

Part 3 Enforcement

34A-6-301 Inspection and investigation of workplace, worker injury, illness, or complaint -- Warrants -- Attendance of witnesses -- Recordkeeping by employers -- Employer and employee representatives -- Request for inspection -- Compilation and publication of reports and information -- Rules.

- (1)
 - (a) The division or its representatives, upon presenting appropriate credentials to the owner, operator, or agent in charge, may:
 - (i) enter without delay at reasonable times any workplace where work is performed by an employee of an employer;
 - (ii) inspect and investigate during regular working hours and at other reasonable times in a reasonable manner any workplace, worker injury, occupational disease, or complaint and all pertinent methods, operations, processes, conditions, structures, machines, apparatus, devices, equipment, and materials in the workplace; and
 - (iii) question privately any such employer, owner, operator, agent, or employee.
 - (b) The division, upon an employer's refusal to permit an inspection, may seek a warrant pursuant to the Utah Rules of Criminal Procedure.
- (2)
 - (a) The division or its representatives may require the attendance and testimony of witnesses and the production of evidence under oath.
 - (b) Witnesses shall receive fees and mileage in accordance with Section 78B-1-119.
 - (c)
 - (i) If any person fails or refuses to obey an order of the division to appear, any district court within the jurisdiction of which such person is found, or resides or transacts business, upon the application by the division, shall have jurisdiction to issue to any person an order requiring that person to:
 - (A) appear to produce evidence if, as, and when so ordered; and
 - (B) give testimony relating to the matter under investigation or in question.
 - (ii) Any failure to obey an order of the court described in this Subsection (2)(c) may be punished by the court as a contempt.
- (3)
 - (a) The commission shall make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, requiring employers:
 - (i) to keep records regarding activities related to this chapter considered necessary for enforcement or for the development of information about the causes and prevention of occupational accidents and diseases; and
 - (ii) through posting of notices or other means, to inform employees of their rights and obligations under this chapter including applicable standards.
 - (b) The commission shall make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, requiring employers to keep records regarding any work-related death and injury and any occupational disease as provided in this Subsection (3)(b).
 - (i) Each employer shall investigate or cause to be investigated all work-related injuries and occupational diseases and any sudden or unusual occurrence or change of conditions that pose an unsafe or unhealthful exposure to employees.
 - (ii) Each employer shall, within eight hours of occurrence, notify the division of any:

- (A) work-related fatality;
- (B) disabling, serious, or significant injury; or
- (C) occupational disease incident.

(iii)

(A) Each employer shall file a report with the Division of Industrial Accidents in accordance with Sections 34A-2-407 and 34A-3-108, after the employer's first knowledge of the occurrence, or after the employee's notification of the same, in the form prescribed by the Division of Industrial Accidents, of any work-related fatality or any work-related injury or 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)

(I) Each employer shall file a subsequent report with the Division of Industrial Accidents of any previously reported injury or occupational disease that later resulted in death.

(II) The subsequent report shall be filed with the Division of Industrial Accidents in accordance with Sections 34A-2-407 and 34A-3-108.

(iv) A report is not required for minor injuries, such as cuts or scratches that require 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 of Industrial Accidents.

(v) A report is not required:

- (A) for occupational diseases that manifest after the employee is no longer employed by the employer with which the exposure occurred; or
- (B) where the employer is not aware of an exposure occasioned by the employment which results in a compensable occupational disease as defined by Section 34A-3-103.

(vi) Each employer shall provide the employee with:

- (A) a copy of the report submitted to the Division of Industrial Accidents; and
- (B) a statement, as prepared by the Division of Industrial Accidents, of the employee's rights and responsibilities related to the industrial injury or occupational disease.

(vii) Each employer shall maintain a record in a manner prescribed by the commission of all work-related fatalities or work-related injuries and of all 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.

(viii) The commission shall make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to implement this Subsection (3)(b) consistent with nationally recognized rules or standards on the reporting and recording of work-related injuries and occupational diseases.

(c)

(i) The commission shall make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, requiring employers to keep records regarding exposures to potentially toxic materials or harmful physical agents required to be measured or monitored under Section 34A-6-202.

(ii)

- (A) The rules made under Subsection (3)(c)(i) shall provide for employees or their representatives:
 - (I) to observe the measuring or monitoring; and
 - (II) to have access to the records of the measuring or monitoring, and to records that indicate their exposure to toxic materials or harmful agents.
- (B) Each employer shall promptly notify employees being exposed to toxic materials or harmful agents in concentrations that exceed prescribed levels and inform any such employee of the corrective action being taken.
- (4) Information obtained by the division shall be obtained with a minimum burden upon employers, especially those operating small businesses.
- (5) A representative of the employer and a representative authorized by employees shall be given an opportunity to accompany the division's authorized representative during the physical inspection of any workplace. If there is no authorized employee representative, the division's authorized representative shall consult with a reasonable number of employees concerning matters of health and safety in the workplace.
- (6)
 - (a)
 - (i)
 - (A) Any employee or representative of employees who believes that a violation of an adopted safety or health standard exists that threatens physical harm, or that an imminent danger exists, may request an inspection by giving notice to the division's authorized representative of the violation or danger. The notice shall be:
 - (I) in writing, setting forth with reasonable particularity the grounds for notice; and
 - (II) signed by the employee or representative of employees.
 - (B) A copy of the notice shall be provided the employer or the employer's agent no later than at the time of inspection.
 - (C) Upon request of the person giving notice, the person's name and the names of individual employees referred to in the notice may not appear in the copy or on any record published, released, or made available pursuant to Subsection (7).
 - (ii)
 - (A) If upon receipt of the notice the division's authorized representative determines there are reasonable grounds to believe that a violation or danger exists, the authorized representative shall make a special inspection in accordance with this section as soon as practicable to determine if a violation or danger exists.
 - (B) If the division's authorized representative determines there are no reasonable grounds to believe that a violation or danger exists, the authorized representative shall notify the employee or representative of the employees in writing of that determination.
 - (b)
 - (i) Prior to or during any inspection of a workplace, any employee or representative of employees employed in the workplace may notify the division or its representative of any violation of a standard that they have reason to believe exists in the workplace.
 - (ii) The division shall:
 - (A) by rule, establish procedures for informal review of any refusal by a representative of the division to issue a citation with respect to any alleged violation; and
 - (B) furnish the employees or representative of employees requesting review a written statement of the reasons for the division's final disposition of the case.
- (7)

- (a) The division may compile, analyze, and publish, either in summary or detailed form, all reports or information obtained under this section, subject to the limitations set forth in Section 34A-6-306.
 - (b) The commission shall make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, necessary to carry out its responsibilities under this chapter, including rules for information obtained under this section, subject to the limitations set forth in Section 34A-6-306.
- (8) Any employer who refuses or neglects to make reports, to maintain records, or to file reports with the commission as required by this section is guilty of a class C misdemeanor and subject to citation under Section 34A-6-302 and a civil assessment as provided under Section 34A-6-307, unless the commission finds that the employer has shown good cause for submitting a report later than required by this section.

Amended by Chapter 72, 2013 General Session

34A-6-302 Citations issued by division -- Grounds -- Posting -- Limitation.

- (1)
- (a) If upon inspection or investigation, the division or its authorized representative believes that an employer has violated a requirement of Section 34A-6-201, of any standard, rule, or order issued under Section 34A-6-202, or any rules under this chapter, it shall with reasonable promptness issue a citation to the employer.
 - (b) Each citation shall:
 - (i) be in writing; and
 - (ii) describe with particularity the nature of the violation, including a reference to the provision of the chapter, standard, rule, or order alleged to have been violated.
 - (c) The citation shall fix a reasonable time for the abatement of the violation. In the case of a review proceeding initiated by the employer in good faith, not for the purpose of delay or avoidance of the penalties, the time for abatement begins to run on the date of the final order of the commission.
 - (d) The commission may prescribe procedures for the issuance of a notice in lieu of a citation with respect to violations that have no direct or immediate relationship to safety or health.
- (2) Each citation issued under this section or a copy shall be prominently posted by the employer, as required by rule, at or near each place a violation referred to in the citation occurred.
- (3) A citation may not be issued under this section after the expiration of six months following the occurrence of any violation.

Renumbered and Amended by Chapter 375, 1997 General Session

34A-6-303 Enforcement procedures -- Notification to employer of proposed assessment -- Notification to employer of failure to correct violation -- Contest by employer of citation or proposed assessment -- Procedure.

- (1)
- (a) If the division issues a citation under Subsection 34A-6-302(1), it shall within a reasonable time after inspection or investigation, notify the employer by certified mail of the assessment, if any, proposed to be assessed under Section 34A-6-307 and that the employer has 30 days to notify the Division of Adjudication that the employer intends to contest the citation, abatement, or proposed assessment.

- (b) If, within 30 days from the receipt of the notice issued by the division, the employer fails to notify the Division of Adjudication that the employer intends to contest the citation, abatement, or proposed assessment, and no notice is filed by any employee or representative of employees under Subsection (3) within 30 days, the citation, abatement, and assessment, as proposed, is final and not subject to review by any court or agency.
- (2)
 - (a) If the division has reason to believe that an employer has failed to correct a violation for which a citation has been issued within the time period permitted, the division shall notify the employer by certified mail:
 - (i) of the failure;
 - (ii) of the assessment proposed to be assessed under Section 34A-6-307; and
 - (iii) that the employer has 30 days to notify the Division of Adjudication that the employer intends to contest the division's notification or the proposed assessment.
 - (b) The period for corrective action does not begin to run until entry of a final order by the commission.
 - (c) If the employer fails to notify the Division of Adjudication, in writing, within 30 days from the receipt of notification issued by the division, that the employer intends to contest the notification or proposed assessment, the notification and assessment, as proposed, is final and not subject to review by any court or agency.
- (3)
 - (a) If an employer notifies the Division of Adjudication that the employer intends to contest a citation issued under Subsection 34A-6-302(1), or notification issued under Subsection (1) or (2), or if, within 30 days of the issuance of a citation under Subsection 34A-6-302(1), any employee or representative of employees files a notice with the division alleging that the period of time fixed in the citation for the abatement of the violation is unreasonable, the division shall advise the commissioner of the notification, and the commissioner shall provide an opportunity for a hearing.
 - (b) Upon a showing by an employer of a good faith effort to comply with the abatement requirements of a citation, and that the abatement has not been completed because of factors beyond the employer's reasonable control, the division, after an opportunity for discussion and consideration, shall issue an order affirming or modifying the abatement requirements in any citation.

Renumbered and Amended by Chapter 375, 1997 General Session

34A-6-304 Procedure for review of order entered by administrative law judge -- Continuing jurisdiction of commission.

- (1)
 - (a) Administrative law judges assigned by the director of the Division of Adjudication shall hear and determine any proceeding assigned to them by the Division of Adjudication.
 - (b) The administrative law judge shall enter the administrative law judge's findings of fact, conclusions of law, and order not later than 30 days after final receipt of all matters concerned in the hearing.
 - (c) The findings of fact, conclusions of law, and order of the administrative law judge shall become the final order of the commission unless objections are made in accordance with Subsection (2).
- (2)

- (a) Any party of interest who is dissatisfied with the order entered by an administrative law judge may obtain a review by appealing the decision in accordance with Section 63G-4-301 and Chapter 1, Part 3, Adjudicative Proceedings.
- (b) The commissioner or Appeals Board shall make its decision in accordance with Section 34A-1-303.
- (c) The decision of the commission is final unless judicial review is requested in accordance with Chapter 1, Part 3, Adjudicative Proceedings.
- (d) To the extent that new facts are provided, the commission has continuing jurisdiction to amend, reverse, or enhance prior orders.

Amended by Chapter 382, 2008 General Session

34A-6-305 Injunction proceedings.

- (1) The district courts shall have jurisdiction, upon petition of the administrator to restrain any conditions or practices in any place of employment where danger exists which could reasonably be expected to cause death or physical harm immediately or before the imminence of such danger can be eliminated through enforcement procedures provided by this chapter. Any order issued under this section may require that necessary steps be taken to avoid, correct, or remove imminent danger or prohibit the employment or presence of any individual in locations or under conditions where imminent danger exists, except individuals whose presence is necessary to avoid, correct, or remove imminent danger or maintain the capacity of a continuous process operation so that normal operations can be resumed without a complete cessation of operations, or where cessation of operations is necessary, to permit such to be accomplished in a safe and orderly manner.
- (2) The district courts shall have jurisdiction upon petition to grant injunctive relief or temporary restraining orders pending the outcome of any enforcement proceeding pursuant to this act pursuant to Rule 65A, Utah Rules of Civil Procedure; provided, that no temporary restraining order issued without notice shall be effective for more than five days.
- (3) Whenever an inspector concludes that imminent danger exists in any place of employment, the inspector shall inform the affected employees and employers of the danger and that the inspector is recommending to the administrator that relief be sought.
- (4) If the administrator arbitrarily or capriciously fails to seek relief under this section, any employee who may be injured by reason of such failure, or the representative of such employees, may bring an action against the administrator in the district court of the county in which the imminent danger is alleged to exist or the employer has its principal office, for a writ of mandamus and for further appropriate relief.

Renumbered and Amended by Chapter 375, 1997 General Session

34A-6-306 Disclosure of trade secrets -- Protective orders.

- (1) All information reported to or otherwise obtained by the administrator or the administrator's representatives or any employee in connection with any inspection or proceeding under this chapter which contains or which might reveal a trade secret shall be considered confidential except that the information may be disclosed to other officers or employees concerned with carrying out this chapter or when relevant, in any proceeding under this chapter.
- (2) In any such proceeding, the commission or the court shall issue appropriate orders to protect the trade secret.

Renumbered and Amended by Chapter 375, 1997 General Session

34A-6-307 Civil and criminal penalties.

- (1) The commission may assess civil penalties against any employer who has received a citation under Section 34A-6-302 as follows:
 - (a) Except as provided in Subsections (1)(b) through (d), the commission may assess up to \$7,000 for each cited violation.
 - (b) The commission may not assess less than \$250 nor more than \$7,000 for each cited serious violation. A violation is serious only if:
 - (i) it arises from a condition, practice, method, operation, or process in the workplace of which the employer knows or should know through the exercise of reasonable diligence; and
 - (ii) there is a substantial possibility that the condition, practice, method, operation, or process could result in death or serious physical harm.
 - (c) The commission may not assess less than \$5,000 nor more than \$70,000 for each cited willful violation.
 - (d) The commission may assess up to \$70,000 for each cited violation if the employer has previously been found to have violated the same standards, code, rule, or order.
 - (e) After the expiration of the time permitted to an employer to correct a cited violation, the commission may assess up to \$7,000 for each day the violation continues uncorrected.
- (2) The commission may assess a civil penalty of up to \$7,000 for each violation of any posting requirement under this chapter.
- (3) In deciding the amount to assess for a civil penalty, the commission shall consider all relevant factors, including:
 - (a) the size of the employer's business;
 - (b) the nature of the violation;
 - (c) the employer's good faith or lack of good faith; and
 - (d) the employer's previous record of compliance or noncompliance with this chapter.
- (4) Any civil penalty collected under this chapter shall be paid into the General Fund.
- (5) Criminal penalties under this chapter are as follows:
 - (a) Any employer who willfully violates any standard, code, rule, or order issued under Section 34A-6-202, or any rule made under this chapter, is guilty of a class A misdemeanor if the violation caused the death of an employee. If the violation causes the death of more than one employee, each death is considered a separate offense.
 - (b) Any person who gives advance notice of any inspection conducted under this chapter without authority from the administrator or the administrator's representatives is guilty of a class A misdemeanor.
 - (c) Any person who knowingly makes a false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under this chapter is guilty of a class A misdemeanor.
- (6) After a citation issued under this chapter and an opportunity for a hearing under Title 63G, Chapter 4, Administrative Procedures Act, the division may file an abstract for any uncollected citation penalty in the district court. The filed abstract shall have the effect of a judgment of that court. The abstract shall state the amount of the uncollected citation penalty, reasonable attorneys' fees as set by commission rule, and court costs.

Amended by Chapter 382, 2008 General Session