

1 **WORKERS' COMPENSATION DEPENDENT BENEFIT**

2 **AMENDMENTS**

3 2018 GENERAL SESSION

4 STATE OF UTAH

5 **Chief Sponsor: Karen Mayne**

6 House Sponsor: James A. Dunnigan

8 **LONG TITLE**

9 **General Description:**

10 This bill modifies provisions related to workers' compensation disability benefits.

11 **Highlighted Provisions:**

12 This bill:

13 ▶ modifies the calculation of benefits paid to one or more dependents of an employee
14 with a disability under the Workers' Compensation Act.

15 **Money Appropriated in this Bill:**

16 None

17 **Other Special Clauses:**

18 This bill provides a special effective date.

19 **Utah Code Sections Affected:**

20 AMENDS:

21 **34A-2-410**, as last amended by Laws of Utah 2015, Chapter 258

22 **34A-2-411**, as last amended by Laws of Utah 1999, Chapter 261

23 **34A-2-412**, as renumbered and amended by Laws of Utah 1997, Chapter 375

24 **34A-2-413**, as last amended by Laws of Utah 2016, Chapter 31

26 *Be it enacted by the Legislature of the state of Utah:*

27 Section 1. Section **34A-2-410** is amended to read:

28 **34A-2-410. Temporary disability -- Amount of payments -- State average weekly**
29 **wage defined.**

30 (1) (a) Subject to Subsections (1)(b) and (5), in case of temporary disability, so long as
31 the disability is total, the employee shall receive 66-2/3% of that employee's average weekly
32 wages at the time of the injury but:

33 (i) not more than a maximum of 100% of the state average weekly wage at the time of
34 the injury per week; and

35 (ii) (A) subject to Subsections (1)(a)(ii)(B) and (C), not less than a minimum of \$45
36 per week plus:

37 (I) [~~\$5~~] \$20 for a dependent spouse; and

38 (II) [~~\$5~~] \$20 for each dependent child under the age of 18 years, up to a maximum of
39 four dependent children;

40 (B) not to exceed the average weekly wage of the employee at the time of the injury;
41 and

42 (C) not to exceed 100% of the state average weekly wage at the time of the injury per
43 week.

44 (b) In no case shall the compensation benefits exceed 312 weeks at the rate of 100% of
45 the state average weekly wage at the time of the injury over a period of 12 years from the date
46 of the injury.

47 (2) If a light duty medical release is obtained before the employee reaches a fixed state
48 of recovery and no light duty employment is available to the employee from the employer,
49 temporary disability benefits shall continue to be paid.

50 (3) The "state average weekly wage" as referred to in this chapter and Chapter 3, Utah
51 Occupational Disease Act, shall be determined by the commission as follows:

52 (a) On or before June 1 of each year, the total wages reported on contribution reports to
53 the Unemployment Insurance Division for the preceding calendar year shall be divided by the
54 average monthly number of insured workers determined by dividing the total insured workers
55 reported for the preceding year by 12.

56 (b) The average annual wage obtained under Subsection (3)(a) shall be divided by 52.

57 (c) The average weekly wage determined under Subsection (3)(b) is rounded to the

58 nearest dollar.

59 (4) The state average weekly wage determined under Subsection (3) shall be used as
60 the basis for computing the maximum compensation rate for:

61 (a) injuries or disabilities arising from occupational disease that occurred during the
62 12-month period commencing July 1 following the June 1 determination; and

63 (b) any death resulting from the injuries or disabilities arising from occupational
64 disease.

65 (5) The commission may reduce or terminate temporary disability compensation in
66 accordance with Section 34A-2-410.5.

67 Section 2. Section 34A-2-411 is amended to read:

68 **34A-2-411. Temporary partial disability -- Amount of payments.**

69 (1) If the injury causes temporary partial disability for work, the employee shall receive
70 weekly compensation equal to:

71 (a) 66-2/3% of the difference between the employee's average weekly wages before the
72 accident and the weekly wages the employee is able to earn after the accident, but not more
73 than 100% of the state average weekly wage at the time of injury; plus

74 (b) [~~\$5~~] \$20 for a dependent spouse and [~~\$5~~] \$20 for each dependent child under the
75 age of 18 years, up to a maximum of four such dependent children, but only up to a total
76 weekly compensation that does not exceed 100% of the state average weekly wage at the time
77 of injury.

78 (2) The commission may order an award for temporary partial disability for work at
79 any time prior to 12 years after the date of the injury to an employee:

80 (a) whose physical condition resulting from the injury is not finally healed and fixed 12
81 years after the date of injury; and

82 (b) who files an application for hearing under Section 34A-2-417.

83 (3) The duration of weekly payments may not exceed 312 weeks nor continue more
84 than 12 years after the date of the injury. Payments shall terminate when the disability ends or
85 the injured employee dies.

86 Section 3. Section 34A-2-412 is amended to read:

87 **34A-2-412. Permanent partial disability -- Scale of payments.**

88 (1) An employee who sustained a permanent impairment as a result of an industrial
89 accident and who files an application for hearing under Section 34A-2-417 may receive a
90 permanent partial disability award from the commission.

91 (2) Weekly payments may not in any case continue after the disability ends, or the
92 death of the injured person.

93 (3) (a) In the case of the injuries described in Subsections (4) through (6), the
94 compensation shall be 66-2/3% of that employee's average weekly wages at the time of the
95 injury, but not more than a maximum of 66-2/3% of the state average weekly wage at the time
96 of the injury per week and not less than a minimum of \$45 per week plus [~~\$5~~] \$20 for a
97 dependent spouse and [~~\$5~~] \$20 for each dependent child under the age of 18 years, up to a
98 maximum of four dependent children, but not to exceed 66-2/3% of the state average weekly
99 wage at the time of the injury per week.

100 (b) The compensation determined under Subsection (3)(a) shall be:

101 (i) paid in routine pay periods not to exceed four weeks for the number of weeks
102 provided for in this section; and

103 (ii) in addition to the compensation provided for temporary total disability and
104 temporary partial disability.

105 (4) For the loss of: Number of Weeks

106 (a) Upper extremity

107 (i) Arm

108 (A) Arm and shoulder (forequarter amputation) 218

109 (B) Arm at shoulder joint, or above deltoid insertion 187

110 (C) Arm between deltoid insertion and elbow joint, at elbow joint, or
111 below elbow joint proximal to insertion of biceps tendon 178

112 (D) Forearm below elbow joint distal to insertion of biceps tendon 168

113 (ii) Hand

114 (A) At wrist or midcarpal or midmetacarpal amputation 168

115 (B) All fingers except thumb at metacarpophalangeal joints 101

116 (iii) Thumb

117 (A) At metacarpophalangeal joint or with resection of

118 carpometacarpal bone 67

119 (B) At interphalangeal joint 50

120 (iv) Index finger

121 (A) At metacarpophalangeal joint or with resection of metacarpal bone 42

122 (B) At proximal interphalangeal joint 34

123 (C) At distal interphalangeal joint 18

124 (v) Middle finger

125 (A) At metacarpophalangeal joint or with resection of metacarpal bone 34

126 (B) At proximal interphalangeal joint 27

127 (C) At distal interphalangeal joint 15

128 (vi) Ring finger

129 (A) At metacarpophalangeal joint or with resection of metacarpal bone 17

130 (B) At proximal interphalangeal joint 13

131 (C) At distal interphalangeal joint 8

132 (vii) Little finger

133 (A) At metacarpophalangeal joint or with resection of metacarpal bone 8

134 (B) At proximal interphalangeal joint 6

135 (C) At distal interphalangeal joint 4

136 (b) Lower extremity

137 (i) Leg

138 (A) Hemipelvectomy (leg, hip and pelvis) 156

139 (B) Leg at hip joint or three inches or less below tuberosity of ischium 125

140 (C) Leg above knee with functional stump, at knee joint or Gritti-Stokes

141 amputation or below knee with short stump (three inches or less below

142 intercondylar notch) 112

143 (D) Leg below knee with functional stump 88

144 (ii) Foot

145 (A) Foot at ankle 88

146 (B) Foot partial amputation (Chopart's) 66

147 (C) Foot midmetatarsal amputation 44

148 (iii) Toes

149 (A) Great toe

150 (I) With resection of metatarsal bone 26

151 (II) At metatarsophalangeal joint 16

152 (III) At interphalangeal joint 12

153 (B) Lesser toe (2nd -- 5th)

154 (I) With resection of metatarsal bone 4

155 (II) At metatarsophalangeal joint 3

156 (III) At proximal interphalangeal joint 2

157 (IV) At distal interphalangeal joint 1

158 (C) All toes at metatarsophalangeal joints 26

159 (iv) Miscellaneous

160 (A) One eye by enucleation 120

161 (B) Total blindness of one eye 100

162 (C) Total loss of binaural hearing 109

163 (5) Permanent and complete loss of use shall be deemed equivalent to loss of the

164 member. Partial loss or partial loss of use shall be a percentage of the complete loss or loss of

165 use of the member. This Subsection (5) does not apply to the items listed in Subsection

166 (4)(b)(iv).

167 (6) (a) For any permanent impairment caused by an industrial accident that is not

168 otherwise provided for in the schedule of losses in this section, permanent partial disability

169 compensation shall be awarded by the commission based on the medical evidence.

170 (b) Compensation for any impairment described in Subsection (6)(a) shall, as closely as
171 possible, be proportionate to the specific losses in the schedule set forth in this section.

172 (c) Permanent partial disability compensation may not:

173 (i) exceed 312 weeks, which shall be considered the period of compensation for
174 permanent total loss of bodily function; and

175 (ii) be paid for any permanent impairment that existed prior to an industrial accident.

176 (7) The amounts specified in this section are all subject to the limitations as to the
177 maximum weekly amount payable as specified in this section, and in no event shall more than a
178 maximum of 66-2/3% of the state average weekly wage at the time of the injury for a total of
179 312 weeks in compensation be required to be paid.

180 Section 4. Section **34A-2-413** is amended to read:

181 **34A-2-413. Permanent total disability -- Amount of payments -- Rehabilitation.**

182 (1) (a) In the case of a permanent total disability resulting from an industrial accident
183 or occupational disease, the employee shall receive compensation as outlined in this section.

184 (b) To establish entitlement to permanent total disability compensation, the employee
185 shall prove by a preponderance of evidence that:

186 (i) the employee sustained a significant impairment or combination of impairments as a
187 result of the industrial accident or occupational disease that gives rise to the permanent total
188 disability entitlement;

189 (ii) the employee has a permanent, total disability; and

190 (iii) the industrial accident or occupational disease is the direct cause of the employee's
191 permanent total disability.

192 (c) To establish that an employee has a permanent, total disability the employee shall
193 prove by a preponderance of the evidence that:

194 (i) the employee is not gainfully employed;

195 (ii) the employee has an impairment or combination of impairments that reasonably
196 limit the employee's ability to do basic work activities;

197 (iii) the industrial or occupationally caused impairment or combination of impairments

198 prevent the employee from performing the essential functions of the work activities for which
199 the employee has been qualified until the time of the industrial accident or occupational disease
200 that is the basis for the employee's permanent total disability claim; and

201 (iv) the employee cannot perform other work reasonably available, taking into
202 consideration the employee's:

203 (A) age;

204 (B) education;

205 (C) past work experience;

206 (D) medical capacity; and

207 (E) residual functional capacity.

208 (d) Evidence of an employee's entitlement to disability benefits other than those
209 provided under this chapter and Chapter 3, Utah Occupational Disease Act, if relevant:

210 (i) may be presented to the commission;

211 (ii) is not binding; and

212 (iii) creates no presumption of an entitlement under this chapter and Chapter 3, Utah
213 Occupational Disease Act.

214 (e) In determining under Subsections (1)(b) and (c) whether an employee cannot
215 perform other work reasonably available, the following may not be considered:

216 (i) whether the employee is incarcerated in a facility operated by or contracting with a
217 federal, state, county, or municipal government to house a criminal offender in either a secure
218 or nonsecure setting; or

219 (ii) whether the employee is not legally eligible to be employed because of a reason
220 unrelated to the impairment or combination of impairments.

221 (2) For permanent total disability compensation during the initial 312-week
222 entitlement, compensation is 66-2/3% of the employee's average weekly wage at the time of the
223 injury, limited as follows:

224 (a) compensation per week may not be more than 85% of the state average weekly
225 wage at the time of the injury;

226 (b) (i) subject to Subsection (2)(b)(ii), compensation per week may not be less than the
227 sum of \$45 per week and:

228 (A) [~~\$5~~] \$20 for a dependent spouse; and

229 (B) [~~\$5~~] \$20 for each dependent child under the age of 18 years, up to a maximum of
230 four dependent minor children; and

231 (ii) the amount calculated under Subsection (2)(b)(i) may not exceed:

232 (A) the maximum established in Subsection (2)(a); or

233 (B) the average weekly wage of the employee at the time of the injury; and

234 (c) after the initial 312 weeks, the minimum weekly compensation rate under
235 Subsection (2)(b) is 36% of the current state average weekly wage, rounded to the nearest
236 dollar.

237 (3) This Subsection (3) applies to claims resulting from an accident or disease arising
238 out of and in the course of the employee's employment on or before June 30, 1994.

239 (a) The employer or the employer's insurance carrier is liable for the initial 312 weeks
240 of permanent total disability compensation except as outlined in Section [34A-2-703](#) as in effect
241 on the date of injury.

242 (b) The employer or the employer's insurance carrier may not be required to pay
243 compensation for any combination of disabilities of any kind, as provided in this section and
244 Sections [34A-2-410](#) through [34A-2-412](#) and Part 5, Industrial Noise, in excess of the amount of
245 compensation payable over the initial 312 weeks at the applicable permanent total disability
246 compensation rate under Subsection (2).

247 (c) The Employers' Reinsurance Fund shall for an overpayment of compensation
248 described in Subsection (3)(b), reimburse the overpayment:

249 (i) to the employer or the employer's insurance carrier; and

250 (ii) out of the Employers' Reinsurance Fund's liability to the employee.

251 (d) After an employee receives compensation from the employee's employer, the
252 employer's insurance carrier, or the Employers' Reinsurance Fund for any combination of
253 disabilities amounting to 312 weeks of compensation at the applicable permanent total

254 disability compensation rate, the Employers' Reinsurance Fund shall pay all remaining
255 permanent total disability compensation.

256 (e) Employers' Reinsurance Fund payments shall commence immediately after the
257 employer or the employer's insurance carrier satisfies its liability under this Subsection (3) or
258 Section [34A-2-703](#).

259 (4) This Subsection (4) applies to claims resulting from an accident or disease arising
260 out of and in the course of the employee's employment on or after July 1, 1994.

261 (a) The employer or the employer's insurance carrier is liable for permanent total
262 disability compensation.

263 (b) The employer or the employer's insurance carrier may not be required to pay
264 compensation for any combination of disabilities of any kind, as provided in this section and
265 Sections [34A-2-410](#) through [34A-2-412](#) and Part 5, Industrial Noise, in excess of the amount of
266 compensation payable over the initial 312 weeks at the applicable permanent total disability
267 compensation rate under Subsection (2).

268 (c) The employer or the employer's insurance carrier may recoup the overpayment of
269 compensation described in Subsection (4) by reasonably offsetting the overpayment against
270 future liability paid before or after the initial 312 weeks.

271 (5) (a) A finding by the commission of permanent total disability is not final, unless
272 otherwise agreed to by the parties, until:

273 (i) an administrative law judge reviews a summary of reemployment activities
274 undertaken pursuant to Section [34A-2-413.5](#);

275 (ii) the employer or the employer's insurance carrier submits to the administrative law
276 judge:

277 (A) a reemployment plan as prepared by a qualified rehabilitation provider reasonably
278 designed to return the employee to gainful employment; or

279 (B) notice that the employer or the employer's insurance carrier will not submit a plan;
280 and

281 (iii) the administrative law judge, after notice to the parties, holds a hearing, unless

282 otherwise stipulated, to:

283 (A) consider evidence regarding rehabilitation; and

284 (B) review any reemployment plan submitted by the employer or the employer's
285 insurance carrier under Subsection (5)(a)(ii).

286 (b) Before commencing the procedure required by Subsection (5)(a), the administrative
287 law judge shall order:

288 (i) the initiation of permanent total disability compensation payments to provide for the
289 employee's subsistence; and

290 (ii) the payment of any undisputed disability or medical benefits due the employee.

291 (c) Notwithstanding Subsection (5)(a), an order for payment of benefits described in
292 Subsection (5)(b) is considered a final order for purposes of Section [34A-2-212](#).

293 (d) The employer or the employer's insurance carrier shall be given credit for any
294 disability payments made under Subsection (5)(b) against its ultimate disability compensation
295 liability under this chapter or Chapter 3, Utah Occupational Disease Act.

296 (e) An employer or the employer's insurance carrier may not be ordered to submit a
297 reemployment plan. If the employer or the employer's insurance carrier voluntarily submits a
298 plan, the plan is subject to Subsections (5)(e)(i) through (iii).

299 (i) The plan may include, but not require an employee to pay for:

300 (A) retraining;

301 (B) education;

302 (C) medical and disability compensation benefits;

303 (D) job placement services; or

304 (E) incentives calculated to facilitate reemployment.

305 (ii) The plan shall include payment of reasonable disability compensation to provide
306 for the employee's subsistence during the rehabilitation process.

307 (iii) The employer or the employer's insurance carrier shall diligently pursue the
308 reemployment plan. The employer's or insurance carrier's failure to diligently pursue the
309 reemployment plan is cause for the administrative law judge on the administrative law judge's

310 own motion to make a final decision of permanent total disability.

311 (f) If a preponderance of the evidence shows that successful rehabilitation is not
312 possible, the administrative law judge shall order that the employee be paid weekly permanent
313 total disability compensation benefits.

314 (g) If a preponderance of the evidence shows that pursuant to a reemployment plan, as
315 prepared by a qualified rehabilitation provider and presented under Subsection (5)(e), an
316 employee could immediately or without unreasonable delay return to work but for the
317 following, an administrative law judge shall order that the employee be denied the payment of
318 weekly permanent total disability compensation benefits:

319 (i) incarceration in a facility operated by or contracting with a federal, state, county, or
320 municipal government to house a criminal offender in either a secure or nonsecure setting; or

321 (ii) not being legally eligible to be employed because of a reason unrelated to the
322 impairment or combination of impairments.

323 (6) (a) The period of benefits commences on the date the employee acquired the
324 permanent, total disability, as determined by a final order of the commission based on the facts
325 and evidence, and ends:

326 (i) with the death of the employee; or

327 (ii) when the employee is capable of returning to regular, steady work.

328 (b) An employer or the employer's insurance carrier may provide or locate for a
329 permanently totally disabled employee reasonable, medically appropriate, part-time work in a
330 job earning at least minimum wage, except that the employee may not be required to accept the
331 work to the extent that it would disqualify the employee from social security disability benefits.

332 (c) An employee shall:

333 (i) fully cooperate in the placement and employment process; and

334 (ii) accept the reasonable, medically appropriate, part-time work.

335 (d) In a consecutive four-week period when an employee's gross income from the work
336 provided under Subsection (6)(b) exceeds \$500, the employer or insurance carrier may reduce
337 the employee's permanent total disability compensation by 50% of the employee's income in

338 excess of \$500.

339 (e) If a work opportunity is not provided by the employer or the employer's insurance
340 carrier, an employee with a permanent, total disability may obtain medically appropriate,
341 part-time work subject to the offset provisions of Subsection (6)(d).

342 (f) (i) The commission shall establish rules regarding the part-time work and offset.

343 (ii) The adjudication of disputes arising under this Subsection (6) is governed by Part
344 8, Adjudication.

345 (g) The employer or the employer's insurance carrier has the burden of proof to show
346 that medically appropriate part-time work is available.

347 (h) The administrative law judge may:

348 (i) excuse an employee from participation in any work:

349 (A) that would require the employee to undertake work exceeding the employee's:

350 (I) medical capacity; or

351 (II) residual functional capacity; or

352 (B) for good cause; or

353 (ii) allow the employer or the employer's insurance carrier to reduce permanent total
354 disability benefits as provided in Subsection (6)(d) when reasonable, medically appropriate,
355 part-time work is offered, but the employee fails to fully cooperate.

356 (7) When an employee is rehabilitated or the employee's rehabilitation is possible but
357 the employee has some loss of bodily function, the award shall be for permanent partial
358 disability.

359 (8) As determined by an administrative law judge, an employee is not entitled to
360 disability compensation, unless the employee fully cooperates with any evaluation or
361 reemployment plan under this chapter or Chapter 3, Utah Occupational Disease Act. The
362 administrative law judge shall dismiss without prejudice the claim for benefits of an employee
363 if the administrative law judge finds that the employee fails to fully cooperate, unless the
364 administrative law judge states specific findings on the record justifying dismissal with
365 prejudice.

366 (9) (a) The loss or permanent and complete loss of the use of the following constitutes
367 total and permanent disability that is compensated according to this section:

- 368 (i) both hands;
- 369 (ii) both arms;
- 370 (iii) both feet;
- 371 (iv) both legs;
- 372 (v) both eyes; or
- 373 (vi) any combination of two body members described in this Subsection (9)(a).

374 (b) A finding of permanent total disability pursuant to Subsection (9)(a) is final.

375 (10) (a) An insurer or self-insured employer may periodically reexamine a permanent
376 total disability claim, except those based on Subsection (9), for which the insurer or
377 self-insured employer had or has payment responsibility to determine whether the employee
378 continues to have a permanent, total disability.

379 (b) Reexamination may be conducted no more than once every three years after an
380 award is final, unless good cause is shown by the employer or the employer's insurance carrier
381 to allow more frequent reexaminations.

382 (c) The reexamination may include:

- 383 (i) the review of medical records;
- 384 (ii) employee submission to one or more reasonable medical evaluations;
- 385 (iii) employee submission to one or more reasonable rehabilitation evaluations and
386 retraining efforts;
- 387 (iv) employee disclosure of Federal Income Tax Returns;
- 388 (v) employee certification of compliance with Section [34A-2-110](#); and
- 389 (vi) employee completion of one or more sworn affidavits or questionnaires approved
390 by the division.

391 (d) The insurer or self-insured employer shall pay for the cost of a reexamination with
392 appropriate employee reimbursement pursuant to rule for reasonable travel allowance and per
393 diem as well as reasonable expert witness fees incurred by the employee in supporting the

394 employee's claim for permanent total disability benefits at the time of reexamination.

395 (e) If an employee fails to fully cooperate in the reasonable reexamination of a
396 permanent total disability finding, an administrative law judge may order the suspension of the
397 employee's permanent total disability benefits until the employee cooperates with the
398 reexamination.

399 (f) (i) If the reexamination of a permanent total disability finding reveals evidence that
400 reasonably raises the issue of an employee's continued entitlement to permanent total disability
401 compensation benefits, an insurer or self-insured employer may petition the Division of
402 Adjudication for a rehearing on that issue. The insurer or self-insured employer shall include
403 with the petition, documentation supporting the insurer's or self-insured employer's belief that
404 the employee no longer has a permanent, total disability.

405 (ii) If the petition under Subsection (10)(f)(i) demonstrates good cause, as determined
406 by the Division of Adjudication, an administrative law judge shall adjudicate the issue at a
407 hearing.

408 (iii) Evidence of an employee's participation in medically appropriate, part-time work
409 may not be the sole basis for termination of an employee's permanent total disability
410 entitlement, but the evidence of the employee's participation in medically appropriate, part-time
411 work under Subsection (6) may be considered in the reexamination or hearing with other
412 evidence relating to the employee's status and condition.

413 (g) In accordance with Section [34A-1-309](#), the administrative law judge may award
414 reasonable attorney fees to an attorney retained by an employee to represent the employee's
415 interests with respect to reexamination of the permanent total disability finding, except if the
416 employee does not prevail, the attorney fees shall be set at \$1,000. The attorney fees awarded
417 shall be paid by the employer or the employer's insurance carrier in addition to the permanent
418 total disability compensation benefits due.

419 (h) During the period of reexamination or adjudication, if the employee fully
420 cooperates, each insurer, self-insured employer, or the Employers' Reinsurance Fund shall
421 continue to pay the permanent total disability compensation benefits due the employee.

422 (11) If any provision of this section, or the application of any provision to any person
423 or circumstance, is held invalid, the remainder of this section is given effect without the invalid
424 provision or application.

425 Section 5. **Effective date.**

426 This bill takes effect on July 1, 2018.