

# ON-THE-JOB

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



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



## A word from the Commissioner

As part of Governor Herbert's 2011 State of the State address, he directed all members of his cabinet to "...review existing business regulations and determine which should be kept, which should be modified, and which will be eliminated" in order to encourage a regulatory environment which both protects Utahns and does not hamstring business.

As part of this rule review process, the Labor Commission identified that most of its existing rules are appropriate exercises of rule making authority but that many rules can benefit from clarification and simplification while several others are no longer warranted. In all, the Commission identified 18 rules to amend, 4 to repeal, and 1 to add, and 1 needing possible statutory change. The Commission invites stakeholders to continue to participate in assuring a balanced regulatory environment that protects the health, safety and fairness for Utah's employees while allowing Utah's employers to conduct their business efficiently and effectively.

## Electronic Paycard Rule

### A win-win transaction for everyone

By: Brent Asay, Wage Claim Unit, UALD

"Win-Win" describes the mutually beneficial results that can come from the recent implementation of the pay card as another wage payment method that can be utilized by Utah employers. This new Utah Administrative Rule is governed by the pay card rule that was enacted by the Labor Commission on March 24, 2010 (*Utah Labor Rule 610-3-22*) which permits a private sector employer to load an employee's earned wages for a completed pay period onto a card similar to a bank debit card. The employee can then use it at a designated ATM machine on payday to withdraw wages earned in one transaction without being charged a fee.



Laurie Ryerson of the local company Conveyors & Equipment ("*Conveyors*") touted the "Win-Win" benefits of the pay card at Governor Gary Herbert's press conference that took place on December 6, 2011, at Conveyors' business facility, where Governor Herbert announced the results of a comprehensive review of all of Utah's business regulations. Ryerson stated:

*"Printing checks, getting them signed and distributed to employees is very challenging for most businesses unless they are a very small operation. Businesses are further challenged if they have employees that travel or work outside of the state in which the payroll is generated.*

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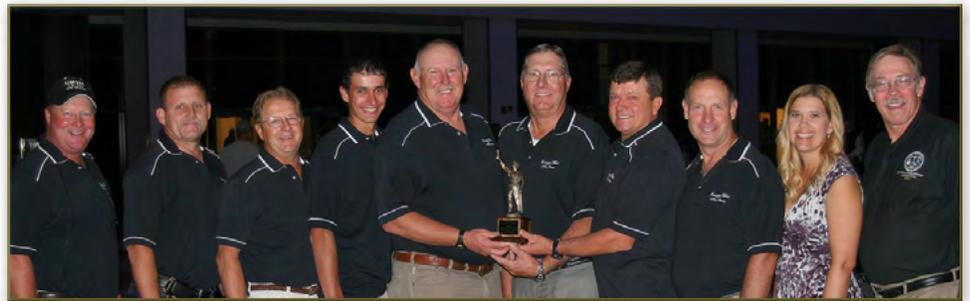
## National Mine Rescue Competition

By: **Debbie King**, *Labor Commission, Miner Certification Office*

In October 2011, Debbie King (*Miner Certification*) and Kent Houghton, Director of the State's Office of Coal Mine Safety (*OCMS*), had the opportunity to attend the National Mine Rescue Competition in Columbus, Ohio. This event is held every two years, and includes teams from all over the world that compete in Mine Rescue, First Aid, Bench and Pre-Shift. It also requires a staff of over 300 officials to judge, score, set up fields, guard lock-up facilities, tabulate and review score cards. Kent and Debbie were two of the many individuals who helped officiate for the competition.



Competing in mine rescue contests is critical to ensuring that our mine rescue teams have the sharpest skills and latest technologies.



**Pictured from left to right:** Kelly Duke, Bob Hill, Gary Christensen (*Captain*), Bret Tennant, Gary Boyd, Ray Guymon, Brad Timothy, Brad Reed, Debbie King and Kent Houghton (*Utah Labor Commission*).

Competing in mine rescue contests is critical to ensuring that our mine rescue teams have the sharpest skills and latest technologies. The Pre-Shift Examiners who identify and correct hazards before they cause an accident or injury, the Benchmen who ensure that rescue equipment is in good working condition and ready for use, and the First Aid specialists who treat injuries and perform vital medical treatment are all essential to saving lives and ensuring the safety of our miners.

This year was the 100-Year celebration of the National Mine Rescue Competition. The first competition was held in Pittsburgh, PA in 1911. During that event, there were a total of 4 Mine Rescue teams that participated in that competition.

In 2011, there were 102 Mine Rescue teams, 44 First Aid teams, 123 Bench participants and 110 Pre-Shift participants that competed. Of those, the state of Utah had 8 Mine Rescue teams, 5 First Aid teams, 4 Bench participants and 6 Pre-Shift participants.

First, second and third place trophies are awarded for each of the categories mentioned, and in addition, many of the individual States typically will award a trophy

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## National Mine Rescue Competition continued



to the highest placing team from their state. This year, the Utah Labor Commission's Office of Coal Mine Safety (OCMS) proudly presented a State Trophy for the first time in the history of the National Competition. We were honored to present the Utah State Trophy for Mine Rescue to: **Energy West Mining – Silver Team, from Huntington UT.**

Mine rescue teams are crucial to the safety of our miners here in Utah. Our mine rescue team members are comprised of a special breed of men and women who spend many hours and days refining their skills and expertise and are prepared to step up and put their own lives on the line for their fellow miners. We were grateful to be able to participate in such a significant event.

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## 2012 State Report Cards for Worker's Compensation Released by Work Loss Data Institute

According to a recent press release by the Work Loss Data Institute (WLDI), a database development Company focused on workplace health and productivity, ***“Utah performed the best of all the states...”*** Read an excerpt from their press release below:

**December 21, 2011 Encinitas, CA** – Work Loss Data Institute (WLDI) announces the release of its *2012 State Report Cards for Workers' Comp*, now with 10 years of data, which is used to track trends and give states a grade and tier ranking based on their performance from 2000-2009. Forty-three states are covered, plus Puerto Rico, Guam and the Virgin Islands.

WLDI's State Report Cards are based on data from OSHA Forms 300 and 200, which cover all OSHA recordable injuries and illnesses and provide the basis for rating state-by-state workers' compensation performance. The report cards help employers, insurers, TPA's, state governments and consultants answer the questions, "Who is doing well and why?"

Utah performed the best of all the states for 2009 and Arkansas and Minnesota came in a close second and third. All three states received a grade of A+ based on an average of their 2009 scores in the five categories above. West Virginia, New York, Hawaii, Wyoming and Kentucky received failing grades. This is New York's tenth consecutive year with an F grade.

A summary of each grade for all states is shown on a U.S. Map Showing Grades by State, located at: <http://www.worklossdata.com/SRC2012grades.htm>.

**For the full press release and more information:**  
[http://www.worklossdata.com/PR\\_SRC2012.htm](http://www.worklossdata.com/PR_SRC2012.htm)



The primary purpose of the Medical Committee is to be a resource for all the workers' compensation insurance medical issues that come before the Labor Commission.



## Workers' Compensation Medical Committee Update

By: **Dr. Alan Colledge**, *Industrial Accidents Division*

The Labor Commission has recently modified what once was known as the Medical Fee Committee to the more general Medical Committee. The primary purpose of the Medical Committee is to be a resource for all the workers' compensation insurance medical issues that come before the Labor Commission. This reformed committee will meet at least 2-3 times each year in an open meeting format to address issues as directed by the Labor Commission. The Committee's primary responsibility will still be the development and updating of the annual Labor Commission's Medical Fee Schedule that goes into effect on December 1 of each year.

**Other responsibilities of the Medical Committee may include but are not limited to:**

- Updating and improving Labor Commission forms
- Development of treatment guidelines
- Impairment guideline improvement
- Injured worker surveys
- Educational outreach
- Labor Commission seminars
- New projects as assigned

The Medical Committee also reports to the Workers' Compensation Advisory Council as necessary. The Committee is presided over by **Ron Dressler**, Labor Commission Industrial Accident Director and **Alan Colledge**, MD, Medical Director for the Industrial Accidents Division.

The Committee is made up of voluntary stake holders appointed by their professional organizations. They are asked to serve for a 3 year term. Current members of the committee include:

### **Orthopedic Representative-Utah State Orthopedic Society**

**Eric Vanderhooft MD**  
Orthopedist Surgeon

### **Initial Care Representative**

**Phil Jiricko MD MHA MS**  
Intermountain HealthCare Work Med

### **Self Insured**

**M. Jeff Rowley**  
Salt Lake City Corporation

### **Occupational Physician MD**

**Ed Holmes, MD**  
Chief Medical Consultant

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**Physiatrist**

Doug Shepherd, M.D.

**Physical Therapy Representative**

Dell Felix

**Chiropractic Representative**

Gordon McClean

**Nurse Practitioner Representative**

Deborah M. Judd, MSN, FNP-C  
Weber State University

**WCFU Representatives**

Roger Stuart, MD, Medical Director  
Workers Compensation Fund of Utah

**Private Insurer Representative**

Truman Child CEO  
American Liberty Insurance

**Injured Worker Legal Representative**

Dawn Atkins

**Employer Legal Representative**

Dori K. Petersen

**Professional Consultants Assistants**

Mari Ann Randall  
INGENIX

Melissa Fannesbeck  
INGENIX

Peg Howorth  
Workers Compensation Fund of Utah

Karine McOmie  
INGENIX

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## Electronic Paycard Rule continued

*Direct Deposit has been extremely helpful in accomplishing part of this task. However, there are some individuals that cannot or will not open a checking or savings account, and therefore cannot be paid by direct deposit. The Paycard Rule is the best practical solution to paying employees that fit into that category."*

Alongside the traditional methods of wage payment by check or direct deposit, the pay card method is another option for the employer, providing the added benefits of paperless efficiency and administrative time-savings. On the employee side, it gives employees the ability to conveniently access their wages and pay stubs on payday. At the same time, it allows for electronic access of their pay stub and printing it without cost, with the protection that if such access is somehow disrupted the employer must provide a hard copy pay stub.

This new Administrative Rule is a prime example of the how the Labor Commission supports Utah businesses - by systematically reviewing the practicality of existing business regulations and upon evaluation, implementing better rules that assist employers to operate more efficiently and still comply with the law.

**Deseret News Article:** "Gov targets unnecessary business regulations"

[www.deseretnews.com/article/705395428/Gov-targets-unnecessary-business-regulations.html?s\\_cid=rss-30](http://www.deseretnews.com/article/705395428/Gov-targets-unnecessary-business-regulations.html?s_cid=rss-30)

**Salt Lake Tribune Article:** "Governor says Utah has too many rules"

[www.sltrib.com/sltrib/politics/53060908-90/business-changes-enacted-gov.html.csp](http://www.sltrib.com/sltrib/politics/53060908-90/business-changes-enacted-gov.html.csp)





# Appellate Decisions

During the final three months of 2011, the Utah Court of Appeals issued only one decision in a Labor Commission case. That decision is summarized below. The full text of the decision is available at [www.utcourts.gov/courts/appell/](http://www.utcourts.gov/courts/appell/).

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**Michele Hansen v. Labor Commission, Durham Care, and Uninsured Employers' Fund**, (2011 UT App 376, issued November 3, 2011). In this case, the Commission's decision considered the question of medical care necessary to treat Ms. Hansen's workplace injury. The Commission concluded that additional proceedings were necessary to develop "a current and complete evidentiary record regarding Ms. Hansen's need for medical care to treat her work injury." The Commission remanded Mrs. Hansen's case to an administrative law judge for that purpose.

Ms. Hansen asked the Utah Court of Appeals to review the Commission's decision. The Court declined to do so and, instead, dismissed Ms. Hansen's appeal, because she had not yet exhausted her administrative remedies before the Commission. In reaching this conclusion, the Court rejected Ms. Hansen's argument that the Commission had lacked authority to remand Ms. Hansen's case to the ALJ for additional proceedings.

**Note:** *Although the Court dismissed Ms. Hansen's appeal, the Court also expressed concern with the Commission's delay in taking action on Ms. Hansen's case. The Commission has made significant progress in addressing such delays; in particular, the Commission has reduced the number of cases waiting for decision by more than 70% and expects to completely eliminate the backlog within a few months.*



# 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 602-2-4**  
Adjudication

**Attorneys' Fees in Workers' Compensation Cases.**

Corrects typographical error to increase fee cap for attorneys in workers' compensation cases effective October 1, 2011, rather than 2012.

*Effective December 22, 2011.*

**R612-4**  
Industrial Accidents

**Premium Rates.** Extends existing premium assessment rates of 3.0% for the ERF and .05% for the UEF through the 2012 calendar year.

*Effective January 1, 2012.*

**R606-2**  
UALD

**Preemployment Inquiry Guide.** Repealed.

*Effective November 21, 2011.*

**R616-3-3**  
Boilers, Elevators  
and Coal Mine  
Safety

**Adoption of updated codes.** Proposal to adopt updated versions of national elevator and escalator engineering and safety codes.

*Under review by Division*

**R600-3**  
Administration

**Definitions Applicable to Construction Licensees.**

Pursuant to HB 303, allows unincorporated entities licensed as construction companies to challenge presumption that they are "employers" for purposes of the Utah Workers' Compensation Act.

*Effective December 8, 2011.*

**Rule 612-2-5**  
Industrial Accidents

**Medical Fee Guidelines.** Adopts 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.

*Effective Nov. 21, 2011.*

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## Rules Corner continued

### **Rule 608-1-17** UALD

**Assistance Animals.** Defines circumstances in which state and federal fair housing laws authorize an assistance animal as a reasonable accommodation; also addresses relationship of fair housing standards for service animals to standards for service animals in public areas, common carriers, etc.

*Effective Nov. 21, 2011.*

## Electronic Delivery of Documents in Adjudicative Proceedings

By: **Karla Rush**, *Adjudication Division*

During the past year, the Utah legislature adopted a bill that allows the Labor Commission's Adjudication Division to deliver documents electronically to the parties of adjudicated cases. All legal counsel who appear on behalf of a party before the Adjudication Division and all designated agents are required to file their electronic address with the Division to receive delivery of documents in adjudicative proceedings.

It was anticipated that this change would not only benefit the parties because of the efficiency of receiving documents from the Adjudication Division, but it would also result in substantial cost savings for the Commission. The Division purchased scanners to assist in the new process, and during the past quarter the Division has started implementing the changes.

Postage expenses for the Division have decreased dramatically. During FY2011, the average monthly expense incurred for postage was \$2,039. During the three months since implementation, the average has dropped to \$617 per month. Also, the ability to e-mail documents will also result in savings in paper usage, envelope expense, and printing costs.



### **Utah Labor Commission**

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Office Hours | Monday through Friday 8 to 5

### **The Utah Labor Commission's office hours:**

**Monday through Friday 8-5.**

Closed for upcoming holidays:

Dr Martin Luther King Day  
(third Monday in January)

Washington and Lincoln Day  
(third Monday in February)