

# **Rule R602-4. Procedures for Termination of Temporary Total Disability Compensation Pursuant to Reemployment under Section 34A-2-410.5.**

As in effect on July 1, 2008

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### **R602-4-1. Purpose, authority and scope.**

Section 34A-2-410.5 allows an employer or its insurance carrier (“employer” hereafter) to request Labor Commission permission to reduce or terminate an employee’s temporary disability compensation. Under authority of section 34A-2-410.5(7), the Commission establishes these rules to govern the adjudication of such requests. This rule supersedes the provisions of R602-2, 602-3, R602-5, R602-7 and R602-8 R602-4-3 as to any actions brought pursuant to section 34A-2-410.5.

### **R602-4.2 Commission permission required.**

An employer shall not terminate or reduce an employee’s temporary disability compensation pursuant to section 34A-2-410.5 prior to issuance of a final order by the Commission ordering the reduction or termination.

### **R602-4-3. Adjudication of requests to terminate or reduce compensation.**

#### **R602-4-3.1. Mediation.**

Prior to filing a request to terminate or reduce temporary disability compensation pursuant to section 34A-2-410.5, the parties are encouraged to request assistance from the Mediation Unit of the Commission’s Industrial Accidents Division.

## **R602-4-3.2. Pleadings and Discovery.**

### **A. Definitions.**

1. "Application" means an Application for Hearing for Termination or Reduction of Compensation (Adjudication Form 402), all supporting documents, proof of service and Notice of Request for Termination or Reduction of Compensation (Adjudication Form 404) which together constitute the request for agency action regarding termination or reduction of benefits pursuant to Section 34A-2-410.5.

2. "Supporting medical documentation" means any medical provider's report or treatment note that addresses the employee's medical condition or functional restrictions.

3. "Supporting documents" means supporting medical documentation, Persons with Knowledge List (Adjudication Form 403), any documents related to reasons for the requested termination or reduction, and any documents describing the employee's work duties.

4. "Proof of Service" means any of the following: 1) the employee's signed and dated acceptance of service of the Application and all supporting documents; 2) a certificate of service of the Application and all supporting documents signed by the employer or insurer's counsel and accompanied by a return receipt signed by the employee; or 3) a return of service showing personal service of the Application and all supporting documents on the employee according to Utah Rule of Civil Procedure 4(d)(1).

5. "Persons with Knowledge List" (Adjudication Form 403) means a party's list of all persons who have material knowledge regarding the reasons for the request to terminate or reduce compensation. The list must specify the full name of the person, a summary of the knowledge possessed by the person, and a statement whether the party will produce the person as a witness at hearing.

6. "Notice of Request for Termination or Reduction of Compensation" means Adjudication Form 404.

### **B. Application for Hearing.**

1. An employer may request Commission approval to terminate or reduce an employee's temporary disability compensation under section 34A-2-410.5 by filing an Application with the Commission's Adjudication Division.

2. An Application is not deemed filed with the Division until the employer submits a completed Application with all required documentation.

### **C. Discovery.**

1. At least 15 days prior to a hearing on an Application, each party shall mail or otherwise serve on the opposing party a list of all witnesses that party will produce at the hearing. Because it is presumed that the employee will appear at the hearing, the employee is not required to list himself or herself on the list. The employer will also mail

to or otherwise serve on the employee a copy of all exhibits the employer intends to submit at the hearing.

2. Testimony of witnesses and exhibits not disclosed as required by this Rule shall not be admitted into evidence at the hearing. A party's failure to subpoena or otherwise produce an individual previously identified by that party as an intended witness may give rise to an inference that the individual's testimony would have been adverse to the party failing to produce the witness.

3. Other than disclosures required by this rule and voluntary exchanges of information, the parties may not engage in any other discovery procedures.

4. Subpoenas may be used only to compel attendance of witnesses at hearing, and not for obtaining documents or compelling attendance at depositions. All subpoenas shall be signed by an administrative law judge.

D. Defaults and Motions.

1. Defaults shall only be issued at the time of hearing based on nonattendance of a party. Motions will only be considered at the time of hearing.

**R602-4-4.3. Hearings.**

A. Scheduling and Notice.

A hearing will be held within 30 days after an Application is filed with the Commission's Adjudication Division. The Division will send notice of hearings by regular mail to the addresses of the employer and employee set forth on the Application. A party must immediately notify the Division of any change or correction of the addresses listed on the Application. The Division will also mail notice to the address of any party's attorney as disclosed on the Application or by an Appearance of Counsel filed with the Division. Notice by the Division to a party's attorney is considered notice to the party itself.

B. Hearings.

Each hearing pursuant to section 34A-2-410.5 shall be conducted by an administrative law judge as a formal evidentiary hearing. The evidentiary record shall be deemed closed at the conclusion of the hearing, and no additional evidence will be accepted thereafter. After hearing, the administrative law judge shall issue a decision within 45 days from the date the Application was filed.

C. Motions for Review.

Commission review of an administrative law judge's decision is subject to the provisions of section 63G-4-301, section 34A-1-303, and R602-2.M.

KEY

Worker's compensation, administrative procedures, hearings, settlements

Date of Enactment or Last Substantive Amendment

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Authorizing, Implemented, or Interpreted Law

34A-1-104(1) et seq.; 34A-2-410.5;