
**LABOR
COMMISSION
STATE OF UTAH**

**QUARTERLY
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ON - THE - JOB

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Legislative Update - 2006

By R. Lee Ellertson, Commissioner

Now that the dust has once again settled on the past legislative session, I thought it would be well to bring you up to date on legislation which passed and was supported or sponsored by the Commission. This session, the Commission requested passage of two bills.

SB 40 – Sponsored by Sen. Dmitrich relates to the Commission's

authority to issue certificates for coal and other hydrocarbon mining. It also adds provisions regarding mine electrician certificates and allows the Commission to issue certificates for all hydrocarbon mining, in addition to coal mining.

SB 93 – Sponsored by Sen. Mayne changes the name of the Safety Division to the Boiler and Elevator Safety Division. This will clarify the division's responsibilities and help alleviate the volume of calls they receive which actually belong to UOSH.

Other legislation which will have an impact upon the Commission includes:

HB 72 – Sponsored by Representative Snow allows the state to obtain workers' compensation coverage from companies other than the Workers Compensation Fund, or to become self-insured. If the state chooses to be self-insured, the Commission would oversee their program like any other self-insured employer.

HB 150 – Sponsored by Rep. Morley clarifies when a general contractor is allowed exclusive remedy in the workers' compensation system. It also defines the persons with whom and purposes for which contracts

may be made for managed health care in the workers' compensation setting, and grants the Commission rule-making authority over the subject. It expands requirements for workers' compensation carriers to designate agents to receive notices and orders. In addition, the bill clarifies the Commission's authority to adjudicate medical fee disputes. HB150 clarifies burden of proof in permanent total disability cases.

"The greatest news of all is that our people still remain the very best and are dedicated to doing the state's business in an efficient and professional manner."

HB 9 – Sponsored by Rep. Murray appropriates \$250,000 this year and a like amount next year from the Workplace Safety account for the Commission to conduct a two-year study to determine which forms of cancer, if any, firefighters and drug task force officers contract as a direct result of their jobs.

The FY2007 budget was approved with some of the following highlights: We received \$176,000 for our Adjudication Division to establish an office in the Southwest area of the state. We are currently underway to find office space in a central location and will assign an Administrative Law Judge and hire a support specialist. We received \$100,000 from the Workplace Safety account for a new

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Workers' Compensation - A Fair System for All

By Mary Betts, Claims Manager

Experiencing an on-the-job injury can be a life-altering event. As an injured worker travels down the road to recovery, the obvious goal we all share is that they encounter as few as possible speed bumps before reaching their final destination of returning to the job. Therefore, it's important for all participants in the workforce to have a basic understanding of the workers' compensation system.

In Utah, all employers must provide workers' compensation coverage for their employees (*a few exceptions are noted in Utah Law*). In return for providing this coverage, the employer has protection (known as "exclusive remedy") which prevents an employee from suing the employer as a result of the injury. This coverage also benefits an injured employee by providing a replacement wage of 66 2/3% of the employee's average weekly wage at the time of the injury - not to exceed the State's maximum average weekly wage. The wage replacement benefit continues until a doctor determines that the injured worker is medically stable. At this point in the claim, the doctor may determine the injured employee has suffered a permanent impairment resulting from the work-related injury. If a permanent impairment is determined, the doctor will submit those findings to the insurance carrier for preparation of a compensation agreement which the injured party and the Labor Commission will review. The injured worker can then be paid for the permanent impairment.

In addition to the benefit of wage replacement, workers' compensation insurance pays all medical bills relating to the injury, as well as mileage to and from authorized medical care at a rate of 37.5 cents per mile.

An injured worker's first course of action should be to report the injury to his/her employer immediately. If an employee fails to notify the employer or the Labor Commission within 180 days of an injury, the



employee is barred from any claim of benefits. Once the employer receives notice of an injury, they are responsible for preparing and submitting the "*Employer's First Report of Injury*" to the insurance carrier within seven days of notification. The employer must also provide the injured worker with a copy of the *Employer's First Report of Injury*, along with a statement as prepared by the Labor Commission of the injured worker's rights and responsibilities. Next course of action is for the injured worker to obtain medical treatment from the employer's designated medical provider. If the employer or insurance carrier does not name a

preferred medical provider, the injured worker may seek medical treatment from a physician of his/her choice. The medical provider will prepare and submit a "*Physician's Initial Report of Work Injury*" to the insurance carrier and the Labor

Commission. This form, along with the employer's report, helps to establish the claim. Upon notice of a workers' compensation claim, the assigned insurance adjustor has 21 days to accept, deny, or notify the injured worker that further investigation is required. If further investigation is required, the insurance carrier may then have an additional 24 days to complete its investigation (total of 45 days).

If the injured worker is released to return to work with restrictions and the employer is not able to accommodate them, the situation should be discussed with the adjustor to evaluate if and what assistance can be provided. The **Utah State Office of Rehabilitation** can provide information regarding services available for injured workers who are unable to return to their previous employment. The

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"Utah Workers' Compensation Laws and Rules help create a system of expectations and fairness for all parties involved in the system."

Legislative Update 2006

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Consultation Officer, a Compliance Assistance Officer, and \$145,000 additional funding from the General Fund for UOSH. The Legislature also restored \$246,300 funding to our Industrial Accidents Division, replacing money taken from the Uninsured Employers Fund during the 2001 budget crunch.

And the greatest news of all is that our people still remain the very best and are dedicated to doing the state's business in an efficient and professional manner.

Commission is responsible for providing administrative oversight to ensure the system is working as intended. However, if an injured employee or employer hits a speed bump in the claim process, it makes good sense to speak directly with the assigned adjustor in an attempt to mutually resolve the issue. This helps keep the lines of communication open between all participants involved in the claim.

The Utah Labor Commission also has **Workers' Compensation Intake Employees** available to assist participants with questions. They are available at (801) 530-6800 or toll-free (800) 530-5090. The Commission has educational information and publications available on our website for the employee, employer, and the medical community. Visit our website: www.laborcommission.utah.gov, which also offers links to current Workers' Compensation Laws and Rules.

The Division of Industrial Accidents is committed to educating all parties involved in the workers' compensation system through our **Outreach Program**. Upon request, we will arrange a date and time for an Outreach Employee to come to your worksite or meeting place to conduct an informational presentation designed to meet the needs of your particular group (medical providers, employer or employee groups, associations, unions, insurance providers, etc.) This can provide valuable information and insight into the Workers' Compensation system. We encourage you to contact Lois Gutierrez, Outreach Worker, at (801) 530-6853 to plan and customize a presentation to address your group's needs.

Fair System for All

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Utah State Office of Rehabilitation has multiple offices throughout the state. Check your local telephone directory under State Government for an office near you. An injured worker should also be aware there is a 90-day window to apply for unemployment benefits when released to return to work and employment is not available. For specific information regarding unemployment benefits, contact the **Department of Workforce Services** at (801) 526-4400 or toll-free (888) 848-0688.

Utah Workers' Compensation Laws and Rules help create a system of expectations and fairness for all parties involved in the system. The Utah Labor

National Safety Month - June 2006



This year marks the 10th anniversary of the National Safety Council's designation of National Safety Month in June. Their 10th anniversary theme, **Making our World a Safer Place**, reflects the Council's mission to prevent accidental injury and death by educating and influencing people to adopt and maintain safe and healthy practices and behaviors in all aspects of their lives.

Throughout June, 2006 National Safety Month activities will address safety risks and include injury prevention tips applicable to the workplace, driving, and the home and community. For more information on National Safety Month, visit the National Safety Council's website: www.nsc.org

Fair Housing – It's Not an Option; It's the Law

April is recognized nationally as fair housing month ever since Congress passed the Fair Housing Act on April 11, 1968. This year marks the 38th anniversary of the passage of that Act, which has created equal housing opportunities for all Americans by prohibiting discrimination in housing on the basis of race, color, religion, sex, national origin, disability, familial status, and in Utah, source of income. Remember, "**Fair Housing - It's Not an Option; It's the Law**". To show the state of Utah's commitment to Fair Housing, the Governor has signed a Fair Housing Declaration commemorating the month-long recognition.



Governor Jon Huntsman, Jr. signs declaration with Comm. R. Lee Ellertson (far right) and Fair Housing representatives.

FAIR HOUSING DECLARATION – 2006

Whereas, every resident has the right to live where he or she chooses, without fear of discrimination; and

Whereas, April is nationally recognized as Fair Housing Month and the 38th Anniversary of the passage of the U. S. Fair Housing Law, Title VIII of the Civil Rights Act of 1968, which enunciates a national policy of Fair Housing without regard to race, color, religion, national origin, sex, familial status, and disability, and encourages fair housing opportunities for all people; and

Whereas, the State of Utah passed its own Fair Housing Act in 1989, recognizing the right of all residents of this state to be free from discrimination in the sale, rental and financing of their homes based on race, color, religion, sex, national origin, familial status, disability and source of income; and

Whereas the Utah Apartment Association, the U.S. Department of Housing and Urban Development, the Utah Association of Realtors, as well as the Utah Labor Commission Antidiscrimination and Labor Division, are committed in their efforts to highlight the Fair Housing Law by continuing to address discrimination in our communities, to support programs that will educate the public about the right to equal housing opportunities, and to plan partnership efforts with other organizations to help assure every person of the right to fair housing;

Now Therefore, I, Jon M. Huntsman Jr., Governor of the State of Utah, do hereby declare the month of April 2006, as

Fair Housing Month

in Utah, in commemoration with National Fair Housing Month, with the theme of "**Fair Housing - It's Not an Option; It's the Law**" and urge all citizens to recognize this celebration for the purpose of promoting home ownership and improving the quality of life for all Utah residents.

The State is at the Gate

Larry A. Patrick, UOSH Administrator

Several years ago, I was the Production Manager at a facility that was closely regulated by the State. We had frequent visits from the Boiler and Elevator Safety Division, the Department of Environmental Quality and, of course, the Utah Occupational Safety and Health Division (UOSH). A telephone call with the simple message, "The State is at the gate" was enough to evoke near-panic throughout the site. Maybe I am the exception, but I never saw reason to panic. I saw a visit by a regulator as an opportunity to demonstrate compliance with state regulations or as an independent assessment of how you could work safer. The purpose of this article is to explain what you should expect if you get the call that says "The State is at the gate".



The general conditions for a UOSH inspection are stated fairly clearly in the law, but I will take the opportunity to expand on some of those conditions.

Getting to the Gate

I think it might be useful for you to understand how UOSH ends up at the gate of one of the over 68,000 employers in the state. Please understand that it is not a random process. If your facility has any of the following occurrences, you can expect a visit from UOSH:

- An accident which results in a serious injury to an employee
- A safety and health complaint has been filed with UOSH about your facility
- You are involved in an imminently dangerous activity
- Your injury and illness statistics indicate likely safety and health problems at your facility.

The Law

(Excerpt from the *Utah Occupational Safety and Health Act, Utah Code Title 34A-6-301*):

"(1)(a) The Division or its representatives, upon presenting appropriate credentials to the owner, operator, or agent in charge, may:

(i) enter without delay at reasonable times any workplace where work is performed by an employee of an employer; (ii) inspect and investigate during regular working hours and at other reasonable times in a reasonable manner, any workplace, worker injury, occupational disease or complaint and all pertinent methods, operations, processes, conditions, structures, machines, apparatus, devices, equipment, and materials in the workplace; and (iii) question privately any such employer, owner, operator, agent, or employee.

(1)(b) The Division, upon an employer's refusal to permit an inspection, may seek a warrant under Section 77-23-211."

The second thing you need to know is that you have the legal right to deny us entry into your facility. However, in most cases, that is only a temporary delay because it is likely we will get a warrant and gain access to your facility through that legal process.

Inside the Gate

Now I will briefly discuss what you can expect when we enter your facility.

1. Presentation of Credentials

We will present our credentials as a matter of practice not only because it is required by law, but to establish who we are and that we are there in an official capacity. The credentials will normally be presented to the owner, operator, or agent in charge of the facility. However, if that person is not available, credentials will be presented to the top management official available.

2. Opening Conference

An opening conference will be conducted and the Compliance Officer will explain the purpose of the

inspection/investigation, how the inspection/investigation will be conducted and will gather general information required to document the inspection in the federal database. The opening conference also affords the employer the opportunity to communicate applicable information to the Compliance Officer.

3. Walk-around Inspection

The walk-around inspection is the core of the inspection process. The Compliance Officer will physically walk around the work place and check for compliance with applicable safety and health laws and standards. The employer may designate a representative to participate in the walk-around. Employee representatives may also participate. The walk-around phase of the inspection may last a short time in the case of a limited scope inspection or several weeks for a full scope inspection at a large facility.

During the walk-around phase of the inspection, the Compliance Officer will also review safety and health related programs and procedures and interview employees. For health-related inspections, various samples and measurements will also be taken during the walk-around.

It is our intent to be as open and helpful as possible during the inspection process so we welcome questions concerning the inspection and the requirements that must be met.

It should be noted that our standard practice is to videotape the walk-around to establish a visual record of the compliance status at the time of inspection.

4. Closing Conference

At the conclusion of the walk-around phase, a closing conference will be conducted. During the closing conference, the Compliance Officer will discuss the apparent violations noted during the inspection. This will include discussion of the applicable standards that have apparently been violated. The Compliance Officer will also discuss what the employer can expect with respect to a citation, the content of the citation, and the employer's rights and responsibilities once the citation is received. If health related

measurements were taken during the walk-around and the results are not available at the time the closing conference is held, a second closing conference will be held when the sample results are available.

After We Leave

1. Citation

When the Compliance Officer returns to the office following the inspection, he/she will create the case file which includes a narrative, alleged violations, and supporting documentation. It is likely that the Compliance Officer will be in frequent contact with the employer as the case file is developed. Since the case file is a legal document, it goes through an extensive internal review and editing process. Typically a citation will be issued to the employer within 45 – 65 days of the closing conference. By

law, the citation must be issued within six months of the closing conferences or the case must be dropped.

2. Citation Receipt

We send citations via certified mail with a return receipt requested. This gives us formal notification that you have received the citation.

The citation will explain your rights and responsibilities relative to that citation and I will briefly discuss two items. First, from the date you receive the citation, you have 30 calendar days to decide if you want to contest all or any part of the citation. If a citation is not contested in the 30 day period, the citation becomes a final legal order. If you contest the citation, it enters a formal legal process that I will discuss in a future article.

Second, the citation will include information on how you can request an informal conference with UOSH. This conference affords the employer an opportunity to informally discuss the citation and the alleged violations. Approximately 40% of all UOSH cases are resolved at this level.

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The “Rules Corner”



Pursuant to authority granted by the Utah Legislature, the Commission has recently adopted or is considering the following substantive rules. If you have questions or concerns about any of these rules, please call the Labor Commission at 801-530-6953.

R602-2.1.M Adjudication	Memoranda supporting Motions for Review. This amendment explicitly allows submission of a reply memorandum in review proceedings before the Labor Commission or Appeals Board.	Discussed at public meeting on April 5 and published May 1, 2006.
R614-1-4 UOSH	Slip Resistance. This rule repeals “slip resistance” requirements for steel-erection projects.	Discussed at public meeting on April 5; published April 17, 2006.
Rule 614-1-4 UOSH	Roll-over Protection. This rule incorporates federal standards for roll-over protection of employees in construction and agriculture.	Discussed at public meeting on April 5. To be published in May, 2006.
Rule 614-1-4 UOSH	Exposure to Hexavalent Chromium. This amendment incorporates new federal standards limiting occupational exposure to hexavalent chromium.	Discussed at public meeting on April 5. To be published May, 2006.
Rule 616-2-3 Boiler & Elevator Safety	National Boiler & Pressure Vessel Board Inspection Code. This amendment adopts the most recent modifications to the National Board’s inspection code. These modifications are either 1) procedural, or 2) of no impact in Utah.	Published April 17, 2006. Can become effective May 18, 2006.
R612-4-2 Industrial Accidents	Premium Rates for UEF and ERF. Continues existing premium rates for Employers’ Reinsurance Fund at 7.25% and Uninsured Employers’ Fund at .25%	Discussed at Advisory Council and Open Public Meeting. Published November 1, 2005. Effective January 1, 2006.



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Summary

UOSH inspections and investigation are formal processes which are conducted to improve workplace safety and health. Generally, every workplace visited by UOSH is the result of an accident, complaint, imminent danger, or poor injury and illness statistics. However, we may inspect any workplace including state or local government facilities without any reason, or we may inspect a facility over concern about exposure to silica or lead. My advice - assume we are coming.

UOSH offers free consultation and compliance assistance for all Utah employers. You may request this service by calling (801) 530-6855 or (801) 530-6900.

