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### 1. Citation for the state's workers' compensation statute

Utah Code Annotated §34A-2-101, et seq. The Utah Occupational Disease Act is at §34A-3-101, et seq.

Helpful information regarding workers' compensation in Utah, including answers to frequently asked questions, can be reviewed at the Labor Commissions's website: <http://laborcommission.utah.gov>.

## SCOPE OF COMPENSABILITY

### 2. Who are covered "employees" for purposes of workers' compensation?

Employees include those engaged in government service, any express or implied contract of hire, lessees of mining property, and owners of a partnership or sole proprietorship if an election is made. Utah Code. Ann. § 34A-2-104. Also, temporary employees qualify if the temporary staffing company which employs them secures compensation coverage. § 34A-2-105(3)(b). Officers and directors of the corporation if an election is made, or real estate agents or brokers, are not included. § 34A-2-104(5).

### 3. Identify and describe any "statutory employer" provision.

When an employer procures a contractor to do work and the employer retains supervision or control of the work, such work being a part or process in the trade or business of the employer, all employees of the contractor and all subcontractors under the contractor are considered employees of the original employer. Utah Code Ann. § 34A-2-103(7)(b); See *Gherisi v. Salazaar*, 883 P.2d 1352 (Utah 1994); *Bosch v. Busch Development, Inc.*, 777 P.2d 431 (Utah 1989); *Pate v. Marathon Steel Co.*, 777 P.2d 428 (Utah 1989); *Pinnacle Homes, Inc. v. Labor Comm'n*, 368 P.3d, 173 (Utah Ct. App. 2007).

### 4. What types of injuries are covered and what is the standard of proof for each:

#### A. Traumatic or "single occurrence" claims.

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Accidents arising out of and in the course of employment, not purposely self-inflicted, are compensable. Utah Code Ann. § 34A-2-401. An accident is an unexpected or unintended occurrence that may be either the cause or the result of an injury. See *Allen v. Industrial Commission*, 729 P.2d 15 (Utah 1986).

### **B. Occupational disease (including respiratory and repetitive use).**

Any disease or illness that arises out of and in the course of the employment and is medically caused or aggravated by that employment is compensable. Utah Code Ann. § 34A-3-103.

### **5. What, if any, injuries or claims are excluded?**

None, if they are caused by an industrial accident or occupational disease.

### **6. What psychiatric claims or treatments are compensable?**

Physical, mental or emotional injuries related to mental stress arising out of and in the course of employment are compensable once the claimant proves “extraordinary” mental stress arising from employment, and establishes both legal and medical causation. The nature of the stress is judged according to an objective standard. Good faith employer personnel actions such as disciplinary actions, layoffs, demotions, promotions and terminations may not form the basis for a compensable mental stress claim. Utah Code Ann. §§ 34A-2-402, 34A-3-106.

### **7. What are the applicable statutes of limitations?**

An employee must report the injury to the employer or the Commission within 180 days of the injury, or the claim is barred. Utah Code Ann. § 34A-2-407(3). An employer or physician's injury report is sufficient evidence of notice.

Claims for occupational hearing loss must be filed in the time period specified in § 34A-2-506.

Except with respect to prosthetic devices, and in permanent total disability cases, medical treatment expenses must be covered so long as the expense is reasonable in amount, necessary to treat the injuries, and the expense is submitted for payment within the later of one year after the date of treatment, or the date on which the employee knew or should have known that the medical expense is related to the industrial accident. § 34A-2-417(1).

As a general rule, benefits are barred if a claim is not filed within six years from the date of the accident. There is also a 12 year statute of limitations if the injured worker files an application for hearing within six years but is not able to meet his burden of proving that he is owed compensation within 12 years. An award of benefits may be made beyond 12 years in some instances where the injured worker is participating in a commission approved reemployment plan. § 34A-2-417(2).

Death claims are subject to a one-year statute of limitation. § 34A-2-417(3). Death benefits are only payable if the employee dies within six years from the date of first disability or first medical treatment following the industrial injury. § 34A-2-903(2).

**8. What are the reporting and notice requirements for those alleging an injury?**

The employee, the employee's next of kin, or the employee's attorney must notify the employer of the injury. Utah Code Ann. § 34A-2-407(2). Such notification can take the form of an employer's or physician's injury reported filed with the Labor Commission, the employer, or the employer's workers' compensation carrier, or payment of benefits by the employer or the employer's carrier. § 34A-2-407(4). The employee must report an injury within 180 days. § 34A-2-407(3).

**9. Describe available defenses based on employee's conduct:**

**A. Self-inflicted injury.**

Self-inflicted injuries are not compensable. Utah Code Ann. § 34A-2-401(1).

**B. Willful misconduct, "horseplay," etc.**

Injury from horseplay may not be in the course of employment, depending on how serious the deviation is. *Prows v. The Industrial Commission*, 610 P.2d 1362 (Utah 1980). Where an employee willfully fails to use a safety device or obey an order or rule, compensation is reduced 15%, except in case of injury resulting in death. Utah Code Ann. §§ 34A-2-302(2), 34A-2-302(3).

**C. Injuries involving drugs and/or alcohol.**

No disability compensation is awarded to an employee when the major contributing cause of the

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injury is the employee's use of illegal substances, intentional abuse of drugs in excess of prescribed amounts, and intoxication from alcohol with blood alcohol concentration of .08% or greater. Utah Code Ann. § 34A-2-302(4). This does not apply if the employer permitted, encouraged, or had knowledge of the drug or alcohol use. § 34A-2-302(3)(b). The workers compensation statute imposes a rebuttable presumption that the employee's injury was caused by the employee's conduct if a scientifically accepted chemical test establishes a blood alcohol concentration of .08 grams or greater, any amount of an illegal drug is found in the employee's system, or the employee is found with improper amounts of prescription medication in his system. § 34A-2-302(5). The employee's intoxication is not required to be willful. See *Traylor Bros. Inc. v. Overton*, 736 P.2d 1048 (Utah Ct. App. 1987). The presumption may be rebutted in accordance with § 34A-2-302(5)(b).

**10. What, if any, penalties or remedies are available in claims involving fraud?**

Any person convicted of workers compensation fraud is guilty of a crime, which can range from a class A misdemeanor to a second degree felony, depending on the amount of money that was involved. Utah Code Ann. §§ 76-10-1801, 34A-2-110.

**11. Is there any defense for falsification of employment records regarding medical history?**

There is no specific statutory defense for falsification of medical history, although such would fall under the fraud provisions of Utah Code Ann. § 34A-2-110.

**12. Are injuries during recreational and other non-work activities paid for or supported by the employer compensable?**

Generally, no. *Black v. McDonald's of Layton*, 733 P.2d 154 (Utah 1989).

**13. Are injuries by co-employees compensable?**

Yes, if all elements of a compensable accident are present. The co-employee is immune from suit for negligence. Utah Code Ann. § 34A-2-105(1); See *Stamper v. Johnson*, 232 P.3d 514 (Utah 2010).

**14. Are acts by third parties unrelated to work but committed on the premises, compensable (e.g. "irate paramour" claims)?**

If an injury or death for which compensation is payable is caused by the act of a person other than the employer, then the injured employee may claim compensation from the employer as well as maintain an action against the third-party person who caused the injury or death. Utah Code Ann. § 34A-2-106.

## BENEFITS

### 15. What criterion is used for calculating the average weekly wage?

An employee's average weekly wage is computed as follows: if wages are fixed by the year, the yearly wage is divided by 52. Utah Code Ann. § 34A-2-409(1)(a). If wages are fixed by the month, the monthly wage is divided by four and one-third. § 34A-2-409(1)(b). If wages are fixed by the week, that is the average weekly wage. § 34A-2-409(1)(c). If wages are fixed by the day, the wage is multiplied by the number of days the employee worked or would have worked but for the accident. § 34A-2-409(1)(d). If wages are fixed by the hour, the hourly rate is multiplied by the number of hours the employee would have worked for the week but for the accident (the multiplier must not be less than 20 hours). § 34A-2-409(1)(e). If the wage was not fixed or cannot be ascertained, the average weekly wage is the usual wage for similar services. § 34A-2-409(1)(f). If the employee is compensated by output, the employee's average weekly wage is computed by taking the employee's highest paying 13-week quarter from the previous four quarters, and dividing by 13. § 34A-2-409(1)(g).

If none of the above methods fairly determine the average weekly wage in a case, the Commission is permitted to use any other method that will fairly determine the employee's average weekly wage. Utah Code Ann. § 34A-2-409(2).

The state average weekly wage is determined by taking the total wages the state reported on contribution reports to the Department of Employment Security divided by the average monthly number of insured employees, determined by dividing the total insured employees reported for the preceding year by 12. Utah Code Ann. § 34A-2-410(3). It is calculated and published each year and becomes effective June 1.

### 16. How is the rate for temporary/lost time benefits calculated, including minimum and maximum rates?

The employee receives two-thirds of his or her average weekly wage at the time of the injury, but not more than 100% of the state average weekly wage and not less than \$45 per week. Utah Code Ann. § 34A-2-410(1). The injured worker also receives an additional \$20 per week for a dependent

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spouse and each dependent child under the age of 18, to a maximum of 4 children. § 34A-2-410(1). In the event of light duty medical release where no such work is available, the employee will continue to receive temporary total disability benefits. § 34A-2-410(2).

17. **How long does the employer/insurer have to begin temporary benefits from the date disability begins?**

The employer/insurer must promptly investigate a claim and pay within 21 days or send written notice that further investigation is needed. Labor Commission Rule R612-200-1-C. The claim must be paid or denied within 45 days.

18. **What is the "waiting" or "retroactive" period for temporary benefits (e.g. must be out \_\_\_ days before recovering benefits for the first \_\_\_ days)?**

The employee must be out 14 days before recovering benefits for the first 3 days. Utah Code Ann. § 34A-2-408.

19. **What is the standard/procedure for terminating temporary benefits?**

Temporary benefits are terminated when the health care provider or independent medical examiner renders an opinion that the condition has stabilized. Temporary benefits are not to exceed 312 weeks at the rate of 100% of the state average weekly wage over a period of 12 years from the injury. Utah Code Ann. § 34A-2-410(1)(b).

The Labor Commission may terminate temporary benefits upon motion from the employer for the reasons stated in Utah Code Ann. § 34A-2-410.5(2). These reasons include termination of the employee due to criminal conduct, violent conduct, or violation of reasonable written workplace safety rules; if the employee is incarcerated for an amount of time that would result in termination based on reasonable written policies; and if the employee is terminated for use of controlled substances or alcohol that results in a blood concentration of .08 grams or higher. Further, the Commission may terminate temporary benefits if the employee is terminated in accordance with a reasonable, written workplace rule that is applied in a manner that is reasonable and nondiscriminatory. § 34A-2-410.5(2).

20. **Is the amount of temporary total disability paid credited toward the amount entitled for permanent partial disability?**

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No, except that the total benefits may not exceed 66 2/3% of the state average weekly wage at the time of the injury for a total of 312 weeks. Any overpayment of this compensation may be recouped by the employer or its insurer by reasonably offsetting the overpayment against future permanent total disability benefits. Utah Code Ann. § 34A-2-413(4).

### 21. What disfigurement benefits are available and how are they calculated?

A specific benefit schedule for impairment ratings to specific body parts is contained in Utah Code Ann. § 34A-2-412(4). There is no entitlement for disfigurement benefits for scarring or similar disfigurement.

### 22. How are permanent partial disability benefits calculated, including the minimum and maximum rates?

#### A. How many weeks are available for scheduled members/parts, and the standard for recovery?

There is a listing of the number of weeks available for scheduled parts of the body. Utah Code Ann. § 34A-2-412(4).

#### B. Number of weeks for "whole person" and standard for recovery.

If the permanent partial disability is based on an impairment rating, rather than a specifically scheduled injury, the permanent partial disability benefit is based on 312 weeks, multiplied by the applicable weekly compensation rate, multiplied by the impairment rating. As an example, if an employee's compensation rate is \$100, and his impairment rating is 10%, his permanent partial disability benefit is  $312 \times \$100 \times .10 = \$3,120$ . Utah Code Ann. § 34A-2-412(3).

The maximum period of permanent partial disability compensation is 312 weeks, representing compensation for permanent total loss of bodily function. §34A-2-412(6). "Disability means becoming medically impaired as to function," and "can be total or partial, temporary or permanent, industrial or nonindustrial." § 34A-2-102(6).

### 23. Are there any requirements/benefits for vocational rehabilitation, and what is the standard for recovery?

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If it appears that an injured worker is “disabled” as defined by statute (see Utah Code Ann. § 34A-8a-102), the employer or its workers compensation carrier must file an initial written report with the Commission. The report must assess the injured worker’s need or lack of need for vocational assistance in re-employment. The employer must also provide the injured worker with information regarding re-employment. Utah Code Ann. § 34A-8a-301.

Within 10 days of the written report, the employer must refer the disabled worker to the Utah State Office of Rehabilitation, or, at the employer’s option, to a private rehabilitation or re-employment service, to provide an evaluation and develop a re-employment plan. Utah Code Ann. § 34A-8a-302.

Employers or their insurers that file initial “disabled injured worker” reports with the Commission, and who refer employees to the Utah State Office of Rehabilitation or to private services in accordance with this statute, are required to file quarterly reports with the Commission detailing rehabilitation activities. Utah Code Ann. § 34A-8a-203. The purpose of the reports is to allow the state to monitor and evaluate the voluntary efforts of employers to assist injured workers in returning to the workforce. § 34A-8a-101(2).

An employer can offer reemployment after an industrial injury, which generally involves light duty or similar accommodation of the employee’s physical impairment and restrictions. If reemployment is justifiably terminated by the employer, the employer may petition the Labor Commission for reduction or cessation of disability payments. Termination of reemployment on the following grounds is deemed justifiable: criminal conduct, violent conduct, violation of certain workplace rules, incarceration in a correctional facility, or the inappropriate use of controlled substances or alcohol. Utah Code Ann. § 34A-2-410.5(2). An employee’s right to medical benefits is not affected by this provision. §34A-2-410.5(3).

**24. How are permanent total disability benefits calculated, including the minimum and maximum rates?**

Permanent total disability benefits are two-thirds of the employee's average weekly wage at the time of the injury, but not more than 85% of the state average weekly wage, and not less than the sum of \$45 per week, plus \$20 for a dependent spouse and each dependent child. Utah Code Ann. § 34A-2-413.

**25. How are death benefits calculated, including the minimum and maximum rates?**



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**A. Funeral expenses.**

The employer pays all burial expenses. Utah Code Ann. §§ 34A-2-401, 34A-2-418. The current cap on burial expenses is \$8,000.

**B. Dependency claims.**

Death benefits are two-thirds of the decedent's average weekly wage at the time of the injury, but not more than 85% of the state average weekly wage at the time of the injury and not less than a minimum of \$45 plus \$20 for each dependent. Utah Code Ann. § 34A-2-410.

**26. What are the criteria for establishing a "second injury" fund recovery?**

In Utah, the second injury fund is known as the Employer's Reinsurance Fund. The Employers Reinsurance Fund is liable only if there is a 10% whole person permanent pre-existing impairment, the employee is permanently and totally disabled and the accident occurred between July 1, 1988 and June 30, 1994. The Fund pays half of all medicals over \$20,000 and all permanent total disability benefits after the initial 3 year period. Utah Code Ann. § 34A-2-703. The employer receives a credit for all temporary and permanent disability benefits paid. Utah Code Ann. § 34A-2-703. The Fund has no liability for accidents or diseases occurring on or after July 1, 1994. Utah Code Ann. § 34A-2-702.

**27. What are the provisions for re-opening a claim for worsening of condition, including applicable limitations periods?**

If the employee's disability rating changes, he or she may reapply, subject to the statutes of limitation discussed above in conjunction with Question No. 7. Utah Code Ann. § 34A-2-417.

**28. What situation would place responsibility on the employer to pay an employee's attorney fees?**

In most cases, the Act applies only to fixing the amount of attorney fees and provides no authority for assessing such fees against either party. *Graham v. Industrial Comm'n*, 495 P.2d 806 (Utah 1972). The attorney fees are set by Labor Commission rule, and are deducted from the applicant's recovery. However, in a case where the only remedy sought is recovery of medical expenses, the Labor Commission rules provide for assessment of an "add on" attorney fee to compensate the applicant's lawyer for assisting in getting the medical expenses paid. Also, a prevailing applicant's attorney is entitled to recover reasonable and necessary costs incurred in prosecuting the claim. These fee issues are addressed in Utah Code Ann. § 34A-1-309 and Rule R602-200-2.

## EXCLUSIVITY/TORT IMMUNITY

29. Is the compensation remedy exclusive?

A. Scope of immunity.

Liabilities of the employer imposed by the Act are in place of "any and all other civil liability whatsoever." Utah Code Ann. § 34A-2-105.

B. Exceptions (intentional acts, contractual waiver, "dual capacity," etc.).

Exceptions include contractual waiver as set forth in *Freund v. Utah Power & Light Co.*, 793 P.2d 362 (Utah 1990), and when the employer or co-employee act with a specific intent to injure the employee. *Brian v. Utah International*, 533 P.2d 892 (Utah 1975); *Lantz v. National Semiconductor Corp.*, 775 P.2d 937 (Utah App. 1989).

30. Are there any penalties against the employer for unsafe working conditions?

Yes. If the employer willfully fails to provide necessary safety devices, the award can be increased 15%. Utah Code Ann. § 34A-2-301. Any violation of any provision of the Act is a misdemeanor. Utah Code Ann. § 34A-2-209.

31. What is the penalty, if any, for an injured minor?

The Utah labor statutes do not specify a penalty for an "injured" minor. However, Utah law prohibits minors from working in excess of certain hours, and from working in "hazardous" occupations. Utah Code Ann. §§ 34-23-201 and 202. It is a class B misdemeanor for an employer to "knowingly employ a minor or permit a minor to work in a repeated violation" of the child labor laws. § 34-23-402. Further, the Labor Commission may assess an administrative penalty of up to \$500 per violation of the child labor requirements. § 34-23-401.

32. What is the penalty if a court finds an employer has attempted to prevent an employee from making a claim?

An employer may not knowingly or intentionally impede or diminish an employee's efforts to make a claim or receive worker's compensation benefits in any way, including intimidation, coercion, or harassment. Likewise, the code specifies that an employer may not suspend, discharge, discipline, or threaten an employee who has or is attempting to make a claim. If found guilty for such conduct, employers may be fined up to \$5,000 for each violation. Utah Code Ann § 34A-2-114.

**33. What is the potential exposure for "bad faith" claims handling?**

Under Utah law, a bad faith claim is contractual in nature, and the Utah Supreme Court has held that an injured employee cannot sue his employer's workers' compensation carrier because there is no privity of contract between the employee and the insurer. *Savage v. Educators Insurance Co.*, 908 P.2d 862 (Utah 1995). The courts have not foreclosed the possibility that a workers' compensation carrier could be sued for independent torts such as intentional infliction of emotional distress, *Id.*, and the Utah Court of Appeals has implied that such claims would be permissible under Utah law. *Gunderson v. May Department Stores Co.*, 955 P.2d 346 (Utah Ct. App. 1998). Bad faith is not created because of a mere delay in payment to an injured employee. *Id.* The issue of whether an employee can sue his self-insured employer for bad faith has not been addressed by the Utah courts.

**34. What is the exposure for terminating an employee who has been injured?**

There is no exposure outlined in the statute for terminating an employee. Refer to employment and wrongful termination law. Note, however, that an employee's right to receive workers' compensation benefits is not affected by his or her termination from employment. Furthermore, it is frequently the case that the scope of a claim will expand after an employee has been terminated.

## THIRD PARTY ACTIONS

**35. Can third parties be sued by the employee?**

Yes. Utah Code Ann. §34A-2-106.

**36. Can co-employees be sued for work-related injuries?**

No. Utah Code Ann. §34A-2-105. Co-employees are not deemed to be third parties. Claims against co-employees are barred due to the plain language of the Act, which specifically states that an employee can maintain a third-party action if the person who caused the injury is not “an employer, officer, agent, or employee of the employer.” Utah Code Ann. § 34A-2-105(1).

**37. Is subrogation available?**

Yes. Utah Code Ann. §34A-2-106.

## MEDICALS

**38. Is there a time limit for medical bills to be paid, and are penalties available for late payment?**

Medical bills on an accepted liability claim are due and payable within 45 days of being billed. Also, any portion of a bill that is not in dispute is payable within 45 days. There is no specific penalty in the workers’ compensation statute for late payment of medical bills, other than imposition of 8 percent interest on unpaid benefit payments. See Utah Code Ann. § 34A-2-420(3) and Rule 612-2-13. The Utah Court of Appeals has held that an employer who fails to pay benefits after judgment has been entered by the Utah Labor Commission is subject to the 15 percent increase in benefits set forth in Utah Code Ann. § 34A-2-302 for “willful failure of an employer to comply with the law or any lawful order of the industrial commission . . .” *Gunderson v. May Department Stores Co.*, 955 P.2d 346, 351 (Utah Ct. App. 1998). Additionally, penalties can be imposed on employers for failure to properly administer claims. Such penalties include possible revocation of an employer’s certificate of self-insurance to prosecution for the misdemeanor of violating a Commission order. *Id.* Additionally, medical providers can file applications for hearing requesting payment of outstanding medical expenses for treatment related to workers’ compensation injuries.

**39. What, if any, mechanisms are available to compel the production of medical information (reports and/or an authorization) at the administrative level?**

The commissioners and the Secretary of the Commission may issue subpoenas to compel the production of documents. Utah Code Ann. § 34A-1-302. Generally, however, the employee executes a HIPAA-compliant authorization in order to release his or her records to the employer/insurer. An employer is entitled to such an authorization by Rule R612-2-22.

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40. What is the rule on (a) Claimant's choice of physician; (b) Employer's right to second opinion and/or Independent Medical Examination?

The employee is normally allowed to choose and is allowed to change physicians once without permission of the Labor Commission. Administrative Rule R612-300-2.

41. What is the standard for covered treatment (e.g. chiropractic care, physical therapy, etc.)?

All medical, nurse and hospital services and medicines are covered. Utah Code Ann. § 34A-2-401. This includes physical therapy, and, in appropriate cases, chiropractic care is allowed.

42. Which prosthetic devices are covered, and for how long?

Prosthetic devices are covered indefinitely. Utah Code Ann. § 34A-2-417.

43. Are vehicle and/or home modifications covered as medical expenses?

Yes, if prescribed by a physician.

44. Is there a medical fee guide or schedule, or other provisions for cost containment?

Yes, in the regulations published by the Department. Administrative Rule R612-2-5.

45. What, if any, provisions or requirements are there for "managed care"?

Managed care is addressed under Utah Code Ann. § 34A-2-111. In Utah, self-insured employers and workers compensation insurers may adopt a managed health program to provide employees with workers' compensation benefits. The plan may include a preferred provider program so long as the employee is allowed a selection of more than one physician in the health care specialty required for treating his injury or condition. If an employer/insurer or self-insured entity develops an appropriate provider program, employees are required to utilize preferred provider physicians and medical care facilities. If an employee has been notified of the program, but chooses not to

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participate, the employee will be obligated to pay for any charges in excess of the preferred provider allowances.

Regardless of whether a preferred provider program is established, employers may have their own health care facilities on or near their work site, and may continue to contract with health care providers. The employer may also operate a health care facility and require employees to first seek treatment at the provided health care or contracted facility.

An employee is not required to seek treatment from a preferred provider in cases of emergency, when the employee believes in good faith that his condition is non-industrial, and when an employee living in a rural area would be unduly burdened by traveling to a preferred provider.

## PRACTICE / PROCEDURE

### 46. What is the procedure for contesting all or part of a claim?

After an employee reports a work injury, the claims representative can complete the Form 089 “Employee Notification Denial of Claim.” The claims representative can specify whether the claim is fully or partially denied and the basis for the denial. The form can be found at:

<https://laborcommission.utah.gov/wp-content/uploads/2019/11/Form-089-Revised-2-2019.pdf>

After the employee files an application for hearing, the employer/insurer files an answer, either admitting or denying each element of the claim.

### 47. What is the method of claim adjudication?

#### A. Administrative level.

The claim is filed before the Labor Commission, and is initially decided by an administrative law judge (“ALJ”). The decision of the ALJ may be appealed to the Commission. See Utah Code Ann. §§ 34A-2-801 through 34A-2-803.

#### B. Trial court.

Not applicable.

**C. Appellate.**

The decision of the Commission may be appealed to the Utah Court of Appeals. See Utah Code Ann. §§ 34A-1-301 through 34A-1-310.

**48. What are the requirements for stipulations or settlements?**

Settlements are allowed only if there is a reasonable dispute or if the settlement is a reasonable commutation of future benefits. Utah Code Ann. § 34A-2-420(4). No agreement by an employee to waive his or her right to compensation under the Act is valid. Utah Code Ann. § 34A-2-108. See Labor Commission Rule R602-2-5 on settlement agreements.

**49. Are full and final settlements with closed medicals available?**

Such settlements are only available when compensability is disputed, or when the settlement is a commutation of reasonable future benefit entitlements. The Labor Commission's approval is required for any such settlement. *Wilburn v. Interstate Electric*, 748 P.2d 582 (Utah Ct. App. 1988); Utah Code Ann. §34A-2-420(4); Labor Commission Rule R602-2-5. Otherwise, future medical expenses cannot be settled.

However, future medical expenses can be commuted, which amounts to paying the present day value of future anticipated medical expenses. For the Commission to grant a commutation, the parties will have to provide the judge with a doctor's reasonable opinion regarding future treatment and the costs associated with such treatment.

**50. Must stipulations and/or settlements be approved by the state administrative body?**

Yes. Settlement agreement forms and information can be reviewed at <https://laborcommission.utah.gov/divisions/adjudication/workers-compensation-settlement-agreements/>.

## RISK FINANCE FOR WORKERS' COMPENSATION

51. What insurance is required, and what is available (e.g. private carriers, state fund, assigned risk pool, etc.)?

A private insurer, state fund or self-insurance are all options. Utah Code Ann. § 34A-2-201.

52. What are the provisions/requirements for self-insurance?

A. For individual entities.

Self-insurance is permitted if satisfactory proof of ability to pay is submitted annually to the Commission. Utah Code Ann. § 34A-2-201(1). The self-insurer must also provide a knowledgeable contact within the state, maintain a toll free number for claims, and comply with all of the Commission's rules. Administration of such programs is discussed in Labor Commission Rule R612-3-5.

B. For groups or "pools" of private entities.

Risk pools are not mentioned in the statute.

53. Are "illegal aliens" entitled to benefits of workers' compensation in light of The Immigration Reform and Control Act of 1986, which indicates that they cannot lawfully enter into an employment contract in the United States, although most state acts include them within the definition of "employee"?

Under Utah law, illegal aliens are specifically included in the statutory definitions of "employee," "worker," and "operative" under the Workers' Compensation Act. Utah Code Ann. § 34A-2-104(1)(b). Thus, such persons are entitled to workers' compensation benefits.

54. Are terrorist acts or injuries covered or excluded under workers' compensation law?

Utah workers' compensation benefits are available because of injury or death "in any way contracted, sustained, aggravated, or incurred by the employee in the course of or because of or



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arising out of the employee's employment." Utah Code Ann. §34A-2-105(1). In light of this broad language, and the Act's silence on the specific issue of terrorism, it is presumed that injuries caused by a terrorist act would be covered, so long as the employee is in the course of employment at the time of the injury.

**55. Are there any state specific requirements which must be satisfied in light of the obligation of the parties to satisfy Medicare's interests pursuant to the Medicare Secondary Payer Act?**

There is nothing unique to Utah workers' compensation law with regard to the federal Medicare program. As explained above in response to Question Nos. 48 and 49, full and final settlements can take place with the approval of the administrative law judge. It is not uncommon for the judge to require an explanation of how Medicare's interest is being resolved in connection with her approval or disapproval of the settlement that is being proposed.

**56. How are subrogation liens of Medicaid and health insurers treated under workers' compensation law?**

The Federal Medicaid statute requires States to include in their plan for medical assistance provisions (1) that the individual will assign to the State any rights to payment for medical care from any third party and (2) that the individual will cooperate with the State in pursuing any third party who may be liable to pay for care and services available under the Medicaid plan. 42 U.S.C.A. §1396k(a). The State is authorized to retain such amount as is necessary to reimburse it (and the Federal Government as appropriate) for medical assistance payments and to pay the remainder to the individual. 42 U.S.C.A. §1396k(b).

The State of Utah enjoys a statutory lien on all third party recoveries, including recoveries of workers' compensation benefits. Utah Code Ann. §§ 26-19-2, 26-19-5. "This lien has priority over all other claims to the proceeds, except claims for attorney's fees and costs . . ." Utah Code Ann. §26-19-5(1)(b). Health insurance subrogation is permissible in the workers' compensation context. Absent a contractual provision to the contrary, Utah law does not allow subrogation until the injured worker has been made whole. *Hill v. State Farm Mutual Automobile Insurance Co.*, 765 P.2d 864 (Utah 1988.). However, Utah courts will enforce insurance policy provisions that allow for subrogation or reimbursement regardless of whether the injured worker was made whole as a result of the settlement. *Id.*

**57. What are the requirements for confidentiality and privacy of medical records under workers'**

**compensation law and how are they affected by state and federal law (HIPAA)?**

At the present time, HIPAA, 45 CFR parts 160-164 and 65 FR 82462, is applicable in Utah, as in all other states. The HIPAA privacy rule recognizes the legitimate need of employers and workers' compensation insurers to have access to applicants' medical records to the extent authorized by state law. See 45 CFR 164.512(a).

Under Utah law, a medical provider is required, without authorization, to provide records necessary to substantiate the billing of medical services related to the workers' compensation claim. Other relevant records must be disclosed pursuant to a Labor Commission records release form, or other HIPAA-compliant authorization form. Employers and insurers may not disclose medical information without authorization, and may only use the medical information to pay, assess or adjudicate the workers' compensation claim.

Workers' compensation applicants in Utah must provide the employer or workers' compensation insurer with a signed medical records authorization when an action for benefits is filed with the Utah Labor Commission. Also, the Labor Commission will usually issue subpoenas upon request.

These medical records privacy and disclosure provisions are addressed in Rule R612-2-22.

**58. What are the provisions for "Independent Contractors"?**

The Utah Workers' Compensation Act defines "independent contractors" as "any person engaged in the performance of work for another" who is (1) independent of the employer regarding execution of the work, (2) not subject to routine control of the employer, (3) engaged in only the performance of a definite job or piece of work, and (4) subordinate to the employer only regarding the result desired by the employer. Utah Code Ann. § 34A-2-103(2).

The statute includes "independent contractors" as "employers" who are responsible to obtain workers' compensation benefits for their employees. Utah Code Ann. § 34A-2-201.

The employer of an independent contractor assumes workers' compensation liability for his independent contractor's employees if the employer "retains supervision or control, and this work is part or process of in the trade or business of the employer. Utah Code Ann. § 34A-2-103(7)(a). However, this liability disappears if the employer of the subcontractor obtains and relies on a valid certification that the subcontractor had procured workers' compensation benefits for his employees. Utah Code Ann. § 34A-2-103(7)(e).

59. Are there any specific provisions for “Independent Contractors” pertaining to professional employment organizations/temporary service companies/leasing companies?

Under Utah law, the client company in an employee leasing arrangement is considered the employer of the leased employees, and is responsible to secure workers’ compensation benefits for them. However, the law does allow an insurer to issue a policy to the leasing company as the named insured, and its client companies as additional insureds through individual endorsements. Utah Code Ann. § 34A-2-103(3).

60. Are there any specific provisions for “Independent Contractors” pertaining to owner/operators of trucks or other vehicles for driving or delivery of people or property?

No.

61. What are the "Best Practices" for defending workers' compensation claims and controlling workers' compensation benefits costs and losses?

Financial exposure to workers’ compensation is an expensive and complex challenge for every business. The best means for reducing and eliminating that exposure is a strong and individualized “Best Practices” plan.

Every business must deal with the expense of workers’ compensation in its risk management and in dealing with the inevitable claim. The best approach to ameliorating a business exposure is a strong and individualized "Best Practices" plan.

62. Does your state permit medical marijuana and what are the restrictions for use and for work activity in your state Workers’ Compensation law?

In 2018, Utah passed the Utah Medical Cannabis Act. Accordingly, a person must hold a medical cannabis card issued by the Utah Department of Health to legally purchase and possess medical cannabis. A card holder may use medicinal cannabis in correspondence with the medicinal dosage prescribed. Medical cannabis cardholders may not possess more than 113 grams by weight of unprocessed cannabis or an amount of cannabis product that contains 20 grams of total composite THC.

## UTAH

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Per the Act, compensation may not be awarded if the employee's conduct is the major contributing cause of the injury. Utah Code Ann. § 34A-2-302(3)(b). Likewise, compensation may be reduced 15% when the employee's conduct is a contributing cause of the employee's injury but not the major contributing cause. *Id.* Conduct includes the employee's knowing use of a controlled substance that the employee did not obtain under a valid prescription or intentional abuse of a controlled substance that the employee obtained under a valid prescription in excess of prescribed therapeutic amounts or in an otherwise abusive manner. § 34A-2-302(4). Controlled substance is defined as expressed in Utah Code Ann. § 58-37-2, which details the Utah Schedule of Controlled Substances. § 34A-2-302(1)(a). Under § 58-37-2 a controlled substance is a drug or substance included in schedule I of § 58-37-4. Per § 58-37-4, cannabis is a schedule I controlled substance. § 58-37-4(2)(a)(iii)(S). Pursuant to § 34A-2-302(1)(e), a valid prescription is a prescription that is prescribed for a controlled substance for use by the employee for whom it was prescribed and has not been altered or forged. A prescription is an order issued by a licensed practitioner for a controlled substance. § 58-37-2(1)(II).

If all elements of a compensable accident are present, the presence of medical marijuana in an employee's system does not automatically result in the loss of an award of compensation or 15% reduction in compensation if the employee has a valid prescription for the medical marijuana and has not intentionally abused the valid prescription by consuming excess of the prescribed amount or consumed in an otherwise abusive manner while working. It is presumed that cannabis is the major contributing cause of an employee's injury if at the time of injury the employee has in their system marijuana that the employee obtained under a valid prescription or the metabolites of cannabis if the amount in the employee's system is consistent with the employee using the controlled substance intentionally in excess of prescribed therapeutic amounts or in an otherwise abusive manner. Utah Code Ann. § 34A-2-302(5)(a).

The Act requires public employers to accommodate medical cannabis use by employees, unless use would jeopardize federal funding, a federal security clearance or any other federal background determination required for the employee's position. Private employers are not required to accommodate the use of medical cannabis and may have policies restricting it. The Act allows employers to treat medical cannabis use in the same fashion as opioids or opiates, meaning that disciplinary action and/or termination may occur due to impairment or poor job performance.

The Act states that, subject to Utah Code Ann. § 34-2-407(11), an employer or insurance carrier is not required to pay or reimburse for cannabis, a cannabis product or a medical cannabis device. Under Utah law, a person may not operate or be in actual physical control of a car if the person has any measurable controlled substance or metabolite of a controlled substance in their body. However, an affirmative defense exists where the controlled substance is medical cannabis in dosage form.

## UTAH

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63. Does your state permit the recreational use of marijuana and what are the restrictions for use and for work activity in your state Workers' Compensation law?

No, recreational use of cannabis is prohibited in Utah. Possession of small amounts is punishable by misdemeanor. Under Utah Code Ann. § 34-2-302(3)(b) compensation may not be awarded if the major contributing cause of injury is the employee's conduct or compensation may be reduced by 15% when the employee's conduct is a contributing cause of the injury but not the major contributing cause. Conduct, as described in § 34-2-302(3)(b) includes knowing use of a controlled substance that the employee did not obtain under a valid prescription. Utah Code Ann. § 34-2-302(4)(a).

The ALFA affiliated counsel who compiled this State compendium offers an expert, experienced and business-friendly resource for review of an existing plan or to help write a "Best Practices" plan to guide your workers' compensation preparation and response. No one can predict when the need will arise, so ALFA counsels that you make it a priority to review your plan with the ALFA Workers' Compensation attorney for your state and you can contact ALFA at (312) 642-ALFA (3532).