



State of Utah

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DIVISION OF INDUSTRIAL ACCIDENTS BULLETIN

October 14, 2009

Reporting Requirements for Insurers and Employers under the amended Utah Injured Worker Reemployment Act

The Utah Injured Worker Reemployment Act (*Title 34A, Chapter 8a, Utah Code Annotated*) as amended by the 2009 Utah Legislature, is intended to promote and monitor efforts to return injured workers to the workforce. As amended, the Act requires insurers (workers' compensation insurance carriers or Uninsured Employers' Fund) and employers (self-insured employers or uninsured employers) to submit information to the Division of Industrial Accidents regarding certain types of reemployment efforts on behalf of injured workers.

The Act's reporting requirements did not become fully effective until July 1, 2009. The reporting requirements discussed in this BULLETIN therefore apply as of July 1, 2009, and this Bulletin supersedes any previous instructions issued by the Division of Industrial Accidents on this topic, including the October 29, 2001 IAD BULLETIN excusing insurers or employers from submitting rehabilitation reports. Insurance carriers and employers are now required to prepare and submit the following forms:

- **Form 206** – *Insurer/Employer Initial Reemployment Report for Injured Worker*
- **Form 215** – *Insurer/Employer Request to Waive/Postpone Reemployment Referral*
- **Form 239** – *Insurer/Employer Quarterly Report on Reemployment Efforts*

The purpose and requirements for each form are discussed below. The Utah Labor Commission's rules and forms related to the Utah Injured Worker Reemployment Act and an electronic copy of this October 14, 2009 IAD BULLETIN can be found on the Division of Industrial Accidents' website at <http://laborcommission.utah.gov/IndustrialAccidents/index.html>

Form 206 - Insurer/Employer Initial Reemployment Report for Injured Worker is used by all insurers and employers to comply with the initial reporting requirement of **Section 34A-8a-301** of the Act. Within 30 days after it appears that: a) an injured worker is or will be a "disabled injured worker" as defined by the Act; or b) the injured worker's temporary total disability compensation period exceeds 90 day, insurers and employers must complete Form 206 for the injured worker. The completed Form 206 must then be submitted to the Division of Industrial Accidents and also a copy delivered or mailed to the injured worker. **NOTE:** Due to delay in establishing rules to implement the Injured Worker Reemployment Act and updating previous versions of Form 206, the Industrial Accidents Division will accept previous versions of Form 206 until December 31, 2009. After that date, insurers and self-insured employers must use the updated Form 206.

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▪ **Form 215 - Insurer/Employer Request to Waive/Postpone Reemployment Referral.**

Pursuant to **Section 34A-8a-302** of the Act, insurer and employers are required to refer a “disabled injured worker” to either the Utah State Office of Rehabilitation or to a private reemployment or rehabilitation service within 10 days after submitting Form 206. However, an insurer or employer can ask the Industrial Accidents Division to waive or postpone the reemployment referral requirement by submitting Form 215 to the Division and also mailing a copy to the injured worker. The Division will also use the same Form 215 to notify the insurer or employer and also the injured worker whether the Division has approved or disapproved the request.

Form 239 - Insurer/Employer Quarterly Report on Reemployment Efforts. As of July 1, 2009, **Section 34A-8a-203** of the Act requires insurers and employers to track certain information regarding reemployment efforts on behalf of injured workers and then report that information to the Division of Industrial Accidents on a quarterly basis. Insurers and employers must use Form 239 to file these quarterly reports. The information required is:

- 1) Total number of initial rehabilitation reports (using Form 206) filed for injured workers;
- 2) Total number of rehabilitation or reemployment referrals made for injured workers;
- 3) Total number of injured workers not referred to rehabilitation or reemployment; and
- 4) Total number of injured workers for whom a referral or reemployment plan was not necessary.

Form 239 must be submitted to the Division no later than 45 days after the end of each calendar quarter. The Act allows the Division to impose a penalty of up to \$500 against an insurance carrier or self-insured employer for late filing of Form 239. **NOTE:** Due to delay in establishing rules to implement the Injured Worker Reemployment Act and creating a final version of Form 239, no penalties will be assessed for late filing of the first quarterly reports due under the Act (3rd quarter of 2009, covering July through September).

Please contact me if you have any questions or concerns with these forms, the proposed administrative rules, or any other issue regarding implementation of the Injured Worker Reemployment Act.

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New Rule

R612-8 - Guidelines for the Utah Injured Worker Reemployment Act.

October 14, 2009

R612. Labor Commission, Industrial Accidents.

R612-8. Guidelines for the Utah Injured Worker Reemployment Act.

R612-8-1. Purpose, authority and definitions.

- A.** These rules guide insurance carriers and employers in complying with reporting and other requirements of the Utah Injured Worker Reemployment Act, Title 34A, Chapter 8a, Utah Code Annotated.
- B.** The Utah Labor Commission enacts these rules under the authority of section 34A-8a-202 and section 34A-8a-203.
- C.** Definitions established by section 34A-8a-102, 34A-8a-203(1) and rule R612-1 apply to this rule. The following definitions also apply to this rule:
 - (1) "Insurance carrier" includes insurance carriers providing workers' compensation coverage and the Uninsured Employers Fund;
 - (2) "Employer" includes self-insured employers and uninsured employers that are paying an injured worker's claim for benefits.
 - (3) "Disabled Injured Worker" means an injured worker who:
 - (a) because of the injury or disease that is the basis of the employee being an injured worker:
 - (i) is or will be unable to return to work in the injured worker's usual and customary occupation; or
 - (ii) is unable to perform work for which the injured worker has previous training and experience; and
 - (b) reasonably can be expected to attain gainful employment after an evaluation provided for in accordance with the Utah Injured Worker Reemployment Act, Title 34A, Chapter 8a.

R612-8-2. Form 206 – Insurer/Employer Initial Reemployment Report for Injured Worker.

- A.** Pursuant to section 34A-8a-301, a worker who has suffered a work-related injury or disease must be provided an initial written report (Form 206) that assesses the injured worker's need for vocational reemployment assistance. Form 206 is only required in those instances in which:
 - (1) it appears the injured worker is or will be a "disabled injured worker"; or
 - (2) the duration of the injured worker's temporary total disability compensation exceeds 90 days.
- B.** If the injured worker was covered by workers' compensation insurance at the time of injury or disease or the claim is being paid by the Uninsured Employers' Fund (UEF), the insurance carrier or UEF must prepare and submit Form 206. If the injured worker's claim is being paid by a self-insured employer or an uninsured employer, the employer must prepare and submit Form 206.

- C. Form 206 must be mailed or otherwise delivered to the injured worker and to the Division within 30 days after the insurance carrier or employer knows or should know that the injured worker's circumstances satisfy either of the conditions described in subsections A. (1) of A. (2).

R612-8-3. Referral of disabled injured worker for evaluation; permission to waive or postpone referral.

- A. If Form 206 determines that an injured worker satisfies the definition of a "disabled injured worker," the insurance carrier or employer shall refer the injured worker to the Utah State Office of Rehabilitation or to a private rehabilitation or reemployment service for evaluation and development of a reemployment plan. This referral must be made within 10 days after the insurance carrier or employer submits Form 206 to the Division unless the Division grants a waiver or postponement as provided in the following subsection B of this rule.
- B. Section 34A-8a-302(3) authorizes the Labor Commission through the Division of Industrial Accidents to waive or postpone an insurance carrier or employer's referral obligation. An insurance carrier or employer shall make its request by completing and submitting "**Form 215 - Insurer/Employer Request to Waive/Postpone Reemployment Referral**" to the Division and mailing a copy of the completed form to the injured worker. The Division will consider such requests on a case-by-case basis. The Division will generally grant requests for waiver or postponement for the following reasons, or for other reasons similarly establishing good cause:
- (1) the injured worker was not medically stable;
 - (2) the injured worker's physical capacity has not been determined; or
 - (3) liability for the injured worker's claim is under review provided, however, that the Division may require the insurance carrier or employer to refer the injured worker for the free services offered by the Utah State Office of Rehabilitation.

R612-8-4. Form 239 – Insurer/Employer Quarterly Report on Reemployment Efforts To The Division; Penalties.

- A. Beginning with the calendar quarter commencing on July 1, 2009, and continuing for each quarter thereafter, section 34A-8a-203(2) requires insurance carriers and employers (referred to as "reporting entities") to file quarterly reports enumerating their efforts to return injured workers to gainful employment
- B. Reporting entities shall submit their quarterly reports by completing Form 239 – Insurer/Employer Quarterly Report on Reemployment Efforts," and filing the form with the Division no later than 45 days after the end of each calendar quarter.
- C. Section 34A-8a-203 (4) requires the Commission to impose a civil penalty of up to \$500 against a reporting entity that fails to file Form 206. Initial proceedings to assess such penalty are hereby designated as informal adjudicatory proceedings, while all subsequent proceedings with respect to assessment of such penalty are hereby designated as formal proceedings.

R612-8-6. Administrative Review. An injured worker, insurance carrier or employer may submit any dispute arising from the provisions of the Utah Injured Worker Reemployment Act or these rules to the Labor Commission's Adjudication Division for resolution according the procedures

established by the Utah Administrative Procedures Act, Title 63G, Chapter 4, Utah Code Annotated.

KEY: reemployment workers' compensation guidelines

Date of Enactment or Last Substantive Amendment: June 15, 1995

Notice of Continuation: September 30, 2004

Authorizing, and Implemented or Interpreted Law: 34A-1-104; 34A-8-109