



# ON - THE - JOB

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## Migrant Farm Worker Appreciation

By Elena Bensor,- Workplace Safety Grant Program Manager

**M**igrant Farmworkers live in a precarious world. They often travel thousands of miles to harvest melons, cherries, peaches, apples and pears. Work that may not even be there when they arrive.

Often toiling 10 to 12 hours a day, sometimes in extreme conditions, three out of four farmworkers earn less than \$10,000 a year, with nearly one-third of all farmworkers earning less than \$2,500 a year. Their poverty compels many to bring their children to the fields to help supplement the family income. They are often ill-housed, ill-fed, and lack the benefits that most workers take for granted.

On Nov. 20<sup>th</sup> 2008, the Utah Labor Commission, in partnership with the Utah Migrant Farmworker Coalition, hosted a Thanksgiving holiday outreach event in Genola, Utah. The event was a tremendous success based on the attendance of almost 200 people, many of them young children and their families who filled the Genola Head Start center to capacity.

During this holiday event, the Utah Labor Commission and participating member

agencies such as Centro de la Familia, Utah Legal Services, Utah Department of



Education, Futures Through Training and Centro Hispano de Provo, conducted  
continued on page 2...

### *Inside .....*

Fair Housing in Utah	⇒	3
Utah OSHA Private Consultation Services	⇒	4
Rules Corner	⇒	5
Appellate Decisions	⇒	6

## Migrant Farm Worker Appreciation

...continued from page 1

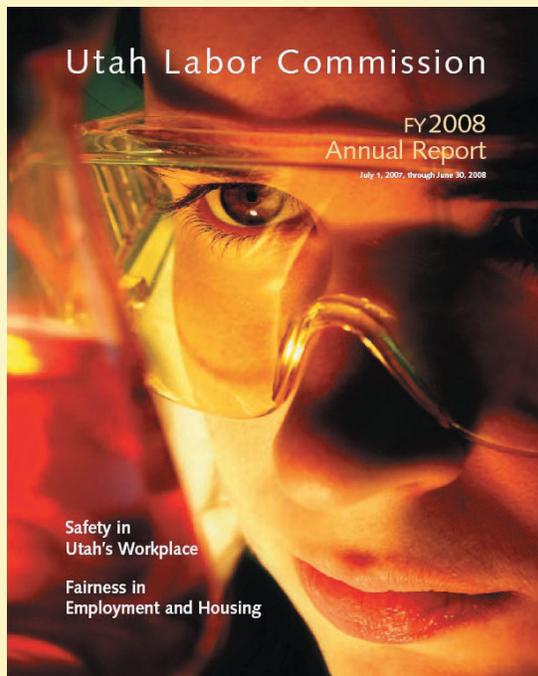
pesticide training sessions and hosted viewing of “Por el Bien de los Suyos”, a workplace safety DVD produced by the Utah Labor Commission, and provided medical services such as flu vaccines and specialty physician referrals.

Families in attendance were also served a delicious holiday dinner while their children participated in activities that included reading time, receiving books donated by the Utah Department of Education, fun piñatas and other prizes. Most of the families also received complementary

family pictures and generously donated thanksgiving dinners for them to take home after the activities at the Genola center concluded.



The Utah Labor Commission is committed to our mission: To lead in achieving safety in Utah’s workplaces and fairness in employment and housing.



Visit our Website to review our  
FY08 Annual Report

Available at:  
[www.laborcommission.utah.gov](http://www.laborcommission.utah.gov)



# Fair Housing in Utah

**SOLD**  
**FOR SALE**

**T**he Antidiscrimination & Labor Division's Fair Housing focus is to administer and enforce Utah's Fair Housing Act. The Act prohibits discrimination on the basis of race, religion, color, sex, national origin, familial status, disability or source of income in the rental, purchase and sale of real property.

Under the Utah and Federal Fair Housing Acts, you have the right to rent, purchase, or finance housing without discrimination based on your race, color, national origin, religion, sex, familial status (families with children under 18), or disability. Additionally, you also have the right to select housing regardless of your source of income (for example, if you receive state, local, or federal government assistance, including housing vouchers).



## What Housing is Covered?

The Fair Housing Acts cover most housing. In some circumstances, the Acts exempt owner-occupied buildings with no more than four units, single-family homes sold or rented without the use of a broker, and housing operated by organizations and private clubs that limit occupancy to members.

## How to Recognize Housing Discrimination:

Most housing discrimination doesn't involve having a door slammed in your face or a bigoted remark directed your way. Unsuspecting renters or home buyers may be politely turned away from the housing of their choice, even though they are qualified.

For example:

- A woman with a disability who uses a companion animal was refused a rental unit in an apartment with a "no-pets" policy.
- In some instances, women or families are denied housing because of unlawful "no kids" policies.
- Housing discrimination may also include situations where children are restricted from accessing and using facilities, due to unlawful rules prohibiting children from accessing privileges normally available to older tenants.
- Housing discrimination also applies to situations of predatory lending practices, where unsuspecting potential home buyers enter into loan agreements with high interest rates or different terms and conditions than those set for other individuals with similar credit scores and credit history.

The Commission's Fair Housing Unit receives, investigates, mediates and resolves charges of housing discrimination. It also acts as a resource to residence seekers, property managers, and owners concerning laws which prohibit housing discrimination.

If you feel your rights to fair housing have been violated, or you have questions about your responsibilities, please contact our office for more information.

Phone: (801) 530-6801

Fax: (801) 530-7609

In-state Toll Free 1-800-222-1238

[fh@utah.gov](mailto:fh@utah.gov)

## Utah OSHA Private Consultation Services

Utah Occupational Safety and Health (UOSH) Consultation Division provides free training and presentations at the request of the employer. Shown below is a list of frequently requested training provided by UOSH Consultants:

### TRAINING TOPICS

- ❖ Asbestos
- ❖ Lead
- ❖ Hazard Communication
- ❖ Respiratory Protection
- ❖ Personal Protective Equipment
- ❖ Bloodborne Pathogen
- ❖ Noise
- ❖ Lockout/Tagout
- ❖ Machine Guarding
- ❖ Trenching and Excavation
- ❖ Fall Protection
- ❖ Scaffolding
- ❖ Confined Space Entry
- ❖ Health Standards such as Lead, Asbestos etc.
- ❖ 10-hour Construction Training
- ❖ Workplace Violence

This is not an all-inclusive list. If you are interested in another topic for training not included on the list, please call UOSH Consultation at (801) 530-6010. If you belong to the Public Sector such as State, City, County, etc. you can call us at (801) 580-2997. You may also request a UOSH consultation by filling out the form available on our website at:

<http://laborcommission.utah.gov/UOSH/Consultation/Requesttraining>



The Mountain West OSHA Training Center in Salt Lake City, also provides various training. The Center is a consortium between the Salt Lake Community College's Environmental Technology Program, the University of Utah's Rocky Mountain Center for Occupational and Environmental Health and the Uintah Basin Applied Technology College. The consortium received OSHA Training Center status in December 2002 and is one of two official Training Centers serving Region VIII.

Mountain West  
OSHA Training and Outreach Center  
391 Chipeta Way, Suite C  
Salt Lake City UT 84108  
Phone: (801) 581-4055  
Fax: (801) 585-5275

For complete UOSH services and more information regarding Utah OSHA, please visit our website: [www.uosh.utah.gov](http://www.uosh.utah.gov)

## 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.



<b>R602-2 Adjudication</b>	<b>Workers' Comp/Occupational Disease Claims.</b> Clarifying amendments regarding the adjudication process. Relocates other rule provisions; transfers authority to approve medical exams paid by UEF. (See R612-2-9.F, <i>Industrial Accidents</i> , below.)	Final December 8, 2008
<b>R602-5 Adjudication</b>	<b>Cooperation and diligent pursuit in permanent total disability claims.</b> Establishes procedures for expedited adjudication of disputes regarding cooperation and diligence with respect to reemployment and rehabilitation in permanent total disability claims.	Final December 8, 2008
<b>R602-6 Adjudication</b>	<b>Approval of Workers' Compensation Settlements.</b> Moves provisions of existing rule into a separate rule.	Final December 8, 2008
<b>R602-7 Adjudication</b>	<b>Employment Discrimination Claims.</b> Establishes procedures for adjudicating employment discrimination complaints.	Published in <i>Utah Bulletin</i> February 1, 2009; can be effective March 10, 2009
<b>R602-8 Adjudication</b>	<b>Occupational Safety &amp; Health Citations.</b> Establishes procedures for adjudicating challenges to occupational safety and health citations.	Published in <i>Utah Bulletin</i> February 1, 2009; can be effective March 10, 2009
<b>R612-2-9.F Industrial Accidents</b>	<b>Authorization for medical exam.</b> Moves authority from Adjudication to Industrial Accidents to approve medical exams of indigent injured workers.	Final December 8, 2008
<b>R612-4 Industrial Accidents</b>	<b>Premium Rates.</b> Maintains assessment to fund Uninsured Employers Fund at .25%. Reduces assessment to fund Employers Reinsurance Fund from 7.25% (2008) to 5% (2009).	Rule became final December 8, 2008. Applicable to premiums on January 1, 2009
<b>R616-2-3 Boiler, Elevator &amp; Coal Mine Safety</b>	<b>Safety Codes and Rules.</b> Incorporates recent amendments to national engineering standards for boiler and pressure vessel safety.	Published in <i>Utah Bulletin</i> January 15, 2009; can be effective February 24, 2009

## Appellate Decisions

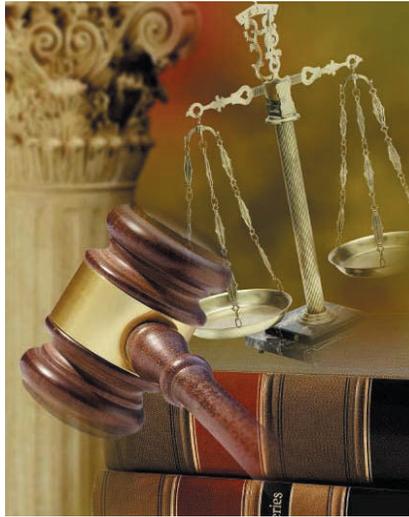
**D**uring the last three months, the Utah Court of Appeals has issued decisions in four workers' compensation cases. The Court's decisions are summarized below and can be read in full at [www.utcourts.gov/courts/appell/](http://www.utcourts.gov/courts/appell/). Also, the Utah Supreme Court has agreed to review the Court of Appeals' decision in one other workers' compensation case.

***Hymas v. Labor Commission et al.*, (2008 UT App 471, issued December 26, 2008).** After her husband died of a heart attack, Mrs. Hymas claimed workers' compensation death benefits on the theory that Mr. Hymas's heart attack had been caused by the physical exertions required by his employment. A hearing on Mrs. Hymas's claim was held by one of the Commission's administrative law judges. At that hearing, Mrs. Hymas, who was represented by an attorney, failed to submit any medical opinions to support her contention that her husband's death was caused by his work. Instead, Mrs. Hymas offered her own lay testimony and that of her husband's co-workers to describe the physical demands of the employment. Alternatively, Mrs. Hymas asked that the hearing be continued to allow her additional time to obtain the necessary medical evidence.

The ALJ concluded that the lay testimony of Mrs. Hymas and the co-workers was not competent to prove the medical cause of Mr. Hymas's heart attack. The ALJ also denied Mrs. Hymas's request for a continuance, on the grounds that parties are expected to be prepared to present their evidence at the evidentiary hearing. In light of Mrs. Hymas's failure to prove that her husband's death was caused by his work, the ALJ dismissed Mrs. Hymas's claim. The Labor Commissioner affirmed the ALJ's ruling.

Mrs. Hymas appealed the Commission's decision to the Utah Court of Appeals, arguing that the Commission had abused its discretion and violated her right to due process by not allowing Mrs. Hymas to submit additional evidence after

the hearing. In addressing this issue, the Court of Appeals noted various provisions of the Labor Commission's administrative rules requiring parties to be prepared to submit their evidence at hearing. The Court of Appeals concluded that the Commission acted within its discretion in applying these rules to Mrs. Hymas.



***Verburg v. Labor Commission et al.*, (2008 UT App. 390; unpublished decision issued October 30, 2008).** Mr. Verburg underwent surgery for a cervical condition unrelated to his work as an Ogden City police officer. Following a period of recovery after the surgery, Mr. Verburg returned to work. Ten days later,

as he was getting into his police car, he hit the side of his head on door frame. His vision went dark for a moment, but he did not lose consciousness. He went on with his work but experienced pain and stiffness in his neck, head and shoulders. He subsequently claimed workers' compensation benefits for this aggravation of his preexisting neck condition.

After a hearing, the administrative law judge awarded benefits to Mr. Verburg. Specifically, the ALJ concluded that, even though Mr. Verburg's underlying cervical condition was not work-related, the impact of hitting his head on his police car door frame was an unusual or extraordinary exertion sufficient to bring Mr. Verburg's medical problems within the coverage of the workers' compensation system.

Ogden City requested Commission review of the ALJ's decision. The Commission reversed the ALJ's decision and denied Mr. Verburg's claim for benefits. Specifically, the Commission observed that Mr. Verburg submitted little evidence regarding the force of impact that resulted when he hit his head on the door frame. The evidence that was submitted indicated that Mr. Verburg had experienced the same kind of "bump" that drivers and passengers frequently experience when entering a car. The Commission further noted that the *effect* of the impact—the

momentary darkening of Mr. Verburg's vision—should not be confused with the *force* of impact. Based on the evidence presented, the Commission concluded that the impact Mr. Verburg experienced from his work accident was not so unusual or extraordinary as to justify workers' compensation benefits.

Mr. Verburg appealed the Commission's decision to the Utah Court of Appeals. The Court affirmed the Commission's decision, holding that "[w]ithout evidence indicating that Verburg's activity was unusual or extraordinary, the Commission's conclusion that Verburg was not entitled to benefits is reasonable and rational."

In two other cases (*Torgerson v. Labor Commission, et al.*, 2008 UT App 378, unpublished decision issued October 23, 2008; and *Le v. Labor Commission, et al.*, 2008 UT App 441, unpublished decision issued December 4, 2008), the Utah Court of Appeals rejected appeals filed by *pro se* applicants for workers' compensation benefits.

- In *Le*, the Court of Appeals dismissed Mr. Le's appeal for failure to submit a proper docketing statement.
- In *Torgerson*, the Court of Appeals: 1) rejected Mr. Torgerson's challenge to the Labor Commission's authority over his workers' compensation claim; 2) affirmed the Commission's determination that Mr. Torgerson was not entitled to permanent total disability compensation; and 3) upheld the Commission's decisions on various ancillary issues.

**Supreme Court review of *Frito-Lay and Transcontinental Insurance v. Labor Commission and Amy Clausing*, (2008 UT App. 341; issued August 28 2008).** In the last edition of this newsletter, it was noted that the Court of Appeals had reversed a decision by the Commission's Appeals Board and had held that Transcontinental was entitled to use the Rules of Civil Procedure to obtain relief from an ALJ's award of excessive compensation to Ms. Clausing. The Utah Supreme Court has granted the Commission's petition for certiorari and will now proceed to review the Court of Appeals' decision.

## *If injured at work... will YOU be covered?*



By law, almost all employers must cover their employees with workers' compensation insurance. In the event of a workplace injury, workers' compensation insurance will pay medical costs and partial wage replacement during recovery. If disabled from the accident, the injured worker may receive monthly benefits for life.

Now, you can ***"Ensure You're Insured"***.  
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**For more information or to report non-compliance, please call (801) 530-6099.**

**[www.laborcommission.utah.gov](http://www.laborcommission.utah.gov)**

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ON-THE-JOB, 3rd Quarter 2008, Page 8

## Payment of Wages

In 2008, UALD investigated 2,359 claims, a 25% increase over 1,890 in 2007. The Utah Payment of Wages Act, Utah Code Ann. §34-28-1, outlines requirements for paying wages to employees, and employers' responsibilities regarding paydays, final paychecks, electronic payroll deposits, lawful deductions, wage disputes, and payroll records. The law also outlines the Antidiscrimination and Labor Division's (UALD) authority to enforce the law and specifies penalties for violating the law. The law also makes it illegal for an employer to retaliate against an employee for filing a complaint with the Division.



To learn more about an employer's responsibility for payment of wages, review the Act at: [www.le.utah.gov](http://www.le.utah.gov) (Title 34, Chapter 28).

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### Request Form

- Please delete my name from your mailing list.
- Please add my name to your mailing list. I would like to receive your quarterly newsletter.
- Please correct my name/address on your mailing list. I am currently receiving your quarterly newsletter.
- Please send the newsletter by email

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Company		
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