

LIMITATION ON WORKERS COMPENSATION COVERAGE

1999 GENERAL SESSION

STATE OF UTAH

Sponsor: Parley Hellewell

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

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

AMENDS:

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

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

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

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

(1) 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~~[, or]~~;

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

~~[(b)] (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

~~[(c)] (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.

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

(a) ~~[Compensation]~~ 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]~~ except when the employer permitted, encouraged, or had actual knowledge

of the conduct described in Subsection (2)(b)(i) through (iii), disability compensation may not be awarded under this chapter or Title 34A, Chapter 3, Utah Occupational Disease Act, to an employee when the major contributing cause of the employee's injury 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 .08 grams or greater as shown by a chemical test.

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

- (i) the employee has in the employee's system:
 - (A) any amount of an illegal substance; or
 - (B) drugs in excess of prescribed therapeutic amounts; or
- (ii) the employee has a blood or breath alcohol concentration of .08 grams or greater.

(b) The presumption created under Subsection (3)(a) may be rebutted by evidence showing that:

- (i) the chemical test creating the presumption is inaccurate;
- (ii) the employee did not engage in the conduct described in Subsections (2)(b)(i) through

(iii);

(iii) a competent medical opinion from a physician verifies that a finding that the conduct described in Subsections (2)(b)(i) through (iii) was the major contributing cause of the employee's injury is not supported by the amount in the employee's system of:

- (A) illegal substances;
- (B) drugs in excess of prescribed therapeutic amounts;
- (C) alcohol; or
- (D) a combination of Subsections (3)(b)(iii)(A) through (C); or

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

(c) (i) Except as provided in Subsections (3)(c)(ii) and (iii), if a chemical test that creates the presumption under Subsection (3)(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 as defined in Section 34-41-101, 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, may be disclosed to the extent necessary to establish or rebut the presumption created under Subsection (3)(a).

(iii) Notwithstanding Section 34-41-103, the results of a test taken under Title 34, Chapter 41, may be disclosed to the extent necessary to establish or rebut the presumption created under Subsection (3)(a).