

ON-THE-JOB

Q U A R T E R L Y N E W S L E T T E R



EDITOR-IN-CHIEF | *Sherrie M. Hayashi*

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ACHIEVING SAFETY IN UTAH'S WORKPLACES AND FAIRNESS IN EMPLOYMENT AND HOUSING



A word from the Commissioner

The Labor Commission is now open Monday through Friday 8 a.m. to 5 p.m. at all three locations in Salt Lake City, Price (Coal Mine Safety and Certification) and Parowan (Adjudication.)

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Our Office Hours are now Monday through Friday 8-5

Employee Misclassification

Compliance and education efforts - 11 state agency leaders sign memorandums of understanding

By: **Sherrie Hayashi**, *Commissioner*

On September 19, 2011, I had an opportunity to travel to Washington D.C. to meet with the U.S. Secretary of Labor, Hilda Solis and other state Labor Commissioners. The US Dept. of Labor, Wage & Hour Division hosted a ceremony where agreements were signed with the Utah Labor Commission, eight other states and the Internal Revenue Service, to share information in our efforts to address the issue of misclassification of workers who should be classified as employees. Two other states will also be signing similar memorandums of understanding.



Misclassifying workers allows companies to avoid paying workers compensation insurance, unemployment insurance, and state and federal taxes. It also creates a mechanism where workers may not be protected by laws that under normal circumstances protect workers, such as occupational safety and health laws, minimum wage and overtime laws, and antidiscrimination laws. It also creates an unfair economic disadvantage for those employers who strive to comply with labor laws, but cannot compete with companies who benefit from misclassifying their employees in order to avoid paying taxes and worker's compensation premiums.

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Electronic Data Interchange (EDI)

By: **Tonya Gallegos**, Deputy Director of Industrial Accidents Division



The Utah Labor Commission's Division of Industrial Accidents is very excited with the continuing progress we have been making during the implementation of our Electronic Data Interchange ("EDI") system. The new EDI will allow insurance carriers or claim administrators to file the First Report of Injury forms electronically instead of manually. This year has been a successful year so far, in completing the necessary steps in order to move toward our rollout target date.

We have contracted with Mitchell International, Inc. as our internal testing partner, and they have been working diligently in testing our systems. We have also approved all four of the EDI vendors who have applied for authorization to offer their services to our trading partners (insurance carriers and claims administrators). The vendors will be the clearinghouse for the trading partners and include Mitchell International, Inc., Ebix, Inc., HealthTech, Inc., and Insurance Services Offices, Inc.

The Division of Industrial Accidents has held live and webinar EDI overview meetings, to provide our stakeholders and trading partners with opportunities to learn about Utah's EDI implementation plan. A recorded session can be viewed by going to: <https://utlabcom.ilinc.com/register/bbrsjmr>. In addition, in partnership with IAIABC we have created Reporting and Response training specific to Utah's claim EDI expectations, which are available at: www.iaiaabc.org/e-vents

Utah's entry into EDI will begin with First Report of Injury (FROI) reports, which constitutes the current paper Form 122, Form 089 and Form 441. Claims EDI will roll out to our trading partners beginning January 1, 2012 and will be completed by May 31, 2012. The second phase will be the addition of Subsequent Report of Injury (SROI) reports that will follow suit in 2013.

Please check our EDI implementation web page for updates, documents and upcoming training: <http://www.laborcommission.utah.gov/IndustrialAccidents/EDIImplementation.html>

And if you haven't already, consider sending an email to claimsed@utah.gov to request inclusion in EDI updates.

EDI will streamline the form submission process as well as improve efficiencies within the reporting requirements required from our partners. The advantages of moving toward an EDI system specifically include time and cost savings as well as improved accuracy.

The new EDI will allow insurance carriers or claim administrators to file the First Report of Injury form electronically instead of manually.



Utah Labor Commission Workers' Compensation Conference

By: **Ron Dressler**, *Industrial Accidents Division Director*

On September 29th, the Division of Industrial Accidents hosted the Labor Commission's 9th Workers' Compensation Educational Conference. The conference took place at the Sheraton Hotel in downtown Salt Lake City and was attended by 190 participants representing adjusters, attorneys, medical providers, and insurance carrier representatives. The morning session consisted of a very informative key note address by Dr. James Talmage on the value of work and the emotional and physiological benefits seen by those who can return to work soon after an injury. The information was not only valuable to adjusters, but to medical providers as well when considering patient diagnosis and work restrictions. Also in the morning we had an "open mike" panel discussion consisting of our very own Alan Hennebold, Deputy Commissioner and General Counsel and Presiding Law Judge Richard La Jeunesse as well as Jill Christensen, Senior Claims Adjuster from the Workers' Compensation Fund. The panel was well received as the audience asked many questions on legal, procedural and adjusting matters. In fact, this session would have proceeded much longer if not having to break for lunch.

The afternoon agenda consisted of two breakout sessions, one directed toward administrative topics and the other medical. The administrative session consisted of a Q&A on EDI, the Division's electronic reporting initiative, by our Deputy Director, Tonya Gallegos; the effect of lifetime medical coverage on workers' compensation claims by Salt Lake County's Risk Manager, Jeff Rowley; the updated Restorative Services forms by Dell Felix, PT and Gordon McClean, DC; and a review of the updated Medical Fee Guidelines and 2012 Impairment guidelines by our Medical Director, Dr. Alan Colledge. The medical breakout session covered the treatment of injured workers on chronic pain medications by Dr. Mark Passey; the diagnosis and management of closed head injuries by Dr. Kirk Leininger; the treatment of injured workers' spine injuries by Dr. Steve Warner; and an overview of treating injured workers generally by Dr. William Brandt.

Lastly, I had the pleasure of celebrating with the audience the centennial of workers' compensation in the United States by sharing a brief history of "worker protection" programs through history including the programs of Chancellor Otto Von Bismark of Germany, which many of the elements our current programs adopted. Most were surprised to hear that the first state that adopted a workers' compensation program and have it upheld by the state's courts was Wisconsin, 100 years ago this year. I then provided an update on many of the new programs and updates to processes that we are implementing to improve our own present day workers' compensation program. With the amount of participation and positive feedback the conference was a big success.

The conference was attended by 190 participants representing adjusters, attorneys, medical providers, and insurance carrier representatives.





Photo provided by ksl.com

The conference aimed to instruct newly arrived refugees from Africa on issues such as workplace safety, employment and housing discrimination.



Photo provided by ksl.com



Photo provided by ksl.com

Utah Labor Commission & Salt Lake City Mayor's Office collaborate to educate newly arrived refugees to Utah

By: **Dan Singer**, Fair Housing Manager, UALD

On August 27, I had the opportunity to speak with a group of refugees from various African nations that recently arrived in Utah regarding their rights as tenants and employees. The conference, sponsored by a collaboration between the Utah Labor Commission, the Salt Lake City Mayor's Office and United Africans of Utah, aimed to instruct these individuals on issues such as workplace safety, employment and housing discrimination, and other basic civil rights that refugees are entitled to while living in the United States.

The Labor Commission has placed special time and emphasis on collaborations such the Mayor's Anti-Discrimination campaign in order to reach specially underserved communities in our efforts to inform refugees about employment and housing discrimination; and ensure that employees are paid what they are owed by their employer. Often due to cultural differences, many newly-arrived refugees are not aware that they are protected by State and Federal law from sexual harassment, disparate treatment, pregnancy discrimination, and a variety of other issues that face workers and tenants. Equally important is educating business owners on their rights as employers and particularly what they may expect of an employee, and their responsibilities in paying and treating employees fairly. Education and outreach activities are essential for educating all employees and employers in the State on their rights.

Another major obstacle that many individuals that have experienced discrimination or wage issues is that they do not know where to go to address the problem. A large portion of our outreach efforts focuses on the mission of the Utah Antidiscrimination and Labor Division, and the Labor Commission as a whole, including developing trust with these communities, so that these individuals know not only where to go to make a complaint, but also feel that our services are accessible without fear of persecution.

Before and after the presentation, I was able to speak with various news outlets about the Division's mission of investigating discrimination and wage issues, and educating the public on State and Federal law. After the Deseret Morning News and KSL did stories on the presentation, I have heard from various individuals that saw the coverage and have contacted us for more information.

The Utah Antidiscrimination and Labor Division remains committed to reaching out to all citizens of the state of Utah to educate on issues of discrimination and wage matters. We are proud of our mission and invite employers and employees with any questions to contact us at **801-530-6800**.



Continued from cover page

Employee Misclassification continued

Particularly in this difficult economy, the partnership between these agencies will ensure a unified approach to providing the necessary support for those businesses committed to abiding by the law, and will continue to enforce protections for workers to be treated fairly and to be safe in their work environment.

The Memorandum of Understanding with the U.S. Department of Labor enhances the State of Utah's existing work to address the misclassification of workers. During the 2011 legislative session, Sen. Karen Mayne sponsored SB11, creating the Workers Classification Coordinated Enforcement Council. The Council, led by the Labor Commission, is a cooperative effort between the Utah Tax Commission, the Office of the Attorney General, Department of Commerce, and the Department of Workforce Services/Unemployment Insurance Division.

New elevator and escalator codes due out next year

By: **Mike Pedersen**

Mike Pedersen, Chief Elevator Inspector for the state of Utah, attended the annual NAESAI conference in Portland, OR. As part of the conference, the Regulatory Authority Committee discussed upcoming new codes that will be out in 2013 - the ASME A17.1 Edition for Elevators and Escalators. Other items of interest at the conference were: training for school children and elderly people on how to ride elevators and escalators safely, and recognition of National Elevator and Escalator Safety Awareness Week on November 13th to increase public awareness of the safe and proper use of elevators, escalators and moving walkways. The goal is to reduce, through education and awareness, avoidable accidents. The elevator industry greatly contributes to the quality of life and can contribute to the safety of the public.





Appellate Decisions

Since our last newsletter, the Utah Court of Appeals has issued decisions in three Labor Commission cases. The Court's decisions are summarized below. Their full text is available at www.utcourts.gov/courts/appell/.

Blair v. Labor Commission, et al., (2011 UT App 244, issued July 29, 2011.) Blair injured his low back in 1999 and the workers' compensation insurance carrier paid medical expenses and disability compensation. Over the next several years, Blair sought occasional treatment for back problems. Then, in 2007, Blair's treating physicians took him off work and recommended surgery. However, the insurance carrier's medical consultant disagreed—in his view, surgery would not alleviate Blair's continuing low-back problems.

In light of these conflicting medical opinions, the ALJ referred the matter to an impartial medical panel. The panel concluded that Blair's treatment through June 9, 2000, was necessary to treat his work injury but that subsequent treatment was not related to the work injury. The panel also concluded that Blair's periods of disability in 2007 were not caused by the work injury. Relying on the panel's decision, the ALJ denied Blair's claim for additional benefits. The Commission affirmed the ALJ's decision. Blair then filed a petition for review with the Court of Appeals.

At the Court of Appeals, Blair argued that the insurance carrier had conceded that Blair's work accident caused his continuing back problems or, alternatively, had failed to raise causation as an affirmative defense. He also argued that the Commission had applied an incorrect legal standard in evaluating causation and had failed to provide the medical panel with a description of his continuing back problems. The Court rejected each of these arguments. However, the Court found merit to Blair's final argument—that the Commission had not addressed Blair's factual challenge to the medical panel's findings. The Court of Appeals remanded Blair's claim back to the Commission to correct that defect.

The two remaining appellate decisions highlight, once again, the critical importance of paying attention to filing deadlines. In **Belucci v. Labor Commission and Kimberly Clark, Inc.** (2011 UT App 287, issued August 25, 2011), the Court summarily dismissed Belucci's petition for review of a Commission decision because the petition wasn't timely filed with the Court. In **Rosenbaum v. Labor Commission et al.**, (2011 UT App 279, issued August 18, 2011), the Court summarily affirmed the Commission's dismissal of Rosenbaum's untimely request for Commission review of an administrative law judge's decision.



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.

Rule 612-2-5
Industrial Accidents

Medical Fee Guidelines. Proposed adoption of 2011 Resource-Based Relative Value Schedule (RBRVS), 2011 American Medical Association Current Procedural Terminology (CPT) coding standards, and the 2011 Utah Labor Commission Medical Fee Guidelines.

Discussed and approved at the July 13 meeting of the Workers' Compensation Advisory Council. Following a public hearing on September 27, they are to be published in the Utah Bulletin to allow additional comment.

Rule 608-1-17
UALD

Assistance Animals. Defines circumstances in which state and federal fair housing laws authorize an individual with a disability to possess an assistance animal as a reasonable accommodation; also addresses relationship of fair housing standards for service animals to standards found at 62A-5b-101 et seq. for use of service animals in public areas, common carriers, and similar locations.

Following a public hearing, initially published in the Utah Bulletin to allow additional comment; Commission is currently considering changes to proposed rule.

Rule 602-2-4
Adjudication

Attorneys' Fees in Workers' Compensation Cases. Increases the maximum fee for injured workers' attorneys in workers' compensation cases, to match the increase in benefit amounts over the last four years.

Discussed and approved by Workers' Compensation Advisory Council. Following a public hearing and publishing in the Utah Bulletin to allow additional comment, adopted on September 21, with an effective date of October 1.

Rule 600-3
Administration

Definitions Applicable to Construction Licensees. This rule defines terms and establishes procedures by which unincorporated entities licensed as construction companies can challenge the presumption that they are "employers" for purposes of payment of wages, employment discrimination, and occupational safety and health.

Following a public hearing and publishing in the Utah Bulletin to allow additional comment, adopted and effective on September 21.

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Rules Corner continued

Rule 600-2 Administration

Business hours. Implements H.B. 328, "Government Work Week," and Governor Herbert's directive to state agencies by setting the Utah Labor Commission's business hours from 8 a.m. to 5 p.m., Monday through Friday, excluding holidays. (NOTE: A corresponding 120-day (emergency) filing that is effective 09/06/2011 is under DAR No. 35125 in this issue, September 1, 2011, of the Bulletin.)

Effective September 6, pursuant to an emergency rule filing. Regular rule-making is underway and can become final on October 10.

Rule 616-2 Boiler, Elevator and Coal Mine Safety

Boiler and Pressure Vessel Rules. Incorporates by references the most recent versions of applicable sections of the American Society of Mechanical Engineers ("ASME") codes for construction of boilers; also adopts most current version of the National Boiler Board inspection code.

Effective August 22.

Look for our updated website at the end of October / early November
The web site is and will be utahlaborcommission.utah.gov



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