STATE OF UTAH
WORKERS’ COMPENSATION
COMPRENDIUM OF LAW

Prepared by
Ryan P. Atkinson, Esq.
STRONG & HANNI
3 Triad Center, Suite 500
Salt Lake City, UT 84180
Telephone: (801) 532-7080
Facsimile: (801) 596-1508
E-mail: ratkinson@strongandhanni.com
Website: www.strongandhanni.com
PART ONE:

Definitions of Employer, Employee, and Independent Contractor:

For the purposes of workers’ compensation, an “employee” is defined as “an elective or appointive officer and any other person in the service of the state; a county, city, or town within the state; or a school district within the state” who is “serving the state or any county, city, town, or school district under an election, appointment, or any contract of hire, express or implied, written or oral; and including an officer or employee of the state institutions of learning and a member of the National Guard while on state active duty. Utah Code Annotated (U.C.A) 1953 § 34A-2-104(1)(a). An employee is alternatively defined as “a person in the service of any employer . . . who employs one or more workers or operatives regularly in the same business, or in or about the same establishment under any contract of hire, express or implied, oral or written, including aliens and minors, whether legally or illegally working for hire, and not including any person whose employment is casual and not in the usual course of the trade, business, or occupation of the employee’s employer.” U.C.A 1953 § 34A-2-104(1)(b).

Except for domestic employers, “each person, including each public utility and each independent contractor, who regularly employs one or more workers or operatives in the same business, or in or about the same establishment, under any contract of hire, express or implied, oral or written, is considered an employer” for the purposes of workers’ compensation. U.C.A. 1953 § 34A-2-103(2)(a). With a few exceptions, all employers are required to provide workers’ compensation coverage for all of their employees. Some agricultural workers, some casual or domestic workers, real estate brokers, and sole proprietors, partners of a partnership, and members of limited liability companies are not automatically covered by the workers’ compensation system, although companies may elect to provide coverage for them. U.C.A 1953 § 34A-2-104; § 34A-2-104, § 34A-2-201. The right to recover workers’ compensation for injuries sustained by an employee is the exclusive remedy for an injured worker against an employer. U.C.A 1953 § 34A-2-105. This provision “applies to any injury, except for injuries caused by intentional misconduct, that occurs ‘in the course of or because of or arising out of the employee’s employment.’” Stamper v. Johnson, 232 P.3d 514, 517-518 (Utah 2010). Where an employer intentionally injures an employee, he may also face tort liability. Helf v. Chevron U.S.A., Inc., 203 P.3d 962 (Utah 2009).

“Independent contractor” means “any person engaged in the performance of any work for another who, while so engaged, is independent of the employer in all that pertains to the execution of the work, not subject to the routine rule or control of the employer, engaged only in the performance of a definite job or piece of work, and subordinate to the employer only in effecting a result in accordance with the employer’s design.” U.C.A. 1953 § 34A-2-103(b). “In assessing a given relationship to determine whether a person was an employee or an independent contractor for purposes of the Workers’ Compensation Act, not only does the court consider whatever agreements exist concerning the right of control, but it also takes into account the actual dealings between the parties and the control that was in fact asserted. Utah Home Fire Ins. Co. v. Manning, 985 P.2d 243 (Utah 1999). “To the extent the standard for determining an ‘employee,’ for purposes of the Workers’ Compensation Act, under the
right-to-control test can be compared to the standard to determining an ‘employee’ for the purposes of the Act’s provision deeming contractors to be employees so as to protect employees of irresponsible and uninsured subcontractors, the level of control or supervision contemplated under latter standard is less. Id.

Utah law also designates some employers as “statutory employers.” U.C.A 1953 § 34A-2-103(7)(a). The statutory employer provision states that “if any person who is an employer procures any work to be done wholly or in part for the employer by a contractor over whose work to be done wholly or in part for the employer by a contractor over whose work the employer retains supervision or control, and this work is a part or process in the trade or business of the employer, the contractor, all persons employed by the contractor, all subcontractors under the contractor, and all persons employed by any of these subcontractors, are considered employees of the original employer for the purposes of this chapter.” Id.

The Utah Supreme Court has ruled that “the term ‘supervision or control’ requires only that the general contractor retain ultimate control over the project. Bennett v. Industrial Commission, 726 P.2d 427, 432 (Utah 1986). “The power to supervise or control the ultimate performance of subcontractors satisfies the requirement that the general contractor retain supervision or control over the subcontractor. Therefore, as long as a subcontractor’s work is a part or process of the general contractor’s business, an inference arises that the general contractor has retained supervision or control over the subcontractor.” Id. To avoid liability as a statutory employer, a person hiring an independent contractor must verify the contractor has complied with workers’ compensation requirements. The requirements may be met by obtaining a workers’ compensation coverage waiver, which is a certification by the Industrial Accidents Division the waiver holder has no employees and has provided evidence it is an independently established business.

Compensable Conditions:

“The Workers’ Compensation Act was enacted to provide economic protection for employees who sustain injuries arising out of their employment, therefore ‘alleviat[ing] hardship upon workers and their families.’ We have held that ‘to give effect to that purpose, the Act should be liberally construed and applied to provide coverage’ and that ‘[a]ny doubt respecting the right of compensation will be resolved in favor of the injured employee.” Drake v. Industrial Com’n, 939 P.2d 177, 182 (Utah 1997).

To be compensable under the Workers’ Compensation Act, an injury must have occurred by accident and there must be a causal relationship between the injury and the claimant’s employment activities. Stouffer Foods Corp. v. Industrial Com’n, 801 P.2d 179 (Utah 1990). An “accident” is an unexpected or unintended occurrence that may be either the cause or the result of an injury. Allen v. Industrial Com’n, 729 P.2d 15 (Utah 1986). The Utah Supreme Court has adopted a two-part test to determine whether injuries stemming from work-related accidents trigger coverage for workers’ compensation. Allen v. Industrial Com’n, 729 P.2d 15, 25 (Utah 1986). In so doing, the court determined, “compensable injuries can best be identified by first considering the legal cause of the injury and then its medical cause.” Id. The test focuses on the need for medical causation to be established in all cases, and legal causation (or unusual exertion) to be established in those cases where the injury resulting in industrial accident is
substantially related to a pre-existing condition. For workers who have no pre-existing condition, any injury caused by a work related event which is unexpected as to cause or result may give rise to a workers’ compensation claim. Where the claimant does have a “pre-existing condition which contributes to the injury, an unusual or extraordinary exertion is required to prove legal causation.” *Id.*, at 26. The comparison between the usual and unusual exertion is defined according to an objective standard. *Id.* Thus, for injuries to workers who have pre-existing conditions, an injury’s precipitating event must be beyond that incurred in normal everyday life. *Id.*

Compensable injuries may also arise from cumulative trauma typified by the gradual onset of symptoms. *See Allen, at 18; Miera v. Industrial Com’n, 728 P.2d 1023 (Utah 1986); Specialty Cabinet Co. v. Montoya, 734 P.2d 437 (Utah 1986).*

Compensable injuries must arise out of and/or in the course of employment. U.C.A. 1953 § 34A-2-401. “The scope of one’s employment includes not only those things which are the direct and primary duties of the assigned job; but also those things which are reasonably necessary and incidental thereto.” *Hafer’s Inc. v. Industrial Com’n of Utah, 526 P.2d 1188 (Utah 1974).* Travel to and from employment is not generally considered to be “in the course” of employment, although exceptions to exist. *Soldier Creek Coal Co. v. Bailey, 709 P.2d 1165 (Utah 1985); State v. Ind. Com’n., 685 P.2d 1051 (Utah 1984).* Horseplay may be covered by workers’ compensation. *See J & W Janitorial Co. v. Ind. Com’n, 661 P.2d 949 (Utah 1983); Prows v. Ind. Com’n., 610 P.2d 1362 (Utah 1980) (rubber band fight occurring during work hours and on business premises held compensable).*

Utah also specifically recognizes compensable claims for occupational diseases, defined as “any disease or illness that arises out of and in the course of employment and is medically caused by that employment.” U.C.A. 1953 § 34A-3-103. The employer/insurer of last injurious exposure is responsible for the entire claim if (a) the employee’s exposure to the hazards of the disease in the course of employment with that employer was a substantial contributing medical cause of the alleged occupational disease and (b) the employee was employed by that employer for at least 12 consecutive months. U.C.A. 1953 § 34A-3-105(1). Otherwise, liability is apportioned between employers based on the involved employers’ causal contribution to the occupational disease. U.C.A. 1953 § 34A-3-105(2).

An employee may recover a physical, mental, or emotional disease related to mental stress arising out of and in the course of employment only when there is sufficient legal and medical causal connection between the employee’s disease and employment. U.C.A. § 34A-3-106(1). An employee who alleges a compensable occupational disease involving mental stress bears the burden of proof to establish legal and medical causation by a preponderance of the evidence. U.C.A § 34A-3-106(6). Legal causation requires proof of extraordinary mental stress arising predominantly and directly from employment; the extraordinary nature of the stress is judged according to an objective standard in comparison with contemporary national employment and non-employment life. U.C.A. § 34A-3-106(2). Medical causation requires proof that the physical, mental, or emotional disease was medically caused by the mental stress that is the legal cause of the physical, mental, or emotional disease. U.C.A. § 34A-3-106(3). Compensation for claims brought under the Occupational Disease Act must be “reduced and
limited to the proportion of the compensation that would be payable if the occupational disease were the sole cause of disability or death.” U.C.A. § 34A-3-110. Thus, compensation must be reduced to the extent any part of a disease is caused by a pre-existing condition.

In a case of first impression, the Utah Court of Appeals recently held that “to satisfy the ‘predominant’ requirement of the legal causation test for mental stress claim, the workers’ compensation claimant must show that the sum of all work-related stress is greater than the sum of all non-work related stress, and once there has been a determination that the claimant has established a compensable mental stress claim, the compensation payable for that claim must be reduced to reflect the non-work related causes.” Eastern Utah Broadcasting and Workers’ Compensation Fund v. Labor Com’n and Wood, 158 P.3d 1115, 1115 (Utah Ct. App. 2007); See also U.C.A § 34A-3-106; U.C.A. § 34A-3-110.

Excluded Injuries or Claims:


Mental stress claims may not be based on good faith personnel actions or alleged discrimination, harassment, or unfair labor practices. U.C.A. § 34A-3-106(4)-(5).

Compensation may not be collected under the Utah Occupational Disease Act when disability or death is wholly or partially caused by the employee’s purposeful self-exposure to hazard. U.C.A. § 34A-3-112.

Except where the employer permitted, encouraged, or had knowledge of an employee’s use of illegal substances, intentional abuse of drugs in excess of prescribed amounts, or intoxication, an employee may not recover disability compensation when the major contributing cause of the employee’s disease is found in any of these behaviors. Id.

Claims must be brought within appropriate statutes of limitation, or be barred.