

## **CHAPTER 65-06.2 INMATES OF PENAL INSTITUTIONS**

### **65-06.2-01. Inmate defined.**

For the purposes of sections 65-06.2-02 and 65-06.2-03, an "inmate" is a person who is confined against the inmate's will in a city or county penal institution or is a person who, as a criminal defendant before a court, is ordered or elects to perform public service for a city or county in conjunction with or in lieu of a jail sentence. The term "inmate" does not include an individual injured while incarcerated in the North Dakota state penitentiary or any of its affiliated facilities or an individual injured in a fight, riot, recreational activity, or other incident not directly related to the inmate's work assignment.

### **65-06.2-02. Coverage of inmates - Conditions.**

1. If an inmate in performance of work in connection with the maintenance of the institution, or with any industry maintained within the institution, or with any public service activity, sustains a compensable injury, the inmate may be awarded and paid benefits under the provisions of this title, upon being released from the institution or after discharge from public service.
2. Claims under this chapter must be filed and processed pursuant to section 65-05-01, except that an inmate also has one year from the date of first release from the institution or discharge from public service to file a claim.
3. Workforce safety and insurance benefits under this chapter accrue and are payable from the time of the inmate's release from the institution or after discharge from public service. Disability benefits must be computed according to the methods provided in chapter 65-05. The inmate's weekly wage must be computed using either the actual wage paid to the inmate or the federal minimum wage as of the date of injury, whichever is higher.
4. If a former inmate receiving disability benefits under the provisions of this chapter is recommitted or sentenced by a court to imprisonment in a penal institution, the disability benefits are payable pursuant to subsection 2 of section 65-05-08.

### **65-06.2-03. Workers' compensation coverage of inmates.**

Any county or city, by resolution of the governing body, may elect to cover its inmates with workforce safety and insurance benefits in accordance with this chapter. Any county or city that makes this election is not liable to respond in damages at common law or by statute for injuries to or the death of any inmate whenever the provisions of this chapter have been met and the premiums as set by the organization are not in default.

### **65-06.2-04. Workers' compensation coverage for inmates engaged in work programs through roughrider industries.**

The director of the department of corrections and rehabilitation may elect to provide and request from the organization a program of modified workers' compensation coverage established under this chapter and according to administrative rules and fee schedules of this chapter. The modified workers' compensation coverage is for inmates incarcerated at the penitentiary and engaged in work in a prison industries work program through roughrider industries, whether the program is operated by roughrider industries or by contract with another entity or private employer. An inmate who sustains a compensable injury arising out of and in the course of work in a prison industries work program through roughrider industries may only receive workforce safety and insurance benefits under the modified workers' compensation coverage established for that purpose.

### **65-06.2-05. Modified coverage of inmates engaged in work programs through roughrider industries - Conditions.**

Except as otherwise provided in this chapter, all claims for workforce safety and insurance benefits under this section and sections 65-06.2-04, 65-06.2-06, and 65-06.2-08 are subject to

title 65. A claim under this section and sections 65-06.2-04, 65-06.2-06, and 65-06.2-08 must be filed according to section 65-05-01. While an inmate is incarcerated at the penitentiary, the penitentiary shall pay the reasonable medical expenses of that inmate at penitentiary medical payment levels, if that inmate incurs a compensable injury while working in a prison industries work program through roughrider industries. If an inmate sustains a compensable injury while working in a prison industries work program through roughrider industries, disability, vocational rehabilitation allowance, and permanent partial impairment benefits may not accrue or be paid while the inmate is incarcerated and may only be paid after the inmate is discharged from the penitentiary. If the director of the department of corrections and rehabilitation and the organization determine that an inmate who suffers a compensable injury under this chapter is in need of vocational rehabilitation services while the inmate is incarcerated, the penitentiary and the organization may provide vocational rehabilitation services to the inmate. An injury resulting from a fight, riot, recreational activity, or other activity or incident other than the inmate's actual performance of work duties in a prison industries work program through roughrider industries is not compensable under this title.

**65-06.2-06. Rulemaking - Participation in state entities account.**

The organization, in cooperation with the department of corrections and rehabilitation and the risk management division of the office of management and budget, shall adopt administrative rules and fee schedules for a program of modified workers' compensation coverage established and provided under this section and sections 65-06.2-04, 65-06.2-05, and 65-06.2-08. The administrative rules and fee schedules must provide for the classification of inmates engaged in work in a prison industries work program through roughrider industries, the computation of premium, the payment of claims charges against the classification, the payment of medical bills, coverage under the workforce safety and insurance account for state entities under section 65-04-03.1, and the reimbursement by roughrider industries to the organization for all claim benefit costs charged against that classification, as well as any allocated loss adjustment expense and all administrative expenses, including the expense of issuing the coverage, for the life of the claim in excess of premiums, coverage under the workforce safety and insurance account for state entities, and medical expenses paid by roughrider industries. Roughrider industries shall contribute to the risk management workers' compensation fund and participate in the workforce safety and insurance account for state entities under section 65-04-03.1 to cover the costs in excess of premiums and medical expenses paid. The organization shall determine and the risk management division shall assess a premium against roughrider industries for the cost of coverage under the workforce safety and insurance account for state entities and roughrider industries shall pay that premium.

**65-06.2-07. State reimbursement for liability in excess of collected premiums.**

Whenever total costs and expenses charged to the classification of the modified workers' compensation program established under this chapter exceeds the amount of premiums paid into the fund and any payments from the risk management workers' compensation fund under the workforce safety and insurance state entities account under section 65-04-03.1, those excess costs and expenses are a general obligation of the state and the state shall reimburse the organization for credit to the workforce safety and insurance fund through legislative appropriation to the extent not covered by any program of excess coverage or reinsurance. This modified workers' compensation coverage may not be effective unless the organization has, in its sole discretion, purchased excess coverage or reinsurance that does not exclude claims under this section.

**65-06.2-08. No liability for damages - Inmates are not employees.**

The state and its employees and the department of corrections and rehabilitation and its divisions, departments, and employees may not be held liable for damages at common law or by statute if an inmate covered under a program of modified workers' compensation coverage under this chapter sustains a compensable injury while working in a prison industries work program through roughrider industries. An inmate covered under a program of modified workers'

compensation coverage under this chapter is not an employee of the state or the department of corrections and rehabilitation and its divisions and departments, except for the purpose of modified workers' compensation coverage under this chapter.

**65-06.2-09. Safety and performance review.**

The organization shall perform a biennial safety review of the roughrider industries work programs covered under this chapter and a biennial performance review of the program of modified workers' compensation coverage. If the organization makes any recommendation for a change in either program as a result of the review, the organization shall submit a report with the recommendation to the legislative council no later than thirty days before the commencement of each regular session of the legislative assembly.