

1 **EMPLOYEE OBLIGATIONS RELATED TO**
2 **WORKERS' COMPENSATION**

3 2008 GENERAL SESSION

4 STATE OF UTAH

5 **Chief Sponsor: Michael T. Morley**

6 Senate Sponsor: Curtis S. Bramble

8 **LONG TITLE**

9 **General Description:**

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

12 **Highlighted Provisions:**

13 This bill:

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

24 **Monies Appropriated in this Bill:**

25 None

26 **Other Special Clauses:**

27 This bill takes effect on July 1, 2008.

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) ~~[In]~~ 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 per
45 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 is

58 available to the employee from the employer, temporary disability benefits shall continue to be
59 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
63 to 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 the
70 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 disease.

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

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

77 **34A-2-410.5. Employee cooperation with reemployment.**

78 (1) As used in this section:

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

80 (b) "Correctional facility" means:

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

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

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

85 (i) a temporary total disability benefit; or

- 86 (ii) a temporary partial disability benefit.
- 87 (d) "Local governmental entity" is as defined in Section 34-41-101.
- 88 (e) "Reemployment" means employment that:
- 89 (i) is after an accident or occupational disease that is the basis for a disability claim; and
- 90 (ii) in a manner consistent with Subsection (2)(b), offers to an employee an opportunity
- 91 for earnings, considering the employee's:
- 92 (A) education;
- 93 (B) experience; and
- 94 (C) physical and mental impairment or condition.
- 95 (f) "State institution of higher education" means an institution listed in Section
- 96 53B-3-102.
- 97 (g) "Valid prescription" is a prescription, as defined in Section 58-37-2, that is:
- 98 (i) prescribed for a controlled substance for use by the employee for whom it is
- 99 prescribed; and
- 100 (ii) not altered or forged.
- 101 (2) In accordance with this section, the commission may reduce or terminate an
- 102 employee's disability compensation for a disability claim for good cause shown by the employer
- 103 including if:
- 104 (a) the employer terminates the employee from the reemployment and the termination
- 105 is:
- 106 (i) reasonable;
- 107 (ii) for cause; and
- 108 (iii) as a result, in whole or in part, of:
- 109 (A) criminal conduct;
- 110 (B) violent conduct; or
- 111 (C) a violation of a reasonable, written workplace health, safety, licensure, or
- 112 nondiscrimination rule that is applied in a manner that is reasonable and nondiscriminatory;
- 113 (b) the employee is incarcerated in a correctional facility for a period of time that would

114 result in the termination of the employee's reemployment in accordance with a reasonable,
115 written workplace rule that is applied in a manner that is reasonable and nondiscriminatory; or

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

117 (i) (A) for use of a controlled substance that the employee did not obtain under a valid
118 prescription;

119 (B) for intentional abuse of a controlled substance that the employee obtained under a
120 valid prescription, if the employee uses the controlled substance intentionally:

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

122 (II) in an otherwise abusive manner; or

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

125 (ii) in accordance with a reasonable, written workplace rule that is applied in a manner
126 that is reasonable and nondiscriminatory.

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

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

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

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

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

141 (b) The commission shall issue an order as to whether or not an employee's disability

142 compensation is reduced or terminated under this section by no later than 45 days from the day
143 on which an application for a hearing is filed.

144 (c) A reduction or termination of disability compensation under this Subsection (5)
145 takes effect on the day determined by the commission.

146 (d) If the disability compensation is ordered terminated or reduced, the employer or
147 employer's insurance carrier shall treat a resulting overpayment as an offset against the
148 employer's or employer's insurance carrier's future obligations to pay disability compensation to
149 the employee.

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

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

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

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

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

162 (II) in an otherwise abusive manner; or

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

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

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

- 170 (a) describing factors to be considered under Subsection (2); and
- 171 (b) related to the procedures for a request for a hearing under this section.
- 172 (8) The adjudication of a dispute arising under this section is governed by Part 8,

173 Adjudication.

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

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

177 **34A-2-413. Permanent total disability -- Amount of payments -- Rehabilitation.**

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

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

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

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

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

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

191 (i) the employee is not gainfully employed;

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

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

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

- 200 (A) age;
- 201 (B) education;
- 202 (C) past work experience;
- 203 (D) medical capacity; and
- 204 (E) residual functional capacity.

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

- 207 (i) may be presented to the commission;
- 208 (ii) is not binding; and
- 209 (iii) creates no presumption of an entitlement under this chapter and Chapter 3, Utah
210 Occupational Disease Act.

211 (e) In determining under Subsections (1)(b) and (c) whether an employee cannot
212 perform other work reasonably available, the following may not be considered:

- 213 (i) whether the employee is incarcerated in a facility operated by or contracting with a
214 federal, state, county, or municipal government to house a criminal offender in either a secure or
215 nonsecure setting; or
- 216 (ii) whether the employee is not legally eligible to be employed because of a reason
217 unrelated to the impairment or combination of impairments.

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

- 221 (a) compensation per week may not be more than 85% of the state average weekly
222 wage at the time of the injury;
- 223 (b) (i) subject to Subsection (2)(b)(ii), compensation per week may not be less than the
224 sum of \$45 per week [~~, plus~~] and:
- 225 (A) \$5 for a dependent spouse [~~, plus~~]; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

266 (c) ~~[Any overpayment of this compensation shall be recouped by the]~~ The employer or
267 its insurance carrier may recoup the overpayment of compensation described in Subsection (4)
268 by reasonably offsetting the overpayment against future liability paid before or after the initial
269 312 weeks.

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

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

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

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

281 (i) an administrative law judge reviews a summary of reemployment activities

282 undertaken pursuant to Chapter 8, Utah Injured Worker Reemployment Act;

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

284 (A) a reemployment plan as prepared by a qualified rehabilitation provider reasonably

285 designed to return the employee to gainful employment; or

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

287 (iii) the administrative law judge, after notice to the parties, holds a hearing, unless

288 otherwise stipulated, to:

289 (A) consider evidence regarding rehabilitation; and

290 (B) review any reemployment plan submitted by the employer or its insurance carrier

291 under Subsection (6)(a)(ii).

292 (b) Before commencing the procedure required by Subsection (6)(a), the administrative

293 law judge shall order:

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

295 employee's subsistence; and

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

297 (c) Notwithstanding Subsection (6)(a), an order for payment of benefits described in

298 Subsection (6)(b) is considered a final order for purposes of Section 34A-2-212.

299 (d) The employer or its insurance carrier shall be given credit for any disability

300 payments made under Subsection (6)(b) against its ultimate disability compensation liability

301 under this chapter or Chapter 3, Utah Occupational Disease Act.

302 (e) An employer or its insurance carrier may not be ordered to submit a reemployment

303 plan. If the employer or its insurance carrier voluntarily submits a plan, the plan is subject to

304 Subsections (6)(e)(i) through (iii).

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

306 (A) retraining[;];

307 (B) education[;];

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

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

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

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

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

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

321 (g) If a preponderance of the evidence shows that pursuant to a reemployment plan, as
322 prepared by a qualified rehabilitation provider and presented under Subsection (6)(e), an
323 employee could immediately or without unreasonable delay return to work but for the
324 following, an administrative law judge shall order that the employee be denied the payment of
325 weekly permanent total disability compensation benefits:

326 (i) incarceration in a facility operated by or contracting with a federal, state, county, or
327 municipal government to house a criminal offender in either a secure or nonsecure setting; or

328 (ii) not being legally eligible to be employed because of a reason unrelated to the
329 impairment or combination of impairments.

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

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

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

335 (b) An employer or its insurance carrier may provide or locate for a permanently totally
336 disabled employee reasonable, medically appropriate, part-time work in a job earning at least
337 minimum wage [~~provided that employment~~], except that the employee may not be required to

338 accept the work to the extent that it would disqualify the employee from Social Security
339 disability benefits.

340 (c) An employee shall:

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

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

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

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

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

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

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

355 (h) The administrative law judge may:

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

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

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

359 (II) residual functional capacity; or

360 (B) for good cause; or

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

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

366 partial disability.

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

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

375 (i) both hands[;];

376 (ii) both arms[;];

377 (iii) both feet[;];

378 (iv) both legs[;];

379 (v) both eyes[;]; or

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

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

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

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

390 (c) The reexamination may include:

391 (i) the review of medical records;

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

393 (iii) employee submission to one or more reasonable rehabilitation evaluations and

394 retraining efforts;

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

396 (v) employee certification of compliance with Section 34A-2-110; and

397 (vi) employee completion of one or more sworn affidavits or questionnaires approved
398 by the division.

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

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

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

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

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

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

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

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

434 Section 4. **Effective date.**

435 This bill takes effect on July 1, 2008.