

# 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

## The 2013 Legislative Session

By: **Commissioner Sherrie Hayashi**



The Utah Legislature has enacted several bills intended to improve administrative adjudications in general and the Labor Commission's adjudications in particular. The Legislature also updated and broadened Commission authority—particularly regarding the workers' compensation system.

### **Administrative efficiency and impartiality**

**Senate Bill (SB) 99** addresses the Commission's adjudicative process. The bill requires that two Appeals Board members be attorneys; it also allows the Commissioner to recuse herself from cases where her impartiality could be questioned. **SB 99** authorizes employment of a medical panel director to improve the Commission's medical panel process. It prohibits assignment of an ALJ or medical panelist to evaluate subsequent claims from the same individual arising out of different injuries. Finally, the bill imposes time standards for issuing decision and resolving claims, and requires the Commission to monitor and report on its success in meeting these standards.

**SB 191** tasks the Department of Human Resource Management with developing a code of conduct, performance evaluations and performance surveys for administrative law judges. **SB 191** also specifies that an ALJ tampering with or destroying evidence is subject to prosecution under Utah's criminal code.

**Commission authority SB 147** extends Commission workers' compensation rule-making authority to issues of medical necessity and treatment protocols. Likewise, the bill updates Commission rule-making authority over the reporting of workplace injuries by employers/insurance carriers. **SB 147** also clarifies that nurse practitioners are subject to Commission rules for treatment of injured workers.

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## The 2013 Legislative Session

Other bills addressing the workers' compensation system include **SB 45**, which allows corporations with no employees to exclude up to 5 officers or directors from workers' compensation coverage by notifying the Commission. **SB 22** and **SB 15** extend the "sunset" dates of the Worker Classification Coordinated Enforcement Council and the Industrial Accident Restricted Account to 2016 and 2018.

**SB 59** amends Utah's Insurance Code and Workers' Compensation Act to require coordination of injured workers' medical coverage between workers' compensation insurers and group health insurance plans. This bill, which has a delayed effective date of July 1, 2014, is intended to insure that an injured worker with medical coverage with both a group health insurer and a workers' compensation insurer will receive necessary medical care during the period that the two insurance carriers are sorting out their ultimate liability for the worker's medical expenses.

And finally, the Legislature enacted **SCR 9**, a concurrent resolution designating June 23-29, 2013, as Workplace Safety Week and encouraging Utahans to recognize the importance of safety in the workplace.

## Legislative Audit Results

By: **Heather Gunnarson**, Adjudication Division Director



The results of the long-awaited Legislative Audit of the Labor Commission's Adjudication Division were released this February. The Commission is pleased with the results of the audit and gratified that the objective auditors found "no evidence that the Labor Commission's proceedings are biased against injured workers."

The Commission is also heartened by the auditors' conclusions that the Commission generally operates in a timely manner. While many of the recommendations were already being addressed by the new Division Director and Commission staff prior to the audit, the audit provides helpful and objective insight into continued areas for improvement. For example:

- The Commission has reduced the backlog of pending appeals from 238 in March 2008 to 24 as of February 1, 2013.
- The Commission is working to reduce the time for issuing orders from 120 days to 60 days within the next 18 months.
- The Commission has adopted a Code of Judicial Conduct modeled after the Utah Code of Judicial Conduct. The Code imposes high standards of professionalism and ethical conduct.
- The Commission now conducts on-line performance surveys of its ALJs after every hearing.
- The Commission enthusiastically supports the Audit's recommendation of hiring a Medical Director to recruit competent panel members, provide training, and maintain the quality of panel reports.
- The Commission plans to undertake an "Operational Excellence" process-improvement project during the summer of 2013.

The Commission is committed to implementing all of the Audit's recommendations over the next several months and will carry on with the continuous process of identifying additional methods to promote the timely and fair adjudication of disputes coming before it. For a complete copy of the Legislative Audit and the Commission's response, please visit our website at [www.laborcommission.utah.gov](http://www.laborcommission.utah.gov).



## OSHA Approved, ANSI Certified... Really?

By: **Louis M. Silva**, Utah OSHA Division Director



When was the last time you were at a hardware store, tool store or equipment store looking at a product with a big label (*most likely yellow*) saying “**OSHA APPROVED**” or “**ANSI APPROVED**”? Well, the fact of the matter is that there is no such thing as “**OSHA APPROVED**” or “**ANSI APPROVED**.” This may come as a surprise to you and many others since those labels are commonly found.

Over the last several years, the market for eye and face protection has become increasingly competitive, attracting a number of new suppliers. Along with them, the number of misleading claims being made about products has increased dramatically. The two most common are "ANSI Certified" and "OSHA Approved." No matter who is making these claims, both statements are false.

So, let's clarify the role of ANSI and OSHA as they pertain to safety products. OSHA is the U.S. Occupational Safety and Health Administration, which is the enforcement arm of the U.S. Department of Labor. It does not certify, approve or test products, nor will it recommend a particular product or service.

ANSI is the American National Standards Institute. It provides accreditation to the Standards Development Organizations (SDO's) that write the standards. ANSI does not certify, approve or even test products.

In the case of eye and face protection, OSHA requires that employers provide to their employees safety products that meet the American National Standard for Occupational Eye and Face Protection Devices, ANSI/ISEA Z87.1-2010. It's also important to note that the Z87 Standard is self-certifying, meaning that the manufacturer of the product is responsible for verifying that a particular product meets expected performance criteria. This is done by testing the product according to the methods specified in the standard. The result is that a product either passes or fails. If a product meets all the applicable requirements of the Z87 Standard and passes the applicable tests, the manufacturer can only claim that the product meets the ANSI/ISEA Z87.1 standard. The manufacturer is then obligated to provide test results to support the claim to anyone who asks.

Products either meet or do not meet the requirements of the ANSI Z87.1 Standard, and through their proper use in the workplace, they can help a company meet its OSHA requirements for protecting workers. So, it's important to understand the claims that manufacturers are making about safety products.

It is also very important to read those labels carefully. Remember, manufacturers are responsible for verifying that their products meet applicable standards and not the organizations that issue those standards.



In conclusion, remember that products **cannot** be "ANSI certified", "ANSI approved", "OSHA approved" or any variation thereof.



Please visit our website at: [www.uosh.utah.gov](http://www.uosh.utah.gov). and read more about safety and health in Utah, or call us with any job safety and health questions at **(801) 530-6901**.



# Workers Compensation Coverage Waivers

By: **Brad Morse**, *Industrial Accidents Division*



**The Workers' Compensation Act** allows the issuance of a Workers' Compensation Coverage Waiver to qualified partners of a partnership, officers of a corporation, or owner of a sole proprietorship, none of which can have employees. The waiver acts as a declaration of non-coverage and is typically used by independent contractors who hire out their services to employers. If the independent contractor does not have a waiver or proof of workers' compensation insurance coverage, the general rule is that the independent contractor and all subcontractors or persons employed by the contractor may be considered employees of the original hiring employer and workers' compensation insurance would have to be provided.

As of July 1, 2011, the Labor Commission became responsible for processing and issuing waivers. In January 2011 the time a waiver is valid changed from three years to one year. In a typical month, the Industrial Accidents Division receives an average of 490 waiver applications of which 90% are ultimately issued, and we anticipate an increase as renewals now occur on a more frequent basis.

One of the requirements to obtain a waiver is that an applicant cannot have employees. If an employee is hired, the business is required to obtain workers' compensation insurance coverage and the waiver becomes invalid. The independent contractor must provide evidence of their eligibility to obtain a waiver such as copy of a business license, a liability insurance policy, copies of income tax returns, verification of a business location, phone number, bank account, or proof of advertising.



Our waiver unit is extremely busy since, in conjunction with receiving online applications, our staff also engages with the public face-to-face, by email or by telephone. In 2012 alone, assistance was provided to an average of 298 walk-ins and 265 phone calls per month.

Our top priority is serving our stakeholders and customers efficiently. In order to achieve this goal we use an on-line web application system which includes electronic payments and uploading of documentation. This includes a new online video in English and Spanish that helps walk applicants through the application process and a computer kiosk which is also available in our lobby.

**For more information** regarding waivers please visit our website: [laborcommission.utah.gov/wcccoveragewaivers](http://laborcommission.utah.gov/wcccoveragewaivers).



# Coal Mining

## A Valuable Asset for the State of Utah

By: **Debbie King**, Administrative Secretary in the Miner Certification Office and  
**Pete Hackford**, Boiler, Elevator and Coal Mine Safety Division Director



Utah has some of the largest underground coal mines in the United States.

Coal is an abundant resource here in Utah, and coal production is as essential to our economy today as it was a hundred years ago.

### Do you know where much of your electricity comes from? The answer is Coal.

Coal is the source of nearly half of the electricity consumed in the United States each year, and in Utah over 95% of the electricity generated comes from coal. Last year, the United States produced 259 million tons of coal. With an average production of 24 million tons of coal each year, Utah produces nearly 10% of our country's total coal production.

Utah has some of the largest underground coal mines in the United States. We have eight operating underground coal mines, one surface coal mine and six coal-fired power plants. Coal is mined, processed and then fired in large utility boilers that generate high pressure super heated steam. This steam is introduced into large turbines that turn generators thus producing electricity.

Coal production in Utah contributes millions of dollars towards the State's General Fund. For instance, in fiscal year 2005 coal production in Utah was responsible for generating over \$27.8 million in royalty revenues (*or private sector taxes*) and that amount has been increasing every year since.

The coal mining industry is responsible for thousands of Utah jobs.

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### Utah Labor Commission's Role in Coal Mine Safety

As with any occupation in Utah, safety is always the number one priority. With the U.S. Mine Safety and Health Administration (MSHA) as the agency responsible for inspections and enforcement of regulatory standards in the coal mining industry, the state relies on its ability to create, measure and promote safety through a variety of programs. One of the oldest and most successful is the coal miner certification program. The State of Utah requires electricians, foremen and fire bosses (mine examiners) to be certified prior to performing work in these mining occupations.

The Boiler, Elevator and Coal Mine Safety Division of the Utah Labor Commission oversees the certification of coal miners. The Division utilizes a Certification Board with ten members who work as part time employees for the Division. Each one of the board members has worked in the coal mining industry for decades and has a vast knowledge of coal mining, underground mining conditions, safety practices as well as federal and state laws. Certification exams consist of written and verbal questions along with demonstrations of hands-on knowledge of wiring, ventilating and proper use of tools and instruments.

The board members are a vital part of the creation of all of the exams. Along with Division personnel they help administer every certification exam and also grade the hands-on sections of the examination process. Without their experience, expertise and first-hand knowledge of coal mining practices and regulations, the certification

exams would not be possible. It is their commitment to safety and the education of the future generation of coal miners that maintains the integrity of the certification process.

### Using Technology for Better Service

In the last six years, the miner certification program progressed from a completely manual application and testing process, to a full electronic system which includes an on-line application, testing, grading, billing and record retention.

In previous years, applications were submitted on paper by mail, or brought into the office. The applicants would pay with a personal check or money order. Exams were created by hand from a bank of questions stored in the Divisions database and written tests were scored manually by the administrative secretary in the Miner Certification Office. At times there are as many as 600 written tests from one exam to be scored. Additionally, records of certifications were kept as hard copy documents in the miner certification office.

Applications are now submitted online with a credit or debit card as payment. Exams are now created with a software program that randomly generates questions, therefore making every exam unique. Written tests are then scored with the use of a scanner thereby increasing speed and accuracy significantly. Certification records are now scanned and stored electronically, including all pre-existing records. The Division has also made the list of certification records available to the general public by creating a certification search that is available on the Labor Commission's web page.

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*Coal is an abundant resource here in Utah, and coal production is as essential to our economy today as it was a hundred years ago. The Division of Boiler, Elevator and Coal Mine Safety is committed to the safety of workers here in Utah and proud of the role it plays in supporting Utah's economy.*



# Change is Coming to the Adjudication's Hearing Schedule

By: Heather Gunnarson, Adjudication Division Director



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This new system will allow the ALJs to issue decisions within two weeks (or so) of the hearing.

The Adjudication Division is streamlining its processes and looking for new ways to improve efficiencies. This summer, we are trying something that seems counter intuitive to speeding up cases: we will hold no hearings during July and August. *(Although we will not be hearing cases in July and August, we are still very much open for business. If you have an expedited or emergency matter, please let us know and we will schedule you for a hearing right away.)*

This hiatus will allow the ALJs time to issue all pending decisions so that by September 1, we can implement our new condensed hearing calendar: the ALJs will each rotate through a week of hearings, where they will conduct four hearings each day, followed by two weeks of writing decisions. This new system will allow the ALJs to issue decisions within two weeks (or so) of the hearing.

**This is a work in progress;** while we've tried to think through the new schedule to make it as smooth as possible, we will undoubtedly encounter problems that will require additional refinement. We ask for your continued patience and cooperation to help us improve the process, and welcome your feedback and suggestions. Please contact the Adjudication Division for more information.



# Appellate Decisions

This quarter, the Utah Court of Appeals issued one decision involving Labor Commission cases, bringing the total for 2012 to twelve cases. The full text of this decision is available at [www.utcourts.gov/opinions/](http://www.utcourts.gov/opinions/). The decision issued by the court this quarter dealt with the Utah Workers' Compensation Act.

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**Waste Management and Indemnity Insurance of North America v. Labor Commission and Cathie Hartley** (2012 UT App. 339; issued December 6, 2012). Ms. Hartley injured her spine, feet and tailbone while working for Waste Management when a full garbage can fell and pinned her to the ground. The Commission determined the evidence in the record supported the ALJ's decision to award Ms. Hartley the cost of surgery to treat her injured tailbone along with temporary total disability compensation until she reached medical stability from her work injuries. Waste Management appealed the Commission's decision to the Utah Court of Appeals, which upheld the Commission's decision. The court explained that there was substantial evidence to support the Commission's award of the cost of surgery and other benefits to Ms. Hartley because it was clear from the record that she would not become medically stable without such surgery. The court also found the Commission's award of temporary disability compensation to be reasonable and rational in light of the evidence surrounding Ms. Hartley's date of medical stability.

# 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

**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  
Division

**Premium Assessments.** Reduces by 0.1% 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 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**

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.

*Effective February 25, 2013*

**Utah Labor Commission**

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