

1 **LIMITATION ON WORKERS' COMPENSATION**

2 **COVERAGE**

3 1999 GENERAL SESSION

4 STATE OF UTAH

5 **Sponsor: Parley Hellewell**

6 AN ACT RELATING TO LABOR; CREATING A REBUTTABLE PRESUMPTION THAT
7 MAJOR CONTRIBUTING CAUSE OF INJURY IS INTOXICATION; AND MAKING
8 TECHNICAL CHANGES.

9 This act affects sections of Utah Code Annotated 1953 as follows:

10 AMENDS:

11 **34A-2-302**, as renumbered and amended by Chapter 375, Laws of Utah 1997

12 *Be it enacted by the Legislature of the state of Utah:*

13 Section 1. Section **34A-2-302** is amended to read:

14 **34A-2-302. Employee's willful misconduct -- Penalty.**

15 (1) An employee may not:

16 (a) remove, displace, damage, destroy, or carry away any safety device or safeguard
17 provided for use in any employment or place of employment~~[, or]~~;

18 (b) interfere in any way with the use ~~[thereof]~~ of a safety device or safeguard described in
19 Subsection (1)(a) by any other person;

20 ~~[(b)]~~ (c) interfere with the use of any method or process adopted for the protection of any
21 employee in the employer's employment or place of employment; or

22 ~~[(c)]~~ (d) fail or neglect to follow and obey orders and to do every other thing reasonably
23 necessary to protect the life, health, and safety of employees.

24 (2) Except in case of injury resulting in death:

25 (a) ~~[Compensation]~~ compensation provided for by this chapter shall be reduced 15% when
26 injury is caused by the willful failure of the employee:

27 (i) to use safety devices when provided by the employer; or

28 (ii) to obey any order or reasonable rule adopted by the employer for the safety of the
29 employee[-]; and

30 (b) [~~Except~~] except when the employer permitted, encouraged, or had actual knowledge
31 of the conduct described in Subsection (2)(b)(i) through (iii), disability compensation may not be
32 awarded under this chapter or Title 34A, Chapter 3, Utah Occupational Disease Act, to an
33 employee when the major contributing cause of the employee's injury is the employee's:

- 34 (i) use of illegal substances;
- 35 (ii) intentional abuse of drugs in excess of prescribed therapeutic amounts; or
- 36 (iii) intoxication from alcohol with a blood or breath alcohol concentration of .08 grams
37 or greater as shown by a chemical test.

38 (3) (a) For purposes of Subsection (2), it is presumed that the major contributing cause of
39 the employee's injury is the employee's conduct described in Subsections (2)(b)(i) through (iii) if
40 at the time of the injury, as shown by a chemical test:

- 41 (i) the employee has in the employee's system:
 - 42 (A) any amount of an illegal substance; or
 - 43 (B) drugs in excess of prescribed therapeutic amounts; or
 - 44 (ii) the employee has a blood or breath alcohol concentration of .08 grams or greater.
- 45 (b) The presumption created under Subsection (3)(a) may be rebutted by evidence showing

46 that:

- 47 (i) the chemical test creating the presumption is inaccurate;
- 48 (ii) the employee did not engage in the conduct described in Subsections (2)(b)(i) through
49 (iii); § [~~or~~]

49a (iii) A COMPETENT MEDICAL OPINION FROM A PHYSICIAN VERIFIES THAT A FINDING THAT
49b THE CONDUCT DESCRIBED IN SUBSECTIONS (2)(b)(i) THROUGH (iii) WAS THE MAJOR
49c CONTRIBUTING CAUSE OF THE EMPLOYEE'S INJURY IS NOT SUPPORTED BY THE AMOUNT IN
THE

49d EMPLOYEE'S SYSTEM OF:

- 49e (A) ILLEGAL SUBSTANCES;
- 49f (B) DRUGS IN EXCESS OF PRESCRIBED THERAPEUTIC AMOUNTS;
- 49g (C) ALCOHOL; OR
- 49h (D) A COMBINATION OF SUBSECTIONS (3)(b)(iii)(A) THROUGH (C); OR

50 [~~(iii)~~] (iv) § the conduct described in Subsections (2)(b)(i) through (iii) was not the major
51 contributing cause of the employee's injury.

52 (c) (i) Except as provided in Subsection § [~~(3)(c)(i)~~] (3)(c)(ii) AND (iii) § , if a chemical test
52a that creates the

53 presumption under Subsection (3)(a) is taken at the request of the employer, the employer shall
54 comply with § : (A) § Title 34, Chapter 38, Drug and Alcohol Testing § ; OR (B) IF THE EMPLOYEE
54a IS A LOCAL GOVERNMENTAL EMPLOYEE AS DEFINED IN SECTION 34-41-101, TITLE 34, CHAPTER
54b 41, LOCAL GOVERNMENTAL ENTITY DRUG-FREE WORKPLACE POLICIES § .

55 (ii) Notwithstanding Section 34-38-13, the results of a test taken under Title 34, Chapter
56 38, may be disclosed to the extent necessary to establish or rebut the presumption created under

Amended on 3 — goldenrod 2-24-1999 rd/po

Amended on 2 — goldenrod 2-23-1999 rd/po

57 Subsection (3)(a).

57a **§ (iii) NOTWITHSTANDING SECTION 34-41-103, THE RESULTS OF A TEST TAKEN UNDER TITLE 34,**
57b **CHAPTER 41, MAY BE DISCLOSED TO THE EXTENT NECESSARY TO ESTABLISH OR REBUT THE**
57c **PRESUMPTION CREATED UNDER SUBSECTION (3)(a). §**

Legislative Review Note

as of 2-10-99 12:11 PM

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel