

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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A C H I E V I N G S A F E T Y I N U T A H ' S W O R K P L A C E S A N D F A I R N E S S I N E M P L O Y M E N T A N D H O U S I N G



Labor Commission Accomplishments A Year End Review

By: **Commissioner Sherrie Hayashi**

The Labor Commission has faced some interesting challenges and opportunities to re-assess the way we conduct business; among these are increasing demands to provide services with fewer resources balanced against, rightfully, a greater public demand for accountability, transparency, and efficiency. Our staff have met these challenges with professionalism and dedication, but most importantly, with an unwavering commitment to protect the safety in Utah's workplaces, and fairness in employment and housing.

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Reflecting on key accomplishments for 2011 | 2012:

- Utah's workers compensation system was recognized by the Work Loss Data Institute as being one of the best programs among all the states, receiving an "A" rating.
- The Employment Discrimination Unit dramatically reduced the number of active cases over 450 days old. In FY 2010, 11% of its cases were older than 450 days. As of July 1, 2011, this number was reduced to 3%. Similarly, the Fair Housing Unit reduced the average age of its cases by 18% in FY 2011.
- The Boiler, Elevator and Coal Mine Safety Division performed over 22,000 inspections.
- Utah Occupational Safety and Health (Utah OSHA) evaluated safety and health conditions at work sites employing over 165,000 employees.
- Utah's Appellate Courts completed review of Labor Commission decisions in 11 separate appeals. The courts affirmed the Commission's decisions in 9 of those cases.
- The Labor Commission awarded \$681,000 in grants to 23 organizations for workplace safety programs.

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Year End Review continued

- The Labor Commission won in TWO categories for the Governor's Award for Excellence: **Innovation and Efficiency** – awarded to the Adjudication Division & DTS Team; and **Outstanding Utah Public Service Award** – awarded to Alan Hennebold, Deputy Commissioner.

As we look towards our goals and objectives for next year, our priorities are focused on using technology to continue to improve efficiency and timeliness, allowing for a stronger focus on customer service and quality. I would like to invite you to read more about our accomplishments in our 2012 Annual Report at www.laborcommission.utah.gov

Warmest Regards,

Employers Against Domestic Violence

By Jennifer Campbell

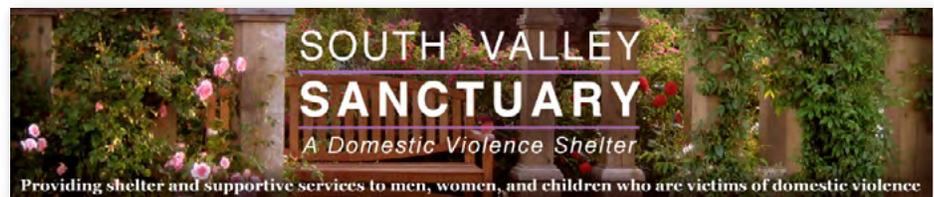
Utah Employers Against Domestic Violence is one of the many programs provided by South Valley Sanctuary. The Sanctuary is a nonprofit domestic violence shelter that builds awareness of domestic violence by educating local businesses to recognize warning signs, respond appropriately, and safely refer its employees to the appropriate resources for help.

These are some statistics that indicate the importance of the program:

- 1 in 4 women and 1 in 9 men are victims of domestic violence.
- Every 15 seconds a woman is physically assaulted.
- Domestic violence costs American employers \$728 million in productivity each year.
- About 8 million days of work are missed each year due to domestic violence.
- 74% of employed battered women are harassed by their partner at work.

Source: Domestic Violence Survivors at Work: How Perpetrators Impact Employment, by Maine Department of Labor and Family Crisis Services

The mission of Utah Employers Against Domestic Violence is to assist companies in creating a safer and more productive work environment that is intolerant of domestic violence, as well as providing support for victims and their families. Their objective is to raise awareness for employers about the financial and psychological problems domestic violence creates in the workplace.



Through a Workplace Safety Grant from the Utah Labor Commission, Utah Employers Against Domestic Violence is able to assess each individual company's needs, cultures and goals. They then work with the organization to develop training programs for staff and management that will focus on the dynamics of domestic violence. The trainings currently available are:

- "HR: How to Respond"
- "Supervisors: Recognize and Refer"
- "Employees: Domestic Violence Dynamics"

They also offer suggestions for domestic violence policies for companies to incorporate in their Policies and Procedures manuals.

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COMPONENTS OF THE PROGRAM

Utah Employers Against Domestic Violence has 3 major components that it offers to employers:

1. Awareness:

- a. Provides posters, flyers, brochures, community resources, etc. that are designed for display in a company's offices. Materials are provided in Spanish and English.

2. Policy Development:

- a. Provides suggested policies and responses for companies to follow if an employee is a victim or perpetrator of domestic violence.

3. Education:

- a. Provides training to company supervisors on the effects of domestic violence on their employees. This training prepares them to respond properly to any violent or potentially violent situation, how to approach a victim or a perpetrator, and where to refer their employees for assistance.
- b. Provides general awareness training to company employees so that they will be able to recognize domestic violence in their own life or the lives of others.

If you are interested in scheduling trainings or learning more about these programs, please contact Jennifer Campbell, Associate Director of South Valley Sanctuary at: jenc@southvalleysanctuary.com or 801.255.1095 ext 207.



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Criminal Prosecution for Non-Payment of Wages

The Wage Claim Unit of the Labor Commission is proud of its contribution in the prosecution of a recent wage claim case that will be remembered as the first of its kind. According to the Utah Attorney General's Office, the case is significant because it represents the first time a non-payment of wages situation had previously been criminally prosecuted in the state, and it involved more than \$2 million in unpaid wages.



In 2009, ninety-five employees filed wage claims with the Utah Labor Commission against David Rushton and his company Foottube (*aka Sensory Sweeps*). After conducting an extensive investigation of the claims, the Wage Claim Unit referred the matter to the Utah Attorney General's Office for prosecution. The successful collaboration between these two agencies was a determining factor in Rushton's sentencing. Rushton is now serving a jail sentence, and he has received stiff criminal penalties in addition to being ordered to pay restitution.

Jennifer Gren, Wage Claim Unit lead investigator on the Rushton case, summed it up well: "We are very glad for the recent media attention publicizing the efforts of the Wage Claim Unit and the work of the Utah Attorney General's Office in successfully prosecuting David Rushton. This sends a clear message to Utah employers that they must pay employees their earned wages as the law requires."

During economically difficult times, employers may find themselves in the middle of a wage dispute. It's particularly important for them to be aware of their legal obligations to their employees and to understand basic wage laws, which include:

- The Utah minimum wage is \$7.25 per hour.
- If an employer terminates the employment of an employee, all wages must be paid within 24 hours.
- If the employee does not have a written contract for a definite period and the employee resigns, the wages must be paid on the next regular payday.
- Minors under the age of 18 must be paid the minimum wage, although employers may pay them \$4.25 during the first 90 days of their employment as a training wage.
- Tipped employees (adults and minors) may be paid \$2.13 per hour so long as the tips they earn bring them up to at least the minimum wage.

The Utah Payment of Wage and Minimum Wage Acts outline the responsibilities employers have regarding paydays, final paychecks, electronic payroll deposits, paying at least the minimum wage, lawful deductions and wages disputes. For more information we invite you to visit our website www.laborcommission.utah.gov.



Photo courtesy of Salt Lake Tribune



Preventing Backover Incidents in Construction

By **Louis Silva**, Utah OSHA Division Director

The leading cause of fatalities for workers in United States work zones is being run over or backed over by vehicles. A backover incident occurs when a backing vehicle strikes a worker who is standing, walking, or kneeling behind the vehicle. While we often worry about construction workers being killed by motorists, road workers working behind the barriers in work zones are at equal risk of being killed by construction vehicles due to the vehicles' large "blind spots." These deaths are completely preventable.

The leading cause of fatalities for workers in United States work zones is being run over or backed over by vehicles.

According to the Bureau of Labor Statistics, over 70 workers were fatally injured in the United States from backover incidents in 2011. A typical example: an employee was working inside a work zone wearing his reflective safety vest. A dump truck that was operating in the work zone had a working audible back up alarm and operating lights. The dump truck backed up, and struck the employee who was standing in the dump truck's blind spot with the rear passenger-side wheels. The employee was fatally injured.



How do backover incidents occur?

Backover accidents can happen for a variety of reasons. Drivers may not be able to see a worker in their blind spot, workers may not hear backup alarms because of other worksite noises or because the alarms are not functioning. A spotter assisting one truck may not see another truck behind him. Workers riding on vehicles may fall off and get backed over. Drivers may assume that the area is clear and not look in the direction of travel. Sometimes, it is unclear why a worker was in the path of a backing vehicle. A combination of factors can also lead to backover incidents.

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What can be done to prevent backover incidents?

Many solutions exist to prevent backover incidents:

- Drivers can use a spotter to help them back up their vehicles.
- Video cameras with in-vehicle display monitors can give drivers a view of what is behind them.
- Proximity detection devices, such as radar and sonar, can alert drivers to objects that are behind them.
- Tag-based systems can inform drivers when other employees are behind the vehicle and can alert employees when they walk near a vehicle equipped to communicate with the tag worn by the employee.
- Employers can create internal traffic control plans, which tell the drivers where to drive and can reduce the need to back up.
- In some cases, internal traffic control plans can be used to separate employees on foot from operating equipment.

Training is another tool to prevent backover incidents. Blind spots behind and around vehicles are not immediately obvious to employees on foot. By training employees on where those blind spots are and how to avoid being in them, employers can prevent some backover incidents. One component of this training can include putting employees who will be working around vehicles in the driver’s seat to get a feel for where the blind spots are and exactly what the drivers can see.

OSHA has published a new Preventing Backovers webpage that provides information about the hazards and solutions that can reduce the risk or frequency of these incidents. It includes articles, resources, and references to existing regulations and letters of interpretation.

If you have questions related to backover hazard prevention or any other questions about occupational safety and health in Utah, please do not hesitate to call us at (801) 530-6901. There is always a staff member readily available to assist you and answer your questions. You can also visit the Utah OSHA website at www.uosh.utah.gov or the federal OSHA website at www.osha.gov/doc/topics/backover for more information.

Vehicles Causing the Most Backover Fatalities 2005 - 2010*

Dump Truck	67
Semi/Truck Trailer	40
Truck	30
Forklift	21
Garbage Truck	20
Pick Up Truck	16

*OSHA Integrated Management Information System Data



U.S Department of Labor, Bureau of Labor Statistics and Labor Commission prepare for the New Year

By **Jennifer Roundy and Edward Denning**, *Bureau of Labor Statistics Unit, Utah Labor Commission*

The U.S. Department of Labor, Bureau of Labor Statistics (BLS) and the Utah Labor Commission Statistics Section are preparing for a new year of collecting and compiling data for the State. The Commission's Statistics Section is responsible for collecting and compiling fatal and non-fatal occupational injuries and illnesses information in the State. They work with both state and federal agencies, including the U.S Bureau of Labor Statistics (BLS), Utah Occupational Safety and Health Division (Utah OSHA), and the Utah Department of Health to collect and analyze occupational data.

Non-fatal occupational injuries and illnesses

Over 2400 private sector employers in Utah were surveyed for information concerning their average number of employees and hours worked, as well as details on any nonfatal occupational injuries and illnesses that occurred during calendar year 2011.

- The overall incident rate in Utah for public and private sectors combined rose to 3.7 in 2011, up from 3.6 in 2010. Incidence rates represent the number of injuries or illnesses per 100 full-time workers.
- From these injuries and illnesses, cases with days away from work decreased from 0.8 cases per 100 full-time workers in 2010 to 0.7 in 2011.
- Cases with job transfer or restrictions were unchanged at 0.7 cases per 100 full-time workers in 2010 and 2011.
- The incidence rate for other recordable cases increased from 2010 at 1.9 cases per 100 full-time workers to 2.1 in 2011. Other recordable cases are work-related injuries or illnesses that required more than first aid, but did not require days away from work, job transfer or restriction.

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The BLS reports that the state of Utah fatalities for 2011 have decreased from 41 incidences in 2010 to 39.



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BLS, Labor Commission prepare for the New Year continued

Workplace fatalities decrease in 2011

The BLS reports that Utah fatalities have decreased from 41 incidences in 2010 to 39 in 2011. According to the 2011 Utah Fatalities Survey:

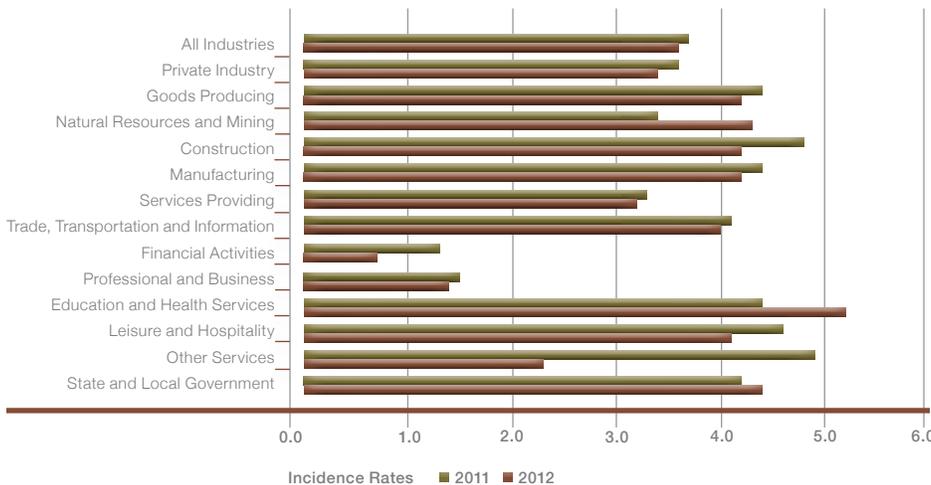
- Transportation incidences were the most frequent of fatal injuries and accounted for 24 of Utah’s 39 fatalities.
- Falls to a lower level were the second most frequent fatal injuries accounting for 5 out of Utah’s 39 fatalities.
- Three fatalities occurred from assaults and violent acts, 8 percent of the total.
- Contacts with objects and equipment accounted for five fatalities, 13 percent of the total.

The Statistics section annually releases total fatality counts and descriptive data in an effort to provide the most accurate information to assist employers, safety departments, and employees in identifying occupational safety and health issues in the state.

For additional information, please contact:

Edward Denning at (801) 530-6926, Edenning@utah.gov, or Jennifer Roundy at (801) 530-6823, Jroundy@utah.gov at the Utah Labor Commission Statistics section.

Incidence rates per 100 full-time workers for total nonfatal occupation injuries and illnesses by major industry sector in Utah - 2010 & 2011



SOURCE: Bureau of Labor Statistics, U.S. Department of Labor, Survey of Occupational Injuries and Illnesses in cooperation with participating State agencies.



Appellate Decisions

This quarter, the Utah Court of Appeals issued one decision involving Labor Commission cases, bringing the total for the year to eleven cases. The Utah Supreme Court also issued one decision involving a Labor Commission case. The full text of these decisions is available at www.utcourts.gov/opinions/. The decisions issued by the courts this quarter dealt with the Utah Workers' Compensation Act.

Kurt Ballenger v. Labor Commission (201220572-CA; issued October 19, 2012).

Mr. Ballenger injured his left wrist while working for MK Corporation and claimed permanent total disability compensation due to the injury. The Labor Commission's Appeals Board determined Mr. Ballenger had not met the requirements for permanent total disability compensation and denied his claim. Mr. Ballenger then appealed the Board's decision, but mistakenly filed his petition for review with the Board rather than the Utah Court of Appeals. The court summarily dismissed the petition for review after determining Mr. Ballenger did not file his petition within 30 days of when the Board's decision was issued. The court explained that although Mr. Ballenger filed his petition for review with the Board within the time allotted, such petition must be filed with the court within 30 days of the Board's final order to be considered timely.

Employers Reinsurance Fund and Sunnyside Coal Company v. Labor Commission and Cecil Henningson (2012 UT 76; issued November 6, 2012).

Mr. Henningson was working for Sunnyside Coal Company in October 1993 when he injured his back. He reported the injury to Sunnyside and received some disability benefits for his injury. In 1997, Mr. Henningson's physician opined that Mr. Henningson was permanently and totally disabled and had been unable to work since 1993. Ten years later in 2007, Mr. Henningson filed with the Labor Commission claiming permanent total disability compensation. The Commission determined that it had jurisdiction over the claim and awarded permanent total disability compensation to Mr. Henningson. Sunnyside and the Employers Reinsurance Fund appealed the Commission's decision to the Utah Court of Appeals, which certified the issues in dispute to the Utah Supreme Court. Specifically, the parties disputed whether the Commission had jurisdiction over Mr. Henningson's claim and whether the award of permanent total disability compensation was appropriate given the amount of time Mr. Henningson waited to claim such benefits. The Utah Supreme Court upheld the Commission's finding that it had jurisdiction over the claim and upheld the award of permanent total disability benefits to Mr. Henningson. However, the court also held that because Mr. Henningson delayed in filing after learning he was permanently and totally disabled in 1997, he could only recover benefits beginning from 2007 when he filed his claim with the Commission. The court therefore remanded the matter to the Commission to calculate the proper amount of benefits to which Mr. Henningson is entitled.



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.

R614-1-4 Occupational Safety & Health (UOSH)	Incorporation of federal standards. Incorporates into Utah's occupational safety and health rules recent modifications to corresponding federal standards for chemical hazard communications.	<i>Effective July 23, 2012.</i>
R612-1-12 Industrial Accidents Division	Unincorporated entities licensed under the Constructions Trades Licensing Act. Addresses workers' compensation premiums for unincorporated entities and disability benefits in connection with such entities.	<i>Public hearing May 2, 2012; held for further consideration.</i>
Rule 606-3 Employment Discrimination	Nondiscrimination Clause to be used in Contracts Entered into by the State of Utah and its Agencies. Proposed repeal of Rule 606-3, requiring nondiscrimination clauses in State contracts, because the rule is not authorized by statute and is not necessary.	<i>Effective October 22, 2012.</i>
Rule 606-4 Employment Discrimination	Advertising. Proposed repeal of Rule 606-4, prohibiting discriminatory help-wanted ads, because the substance of the rule is already addressed by statute. Consequently, the rule is not necessary.	<i>Effective October 22, 2012.</i>
Rule 606-5 Employment Discrimination	Employment Agencies. Proposed repeal of Rule 606-5, prohibiting discrimination by employment agencies, because the substance of the rule is already addressed by statute. Consequently, the rule is not necessary.	<i>Effective October 22, 2012.</i>
Rule 612-3 Industrial Accidents	Workers' Compensation Rules, Self- Insurance. Removes detailed rules regarding use of letters of credit as a method by which self-insured employers can secure their liability for payment of workers' compensation benefits.	<i>Effective October 22, 2012.</i>

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Rules Corner continued

Rule 612-1-3.C

Industrial Accidents

Official Forms—Restorative Services Authorization -

Form 221. Replaces the existing form 122, which has been used for all types of restorative services, with three more specialized forms that address specific types of injuries.

Effective October 22, 2012.

Rule 602-2-4

Adjudication
Division

Attorneys Fees. Increases by 2% the maximum attorneys fees in workers' compensation cases to match the increase in injured workers' disability compensation over the last year.

Effective January 1, 2013

Rule 612-2-5

Industrial Accidents

Regulation of Medical Practitioner Fees. Updates the Commission's fee schedule for medical treatment of injured workers, and adjusts conversion rates for computing fees for some medical specialties.

Effective December 10, 2012

Rule 612-4-2

Industrial Accidents

Premium Assessments. Reduces by .1% the assessment rate used to fund the Employer's Reinsurance Fund, and increases by the same amount the assessment rate used to fund the Uninsured Employers' Fund.

Effective January 1, 2013

Rule 612

Industrial Accidents

Recodification. The Commission proposes to reorganize all Industrial Accidents rules in a more rational structure. The objective is to assist users of the rules in locating the rules that are of interest to them. This proposal does not involve any substantive changes to the existing rules.

Public hearing on December 5, 2012; to be submitted to Division of Admin. Rules for publication.



Utah Labor Commission

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