Chapter 3
Utah Occupational Disease Act

Part 1
Utah Occupational Disease Act

34A-3-101 Title -- Definitions.
(1) This chapter is known as the "Utah Occupational Disease Act."
(2) For purposes of this chapter, "division" means the Division of Industrial Accidents.

Renumbered and Amended by Chapter 375, 1997 General Session

34A-3-102 Chapter to be administered by commission -- Exclusive remedy.
(1) The commission shall administer this chapter through the division, the Division of Adjudication, and the Appeals Board in accordance with Section 34A-2-112.
(2) Subject to the limitations provided in this chapter and, unless otherwise noted, all provisions of Chapter 2, Workers' Compensation Act, are incorporated into this chapter and shall be applied to occupational disease claims.
(3) The right to recover compensation under this chapter for diseases or injuries to health sustained by a Utah employee is the exclusive remedy as outlined in Section 34A-2-105.

Amended by Chapter 286, 2014 General Session

34A-3-103 Occupational diseases.
For purposes of this chapter, a compensable occupational disease means any disease or illness that arises out of and in the course of employment and is medically caused or aggravated by that employment.

Renumbered and Amended by Chapter 375, 1997 General Session

34A-3-104 Employer liability for compensation.
(1) Every employer is liable for the payment of disability and medical benefits to every employee who acquires a disability, or death benefits to the dependents of any employee who dies, by reason of an occupational disease under the terms of this chapter.
(2) Compensation may not be paid when the last day of injurious exposure of the employee to the hazards of the occupational disease occurred before 1941.

Amended by Chapter 297, 2011 General Session
Amended by Chapter 366, 2011 General Session

34A-3-105 Last employer liable -- Exception.
(1) To the extent compensation is payable under this chapter for an occupational disease which arises out of and in the course of an employee's employment for more than one employer, the only employer liable shall be the employer in whose employment the employee was last injuriously exposed to the hazards of the disease if:
(a) the employee's exposure in the course of employment with that employer was a substantial contributing medical cause of the alleged occupational disease; and

(b) the employee was employed by that employer for at least 12 consecutive months.
(2) Should the conditions of Subsection (1) not be met, liability for disability, death, and medical benefits shall be apportioned between employers based on the involved employers' causal contribution to the occupational disease.

Renumbered and Amended by Chapter 375, 1997 General Session

34A-3-106 Mental stress claims.
(1) Physical, mental, or emotional diseases 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 disease and employment.
(2)
(a) Legal causation requires proof of extraordinary mental stress arising predominantly and directly from employment.
(b) The extraordinary 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 disease was medically caused by the mental stress that is the legal cause of the physical, mental, or emotional disease.
(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 occupational disease 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-3-107 Benefits -- Disability compensation, death, medical, hospital, and burial expenses -- Procedure and payments.
(1) The benefits to which an employee with a disability or the employee's dependents are entitled under this chapter shall be based upon the employee's average weekly wage at the time the cause of action arises and shall be computed in accordance with and in all ways shall be equivalent to the benefits for disability and death provided in Chapter 2, Workers' Compensation Act.
(2) The employee with a disability is entitled to medical, hospital, and burial expenses equivalent to those provided in Chapter 2, Workers' Compensation Act.
(3) The procedure and payment of benefits under this chapter shall be equivalent to and consistent with Chapter 2, Workers' Compensation Act, including Section 34A-2-703.

Amended by Chapter 366, 2011 General Session

34A-3-108 Reporting of occupational diseases -- Regulation of health care providers.
(1) An employee sustaining an occupational disease, as defined in this chapter, arising out of and in the course of employment shall provide notification to the employee's employer promptly of the occupational disease. If the employee is unable to provide notification, the employee's

next of kin or attorney may provide notification of the occupational disease to the employee's employer.

(2)

(a) An employee who fails to notify the employee's employer or the division within 180 days after the cause of action arises is barred from a claim of benefits arising from the occupational disease.

(b) The cause of action is considered to arise on the date the employee first:

(i) suffers disability from the occupational disease; and

(ii) knows, or in the exercise of reasonable diligence should have known, that the occupational disease is caused by employment.

(3) The following constitute notification of an occupational disease:

(a) an employer's report filed with the:

(i) division; or

(ii) workers' compensation insurance carrier;

(b) a physician's injury report filed with the:

(i) division;

(ii) employer; or

(iii) workers' compensation insurance carrier;

(c) a workers' compensation insurance carrier's report to the division; or

(d) the payment of any medical or disability benefit by the employer or the employer's workers' compensation insurance carrier.

(4)

(a) An employer and the employer's workers' compensation insurance carrier, if any, shall file a report in accordance with the rules described in Subsection (4)(b) of any occupational disease resulting in:

(i) medical treatment;

(ii) loss of consciousness;

(iii) loss of work;

(iv) restriction of work; or

(v) transfer to another job.

(b) An employer or the employer's workers' compensation insurance carrier, if any, shall file a report required under Subsection (4)(a) and any subsequent reports of a previously reported occupational disease as may be required by the commission within the time limits and in the manner established by rule by the commission made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, under Subsection 34A-2-407(5).

(c) A report is not required:

(i) for a minor injury that requires first aid treatment only, unless a treating physician files, or is required to file, the Physician's Initial Report of Work Injury or Occupational Disease with the division;

(ii) for occupational diseases that manifest after the employee is no longer employed by the employer with which the exposure occurred; or

(iii) when the employer is not aware of an exposure occasioned by the employment that results in an occupational disease as defined by Section 34A-3-103.

(5) An employer or its workers' compensation insurance carrier, if any, 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 occupational disease.

(6) An employer shall maintain a record in a manner prescribed by the division of occupational diseases resulting in:
(a) medical treatment;
(b) loss of consciousness;
(c) loss of work;
(d) restriction of work; or
(e) transfer to another job.
(7) An employer or a workers' compensation insurance carrier who refuses or neglects to make a report, maintain a record, or file a report with the division as required by this section is subject to citation and civil assessment in accordance with Subsection 34A-2-407(8).
(8)
(a) Except as provided in Subsection (8)(c), a physician, surgeon, or other health care provider attending an occupationally diseased employee shall:
(i) comply with the rules, including the schedule of fees, for services as adopted by the commission;
(ii) make reports to the division at any and all times as required as to the condition and treatment of an occupationally diseased employee or as to any other matter concerning industrial cases being treated; and
(iii) comply with rules made under Section 34A-2-407.5.
(b) A physician, as defined in Section 34A-2-111, who is associated with, employed by, or bills through a hospital is subject to Subsection (8)(a).
(c) A hospital is not subject to the requirements of Subsection (8)(a) except a hospital is subject to rules made by the commission under Subsections 34A-2-407(9)(a)(ii) and (iii) and 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 (8) does not prohibit a contract with a provider of health services relating to the pricing of goods and services.
(9) A copy of the physician's initial report shall be furnished to the:
(a) division;
(b) employee; and
(c) employer or its workers' compensation insurance carrier.
(10) A person subject to reporting under Subsection (8)(a)(ii) or Subsection 34A-2-407(9)(a)(iii) who refuses or neglects to make a report or comply with this section is subject to a civil assessment in accordance with Subsection 34A-2-407(8).
(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 2, Workers' Compensation 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 2, Workers' Compensation 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 10, 2016, and ending on July 1, 2018, a workers' compensation insurance carrier or self-insured employer that is reimbursing a hospital that has not entered into a contract described in Subsection (11)(b), shall reimburse the hospital for covered medical services at 85% of the billed hospital fees for the covered medical services.
(d) A hospital may not engage in balance billing.
(12)
(a) An application for a hearing to resolve a dispute regarding an occupational disease claim shall be filed with the Division of Adjudication.
(b) After the filing, a copy shall be forwarded by mail to:
(i)
(A) the employer; or
(B) the employer's workers' compensation insurance carrier;
(ii) the applicant; and
(iii) the attorneys for the parties.
(13)
(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 is compensable pursuant to this chapter and Chapter 2, Workers' Compensation Act, including the following:
(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 (13)(a)(i); and
(iii) collection issues related to a good or service described in Subsection (13)(a)(i).
(b) Except as provided in Subsection (13)(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 of goods or services described in Subsection (13)(a) that are compensable under this chapter or Chapter 2, Workers' Compensation Act.

Amended by Chapter 64, 2021 General Session

34A-3-109 Limitations -- Rights barred if not filed within limits -- Burden of proof.
(1) The limitation of rights regarding medical benefits provided in Subsection 34A-2-417(1) does not apply to compensable occupational diseases under the terms of this chapter.
(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 the employee's cause of action arose; and

(ii) by no later than 12 years from the date on which the employee's cause of action arose, 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 on which the employee's cause of action arose, if:

(i) the employee complies with Subsections (2)(a)(i) and (ii); and

(ii) 12 years from the date on which the employee's cause of action arose:

(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) Subject to Subsection (3)(b), a claim for death benefits is barred unless an application for hearing is filed within one year of the date the deceased employee's dependents knew, or in the exercise of reasonable diligence should have known, that the employee's death was caused by an occupational disease.

(b) A dependents' claim for death benefits may not be actionable more than six years after the employee's cause of action arises.

(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 on which the cause of action arose, 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 in an application for hearing:

(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.

Amended by Chapter 261, 1999 General Session

34A-3-110 Occupational disease aggravated by other diseases.

The compensation payable under this chapter shall be reduced and limited to the proportion of the compensation that would be payable if the occupational disease were the sole cause of disability or death, as the occupational disease as a causative factor bears to all the causes of the disability or death when the occupational disease, or any part of the disease:
(1) is causally related to employment with a non-Utah employer not subject to commission jurisdiction;
(2) is of a character to which the employee may have had substantial exposure outside of employment or to which the general public is commonly exposed;
(3) is aggravated by any other disease or infirmity not itself compensable; or
(4) when disability or death from any other cause not itself compensable is aggravated, prolonged, accelerated, or in any way contributed to by an occupational disease.

Renumbered and Amended by Chapter 375, 1997 General Session

34A-3-111 Compensation not additional to that provided for accidents.

The compensation provided under this chapter is not in addition to compensation that may be payable under Chapter 2, Workers' Compensation Act, and in all cases when injury results by reason of an accident arising out of and in the course of employment and compensation is payable for the injury under Chapter 2, Workers' Compensation Act, compensation under this chapter may not be payable.

Renumbered and Amended by Chapter 375, 1997 General Session

34A-3-112 Employee's willful misconduct.

(1) Notwithstanding anything contained in this chapter, an employee or dependent of any employee is not entitled to receive compensation for disability or death from an occupational disease when the disability or death, wholly or in part, was caused by the purposeful self-exposure of the employee.
(2) Except in cases resulting in death:
  (a) Compensation provided for in this chapter shall be reduced 15% when the occupational disease 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.
  (b) Except when the employer permitted, encouraged, or had actual knowledge of the conduct described in Subsections (2)(b)(i) through (iii), disability compensation may not be awarded under this chapter to an employee when the major contributing cause of the employee's disease is the employee's:
    (i) use of illegal substances;
    (ii) intentional abuse of drugs in excess of prescribed therapeutic amounts; or
    (iii) intoxication from alcohol with a blood or breath alcohol concentration of .05 grams or greater as shown by a chemical test.

Amended by Chapter 283, 2017 General Session

34A-3-113 Presumption of workers' compensation benefits for firefighters -- Study.

(1) As used in this section:
  (a)

(i) "Firefighter" means a member, including a volunteer member, as described in Subsection 67-20-2(10)(b)(ii), or a member paid on call, of a fire department or other organization that provides fire suppression and other fire-related service who is responsible for or is in a capacity that includes responsibility for the extinguishment of fires.
(ii) "Firefighter" does not include a person whose job description, duties, or responsibilities do not include direct involvement in fire suppression.
(b) "Presumptive cancer" means one or more of the following cancers:
(i) pharynx;
(ii) esophagus;
(iii) lung; and
(iv) mesothelioma.
(2) If a firefighter who contracts a presumptive cancer meets the requirements of Subsection (3), there is a rebuttable presumption that:
(a) the presumptive cancer was contracted arising out of and in the course of employment; and
(b) the presumptive cancer was not contracted by a willful act of the firefighter.
(3) To be entitled to the rebuttable presumption described in Subsection (2), the firefighter shall:
(a) during the time of employment as a firefighter, undergo annual physical examinations;
(b) have been employed as a firefighter for eight years or more and regularly responded to firefighting or emergency calls within the eight-year period; and
(c) if the firefighter has used tobacco, provide documentation from a physician that indicates that the firefighter has not used tobacco for the eight years preceding reporting the presumptive cancer to the employer or division.
(4) A presumption established under this section may be rebutted by a preponderance of the evidence.
(5) If a firefighter who contracts a presumptive cancer is employed as a firefighter by more than one employer and qualifies for the presumption under Subsection (2), and that presumption has not been rebutted, the employer and insurer at the time of the last substantial exposure to risk of the presumptive cancer are liable under this chapter under Section 34A-3-105.
(6) A cause of action subject to the presumption under this section is considered to arise on the date that the employee:
(a) suffers disability from the occupational disease;
(b) knows, or in the exercise of reasonable diligence should have known, that the occupational disease is caused by employment; and
(c) files a claim as provided in Section 34A-3-108.

Amended by Chapter 25, 2023 General Session
Amended by Chapter 364, 2023 General Session

Part 2
Presumptions for First Responders

34A-3-201 Definitions.
(1) As used in this part:
(a) "COVID-19" means the disease caused by severe acute respiratory syndrome coronavirus 2.
(b) "First responder" means:
(i) a first responder as defined in Section 34A-2-102;

(ii) an individual employed by:
(A) a health care facility as defined in Section 26B-2-201;
(B) an office of a physician, chiropractor, or dentist;
(C) a nursing home;
(D) a retirement facility;
(E) a home health care provider;
(F) a pharmacy;
(G) a facility that performs laboratory or medical testing on human specimens; or
(H) an entity similar to the entities listed in Subsections (1)(b)(ii)(A) through (G);
(iii) an individual employed by, working with, or working at the direction of a local health department; or
(iv) a volunteer, as defined in Section 67-20-2, providing services to a local health department in accordance with Title 67, Chapter 20, Volunteer Government Workers Act.
(c) "Physician" means an individual licensed under:
(i) Title 58, Chapter 67, Utah Medical Practice Act;
(ii) Title 58, Chapter 68, Utah Osteopathic Medical Practice Act;
(iii) Title 58, Chapter 70a, Utah Physician Assistant Act; or
(iv) Title 58, Chapter 31b, Nurse Practice Act, as an advanced practice registered nurse.
(d) "Utah minimum wage" means the highest wage designated as Utah's minimum wage under Title 34, Chapter 40, Utah Minimum Wage Act.
(2) For purposes of this part, an individual is diagnosed with COVID-19 if the individual:
(a) through laboratory testing of a specimen the individual provides, tests positive for the virus that causes COVID-19; and
(b) is diagnosed with COVID-19 by a physician.

Amended by Chapter 328, 2023 General Session

34A-3-202 Workers' compensation presumption for first responders.
(1) A first responder who claims to have contracted COVID-19 during the performance of the first responder's duties as a first responder, is presumed to have contracted COVID-19 during the course of performing the first responder's duties as a first responder if the first responder is diagnosed with COVID-19:
(a) while employed or serving as a first responder; or
(b) if the first responder's employment or service as a first responder terminates, within two weeks after the day on which the first responder's employment or service terminates.
(2) A first responder who makes a claim under this part shall provide written documentation of a COVID-19 diagnosis to the first responder's employer or insurer.

Renumbered and Amended by Chapter 5, 2020 Special Session 5

34A-3-203 Workers' compensation claims.
(1) This part applies to a claim resulting from an exposure arising out of and in the course of a first responder's employment or service on or after March 21, 2020, and before June 1, 2021.
(2) For purposes of establishing a workers' compensation claim under this part, the date of exposure is presumed to be the earlier of the day on which:
(a) the first responder is diagnosed with COVID-19;
(b) the first responder is unable to work because of a symptom of a disease that is later diagnosed as COVID-19; or

(c) the first responder's employment or service as a first responder terminates, if the first responder is diagnosed with COVID-19 within two weeks after the day on which the first responder's employment or service as a first responder terminates.

(3) Death benefits payable under this chapter are payable only if a claimant establishes by competent evidence that death was a consequence of or a result of COVID-19.

Renumbered and Amended by Chapter 5, 2020 Special Session 5

34A-3-204 Failure to be tested -- Rebuttable presumption.

(1) A first responder who refuses examination for COVID-19 or fails to be diagnosed with COVID-19 is not entitled to the presumption established under this part.

(2) The presumption established under this part may be rebutted by a preponderance of the evidence.

Renumbered and Amended by Chapter 5, 2020 Special Session 5

34A-3-205 Determining employers of first responders -- Volunteer first responders -- Workers' compensation premiums.

(1) For purposes of receiving workers' compensation benefits, a first responder performing the services of a first responder is considered an employee of an entity for whom the first responder provides those services.

(2)

(a) A first responder who only performs the services of a first responder for minimal or no compensation or on a volunteer basis receives an amount of workers' compensation:

(i) calculated in accordance with Section 34A-2-409; and

(ii)

(A) based on the first responder's primary employment, if the first responder is primarily employed other than as a first responder; or

(B) based on the Utah minimum wage, if the first responder has no employment other than as a first responder.

(b) An entity for whom a first responder provides first responder services for minimal or no compensation or on a volunteer basis shall:

(i) pay any excess premium necessary for workers' compensation, if the first responder is primarily employed other than as a first responder; and

(ii) pay any premium necessary for workers' compensation, if the first responder has no employment other than as a first responder.

(3) A first responder is not precluded from utilizing insurance a primary employer provides, or any other insurance benefits, in addition to workers' compensation benefits.

Renumbered and Amended by Chapter 5, 2020 Special Session 5

34A-3-206 Rulemaking authority.

The commission may make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to carry out the provisions of this part.

Renumbered and Amended by Chapter 5, 2020 Special Session 5