TITLE 65
WORKFORCE SAFETY AND INSURANCE

CHAPTER 65-01
GENERAL PROVISIONS

65-01-01. Purposes of workforce safety and insurance law - Police power.

The state of North Dakota, exercising its police and sovereign powers, declares that the prosperity of the state depends in a large measure upon the well-being of its wageworkers, and, hence, for workers injured in hazardous employments, and for their families and dependents, sure and certain relief is hereby provided regardless of questions of fault and to the exclusion of every other remedy, proceeding, or compensation, except as otherwise provided in this title, and to that end, all civil actions and civil claims for relief for those personal injuries and all jurisdiction of the courts of the state over those causes are abolished except as is otherwise provided in this title. A civil action or civil claim arising under this title, which is subject to judicial review, must be reviewed solely on the merits of the action or claim. This title may not be construed liberally on behalf of any party to the action or claim.

65-01-01.1. Civil liability for intentional injuries.

The sole exception to an employer's immunity from civil liability under this title, except as provided in chapter 65-09, is an action for an injury to an employee caused by an employer's intentional act done with the conscious purpose of inflicting the injury.

65-01-02. Definitions. (Effective through August 31, 2028)

In this title:

1. "Acute care" means a short course of intensive diagnostic and therapeutic services provided immediately following a work injury with a rapid onset of pronounced symptoms.
2. "Adopted" or "adoption" refers only to a legal adoption effected prior to the time of the injury.
3. "Allied health care professional" includes a health care provider, pharmacist, audiologist, speech language pathologist, or naturopath or any recognized practitioner who provides skilled services pursuant to the prescription of, or under the supervision or direction of any of these individuals.
4. "Artificial members" includes a device that is a substitute for a natural part, organ, limb, or other part of the body. The term includes a prescriptive device that is an aid for a natural part, organ, limb, or other part of the body if the damage to the prescriptive device is accompanied by an injury to the body. A prescriptive device includes prescription eyeglasses, contact lenses, dental braces, and orthopedic braces.
5. "Artificial replacements" means mechanical aids, including braces, belts, casts, or crutches as may be reasonable and necessary due to compensable injury.
6. "Average weekly wage" means the weekly wages the injured employee was receiving from all employments for which coverage is required or otherwise secured at the date of first disability. The average weekly wage determined under this subsection must be rounded to the nearest dollar. If the injured employee's wages are not fixed by the week, they must be determined by using the first applicable formula from the schedule below:
   a. For seasonal employment, during the first consecutive days of disability up to twenty-eight days the average weekly wage is calculated pursuant to the first applicable formula in subdivisions b through g, and after that are calculated as one-fiftieth of the total wages from all occupations during the twelve months preceding the date of first disability or during the tax year preceding the date of first disability, or an average of the three tax years preceding the date of first disability, whichever is highest and for which accurate, reliable, and complete records are readily available.

b. The "average weekly wage" of a self-employed employer is determined by the following formula: one fifty-second of the average annual net self-employed earnings reported the three preceding tax years or preceding fifty-two weeks whichever is higher if accurate, reliable, and complete records for those fifty-two weeks are readily available.
c. Hourly or daily rate multiplied by number of hours or days worked per seven-day week.
d. Monthly rate multiplied by twelve months and divided by fifty-two weeks.
e. Biweekly rate divided by two.
f. The usual wage paid other employees engaged in similar occupations.
g. A wage reasonably and fairly approximating the weekly wage lost by the injured employee during the period of disability.

7. "Average weekly wage in the state" means the determination made of the average weekly wage in the state by job service North Dakota on or before July first of each year, computed to the next highest dollar.
8. "Board" means the workforce safety and insurance board of directors.
9. "Brother" and "sister" include a stepbrother and a stepsister, a half brother and a half sister, and a brother and sister by adoption. The terms do not include a married brother or sister unless that person actually is dependent.
10. "Child", for determining eligibility for benefits under chapter 65-05, means a legitimate child, a stepchild, adopted child, posthumous child, foster child, and acknowledged illegitimate child who is under eighteen years of age and resides with the injured employee; or is under eighteen years of age and does not reside with the injured employee but a duty of support is substantiated by an appropriate court order; or is between eighteen and twenty-two years of age and enrolled as a full-time student in any accredited educational institution and dependent upon the injured employee for support; or is eighteen years of age or over and is physically or mentally incapable of self-support and is actually dependent upon the injured employee for support. A child does not include a married child unless actually dependent on the injured employee as shown on the preceding year's income tax returns.
11. "Compensable injury" means an injury by accident arising out of and in the course of hazardous employment which must be established by medical evidence supported by objective medical findings.
    a. The term includes:
        (1) Disease caused by a hazard to which an employee is subjected in the course of employment. The disease must be incidental to the character of the business and not independent of the relation of employer and employee. Disease includes effects from radiation.
        (2) An injury to artificial members.
        (3) Injuries due to heart attack or other heart-related disease, stroke, and physical injury caused by mental stimulus, but only when caused by the employee's employment with reasonable medical certainty, and only when it is determined with reasonable medical certainty that unusual stress is at least fifty percent of the cause of the injury or disease as compared with all other contributing causes combined. Unusual stress means stress greater than the highest level of stress normally experienced or anticipated in that position or line of work.
        (4) Injuries arising out of employer-required or supplied travel to and from a remote jobsite or activities performed at the direction or under the control of the employer.
        (5) An injury caused by the willful act of a third person directed against an employee because of the employee's employment.
        (6) A mental or psychological condition that is physiologically caused by a physical injury, but only when the physical injury is determined with reasonable medical certainty to be at least fifty percent of the cause of the condition as compared with all other contributing causes combined, and only

when the condition did not pre-exist the work injury. Other contributing causes include emotional circumstances that generally accompany work-related injuries, including the loss of function, loss of self-esteem, loss of financial independence, divorce, loss of career or employment position, disruption of lifestyle or family units, anxiousness, uncertainty, or compromised ability to participate in a lifestyle, hobby, or pastime.

b. The term does not include:

(1) Ordinary diseases of life to which the general public outside of employment is exposed or preventive treatment for communicable diseases, except the organization may pay for preventive treatment for an exposure to a bloodborne pathogen as defined in section 23-07.5-01 occurring in the course of employment and for exposure to rabies occurring in the course of employment.

(2) A willfully self-inflicted injury, including suicide or attempted suicide, or an injury caused by the employee's willful intention to injure or kill another.

(3) Any injury caused by the use of intoxicants, including recreational marijuana use, or the illegal use of controlled substances.

(4) An injury that arises out of an altercation in which the injured employee is an aggressor. This paragraph does not apply to public safety employees, including law enforcement officers or private security personnel who are required to engage in altercations as part of their job duties if the altercation arises out of the performance of those job duties.

(5) An injury that arises out of an illegal act committed by the injured employee.

(6) An injury that arises out of an employee's voluntary nonpaid participation in any recreational activity, including athletic events, parties, and picnics, even though the employer pays some or all of the cost of the activity.

(7) Injuries attributable to a pre-existing injury, disease, or other condition, including when the employment acts as a trigger to produce symptoms in the pre-existing injury, disease, or other condition unless the employment substantially accelerates its progression or substantially worsens its severity. Pain is a symptom and may be considered in determining whether there is a substantial acceleration or substantial worsening of a pre-existing injury, disease, or other condition, but pain alone is not a substantial acceleration or a substantial worsening.

(8) A nonemployment injury that, although acting upon a prior compensable injury, is an independent intervening cause of injury.

(9) A latent or asymptomatic degenerative condition, caused in substantial part by employment duties, which is triggered or made active by a subsequent injury.

(10) A mental injury arising from mental stimulus.

12. "Date of first disability" means the first date the injured employee was unable to work because of a compensable injury.
13. "Date of maximum medical improvement" or "date of maximum medical recovery" means the date after which further recovery from, or lasting improvement to, an injury or disease can no longer reasonably be anticipated based upon reasonable medical probability.
14. "Director" means the director of the organization.
15. "Disability" means loss of actual earnings and may be permanent total, temporary total, or partial.
16. "Electronic means" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.
17. "Employee" means an individual who performs hazardous employment for another for remuneration unless the individual is an independent contractor under the common-law test.

a. The term includes:

(1) All elective and appointed officials of this state and its political subdivisions, including municipal corporations and including the members of the legislative assembly, all elective officials of any county, and all elective peace officers of any city.
(2) Aliens.
(3) Human service zone general assistance workers, except those who are engaged in repaying to human service zones or the department of health and human services moneys the human service zones or the department of health and human services have been compelled by statute to expend for general assistance.
(4) Minors, whether lawfully or unlawfully employed. A minor is deemed sui juris for the purposes of this title, and no other person has any claim for relief or right to claim workforce safety and insurance benefits for any injury to a minor worker, but in the event of the award of a lump sum of benefits to a minor employee, the lump sum may be paid only to the legally appointed guardian of the minor.

b. The term does not include:
(1) An individual whose employment is both casual and not in the course of the trade, business, profession, or occupation of that individual's employer.
(2) An individual who is engaged in an illegal enterprise or occupation.
(3) The spouse of an employer or the child under the age of twenty-two of an employer. For purposes of this paragraph and section 65-07-01, "child" means any legitimate child, stepchild, adopted child, foster child, or acknowledged illegitimate child.
(4) A real estate broker or real estate salesperson, provided the individual meets the following three requirements:
(a) The salesperson or broker must be a licensed real estate agent under section 43-23-05.
(b) Substantially all of the salesperson's or broker's remuneration for the services performed as a real estate agent must be directly related to sales or other efforts rather than to the number of hours worked.
(c) A written agreement must exist between the salesperson or broker and the person for which the salesperson or broker works, which agreement must provide the salesperson or broker will not be treated as an employee but rather as an independent contractor.
(5) The members of the board of directors of a business corporation who are not employed in any capacity by the corporation other than as members of the board of directors.
(6) An individual delivering newspapers or shopping news, if substantially all of the individual's remuneration is directly related to sales or other efforts rather than to the number of hours worked and a written agreement exists between the individual and the publisher of the newspaper or shopping news which states the individual is an independent contractor.
(7) An employer.
(8) An athlete participating in a contact sport. As used in this paragraph, "contact sport" means a team or individual competitive athletic activity that includes significant physical contact between the athletes involved. The term includes football and hockey.

18. "Employer" means a person that engages or received the services of another for remuneration unless the person performing the services is an independent contractor under the common-law test. The term includes:
a. The state and all political subdivisions thereof.
b. All public and quasi-public corporations in this state.
c. Every person, partnership, limited liability company, association, and private corporation, including a public service corporation.
d. The legal representative of any deceased employer.

e. The receiver or trustee of any person, partnership, limited liability company, association, or corporation having one or more employees as herein defined.
f. The president, vice presidents, secretary, or treasurer of a business corporation, but not members of the board of directors of a business corporation who are not also officers of the corporation.
g. The managers of a limited liability company.
h. The president, vice presidents, secretary, treasurer, or board of directors of an association or cooperative organized under chapter 6-06, 10-12, 10-13, 10-15, 36-08, or 49-21.
i. The clerk, assessor, treasurer, or any member of the board of supervisors of an organized township, if the person is not employed by the township in any other capacity.
j. A multidistrict special education unit.
k. An area career and technology center.
l. A regional education association.

19. "Fee schedule" means the payment formulas established in the organization publication entitled "Medical and Hospital Fees".
20. "Fund" means the workforce safety and insurance fund.
21. "Hazardous employment" means any employment in which one or more employees are employed regularly in the same business or in or about the establishment except:
    a. Agricultural or domestic service.
    b. Any employment of a common carrier by railroad.
    c. Any employment for the transportation of property or persons by nonresidents, where, in such transportation, the highways are not traveled more than seven miles [11.27 kilometers] and return over the same route within the state of North Dakota.
    d. All members of the clergy and employees of religious organizations engaged in the operation, maintenance, and conduct of the place of worship.
22. "Health care provider" means a doctor of medicine or osteopathy, chiropractor, dentist, optometrist, podiatrist, or psychologist acting within the scope of the doctor's license, a physical therapist, an advanced practice registered nurse, or a certified physician assistant.
23. "Medical marijuana" means the use of all parts of the plant of the genus cannabis, the seeds of the plant, the resin extracted from any part of the plant, and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, the seeds of the plant, or the resin extracted from any part of the plant as a physician-recommended form of medicine or herbal therapy. The term does not include treatments or preparations specifically approved by the United States food and drug administration as a drug product.
24. "Noncompliance" means failure to follow the requirements of chapter 65-04. An employer may be in noncompliance regardless of the employer's insured or uninsured status with the organization.
25. "Organization" means workforce safety and insurance, or the director, or any department head, assistant, or employee of workforce safety and insurance designated by the director, to act within the course and scope of that person's employment in administering the policies, powers, and duties of this title.
26. "Parent" includes a stepparent and a parent by adoption.
27. "Payroll report" means the mechanism created by the organization and used by employers to report all employee payroll required by the organization.
28. "Permanent impairment" means the loss of or loss of use of a member of the body existing after the date of maximum medical improvement and includes disfigurement resulting from an injury.
29. "Permanent total disability" means disability that is the direct result of a compensable injury that prevents an injured employee from performing any work and results from any one of the following conditions:
    a. Total and permanent loss of sight of both eyes;

b. Loss of both legs or loss of both feet at or above the ankle;
c. Loss of both arms or loss of both hands at or above the wrist;
d. Loss of any two of the members or faculties in subdivision a, b, or c;
e. Permanent and complete paralysis of both legs or both arms or of one leg and one arm;
f. Third-degree burns that cover at least forty percent of the body and require grafting;
g. A medically documented brain injury affecting cognitive and mental functioning which renders an injured employee unable to provide self-care and requires supervision or assistance with a majority of the activities of daily living; or
h. A compensable injury that results in a permanent partial impairment rating of the whole body of at least twenty-five percent pursuant to section 65-05-12.2.

If the injured employee has not reached maximum medical improvement within one hundred four weeks, the injured employee may receive a permanent partial impairment rating if a rating will assist the organization in assessing the injured employee's capabilities. Entitlement to a rating is solely within the discretion of the organization.

30. "Rehabilitation services" means nonmedical services reasonably necessary to restore a disabled employee to substantial gainful employment as defined by section 65-05.1-01 as near as possible. The term may include vocational evaluation, counseling, education, workplace modification, vocational retraining including training for alternative employment with the same employer, and job placement assistance.
31. "Seasonal employment" includes occupations that are not permanent or that do not customarily operate throughout the entire year. Seasonal employment is determined by what is customary with respect to the employer at the time of injury.
32. "Spouse" includes only the decedent's husband or wife who was living with the decedent or was dependent upon the decedent for support at the time of injury.
33. "Subcontractor" means a person that agrees to perform all or part of the work for a contractor or another subcontractor.
34. "Temporary total disability" means disability that results in the inability of an injured employee to earn wages as a result of a compensable injury for which disability benefits may not exceed a cumulative total of one hundred four weeks or the date the injured employee reaches maximum medical improvement or maximum medical recovery, whichever occurs first.
35. "Uninsured" means failure of an employer to secure mandatory coverage with the organization or failure to pay premium, assessment, penalty, or interest, as calculated by the organization, which is more than forty-five days past due. An uninsured employer is subject to chapter 65-09.
36. "Utilization review" means the initial and continuing evaluation of appropriateness in terms of both the level and the quality of health care and health services provided a patient, based on medically accepted standards. The evaluation must be accomplished by means of a system that identifies the utilization of medical services, based on medically accepted standards, and which refers instances of possible inappropriate utilization to the organization to obtain opinions and recommendations of expert medical consultants to review individual cases for which administrative action may be deemed necessary.
37. "Valid functional capacities examination" means:
    a. The results of a physical examination consisting of a battery of standardized assessments that offer reliable results in performance-based measures and demonstrate the level and duration an injured employee may return to work.
    b. The conclusions of medical experts, following observations of other activities the medical expert determines similarly predictive, when the results of the physical examination in subdivision a are not obtained or reliable.
38. a. "Wages" means:
        (1) An injured employee's remuneration from all employment reportable to the internal revenue service as earned income for federal income tax purposes.

(2) For members of the national guard who sustain a compensable injury while on state active duty, "wages" includes income from federal employment and may be included in determining the average weekly wage.

(3) For purposes of chapter 65-04 only, "wages" means all gross earnings of all employees. The term includes all pretax deductions for amounts allocated by the employee for deferred compensation, medical reimbursement, retirement, or any similar program, but may not include dismissal or severance pay.

b. The organization may consider postinjury wages for which coverage was not required or otherwise secured in North Dakota for purposes of determining appropriate vocational rehabilitation options or entitlement to disability benefits under this title.

Definitions. (Effective after August 31, 2028) In this title:

1. "Acute care" means a short course of intensive diagnostic and therapeutic services provided immediately following a work injury with a rapid onset of pronounced symptoms.
2. "Adopted" or "adoption" refers only to a legal adoption effected prior to the time of the injury.
3. "Allied health care professional" includes a health care provider, pharmacist, audiologist, speech language pathologist, or naturopath or any recognized practitioner who provides skilled services pursuant to the prescription of, or under the supervision or direction of any of these individuals.
4. "Artificial members" includes a device that is a substitute for a natural part, organ, limb, or other part of the body. The term includes a prescriptive device that is an aid for a natural part, organ, limb, or other part of the body if the damage to the prescriptive device is accompanied by an injury to the body. A prescriptive device includes prescription eyeglasses, contact lenses, dental braces, and orthopedic braces.
5. "Artificial replacements" means mechanical aids, including braces, belts, casts, or crutches as may be reasonable and necessary due to compensable injury.
6. "Average weekly wage" means the weekly wages the injured employee was receiving from all employments for which coverage is required or otherwise secured at the date of first disability. The average weekly wage determined under this subsection must be rounded to the nearest dollar. If the injured employee's wages are not fixed by the week, they must be determined by using the first applicable formula from the schedule below:
   a. For seasonal employment, during the first consecutive days of disability up to twenty-eight days the average weekly wage is calculated pursuant to the first applicable formula in subdivisions b through g, and after that are calculated as one-fiftieth of the total wages from all occupations during the twelve months preceding the date of first disability or during the tax year preceding the date of first disability, or an average of the three tax years preceding the date of first disability, whichever is highest and for which accurate, reliable, and complete records are readily available.
   b. The "average weekly wage" of a self-employed employer is determined by the following formula: one fifty-second of the average annual net self-employed earnings reported the three preceding tax years or preceding fifty-two weeks whichever is higher if accurate, reliable, and complete records for those fifty-two weeks are readily available.
   c. Hourly or daily rate multiplied by number of hours or days worked per seven-day week.
   d. Monthly rate multiplied by twelve months and divided by fifty-two weeks.
   e. Biweekly rate divided by two.
   f. The usual wage paid other employees engaged in similar occupations.
   g. A wage reasonably and fairly approximating the weekly wage lost by the injured employee during the period of disability.

7. "Average weekly wage in the state" means the determination made of the average weekly wage in the state by job service North Dakota on or before July first of each year, computed to the next highest dollar.
8. "Board" means the workforce safety and insurance board of directors.
9. "Brother" and "sister" include a stepbrother and a stepsister, a half brother and a half sister, and a brother and sister by adoption. The terms do not include a married brother or sister unless that person actually is dependent.
10. "Child", for determining eligibility for benefits under chapter 65-05, means a legitimate child, a stepchild, adopted child, posthumous child, foster child, and acknowledged illegitimate child who is under eighteen years of age and resides with the injured employee; or is under eighteen years of age and does not reside with the injured employee but a duty of support is substantiated by an appropriate court order; or is between eighteen and twenty-two years of age and enrolled as a full-time student in any accredited educational institution and dependent upon the injured employee for support; or is eighteen years of age or over and is physically or mentally incapable of self-support and is actually dependent upon the injured employee for support. A child does not include a married child unless actually dependent on the injured employee as shown on the preceding year's income tax returns.
11. "Compensable injury" means an injury by accident arising out of and in the course of hazardous employment which must be established by medical evidence supported by objective medical findings.
    a. The term includes:
        (1) Disease caused by a hazard to which an employee is subjected in the course of employment. The disease must be incidental to the character of the business and not independent of the relation of employer and employee. Disease includes effects from radiation.
        (2) An injury to artificial members.
        (3) Injuries due to heart attack or other heart-related disease, stroke, and physical injury caused by mental stimulus, but only when caused by the employee's employment with reasonable medical certainty, and only when it is determined with reasonable medical certainty that unusual stress is at least fifty percent of the cause of the injury or disease as compared with all other contributing causes combined. Unusual stress means stress greater than the highest level of stress normally experienced or anticipated in that position or line of work.
        (4) Injuries arising out of employer-required or supplied travel to and from a remote jobsite or activities performed at the direction or under the control of the employer.
        (5) An injury caused by the willful act of a third person directed against an employee because of the employee's employment.
        (6) A mental or psychological condition that is physiologically caused by a physical injury, but only when the physical injury is determined with reasonable medical certainty to be at least fifty percent of the cause of the condition as compared with all other contributing causes combined, and only when the condition did not pre-exist the work injury. Other contributing causes include emotional circumstances that generally accompany work-related injuries, including the loss of function, loss of self-esteem, loss of financial independence, divorce, loss of career or employment position, disruption of lifestyle or family units, anxiousness, uncertainty, or compromised ability to participate in a lifestyle, hobby, or pastime.
    b. The term does not include:
        (1) Ordinary diseases of life to which the general public outside of employment is exposed or preventive treatment for communicable diseases, except the organization may pay for preventive treatment for an exposure to a bloodborne pathogen as defined in section 23-07.5-01 occurring in the

course of employment and for exposure to rabies occurring in the course of employment.

(2) A willfully self-inflicted injury, including suicide or attempted suicide, or an injury caused by the employee's willful intention to injure or kill another.

(3) Any injury caused by the use of intoxicants, including recreational marijuana use, or the illegal use of controlled substances.

(4) An injury that arises out of an altercation in which the injured employee is an aggressor. This paragraph does not apply to public safety employees, including law enforcement officers or private security personnel who are required to engage in altercations as part of their job duties if the altercation arises out of the performance of those job duties.

(5) An injury that arises out of an illegal act committed by the injured employee.

(6) An injury that arises out of an employee's voluntary nonpaid participation in any recreational activity, including athletic events, parties, and picnics, even though the employer pays some or all of the cost of the activity.

(7) Injuries attributable to a pre-existing injury, disease, or other condition, including when the employment acts as a trigger to produce symptoms in the pre-existing injury, disease, or other condition unless the employment substantially accelerates its progression or substantially worsens its severity. Pain is a symptom and may be considered in determining whether there is a substantial acceleration or substantial worsening of a pre-existing injury, disease, or other condition, but pain alone is not a substantial acceleration or a substantial worsening.

(8) A nonemployment injury that, although acting upon a prior compensable injury, is an independent intervening cause of injury.

(9) A latent or asymptomatic degenerative condition, caused in substantial part by employment duties, which is triggered or made active by a subsequent injury.

(10) A mental injury arising from mental stimulus.

12. "Date of first disability" means the first date the injured employee was unable to work because of a compensable injury.

13. "Date of maximum medical improvement" or "date of maximum medical recovery" means the date after which further recovery from, or lasting improvement to, an injury or disease can no longer reasonably be anticipated based upon reasonable medical probability.

14. "Director" means the director of the organization.

15. "Disability" means loss of actual earnings and may be permanent total, temporary total, or partial.

16. "Electronic means" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

17. "Employee" means an individual who performs hazardous employment for another for remuneration unless the individual is an independent contractor under the common-law test.

a. The term includes:

(1) All elective and appointed officials of this state and its political subdivisions, including municipal corporations and including the members of the legislative assembly, all elective officials of any county, and all elective peace officers of any city.

(2) Aliens.

(3) Human service zone general assistance workers, except those who are engaged in repaying to human service zones or the department of health and human services moneys the human service zones or the department of health and human services have been compelled by statute to expend for general assistance.

(4) Minors, whether lawfully or unlawfully employed. A minor is deemed sui juris for the purposes of this title, and no other person has any claim for relief or

right to claim workforce safety and insurance benefits for any injury to a minor worker, but in the event of the award of a lump sum of benefits to a minor employee, the lump sum may be paid only to the legally appointed guardian of the minor.

b. The term does not include:
   (1) An individual whose employment is both casual and not in the course of the trade, business, profession, or occupation of that individual's employer.
   (2) An individual who is engaged in an illegal enterprise or occupation.
   (3) The spouse of an employer or the child under the age of twenty-two of an employer. For purposes of this paragraph and section 65-07-01, "child" means any legitimate child, stepchild, adopted child, foster child, or acknowledged illegitimate child.
   (4) A real estate broker or real estate salesperson, provided the individual meets the following three requirements:
      (a) The salesperson or broker must be a licensed real estate agent under section 43-23-05.
      (b) Substantially all of the salesperson's or broker's remuneration for the services performed as a real estate agent must be directly related to sales or other efforts rather than to the number of hours worked.
      (c) A written agreement must exist between the salesperson or broker and the person for which the salesperson or broker works, which agreement must provide the salesperson or broker will not be treated as an employee but rather as an independent contractor.
   (5) The members of the board of directors of a business corporation who are not employed in any capacity by the corporation other than as members of the board of directors.
   (6) An individual delivering newspapers or shopping news, if substantially all of the individual's remuneration is directly related to sales or other efforts rather than to the number of hours worked and a written agreement exists between the individual and the publisher of the newspaper or shopping news which states the individual is an independent contractor.
   (7) An employer.

18. "Employer" means a person that engages or received the services of another for remuneration unless the person performing the services is an independent contractor under the common-law test. The term includes:
   a. The state and all political subdivisions thereof.
   b. All public and quasi-public corporations in this state.
   c. Every person, partnership, limited liability company, association, and private corporation, including a public service corporation.
   d. The legal representative of any deceased employer.
   e. The receiver or trustee of any person, partnership, limited liability company, association, or corporation having one or more employees as herein defined.
   f. The president, vice presidents, secretary, or treasurer of a business corporation, but not members of the board of directors of a business corporation who are not also officers of the corporation.
   g. The managers of a limited liability company.
   h. The president, vice presidents, secretary, treasurer, or board of directors of an association or cooperative organized under chapter 6-06, 10-12, 10-13, 10-15, 36-08, or 49-21.
   i. The clerk, assessor, treasurer, or any member of the board of supervisors of an organized township, if the person is not employed by the township in any other capacity.
   j. A multidistrict special education unit.
   k. An area career and technology center.
   l. A regional education association.

19. "Fee schedule" means the payment formulas established in the organization publication entitled "Medical and Hospital Fees".
20. "Fund" means the workforce safety and insurance fund.
21. "Hazardous employment" means any employment in which one or more employees are employed regularly in the same business or in or about the establishment except:
    a. Agricultural or domestic service.
    b. Any employment of a common carrier by railroad.
    c. Any employment for the transportation of property or persons by nonresidents, where, in such transportation, the highways are not traveled more than seven miles [11.27 kilometers] and return over the same route within the state of North Dakota.
    d. All members of the clergy and employees of religious organizations engaged in the operation, maintenance, and conduct of the place of worship.
22. "Health care provider" means a doctor of medicine or osteopathy, chiropractor, dentist, optometrist, podiatrist, or psychologist acting within the scope of the doctor's license, a physical therapist, an advanced practice registered nurse, or a certified physician assistant.
23. "Medical marijuana" means the use of all parts of the plant of the genus cannabis, the seeds of the plant, the resin extracted from any part of the plant, and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, the seeds of the plant, or the resin extracted from any part of the plant as a physician-recommended form of medicine or herbal therapy. The term does not include treatments or preparations specifically approved by the United States food and drug administration as a drug product.
24. "Noncompliance" means failure to follow the requirements of chapter 65-04. An employer may be in noncompliance regardless of the employer's insured or uninsured status with the organization.
25. "Organization" means workforce safety and insurance, or the director, or any department head, assistant, or employee of workforce safety and insurance designated by the director, to act within the course and scope of that person's employment in administering the policies, powers, and duties of this title.
26. "Parent" includes a stepparent and a parent by adoption.
27. "Payroll report" means the mechanism created by the organization and used by employers to report all employee payroll required by the organization.
28. "Permanent impairment" means the loss of or loss of use of a member of the body existing after the date of maximum medical improvement and includes disfigurement resulting from an injury.
29. "Permanent total disability" means disability that is the direct result of a compensable injury that prevents an injured employee from performing any work and results from any one of the following conditions:
    a. Total and permanent loss of sight of both eyes;
    b. Loss of both legs or loss of both feet at or above the ankle;
    c. Loss of both arms or loss of both hands at or above the wrist;
    d. Loss of any two of the members or faculties in subdivision a, b, or c;
    e. Permanent and complete paralysis of both legs or both arms or of one leg and one arm;
    f. Third-degree burns that cover at least forty percent of the body and require grafting;
    g. A medically documented brain injury affecting cognitive and mental functioning which renders an injured employee unable to provide self-care and requires supervision or assistance with a majority of the activities of daily living; or
    h. A compensable injury that results in a permanent partial impairment rating of the whole body of at least twenty-five percent pursuant to section 65-05-12.2.

    If the injured employee has not reached maximum medical improvement within one hundred four weeks, the injured employee may receive a permanent partial impairment rating if a rating will assist the organization in assessing the injured

employee's capabilities. Entitlement to a rating is solely within the discretion of the organization.

30. "Rehabilitation services" means nonmedical services reasonably necessary to restore a disabled employee to substantial gainful employment as defined by section 65-05.1-01 as near as possible. The term may include vocational evaluation, counseling, education, workplace modification, vocational retraining including training for alternative employment with the same employer, and job placement assistance.
31. "Seasonal employment" includes occupations that are not permanent or that do not customarily operate throughout the entire year. Seasonal employment is determined by what is customary with respect to the employer at the time of injury.
32. "Spouse" includes only the decedent's husband or wife who was living with the decedent or was dependent upon the decedent for support at the time of injury.
33. "Subcontractor" means a person that agrees to perform all or part of the work for a contractor or another subcontractor.
34. "Temporary total disability" means disability that results in the inability of an injured employee to earn wages as a result of a compensable injury for which disability benefits may not exceed a cumulative total of one hundred four weeks or the date the injured employee reaches maximum medical improvement or maximum medical recovery, whichever occurs first.
35. "Uninsured" means failure of an employer to secure mandatory coverage with the organization or failure to pay premium, assessment, penalty, or interest, as calculated by the organization, which is more than forty-five days past due. An uninsured employer is subject to chapter 65-09.
36. "Utilization review" means the initial and continuing evaluation of appropriateness in terms of both the level and the quality of health care and health services provided a patient, based on medically accepted standards. The evaluation must be accomplished by means of a system that identifies the utilization of medical services, based on medically accepted standards, and which refers instances of possible inappropriate utilization to the organization to obtain opinions and recommendations of expert medical consultants to review individual cases for which administrative action may be deemed necessary.
37. "Valid functional capacities examination" means:
    a. The results of a physical examination consisting of a battery of standardized assessments that offer reliable results in performance-based measures and demonstrate the level and duration an injured employee may return to work.
    b. The conclusions of medical experts, following observations of other activities the medical expert determines similarly predictive, when the results of the physical examination in subdivision a are not obtained or reliable.
38. a. "Wages" means:
        (1) An injured employee's remuneration from all employment reportable to the internal revenue service as earned income for federal income tax purposes.
        (2) For members of the national guard who sustain a compensable injury while on state active duty, "wages" includes income from federal employment and may be included in determining the average weekly wage.
        (3) For purposes of chapter 65-04 only, "wages" means all gross earnings of all employees. The term includes all pretax deductions for amounts allocated by the employee for deferred compensation, medical reimbursement, retirement, or any similar program, but may not include dismissal or severance pay.
    b. The organization may consider postinjury wages for which coverage was not required or otherwise secured in North Dakota for purposes of determining appropriate vocational rehabilitation options or entitlement to disability benefits under this title.

65-01-03. Individual performing service for remuneration presumed an employee.

1. Each individual who performs services for another for remuneration is presumed to be an employee of the person for which the services are performed, unless it is proven that the individual is an independent contractor under the common-law test. The person that asserts that an individual is an independent contractor under the common-law test, rather than an employee, has the burden of proving that fact.
2. In the case of commercial motor vehicles whose gross vehicle weight rating is more than twenty-six thousand pounds [11793.40 kilograms], with an individual operating a licensed truck or licensed tractor for a motor carrier of property, the presumption in subsection 1 is successfully rebutted if all of the following factors are present:
   a. The individual owns, leases, or enters a purchase agreement to purchase a truck or tractor. The lease or purchase agreement must represent reasonably the value of the lease or purchase of the truck or tractor. The lease or purchase agreement may be with the carrier of property. An unreasonable lease or purchase agreement with a third party, unaffiliated with the carrier, does not affect this factor.
   b. The individual is responsible for the maintenance and repair of the truck or tractor.
   c. The individual bears the principal burden of operating costs, including fuel, supplies, vehicle insurance, and personal expenses.
   d. The individual is responsible for supplying the necessary personal services to operate the truck or tractor.
   e. Income taxes are not withheld from the individual's compensation.
   f. The individual generally determines the details and means of performing the services, in conformance with statutory or regulatory requirements, operating procedures of the carrier, and specifications of the shipper.
   g. The individual enters a written agreement with the motor carrier outlining the nature of the relationship.

65-01-04. Computation of weekly wages in compensation matters.

Repealed by S.L. 1969, ch. 558, § 6.

65-01-05. Employment of those unprotected by insurance unlawful - Effect of failure to secure compensation - Penalty - Injunction.

Repealed by S.L. 2001, ch. 578, § 17.

65-01-06. Exempting certain flying employees.

Pilots, copilots, stewardesses, and other regular flying employees of a regularly established airline operating under a certificate of convenience and necessity granted by the competent authorities of the United States of America and operating regularly scheduled flights in interstate or foreign commerce shall be exempt from the compulsory provisions of this title while engaged in work, the duties of which primarily involve interstate or foreign flying operations. Employees not regularly engaged in interstate or foreign flying operations, and the flying employees of any such airline as has its principal operating base in North Dakota, shall not be included in this exemption.

65-01-07. Employer must keep record of injuries to employees - Reports required - Contents - Penalty.

Repealed by S.L. 1975, ch. 106, § 673.

65-01-08. Contributing employer and staffing service relieved from liability for injury to employee.

1. If a local or out-of-state employer secured the payment of compensation to that employer's employees by contributing premiums to the fund, the employee, and the parents in the case of a minor employee, or the representatives or beneficiaries of

either, do not have a claim for relief against the contributing employer or against any agent, servant, or other employee of the employer for damages for personal injuries, but shall look solely to the fund for compensation.

2. If a client company contracts with a staffing service for an employee's services, the client company and the staffing service are immune from any claim for relief by that employee or by another employee of the client company or staffing service, to the same extent granted under this title to contributing employers if the client company or staffing service secured the payment of compensation in accordance with this title. Although an account must include the name of the staffing service, the employee is considered an employee of the client company and staffing service for purposes of application of immunity for injuries incurred by or caused by that employee.
3. For purposes of this section:
   a. "Client company" means a person that contracts to receive services within the course of that person's usual business from a staffing service or that contracts to lease any or all of that person's employees from a staffing service.
   b. "Staffing service" means an employer in the business of providing the employer's employees to persons to perform services within the course of that person's usual businesses. The term includes professional employer organizations' staff leasing companies, employee leasing organizations, and temporary staffing companies. The term "staffing service" must be broadly construed to encompass entities that offer services provided by a professional employer organization, staff leasing company, employee leasing organization, or temporary staffing company regardless of the term used.
      (1) Within the meaning of staffing service as used in this section, "temporary staffing" or "temporary staffing service" means an arrangement by which an employer hires its own employees and assigns the employees to a client company to support or supplement the client company's workforce in a special work situation, including:
         (a) An employee absence;
         (b) A temporary skill shortage;
         (c) A seasonal workload; or
         (d) A special assignment or project with a targeted end date.
      (2) The term does not include arrangements in which the majority of the client company's workforce has been assigned by a temporary staffing service for a period of more than twelve consecutive months.
4. A staffing service that provides only temporary staffing services is the employee's employer. The temporary staffing service shall maintain a workforce safety and insurance account in the temporary staffing service's name and report the wages for those workers annually to the organization. All other staffing services shall:
   a. Report payroll detail as directed by the organization for each North Dakota client company.
   b. Maintain complete and separate records of the payroll of the staffing service's client companies. Claims must be separately identified by the staffing service for each client company.
   c. Share employer responsibilities with the client company, including retention of the authority to hire, terminate, discipline, and reassign employees. If the contractual agreement between a staffing service and a client company is terminated, the employees become the sole employees of the client company.
   d. Notify the organization of the client company's name, workforce safety and insurance account number, and the date the staffing service began providing services to the client company. The staffing service shall provide this information upon entering an agreement with a client company, but no later than fifteen days from the effective date of the written agreement.
   e. Supply the organization with a copy of the agreement between the staffing service and client company.

f. Notify the organization upon termination of any agreement with a client company, but no later than fifteen days from the effective date of termination.
g. Notify the staffing service's client companies of an uninsured status for failure to pay workforce safety and insurance premiums within fifteen days of notice by the organization.

5. A staffing service that provides both temporary and long-term employees is subject to the reporting requirements associated with the type of employee provided to the client company.

6. a. The organization shall maintain all employer data for each client company requiring coverage under this title. If a client company enters an agreement with a staffing service, the organization shall generate a master billing for the staffing service detailing the staffing service's client companies.
b. Rate classifications for employees provided by a staffing service must be those which would apply as if the work were performed by the employees of the client company. A client company is eligible for organization safety discount and dividend programs. If a client company enters an agreement with a staffing service, the client company shall retain the client company's experience rate, if applicable.
c. Both a staffing service and client company under this section are considered employers for purposes of section 65-04-26.1. A staffing service that provides employees to a client company that has been determined to be uninsured or ineligible for coverage under sections 65-04-27.1 and 65-04-33 may not secure workforce safety and insurance coverage for those employees.

7. a. The organization shall determine whether an entity is a staffing service. If the organization determines an entity is a staffing service, the organization may further determine if the entity is a temporary staffing service. In rendering either determination, the organization may issue a decision under section 65-04-32. If the organization determines an entity is not a staffing service, the client company shall maintain a workforce safety and insurance account and pay the premium for coverage of the employees.
b. The factors the organization may consider in determining whether an entity is a staffing service include the number of client companies handled by the staffing service, the length of time the staffing service has been in existence, the extent to which the staffing service extends services to the general public, the degree to which the client company and staffing service are separate and unrelated business entities, the repetition of officers or managers between the client company and staffing service, and the extent to which a client company has an ownership or other interest in the staffing service. The organization also may consider the scope of the services provided by the staffing service, the relationship between the staffing service and the client company's workers, the written agreement between the staffing service and the client company, and any other factor deemed relevant by the organization.
c. The organization may require information from any staffing service, including a list of current client company accounts, staffing assignments, payroll information, and rate classification information. A client company shall provide any information requested by the organization regarding any staffing service.

8. The organization may adopt rules consistent with this section which further define client company and staffing service and which provide a procedure by which the organization may determine whether an entity meets these definitions.

65-01-09. Injury through negligence of third person - Option of employee - Organization subrogated when claim filed - Lien created.

When an injury or death for which compensation is payable under provisions of this title has been sustained under circumstances creating in some person other than the organization a legal liability to pay damages in respect thereto, the injured employee, or the injured employee's

dependents may claim compensation under this title and proceed at law to recover damages against such other person.

1. The organization is subrogated to the rights of the injured employee or the injured employee's dependents to the extent of fifty percent of the damages recovered up to a maximum of the total amount the organization has paid or would otherwise pay in the future in compensation and benefits for the injured employee. The organization also has a lien to the extent of fifty percent of the damages recovered up to a maximum of the total amount the organization has paid in compensation and benefits. The organization's subrogation interest or lien may not be reduced by settlement, compromise, or judgment. The action against such other person may be brought by the injured employee, or the injured employee's dependents in the event of the injured employee's death. Such action shall be brought in the injured employee's or in the injured employee's dependents' own right and name and as trustee for the organization for the subrogation interest of the organization. However, if the director chooses not to participate in an action, and the decision is in writing, the organization has no subrogation interest and no obligation to pay fees or costs under this section and no lien.
2. If the injured employee or the injured employee's dependents do not institute suit within sixty days after date of injury, the organization may bring the action in its own name and as trustee for the injured employee or the injured employee's dependents and retain as its subrogation interest the full amount it has paid or would otherwise pay in the future in compensation and benefits to the injured employee or the injured employee's dependents and retain as its lien the full amount the organization has paid in compensation and benefits. In the alternative, the organization may bring an action against a third party to recover its lien for benefits paid to the injured employee. Within sixty days after both the injured employee and the organization have declined to commence an action against a third person as provided above, the employer may bring the action in the employer's own name or in the name of the injured employee, or both, and in trust for the organization and for the injured employee. The party bringing the action may determine if the trial jury should be informed of the trust relationship.
3. If the action is brought by the injured employee or the injured employee's dependents, or the employer as provided in subsection 2, the organization shall pay fifty percent of the costs of the action, exclusive of attorney's fees, when such costs are incurred as the action progresses before recovery of damages. If there is no recovery of damages in the action, this shall be a cost of the organization to be paid from the organization's general fund. After recovery of damages in the action, the costs of the action, exclusive of attorney's fees, must be prorated and adjusted on the percentage of the total subrogation interest of the organization recovered to the total recovery in the action. The organization shall pay attorney's fees to the injured employee's attorney from the organization's general fund as follows:
    a. Twenty-five percent of the subrogation interest recovered for the organization before judgment; and
    b. Thirty-three and one-third percent of the subrogation interest recovered for the organization when recovered through judgment entered as a result of a trial on the merits or recovered through binding alternative dispute resolution.
4. The above provisions as to costs of the action and attorney's fees are effective only when the injured employee advises the organization in writing the name and address of the injured employee's attorney, and the injured employee has employed such attorney for the purpose of collecting damages or of bringing legal action for recovery of damages. If an injured employee fails to pay the organization's subrogation interest and lien within thirty days of receipt of a recovery in a third-party action, the organization's subrogation interest is the full amount of the damages recovered, up to a maximum of the total amount it has paid or would otherwise pay in the future in compensation and benefits to the injured employee or the injured employee's dependents, no costs or attorney's fees will be paid from the organization's

subrogation interest and the organization's lien is the full amount of the damages recovered up to a maximum of the total amount it has paid.

5. The organization's lien is created upon first payment of benefits. The lien attaches to all claims, demands, settlement proceeds, judgment awards, or insurance payable by reason of a legal liability of a third person. If the organization does not receive payment of its lien amount within thirty days of the payment of any recovery and if the organization has served, by regular mail, written notice of its lien upon the injured employee or the injured employee's dependents and upon the third person, the insurer of the third person, the injured employee or injured employee's dependents, and the attorney of the injured employee or injured employee's dependents are liable to the organization for the lien amount. A release or satisfaction of any judgment, claim, or demand given by the injured employee or the injured employee's dependents is not valid or effective against the lien. An action to collect the organization's lien amount must be commenced within one year of the organization first possessing actual knowledge of a recovery.
6. Upon receipt of its subrogation interest, the organization shall credit the medical expense assessment paid by the employer under section 65-04-04.4 to the employer's account.
7. If the organization's lien is not recognized by another jurisdiction, the organization may issue a decision, including a decision demanding repayment from the injured employee, of all benefits and compensation the organization has made on behalf of the injured employee, including costs and administrative fees.

65-01-10. Waiver of rights to compensation void - Deduction of premium from employee prohibited - Penalty.

No agreement by an employee to waive rights to compensation under this title is valid except as provided in section 65-05-25. No agreement by any employee to pay any portion of the premium paid or payable by the employer into the fund is valid, and any employer who deducts any portion of the premium from the wages or salary of any employee eligible for benefits under this title is guilty of a class A misdemeanor and is subject to a penalty of up to five thousand dollars. The organization may reduce the penalties provided under this section. An employer may not appeal an organization decision not to reduce a penalty under this section.

65-01-11. Burden of proof in compensation matters - Death certificate.

If the organization or an employer claims an employee is not entitled to the benefits of the North Dakota workforce safety and insurance law because the employee's injury was caused by the employee's willful intention to cause self-injury, or to injure another, or by reason of the voluntary impairment caused by use of alcohol, recreational marijuana use, or illegal use of a controlled substance by the employee, the burden of proving the exemption or forfeiture is on the organization or on the person alleging the same; however, an alcohol concentration level at or above the limit set by the United States secretary of transportation in the Code of Federal Regulations in effect on August 1, 2011, or a level of an illegally used controlled substance or recreational marijuana sufficient to cause impairment found by a test conducted by a physician, qualified technician, chemist, or registered nurse at or above the cutoff level in the Code of Federal Regulations in effect on August 1, 2011, creates a rebuttable presumption the injury was due to impairment caused by the use of alcohol, recreational marijuana use, or the illegal use of a controlled substance. An employer who has a mandatory drug alcohol testing policy for work accidents, or an employer or a health care provider who has reasonable grounds to suspect an employee's alleged work injury was caused by the employee's voluntary impairment caused by use of alcohol, recreational marijuana use, or illegal use of a controlled substance may request the employee undergo testing to determine if the employee had alcohol, marijuana, or the controlled substance in the employee's system at levels greater than the limit set by the United States department of transportation at the time of the injury. If an employee refuses to submit to a reasonable request to undergo a test to determine if the employee was impaired or if an employee refuses to submit to a test for drugs or alcohol after a work accident as mandated

by company policy, the employee forfeits all entitlement to workforce safety and insurance benefits arising out of that injury. Any claimant against the fund, however, has the burden of proving by a preponderance of the evidence that the claimant is entitled to benefits. If a claim for death benefits is filed, the official death certificate must be considered as evidence of death and may not be used to establish the cause of death.

65-01-12. Attorney general to represent organization.

Upon the request of the organization, the attorney general shall institute and prosecute the necessary actions or proceedings for the enforcement of this title or for the recovery of any money due the fund or of any penalty provided for in this title, and shall defend all suits, actions, or proceedings brought against the organization or any of its employees in the attorney general's official capacity.

65-01-13. Information fund - Continuing appropriation.

Repealed by S.L. 2023, ch. 465, § 8.

65-01-14. Informal decision by organization.

Repealed by S.L. 1997, ch. 532, § 6.

65-01-15. Yearly documentation required for firefighter and law enforcement officer.

Except for benefits for an exposure to a bloodborne pathogen as defined by section 23-07.5-01 occurring in the course of employment, a full-time paid firefighter or law enforcement officer who uses tobacco is not eligible for the benefits provided under sections 65-01-15.1 and 65-01-15.2, unless the full-time paid firefighter or law enforcement officer provides yearly documentation from a health care provider which indicates the full-time paid firefighter or law enforcement officer has not used tobacco for the preceding two years.

65-01-15.1. Presumption of compensability for certain conditions of full-time paid firefighters and law enforcement officers.

1. Any condition or impairment of health of a full-time paid firefighter or law enforcement officer caused by lung or respiratory disease, hypertension, heart disease, or an exposure to a bloodborne pathogen as defined by section 23-07.5-01 occurring in the course of employment, or occupational cancer in a full-time paid firefighter, is presumed to have been suffered in the line of duty. The presumption may be rebutted by clear and convincing evidence the condition or impairment is not work-related.
2. As used in this section, an occupational cancer is one which arises out of employment as a full-time paid firefighter and is due to injury due to exposure to smoke, fumes, or carcinogenic, poisonous, toxic, or chemical substances while in the performance of active duty as a full-time paid firefighter.
3. A full-time paid firefighter or law enforcement officer is not eligible for the benefit provided under this section unless that full-time paid firefighter or law enforcement officer has completed five years of continuous service and has successfully passed a medical examination which fails to reveal any evidence of such a condition. The five years of continuous service requirement may include full-time paid service outside the state. An employer shall provide at no expense a medical examination upon employment, for any employee subject to this section.
    a. After the initial medical examination, an employer shall provide at no expense at least a periodic medical examination as follows: for one to ten years of service, every five years; for eleven to twenty years of service, every three years; and for twenty-one or more years of service, every year. The periodic medical examination, at a minimum, must consist of a general medical history of the individual and the individual's family; an occupational history including contact with and an exposure to hazardous materials, toxic products, contagious and infectious diseases, and to physical hazards; a physical examination including measurement of height, weight, and blood pressure; and laboratory and

diagnostic procedures indicating cardiovascular health to a reasonable degree of medical certainty.

b. If the medical examination reveals that an employee falls into a recognized risk group, the employee must be referred to a qualified health professional for future medical examination.

c. If a medical examination produces a false positive result for a condition covered under this section, the organization shall consider the condition to be a compensable injury. In the case of a false positive result, neither the coverage of the condition nor the period of disability may exceed fifty-six days. This section does not affect an employee's responsibility to document that the employee has not used tobacco as required under section 65-01-15. Results of the examination must be used in rebuttal to a presumption afforded under this section.

4. For purposes of this section, "law enforcement officer" means an individual who is licensed to perform peace officer law enforcement duties under chapter 12-63 and is employed full time by the bureau of criminal investigation, the game and fish department, the state highway patrol, the parole and probation division, the North Dakota state university police department, the North Dakota state college of science police department, the university of North Dakota police department, the Bismarck state college police department, a county sheriff's department, a city police department, or the parks and recreation department pursuant to section 55-08-04.

5. The presumption does not include a condition or impairment of health of a full-time paid firefighter or law enforcement officer, who has been employed for ten years or less, if the condition or impairment is diagnosed more than two years after the employment as a full-time paid firefighter or law enforcement officer ends. The presumption also does not include a condition or impairment of health of a full-time paid firefighter or law enforcement officer, who has been employed more than ten years, if the condition or impairment is diagnosed more than five years after the employment as a full-time paid firefighter or law enforcement officer ends.

65-01-15.2. Presumption of compensability for cardiac events of full-time paid firefighters and law enforcement officers.

1. A heart attack, stroke, vascular rupture, or other similar cardiac event, is presumed to be a compensable injury when a full-time paid firefighter or law enforcement officer:
   a. Engages in a situation involving strenuous physical law enforcement activity, fire suppression activity, or emergency response activity, or participates in a training exercise involving strenuous physical activity; and
   b. The heart attack, stroke, vascular rupture, or other similar cardiac event occurs no later than forty-eight hours after the full-time paid firefighter or law enforcement officer engaged or participated in the activity listed under subdivision a.
2. The presumption under subsection 1 may be rebutted by clear and convincing evidence the condition or impairment was not work related.
3. This section applies to any full-time paid firefighter or law enforcement officer who has less than five years of continuous service.
4. A full-time paid firefighter or law enforcement officer is not eligible for the benefit provided under this section unless the full-time paid firefighter or law enforcement officer has successfully passed a medical examination that failed to reveal any evidence of a cardiovascular condition.
5. For purposes of this section, "law enforcement officer" means an individual who is licensed to perform peace officer law enforcement duties under chapter 12-63 and is employed full time by the bureau of criminal investigation, the game and fish department, the state highway patrol, the parole and probation division, the North Dakota state university police department, the North Dakota state college of science police department, the university of North Dakota police department, the Bismarck state college police department, a county sheriff's department, a city police department, or the parks and recreation department pursuant to section 55-08-04.

65-01-16. Decisions by organization - Disputed decisions.

The following procedures must be followed in a claim for benefits, notwithstanding any provisions to the contrary in chapter 28-32:

1. The organization shall send a copy of each initial claim form filed with the organization to the claimant's employer, by regular mail or electronic means, along with a form for the employer's response, if the employer's response has not been filed at the time the claim is filed.
2. The organization may conduct a hearing on any matter within its jurisdiction by informal internal review of the information of record.
3. The organization may issue a notice of decision for any decision made by informal internal review and shall issue the notice of decision on the parties by regular mail or electronic means. A notice of decision must include a statement of the decision, a short summary of the reason for the decision, and notice of the right to reconsideration.
4. A party has forty-five days from the day the notice of decision was issued by the organization by regular mail or electronic means to file a written request for reconsideration. The request for reconsideration is considered filed only upon receipt by the organization. The employer is not required to file the request through an attorney. The request must state the reason for disagreement with the organization's decision and the desired outcome. The request may be accompanied by additional evidence not previously submitted to the organization. The organization shall reconsider the matter by informal internal review of the information of record. Absent a timely and sufficient request for reconsideration, the notice of decision is final and may not be reheard or appealed.
5. After receiving a request for reconsideration, the organization shall issue to the parties by regular mail or electronic means, a notice of decision reversing the previous decision or an administrative order that includes its findings, conclusions, and order. The organization may issue an administrative order on any decision made by informal internal review without first issuing a notice of decision and receiving a request for reconsideration. If the organization does not issue an order within sixty days of receiving a request for reconsideration, any interested party may request, and the organization shall promptly issue, an appealable determination.
6. An employee has forty-five days from the day the administrative order was mailed in which to file a request for assistance from the decision review office under section 65-02-27.
7. A party has forty-five days, from the date of issuance of an administrative order or from the day the decision review office issues its notice by regular mail or electronic means that the office's assistance is complete, in which to file a written request for rehearing. The request must specifically state each alleged error of fact and law to be reheard and the relief sought. The request for rehearing is considered filed only upon receipt by the organization. Absent a timely and sufficient request for rehearing, the administrative order is final and may not be reheard or appealed.
8. Rehearings must be conducted as hearings under chapter 28-32 to the extent the provisions of that chapter do not conflict with this section.
9. A party may appeal a posthearing administrative order to district court in accordance with chapter 65-10. Chapter 65-10 does not preclude the organization from appealing to district court a final order issued by a hearing officer under this title.
10. Any notice of decision, administrative order, or posthearing administrative order is subject to review and reopening under section 65-05-04.

65-01-17. Agricultural employment exemption - Custom agricultural operations.

For purposes of the agricultural service exception to hazardous employment under section 65-01-02, an agricultural employer that engages in a custom agricultural operation, which is the planting, care, or harvesting of grain or field crops on a contract-for-hire basis, exclusive of hauling by special contractor, retains the exemption unless the employer's custom agricultural

operations are based outside this state or require more than thirty actual working days of operation during the calendar year.

65-01-18. Alternative dispute resolution - Pilot program - Continuing appropriation.

Notwithstanding any other provision of law, the organization may develop and implement pilot programs to allow the organization to assess alternative forms of dispute resolution to resolve disputes with injured employees. The goal of the pilot program must be to develop timely, cost-effective, and amicable options to resolve disputes during any stage in the claim adjudication or appeal process. A pilot program may address a broad range of approaches, including collaborative efforts between the organization and other public or private entities. Participation of an injured employee in the pilot program is voluntary. No more than fifty thousand dollars per biennium from the workforce safety and insurance fund is appropriated to the organization on a continuing basis for payment of organization expenses associated with the pilot program.

65-01-19. Pilot programs - Report to legislative management.

Repealed by S.L. 2023, ch. 585, § 3.