

UTAH INJURED WORKER REEMPLOYMENT**ACT**

2009 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Michael T. Morley

Senate Sponsor: Karen Mayne

LONG TITLE**Committee Note:**

The Business and Labor Interim Committee recommended this bill.

General Description:

This bill modifies the Utah Injured Worker Reemployment Act.

Highlighted Provisions:

This bill:

- ▶ restructures the provisions of the chapter;
- ▶ modifies the definition provision;
- ▶ clarifies that the Labor Commission administers the chapter through the Division of Industrial Accidents;
- ▶ provides for reporting and for penalties for failing to report;
- ▶ provides for rulemaking;
- ▶ clarifies the process for issuing an initial written report and making a referral;
- ▶ clarifies provisions related to a rehabilitation counselor;
- ▶ extends the sunset date for the chapter until July 1, 2014;
- ▶ eliminates the position of rehabilitation coordinator; and
- ▶ makes technical and conforming amendments.

Monies Appropriated in this Bill:

None



Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

34A-2-413, as last amended by Laws of Utah 2008, Chapters 27 and 349

34A-3-102, as renumbered and amended by Laws of Utah 1997, Chapter 375

63I-1-234, as renumbered and amended by Laws of Utah 2008, Chapter 382

ENACTS:

34A-8a-203, Utah Code Annotated 1953

RENUMBERS AND AMENDS:

34A-8a-101, (Renumbered from 34A-8-102, as renumbered and amended by Laws of Utah 1997, Chapter 375)

34A-8a-102, (Renumbered from 34A-8-104, as renumbered and amended by Laws of Utah 1997, Chapter 375)

34A-8a-104, (Renumbered from 34A-8-113, as renumbered and amended by Laws of Utah 1997, Chapter 375)

34A-8a-105, (Renumbered from 34A-8-110, as renumbered and amended by Laws of Utah 1997, Chapter 375)

34A-8a-201, (Renumbered from 34A-8-103, as renumbered and amended by Laws of Utah 1997, Chapter 375)

34A-8a-202, (Renumbered from 34A-8-111, as last amended by Laws of Utah 2008, Chapter 382)

34A-8a-204, (Renumbered from 34A-8-112, as last amended by Laws of Utah 2008, Chapter 382)

34A-8a-301, (Renumbered from 34A-8-106, as renumbered and amended by Laws of Utah 1997, Chapter 375)

34A-8a-302, (Renumbered from 34A-8-107, as renumbered and amended by Laws of Utah 1997, Chapter 375)

34A-8a-303, (Renumbered from 34A-8-108, as renumbered and amended by Laws of Utah 1997, Chapter 375)

34A-8a-304, (Renumbered from 34A-8-109, as renumbered and amended by Laws of

Utah 1997, Chapter 375)

REPEALS:

34A-8-101, as renumbered and amended by Laws of Utah 1997, Chapter 375

34A-8-105, as last amended by Laws of Utah 2005, Chapter 81

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

Section 1. Section **34A-2-413** is amended to read:

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

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

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

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

(ii) the employee is permanently totally disabled; and

(iii) the industrial accident or occupational disease is the direct cause of the employee's permanent total disability.

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

(i) the employee is not gainfully employed;

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

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

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

(A) age;

(B) education;

(C) past work experience;

(D) medical capacity; and

(E) residual functional capacity.

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

(i) may be presented to the commission;

(ii) is not binding; and

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

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

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

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

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

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

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

(A) \$5 for a dependent spouse; and

(B) \$5 for each dependent child under the age of 18 years, up to a maximum of four dependent minor children; and

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

(A) the maximum established in Subsection (2)(a); or

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

(c) after the initial 312 weeks, the minimum weekly compensation rate under Subsection (2)(b) is 36% of the current state average weekly wage, rounded to the nearest

dollar.

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

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

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

(c) The Employers' Reinsurance Fund shall for an overpayment of compensation described in Subsection (3)(b), reimburse the overpayment:

(i) to the employer or its insurance carrier; and

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

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

(e) Employers' Reinsurance Fund payments shall commence immediately after the employer or its insurance carrier satisfies its liability under this Subsection (3) or Section 34A-2-703.

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

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

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

rate under Subsection (2).

(c) The employer or its insurance carrier may recoup the overpayment of compensation described in Subsection (4) by reasonably offsetting the overpayment against future liability paid before or after the initial 312 weeks.

(5) (a) Subject to Subsection (5)(b) and notwithstanding the minimum rate established in Subsection (2), an employer, its insurance carrier, or the Employers' Reinsurance Fund, after an employee receives compensation from the employer or the employer's insurance carrier for any combination of disabilities amounting to 312 weeks of compensation at the applicable total disability compensation rate, shall reduce the compensation payable:

(i) to the extent allowable by law;

(ii) by the dollar amount of 50% of the Social Security retirement benefits the employee is eligible to receive for a four week period as of the first day the employee is eligible to receive a Social Security retirement benefit; and

(iii) that the employee receives during the same period as the Social Security retirement benefits.

(b) (i) An employer, its insurance carrier, or the Employers' Reinsurance Fund may not reduce compensation payable under this section on or after May 5, 2008, to an employee by an amount related to a cost-of-living increase to the Social Security retirement benefit that the employee is first eligible to receive for a four week period, notwithstanding whether the employee is injured on or before May 4, 2008.

(ii) For purposes of an employee whose compensation payable is reduced under this Subsection (5) on or before May 4, 2008, the reduction is limited to the amount of the reduction as of May 4, 2008.

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

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

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

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

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

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

(A) consider evidence regarding rehabilitation; and

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

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

(i) the initiation of permanent total disability compensation payments to provide for the employee's subsistence; and

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

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

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

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

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

(A) retraining;

(B) education;

(C) medical and disability compensation benefits;

(D) job placement services; or

(E) incentives calculated to facilitate reemployment.

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

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

(f) If a preponderance of the evidence shows that successful rehabilitation is not

possible, the administrative law judge shall order that the employee be paid weekly permanent total disability compensation benefits.

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

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

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

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

(i) with the death of the employee; or

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

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

(c) An employee shall:

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

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

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

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

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

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

(g) The employer or its insurance carrier has the burden of proof to show that medically appropriate part-time work is available.

(h) The administrative law judge may:

(i) excuse an employee from participation in any work:

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

(I) medical capacity; or

(II) residual functional capacity; or

(B) for good cause; or

(ii) allow the employer or its insurance carrier to reduce permanent total disability benefits as provided in Subsection (7)(d) when reasonable, medically appropriate, part-time work is offered, but the employee fails to fully cooperate.

(8) When an employee is rehabilitated or the employee's rehabilitation is possible but the employee has some loss of bodily function, the award shall be for permanent partial disability.

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

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

(i) both hands;

(ii) both arms;

(iii) both feet;

(iv) both legs;

(v) both eyes; or

(vi) any combination of two body members described in this Subsection (10)(a).

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

277 (11) (a) An insurer or self-insured employer may periodically reexamine a permanent
278 total disability claim, except those based on Subsection (10), for which the insurer or
279 self-insured employer had or has payment responsibility to determine whether the employee
280 remains permanently totally disabled.

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

284 (c) The reexamination may include:

285 (i) the review of medical records;

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

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

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

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

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

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

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

301 (f) (i) If the reexamination of a permanent total disability finding reveals evidence that
302 reasonably raises the issue of an employee's continued entitlement to permanent total disability
303 compensation benefits, an insurer or self-insured employer may petition the Division of
304 Adjudication for a rehearing on that issue. The insurer or self-insured employer shall include
305 with the petition, documentation supporting the insurer's or self-insured employer's belief that
306 the employee is no longer permanently totally disabled.

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

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

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

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

(12) If any provision of this section, or the application of any provision to any person or circumstance, is held invalid, the remainder of this section is given effect without the invalid provision or application.

Section 2. Section **34A-3-102** is amended to read:

34A-3-102. Chapter to be administered by commission -- Exclusive remedy.

(1) ~~[This chapter shall be administered by the]~~ The commission shall administer this chapter through the division, the Division of Adjudication, and the Appeals Board in accordance with Section 34A-2-112.

(2) Subject to the limitations provided in this chapter and, unless otherwise noted, all provisions of Chapter 2, Workers' Compensation Act, and Chapter [8] 8a, Utah Injured Worker Reemployment Act, are incorporated into this chapter and shall be applied to occupational disease claims.

(3) The right to recover compensation under this chapter for diseases or injuries to health sustained by a Utah employee ~~[shall be]~~ is the exclusive remedy as outlined in Section

34A-2-105.

Section 3. Section **34A-8a-101**, which is renumbered from Section 34A-8-102 is renumbered and amended to read:

CHAPTER 8a. UTAH INJURED WORKER REEMPLOYMENT ACT

Part 1. General Provisions

[34A-8-102]. 34A-8a-101. Intent statement.

(1) This chapter is known as the "Utah Injured Worker Reemployment Act."

(2) This chapter is intended to promote and monitor the state's and the employer's capacity to assist the injured worker in returning to the work force ~~[as quickly as possible and to evaluate the cost]~~ by evaluating the effectiveness of the [program] voluntary efforts of employers under this chapter.

Section 4. Section **34A-8a-102**, which is renumbered from Section 34A-8-104 is renumbered and amended to read:

[34A-8-104]. 34A-8a-102. Definitions.

(1) "Disabled injured worker" means an ~~[employee]~~ injured worker who:

~~[(a) has sustained an industrial injury or occupational disease for which benefits are provided under Chapter 2, Workers' Compensation Act, or Chapter 3, Utah Occupational Disease Act;]~~

~~[(b)]~~ (a) because of the injury or disease[;] that is the basis of the employee being an injured worker:

(i) is or will be unable to return to work in the injured worker's usual and customary occupation; or

(ii) is unable to perform work for which the injured worker has previous training and experience; and

~~[(c)]~~ (b) reasonably can be expected to attain gainful employment after [receiving the reemployment training and benefits] an evaluation provided for in accordance with this chapter.

(2) "Division" means the Division of Industrial Accidents.

(3) (a) "Gainful employment" means employment that:

(i) is reasonably attainable in view of ~~[the]~~ an industrial injury or occupational disease; and

(ii) offers to ~~[the]~~ an injured worker, as reasonably feasible, an opportunity for earnings.

(b) Factors ~~[to be]~~ considered in determining gainful employment include ~~[the]~~ an injured worker's:

(i) education;

(ii) experience; and

(iii) physical and mental impairment and condition.

(4) "Initial written report" means a report required under Section 34A-8a-301.

(5) "Injured worker" means an employee who sustains an industrial injury or occupational disease for which benefits are provided under Chapter 2, Workers' Compensation Act, or Chapter 3, Utah Occupational Disease Act.

~~[(4)]~~ (6) "Parties" means:

(a) ~~[the]~~ a disabled injured worker;

(b) the employer of the disabled injured worker;

(c) the employer's workers' compensation insurance carrier; and

~~[(d) reemployment coordinator; and]~~

~~[(e) other professionals as deemed necessary by the commission.]~~

(d) a rehabilitation or reemployment professional for the employer or the employer's workers' compensation insurance carrier.

~~[(5)]~~ (7) "Reemployment plan" means [the] a written:

(a) description or rationale for the manner and means by which it is proposed a disabled injured worker may [be returned] return to gainful employment[-. The reemployment plan shall define]; and

(b) definition of the voluntary responsibilities of:

(i) the disabled injured worker[-];

(ii) the employer[-]; and

(iii) one or more other parties involved with the implementation of the reemployment plan.

Section 5. Section **34A-8a-104**, which is renumbered from Section 34A-8-113 is renumbered and amended to read:

[34A-8-113]. 34A-8a-104. Application.

This chapter ~~[is effective July 1, 1990, and it]~~ applies only to an industrial [injuries and] injury or occupational [diseases which occur] disease that occurs on or after ~~[that date]~~ July 1, 1990.

Section 6. Section **34A-8a-105**, which is renumbered from Section 34A-8-110 is renumbered and amended to read:

~~[34A-8-110].~~ **34A-8a-105. Duties of Utah State Office of Rehabilitation not affected.**

~~[The provisions of this chapter do not affect other]~~ This chapter does not affect the duties and responsibilities of the Utah State Office of Rehabilitation.

Section 7. Section **34A-8a-201**, which is renumbered from Section 34A-8-103 is renumbered and amended to read:

Part 2. Administration

~~[34A-8-103].~~ **34A-8a-201. Chapter administration.**

~~[This chapter shall be administered by the commission]~~

The commission shall administer this chapter:

(1) through the division; and

(2) in conjunction with [its] the commission's administration of [Chapters] Chapter 2, Workers' Compensation Act and Chapter 3, Utah Occupational Disease Act.

Section 8. Section **34A-8a-202**, which is renumbered from Section 34A-8-111 is renumbered and amended to read:

~~[34A-8-111].~~ **34A-8a-202. Rulemaking authority.**

The commission may provide for the administration of this chapter by rule in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

Section 9. Section **34A-8a-203** is enacted to read:

34A-8a-203. Reporting.

(1) As used in this section, "reporting entity" means one of the following that provides benefits under Chapter 2, Workers' Compensation Act, or Chapter 3, Utah Occupational Disease Act:

(a) a self-insured employer as defined in Section 34A-2-201.5; or

(b) a workers' compensation insurance carrier.

(2) Subject to the requirements of this section, a reporting entity shall quarterly report

431 to the commission the following information for the previous quarter beginning with reporting
432 for the quarter that begins July 1, 2009:

433 (a) the total number of injured workers for whom a reporting entity is required during
434 the quarter to file an initial report under Section 34A-8a-301;

435 (b) the number of injured workers reported in Subsection (2)(a) for whom the reporting
436 entity made a referral in accordance with Section 34A-8a-302;

437 (c) the number of injured workers reported in Subsection (2)(a) for whom the reporting
438 entity did not make a referral in accordance with Section 34A-8a-302 because:

439 (i) the injured worker was not medically stable during the quarter;

440 (ii) the injured worker's physical capacity had not been determined during the quarter;

441 or

442 (iii) liability for the injured worker's claim was under review during the quarter;

443 (d) the number of injured workers reported in Subsection (2)(a) for whom a referral or
444 reemployment plan described in Section 34A-8a-302 was not necessary because:

445 (i) the injured worker returned to work in the same job, a new job, or a modified job:

446 (A) with the same employer; or

447 (B) a new employer;

448 (ii) the injured worker became self employed;

449 (iii) the injured worker returned to work as a result of vocational rehabilitation support
450 services, as defined by rule by the commission made in accordance with Title 63G, Chapter 3,
451 Utah Administrative Rulemaking Act; or

452 (iv) the injured worker's disability was too severe to return to work; and

453 (e) other information that the commission requires by rule, made in accordance with
454 Title 63G, Chapter 3, Utah Administrative Rulemaking Act, regarding the voluntary efforts of
455 employers under this chapter for the number of injured workers reported in Subsection (2)(a).

456 (3) In addition to the rulemaking authority under Subsection (2), the commission shall
457 make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act,
458 regarding:

459 (a) the form of a report required under this section; and

460 (b) the procedure for filing a report required under this section.

461 (4) (a) If a reporting entity fails to make a report as required by this section, the

commission shall pursuant to Title 63G, Chapter 4, Administrative Procedures Act, impose a civil assessment of up to \$500 for each quarter that a reporting entity fails to make a report.

(b) A civil assessment collected under this section shall be deposited in the Uninsured Employers' Fund.

Section 10. Section **34A-8a-204**, which is renumbered from Section 34A-8-112 is renumbered and amended to read:

~~[34A-8-112].~~ **34A-8a-204. Administrative review.**

~~[The]~~ An employer [and the] or an injured worker may apply to the Division of Adjudication for resolution of ~~[any]~~ an issue of law or fact arising under this chapter in accordance with Title 63G, Chapter 4, Administrative Procedures Act.

Section 11. Section **34A-8a-301**, which is renumbered from Section 34A-8-106 is renumbered and amended to read:

~~[34A-8-106].~~ **34A-8a-301. Initial report on injured worker.**

~~[When it appears that an injured worker is or will be a disabled injured worker, or when the period of the injured worker's temporary total disability compensation period exceeds 90 days, whichever comes first, the]~~

(1) An employer or [its] the employer's workers' compensation insurance carrier shall~~[- within 30 days thereafter, file with the division and serve on the injured worker]~~ prepare an initial written report assessing ~~[the]~~ an injured worker's need or lack of need for vocational assistance in reemployment~~[- The employer or]~~ if:

(a) it appears that the injured worker is or will be a disabled injured worker; or

(b) the period of the injured worker's temporary total disability compensation period exceeds 90 days.

(2) (a) Subject to Subsection (2)(b), an employer or the employer's workers' compensation insurance carrier shall:

(i) serve the initial written report required by Subsection (1) on the injured worker; and

(ii) file the initial written report required by Subsection (1) with the division.

(b) An employer or the employer's workers' compensation insurance carrier shall comply with Subsection (2)(a) by no later than 30 days after the earlier of the day on which:

(i) it appears that the injured worker is or will be a disabled injured worker; or

(ii) the 90-day period described in Subsection (1)(b) ends.

493 (3) With the initial written report required by Subsection (1), an employer or the
494 employer's workers' compensation insurance carrier shall [also] provide [the] an injured worker
495 information regarding reemployment.

496 Section 12. Section **34A-8a-302**, which is renumbered from Section 34A-8-107 is
497 renumbered and amended to read:

498 ~~[34A-8-107].~~ **34A-8a-302. Evaluation of injured worker -- Reemployment**
499 **plan.**

500 ~~[When it appears that]~~ (1) Subject to the other provisions of this section, if an injured
501 worker is a disabled injured worker, the employer or [its] the employer's workers'
502 compensation insurance carrier shall, within ten days [of receiving] after the day on which the
503 employer or workers' compensation insurance carrier serves the initial written report[, unless
504 otherwise authorized by the division] on the injured worker, refer the disabled injured worker
505 to:

506 (a) the Utah State Office of Rehabilitation; or[;]
507 (b) at the employer's or workers' compensation insurance carrier's option [to], a private
508 rehabilitation or reemployment service[; to provide an evaluation and to develop a
509 reemployment plan].

510 (2) An employer or the employer's workers' compensation insurance carrier shall make
511 the referral required by Subsection (1) for the purpose of:

512 (a) providing an evaluation; and
513 (b) developing a reemployment plan.

514 (3) The commission may authorize an employer or the employer's workers'
515 compensation insurance carrier to:

516 (a) not make a referral required by Subsection (1); or
517 (b) make a referral during a different time period than required by Subsection (1).

518 Section 13. Section **34A-8a-303**, which is renumbered from Section 34A-8-108 is
519 renumbered and amended to read:

520 ~~[34A-8-108].~~ **34A-8a-303. Reemployment objectives.**

521 (1) The commission through the division shall administer this chapter with the
522 objective of assisting in returning [the] a disabled injured worker to gainful employment in the
523 following order of employment priority:

- 524 (a) same job, same employer;
525 (b) modified job, same employer;
526 (c) same job, new employer;
527 (d) modified job, new employer;
528 (e) new job, new employer; or
529 (f) retraining in a new occupation.
- 530 (2) Nothing in this chapter or its application is intended to:
531 (a) modify or in any way affect ~~[any]~~ an existing employee-employer relationship; or
532 (b) provide ~~[any]~~ an employee with ~~[any]~~ a guarantee or right to employment or
533 continued employment with ~~[any]~~ an employer.
- 534 Section 14. Section ~~34A-8a-304~~, which is renumbered from Section 34A-8-109 is
535 renumbered and amended to read:
- 536 ~~[34A-8-109].~~ **34A-8a-304. Rehabilitation counselor.**
537 ~~[All rehabilitation counselors and the reemployment coordinator]~~ A rehabilitation
538 counselor to whom a referral is made under Section 34A-8a-302 shall have the same or
539 comparable qualifications as those established by the Utah State Office of Rehabilitation for
540 personnel assigned to rehabilitation and evaluation duties.
- 541 Section 15. Section ~~63I-1-234~~ is amended to read:
542 **~~63I-1-234. Repeal dates, Title 34A.~~**
- 543 (1) Section 34A-2-202.5 is repealed December 31, 2010.
544 (2) Title 34A, Chapter ~~[8]~~ 8a, Utah Injured Worker Reemployment Act, is repealed
545 July 1, ~~[2009]~~ 2014.
- 546 Section 16. **Repealer.**
547 This bill repeals:
548 Section ~~34A-8-101~~, **Title.**
549 Section ~~34A-8-105~~, **Reemployment coordinator -- Duties.**

H.B. 39 - Utah Injured Worker Reemployment Act

Fiscal Note

2009 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 individuals, businesses, or local governments.
