

1 **UTAH INJURED WORKER REEMPLOYMENT**

2 **ACT**

3 2009 GENERAL SESSION

4 STATE OF UTAH

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

6 Senate Sponsor: Karen Mayne

8 **LONG TITLE**

9 **General Description:**

10 This bill modifies the Utah Injured Worker Reemployment Act.

11 **Highlighted Provisions:**

12 This bill:

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

24 **Monies Appropriated in this Bill:**

25 None

26 **Other Special Clauses:**

27 None

28 **Utah Code Sections Affected:**

29 AMENDS:

30 **34A-2-413**, as last amended by Laws of Utah 2008, Chapters 27 and 349

31 **34A-3-102**, as renumbered and amended by Laws of Utah 1997, Chapter 375

32 **63I-1-234**, as renumbered and amended by Laws of Utah 2008, Chapter 382

33 ENACTS:

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

35 RENUMBERS AND AMENDS:

36 **34A-8a-101**, (Renumbered from 34A-8-102, as renumbered and amended by Laws of
37 Utah 1997, Chapter 375)

38 **34A-8a-102**, (Renumbered from 34A-8-104, as renumbered and amended by Laws of
39 Utah 1997, Chapter 375)

40 **34A-8a-104**, (Renumbered from 34A-8-113, as renumbered and amended by Laws of
41 Utah 1997, Chapter 375)

42 **34A-8a-105**, (Renumbered from 34A-8-110, as renumbered and amended by Laws of
43 Utah 1997, Chapter 375)

44 **34A-8a-201**, (Renumbered from 34A-8-103, as renumbered and amended by Laws of
45 Utah 1997, Chapter 375)

46 **34A-8a-202**, (Renumbered from 34A-8-111, as last amended by Laws of Utah 2008,
47 Chapter 382)

48 **34A-8a-204**, (Renumbered from 34A-8-112, as last amended by Laws of Utah 2008,
49 Chapter 382)

50 **34A-8a-301**, (Renumbered from 34A-8-106, as renumbered and amended by Laws of
51 Utah 1997, Chapter 375)

52 **34A-8a-302**, (Renumbered from 34A-8-107, as renumbered and amended by Laws of
53 Utah 1997, Chapter 375)

54 **34A-8a-303**, (Renumbered from 34A-8-108, as renumbered and amended by Laws of
55 Utah 1997, Chapter 375)

56 **34A-8a-304**, (Renumbered from 34A-8-109, as renumbered and amended by Laws of
57 Utah 1997, Chapter 375)

58 REPEALS:

59 **34A-8-101**, as renumbered and amended by Laws of Utah 1997, Chapter 375

60 **34A-8-105**, as last amended by Laws of Utah 2005, Chapter 81

61

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

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

64 **34A-2-413. Permanent total disability -- Amount of payments -- Rehabilitation.**

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

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

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

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

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

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

77 (i) the employee is not gainfully employed;

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

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

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

- 86 (A) age;
- 87 (B) education;
- 88 (C) past work experience;
- 89 (D) medical capacity; and
- 90 (E) residual functional capacity.
- 91 (d) Evidence of an employee's entitlement to disability benefits other than those
- 92 provided under this chapter and Chapter 3, Utah Occupational Disease Act, if relevant:
- 93 (i) may be presented to the commission;
- 94 (ii) is not binding; and
- 95 (iii) creates no presumption of an entitlement under this chapter and Chapter 3, Utah
- 96 Occupational Disease Act.
- 97 (e) In determining under Subsections (1)(b) and (c) whether an employee cannot
- 98 perform other work reasonably available, the following may not be considered:
- 99 (i) whether the employee is incarcerated in a facility operated by or contracting with a
- 100 federal, state, county, or municipal government to house a criminal offender in either a secure
- 101 or nonsecure setting; or
- 102 (ii) whether the employee is not legally eligible to be employed because of a reason
- 103 unrelated to the impairment or combination of impairments.
- 104 (2) For permanent total disability compensation during the initial 312-week
- 105 entitlement, compensation is 66-2/3% of the employee's average weekly wage at the time of
- 106 the injury, limited as follows:
- 107 (a) compensation per week may not be more than 85% of the state average weekly
- 108 wage at the time of the injury;
- 109 (b) (i) subject to Subsection (2)(b)(ii), compensation per week may not be less than the
- 110 sum of \$45 per week and:
- 111 (A) \$5 for a dependent spouse; and
- 112 (B) \$5 for each dependent child under the age of 18 years, up to a maximum of four
- 113 dependent minor children; and

114 (ii) the amount calculated under Subsection (2)(b)(i) may not exceed:
115 (A) the maximum established in Subsection (2)(a); or
116 (B) the average weekly wage of the employee at the time of the injury; and
117 (c) after the initial 312 weeks, the minimum weekly compensation rate under
118 Subsection (2)(b) is 36% of the current state average weekly wage, rounded to the nearest
119 dollar.

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

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

125 (b) The employer or its insurance carrier may not be required to pay compensation for
126 any combination of disabilities of any kind, as provided in this section and Sections
127 34A-2-410 through 34A-2-412 and Part 5, Industrial Noise, in excess of the amount of
128 compensation payable over the initial 312 weeks at the applicable permanent total disability
129 compensation rate under Subsection (2).

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

- 132 (i) to the employer or its insurance carrier; and
- 133 (ii) out of the Employers' Reinsurance Fund's liability to the employee.

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

139 (e) Employers' Reinsurance Fund payments shall commence immediately after the
140 employer or its insurance carrier satisfies its liability under this Subsection (3) or Section
141 34A-2-703.

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

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

146 (b) The employer or its insurance carrier may not be required to pay compensation for
147 any combination of disabilities of any kind, as provided in this section and Sections
148 34A-2-410 through 34A-2-412 and Part 5, Industrial Noise, in excess of the amount of
149 compensation payable over the initial 312 weeks at the applicable permanent total disability
150 compensation rate under Subsection (2).

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

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

159 (i) to the extent allowable by law;

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

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

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

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

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

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

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

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

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

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

183 (A) consider evidence regarding rehabilitation; and

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

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

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

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

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

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

196 (e) An employer or its insurance carrier may not be ordered to submit a reemployment
197 plan. If the employer or its insurance carrier voluntarily submits a plan, the plan is subject to

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

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

200 (A) retraining;

201 (B) education;

202 (C) medical and disability compensation benefits;

203 (D) job placement services; or

204 (E) incentives calculated to facilitate reemployment.

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

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

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

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

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

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

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

- 226 (i) with the death of the employee; or
- 227 (ii) when the employee is capable of returning to regular, steady work.
- 228 (b) An employer or its insurance carrier may provide or locate for a permanently
- 229 totally disabled employee reasonable, medically appropriate, part-time work in a job earning at
- 230 least minimum wage, except that the employee may not be required to accept the work to the
- 231 extent that it would disqualify the employee from Social Security disability benefits.
- 232 (c) An employee shall:
- 233 (i) fully cooperate in the placement and employment process; and
- 234 (ii) accept the reasonable, medically appropriate, part-time work.
- 235 (d) In a consecutive four-week period when an employee's gross income from the work
- 236 provided under Subsection (7)(b) exceeds \$500, the employer or insurance carrier may reduce
- 237 the employee's permanent total disability compensation by 50% of the employee's income in
- 238 excess of \$500.
- 239 (e) If a work opportunity is not provided by the employer or its insurance carrier, a
- 240 permanently totally disabled employee may obtain medically appropriate, part-time work
- 241 subject to the offset provisions of Subsection (7)(d).
- 242 (f) (i) The commission shall establish rules regarding the part-time work and offset.
- 243 (ii) The adjudication of disputes arising under this Subsection (7) is governed by Part
- 244 8, Adjudication.
- 245 (g) The employer or its insurance carrier has the burden of proof to show that
- 246 medically appropriate part-time work is available.
- 247 (h) The administrative law judge may:
- 248 (i) excuse an employee from participation in any work:
- 249 (A) that would require the employee to undertake work exceeding the employee's:
- 250 (I) medical capacity; or
- 251 (II) residual functional capacity; or
- 252 (B) for good cause; or
- 253 (ii) allow the employer or its insurance carrier to reduce permanent total disability

254 benefits as provided in Subsection (7)(d) when reasonable, medically appropriate, part-time
255 work is offered, but the employee fails to fully cooperate.

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

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

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

- 268 (i) both hands;
- 269 (ii) both arms;
- 270 (iii) both feet;
- 271 (iv) both legs;
- 272 (v) both eyes; or
- 273 (vi) any combination of two body members described in this Subsection (10)(a).

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

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

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

282 (c) The reexamination may include:
283 (i) the review of medical records;
284 (ii) employee submission to one or more reasonable medical evaluations;
285 (iii) employee submission to one or more reasonable rehabilitation evaluations and
286 retraining efforts;
287 (iv) employee disclosure of Federal Income Tax Returns;
288 (v) employee certification of compliance with Section 34A-2-110; and
289 (vi) employee completion of one or more sworn affidavits or questionnaires approved
290 by the division.

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

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

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

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

308 (iii) Evidence of an employee's participation in medically appropriate, part-time work
309 may not be the sole basis for termination of an employee's permanent total disability

310 entitlement, but the evidence of the employee's participation in medically appropriate,
311 part-time work under Subsection (7) may be considered in the reexamination or hearing with
312 other evidence relating to the employee's status and condition.

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

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

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

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

326 **34A-3-102. Chapter to be administered by commission -- Exclusive remedy.**

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

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

334 (3) The right to recover compensation under this chapter for diseases or injuries to
335 health sustained by a Utah employee [~~shall be~~] is the exclusive remedy as outlined in Section
336 34A-2-105.

337 Section 3. Section **34A-8a-101**, which is renumbered from Section 34A-8-102 is

338 renumbered and amended to read:

339 **CHAPTER 8a. UTAH INJURED WORKER REEMPLOYMENT ACT**

340 **Part 1. General Provisions**

341 ~~[34A-8-102].~~ **34A-8a-101. Title -- Intent statement.**

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

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

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

349 ~~[34A-8-104].~~ **34A-8a-102. Definitions.**

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

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

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

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

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

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

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

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

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

366 disease; and

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

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

371 (i) education;

372 (ii) experience; and

373 (iii) physical and mental impairment and condition.

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

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

378 ~~[(4)]~~ (6) "Parties" means:

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

380 (b) the employer of the disabled injured worker;

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

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

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

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

386 ~~[(5)]~~ (7) "Reemployment plan" means [the] a written:

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

390 (b) definition of the voluntary responsibilities of:

391 (i) the disabled injured worker[;];

392 (ii) the employer[;]; and

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

394 plan.

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

397 ~~[34A-8-113].~~ **34A-8a-104. Application.**

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

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

403 ~~[34A-8-110].~~ **34A-8a-105. Duties of Utah State Office of Rehabilitation**
404 **not affected.**

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

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

409 **Part 2. Administration**

410 ~~[34A-8-103].~~ **34A-8a-201. Chapter administration.**

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

412 The commission shall administer this chapter:

413 (1) through the division; and

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

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

418 ~~[34A-8-111].~~ **34A-8a-202. Rulemaking authority.**

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

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

422 **34A-8a-203. Reporting.**

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

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

427 (b) a workers' compensation insurance carrier.

428 (2) Subject to the requirements of this section, a reporting entity shall quarterly report
429 to the commission the following information for the previous quarter beginning with reporting
430 for the quarter that begins July 1, 2009:

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

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

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

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

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

439 or

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

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

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

444 (A) with the same employer; or

445 (B) a new employer;

446 (ii) the injured worker became self-employed;

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

450 (iv) the injured worker's disability was too severe to return to work; and
 451 (e) other information that the commission requires by rule, made in accordance with
 452 Title 63G, Chapter 3, Utah Administrative Rulemaking Act, regarding the voluntary efforts of
 453 employers under this chapter for the number of injured workers reported in Subsection (2)(a).

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

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

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

459 (4) (a) If a reporting entity fails to make a report as required by this section, the
 460 commission shall, pursuant to Title 63G, Chapter 4, Administrative Procedures Act, impose a
 461 civil assessment of up to \$500 for each quarter that a reporting entity fails to make a report.

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

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

466 ~~[34A-8-112].~~ **34A-8a-204. Administrative review.**

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

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

472 **Part 3. Rehabilitation Process**

473 ~~[34A-8-106].~~ **34A-8a-301. Initial report on injured worker.**

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

477 (1) An employer or [its] the employer's workers' compensation insurance carrier shall[-

478 ~~within 30 days thereafter, file with the division and serve on the injured worker]~~ prepare an
 479 initial written report assessing [the] an injured worker's need or lack of need for vocational
 480 assistance in reemployment[. The employer or] if:

481 (a) it appears that the injured worker is or will be a disabled injured worker; or
 482 (b) the period of the injured worker's temporary total disability compensation period
 483 exceeds 90 days.

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

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

487 and

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

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

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

492 (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
 495 worker 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 [tø], 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.**