is eligible to receive a Social Security death benefit; and

(II) receives.

(B) An employer or the employer's insurance carrier may not reduce compensation payable under this Subsection (5)(c)(ii) on or after May 5, 2008, to a surviving spouse by an amount related to a cost-of-living increase to the social security death benefits that the surviving spouse is first eligible to receive for a week, notwithstanding whether the employee is injured on or before May 4, 2008.

(C) For purposes of a surviving spouse whose compensation payable is reduced under this Subsection (5)(c)(ii) on or before May 4, 2008, the reduction is limited to the amount of the reduction as of May 4, 2008.

(d)

(i) If there is a partly dependent person at the time of the death, the payment shall be:

(A) subject to Subsections (5)(d)(i)(B) and (C), 66-2/3% of the decedent's average weekly wage at the time of the injury;

(B) not more than a maximum of 85% of the state average weekly wage at the time of the injury per week; and

(C) not less than a minimum of $45 per week.

(ii) Compensation shall continue during dependency for the remainder of the period between the date of death and the expiration of 312 weeks after the date of injury. Compensation may not amount to more than a maximum of $30,000.

(iii) The benefits provided for in this Subsection (5)(d) shall be in keeping with the circumstances and conditions of dependency existing at the date of injury, and any amount paid under this Subsection (5)(d) shall be consistent with the general provisions of this chapter and Chapter 3, Utah Occupational Disease Act.

(iv) Benefits to a person determined to be partly dependent under Subsection (5)(c):

(A) shall be determined in keeping with the circumstances and conditions of dependency existing at the time of the dependency review; and

(B) may be paid in an amount not exceeding the maximum weekly rate that a partly dependent person would receive if wholly dependent.

(v) A payment under this section shall be paid to a person during a person's dependency by the employer or the employer's insurance carrier.

(e)

(i) Subject to Subsection (5)(e)(ii), if there is a wholly dependent person and also a partly dependent person at the time of death, the benefits may be apportioned in a manner consistent with Section 34A-2-414.

(ii) The total benefits awarded to all parties concerned may not exceed the maximum provided for by law.

(6) The Employers' Reinsurance Fund:

(a) shall be:

(i) used only in accordance with Subsection (1) for:

(A) the purpose of making a payment for an industrial accident or occupational disease occurring on or before June 30, 1994, in accordance with this section and Section 34A-2-703; and

(B) payment of:

(I) reasonable costs of administering the Employers' Reinsurance Fund; or

(II) fees required to be paid by the Employers' Reinsurance Fund;

(ii) expended according to processes that can be verified by audit; and

(b) may not be used for:

(i) administrative costs unrelated to the Employers' Reinsurance Fund; or

(ii) an activity of the commission other than an activity described in Subsection (6)(a).

(7)

(a) After the commissioner determines that all liabilities to be paid from the Employers' Reinsurance Fund have been paid, the commissioner shall notify the Division of Finance.

(b) Upon notification from the commissioner in accordance with Subsection (7)(a), the Division of Finance shall transfer any residual assets in the Employers' Reinsurance Fund into the Uninsured Employers' Fund.

Amended by Chapter 194, 2019 General Session

34A-2-703 Payments from Employers' Reinsurance Fund.

If an employee, who has at least a 10% whole person permanent impairment from any cause or origin, subsequently incurs an additional impairment by an accident arising out of and in the course of the employee's employment during the period of July 1, 1988, to June 30, 1994, inclusive, and if the additional impairment results in permanent total disability, the employer or its insurance carrier and the Employers' Reinsurance Fund are liable for the payment of benefits as follows:

(1) The employer or its insurance carrier is liable for the first $20,000 of medical benefits and the initial 156 weeks of permanent total disability compensation as provided in this chapter or Chapter 3, Utah Occupational Disease Act.
(2) Reasonable medical benefits in excess of the first $20,000 shall be paid in the first instance by the employer or its insurance carrier. Then, as provided in Subsection (5), the Employers' Reinsurance Fund shall reimburse the employer or its insurance carrier for 50% of those expenses.
(3) After the initial 156-week period under Subsection (1), permanent total disability compensation payable to an employee under this chapter or Chapter 3, Utah Occupational Disease Act, becomes the liability of and shall be paid by the Employers' Reinsurance Fund.
(4) If it is determined that the employee is permanently and totally disabled, the employer or its insurance carrier shall be given credit for all prior payments of temporary total, temporary partial, and permanent partial disability compensation made as a result of the industrial accident. An overpayment by the employer or its insurance carrier shall be reimbursed by the Employers' Reinsurance Fund under Subsection (5).
(5)
  (a)
    (i) Upon receipt of a duly verified petition, the Employers' Reinsurance Fund shall reimburse the employer or its insurance carrier for the Employers' Reinsurance Fund's share of medical benefits and compensation paid to or on behalf of an employee.
    (ii) A request for Employers' Reinsurance Fund reimbursements shall be accompanied by satisfactory evidence of payment of the medical or disability compensation for which the reimbursement is requested.
    (iii) A request is subject to review as to reasonableness by the administrator. The administrator may determine the manner of reimbursement.
  (b) A decision of the administrator under Subsection (5)(a) may be appealed in accordance with Part 8, Adjudication.
  (c) An employer or its insurance carrier shall submit to the Employers' Reinsurance Fund, by June 30, 2018, a request for reimbursement related to medical benefits or compensation paid on or before July 1, 2016.
  (d) An employer or its insurance carrier shall submit to the Employers' Reinsurance Fund a request for reimbursement related to medical benefits or compensation paid after July 1, 2016, within 24 months of the later of:
    (i) the date the benefits or compensation are paid by the employer or its insurance carrier; or
    (ii) the date the Employers' Reinsurance Fund is determined to be liable.
  (e) Requests for reimbursement not submitted in accordance with Subsection (5)(c) or (5)(d) are considered untimely and the Employers' Reinsurance Fund may not reimburse the benefits or compensation paid.
(6) If, at the time an employee is determined to have a permanent, total disability, the employee has other actionable workers' compensation claims, the employer or insurance carrier that is liable for the last industrial accident resulting in permanent total disability shall be liable for the benefits payable by the employer as provided in this section and Section 34A-2-413. The employee's entitlement to benefits for prior actionable claims shall then be determined separately on the facts of those claims. A previous permanent partial disability arising out of those claims shall then be considered to be impairments that may give rise to Employers' Reinsurance Fund liability under this section.

Amended by Chapter 235, 2016 General Session

34A-2-704 Uninsured Employers' Fund.

(1)
(a) There is created an Uninsured Employers' Fund. The Uninsured Employers' Fund has the purpose of assisting in the payment of workers' compensation benefits to a person entitled to the benefits, if:
(i) that person's employer:
(A) is individually, jointly, or severally liable to pay the benefits; and
(B)
(I) becomes or is insolvent;
(II) appoints or has appointed a receiver; or
(III) otherwise does not have sufficient funds, insurance, sureties, or other security to cover workers' compensation liabilities; and
(ii) the employment relationship between that person and the person's employer is localized within the state as provided in Subsection (20).
(b) The Uninsured Employers' Fund succeeds to money previously held in the Default Indemnity Fund.
(c) If it becomes necessary to pay benefits, the Uninsured Employers' Fund is liable for the obligations of the employer set forth in this chapter and Chapter 3, Utah Occupational Disease Act, with the exception of a penalty on those obligations.

(2)
(a) Money for the Uninsured Employers' Fund shall be deposited into the Uninsured Employers' Fund in accordance with this chapter and Subsection 59-9-101(2).
(b) The commissioner shall appoint an administrator of the Uninsured Employers' Fund.
(c)
(i) The state treasurer is the custodian of the Uninsured Employers' Fund.
(ii) The administrator shall make provisions for and direct distribution from the Uninsured Employers' Fund.

(3) Reasonable costs of administering the Uninsured Employers' Fund or other fees required to be paid by the Uninsured Employers' Fund may be paid from the Uninsured Employers' Fund.

(4) The state treasurer shall:
(a) receive workers' compensation premium assessments from the State Tax Commission; and
(b) invest the Uninsured Employers' Fund to ensure maximum investment return for both long and short term investments in accordance with Section 34A-2-706.

(5)
(a) The administrator may employ, retain, or appoint counsel to represent the Uninsured Employers' Fund in a proceeding brought to enforce a claim against or on behalf of the Uninsured Employers' Fund.
(b) If requested by the commission, the following shall aid in the representation of the Uninsured Employers' Fund:
(i) the attorney general; or
(ii) the city attorney, or county attorney of the locality in which:
(A) an investigation, hearing, or trial under this chapter or Chapter 3, Utah Occupational Disease Act, is pending;
(B) the employee resides; or
(C) an employer:
(I) resides; or
(II) is doing business.

(c)
(i) Notwithstanding Title 63A, Chapter 3, Part 5, Office of State Debt Collection, the administrator shall provide for the collection of money required to be deposited in the Uninsured Employers' Fund under this chapter and Chapter 3, Utah Occupational Disease Act.
(ii) To comply with Subsection (5)(c)(i), the administrator may:
(A) take appropriate action, including docketing an award in a manner consistent with Section 34A-2-212; and
(B) employ counsel and other personnel necessary to collect the money described in Subsection (5)(c)(i).

(6) To the extent of the compensation and other benefits paid or payable to or on behalf of an employee or the employee's dependents from the Uninsured Employers' Fund, the Uninsured Employers' Fund, by subrogation, has the rights, powers, and benefits of the employee or the employee's dependents against the employer failing to make the compensation payments.

(7)
(a) The receiver, trustee, liquidator, or statutory successor of an employer meeting a condition listed in Subsection (1)(a)(i)(B) is bound by a settlement of a covered claim by the Uninsured Employers' Fund.
(b) A court with jurisdiction shall grant a payment made under this section a priority equal to that to which the claimant would have been entitled in the absence of this section against the assets of the employer meeting a condition listed in Subsection (1)(a)(i)(B).
(c) The expenses of the Uninsured Employers' Fund in handling a claim shall be accorded the same priority as the liquidator's expenses.

(8)
(a) The administrator shall periodically file the information described in Subsection (8)(b) with the receiver, trustee, or liquidator of:
(i) an employer that meets a condition listed in Subsection (1)(a)(i)(B);
(ii) a public agency insurance mutual, as defined in Section 31A-1-103, that meets a condition listed in Subsection (1)(a)(i)(B); or
(iii) an insolvent insurance carrier.
(b) The information required to be filed under Subsection (8)(a) is:
(i) a statement of the covered claims paid by the Uninsured Employers' Fund; and
(ii) an estimate of anticipated claims against the Uninsured Employers' Fund.
(c) A filing under this Subsection (8) preserves the rights of the Uninsured Employers' Fund for claims against the assets of the employer that meets a condition listed in Subsection (1)(a)(i)(B).

(9) When an injury or death for which compensation is payable from the Uninsured Employers' Fund has been caused by the wrongful act or neglect of another person not in the same employment, the Uninsured Employers' Fund has the same rights as allowed under Section 34A-2-106.

(10) The Uninsured Employers' Fund, subject to approval of the administrator, shall discharge its obligations by:
(a) adjusting its own claims; or
(b) contracting with an adjusting company, risk management company, insurance company, or other company that has expertise and capabilities in adjusting and paying workers' compensation claims.

(11)

(a) For the purpose of maintaining the Uninsured Employers' Fund, an administrative law judge, upon rendering a decision with respect to a claim for workers' compensation benefits in which an employer that meets a condition listed in Subsection (1)(a)(i)(B) is duly joined as a party, shall:

(i) order the employer that meets a condition listed in Subsection (1)(a)(i)(B) to reimburse the Uninsured Employers' Fund for the benefits paid to or on behalf of an injured employee by the Uninsured Employers' Fund along with interest, costs, and attorney fees; and

(ii) impose a penalty against the employer that meets a condition listed in Subsection (1)(a)(i)(B):

(A) of 15% of the value of the total award in connection with the claim; and

(B) that shall be deposited into the Uninsured Employers' Fund.

(b) An award under this Subsection (11) shall be collected by the administrator in accordance with Subsection (5)(c).

(12) The state, the commission, and the state treasurer, with respect to payment of compensation benefits, expenses, fees, or disbursement properly chargeable against the Uninsured Employers' Fund:

(a) are liable only to the assets in the Uninsured Employers' Fund; and

(b) are not otherwise in any way liable for the making of a payment.

(13) The commission may make reasonable rules for the processing and payment of a claim for compensation from the Uninsured Employers' Fund.

(14)

(a)

(i) If it becomes necessary for the Uninsured Employers' Fund to pay benefits under this section to an employee described in Subsection (14)(a)(ii), the Uninsured Employers' Fund may assess all other self-insured employers amounts necessary to pay:

(A) the obligations of the Uninsured Employers' Fund subsequent to a condition listed in Subsection (1)(a)(i)(B) occurring;

(B) the expenses of handling covered a claim subsequent to a condition listed in Subsection (1)(a)(i)(B) occurring;

(C) the cost of an examination under Subsection (15); and

(D) other expenses authorized by this section.

(ii) This Subsection (14) applies to benefits paid to an employee of:

(A) a self-insured employer, as defined in Section 34A-2-201.5, that meets a condition listed in Subsection (1)(a)(i)(B); or

(B) if the self-insured employer that meets a condition described in Subsection (1)(a)(i)(B) is a public agency insurance mutual, a member of the public agency insurance mutual.

(b) The assessments of a self-insured employer shall be in the proportion that the manual premium of the self-insured employer for the preceding calendar year bears to the manual premium of all self-insured employers for the preceding calendar year.

(c) A self-insured employer shall be notified of the self-insured employer's assessment not later than 30 days before the day on which the assessment is due.

(d)

(i) A self-insured employer may not be assessed in any year an amount greater than 2% of that self-insured employer's manual premium for the preceding calendar year.

(ii) If the maximum assessment does not provide in a year an amount sufficient to make all necessary payments from the Uninsured Employers' Fund for one or more self-insured employers that meet a condition listed in Subsection (1)(a)(i)(B), the unpaid portion shall be paid as soon as money becomes available.

(e) A self-insured employer is liable under this section for a period not to exceed three years after the day on which the Uninsured Employers' Fund first pays benefits to an employee described in Subsection (14)(a)(ii) for the self-insured employer that meets a condition listed in Subsection (1)(a)(i)(B).

(f) This Subsection (14) does not apply to a claim made against a self-insured employer that meets a condition listed in Subsection (1)(a)(i)(B) if the condition listed in Subsection (1)(a)(i)(B) occurred before July 1, 1986.

(15)

(a) The following shall notify the division of any information indicating that any of the following may be insolvent or in a financial condition hazardous to its employees or the public:

(i) a self-insured employer; or

(ii) if the self-insured employer is a public agency insurance mutual, a member of the public agency insurance mutual.

(b) Upon receipt of the notification described in Subsection (15)(a) and with good cause appearing, the division may order an examination of:

(i) that self-insured employer; or

(ii) if the self-insured employer is a public agency insurance mutual, a member of the public agency mutual.

(c) The cost of the examination ordered under Subsection (15)(b) shall be assessed against all self-insured employers as provided in Subsection (14).

(d) The results of the examination ordered under Subsection (15)(b) shall be kept confidential.

(16)

(a) In a claim against an employer by the Uninsured Employers' Fund, or by or on behalf of the employee to whom or to whose dependents compensation and other benefits are paid or payable from the Uninsured Employers' Fund, the burden of proof is on the employer or other party in interest objecting to the claim.

(b) A claim described in Subsection (16)(a) is presumed to be valid up to the full amount of workers' compensation benefits claimed by the employee or the employee's dependents.

(c) This Subsection (16) applies whether the claim is filed in court or in an adjudicative proceeding under the authority of the commission.

(17) A partner in a partnership or an owner of a sole proprietorship may not recover compensation or other benefits from the Uninsured Employers' Fund if:

(a) the person is not included as an employee under Subsection 34A-2-104(3); or

(b) the person is included as an employee under Subsection 34A-2-104(3), but:

(i) the person's employer fails to insure or otherwise provide adequate payment of direct compensation; and

(ii) the failure described in Subsection (17)(b)(i) is attributable to an act or omission over which the person had or shared control or responsibility.

(18) A director or officer of a corporation may not recover compensation or other benefits from the Uninsured Employers' Fund if the director or officer is excluded from coverage under Subsection 34A-2-104(4).

(19) The Uninsured Employers' Fund:

(a) shall be:

(i) used in accordance with this section only for:

(A) the purpose of assisting in the payment of workers' compensation benefits in accordance with Subsection (1); and

(B) in accordance with Subsection (3), payment of:

(I) reasonable costs of administering the Uninsured Employers' Fund; or

(II) fees required to be paid by the Uninsured Employers' Fund; and
(ii) expended according to processes that can be verified by audit; and
(b) may not be used for:
(i) administrative costs unrelated to the Uninsured Employers' Fund; or
(ii) an activity of the commission other than an activity described in Subsection (19)(a).
(20)
(a) For purposes of Subsection (1), an employment relationship is localized in the state if:
(i)
(A) the employer who is liable for the benefits has a business premise in the state; and
(B)
(I) the contract for hire is entered into in the state; or
(II) the employee regularly performs work duties in the state for the employer who is liable for the benefits; or
(ii) the employee is:
(A) a resident of the state; and
(B) regularly performs work duties in the state for the employer who is liable for the benefits.
(b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission shall by rule define what constitutes regularly performing work duties in the state.

Amended by Chapter 136, 2019 General Session
Amended by Chapter 194, 2019 General Session

34A-2-705 Industrial Accident Restricted Account.
(1) As used in this section:
(a) "Account" means the Industrial Accident Restricted Account created by this section.
(b) "Advisory council" means the state workers' compensation advisory council created under Section 34A-2-107.
(2) There is created in the General Fund a restricted account known as the "Industrial Accident Restricted Account."
(3)
(a) The account is funded from:
(i) .5% of the premium income remitted to the state treasurer and credited to the account pursuant to Subsection 59-9-101(2)(c)(iv); and
(ii) amounts deposited under Section 34A-2-1003.
(b) If the balance in the account exceeds $500,000 at the close of a fiscal year, the excess shall be transferred to the Uninsured Employers' Fund created under Section 34A-2-704.
(4)
(a) From money appropriated by the Legislature from the account to the commission and subject to the requirements of this section, the commission may fund:
(i) the activities of the Division of Industrial Accidents described in Section 34A-1-202;
(ii) the activities of the Division of Adjudication described in Section 34A-1-202; and
(iii) the activities of the commission described in Section 34A-2-1005.
(b) The money deposited in the account may not be used for a purpose other than a purpose described in this Subsection (4), including an administrative cost or another activity of the commission unrelated to the account.
(5)
(a) Each year before the public hearing required by Subsection 59-9-101(2)(d)(i), the commission shall report to the advisory council regarding:

(i) the commission's budget request to the governor for the next fiscal year related to:
(A) the Division of Industrial Accidents; and
(B) the Division of Adjudication;
(ii) the expenditures of the commission for the fiscal year in which the commission is reporting related to:
(A) the Division of Industrial Accidents; and
(B) the Division of Adjudication;
(iii) revenues generated from the premium assessment under Section 59-9-101 on an admitted insurer writing workers' compensation insurance in this state and on a self-insured employer under Section 34A-2-202; and
(iv) money deposited under Section 34A-2-1003.
(b) The commission shall annually report to the governor and the Legislature regarding:
(i) the use of the money appropriated to the commission under this section;
(ii) revenues generated from the premium assessment under Section 59-9-101 on an admitted insurer writing workers' compensation insurance in this state and on a self-insured employer under Section 34A-2-202; and
(iii) money deposited under Section 34A-2-1003.

Amended by Chapter 32, 2022 General Session

34A-2-706 Investment of Employers' Reinsurance Fund and Uninsured Employers' Fund.

(1) The state treasurer shall invest the assets of the Employers' Reinsurance Fund created under Section 34A-2-702 and the Uninsured Employers' Fund created under Section 34A-2-704 with the primary goal of providing for the stability, income, and growth of the principal.
(2) Nothing in this section requires a specific outcome in investing.
(3) The state treasurer may deduct any administrative costs incurred in managing fund assets from earnings before distributing the earnings.
(4)
(a) The state treasurer may employ professional asset managers to assist in the investment of the assets of the funds.
(b) The treasurer may only provide compensation to asset managers from earnings generated by the funds' investments.
(5)
(a) The state treasurer shall invest and manage the assets of the funds as a prudent investor would by:
(i) considering the purposes, terms, distribution requirements, and other circumstances of the funds; and
(ii) exercising reasonable care, skill, and caution in order to meet the standard of care of a prudent investor.
(b) In determining whether the state treasurer has met the standard of care of a prudent investor, the judge or finder of fact shall:
(i) consider the state treasurer's actions in light of the facts and circumstances existing at the time of the investment decision or action, and not by hindsight; and
(ii) evaluate the state treasurer's investment and management decisions respecting individual assets:
(A) not in isolation, but in the context of a fund portfolio as a whole; and
(B) as a part of an overall investment strategy that has risk and return objectives reasonably suited to the funds.

Enacted by Chapter 207, 2018 General Session

Part 8
Adjudication

34A-2-801 Initiating adjudicative proceedings -- Procedure for review of administrative action.

(1)

(a) To contest an action of the employee's employer or its insurance carrier concerning a compensable industrial accident or occupational disease alleged by the employee or a dependent any of the following shall file an application for hearing with the Division of Adjudication:

(i) the employee;

(ii) a representative of the employee, the qualifications of whom are defined in rule by the commission; or

(iii) a dependent as described in Section 34A-2-403.

(b) To appeal the imposition of a penalty or other administrative act imposed by the division on the employer or its insurance carrier for failure to comply with this chapter or Chapter 3, Utah Occupational Disease Act, any of the following shall file an application for hearing with the Division of Adjudication:

(i) the employer;

(ii) the insurance carrier; or

(iii) a representative of either the employer or the insurance carrier, the qualifications of whom are defined in rule by the commission.

(c) A person providing goods or services described in Subsections 34A-2-407(12) and 34A-3-108(13) may file an application for hearing in accordance with Section 34A-2-407 or 34A-3-108.

(2)

(a) Unless all parties agree to the assignment in writing, the Division of Adjudication may not assign the same administrative law judge to hear a claim under this section by an injured employee if the administrative law judge previously heard a claim by the same injured employee for a different injury or occupational disease.

(b) Unless all parties agree to the appointment in writing, an administrative law judge may not appoint the same medical panel or individual panel member to evaluate a claim by an injured employee if the medical panel or individual panel member previously evaluated a claim by the same injured employee for a different injury or occupational disease.

(3) Unless a party in interest appeals the decision of an administrative law judge in accordance with Subsection (4), the decision of an administrative law judge on an application for hearing filed under Subsection (1) is a final order of the commission 30 days after the day on which the decision is issued. An administrative law judge shall issue a decision by no later than 60 days from the day on which the hearing is held under this part unless:

(a) the parties agree to a longer period of time; or

(b) a decision within the 60-day period is impracticable.

(4)

(a) A party in interest may appeal the decision of an administrative law judge by filing a motion for review with the Division of Adjudication within 30 days of the date the decision is issued.
(b) Unless a party in interest to the appeal requests under Subsection (4)(c) that the appeal be heard by the Appeals Board, the commissioner shall hear the review.
(c) A party in interest may request that an appeal be heard by the Appeals Board by filing the request with the Division of Adjudication:
(i) as part of the motion for review; or
(ii) if requested by a party in interest who did not file a motion for review, within 20 days of the day on which the motion for review is filed with the Division of Adjudication.
(d) A case appealed to the Appeals Board shall be decided by the majority vote of the Appeals Board.
(5) The Division of Adjudication shall maintain a record on appeal, including an appeal docket showing the receipt and disposition of the appeals on review.
(6) Upon appeal, the commissioner or Appeals Board shall make its decision in accordance with Section 34A-1-303. The commissioner or Appeals Board shall issue a decision under this part by no later than 90 days from the day on which the motion for review is filed unless:
(a) the parties agree to a longer period of time; or
(b) a decision within the 90-day period is impracticable.
(7) The commissioner or Appeals Board shall promptly notify the parties to a proceeding before it of its decision, including its findings and conclusions.
(8)
(a) Subject to Subsection (8)(b), the decision of the commissioner or Appeals Board is final unless within 30 days after the date the decision is issued further appeal is initiated under the provisions of this section or Title 63G, Chapter 4, Administrative Procedures Act.
(b) In the case of an award of permanent total disability benefits under Section 34A-2-413, the decision of the commissioner or Appeals Board is a final order of the commission unless set aside by the court of appeals.
(9)
(a) Within 30 days after the day on which the decision of the commissioner or Appeals Board is issued, an aggrieved party may secure judicial review by commencing an action in the court of appeals against the commissioner or Appeals Board for the review of the decision of the commissioner or Appeals Board.
(b) In an action filed under Subsection (9)(a):
(i) any other party to the proceeding before the commissioner or Appeals Board shall be made a party; and
(ii) the commission shall be made a party.
(c) A party claiming to be aggrieved may seek judicial review only if the party exhausts the party's remedies before the commission as provided by this section.
(d) At the request of the court of appeals, the commission shall certify and file with the court all documents and papers and a transcript of all testimony taken in the matter together with the decision of the commissioner or Appeals Board.
(10)
(a) The commission shall make rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to facilitate timely completion of administrative actions under this part.
(b) The commission shall monitor the time from filing of an application for a hearing to issuance of a final order of the commission for cases brought under this part.

Amended by Chapter 273, 2018 General Session

34A-2-802 Rules of evidence and procedure before commission -- Admissible evidence.

(1) The commission, the commissioner, an administrative law judge, or the Appeals Board, is not bound by the usual common law or statutory rules of evidence, or by any technical or formal rules or procedure, other than as provided in this section or as adopted by the commission pursuant to this chapter and Chapter 3, Utah Occupational Disease Act. The commission may make its investigation in such manner as in its judgment is best calculated to ascertain the substantial rights of the parties and to carry out justly the spirit of the chapter.

(2) The commission may receive as evidence and use as proof of any fact in dispute all evidence considered material and relevant including the following:

(a) depositions and sworn testimony presented in open hearings;

(b) reports of attending or examining physicians, or of pathologists;

(c) reports of investigators appointed by the commission;

(d) reports of employers, including copies of time sheets, book accounts, or other records; or

(e) hospital records in the case of an injured or diseased employee.

Amended by Chapter 297, 2011 General Session

34A-2-803 Violation of judgments, orders, decrees, or provisions of chapter -- Grade of offense.

(1) An employer, employee, or other person is guilty of a class B misdemeanor if that employer, employee, or other person violates this chapter or Chapter 3, Utah Occupational Disease Act, including:

(a) doing any act prohibited by this chapter or Chapter 3, Utah Occupational Disease Act;

(b) failing or refusing to perform any duty lawfully imposed under this chapter or Chapter 3, Utah Occupational Disease Act; or

(c) failing, neglecting, or refusing to obey any lawful order given or made by the commission, or any judgment or decree made by any court in connection with the provisions of this chapter or Chapter 3, Utah Occupational Disease Act.

(2) Every day during which any person fails to observe and comply with any order of the commission, or to perform any duty imposed by this chapter or Chapter 3, Utah Occupational Disease Act, is a separate and distinct offense.

Amended by Chapter 148, 2018 General Session

Part 9
Presumptions For Emergency Medical Services Providers

34A-2-901 Workers' compensation presumption for emergency medical services providers.

(1) An emergency medical services provider who claims to have contracted a disease, as defined by Section 78B-8-401, as a result of a significant exposure in the performance of his duties as an emergency medical services provider, is presumed to have contracted the disease by accident during the course of his duties as an emergency medical services provider if:

(a) his employment or service as an emergency medical services provider in this state commenced prior to July 1, 1988, and he tests positive for a disease during the tenure of his

employment or service, or within three months after termination of his employment or service; or

(b) the individual's employment or service as an emergency medical services provider in this state commenced on or after July 1, 1988, and he tests negative for any disease at the time his employment or service commenced, and again three months later, and he subsequently tests positive during the tenure of his employment or service, or within three months after termination of his employment or service.

(2) Each emergency medical services agency shall inform the emergency medical services providers that it employs or utilizes of the provisions and benefits of this section at commencement of and termination of employment or service.

Amended by Chapter 3, 2008 General Session

34A-2-902 Workers' compensation claims by emergency medical services providers -- Time limits.

(1) For all purposes of establishing a workers' compensation claim, the "date of accident" is presumed to be the date on which an emergency medical services provider first tests positive for a disease, as defined in Section 78B-8-401. However, for purposes of establishing the rate of workers' compensation benefits under Subsection 34A-2-702(5), if a positive test for a disease occurs within three months after termination of employment, the last date of employment is presumed to be the "date of accident."

(2) The time limits prescribed by Section 34A-2-417 do not apply to an employee whose disability is due to a disease, so long as the employee who claims to have suffered a significant exposure in the service of his employer gives notice, as required by Section 34A-3-108, of the "date of accident."

(3) Any claim for workers' compensation benefits or medical expenses shall be filed with the Division of Adjudication of the Labor Commission within one year after the date on which the employee first acquires a disability or requires medical treatment for a disease, or within one year after the termination of employment as an emergency medical services provider, whichever occurs later.

Amended by Chapter 366, 2011 General Session

34A-2-903 Failure to be tested -- Time limit for death benefits.

(1) An emergency medical services provider who refuses or fails to be tested in accordance with Section 34A-2-901 is not entitled to any of the presumptions provided by this part.

(2) Death benefits payable under Section 34A-2-702 are payable only if it can be established by competent evidence that death was a consequence of or result of the disease and, notwithstanding Subsection 34A-2-702(5), that death occurred within six years from the date the employee first acquired a disability or required medical treatment for the disease that caused the employee's death.

Amended by Chapter 366, 2011 General Session

34A-2-904 Volunteer emergency medical services providers -- Workers' compensation premiums.

(1) For purposes of receiving workers' compensation benefits, any person performing the services of an emergency medical services provider is considered an employee of the entity for whom it provides those services.
(2)
(a) With regard to emergency medical services providers who perform those services for minimal or no compensation on a volunteer basis, and who are primarily employed other than as emergency medical services providers, the amount of workers' compensation benefits shall be based on that primary employment. Any excess premiums necessary for workers' compensation shall be paid by the entity that utilized that individual as an emergency medical services provider.
(b) With regard to emergency medical services providers who perform those services for minimal or no compensation or on a volunteer basis, and who have no other employment, the amount of workers' compensation benefits shall be the minimum benefit. Any premium necessary for workers' compensation shall be paid by the entity that utilizes that individual as an emergency medical services provider.
(3) Workers' compensation benefits are the exclusive remedy for all injuries and occupational diseases, as provided by Title 34A, Chapter 2, Workers' Compensation Act, and Chapter 3, Utah Occupational Disease Act. However, emergency medical services providers described in Subsection (2) are not precluded from utilizing insurance benefits provided by a primary employer, or any other insurance benefits, in addition to workers' compensation benefits.

Renumbered and Amended by Chapter 243, 2005 General Session

34A-2-905 Rulemaking authority -- Rebuttable presumption.
(1) The Labor Commission has authority to establish rules necessary for the purposes of this part.
(2) The presumption provided by this part is a rebuttable presumption.

Renumbered and Amended by Chapter 243, 2005 General Session

Part 10
Workers' Compensation Coverage Waivers Act

34A-2-1001 Title.
This part is known as the "Workers' Compensation Coverage Waivers Act."

Enacted by Chapter 328, 2011 General Session

34A-2-1002 Definitions.
As used in this part:
(1) "Business entity" means:
(a) a sole proprietorship;
(b) a corporation;
(c) a partnership;
(d) a limited liability company; or
(e) an entity similar to one described in Subsections (1)(a) through (d).
(2) "Waiver" means a workers' compensation coverage waiver issued under this part.

Enacted by Chapter 328, 2011 General Session

34A-2-1003 Issuance of a waiver.

(1) The commission shall issue a workers' compensation coverage waiver to a business entity that:
  (a) elects not to include an owner, partner, or corporate officer or director as an employee under a workers' compensation policy in accordance with Section 34A-2-103 and Subsection 34A-2-104(3) or (4);
  (b) employs no other employee on the day on which the commission issues the waiver to the business entity;
  (c) provides to the commission the information required by Section 34A-2-1004; and
  (d) pays a fee established by the commission in accordance with Section 63J-1-504, except that the fee may not exceed $50.

(2)
  (a) A waiver issued under this section expires one year from the day on which it is issued unless renewed by the holder of the waiver.
  (b) To renew a waiver issued under this part, the holder of the waiver shall:
    (i) employ no other employee on the day on which the commission renews the waiver;
    (ii) provide to the commission the information required by Section 34A-2-1004; and
    (iii) pay a fee established by the commission in accordance with Section 63J-1-504, except that the fee may not exceed $50.

(3) As of the day on which a business entity described in Subsection (1) employs an employee other than an owner, partner, or corporate officer or director described in Subsection (1)(a):
  (a) the business entity's waiver is invalid; and
  (b) the business entity is required to provide workers' compensation coverage for that employee in accordance with Section 34A-2-201.

(4) The commission shall deposit a fee collected under this section in the Industrial Accident Restricted Account created in Section 34A-2-705.

(5) Unless invalidated under Section 34A-2-1005, notwithstanding the other provisions of this section, a waiver issued by an insurer that is valid on June 30, 2011, remains valid until its expiration date.

Amended by Chapter 146, 2017 General Session

34A-2-1004 Information required to obtain a waiver.

To obtain or renew a waiver, a business entity shall submit to the commission:

(1) a copy of two or more of the following:
  (a) the business entity's federal or state income tax return that shows business income for the complete taxable year that immediately precedes the day on which the business entity submits the information;
  (b) a valid business license;
  (c) a license to engage in an occupation or profession, including a license under Title 58, Occupations and Professions; or
  (d) documentation of an active liability insurance policy that covers the business entity's activities; or

(2) a copy of one item listed in Subsection (1) and a copy of two or more of the following:
  (a) proof of a bank account for the business entity;
  (b) proof that for the business entity there is:

(i) a telephone number; and
(ii) a physical location; or
(c) an advertisement of services showing the business entity's name and contact information:
(i) in a newspaper of general circulation;
(ii) in a telephone directory;
(iii) on a website or social media; or
(iv) in a trade magazine.

Amended by Chapter 146, 2017 General Session

34A-2-1005 Enforcement.

(1) The commission may investigate a business entity to determine whether the business entity validly elects to not cover an owner, partner, or corporate officer or director as an employee under a workers' compensation policy in accordance with Section 34A-2-103.
(2) If the commission determines that a business entity's election as provided in this section is invalid, the commission may:
(a) prohibit a business entity from using a waiver obtained under this part; and
(b) take any action provided for under this chapter or Chapter 3, Utah Occupational Disease Act, for failure to obtain workers' compensation coverage for an employee.

Enacted by Chapter 328, 2011 General Session