

# 2013 Amendments to Colorado Workers' Compensation Statute

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

8-40-301(7)      Signed May 28, 2013      Effective March 1, 2014      Amended      HB-13-1314

**8-40-301. Scope of term "employee".** (7) Persons who provide host home services as part of residential services and supports, as described in section ~~27-10.5-104 (1) (f)~~ 25.5-10-206 (1) (e), C.R.S., for an eligible person, as defined in section 25.5-6-403 (2) (a), C.R.S., pursuant to the "Home- and Community-based Services for Persons with Developmental Disabilities Act", part 4 of article 6 of title 25.5, C.R.S., and pursuant to a contract with a community-centered board designated pursuant to section ~~27-10.5-105~~ 25.5-10-209, C.R.S., or a contract with a service agency as defined in section ~~27-10.5-102 (28)~~ 25.5-10-202, C.R.S., shall not be considered employees of the community-centered board or the service agency.

8-41-401(1)(a)(I)      Signed June 5, 2013      Effective upon signature      Amended      SB-13-147

**8-41-401. Lessor contractor-out deemed employer – liability – recovery.** (1) (a) (I) Any person, company, or corporation operating or engaged in or conducting any business by leasing or contracting out any part or all of the work thereof to any lessee, sublessee, contractor, or subcontractor, irrespective of the number of employees engaged in such work, shall be construed to be an employer as defined in articles 40 to 47 of this title and shall be liable as provided in said articles to pay compensation for injury or death resulting therefrom to said lessees, sublessees, contractors, and subcontractors and their employees or employees' dependents, except as otherwise provided in subsection (3) of this section.

(II) NOTWITHSTANDING SUBPARAGRAPH (I) OF THIS PARAGRAPH (a) AND ANY OTHER PROVISION OF LAW TO THE CONTRARY, IT IS PRESUMED THAT A BUYER OF GOODS IS NOT LIABLE AS A STATUTORY EMPLOYER WHEN A LESSEE, SUBLESSEE, CONTRACTOR, OR SUBCONTRACTOR, OR THEIR EMPLOYEE WHO IS DELIVERING THE GOODS TO THE BUYER INJURES HIMSELF OR HERSELF WHILE NOT ON THE BUYER'S PREMISES. THE PRESUMPTION MAY BE OVERCOME BY A SHOWING THAT THE LESSEE, SUBLESSEE, CONTRACTOR, OR SUBCONTRACTOR, OR THEIR EMPLOYEE WAS PERFORMING A JOB FUNCTION THAT WOULD NORMALLY BE PERFORMED BY AN EMPLOYEE OF THE BUYER OF THE GOODS BEING DELIVERED. NOTHING IN THIS SUBPARAGRAPH (II) CREATES A PRESUMPTION OF A STATUTORY EMPLOYER-EMPLOYEE RELATIONSHIP WHEN AN INJURY OCCURS ON THE BUYER'S PREMISES.

(III) FOR THE PURPOSES OF THIS SECTION, A "STATUTORY EMPLOYER" IS AN EMPLOYER WHO IS RESPONSIBLE TO PAY WORKERS' COMPENSATION BENEFITS PURSUANT TO SUBPARAGRAPH (I) OF THIS PARAGRAPH (a).

8-42-101(6)(a)      Signed May 28, 2013      Effective July 1, 2013      New      SB-13-285

**8-42-101. Employer must furnish medical aid - approval of plan - fee schedule - contracting for treatment - no recovery from employee - medical treatment guidelines - accreditation of physicians - rules – repeal.** (6) (a) IF AN EMPLOYER RECEIVES NOTICE OF INJURY AND THE EMPLOYER OR, IF INSURED, THE EMPLOYER'S INSURANCE CARRIER, AFTER NOTICE OF THE INJURY, FAILS TO FURNISH REASONABLE AND NECESSARY MEDICAL TREATMENT TO THE INJURED WORKER FOR A CLAIM THAT IS ADMITTED OR FOUND TO BE COMPENSABLE, THE EMPLOYER OR CARRIER SHALL REIMBURSE THE CLAIMANT, OR ANY INSURER OR GOVERNMENTAL PROGRAM THAT PAYS FOR RELATED MEDICAL TREATMENT, FOR THE COSTS OF REASONABLE AND NECESSARY TREATMENT THAT WAS PROVIDED. AN EMPLOYER, INSURER, CARRIER, OR PROVIDER MAY NOT RECOVER THE COST OF CARE

FROM A CLAIMANT WHERE THE EMPLOYER OR CARRIER HAS FURNISHED MEDICAL TREATMENT EXCEPT IN THE CASE OF FRAUD.

(b) IF A CLAIMANT HAS PAID FOR MEDICAL TREATMENT THAT IS ADMITTED OR FOUND TO BE COMPENSABLE AND THAT COSTS MORE THAN THE AMOUNT SPECIFIED IN THE WORKERS' COMPENSATION FEE SCHEDULE, THE EMPLOYER OR, IF INSURED, THE EMPLOYER'S INSURANCE CARRIER, SHALL REIMBURSE THE CLAIMANT FOR THE FULL AMOUNT PAID. THE EMPLOYER OR CARRIER IS ENTITLED TO REIMBURSEMENT FROM THE MEDICAL PROVIDERS FOR THE AMOUNT IN EXCESS OF THE AMOUNT SPECIFIED IN THE WORKER'S COMPENSATION FEE SCHEDULE.

8-42-103(2)

Signed May 28, 2013

Effective July 1, 2013

New

SB-13-285

**8-42-103. Disability indemnity payable as wages - period of disability.** (2) WITHIN FIFTEEN DAYS AFTER RECEIPT OF WRITTEN NOTICE BY THE EMPLOYER OR, IF INSURED, THE EMPLOYER'S WORKERS' COMPENSATION INSURANCE CARRIER OR THIRD-PARTY ADMINISTRATOR OF THE TERMINATION OF A FRINGE BENEFIT OR ADVANTAGE ENUMERATED IN SECTION 8-40-201 (19) (b), AND THE EFFECTIVE DATE OF THE TERMINATION AND COST OF CONVERSION, THE EMPLOYER OR, IF INSURED, THE EMPLOYER'S WORKERS' COMPENSATION INSURANCE CARRIER OR THIRD-PARTY ADMINISTRATOR SHALL RECALCULATE THE APPLICABLE AVERAGE WEEKLY WAGE AND BEGIN PAYMENT OF BENEFITS IN ACCORDANCE WITH THE RECALCULATION WITH INTEREST BEGINNING ON THE DATE THE BENEFIT WAS TERMINATED.

8-42-106(1)

Signed May 28, 2013

Effective July 1, 2013

Amended

SB-13-285

**8-42-106. Temporary partial disability.** (1) In case of temporary partial disability, the employee shall receive sixty-six and two-thirds percent of the difference between ~~said~~ THE employee's average weekly wage at the time of the injury and ~~said~~ THE employee's average weekly wage during the continuance of the temporary partial disability, not to exceed a maximum of ninety-one percent of the state average weekly wage per week. TEMPORARY PARTIAL DISABILITY SHALL BE PAID AT LEAST ONCE EVERY TWO WEEKS.

8-42-107(8) (b)(II)(A)

Signed May 28, 2013

Effective July 1, 2013

Amended

SB-13-285

**8-42-107. Medical impairment benefits - determination of MMI for scheduled and nonscheduled injuries.** (8) (b) (II) If either party disputes a determination by an authorized treating physician on the question of whether the injured worker has or has not reached maximum medical improvement, an independent medical examiner may be selected in accordance with section 8-42-107.2; except that, if an authorized treating physician has not determined that the employee has reached maximum medical improvement, the employer or insurer may only request the selection of an independent medical examiner if all of the following conditions are met:

(A) At least ~~eighteen~~ TWENTY-FOUR months have passed since the date of injury;

8-42-107(8) (b)(III)

Signed May 28, 2013

Effective July 1, 2013

Amended

SB-13-285

**8-42-107. Medical impairment benefits - determination of MMI for scheduled and nonscheduled injuries.** (8) (b) (III) NOTWITHSTANDING PARAGRAPH (c) OF THIS SUBSECTION (8), IF THE INDEPENDENT MEDICAL EXAMINER SELECTED PURSUANT TO SUBPARAGRAPH (II) OF THIS PARAGRAPH (b) FINDS THAT THE INJURED WORKER HAS REACHED MAXIMUM MEDICAL IMPROVEMENT, THE INDEPENDENT MEDICAL EXAMINER SHALL ALSO DETERMINE THE INJURED WORKER'S PERMANENT MEDICAL IMPAIRMENT RATING. The finding REGARDING MAXIMUM MEDICAL IMPROVEMENT AND PERMANENT MEDICAL

IMPAIRMENT of an independent medical examiner in a dispute arising under subparagraph (II) of this paragraph (b) ~~shall~~ MAY be overcome only by clear and convincing evidence. A hearing on this matter shall not take place until the finding of the independent medical examiner has been filed with the division.

8-42-107(8) (c)

Signed May 28, 2013

Effective July 1, 2013

Amended

SB-13-285

**8-42-107. Medical impairment benefits - determination of MMI for scheduled and nonscheduled injuries. (8) (c)** When the injured employee's date of maximum medical improvement has been determined pursuant to SUBPARAGRAPH (I) OF paragraph (b) of this subsection (8), and there is a determination that permanent medical impairment has resulted from the injury, the authorized treating physician shall determine a medical impairment rating as a percentage of the whole person 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. Except for a determination by the authorized treating physician providing primary care that no permanent medical impairment has resulted from the injury, any physician who determines a medical impairment rating shall have received accreditation under the level II accreditation program pursuant to section 8-42-101. For purposes of determining levels of medical impairment, the physician shall not render a medical impairment rating based on chronic pain without anatomic or physiologic correlation. Anatomic correlation must be based on objective findings. If either party disputes the authorized treating physician's finding of medical impairment, including a finding that there is no permanent medical impairment, the parties may select an independent medical examiner in accordance with section 8-42-107.2. The finding of ~~such~~ THE independent medical examiner ~~shall~~ MAY be overcome only by clear and convincing evidence. A hearing on this matter shall not take place until the finding of the independent medical examiner has been filed with the division.

8-42-107.2(4)(a)

Signed May 25, 2013

Effective Aug. 7, 2013

Amended

SB-13-249

**8-42-107.2 Selection of independent medical examiner - procedure - time – disclosures regarding physician relationships with insurers, self-insured employers, or claimants – rules – applicability.**

**(4) (a)** UPON RECEIPT OF THE IME'S REPORT, THE DIVISION HAS FIVE BUSINESS DAYS TO REVIEW THE REPORT AND EITHER:

(I) ISSUE A NOTICE TO ALL PARTIES THAT THE DIVISION HAS RECEIVED THE IME'S REPORT; OR

(II) NOTIFY THE IME OF ANY DEFICIENCIES IN THE REPORT BY LETTER AND SEND COPIES TO ALL PARTIES.

(b) UPON NOTIFICATION OF ANY DEFICIENCIES IDENTIFIED IN THE IME'S REPORT, THE IME HAS TWENTY DAYS TO REMEDY THE DEFICIENCIES AND RESUBMIT THE REPORT. AFTER THE REPORT HAS BEEN RESUBMITTED, THE DIVISION SHALL COMPLY WITH PARAGRAPH (a) OF THIS SUBSECTION (4). IF THE IME FAILS TO TIMELY RESPOND TO THE NOTIFICATION OF DEFICIENCIES, THE DIVISION SHALL ISSUE A NOTICE THAT IT HAS RECEIVED THE IME'S REPORT AND THE INSURER OR SELF-INSURED EMPLOYER SHALL COMPLY WITH PARAGRAPH (c) OF THIS SUBSECTION (4).

(c) Within ~~thirty~~ TWENTY days after the date of the mailing of the ~~IME's report~~ DIVISION'S NOTICE THAT IT HAS RECEIVED THE IME'S REPORT, the insurer or self-insured employer shall either file its admission of liability pursuant to section 8-43-203 or request a hearing before the division contesting one or more of the IME's findings or determinations contained in such report.

8-43-203(2)(b)(II)(A)

Signed May 25, 2013

Effective Aug. 7, 2013

Amended

SB-13-249

**8-43-203. Notice concerning liability - notice to claimants – notice of rights and claims process - rules. (2) (b) (II) (A)** An admission of liability for final payment of compensation ~~shall~~ MUST include a statement that this is the final admission by the workers' compensation insurance carrier in the case, that the claimant may contest this admission if the claimant feels entitled to more compensation, to whom the

claimant should provide written objection, and notice to the claimant that the case will be automatically closed as to the issues admitted in the final admission if the claimant does not, within thirty days after the date of the final admission, contest the final admission in writing and request a hearing on any disputed issues that are ripe for hearing, including the selection of an independent medical examiner pursuant to section 8-42-107.2 if an independent medical examination has not already been conducted. If an independent medical examination is requested pursuant to section 8-42-107.2, the claimant is not required to file a request for hearing on disputed issues that are ripe for hearing until the division's independent medical examination process is terminated for any reason. Any issue for which a hearing or an application for a hearing is pending at the time that the final admission of liability is filed shall proceed to the hearing without the need for the applicant to refile an application for hearing on the issue. This information ~~shall~~ MUST also be included in the admission of liability for final payment of compensation. The respondents ~~shall~~ have ~~thirty~~ TWENTY days after the date of mailing of the ~~report from the division's independent medical examiner~~ NOTICE FROM THE DIVISION OF THE RECEIPT OF THE IME'S REPORT to file ~~a revised final~~ AN admission or to file an application for hearing. The claimant ~~shall have~~ HAS thirty days after the date respondents file the ~~revised final~~ admission or application for hearing to file an application for hearing, or a response to the respondents' application for hearing, as applicable, on any disputed issues that are ripe for hearing. The revised final admission, ~~shall~~ IF ANY, MUST contain the statement required by this subparagraph (II), and the provisions relating to contesting the revised final admission ~~shall~~ apply. When the final admission is predicated upon medical reports, ~~such~~ THE reports ~~shall~~ MUST accompany the final admission.

8-43-203(4)

Signed May 28, 2013

Effective July 1, 2013

New

SB-13-285

**8-43-203. Notice concerning liability - notice to claimants – notice of rights and claims process - rules.** (4) WITHIN FIFTEEN DAYS AFTER THE MAILING OF A WRITTEN REQUEST FOR A COPY OF THE CLAIM FILE, THE EMPLOYER OR, IF INSURED, THE EMPLOYER'S INSURANCE CARRIER OR THIRD-PARTY ADMINISTRATOR SHALL PROVIDE TO THE CLAIMANT OR HIS OR HER REPRESENTATIVE A COMPLETE COPY OF THE CLAIM FILE THAT INCLUDES ALL MEDICAL RECORDS, PLEADINGS, CORRESPONDENCE, INVESTIGATION FILES, INVESTIGATION REPORTS, WITNESS STATEMENTS, INFORMATION ADDRESSING DESIGNATION OF THE AUTHORIZED TREATING PHYSICIAN, AND WAGE AND FRINGE BENEFIT INFORMATION FOR THE TWELVE MONTHS LEADING UP TO THE DATE OF INJURY AND THEREAFTER, REGARDLESS OF THE FORMAT. IF A PRIVILEGE OR OTHER PROTECTION IS CLAIMED FOR ANY MATERIALS, THE MATERIALS MUST BE DETAILED IN AN ACCOMPANYING PRIVILEGE LOG.

8-43-211(2)(d)

Signed May 28, 2013

Effective July 1, 2013

Amended

SB-13-285

**8-43-211. 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:

(d) If ~~any person~~ AN ATTORNEY requests a hearing or files a notice to set a hearing on ~~issues which are~~ AN ISSUE THAT IS not ripe for adjudication at the time ~~such~~ THE request or filing is made, ~~such person~~ ~~shall~~ THE ATTORNEY MAY be assessed the reasonable attorney fees and costs of the opposing party in preparing for ~~such~~ THE hearing or setting. THE REQUESTING PARTY MUST PROVE ITS ATTEMPT TO HAVE AN UNRIPE ISSUE STRICKEN BY A PREHEARING ADMINISTRATIVE LAW JUDGE TO REQUEST FEES OR COSTS. REQUESTED FEES OR COSTS INCURRED AFTER A PREHEARING CONFERENCE MAY ONLY BE AWARDED IF THEY ARE DIRECTLY CAUSED BY THE LISTING OF THE UNRIPE ISSUE.

**8-44-111. Workers' compensation insurance – deductibles - definition.** (1) (a) Any employer may agree, as a condition of any contract for the insurance of compensation and benefits as provided in articles 40 to 47 of this title or against liability therefor, to pay an amount not to exceed ~~five thousand dollars~~ THE SPLIT POINT APPROVED BY THE COMMISSIONER OF INSURANCE per claim toward the total amount of any claim payable under articles 40 to 47 of this title. The amount of premium to be paid by an employer who agrees to pay such deductible shall be reduced based upon such deductible in an amount determined by the insurance carrier.

(b) AS USED IN THIS SUBSECTION (1), "SPLIT POINT" MEANS THE AMOUNT OF EACH LOSS APPROVED BY THE COMMISSIONER OF INSURANCE THAT AN INSURER MAY APPLY AS THE PRIMARY LOSS IN EACH WORKERS' COMPENSATION CLAIM. THE FULL AMOUNT OF PRIMARY LOSSES COUNTS IN EACH EMPLOYER'S EXPERIENCE MODIFICATION CALCULATION THAT DETERMINES THE EMPLOYER'S PERCENTAGE CREDIT OR SURCHARGE ON WORKERS' COMPENSATION COVERAGE. THE LOSS AMOUNT ABOVE THE SPLIT POINT IS EXCESS LOSS AND CONSTITUTES PART OF EACH EMPLOYER'S EXPERIENCE MODIFICATION CALCULATION.

(c) NOTHING IN THIS SECTION ABROGATES AN EMPLOYER'S RESPONSIBILITY TO PAY THE FULL AMOUNT OF ANY COMPENSATION AND BENEFITS DUE UNDER ARTICLES 40 TO 47 OF THIS TITLE. IT IS A VIOLATION OF THIS TITLE FOR AN EMPLOYER OR, IF INSURED, THE INSURER TO REQUIRE ANY EMPLOYEE TO PAY ANY PART OF THE COMPENSATION AND BENEFITS DUE UNDER ARTICLES 40 TO 47 OF THIS TITLE.

(d) IT IS A VIOLATION OF THIS TITLE FOR AN EMPLOYER OR, IF INSURED, THE INSURER TO REQUIRE AN EMPLOYEE TO USE ANY OTHER TYPE OF INSURANCE, REGARDLESS OF WHETHER IT IS PROVIDED AS A BENEFIT OF EMPLOYMENT, OR ANY OTHER EMPLOYMENT BENEFIT, TO PAY ANY PORTION OF ANY COMPENSATION AND BENEFITS DUE UNDER ARTICLES 40 TO 47 OF THIS TITLE.

(e) NOTHING IN THIS SUBSECTION (1) ALLOWS A CARRIER TO STOP OFFERING NO-DEDUCTIBLE POLICIES.

**8-47-101. Division of workers' compensation - creation - powers, duties, and functions - transfer of functions - change of statutory references.** (3) (d) (II) ~~Commencing in the 1992 legislative session and at least every four years thereafter, the general assembly shall provide for the conduct of~~ AT THE DISCRETION OF THE STATE AUDITOR, THE STATE AUDITOR MAY CONDUCT OR CAUSE TO BE CONDUCTED a performance review by the state auditor of the administrative law judges in the office of administrative courts who hear cases under articles 40 to 47 of this title. The review ~~shall~~ MUST include, but IS not be limited to, the following topics: The time elapsed from the date of hearing until decisions are rendered by the administrative law judges; the time elapsed from the point at which the file is complete and the case is ready for order until the decision is rendered by the administrative law judges; the number of decisions that are reversed upon appeal to the industrial claim appeals panel and to the court of appeals respectively; the workload or number of cases assigned to each administrative law judge; and the public perception of the quality of the performance of the office of administrative courts with respect to matters arising under the "Workers' Compensation Act of Colorado".