

Part 2 Duties and Standards

34A-6-201 Duties of employers and employees.

- (1) Each employer shall:
 - (a) furnish to each of its employees employment and a place of employment that are free from recognized hazards that are causing or are likely to cause death or serious physical harm to its employees; and
 - (b) comply with occupational safety and health standards promulgated under this chapter.
- (2) Each employee shall comply with occupational safety and health standards and the rules and orders issued pursuant to this chapter that are applicable to the employee's own actions and conduct.
- (3) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may make rules that are necessary to implement this section for a workplace with multiple employers.

Amended by Chapter 229, 2015 General Session

34A-6-202 Standards -- Procedure for issuance, modification, or revocation by division -- Emergency temporary standard -- Variances from standards -- Statement of reasons for administrator's actions -- Judicial review -- Priority for establishing standards.

- (1)
 - (a) The division, as soon as practicable, shall issue as standards any national consensus standard, any adopted federal standard, or any adopted Utah standard, unless it determines that issuance of the standard would not result in improved safety or health.
 - (b) All codes, standards, and rules adopted under Subsection (1)(a) shall take effect 30 days after publication unless otherwise specified.
 - (c) If any conflict exists between standards, the division shall issue the standard that assures the greatest protection of safety or health for affected employees.
- (2) The division may issue, modify, or revoke any standard as follows:
 - (a) The division shall publish a proposed rule issuing, modifying, or revoking an occupational safety or health standard and shall afford interested parties an opportunity to submit written data or comments as prescribed by Title 63G, Chapter 3, Utah Administrative Rulemaking Act. When the administrator determines that a rule should be issued, the division shall publish the proposed rule after the expiration of the period prescribed by the administrator for submission.
 - (b) The administrator, in issuing standards for toxic materials or harmful physical agents under this subsection, shall set the standard which most adequately assures, to the extent feasible, on the basis of the best available evidence, that no employee will suffer material impairment of health or functional capacity even if the employee has regular exposure to the hazard during an employee's working life. Development of standards under this subsection shall be based upon research, demonstrations, experiments, and other information deemed appropriate. In addition to the attainment of the highest degree of health and safety protection for the employee, other considerations shall be the latest available scientific data in the field, the feasibility of the standards, and experience under this and other health and safety laws. Whenever practicable, the standard shall be expressed in terms of objective criteria and of the performance desired.

- (c)
 - (i) Any employer may apply to the administrator for a temporary order granting a variance from a standard issued under this section. Temporary orders shall be granted only if the employer:
 - (A) files an application which meets the requirements of Subsection (2)(c)(iv);
 - (B) establishes that the employer is unable to comply with a standard by its effective date because of unavailability of professional or technical personnel or of materials and equipment needed for compliance with the standard or because necessary construction or alteration of facilities cannot be completed by the effective date;
 - (C) establishes that the employer is taking all available steps to safeguard the employer's employees against hazards; and
 - (D) establishes that the employer has an effective program for compliance as quickly as practicable.
 - (ii) Any temporary order shall prescribe the practices, means, methods, operations, and processes which the employer shall adopt and use while the order is in effect and state in detail the employer's program for compliance with the standard. A temporary order may be granted only after notice to employees and an opportunity for a public hearing; provided, that the administrator may issue one interim order effective until a decision is made after public hearing.
 - (iii) A temporary order may not be in effect longer than the period reasonably required by the employer to achieve compliance. In no case shall the period of a temporary order exceed one year.
 - (iv) An application for a temporary order under Subsection (2)(c) shall contain:
 - (A) a specification of the standard or part from which the employer seeks a variance;
 - (B) a representation by the employer, supported by representations from qualified persons having first-hand knowledge of the facts represented, that the employer is unable to comply with the standard or some part of the standard;
 - (C) a detailed statement of the reasons the employer is unable to comply;
 - (D) a statement of the measures taken and anticipated with specific dates, to protect employees against the hazard;
 - (E) a statement of when the employer expects to comply with the standard and what measures the employer has taken and those anticipated, giving specific dates for compliance; and
 - (F) a certification that the employer has informed the employer's employees of the application by:
 - (I) giving a copy to their authorized representative;
 - (II) posting a statement giving a summary of the application and specifying where a copy may be examined at the place or places where notices to employees are normally posted; and
 - (III) by other appropriate means.
 - (v) The certification required under Subsection (2)(c)(iv) shall contain a description of how employees have been informed.
 - (vi) The information to employees required under Subsection (2)(c)(v) shall inform the employees of their right to petition the division for a hearing.
 - (vii) The administrator is authorized to grant a variance from any standard or some part of the standard when the administrator determines that it is necessary to permit an employer to participate in a research and development project approved by the administrator to

demonstrate or validate new and improved techniques to safeguard the health or safety of workers.

(d)

- (i) Any standard issued under this subsection shall prescribe the use of labels or other forms of warning necessary to ensure that employees are apprised of all hazards, relevant symptoms and emergency treatment, and proper conditions and precautions of safe use or exposure. When appropriate, a standard shall prescribe suitable protective equipment and control or technological procedures for use in connection with such hazards and provide for monitoring or measuring employee exposure at such locations and intervals, and in a manner necessary for the protection of employees. In addition, any such standard shall prescribe the type and frequency of medical examinations or other tests which shall be made available by the employer, or at the employer's cost, to employees exposed to hazards in order to most effectively determine whether the health of employees is adversely affected by exposure. If medical examinations are in the nature of research as determined by the division, the examinations may be furnished at division expense. The results of such examinations or tests shall be furnished only to the division; and, at the request of the employee, to the employee's physician.
 - (ii) The administrator may by rule make appropriate modifications in requirements for the use of labels or other forms of warning, monitoring or measuring, and medical examinations warranted by experience, information, or medical or technological developments acquired subsequent to the promulgation of the relevant standard.
- (e) Whenever a rule issued by the administrator differs substantially from an existing national consensus standard, the division shall publish a statement of the reasons why the rule as adopted will better effectuate the purposes of this chapter than the national consensus standard.
- (f) Whenever a rule, standard, or national consensus standard is modified by the secretary so as to make less restrictive the federal Williams-Steiger Occupational Safety and Health Act of 1970, the less restrictive modification shall be immediately applicable to this chapter and shall be immediately implemented by the division.

(3)

- (a) The administrator shall provide an emergency temporary standard to take immediate effect upon publication if the administrator determines that:
 - (i) employees are exposed to grave danger from exposure to substances or agents determined to be toxic or physically harmful or from new hazards; and
 - (ii) that the standard is necessary to protect employees from danger.
- (b) An emergency standard shall be effective until superseded by a standard issued in accordance with the procedures prescribed in Subsection (3)(c).
- (c) Upon publication of an emergency standard the division shall commence a proceeding in accordance with Subsection (2) and the standard as published shall serve as a proposed rule for the proceedings. The division shall issue a standard under Subsection (3) no later than 120 days after publication of the emergency standard.

(4)

- (a) Any affected employer may apply to the division for a rule or order for a variance from a standard issued under this section. Affected employees shall be given notice of each application and may participate in a hearing. The administrator shall issue a rule or order if the administrator determines on the record, after opportunity for an inspection where appropriate and a hearing, that the proponent of the variance has demonstrated by a preponderance of the evidence that the conditions, practices, means, methods, operations,

or processes used or proposed to be used by an employer will provide employment and a workplace to the employer's employees that are as safe and healthful as those which would prevail if the employer complied with the standard.

- (b) The rule or order issued under Subsection (4)(a) shall prescribe the conditions the employer must maintain, and the practices, means, methods, operations and processes that the employer must adopt and use to the extent they differ from the standard in question.
 - (c) A rule or order issued under Subsection (4)(a) may be modified or revoked upon application by an employer, employees, or by the administrator on its own motion, in the manner prescribed for its issuance under Subsection (4) at any time after six months from its issuance.
- (5) The administrator shall include a statement of reasons for the administrator's actions when the administrator:
- (a) issues any code, standard, rule, or order;
 - (b) grants any exemption or extension of time; or
 - (c) compromises, mitigates, or settles any penalty assessed under this chapter.
- (6) Any person adversely affected by a standard issued under this section, at any time prior to 60 days after a standard is issued, may file a petition challenging its validity with the district court having jurisdiction for judicial review. A copy of the petition shall be served upon the division by the petitioner. The filing of a petition may not, unless otherwise ordered by the court, operate as a stay of the standard. The determinations of the division shall be conclusive if supported by substantial evidence on the record as a whole.
- (7) In determining the priority for establishing standards under this section, the division shall give due regard to the urgency of the need for mandatory safety and health standards for particular industries, trades, crafts, occupations, businesses, workplaces or work environments. The administrator shall also give due regard to the recommendations of the Department of Health about the need for mandatory standards in determining the priority for establishing the standards.

Amended by Chapter 413, 2013 General Session

34A-6-203 Discharge or retaliation against employee prohibited.

- (1) A person may not discharge or in any way retaliate against an employee because the employee:
- (a) files a complaint or institutes or causes to be instituted a proceeding under or related to this chapter;
 - (b) testifies or is about to testify in any proceeding under or related to this chapter; or
 - (c) exercises a right granted by this chapter on behalf of the employee or others.
- (2)
- (a) An employee who believes that the employee has been discharged or otherwise retaliated against by any person in violation of this section may, within 30 days after the violation occurs, file a complaint with the division alleging discharge or retaliation in violation of this section.
 - (b)
 - (i) Upon receipt of the complaint, the division shall cause an investigation to be made.
 - (ii) The division may employ investigators as necessary to carry out the purpose of this Subsection (2).
 - (c) Upon completion of the investigation, the division shall issue an order:
 - (i)

- (A) finding a violation of this section has occurred;
 - (B) requiring that the violation cease; and
 - (C) which may include other appropriate relief, such as reinstatement of the employee to the employee's former position with back pay; or
 - (ii) finding that a violation of the section has not occurred.
 - (d) An order issued under Subsection (2)(c) is the final order of the commission unless a party to the claim of a violation of this section seeks further review as provided in Subsection (3).
- (3)
- (a) A party to a claim of a violation of this section may seek review of the order issued under Subsection (2)(c) within 30 days from the date the order is issued by filing a request for review with the Division of Adjudication.
 - (b) The request for review shall comply with Subsection 63G-4-301(1).
 - (c) If the request for review is made, the Division of Adjudication shall conduct a de novo review of the underlying order.
 - (d) If the request for review is based on a finding that a violation of this section occurred, the division shall appear in the review proceeding to defend the division's finding.
 - (e) If the request for review is based on a finding that a violation of this section did not occur, the division may not participate in the review proceeding.
 - (f)
 - (i) If the Division of Adjudication determines a violation of this section has occurred, it may order relief as provided in Subsection (2)(c).
 - (ii) If the Division of Adjudication determines that a violation of this section has not occurred, it shall issue an order stating the determination.
- (4) A party may appeal an order issued by the Division of Adjudication under Subsection (3)(f) in accordance with Subsection 34A-6-304(1).

Amended by Chapter 67, 2016 General Session

34A-6-204 State agencies and political subdivisions to establish programs.

The head of each state agency and each political subdivision of the state shall establish and maintain an occupational safety and health program equivalent to the program for other employments in the state. The commission may not assess monetary penalties against any state agency or political subdivision under Section 34A-6-307.

Renumbered and Amended by Chapter 375, 1997 General Session