

**EMPLOYEE OBLIGATIONS RELATED TO
WORKERS' COMPENSATION**

2008 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Michael T. Morley

Senate Sponsor: _____

LONG TITLE

General Description:

This bill modifies the Workers' Compensation Act to address an employee's duties related to workers' compensation.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ addresses reductions in disability compensation under certain circumstances;
- ▶ provides for adjudication;
- ▶ addresses application of certain provisions to a local governmental entity or state institution of higher education;
- ▶ addresses the scope of the provisions;
- ▶ provides for rulemaking;
- ▶ addresses incarceration or unlawful employment related to permanent total disabilities; and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

⌚→ [None] This bill takes effect on July 1, 2008. ←⌚

H.B. 384



28 **Utah Code Sections Affected:**

29 AMENDS:

30 **34A-2-410**, as last amended by Laws of Utah 2005, Chapter 81

31 **34A-2-413**, as last amended by Laws of Utah 2006, Chapter 295

32 ENACTS:

33 **34A-2-410.5**, Utah Code Annotated 1953



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

36 Section 1. Section **34A-2-410** is amended to read:

37 **34A-2-410. Temporary disability -- Amount of payments -- State average weekly**
38 **wage defined.**

39 (1) (a) ~~[It]~~ Subject to Subsections (1)(b) and (5), in case of temporary disability, so
40 long as the disability is total, the employee shall receive 66-2/3% of that employee's average
41 weekly wages at the time of the injury but:

42 (i) not more than a maximum of 100% of the state average weekly wage at the time of
43 the injury per week; and

44 (ii) (A) subject to Subsections (1)(a)(ii)(B) and (C), not less than a minimum of \$45
45 per week plus;

46 (I) \$5 for a dependent spouse; and

47 (II) \$5 for each dependent child under the age of 18 years, up to a maximum of four
48 dependent children[;];

49 (B) not to exceed the average weekly wage of the employee at the time of the injury[;
50 ~~but~~]; and

51 (C) not to exceed 100% of the state average weekly wage at the time of the injury per
52 week.

53 (b) In no case shall the compensation benefits exceed 312 weeks at the rate of 100% of
54 the state average weekly wage at the time of the injury over a period of 12 years from the date
55 of the injury.

56 (2) ~~[In the event]~~ If a light duty medical release is obtained ~~[prior to]~~ before the
57 employee ~~[reaching]~~ reaches a fixed state of recovery[;] and ~~[when]~~ no light duty employment
58 is available to the employee from the employer, temporary disability benefits shall continue to

59 be paid.

60 (3) The "state average weekly wage" as referred to in this chapter and Chapter 3, Utah
61 Occupational Disease Act, shall be determined by the commission as follows:

62 (a) On or before June 1 of each year, the total wages reported on contribution reports to
63 the Unemployment Insurance Division for the preceding calendar year shall be divided by the
64 average monthly number of insured workers determined by dividing the total insured workers
65 reported for the preceding year by 12.

66 (b) The average annual wage obtained under Subsection (3)(a) shall be divided by 52.

67 (c) The average weekly wage determined under Subsection (3)(b) is rounded to the
68 nearest dollar.

69 (4) The state average weekly wage determined under Subsection (3) shall be used as
70 the basis for computing the maximum compensation rate for:

71 (a) injuries or disabilities arising from occupational disease that occurred during the
72 [~~twelve-month~~] 12-month period commencing July 1 following the June 1 determination; and

73 (b) any death resulting from the injuries or disabilities arising from occupational
74 disease.

75 (5) The commission may reduce or terminate temporary disability compensation in
76 accordance with Section 34-2-410.5.

77 Section 2. Section **34A-2-410.5** is enacted to read:

78 **34A-2-410.5. Employee cooperation with reemployment.**

79 (1) As used in this section:

80 (a) "Controlled substance" is as defined in Section 58-37-2.

81 (b) "Correctional facility" means:

82 (i) a correctional facility as defined in Section 76-8-311.3; or

83 (ii) a facility operated by or contracting with the federal government to house a
84 criminal offender in either a secure or nonsecure setting.

85 (c) "Disability claim" means a claim for compensation for:

86 (i) a temporary total disability benefit; or

87 (ii) a temporary partial disability benefit.

88 (d) "Local governmental entity" is as defined in Section 34-41-101.

89 (e) "Reemployment" means employment that:

90 (i) is after an accident or occupational disease that is the basis for a disability claim;

91 and

92 (ii) in a manner consistent with Subsection (2)(b), offers to an employee an opportunity
93 for earnings, considering the employee's:

94 (A) education;

95 (B) experience; and

96 (C) physical and mental impairment or condition.

97 (f) "State institution of higher education" means an institution listed in Section
98 53B-3-102.

99 (g) "Valid prescription" is a prescription, as defined in Section 58-37-2, that is:

100 (i) prescribed for a controlled substance for use by the employee for whom it is
101 prescribed; and

102 (ii) not altered or forged.

103 (2) In accordance with this section, the commission may reduce or terminate an
104 employee's disability compensation for a disability claim for good cause shown by the
105 employer including if:

106 (a) the employer terminates the employee from the reemployment and the termination
107 is:

108 (i) reasonable;

109 (ii) for ~~H~~→ **just** ←~~H~~ cause; and

110 (iii) as a result, in whole or in part, of:

111 (A) criminal conduct;

112 (B) violent conduct; or

113 (C) a violation of a reasonable, written workplace ~~H~~→ **health, safety, licensure, or**

113a **nondiscrimination** ←~~H~~ rule that is applied in ~~H~~→ [a

114 **nondiscriminatory basis]** a manner that is reasonable and nondiscriminatory ←~~H~~ ;

115 (b) the employee is incarcerated in a correctional facility for a period of time that

116 would result in the termination of the employee's reemployment in accordance with a

117 reasonable, written workplace rule that is applied in a ~~H~~→ [**nondiscriminatory basis]** a manner that

117a **is reasonable and nondiscriminatory** ←~~H~~ ; or

118 (c) subject to Subsection (6), the employee is terminated from the reemployment:

119 (i) (A) for use of a controlled substance that the employee did not obtain under a valid

120 prescription;

121 (B) for intentional abuse of a controlled substance that the employee obtained under a
 122 valid prescription or alcohol, if the employee uses the controlled substance intentionally:

123 (I) in excess of a prescribed therapeutic amount; or

124 (II) in an otherwise abusive manner; or

125 (C) for the use of alcohol that results in intoxication from alcohol with a blood or
 126 breath alcohol concentration of .08 grams or greater; and

127 (ii) in accordance with a reasonable, written workplace rule that is applied in ~~H→~~ **[a**
 128 **nondiscriminatory basis] a manner that is reasonable and nondiscriminatory** ~~←H~~ .

129 (3) Notwithstanding the other provisions of this section, the employee described in
 130 Subsection (2) is eligible for medical benefits to the extent otherwise allowed under this title.

131 (4) (a) An employer or the employer's insurance carrier may file an application for
 132 hearing with the Division of Adjudication to request that an employee's disability
 133 compensation for a disability claim be reduced or terminated under this section.

134 (b) An action under this Subsection (4) is barred if an application for hearing is not
 135 filed within one year from the day on which the employer terminates the employee from
 136 reemployment as described in Subsection (2).

137 (c) An employer or the employer's insurance carrier shall notify the employee that the
 138 employer or employer's insurance carrier has filed a request for a hearing under this section
 139 within three business days of the day on which the filing is made.

140 (5) (a) The commission may reduce or terminate the disability compensation of an
 141 employee for a disability claim if after a hearing requested under Subsection (4), the
 142 commission determines that the conditions of Subsection (2) are met.

143 (b) The commission shall issue an order as to whether or not an employee's disability
 144 compensation is reduced or terminated under this section by no later than 45 days from the day
 145 on which an application for a hearing is filed.

146 (c) A reduction or termination of disability compensation under this Subsection (5)
 147 takes effect on the day ~~H→~~ **determined by the commission.** ~~[the order described in Subsection~~
 147a ~~(5)(b) is issued by the commission;~~

148 ~~except that the following is treated as an offset against future obligations of the employer or~~
 149 ~~employer's insurance carrier to pay disability compensation to the employee:~~

150 ~~—— (i) if the disability compensation is ordered terminated, the amount of disability~~
 151 ~~compensation paid to the employee;~~

152 ~~—— (A) beginning on the day on which the employee begins to receive disability~~
 153 ~~compensation; and~~

154 ~~—— (B) ending on the day on which the disability compensation is terminated; or~~

155 ~~—— (ii) (d) If the disability compensation is ordered terminated or reduced, the employer~~
 155a ~~or employer's insurance carrier shall treat any resulting overpayment as an offset against the~~
 155b ~~employer or employer's insurance carrier's future obligations to pay disability compensation~~
 155c ~~to the employee. [if the disability compensation is ordered reduced, the amount calculated by~~
 156 ~~subtracting from the amount of disability compensation paid to the employee beginning on the~~
 157 ~~day on which the employee begins to receive disability compensation, and ending the day on~~
 158 ~~which the disability compensation is reduced, the amount the employee would have received~~
 159 ~~had the reduction in disability compensation been applied beginning on the day on which the~~
 160 ~~employee begins to receive disability compensation.] ←H~~

161 (6) (a) For purposes of Subsection (2)(c), the commission may consider a chemical test
 162 that conforms to scientifically accepted analytical methods and procedures and includes
 163 verification or confirmation of any positive test result by gas chromatography, gas
 164 chromatography-mass spectroscopy, or other comparably reliable analytical method showing
 165 that the employee has:

166 (i) in the employee's system during employment:

167 (A) any amount of a controlled substance or its metabolites if the employee did not
 168 obtain the controlled substance under a valid prescription; or

169 (B) a controlled substance the employee obtained under a valid prescription or the
 170 metabolites of the controlled substance if the amount in the employee's system is consistent
 171 with the employee using the controlled substance intentionally:

172 (I) in excess of prescribed therapeutic amounts; or

173 (II) in an otherwise abusive manner; or

174 (ii) a blood or breath alcohol concentration of .08 grams or greater during employment.

175 (b) A local governmental entity or state institution of higher education shall comply
 176 with Title 34, Chapter 41, Local Governmental Entity Drug-Free Workplace Policies, in
 177 engaging in a test for a controlled substance that is the basis of a presumption under this
 178 section.

179 (7) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
 180 commission may make rules:

181 (a) describing factors to be considered under Subsection (2); and

182 (b) related to the procedures for a request for a hearing under this section.

183 (8) The adjudication of a dispute arising under this section is governed by Part 8,
184 Adjudication.

185 (9) An issue related to an employee's cooperation with regard to a claim for
186 compensation for permanent total disability benefits is governed by Section 34A-2-413.

187 Section 3. Section **34A-2-413** is amended to read:

188 **34A-2-413. Permanent total disability -- Amount of payments -- Rehabilitation.**

189 (1) (a) In [~~cases~~] the case of a permanent total disability resulting from an industrial
190 accident or occupational disease, the employee shall receive compensation as outlined in this
191 section.

192 (b) To establish entitlement to permanent total disability compensation, the employee
193 must prove by a preponderance of evidence that:

194 (i) the employee sustained a significant impairment or combination of impairments as a
195 result of the industrial accident or occupational disease that gives rise to the permanent total
196 disability entitlement;

197 (ii) the employee is permanently totally disabled; and

198 (iii) the industrial accident or occupational disease [~~was~~] is the direct cause of the
199 employee's permanent total disability.

200 (c) To establish that an employee is permanently totally disabled the employee must
201 prove by a preponderance of the evidence that:

202 (i) the employee is not gainfully employed;

203 (ii) the employee has an impairment or combination of impairments that limit the
204 employee's ability to do basic work activities;

205 (iii) the industrial or occupationally caused impairment or combination of impairments
206 prevent the employee from performing the essential functions of the work activities for which
207 the employee has been qualified until the time of the industrial accident or occupational disease
208 that is the basis for the employee's permanent total disability claim; and

209 (iv) the employee cannot perform other work reasonably available, taking into
210 consideration the employee's:

211 (A) age;

212 (B) education;

213 (C) past work experience;

214 (D) medical capacity; and

215 (E) residual functional capacity.

216 (d) Evidence of an employee's entitlement to disability benefits other than those
217 provided under this chapter and Chapter 3, Utah Occupational Disease Act, if relevant:

218 (i) may be presented to the commission;

219 (ii) is not binding; and

220 (iii) creates no presumption of an entitlement under this chapter and Chapter 3, Utah
221 Occupational Disease Act.

222 (e) In determining under ~~§~~ **[Subsection]** ~~Subsections~~ ~~↔~~ **(1)** ~~↔~~ **(b)** and ~~↔~~ **(c)**
222a whether an employee cannot perform other

223 work reasonably available, the following may not be considered:

224 (i) whether the employee is incarcerated in a facility operated by or contracting with a
225 federal, state, county, or municipal government to house a criminal offender in either a secure
226 or nonsecure setting; or

227 (ii) whether the employee is not legally eligible to be employed because of a reason
228 unrelated to the impairment or combination of impairments.

229 (2) For permanent total disability compensation during the initial 312-week
230 entitlement, compensation ~~[shall be]~~ is 66-2/3% of the employee's average weekly wage at the
231 time of the injury, limited as follows:

232 (a) compensation per week may not be more than 85% of the state average weekly
233 wage at the time of the injury;

234 (b) (i) subject to Subsection (2)(b)(ii), compensation per week may not be less than the
235 sum of \$45 per week~~[, plus]~~ and:

236 (A) \$5 for a dependent spouse~~[, plus]~~; and

237 (B) \$5 for each dependent child under the age of 18 years, up to a maximum of four
238 dependent minor children~~[, but not exceeding]~~; and

239 (ii) the amount calculated under Subsection (2)(b)(i) may not exceed:

240 (A) the maximum established in Subsection (2)(a) ~~[not exceeding]~~; or

241 (B) the average weekly wage of the employee at the time of the injury; and

242 (c) after the initial 312 weeks, the minimum weekly compensation rate under
243 Subsection (2)(b) ~~[shall be]~~ is 36% of the current state average weekly wage, rounded to the
244 nearest dollar.

245 (3) This Subsection (3) applies to claims resulting from an accident or disease arising
246 out of and in the course of the employee's employment on or before June 30, 1994.

247 (a) The employer or its insurance carrier is liable for the initial 312 weeks of permanent
248 total disability compensation except as outlined in Section 34A-2-703 as in effect on the date
249 of injury.

250 (b) The employer or its insurance carrier may not be required to pay compensation for
251 any combination of disabilities of any kind, as provided in this section and Sections 34A-2-410
252 through 34A-2-412 and Part 5, Industrial Noise, in excess of the amount of compensation
253 payable over the initial 312 weeks at the applicable permanent total disability compensation
254 rate under Subsection (2).

255 (c) ~~[Any]~~ The Employers' Reinsurance Fund shall for an overpayment of [this]
256 compensation [shall be reimbursed] described in Subsection (3)(b), reimburse the
257 overpayment:

258 (i) to the employer or its insurance carrier ~~[by the Employers' Reinsurance Fund];~~ and
259 ~~[shall be paid]~~

260 (ii) out of the Employers' Reinsurance Fund's liability to the employee.

261 (d) After an employee ~~[has received]~~ receives compensation from the employee's
262 employer, its insurance carrier, or the Employers' Reinsurance Fund for any combination of
263 disabilities amounting to 312 weeks of compensation at the applicable permanent total
264 disability compensation rate, the Employers' Reinsurance Fund shall pay all remaining
265 permanent total disability compensation.

266 (e) Employers' Reinsurance Fund payments shall commence immediately after the
267 employer or its insurance carrier ~~[has satisfied]~~ satisfies its liability under this Subsection (3) or
268 Section 34A-2-703.

269 (4) This Subsection (4) applies to claims resulting from an accident or disease arising
270 out of and in the course of the employee's employment on or after July 1, 1994.

271 (a) The employer or its insurance carrier is liable for permanent total disability
272 compensation.

273 (b) The employer or its insurance carrier may not be required to pay compensation for
274 any combination of disabilities of any kind, as provided in this section and Sections 34A-2-410
275 through 34A-2-412 and Part 5, Industrial Noise, in excess of the amount of compensation

276 payable over the initial 312 weeks at the applicable permanent total disability compensation
277 rate under Subsection (2).

278 (c) ~~[Any overpayment of this compensation shall be recouped by the]~~ The employer or
279 its insurance carrier may recoup the overpayment of compensation described in Subsection (4)
280 by reasonably offsetting the overpayment against future liability paid before or after the initial
281 312 weeks.

282 (5) Notwithstanding the minimum rate established in Subsection (2), ~~[the~~
283 ~~compensation payable by the]~~ an employer, its insurance carrier, or the Employers' Reinsurance
284 Fund, after an employee ~~[has received]~~ receives compensation from the employer or the
285 employer's insurance carrier for any combination of disabilities amounting to 312 weeks of
286 compensation at the applicable total disability compensation rate, shall ~~[be reduced,]~~ reduce the
287 compensation payable:

288 (a) to the extent allowable by law~~[;]~~; and

289 (b) by the dollar amount of 50% of the Social Security retirement benefits received by
290 the employee during the same period.

291 (6) (a) A finding by the commission of permanent total disability is not final, unless
292 otherwise agreed to by the parties, until:

293 (i) an administrative law judge reviews a summary of reemployment activities
294 undertaken pursuant to Chapter 8, Utah Injured Worker Reemployment Act;

295 (ii) the employer or its insurance carrier submits to the administrative law judge:

296 (A) a reemployment plan as prepared by a qualified rehabilitation provider reasonably
297 designed to return the employee to gainful employment; or

298 (B) notice that the employer or its insurance carrier will not submit a plan; and

299 (iii) the administrative law judge, after notice to the parties, holds a hearing, unless
300 otherwise stipulated, to:

301 (A) consider evidence regarding rehabilitation; and

302 (B) review any reemployment plan submitted by the employer or its insurance carrier
303 under Subsection (6)(a)(ii).

304 (b) Before commencing the procedure required by Subsection (6)(a), the administrative
305 law judge shall order:

306 (i) the initiation of permanent total disability compensation payments to provide for the

307 employee's subsistence; and

308 (ii) the payment of any undisputed disability or medical benefits due the employee.

309 (c) Notwithstanding Subsection (6)(a), an order for payment of benefits described in
310 Subsection (6)(b) is considered a final order for purposes of Section 34A-2-212.

311 (d) The employer or its insurance carrier shall be given credit for any disability
312 payments made under Subsection (6)(b) against its ultimate disability compensation liability
313 under this chapter or Chapter 3, Utah Occupational Disease Act.

314 (e) An employer or its insurance carrier may not be ordered to submit a reemployment
315 plan. If the employer or its insurance carrier voluntarily submits a plan, the plan is subject to
316 Subsections (6)(e)(i) through (iii).

317 (i) The plan may include, but not require an employee to pay for:

318 (A) retraining[;];

319 (B) education[;];

320 (C) medical and disability compensation benefits[;];

321 (D) job placement services[;]; or

322 (E) incentives calculated to facilitate reemployment [~~funded by the employer or its~~
323 ~~insurance carrier~~].

324 (ii) The plan shall include payment of reasonable disability compensation to provide
325 for the employee's subsistence during the rehabilitation process.

326 (iii) The employer or its insurance carrier shall diligently pursue the reemployment
327 plan. The employer's or insurance carrier's failure to diligently pursue the reemployment plan
328 [~~shall be~~] is cause for the administrative law judge on the administrative law judge's own
329 motion to make a final decision of permanent total disability.

330 (f) If a preponderance of the evidence shows that successful rehabilitation is not
331 possible, the administrative law judge shall order that the employee be paid weekly permanent
332 total disability compensation benefits.

332a **H→ (g) If a preponderance of the evidence shows that successful rehabilitation is possible**
332b **pursuant to a reemployment plan as prepared by a qualified rehabilitation provider and**
332c **presented under Subsection (6)(e), an administrative law judge shall order that the employee**
332d **be denied the payment of weekly permanent total disability compensation benefits regardless**
332e **of whether the employee is:**

332f **(i) incarcerated in a facility operated by or contracting with a federal, state, county, or**
332g **municipal government to house a criminal offender in either a secure or nonsecure setting; or**

332h **(ii) not legally eligible to be employed because of a reason unrelated to the**

332i **impairment or combination of impairments.** ←**H**

333 (7) (a) The period of benefits commences on the date the employee became
334 permanently totally disabled, as determined by a final order of the commission based on the
335 facts and evidence, and ends:

336 (i) with the death of the employee; or

337 (ii) when the employee is capable of returning to regular, steady work.

338 (b) An employer or its insurance carrier may provide or locate for a permanently totally
339 disabled employee reasonable, medically appropriate, part-time work in a job earning at least
340 minimum wage [~~provided that employment~~], ~~except that the employee~~ may not be required to
341 accept the work to the extent that it would disqualify the employee from Social Security
342 disability benefits.

343 (c) An employee shall:

344 (i) fully cooperate in the placement and employment process; and

345 (ii) accept the reasonable, medically appropriate, part-time work.

346 (d) In a consecutive four-week period when an employee's gross income from the work
347 provided under Subsection (7)(b) exceeds \$500, the employer or insurance carrier may reduce
348 the employee's permanent total disability compensation by 50% of the employee's income in
349 excess of \$500.

350 (e) If a work opportunity is not provided by the employer or its insurance carrier, a
351 permanently totally disabled employee may obtain medically appropriate, part-time work
352 subject to the offset provisions [~~contained in~~] of Subsection (7)(d).

353 (f) (i) The commission shall establish rules regarding the part-time work and offset.

354 (ii) The adjudication of disputes arising under this Subsection (7) is governed by Part
355 8, Adjudication.

356 (g) The employer or its insurance carrier [~~shall have~~] has the burden of proof to show
357 that medically appropriate part-time work is available.

358 (h) The administrative law judge may:

359 (i) excuse an employee from participation in any [~~job~~] work:

360 (A) that would require the employee to undertake work exceeding the employee's:

361 (I) medical capacity [~~and~~]; or

362 (II) residual functional capacity; or

363 (B) for good cause; or

364 (ii) allow the employer or its insurance carrier to reduce permanent total disability
365 benefits as provided in Subsection (7)(d) when reasonable, medically appropriate, part-time
366 [~~employment has been~~] work is offered, but the employee [~~has failed~~] fails to fully cooperate.

367 (8) When an employee [~~has been~~] is rehabilitated or the employee's rehabilitation is
368 possible but the employee has some loss of bodily function, the award shall be for permanent

369 partial disability.

370 (9) As determined by an administrative law judge, an employee is not entitled to
371 disability compensation, unless the employee fully cooperates with any evaluation or
372 reemployment plan under this chapter or Chapter 3, Utah Occupational Disease Act. The
373 administrative law judge shall dismiss without prejudice the claim for benefits of an employee
374 if the administrative law judge finds that the employee fails to fully cooperate, unless the
375 administrative law judge states specific findings on the record justifying dismissal with
376 prejudice.

377 (10) (a) The loss or permanent and complete loss of the use of the following constitutes
378 total and permanent disability that is compensated according to this section:

379 (i) both hands[;];

380 (ii) both arms[;];

381 (iii) both feet[;];

382 (iv) both legs[;];

383 (v) both eyes[;]; or

384 (vi) any combination of two [~~such~~] body members [~~constitutes total and permanent~~
385 ~~disability, to be compensated according to this section~~] described in this Subsection (10)(a).

386 (b) A finding of permanent total disability pursuant to Subsection (10)(a) is final.

387 (11) (a) An insurer or self-insured employer may periodically reexamine a permanent
388 total disability claim, except those based on Subsection (10), for which the insurer or
389 self-insured employer had or has payment responsibility to determine whether the [~~worker~~]
390 employee remains permanently totally disabled.

391 (b) Reexamination may be conducted no more than once every three years after an
392 award is final, unless good cause is shown by the employer or its insurance carrier to allow
393 more frequent reexaminations.

394 (c) The reexamination may include:

395 (i) the review of medical records;

396 (ii) employee submission to one or more reasonable medical evaluations;

397 (iii) employee submission to one or more reasonable rehabilitation evaluations and
398 retraining efforts;

399 (iv) employee disclosure of Federal Income Tax Returns;

400 (v) employee certification of compliance with Section 34A-2-110; and
401 (vi) employee completion of one or more sworn affidavits or questionnaires approved
402 by the division.

403 (d) The insurer or self-insured employer shall pay for the cost of a reexamination with
404 appropriate employee reimbursement pursuant to rule for reasonable travel allowance and per
405 diem as well as reasonable expert witness fees incurred by the employee in supporting the
406 employee's claim for permanent total disability benefits at the time of reexamination.

407 (e) If an employee fails to fully cooperate in the reasonable reexamination of a
408 permanent total disability finding, an administrative law judge may order the suspension of the
409 employee's permanent total disability benefits until the employee cooperates with the
410 reexamination.

411 (f) (i) [~~Should~~] If the reexamination of a permanent total disability finding [~~reveal~~]
412 reveals evidence that reasonably raises the issue of an employee's continued entitlement to
413 permanent total disability compensation benefits, an insurer or self-insured employer may
414 petition the Division of Adjudication for a rehearing on that issue. The [~~petition~~] insurer or
415 self-insured employer shall [~~be accompanied by~~] include with the petition, documentation
416 supporting the insurer's or self-insured employer's belief that the employee is no longer
417 permanently totally disabled.

418 (ii) If the petition under Subsection (11)(f)(i) demonstrates good cause, as determined
419 by the Division of Adjudication, an administrative law judge shall adjudicate the issue at a
420 hearing.

421 (iii) Evidence of an employee's participation in medically appropriate, part-time work
422 may not be the sole basis for termination of an employee's permanent total disability
423 entitlement, but the evidence of the employee's participation in medically appropriate, part-time
424 work under Subsection (7) may be considered in the reexamination or hearing with other
425 evidence relating to the employee's status and condition.

426 (g) In accordance with Section 34A-1-309, the administrative law judge may award
427 reasonable [~~attorneys~~] attorney fees to an attorney retained by an employee to represent the
428 employee's interests with respect to reexamination of the permanent total disability finding,
429 except if the employee does not prevail, the [~~attorneys~~] attorney fees shall be set at \$1,000.
430 The [~~attorneys~~] attorney fees awarded shall be paid by the employer or its insurance carrier in

431 addition to the permanent total disability compensation benefits due.

432 (h) During the period of reexamination or adjudication if the employee fully
433 cooperates, each insurer, self-insured employer, or the Employers' Reinsurance Fund shall
434 continue to pay the permanent total disability compensation benefits due the employee.

435 (12) If any provision of this section, or the application of any provision to any person
436 or circumstance, is held invalid, the remainder of this section [~~shall be~~] is given effect without
437 the invalid provision or application.

437a **Ĥ→ Section 4. Effective date.**

437b **This bill takes effect on July 1, 2008. ←Ĥ**

Legislative Review Note
as of 2-4-08 12:45 PM

Office of Legislative Research and General Counsel

H.B. 384 - Employee Obligations Related to Workers' Compensation

Fiscal Note

2008 General Session

State of Utah

State Impact

Enactment of this bill will not require additional appropriations.

Individual, Business and/or Local Impact

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for local governments except as employers. Employers may benefit from this change in statute and some individuals may lose disability compensation.
