



ON-THE-JOB

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Labor Commission implements budget cuts at Governor Herbert's request

By Commissioner Sherrie Hayashi

As we are all painfully aware, the nation's economy is suffering and Utah is not immune to these troubling times. A recent article by James Wood, director of the Bureau of Economic and Business Research at the University of Utah, states that Utah's construction industry took a 37% downturn in 2009, the biggest single-year decline since the Great Depression. Industry analysts are predicting another difficult year for 2010. Although Governor Herbert stated in his December budget address that indications are Utah's economy is stabilizing and would be one of the first to emerge from the recession, we still have great challenges ahead. For the upcoming fiscal year, budget cuts are a necessary part of Utah's future.

Governor Herbert has submitted a balanced FY11 budget with no tax increases. In order to accomplish this enormous task and still protect higher and public education from further cuts, and meet critical investments in infrastructure, he issued an Executive Order that all state agencies take a reduction of 3% for the remainder of FY10. The Labor Commission has been asked to take a reduction of \$286,000.

Although the session has not yet begun, the Commerce and Workforce Services subcommittee recommended a 4% budget reduction in the amount of \$240,100, which is more than the 3% general fund reduction mandated by the Governor's Executive Order. In the past, we have been able to absorb the

reductions to our budget with short-term savings, (one time federal funds, cost savings, etc.) but we are unable to do this on an on-going basis. Although final budget information will not be determined until the end of the session, it is critical that we prepare now to absorb these reductions and

maintain services. We have reviewed many options and unfortunately, the Commission has had to eliminate three existing positions and offered one retirement incentive. This is in addition to cost saving measures incorporated throughout FY09-10 such as:

Personnel

- Transferred several employees to federal grant programs when employees left or retired.
- Delayed replacing vacated positions.
- Reduced travel, both in-state and out-of-state.
- Shared half of our DHRM analyst's time with other state agencies.

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Budget cuts

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- Used telecommuting and teleconferencing as a way to save travel costs.

Purchases

- Scaled back on computer and office equipment purchases.



- Cut furniture, maintenance and repair costs.
- Leased copiers from another state agency to avoid large upcoming one-time purchase costs.
- Delayed purchase of the vehicles authorized by the legislature.

Funding Sources

- Worked with federal agencies to collect unpaid grant funds which date back four to five years.
- Negotiated a small concession on costs from the state's Department of Technology Services (DTS).
- Obtained authorization from the legislature for creating other sources of revenue rather than the General Fund.
- Closely monitored costs from Attorney General's office.
- Utilized a contribution from Intermountain Health Care.
- Closely monitored DTS computer programming costs.
- Consolidated costs where applicable between Coal Mine Safety and Boiler and Elevator Safety.
- Presented a week-long Workers Compensation

Seminar using Labor Commission personnel rather than an outside seminar management company as was done in the past. Savings were significant and tuition revenues generated were placed in the Labor Commission Seminar fund.

- Brought an outside attorney into state employment with the Attorney General's office where billing rates are much less than outside attorney billing rates.

Training

- Transferred some education, training and public outreach/trainings costs from funding by the General Fund to funding by the Labor Commission Seminar fund.
- Provided computer and other educational training to employees in-house rather than using more expensive outside training.

I want to express my sincere appreciation to the Utah Labor Commission employees for their dedication and efforts in being very cautious in our ex-

"Staff is continually looking at the way we do business for innovative ideas to cut costs without cutting services."

penditures. Staff is understanding and supportive of the necessary reductions, and is continually looking at the way we do business for innovative ideas to cut costs without cutting services. We remain committed to leading in achieving safety in Utah's workplaces

Utah Labor Commission office hours are Monday through Thursday 7am-6pm. Some services may be available after hours or available on our website:

www.laborcommission.utah.gov



Job Hazard Analysis... a great tool to evaluate your workplace

By Jerry Parkstone, Utah OSHA

One of the greatest tools to eliminate hazards in your workplace is a Job Hazard Analysis (JHA). A JHA is a technique of looking at individual job tasks and identifying the related hazards which may occur while performing that particular task.

To create an effective JHA, it is necessary to learn what a hazard is. A hazard is any item, action, or condition that can cause an injury or illness. Each job performed may include one or more hazards, and by taking the time to perform a JHA, hazards can be eliminated before they occur. Any hazard that puts an employee in imminent danger of injury, illness, or death must be eliminated immediately. Once the most serious hazards are identified, there are three ways of eliminating these hazards: Engineering Controls; Administrative Controls; and Personal Protective Equipment.

Engineering Controls is the most effective manner of controlling a hazard. Engineering Controls include: engineering and manufacturing a guard, enclosing equipment, isolating the hazard with interlocks,

and other means. With proper engineered controls, it is possible to eliminate the ability for an employee to come in contact with that hazard.

If Engineering Controls are not feasible, the next most effective option is Administrative Controls. Administrative controls include: written safety procedures; exposure time limitation; signs; alarms; and training. This option still allows employees to come in contact with hazards, but it gives them the tools to know where the hazard is and how to avoid it.

The last option to control employee exposure to a hazard is Personal Protective Equipment (PPE). PPE includes: gloves; safety glasses; respirators; hand tools; and hearing protection. PPE as a control is only allowed

in the following circumstances: where engineering controls are not feasible or do not totally eliminate the hazard; while engineering controls are being developed; when safe work practices do not provide sufficient additional protection; and during emergencies when engineering controls may not be feasible.

When performing a job hazard analysis you need to look at: What can go wrong? What are the consequences? How could it happen? What are other contributing factors? How likely is it that the hazard will occur? Here is an example of a Job Hazard Analysis (taken from OSHA publication #3071):

Job Location: Metal Shop **Analyst:** Joe Safety
Date: _____



Task Description: Worker reaches into metal box to the right of the machine, grasps a 15-pound casting and carries it to grinding wheel. Worker grinds 20 to 30 castings per hour.

Hazard Description: Picking up a casting, the employee could drop it onto his foot. The casting's weight and height could seriously injure the worker's foot or toes. **Hazard Controls:** Remove castings from the box and place them on

a table next to the grinder. Wear Steel-toe shoes with arch protection. Change protective gloves that allow a better grip. Use a device to pick up castings. **Hazard Description:** Castings have sharp burrs and edges that can cause severe lacerations. **Hazard Controls:** Use a device such as a clamp to pick up castings. Wear cut-resistant gloves that allow a good grip and fit tightly to minimize the chance that they will get caught in grinding wheel. **Hazard Description:** Reaching, twisting, and lifting 15-pound castings from the floor could result in a muscle strain to the lower back. **Hazard Controls:** Move castings from the ground and place

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Training Seminars address dangers of predatory lending

By Dan Singer
Fair Housing Manager
UALD

The Utah Antidiscrimination & Labor Division (UALD) of the Utah Labor Commission hosted four free training sessions on the dangers of predatory lending. The training was given by Stella Adams, an instructor with the National Fair Housing Training Academy (NFHTA). The training centered on aspects of unfair lending, and gave instruction to potential borrowers on topics such as avoiding foreclosure, protecting against predatory lenders, and discriminatory practices in lending.

Tammy Baker, of the UALD, arranged for free continuing education credits to be given to real estate professionals for attending the training sessions. As a result, Utah's training sessions had significantly higher attendance than training sessions held in other markets.

Marsha Waters-Fisher, Program Manager with the NFHTA Graduate School stated that the Salt Lake City

training sessions were the most successful of all the sessions put on by NFHTA. "Adults are most motivated to learn about those things that relate to their needs," said Waters-Fisher. "Tammy was able to identify a need and, thanks to her, we are instituting CE credits in Ohio and Florida."



Tammy
Baker, UALD
Utah Labor
Commission

As Fair Housing Manager with the UALD, I am pleased that so many professionals and potential borrowers had the opportunity to learn about the dangers of predatory lending. Purchasing and financing a home is a decision that must be carefully researched. The information given out at these training sessions empowered borrowers to seek out fair terms from trustworthy sources. It also reinforced to

lenders that they have a legal obligation to equitably provide financing to prospective borrowers.

The Utah Labor Commission believes that due to the success of these sessions, more free training sessions by the National Fair Housing Training Academy will be provided in the future.



Colleen S. Colton reappointed as Chair of Labor Commission Appeals

Colleen S. Colton has been reappointed as Chairman of the Labor Commission Appeals Board. Dr. Colton, a former Labor Commissioner, has been a member of the board since its inception, and has served as the Chairman since 1997. Dr. Colton was a former education policy advisor to former Governor Norman H. Bangerter, and has served as an education administrator for much of her career. She currently is employed as a consultant on labor and education policy issues.

The Appeals Board is authorized to consider and decide appeals from decisions of the Commission's administrative law judges. Pursuant to § 34A-1-205 of the Utah Labor Commission Act, the Board is a three-person body appointed to six-year terms by the Governor with the consent of the Senate, and must include a member representing employers and a member representing employees. In addition to Dr. Colton, other members of the board are Joseph Hatch, representing employees, and Patricia Drawe, representing employers.

Commission handling an “unprecedented” number of wage claims in current fiscal year

By Brent Asay, Wage Claim Unit Manager—UALD

Since Fiscal Year 2005, there has been an unprecedented spike in the number of wage claims filed with the Antidiscrimination and Labor Division (UALD) of the Utah Labor Commission. This is largely due to a fiscal year record of 2,716 claims filed in Fiscal Year 2009, a 42% increase from the number of filings in Fiscal Year 2008 (see graph below).

With 1,276 wage claims thus far filed with the Commission in the current fiscal year, it is projected that UALD will have received a total of 2,476 filings by the end of Fiscal Year 2010. The financial hardships to employers as fallout from the economic climate have very likely been a contributing substantial cause of such a heavy inflow of wage claims.

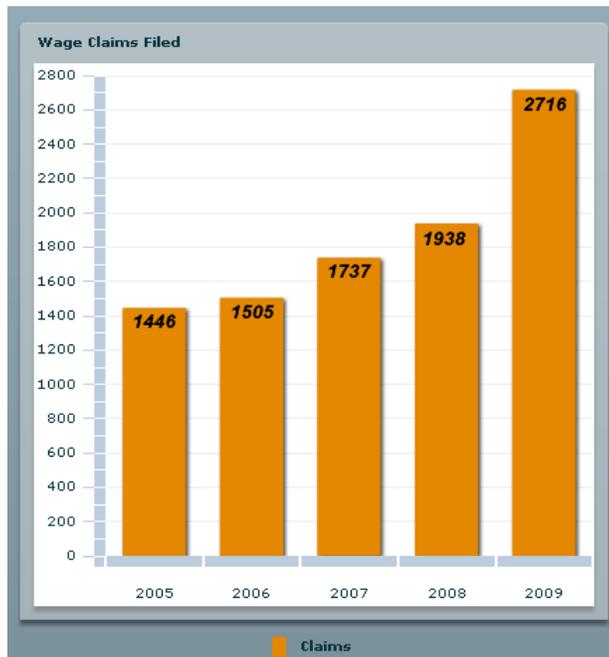
The package of services provided by the Wage Claim Unit consists not only of administering the wage claim process, but also taking telephone calls from constituents who have questions about the legal standards contained in the Utah Payment of Wages Act, Minimum Wage Act and Employment of Minors Act. Providing these services in a quality, timely, and professional manner which is duly responsive to the employer and employee is the Wage Claim Unit’s top priority.



An employee who has not been paid wages for services performed for a private sector employer may file a wage claim with the Commission if the amount of unpaid wages is at least \$50 and no more than \$10,000, and the claim is filed within one year of when the unpaid wages were earned. One may also file a claim for a late wage payment penalty. There also must have been an employer-employee relationship between the alleged responsible employer and the one making the claim during the time of the alleged unpaid wages.

To file a wage claim, or for a late wage payment penalty, one completes the wage claim form that can be accessed through the Commission website, www.laborcommission.utah.gov and by clicking the “Downloads” box on the main screen. The completed form must then be mailed to the Utah Labor Commission at PO Box 146630, Salt Lake City, Utah, 84114-6630; or faxed to 801-530-7609.

An employee with unpaid wages also has the option of filing a claim against the employer in small claims court. However, a claim cannot be filed in both places. For further information, please visit our website or you may call (801) 530-6801 to speak with an intake officer.



Appellate Decisions

By Alan Hennebold, General Counsel

The Utah Supreme Court has issued two decisions in Labor Commission cases. One deals with a significant aspect of administrative law; the second addresses the retroactive effect of the Court's ruling that offsets of social security disability benefits against permanent total disability compensation are unconstitutional. These decisions are available at www.utcourts.gov/courts/appell/.

***Frito-Lay v. Labor Commission*, 2009 UT 71; issued November 3, 2009.**

An ALJ ordered Frito to pay more disability compensation to Clausing than supported by the facts. Although the Utah Administrative Procedures Act permitted Frito to appeal the ALJ's decision, Frito took no action. Then, when Clausing tried to collect her disability award, Frito sought relief from the award under Rule 60(b) of the

Utah Rules of Civil Procedure, the procedural rules that govern Utah's District Courts.

The Appeals Board denied Frito's request for relief under Rule 60(b) on the grounds that the Rules of Civil Procedure do not apply in workers' compensation proceedings. Frito appealed to the Utah Court of Appeals, which held that Frito could use Rule 60(b) to obtain relief. The Court of Appeals also concluded that Frito was entitled to relief pursuant to Rule 60(a) and that the Commission's Appeals Board should have treated Frito's 60(b) motion as a timely "motion for review" under the Administrative Procedures Act.

The Utah Supreme Court agreed to review the Court of Appeals' decision, and on November 3, 2009, reversed

the Court of Appeals. The Supreme Court held that the Rules of Civil Procedure do not apply in workers' compensation proceedings except where the Legislature has specifically directed otherwise. Consequently, Frito was not entitled to use Rule 60 as a means of correcting the ALJ's decision in this case. However, the Supreme Court pointed out that §34A-2-420 of the Utah Workers' Compensation Act grants the Labor Commission



“continuing jurisdiction” over workers' compensation claims and that this continuing jurisdiction is broad enough to address the same functions as Rule 60 addresses for the District Courts. The Supreme Court remanded the Frito/Clausing dispute for the Labor Commission to consider whether to use its continuing jurisdiction to correct the disputed compensation award.

***Merrill v. Labor Commission*, 2009 UT 74, December 4,**

2009. On April 24, 2009, the Utah Supreme Court issued its

first decision in this matter and declared unconstitutional the Utah Workers' Compensation Act's offset of social security retirement benefits against injured workers' permanent total disability compensation. In this recently-issued second decision, the Supreme Court addressed the right of some injured workers' to recoup the amount of such offsets that previously had been deducted from their disability compensation. In summary, the Supreme Court held that injured workers who are deceased, whose claims are closed, or who previously negotiated a settlement are not entitled to repayment. All other injured workers who have had their permanent total disability compensation reduced due to the unconstitutional social security offset are entitled to repayment of the offset amounts.



Scott M. Matheson Court House—Salt Lake City, Utah

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.



R610-3 Utah Antidiscrimination and Labor	Payment of Wages. Would allow payment of wages by use of "paycards."	Approved by the Antidiscrimination & Labor Advisory Council, discussed at public hearing and published in <i>Utah Bulletin</i> . The Commission plans to make this effective February 22, 2010.
R612-2 Industrial Accidents	Premium Assessments. Sets workers' compensation insurance premium assessment rates by reducing the Uninsured Employers Fund from .25% to .05% and the Employers' Reinsurance Fund from 5% to 3.5%	Approved by Workers' Compensation Advisory Council, discussed at public hearing and published in <i>Utah Bulletin</i> . Effective January 1, 2010.
612-13 Industrial Accidents	Procedures for assessing failure to report penalty. Designates first step of assessment process as "informal"; second step as "formal."	Approved by Workers' Compensation Advisory Council, discussed at public hearing and published in <i>Utah Bulletin</i> . Effective January 21, 2010.
R614-2 Occupational Safety and Health	Drilling Industry. Conforms Utah standards for the drilling industry to federal standards by requiring fall protection at heights of more than 4 feet.	Discussed at public hearing and published in <i>Utah Bulletin</i> . Effective December 8, 2009.
R614-7-1 Occupational Safety and Health	Roofing, Tar-Asphalt. Removes obsolete Utah-specific rules that have been supplanted by federal standards.	Discussed at public hearing and published in <i>Utah Bulletin</i> . Can be effective February 22, 2010.
R616-4 Boiler, Elevator and Coal Mine Safety	Safety Codes & Rules for Boilers and Pressure Vessels. Incorporates updated versions of ASME and NFPA boiler and pressure vessel codes.	Discussed at public hearing. To be published in <i>Utah Bulletin</i> .
R616-4 Boiler, Elevator and Coal Mine Safety	Coal Mine Safety. Defines terms and sets procedures for the Utah Office of Coal Mine Safety to examine provisions for health and safety in coal mines and respond to any unsafe conditions. Also sets standards for reporting coal mine accidents and establishes requirements for coal mine operators to annually review emergency response plans.	Approved by Coal Mine Safety Technical Advisory Council and discussed at public hearing. To be published in <i>Utah Bulletin</i> .

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Job Analysis Hazards

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them closer to the work zone to minimize lifting. Ideally, place them at waist height or on an adjustable platform or pallet. Train workers not to twist while lifting, and reconfigure work stations to minimize twisting during lifts.

An effective JHA involves employers, supervisors, foremen, and the employees doing that particular job. If your employees are performing complex, or many different processes, professional assistance may be required. One assistance program that is available to small businesses working in high hazard industries is the Utah OSHA Consultation Program. A highly trained OSHA Consultant will come to your workplace and assist you in preparing a JHA for your company. This service is at no-cost, with no citations or penalties. For more information, please call Utah OSHA Consultation at 801-530-6855. More information on the Utah OSHA Consultation Program can be found on our website at <http://laborcommission.utah.gov/UOSH>. A downloadable booklet on Job Hazard Analysis can be found at: <http://www.osha.gov/Publications/osha3071.html>



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