

2007 Amendments to Colorado Workers' Compensation Statute

(Please note that these statutory amendments have different effective dates)

8-43-404

Effective 1/1/08

Amended

HB-07-1176

Examination - refusal - personal responsibility - physicians to testify and furnish results - definitions. (5) (a) (I) (A) In all cases of injury, the employer or insurer ~~has the right~~ SHALL PROVIDE A LIST OF AT LEAST TWO PHYSICIANS OR TWO CORPORATE MEDICAL PROVIDERS OR AT LEAST ONE PHYSICIAN AND ONE CORPORATE MEDICAL PROVIDER, WHERE AVAILABLE, in the first instance, to FROM WHICH LIST AN INJURED EMPLOYEE MAY select the physician who attends said injured employee. THE TWO DESIGNATED PROVIDERS SHALL BE AT TWO DISTINCT LOCATIONS WITHOUT COMMON OWNERSHIP. IF THERE ARE NOT TWO PROVIDERS AT TWO DISTINCT LOCATIONS WITHOUT COMMON OWNERSHIP WITHIN THIRTY MILES OF EACH OTHER, THEN AN EMPLOYER MAY DESIGNATE TWO PROVIDERS AT THE SAME LOCATION OR WITH SHARED OWNERSHIP INTERESTS. UPON REQUEST BY AN INTERESTED PARTY TO THE WORKERS' COMPENSATION CLAIM, A DESIGNATED PROVIDER ON THE EMPLOYER'S LIST SHALL PROVIDE A LIST OF OWNERSHIP INTERESTS AND EMPLOYMENT RELATIONSHIPS, IF ANY, TO THE REQUESTING PARTY WITHIN FIVE DAYS OF THE RECEIPT OF THE REQUEST. If the services of a physician are not tendered at the time of injury, the employee shall have the right to select a physician or chiropractor. FOR PURPOSES OF THIS SECTION, "CORPORATE MEDICAL PROVIDER" MEANS A MEDICAL ORGANIZATION IN BUSINESS AS A SOLE PROPRIETORSHIP, PROFESSIONAL CORPORATION, OR PARTNERSHIP.

(B) IF THERE ARE FEWER THAN FOUR PHYSICIANS OR CORPORATE MEDICAL PROVIDERS WITHIN THIRTY MILES OF THE EMPLOYER'S PLACE OF BUSINESS WHO ARE WILLING TO TREAT AN INJURED EMPLOYEE, THE EMPLOYER OR INSURER MAY INSTEAD DESIGNATE ONE PHYSICIAN OR ONE CORPORATE MEDICAL PROVIDER, AND SUBPARAGRAPHS (III) AND (IV) OF THIS PARAGRAPH (a) SHALL NOT APPLY. A PHYSICIAN IS PRESUMED WILLING TO TREAT INJURED WORKERS UNLESS HE OR SHE INDICATES TO THE EMPLOYER OR INSURER TO THE CONTRARY.

(II) (A) IF THE EMPLOYER IS A HEALTH CARE PROVIDER OR A GOVERNMENTAL ENTITY THAT CURRENTLY HAS ITS OWN OCCUPATIONAL HEALTH CARE PROVIDER SYSTEM, THE EMPLOYER MAY DESIGNATE HEALTH CARE PROVIDERS FROM WITHIN ITS OWN SYSTEM AND IS NOT REQUIRED TO PROVIDE AN ALTERNATIVE PHYSICIAN OR CORPORATE MEDICAL PROVIDER FROM OUTSIDE ITS OWN SYSTEM.

(B) IF THE EMPLOYER HAS ITS OWN ON-SITE HEALTH CARE FACILITY, THE EMPLOYER MAY DESIGNATE SUCH ON-SITE HEALTH CARE FACILITY AS THE AUTHORIZED TREATING PHYSICIAN, BUT THE EMPLOYER SHALL COMPLY WITH SUBPARAGRAPH (III) OF THIS PARAGRAPH (a). FOR PURPOSES OF THIS SUB-SUBPARAGRAPH (B), "ON-SITE HEALTH CARE FACILITY" MEANS AN ENTITY THAT MEETS ALL APPLICABLE STATE REQUIREMENTS TO PROVIDE HEALTH CARE SERVICES ON THE EMPLOYER'S PREMISES.

(III) AN EMPLOYEE MAY OBTAIN A ONE-TIME CHANGE IN THE DESIGNATED AUTHORIZED TREATING PHYSICIAN UNDER THIS SECTION BY PROVIDING NOTICE THAT MEETS THE FOLLOWING REQUIREMENTS:

(A) THE NOTICE IS PROVIDED WITHIN NINETY DAYS AFTER THE DATE OF THE INJURY, BUT BEFORE THE INJURED WORKER REACHES MAXIMUM MEDICAL IMPROVEMENT.

(B) THE NOTICE IS IN WRITING AND SUBMITTED ON A FORM DESIGNATED BY THE DIRECTOR. THE NOTICE PROVIDED IN THIS SUBPARAGRAPH (III) SHALL ALSO SIMULTANEOUSLY SERVE AS A REQUEST AND AUTHORIZATION TO THE INITIALLY AUTHORIZED TREATING PHYSICIAN TO RELEASE ALL RELEVANT MEDICAL RECORDS TO THE NEWLY AUTHORIZED TREATING PHYSICIAN.

(C) THE NOTICE IS DIRECTED TO THE INSURANCE CARRIER OR TO THE EMPLOYER'S AUTHORIZED REPRESENTATIVE, IF SELF-INSURED, AND TO THE INITIALLY AUTHORIZED TREATING PHYSICIAN AND IS DEPOSITED IN THE UNITED STATES MAIL OR HAND-DELIVERED TO THE EMPLOYER, WHO SHALL NOTIFY THE INSURANCE CARRIER, IF NECESSARY, AND THE INITIALLY AUTHORIZED TREATING PHYSICIAN.

(D) THE NEW PHYSICIAN IS ON THE EMPLOYER'S DESIGNATED LIST OR PROVIDES MEDICAL SERVICES FOR A DESIGNATED CORPORATE MEDICAL PROVIDER ON THE LIST.

(E) THE TRANSFER OF MEDICAL CARE DOES NOT POSE A THREAT TO THE HEALTH OR SAFETY OF THE INJURED EMPLOYEE.

(F) AN INSURANCE CARRIER, OR AN EMPLOYER'S AUTHORIZED REPRESENTATIVE IF THE EMPLOYER IS SELF-INSURED, SHALL TRACK HOW OFTEN INJURED EMPLOYEES CHANGE THEIR AUTHORIZED TREATING PHYSICIAN PURSUANT TO THIS SUBPARAGRAPH (III) AND SHALL REPORT SUCH INFORMATION TO THE DIVISION UPON REQUEST.

(IV) (A) WHEN AN INJURED EMPLOYEE CHANGES HIS OR HER DESIGNATED AUTHORIZED TREATING PHYSICIAN, THE NEWLY AUTHORIZED TREATING PHYSICIAN SHALL MAKE A REASONABLE EFFORT TO AVOID ANY UNNECESSARY DUPLICATION OF MEDICAL SERVICES.

(B) THE ORIGINALLY AUTHORIZED TREATING PHYSICIAN SHALL SEND ALL MEDICAL RECORDS IN HIS OR HER POSSESSION PERTAINING TO THE INJURED EMPLOYEE TO THE NEWLY AUTHORIZED TREATING PHYSICIAN WITHIN SEVEN CALENDAR DAYS AFTER RECEIVING A REQUEST FOR MEDICAL RECORDS FROM THE NEWLY AUTHORIZED TREATING PHYSICIAN.

(C) THE ORIGINALLY AUTHORIZED TREATING PHYSICIAN SHALL CONTINUE AS THE AUTHORIZED TREATING PHYSICIAN FOR THE INJURED EMPLOYEE UNTIL THE INJURED EMPLOYEE'S INITIAL VISIT WITH THE NEWLY AUTHORIZED TREATING PHYSICIAN, AT WHICH TIME THE TREATMENT RELATIONSHIP WITH THE INITIALLY AUTHORIZED TREATING PHYSICIAN SHALL TERMINATE.

(D) THE OPINION OF THE ORIGINALLY AUTHORIZED TREATING PHYSICIAN REGARDING WORK RESTRICTIONS AND RETURN TO WORK SHALL CONTROL UNLESS AND UNTIL SUCH OPINION IS EXPRESSLY MODIFIED BY THE NEWLY AUTHORIZED TREATING PHYSICIAN.

(E) THE NEWLY AUTHORIZED TREATING PHYSICIAN SHALL BE PRESUMED TO HAVE CONSENTED TO TREAT THE INJURED EMPLOYEE UNLESS THE NEWLY

AUTHORIZED TREATING PHYSICIAN EXPRESSLY REFUSES IN WRITING WITHIN FIVE DAYS AFTER THE DATE OF THE NOTICE TO CHANGE AUTHORIZED TREATING PHYSICIANS. IF THE NEWLY AUTHORIZED TREATING PHYSICIAN REFUSES TO TREAT THE INJURED EMPLOYEE, THE EMPLOYEE MAY RETURN TO THE EMPLOYER TO REQUEST AN ALTERNATIVE AUTHORIZED TREATING PHYSICIAN. IF THE EMPLOYER DOES NOT PROVIDE AN ALTERNATIVE AUTHORIZED TREATING PHYSICIAN WITHIN FIVE DAYS AFTER THE EMPLOYEE'S REQUEST, RULES ESTABLISHED BY THE DIVISION SHALL CONTROL.

(V) IF THE AUTHORIZED TREATING PHYSICIAN MOVES FROM ONE FACILITY TO ANOTHER, OR FROM ONE CORPORATE MEDICAL PROVIDER TO ANOTHER, AN INJURED EMPLOYEE MAY CONTINUE CARE WITH THE AUTHORIZED TREATING PHYSICIAN, AND THE ORIGINAL FACILITY OR CORPORATE MEDICAL PROVIDER SHALL PROVIDE THE INJURED EMPLOYEE'S MEDICAL RECORDS TO THE AUTHORIZED TREATING PHYSICIAN WITHIN SEVEN DAYS AFTER RECEIPT OF A REQUEST FOR MEDICAL RECORDS FROM THE AUTHORIZED TREATING PHYSICIAN.

(VI) IN ADDITION TO THE ONE-TIME CHANGE OF PHYSICIAN ALLOWED IN SUBPARAGRAPH (III) OF THIS PARAGRAPH (a), upon written request to the insurance carrier or TO THE employer's authorized representative if self-insured, ~~the~~ AN INJURED employee may procure written permission to have a personal physician or chiropractor ~~attend said~~ TREAT THE employee. If ~~such~~ permission is neither granted nor refused within twenty days, the employer or insurance carrier shall be deemed to have waived any objection ~~thereto~~ TO THE EMPLOYEE'S REQUEST. Objection shall be in writing and shall be deposited in the United States mail or hand-delivered to the employee within ~~said~~ twenty days. AN INSURANCE CARRIER, OR AN EMPLOYER'S AUTHORIZED REPRESENTATIVE IF SELF-INSURED, SHALL TRACK HOW OFTEN AN INJURED EMPLOYEE REQUESTS TO CHANGE HIS OR HER PHYSICIAN AND HOW OFTEN SUCH CHANGE IS GRANTED OR DENIED AND SHALL REPORT SUCH INFORMATION TO THE DIVISION UPON REQUEST. Upon the proper showing to the division, the employee may procure THE DIVISION'S permission at any time to have a physician of the employee's selection ~~attend said~~ TREAT THE employee, and in any nonsurgical case the employee, with such permission, in lieu of medical aid, may procure any nonmedical treatment recognized by the laws of this state as legal. The practitioner administering ~~such~~ THE treatment to SHALL receive ~~such~~ fees ~~therefor~~ under the medical provisions of articles 40 to 47 of this title as ~~may be fixed~~ SPECIFIED by the division.

8-42-101

Effective 5/30/07

Amended

SB-07-258

Employer must furnish medical aid - approval of plan - fee schedule - contracting for treatment - no recovery from employee - medical treatment guidelines - accreditation of physicians - repeal. (3) (a) (I) The director shall establish a schedule fixing the fees for which all medical, surgical, hospital, dental, nursing, and vocational rehabilitation, AND MEDICAL SERVICES, WHETHER RELATED TO treatment rendered OR NOT, PERTAINING to INJURED employees under this section shall be compensated, and it is unlawful, void, and unenforceable as a

debt for any physician, chiropractor, hospital, person, EXPERT WITNESS, REVIEWER, EVALUATOR, or institution to contract with, bill, or charge any patient for services, rendered in connection with injuries coming within the purview of this article or an applicable fee schedule, which are or may be in excess of said fee schedule unless such charges are approved by the director. Fee schedules shall be reviewed on or before July 1 of each year by the director, and appropriate health care practitioners shall be given a reasonable opportunity to be heard as required pursuant to section 24-4-103, C.R.S., prior to fixing the fees, impairment rating guidelines, which shall be based on the revised third edition of the "American Medical Association Guides to the Evaluation of Permanent Impairment", in effect as of July 1, 1991, and medical treatment guidelines and utilization standards. Fee schedules established pursuant to this subparagraph (I) shall take effect on January 1. The director shall promulgate rules concerning reporting requirements, penalties for failure to report correctly or in a timely manner, utilization control requirements for services provided under this section, and the accreditation process in subsection (3.6) of this section.

(3.6) The two-tier accreditation system shall comprise the following programs:

(k) The division shall make available to insurers, CLAIMANTS, AND EMPLOYERS a list of all accredited physicians and a list of all physicians whose accreditation has been revoked. Such lists shall be updated on a monthly basis.

8-42-107

Effective 5/30/07

Amended

SB-07-258

Permanent partial disability benefits - schedule -medical impairment benefits - how determined. (8) **Medical impairment benefits - determination of MMI for scheduled and nonscheduled injuries.** (d) Medical impairment benefits shall be determined by multiplying the medical impairment rating determined pursuant to paragraph (c) of this subsection (8) by the age factor determined pursuant to paragraph (e) of this subsection (8) and by four hundred weeks and shall be calculated at the temporary total disability rate specified in section 8-42-105. Up to ten thousand dollars of the total amount of any such award OR SCHEDULED AWARD shall be automatically paid in a lump sum less the discount as calculated in section 8-43-406 upon the injured employee's written request to the employer or, if insured, to the employer's insurance carrier. The remaining periodic payments of any such award, after subtracting the total amount of the lump sum requested by the employee without subtracting the discount calculated in section 8-43-406, shall be paid at the temporary total disability rate but not less than one hundred fifty dollars per week and not more than fifty percent of the state average weekly wage, beginning on the date of maximum medical improvement.

8-42-107.2

Effective 5/30/07

Amended

SB-07-258

Selection of independent medical examiner -procedure – time - applicability. (3) (a) Upon receiving the requesting party's notice and proposal pursuant to subsection (2) of this section, the other parties have until the end of the thirtieth day after the date of mailing of such notice and proposal within which to negotiate and select an IME.

~~but shall not select an IME earlier than the fourteenth day after the day such notice is mailed.~~ If the parties agree on an IME on or before such thirtieth day, the requesting party shall promptly notify the IME in writing that he or she has been selected. If, within such time, the parties are unable to agree or the requesting party receives no response to the notice and proposal, the insurer or self-insured employer shall give written notice of such fact to the division within thirty days via United States mail, first-class postage paid. The division shall then, within ten days after receiving such written notice, select three physicians by a revolving selection process established by the division from the list of physicians maintained by the division. The division shall administer the list in such fashion as to ensure that the names of candidates to serve as IME in each pending case remain confidential until the IME is selected. The director of the division shall promulgate rules to implement the process of selecting a panel of three physicians from which the parties may select a physician to conduct a division independent medical examination. The selection of a physician panel shall be based on various factors, including, but not limited to, the designation by rule of the fields of specialization authorized to perform independent medical examinations for conditions listed under each medical treatment guideline and measures to prevent the over-utilization of physicians or specialists. The requesting party shall have the opportunity to strike one of the three physicians from the list, followed by the opposing party who shall then be given the opportunity to strike one physician from the list. The remaining IME physician shall be designated by the division to conduct the IME. If one or neither party strikes a physician from the list, the division shall select the physician to conduct the IME from the remaining physicians on the list.

8-43-209

Effective 5/30/07

Amended

SB-07-258

Time schedule for hearings - establishment. (1) ~~The director of the office of administrative courts shall establish a time schedule for hearings by administrative law judges within the time limits for the hearings as established in this section. Hearings shall be heard~~ COMMENCE within eighty to one hundred days after the occurrences listed in HEARING IS SET PURSUANT TO section 8-43-211 (2). One extension of time TO COMMENCE THE HEARING of no more than sixty days shall be granted by an administrative law judge upon agreement of the parties.

(2) One extension of time TO COMMENCE THE HEARING of no more than sixty days may be granted by an administrative law judge upon written request by any party to the case and for good cause shown, in the following cases: When pulmonary lung disease, cancer, cardiovascular disease, or stroke is alleged as the cause of the disability; when the subsequent injury fund is a party; when permanent total disability is alleged; upon agreement of the parties; or when compensability of the injury is contested. In all other cases, extensions of time TO COMMENCE THE HEARING of no more than twenty days may be granted by an administrative law judge upon written request by any party to the case and for good cause shown. ~~Such extensions may be granted only when the interests of all parties will be served.~~

(3) ONCE THE HEARING IS COMMENCED, THE ADMINISTRATIVE LAW JUDGE MAY, FOR GOOD CAUSE SHOWN, CONTINUE THE HEARING TO A DATE CERTAIN TO TAKE ADDITIONAL TESTIMONY, TO FILE AN ADDITIONAL MEDICAL REPORT, TO FILE THE TRANSCRIPT OF A DEPOSITION, OR TO FILE A POSITION STATEMENT. EXCEPT UPON THE

AGREEMENT OF ALL PARTIES OR FOR GOOD CAUSE SHOWN, A CONTINUANCE TO COMPLETE A HEARING SHALL NOT EXCEED THIRTY CALENDAR DAYS.

8-43-210

Effective 5/30/07

Amended

SB-07-258

Evidence. Notwithstanding section 24-4-105, C.R.S., the Colorado rules of evidence and requirements of proof for civil nonjury cases in the district courts shall apply in all hearings; except that medical and hospital records, physicians' reports, vocational reports, and records of the employer are admissible as evidence and can be filed in the record as evidence without formal identification if relevant to any issue in the case. Depositions may be substituted for testimony upon good cause shown. Convictions for alcohol-related offenses, pursuant to ~~title 42 and title 18~~ TITLES 18 AND 42, C.R.S., the transcripts of proceedings leading to such convictions, and the court files relating to such convictions may be admissible in all hearings conducted under the "Workers' Compensation Act of Colorado", ARTICLES 40 TO 47 OF THIS TITLE, where such conviction resulted from the same occurrence, accident, or injury occurring on the job that forms the basis for the workers' compensation claim. ALL RELEVANT MEDICAL RECORDS, VOCATIONAL REPORTS, EXPERT WITNESS REPORTS, AND EMPLOYER RECORDS SHALL BE EXCHANGED WITH ALL OTHER PARTIES AT LEAST TWENTY DAYS PRIOR TO THE HEARING DATE.

8-43-211

Effective 5/30/07

Amended

SB-07-258

Notice - request for hearing. (2) Hearings shall be set by the office of administrative courts in the department of personnel within eighty to one hundred days after any of the following occur:

(e) Except in claims in which compensability is contested OR A HEARING IS REQUESTED IN RESPONSE TO A FINAL ADMISSION OF LIABILITY OR TO OVERCOME A CONCLUSION IN A DIVISION-SPONSORED INDEPENDENT MEDICAL EXAMINATION, the party filing an application for a hearing shall certify on the application that the party attempted to resolve with the other parties all issues listed in the application for a hearing.

8-43-215

Effective 5/30/07

Amended

SB-07-258

Orders. (1) ~~Any hearing conducted under this article shall be completed within one hundred twenty days, or in the case where an extension of time of sixty days is allowable under the provisions of section 8-43-209, one hundred sixty days, after a request therefor pursuant to section 8-43-211 (2).~~ At the NO MORE THAN FIFTEEN WORKING DAYS AFTER THE conclusion of a hearing, the administrative law judge or director shall issue a written order allowing or denying said claim. Such written order shall EITHER BE A SUMMARY ORDER OR A FULL ORDER. A FULL ORDER SHALL contain specific findings of fact and conclusions of law. If compensation benefits are granted, such written order shall specify the amounts thereof, the disability for which compensation benefits are granted, by whom and to whom such benefits shall be paid, and the method and time of such payments. ~~Such written order shall be issued within thirty calendar days after the conclusion of such hearing, and~~ A certificate of

mailing and a copy of such written order shall be mailed, SERVED by regular or electronic mail OR BY FACSIMILE to each of the parties in interest OR THEIR REPRESENTATIVES, the original of which shall be a part of the records in said case. ~~Such written order~~ IF AN ADMINISTRATIVE LAW JUDGE HAS ISSUED A SUMMARY ORDER, A PARTY DISSATISFIED WITH THE ORDER MAY MAKE A WRITTEN REQUEST FOR A FULL ORDER WITHIN SEVEN WORKING DAYS AFTER THE DATE OF MAILING OF THE SUMMARY ORDER. THE REQUEST SHALL BE A PREREQUISITE TO REVIEW UNDER SECTION 8-43-201. IF A REQUEST FOR A FULL ORDER IS MADE, THE ADMINISTRATIVE LAW JUDGE SHALL HAVE TEN WORKING DAYS AFTER RECEIPT OF THE REQUEST TO ISSUE THE ORDER. A FULL ORDER shall be entered as the final award of the administrative law judge or director subject to review as provided in this article.

8-43-303

Effective 5/30/07

New

SB-07-258

Reopening. (4) THE PARTY ATTEMPTING TO REOPEN AN ISSUE OR CLAIM SHALL BEAR THE BURDEN OF PROOF AS TO ANY ISSUES SOUGHT TO BE REOPENED.

8-43-406

Effective 5/30/07

Amended

SB-07-258

Compensation in lump sum. (1) At any time after six months have elapsed from the date of injury, ~~the director, in the exercise of discretion, after five days' prior notice to the parties, may order payment of~~ THE CLAIMANT MAY ELECT TO TAKE all or any part of the compensation awarded in a lump sum ~~or in such manner as the director may determine to be for the best interests of the parties concerned, and the director's order shall be final and not subject to review.~~ When payment in a lump sum is ordered, BY SENDING WRITTEN NOTICE OF THE ELECTION AND THE AMOUNT OF BENEFITS REQUESTED TO THE CARRIER OR THE NONINSURED OR SELF-INSURED EMPLOYER. THE CARRIER OR SELF-INSURED EMPLOYER SHALL FILE THE CALCULATION OF THE LUMP SUM DUE AND NOTICE THAT THE LUMP SUM HAS BEEN PAID TO THE CLAIMANT WITHIN TEN DAYS AFTER THE ELECTION. WHEN THE CLAIMANT IS UNREPRESENTED, the director shall ~~fix the amount~~ CALCULATE AMOUNTS to be paid based on the present worth of partial payments, considering interest at four percent per annum, and less a deduction for the contingency of death. THE DIRECTOR SHALL MAKE THE METHOD OF CALCULATION OF LUMP SUMS AVAILABLE TO ALL PARTIES AT ALL TIMES, INCLUDING POSTING THE INFORMATION ON THE DIVISION'S WEBSITE.

(2) The aggregate of all lump sums granted to a claimant who has been awarded compensation ~~by the director for permanent total disability or death benefits shall not exceed thirty seven SIXTY thousand five hundred sixty dollars. In the case of permanent partial disability, the director shall order payment upon application by the employee not to exceed thirty seven thousand five hundred sixty dollars to be paid based on the present worth of partial payments, considering interest at four percent per annum.~~

8-41-209

Effective 5/17/07

New

HB-07-1008

Coverage for occupational diseases contracted by firefighters - repeal. (1)

DEATH, DISABILITY, OR IMPAIRMENT OF HEALTH OF A FIREFIGHTER OF ANY POLITICAL SUBDIVISION WHO HAS COMPLETED FIVE OR MORE YEARS OF EMPLOYMENT AS A FIREFIGHTER, CAUSED BY CANCER OF THE BRAIN, SKIN, DIGESTIVE SYSTEM, HEMATOLOGICAL SYSTEM, OR GENITOURINARY SYSTEM AND RESULTING FROM HIS OR HER EMPLOYMENT AS A FIREFIGHTER, SHALL BE CONSIDERED AN OCCUPATIONAL DISEASE.

(2) ANY CONDITION OR IMPAIRMENT OF HEALTH DESCRIBED IN SUBSECTION (1) OF THIS SECTION:

(a) SHALL BE PRESUMED TO RESULT FROM A FIREFIGHTER'S EMPLOYMENT IF, AT THE TIME OF BECOMING A FIREFIGHTER OR THEREAFTER, THE FIREFIGHTER UNDERWENT A PHYSICAL EXAMINATION THAT FAILED TO REVEAL SUBSTANTIAL EVIDENCE OF SUCH CONDITION OR IMPAIRMENT OF HEALTH THAT PREEXISTED HIS OR HER EMPLOYMENT AS A FIREFIGHTER; AND

(b) SHALL NOT BE DEEMED TO RESULT FROM THE FIREFIGHTER'S EMPLOYMENT IF THE FIREFIGHTER'S EMPLOYER OR INSURER SHOWS BY A PREPONDERANCE OF THE MEDICAL EVIDENCE THAT SUCH CONDITION OR IMPAIRMENT DID NOT OCCUR ON THE JOB.

(3) (a) ON OR BEFORE MARCH 1, 2009, THE DIVISION, WITHIN EXISTING RESOURCES AND IN CONJUNCTION WITH INSURANCE CARRIERS PROVIDING WORKERS' COMPENSATION INSURANCE IN COLORADO AND WITH EMPLOYERS, IF SELF-INSURED, SHALL PREPARE AND DELIVER A REPORT TO THE BUSINESS AFFAIRS AND LABOR COMMITTEE OF THE HOUSE OF REPRESENTATIVES AND THE BUSINESS, LABOR, AND TECHNOLOGY COMMITTEE OF THE SENATE, OR ANY SUCCESSOR COMMITTEES, REGARDING THE NUMBER OF CLAIMS ALLOWED PURSUANT TO THIS SECTION AND THE COSTS ASSOCIATED WITH THOSE CLAIMS.

(b) THIS SUBSECTION (3) IS REPEALED, EFFECTIVE MARCH 1, 2008.

8-41-404

Effective 10/1/07

New

HB-07-1366

Construction work - proof of coverage required – violation - penalty - definitions.

(1) (a) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (4) OF THIS SECTION, EVERY PERSON PERFORMING CONSTRUCTION WORK ON A CONSTRUCTION SITE SHALL BE COVERED BY WORKERS' COMPENSATION INSURANCE, AND A PERSON WHO CONTRACTS FOR THE PERFORMANCE OF CONSTRUCTION WORK ON A CONSTRUCTION SITE SHALL EITHER PROVIDE, PURSUANT TO ARTICLES 40 TO 47 OF THIS TITLE, WORKERS' COMPENSATION COVERAGE FOR, OR REQUIRE PROOF OF WORKERS' COMPENSATION COVERAGE FROM, EVERY PERSON WITH WHOM HE OR SHE HAS A DIRECT CONTRACT TO PERFORM CONSTRUCTION WORK ON THE CONSTRUCTION SITE.

(b) A SITE OWNER, GENERAL CONTRACTOR, OR OTHER PERSON WHO IS NOT A DIRECT PARTY TO A CONTRACT FOR CONSTRUCTION WORK SHALL NOT BE HELD LIABLE UNDER SUBSECTION (3) OF THIS SECTION SOLELY AS A RESULT OF THE PERSON'S OWNERSHIP INTEREST OR GENERAL SUPERVISORY ROLE IN A CONSTRUCTION PROJECT.

(c) ANY PERSON WHO CONTRACTS FOR THE PERFORMANCE OF CONSTRUCTION WORK ON A CONSTRUCTION SITE AND WHO EXERCISES DUE DILIGENCE BY EITHER PROVIDING WORKERS' COMPENSATION COVERAGE AS REQUIRED BY THIS SECTION OR REQUIRING PROOF OF WORKERS' COMPENSATION COVERAGE AS REQUIRED BY THIS SECTION FROM EVERY PERSON WITH WHOM HE OR SHE HAS A DIRECT CONTRACT TO PERFORM CONSTRUCTION WORK ON THE CONSTRUCTION SITE SHALL NOT BE LIABLE UNDER SUBSECTION (3) OF THIS SECTION.

(2) IF THE PARTIES TO A CONTRACT THAT INCLUDES CONSTRUCTION WORK AGREE THAT PART OF THE CONTRACT PRICE SHALL BE WITHHELD TO COVER WORKERS' COMPENSATION PREMIUMS FOR COVERAGE REQUIRED UNDER THIS SECTION, THE PREMIUMS SHALL BE CALCULATED BASED ONLY ON THAT PORTION OF THE CONTRACT PRICE THAT REPRESENTS THE LABOR PORTION OF THE CONTRACT.

(3) A VIOLATION OF SUBSECTION (1) OF THIS SECTION IS PUNISHABLE BY AN ADMINISTRATIVE FINE IMPOSED PURSUANT TO SECTION 8-43-409 (1)(b). THE DIVISION SHALL TRANSMIT REVENUES COLLECTED THROUGH THE IMPOSITION OF FINES PURSUANT TO THIS SECTION TO THE STATE TREASURER, WHO SHALL CREDIT THEM TO THE WORKERS' COMPENSATION CASH FUND CREATED IN SECTION 8-44-112 (7). SUCH REVENUES SHALL BE APPROPRIATED TO THE DIVISION FOR THE PURPOSE OF ENFORCING THIS SECTION.

(4) (a) THIS SECTION SHALL NOT APPLY TO:

(I) AN OWNER OR OCCUPANT, OR BOTH, OF RESIDENTIAL REAL PROPERTY THAT MEETS THE DEFINITION OF A "QUALIFIED RESIDENCE" UNDER SECTION 163 (h) (4) (A) OF THE FEDERAL "INTERNAL REVENUE CODE OF 1986", AS AMENDED, WHO CONTRACTS OUT ANY WORK DONE TO THE REAL PROPERTY, UNLESS THE PERSON PERFORMING THE WORK IS OTHERWISE AN EMPLOYEE OF THE OWNER OR OCCUPANT, OR BOTH, OF THE REAL PROPERTY;

(II) AN OWNER OR OCCUPANT OF REAL PROPERTY WHO HIRES A PERSON OR PERSONS SPECIFICALLY TO DO ROUTINE REPAIR AND MAINTENANCE ON THE REAL PROPERTY OF SUCH OWNER OR OCCUPANT;

(III) AN INDEPENDENT CONTRACTOR, WHO IS A NATURAL PERSON, WHO HAS FORMED A CORPORATION PURSUANT TO SECTION 7-102-103, C.R.S., OR A LIMITED LIABILITY COMPANY PURSUANT TO SECTION 7-80-203, C.R.S., AND WHO HAS REJECTED WORKERS' COMPENSATION COVERAGE PURSUANT TO SECTION 8-41-202;

(IV) CORPORATE OFFICERS AND MEMBERS OF A LIMITED LIABILITY COMPANY WHO HAVE REJECTED WORKERS' COMPENSATION COVERAGE PURSUANT TO SECTION 8-41-202;

(V) A PARTNER IN A PARTNERSHIP WHO HAS FILED A CERTIFICATE OF LIMITED PARTNERSHIP PURSUANT TO SECTION 7-62-201, C.R.S., A PARTNERSHIP REGISTRATION STATEMENT PURSUANT TO SECTION 7-60-144 OR 7-64-1002, C.R.S., OR A STATEMENT OF TRADE NAME PURSUANT TO SECTION 7-71-103, C.R.S., AND HAS FILED WITH THE DIVISION A FORM, APPROVED BY THE DIRECTOR, REJECTING WORKERS' COMPENSATION; OR

(VI) A SOLE PROPRIETOR WHO HAS FILED A STATEMENT OF TRADE NAME PURSUANT TO SECTION 7-71-103, C.R.S., AND HAS FILED WITH THE

DIVISION A FORM, APPROVED BY THE DIRECTOR, REJECTING WORKERS' COMPENSATION.

(b) NOTHING IN THIS SECTION SHALL BE CONSTRUED TO LIMIT THE RESPONSIBILITY OF CORPORATIONS, LIMITED LIABILITY COMPANIES, PARTNERSHIPS, OR SOLE PROPRIETORSHIPS TO PROVIDE COVERAGE FOR THEIR EMPLOYEES AS REQUIRED UNDER ARTICLES 40 TO 47 OF THIS TITLE.

(5) AS USED IN THIS SECTION:

(a) "CONSTRUCTION SITE" MEANS A LOCATION WHERE A STRUCTURE THAT IS ATTACHED OR WILL BE ATTACHED TO REAL PROPERTY IS CONSTRUCTED, ALTERED, OR REMODELED.

(b) "CONSTRUCTION WORK" INCLUDES ALL OR ANY PART OF THE CONSTRUCTION, ALTERATION, OR REMODELING OF A STRUCTURE. "CONSTRUCTION WORK" DOES NOT INCLUDE SURVEYING, ENGINEERING, EXAMINATION, OR INSPECTION OF A CONSTRUCTION SITE OR THE DELIVERY OF MATERIALS TO A CONSTRUCTION SITE.

(c) "PROOF OF WORKERS' COMPENSATION COVERAGE" INCLUDES A CERTIFICATE OR OTHER WRITTEN CONFIRMATION, ISSUED BY THE INSURER OR AUTHORIZED AGENT OF THE INSURER, OF THE EXISTENCE OF WORKERS' COMPENSATION COVERAGE IN FORCE DURING THE PERIOD OF THE PERFORMANCE OF CONSTRUCTION WORK ON THE CONSTRUCTION SITE.

8-42-108

Effective 7/1/07

Amended

HB-07-1297

Disfigurement - additional compensation. (1) If ~~any~~ AN employee is seriously, permanently disfigured about the head, face, or parts of the body normally exposed to public view, ~~the director~~, in addition to all other compensation benefits provided in this article AND EXCEPT AS PROVIDED IN SUBSECTION (2) OF THIS SECTION, THE DIRECTOR may allow ~~such sum for compensation on account thereof as the director may deem just, not exceeding two thousand dollars~~ NOT TO EXCEED FOUR THOUSAND DOLLARS TO THE EMPLOYEE WHO SUFFERS SUCH DISFIGUREMENT.

(2) IF AN EMPLOYEE SUSTAINS ANY OF THE FOLLOWING DISFIGUREMENTS, THE DIRECTOR MAY ALLOW UP TO EIGHT THOUSAND DOLLARS AS COMPENSATION TO THE EMPLOYEE IN ADDITION TO ALL OTHER COMPENSATION BENEFITS PROVIDED IN THIS ARTICLE OTHER THAN COMPENSATION ALLOWED UNDER SUBSECTION (1) OF THIS SECTION:

- (a) EXTENSIVE FACIAL SCARS OR FACIAL BURN SCARS;
- (b) EXTENSIVE BODY SCARS OR BURN SCARS; OR
- (c) STUMPS DUE TO LOSS OR PARTIAL LOSS OF LIMBS.

(3) THE DIRECTOR SHALL ADJUST THE LIMITS ON THE AMOUNT OF COMPENSATION FOR DISFIGUREMENT SPECIFIED IN THIS SECTION ON JULY 1, 2008, AND EACH JULY 1 THEREAFTER BY THE PERCENTAGE OF ADJUSTMENT MADE BY THE DIRECTOR TO THE STATE AVERAGE WEEKLY WAGE PURSUANT TO SECTION 8-47-106.