



ON-THE-JOB

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The Fair Housing Act and Victims of Domestic Violence

By Daniel Singer, Fair Housing Manager

During the summers of 2005 and 2006 I worked in the domestic violence unit of the Brooklyn District Attorney 's office. The bulk of my time of my time at work was spent working with victims of domestic violence. I would encourage them to get counseling, help them find community aid, and encourage them to testify against their alleged abuser. However, I was shocked at the number of individuals that would refuse to testify against their attacker. I had read official police reports that described the brutal treatment these victims had experienced at the hands of a loved one, and I could not understand why they would not speak out against their treatment. The reasons for a victim of domestic violence refusing to testify against their attacker are complex and varied. But, one of the reasons that I sometimes heard from these individuals was, "My landlord doesn 't like the trouble that this has caused. I just want this to be over with. "

A housing provider is certainly justified in desiring to protect his or her property and working to ensure that tenants are safe by forbidding criminal activity on their property.

Typically, a landlord is legally allowed to evict someone who has committed a crime on their premises. Yet, in many cases, victims of domestic violence share a home or apartment with their attacker. This often results in victims of domestic violence being victimized twice – they

Statistically, 95% of domestic violence victims are women

are first faced with cruelty at the hands of an abuser, which is quickly followed by eviction from housing or homelessness as a result of fleeing their attacker.

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. . .However, courts across the country have begun to address the plight of domestic violence victims as it relates to these victims' fair housing rights. Both the Utah and Federal Fair Housing Acts prohibit discrimination based upon gender. Since the overwhelming majority of domestic violence victims are women, poli-



cies that have a negative impact on domestic violence victims have been found to have a disparate impact on women. For example, if a landlord has a policy of not renting to domestic violence victims, and 95% of domestic violence victims are women, then that pol-

icy will make it much harder for women to rent there than men.

Domestic violence victims can also be discriminated against based on sex due to the gender stereotypes ascribed to battered women. Common stereotypes include the misbegotten idea that domestic violence victims cause their own abuse and could end the abuse if they so desired. Basing a victim's eviction or treatment on those stereotypes, therefore, would be sex discrimination. For example, a landlord that evicts a battered woman because her ex-husband reenters and destroys the apartment, but does not evict a tenant whose apartment was destroyed by an unknown robber, could be accused of sex discrimination.

Recently, courts in Michigan, Colorado, Vermont, and Pennsylvania have found that violations of the fair housing act occurred when housing providers had a policy of not renting to domestic violence victims. However, landlords can avoid running afoul of fair housing law if they have policies in place that forbid criminal activity, without punishing its victims. Housing providers should ensure that they are treating victims of domestic violence the same way that they treat victims of other criminal activity. Landlords should not assume that a past victim of domestic violence will be a future victim of crime and therefore deny them housing.

For more information, or to report housing discrimination or housing discrimination against victims of domestic violence, contact the Fair Housing Unit of the Utah Antidiscrimination and Labor Division at 801-530-6800 or visit us on the web at:

www.laborcommission.utah.gov

Resources for victims of Domestic Violence:

State wide resources and information for victims of domestic violence:

<http://www.aardvarc.org/dv/states/utdv.shtml>

The link to the YWCA

www.ywca.org

Legal Resources & Domestic Violence:

www.utahlegalservices.org

Domestic Violence Shelters:

www.utahbar.org/bars/umba/assets/utah_domestic_violence_shelters.pdf

State Office on Domestic and Sexual Violence.

<http://nomoresecrets.utah.gov/>

THE ANTI-DISCRIMINATION DIVISION & THE MEDIATION PROCESS

By Heather Gunnarson,
UALD Division Director

Two sessions ago, the legislature ordered a performance audit of the Utah Antidiscrimination & Labor Division, a review that took approximately 6 months and was completed in late 2009. The Division worked closely with members of the Legislative Auditor General's Office, and was very interested to hear their results, which were made public in January 2010.

The audit made several suggestions on how to streamline the Division's case processing, including making fundamental changes to the procedures by which the Division mediates employment cases. Specifically, the auditors suggested that the Division adopt an "opt-in" process, as opposed to an "opt-out" one. Under the old business model, every employment discrimination claim was automatically scheduled for mediation, and the parties then had the option of attending or not. Under the new model, the cases are instead immediately assigned to an investigator; the Division lets the parties know about its mediation program; but only if both parties agree is a mediation scheduled.

With the end of the federal fiscal year, the Division has been examining the mediation changes suggested by the legislative audit, to determine whether those changes have led to greater efficiencies, more closures, etc. We found that although the Division is now conducting only about 35% as many mediations as it did during the same period last year,

The mediations being conducted now are 38% successful, as compared to a 4 year average of only 13%. Further, the Division closed 49 cases



through mediation since adopting the auditors' suggested changes, which is the same number it closed in 2008 and only 3 fewer than last year.

Finally, for the last 4 years, 38% of all scheduled mediations had to be canceled because a party declined to attend, as opposed to only 7% this year. In other words, it appears that the audit's suggested changes are a more efficient process, and will be implemented permanently. The Division is grateful for the suggestions made by Legislative Auditor General's Office, and for the opportunity the audit provided to increase its productivity and efficiency.

Overview of Assessment Rates for Workers' Compensation Related Special Funds

By Ron Dressler,
Industrial Accidents Division Director

Certain parts of Utah's workers' compensation system are funded by assessments on workers' compensation insurance premiums paid by employers and by similar assessments paid by self-insured employers. These premium assessment rates are set by the Labor Commission with the help and guidance of the Workers' Compensation Advisory Council and fund four specific separate programs. These programs are established by statute and are related to workers' compensation coverage, division funding, and workplace safety. The assessment rates for two of these programs—the Employers Reinsurance Fund and Uninsured Employers Fund—are set each year within a rate range that is established by statute. The assessment rates for the remaining two programs—the Workplace Safety Restricted Account and the Industrial Accidents Restricted Account—are determined solely by statute.

The Employers' Reinsurance Fund (ERF), formerly known as the Second Injury Fund

provides workers' compensation benefits promptly and accurately to eligible disabled injured workers and their survivors from industrial accidents or occupational disease occurring on or before June 30th, 1994. Benefits include indemnification of compensation typically in the form of

monthly benefit checks as well as coverage of medical expenses. The current maximum assessment rate allowed by statute on workers' compensation premiums for calendar year 2011 is 3.00%. The actual assessment rate for 2011 will be 3.00% which is a decrease from last year's rate of 3.50%.

The Uninsured Employers' Fund (UEF) was established in 1994 to provide workers' compensation benefits

promptly to eligible injured workers. Eligible injured workers' are defined as those who are injured on the job after June 30th, 1994 and whose employers did not maintain statutorily required workers compensation insurance.



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APPELATE DECISIONS

The Utah Court of Appeals has recently issued three decisions—two published, one unpublished—in Labor Commission cases. The Court of Appeals' decisions are summarized below. Their full text is available at:

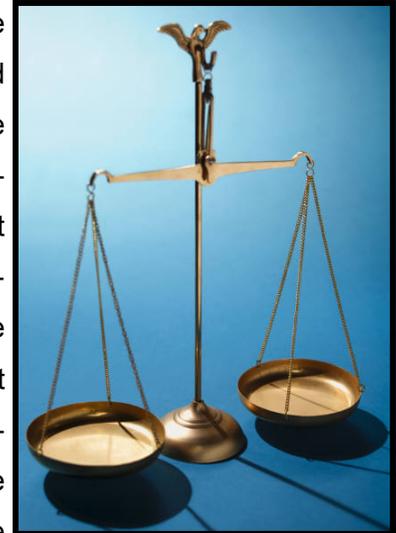
www.utcourts.gov/courts/appell/.

Resort Retainers and Zenith Insurance v. Labor Commission and Donna Jones, (2010 UT App 229, issued August 19, 2010). Pursuant to the Utah Workers' Compensation Act, Ms. Jones sought payment for back surgery and temporary disability compensation for a work injury at Resort Retainers. Resort Retainers submitted medical opinion that the surgery was not necessary; Ms. Jones submitted her surgeon's opinion that it was necessary. The ALJ referred this dispute to an impartial medical panel. The panel concluded that surgery was necessary.

However, in the interval between the ALJ sending the case to the medical panel and the panel issuing its report, Resort Retainers contacted Ms. Jones' surgeon and provided him with additional information, which prompted the surgeon to reverse his recommendation for surgery. The ALJ concluded that the surgeon's new opinion dispelled the medical controversy that had prompted appointment of the medical panel in the first place. On that basis, the ALJ rejected the panel's report and denied Ms. Jones' request for surgery.

Ms. Jones appealed the ALJ's decision. The Commission ruled that the medical panel's

report should have been considered along with all the other medical evidence. On that basis, the Commission set aside the ALJ's first decision and remanded the case to the ALJ. The



ALJ then augmented the record by accepting all the medical evidence, including the surgeon's new opinion, the panel's original report, and a supplemental report from the panel. Based on all this evidence, the ALJ concluded that surgery was necessary.

Resort Retainers asked the Commission to review the ALJ's second decision. The Commission affirmed the ALJ's decision and Resort Retainers then filed a petition for review with the Utah Court of Appeals in which Resort Retainers challenged the manner in which the Commission dealt with the timeliness and admissibility of various medical reports. Resort Retainers also challenged the Commission's decision to consider the medical panel's opinion, even after Ms. Jones' surgeon had withdrawn the recommendation for surgery that prompted appointment of the panel in the first place.

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The Court of Appeals rejected each of Resort Retailers' arguments, either because: 1) the arguments had not been raised before the Commission; 2) the Commission's actions were reasonable; or 3) because the ALJ and Commission's factual determinations were supported by substantial evidence.

Mecham v. Labor Commission, Scott's Roustabout Service, Travelers Insurance Co. and Employers Reinsurance Fund, (2010 UT. App. 283; issued October 15, 2010.) Thomas Keller suffered

severe burns in a workplace accident in 1975. In 2000, Mr. Keller filed a claim for permanent total disability compensation for the 1975 accident. Mr. Keller died in September 2002, before any hearing was held on his claim. In October 2002, an ALJ dismissed Mr. Keller's claim.

In April 2005, Ms. Mecham, the personal representative of Mr. Keller's estate, filed a new claim on behalf of the estate seeking permanent total disability compensation

from the date when Mr. Keller reached stability from his work injuries and continuing until the date of his death in 2002—a period of approximately 24 years. The ALJ dismissed Ms. Mecham's claim and the Commission affirmed that dismissal. Ms. Mecham then petitioned for review by the Utah Court of Appeals.

The Court of Appeals noted that, under the law in effect until 2003, a worker's death termi-

nated any disability claim the worker might have had unless the claim had been reduced to judgment before the worker's death. In 2003, the Utah Legislature amended this rule in order to allow a worker's personal representative to prosecute the worker's claim for compensation. The Court of Appeals ruled that this case should be decided under the law in effect prior to 2003. Consequently, Mr. Keller's claim for permanent total disability compensation expired with his death in 2002.

Finally, in *Minor v. Labor Commission, (unpublished memorandum decision issued August 12, 2010; 2010 UT App 223)*, the Court of Appeals



summarily disposed of Mr. Minor's petition for review of a decision by the Labor Commission's Appeals Board. The Court of Appeals noted that Mr. Minor was required to file his petition for review no later than 30 days after the date of the Appeals Board's decision. Because Mr. Minor did not meet this 30-day filing deadline, the Court of Appeals lacked jurisdiction to consider the merits of Mr. Minor's petition for review.

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-

<p>R614-1-4 Occupational Safety and Health</p>	<p>Incorporation of federal standards—hexavalent chromium. Revises notification requirements in the exposure- determination provisions of existing hexavalent chromium standards.</p>	<p>Final on October 22, 2010</p>
<p>R616-4 Boiler, Elevator and Coal Mine Safety</p>	<p>Safety Codes & Rules for Boilers and Pressure Vessels. Establishes procedures and standards pursuant to § 34A-7-10 to authorize qualified individuals to inspect boilers and pressure vessels as “deputy inspectors,” and to revoke such authority when appropriate.</p>	<p>Final on October 22, 2010</p>
<p>R616-2-8 Boiler, Elevator and Coal Mine Safety</p>	<p>Inspection of Boilers and Pressure Vessels. Clarifies authority of Division inspectors to enter property where boilers and pressure vessels are to be inspected. Also addresses the authority of deputy inspectors to enter such property.</p>	<p>Final on October 22, 2010</p>
<p>Rule 612-2-5 Industrial Accidents</p>	<p>Medical Fee Guidelines. Adopts the 2010 Resource-Based Relative Value Schedule (RBRVS), the 2010 American Medical Association Current Procedural Terminology (CPT) coding standards, and the 2011 Utah Labor Commission Medical Fee Guidelines.</p>	<p>Effective November 22, 2010</p>
<p>Rule 616-3-3 Boiler, Elevator and Coal Mine Safety</p>	<p>Elevator Safety Codes. Adopts ASME A17.6-2010, Establishes the standard for elevator suspension, compensation, and governor systems.</p>	<p>Effective November 22, 2010</p>
<p>R612-4-2 Industrial Accidents</p>	<p>Premium Rates for Uninsured Employer’s Fund and Employer’s Reinsurance Fund. For calendar year 2011, the proposed amendment leaves the workers’ compensation premium assessment used to fund the Uninsured Employers Fund at .05%. The amendment reduces the assessment used to fund the Employers’ Reinsurance Fund from 3.5% to 3.0%.</p>	<p>Published in Utah Bulletin November 1, 2010. To take effect January 1, 2011.</p>
<p>R614 -4-1 Occupational Safety and Health</p>	<p>Incorporation of federal standards (Cranes and Derricks). Incorporates federal standards regarding industry work practices in the use of construction cranes and derricks.</p>	<p>To be published in Utah Bulletin November 15, 2010.</p>

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Overview of Assessment Rates. . .**

As with ERF benefits include indemnification of compensation and medical expenses. In addition to assessments the UEF is also funded through penalties against non-compliant employers as well as applicable reimbursements from employers who have had money paid by UEF to assist their injured employees. The maximum assessment rate allowed by statute on workers' compensation premiums is 0.50%. The actual assessment rate for 2011 will be 0.05% the same as last year.

The Workplace Safety Restricted Account funds are used to support or improve safety consultation services and programs. The statutorily set rate for this fund is .25%. The Industrial Accidents Restricted Account is used to fund the Division of Industrial Accidents



and the Adjudication Division. The statutorily set rate for this fund is .50%.

The total combined assessment rate for the four programs in 2011 is 3.8%. This is a reduction from last years combined assessment rate of 4.3%.

As the Labor Commission and Advisory Council continue to work towards fully funding the ERF and keeping the UEF appropriately funded these

rates are continually subject to change. However, while considering and balancing the needs of the employers, the carriers, and the responsibilities of the four funds, the Labor Commission and Advisory Council are pleased to be able to offer a reduction in rates for 2011 particularly in light of continuing uncertain economic times.

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