

WORKERS' COMPENSATION AMENDMENTS

2003 GENERAL SESSION

STATE OF UTAH

Sponsor: Ed P. Mayne

This act modifies the Workers' Compensation Act including technical changes. The act addresses penalties for failure to make reports related to industrial accidents. The act provides for survival of workers' compensation claims in case of death.

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

AMENDS:

34A-2-407, as last amended by Chapter 205 and renumbered and amended by Chapter 375, Laws of Utah 1997

34A-2-801, as renumbered and amended by Chapter 375, Laws of Utah 1997

ENACTS:

34A-2-423, Utah Code Annotated 1953

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

Section 1. Section **34A-2-407** is amended to read:

34A-2-407. Reporting of industrial injuries -- Regulation of health care providers.

(1) As used in this section, "physician" is as defined in Section 34A-2-111.

~~[(1)]~~ (2) (a) Any employee sustaining an injury arising out of and in the course of employment shall provide notification to the employee's employer promptly of the injury.

(b) If the employee is unable to provide the notification required by Subsection (2)(a), the [employee's next-of-kin or attorney] following may provide notification of the injury to the employee's employer[-]:

(i) the employee's next-of-kin; or

(ii) the employee's attorney.

~~[(2) Any]~~ (3) (a) An employee [who fails to notify the employee's employer or the division within 180 days of an injury] is barred for any claim of benefits arising from [the] an injury[-] if the employee fails to notify within the time period described in Subsection (3)(b):

(i) the employee's employer in accordance with Subsection (2); or

(ii) the division.

(b) The notice required by Subsection (3)(a) shall be made within:

(i) 180 days of the day on which the injury occurs; or

(ii) in the case of an occupational hearing loss, the time period specified in Section 34A-2-506.

~~[(3)]~~ (4) The following constitute notification of injury required by Subsection (2):

(a) an employer's or physician's injury report filed with:

(i) the division;

(ii) the employer; or

(iii) the employer's insurance carrier; or

(b) the payment of any medical or disability benefits by:

(i) the employer; or

(ii) the employer's insurance carrier.

~~[(4)]~~ (5) (a) In the form prescribed by the division, each employer shall file a report with the division of any:

(i) work-related fatality; or

(ii) work-related injury resulting in:

(A) medical treatment;

(B) loss of consciousness;

(C) loss of work;

(D) restriction of work; or

(E) transfer to another job.

(b) The employer shall file the report required by Subsection ~~[(4)]~~ (5)(a) within seven days after:

(i) the occurrence of a fatality or injury;

(ii) the employer's first knowledge of the fatality or injury; or

(iii) the employee's notification of the fatality or injury.

(c) ~~[Each]~~ (i) An employer shall file a subsequent report with the division of any previously reported injury that later ~~[resulted]~~ results in death.

(ii) The subsequent report required by this Subsection (5)(c) shall be filed with the division within seven days following:

~~[(i)]~~ (A) the death; or

~~[(ii)]~~ (B) the employer's first knowledge or notification of the death.

(d) A report is not required to be filed under this Subsection (5) for minor injuries, such as cuts or scratches that require first-aid treatment only, unless:

(i) a treating physician files ~~[, or is required to file, the Physician's Initial Report of Work Injury or Occupational Disease]~~ a report with the division ~~[:]~~ in accordance with Subsection (9);
or

(ii) a treating physician is required to file a report with the division in accordance with Subsection (9).

~~[(5) Each]~~ (6) An employer required to file a report under Subsection (5) 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 industrial injury.

~~[(6)]~~ (7) Each employer shall maintain a record in a manner prescribed by the division of all:

(a) work-related fatalities; or

(b) work-related injuries resulting in:

(i) medical treatment;

(ii) loss of consciousness;

(iii) loss of work;

(iv) restriction of work; or

(v) transfer to another job.

~~[(7) Any]~~ (8) (a) Except as provided in Subsection (8)(b), an employer who refuses or

neglects to make reports, to maintain records, or to file reports with the division as required by this section is:

(i) guilty of a class C misdemeanor; and

(ii) subject to ~~[citation under Section 34A-6-302 and]~~ a civil assessment ~~[as provided under Section 34A-6-307, unless]:~~

(A) imposed by the division, subject to the requirements of Title 63, Chapter 46b, Administrative Procedures Act; and

(B) that may not exceed \$500.

(b) An employer is not subject to the civil assessment or guilty of a class C misdemeanor under this Subsection (8) if:

(i) the employer submits a report later than required by this section; and

(ii) the division finds that the employer has shown good cause for submitting a report later than required by this section.

(c) A civil assessment collected under this Subsection (8) shall be deposited into the Uninsured Employers' Fund created in Section 34A-2-704.

~~[(8)]~~ (9) (a) Except as provided in Subsection ~~[(8)]~~ (9)(c) ~~[all physicians, surgeons, and other health providers]~~, a physician attending an injured ~~[employees]~~ employee shall:

(i) comply with all the rules, including the schedule of fees, for ~~[their]~~ the physician's services as adopted by the commission; and

(ii) make reports to the division at any and all times as required as to:

(A) the condition and treatment of an injured employee; or [as to]

(B) any other matter concerning industrial cases ~~[they are]~~ that the physician is treating.

(b) A physician~~[, as defined in Subsection 34A-2-111(2);]~~ who is associated with, employed by, or bills through a hospital is subject to Subsection ~~[(8)]~~ (9)(a).

(c) A hospital is not subject to the requirements of Subsection ~~[(8)]~~ (9)(a).

(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)] (9) does not modify contracts with providers of health services relating to the pricing of goods and services existing on May 1, 1995.

(f) In accordance with Title 63, Chapter 46b, Administrative Procedures Act, a physician~~[-, surgeon, or other health provider]~~ may file with the Division of Adjudication an application for hearing to appeal a decision or final order to the extent ~~[it]~~ a decision or final order concerns the fees charged by the physician~~[-, surgeon, or other health provider]~~ in accordance with this section.

~~[(9)]~~ (10) A copy of the ~~[physician's]~~ initial report filed under Subsection (9) shall be furnished to:

- (a) the division;
- (b) the employee; and
- (c) (i) the employer; or ~~[its]~~
- (ii) the employer's insurance carrier.

~~[(10) Any]~~ (11) (a) Except as provided in Subsection (11)(b), a physician[-, surgeon, or other health provider], excluding any hospital, who [refuses or neglects to make any report or] fails to comply with this section is guilty of a class C misdemeanor for each offense[-, unless].

- (b) A physician is not guilty of a class C misdemeanor under this Subsection (11), if:
- (i) the physician files a late report; and
- (ii) the division finds that there is good cause for submitting a late report.

~~[(11)]~~ (12) (a) Subject to appellate review under Section 34A-1-303, the commission has exclusive jurisdiction to hear and determine whether the treatment or services rendered to ~~[employees by physicians, surgeons, or other health providers]~~ an employee by a physician are:

- (i) reasonably related to industrial injuries or occupational diseases; and
- (ii) compensable pursuant to this chapter or Chapter 3, Utah Occupational Disease Act.

(b) Except as provided in Subsection ~~[(11)]~~ (12)(a), Subsection 34A-2-211(7), 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 a physician's[, surgeon's, or other health provider's] billing for treatment or services that are compensable under this chapter or Chapter 3, Utah Occupational Disease Act.

Section 2. Section **34A-2-423** is enacted to read:

34A-2-423. Survival of claim in case of death.

(1) As used in this section:

(a) "Estate" is as defined in Section 75-1-201.

(b) "Personal representative" is as defined in Section 75-1-201.

(2) The personal representative of the estate of an employee may adjudicate an employee's claim for compensation under this chapter if in accordance with this chapter, the employee files a claim:

(a) before the employee dies; and

(b) for compensation for an industrial accident or occupational disease for which compensation is payable under this chapter or Chapter 3, Utah Occupational Disease Act.

(3) If the commission finds that the employee is entitled to compensation under this chapter for the claim described in Subsection (2)(a), the commission shall order that compensation be paid for the period:

(a) beginning on the day on which the employee is entitled to receive compensation under this chapter; and

(b) ending on the day on which the employee dies.

(4) (a) Compensation awarded under Subsection (3) shall be paid to:

(i) if the employee has one or more dependents on the day on which the employee dies, to the dependents of the employee; or

(ii) if the employee has no dependents on the day on which the employee dies, to the estate of the employee.

(b) The commission may apportion any compensation paid to dependents under this Subsection (4) in the manner that the commission considers just and equitable.

(5) If an employee that files a claim under this chapter dies from the industrial accident

or occupational disease that is the basis of the employee's claim, the compensation awarded under this section shall be in addition to death benefits awarded in accordance with Section 34A-2-414.

Section 3. Section **34A-2-801** is amended to read:

34A-2-801. Initiating adjudicative proceedings -- Procedure for review of administrative action.

(1) (a) To contest an action of the employee's employer or its insurance carrier concerning a compensable industrial accident or occupational disease alleged by the employee, any of the following shall file an application for hearing with the Division of Adjudication:

(i) the employee; or

(ii) a representative of the employee, the qualifications of whom are defined in rule by the commission.

(b) To appeal the imposition of a penalty or other administrative act imposed by the division on the employer or its insurance carrier for failure to comply with this chapter or Chapter 3, Utah Occupational Disease Act, any of the following shall file an application for hearing with the Division of Adjudication:

(i) the employer;

(ii) the insurance carrier; or

(iii) a representative of either the employer or the insurance carrier, the qualifications of whom are defined in rule by the commission.

(c) A physician~~[, surgeon, or other health provider]~~, as defined in Section 34A-2-111, may file an application for hearing in accordance with Section 34A-2-407.

(d) An attorney may file an application for hearing in accordance with Section 34A-1-309.

(2) Unless a party in interest appeals the decision of an administrative law judge in accordance with Subsection (3), the decision of an administrative law judge on an application for hearing filed under Subsection (1) is a final order of the commission 30 days after the date the decision is issued.

(3) (a) A party in interest may appeal the decision of an administrative law judge by filing a motion for review with the Division of Adjudication within 30 days of the date the decision is issued.

(b) Unless a party in interest to the appeal requests under Subsection (3)(c) that the appeal be heard by the Appeals Board, the commissioner shall hear the review.

(c) A party in interest may request that an appeal be heard by the Appeals Board by filing the request with the Division of Adjudication:

(i) as part of the motion for review; or

(ii) if requested by a party in interest who did not file a motion for review, within 20 days of the date the motion for review is filed with the Division of Adjudication.

(d) A case appealed to the Appeals Board shall be decided by the majority vote of the Appeals Board.

(4) All records on appeals shall be maintained by the Division of Adjudication. Those records shall include an appeal docket showing the receipt and disposition of the appeals on review.

(5) Upon appeal, the commissioner or Appeals Board shall make its decision in accordance with Section 34A-1-303.

(6) The commissioner or Appeals Board shall promptly notify the parties to any proceedings before it of its decision, including its findings and conclusions.

(7) The decision of the commissioner or Appeals Board is final unless within 30 days after the date the decision is issued further appeal is initiated under the provisions of this section or Title 63, Chapter 46b, Administrative Procedures Act.

(8) (a) Within 30 days after the date the decision of the commissioner or Appeals Board is issued, any aggrieved party may secure judicial review by commencing an action in the court of appeals against the commissioner or Appeals Board for the review of the decision of the commissioner or Appeals Board.

(b) In an action filed under Subsection (8)(a):

(i) any other party to the proceeding before the commissioner or Appeals Board shall be

made a party; and

(ii) the commission shall be made a party.

(c) A party claiming to be aggrieved may seek judicial review only if the party has exhausted the party's remedies before the commission as provided by this section.

(d) At the request of the court of appeals, the commission shall certify and file with the court all documents and papers and a transcript of all testimony taken in the matter together with the decision of the commissioner or Appeals Board.