

CHAPTER 65-09
PROCEEDINGS BY INJURED EMPLOYEE AGAINST UNINSURED EMPLOYER

65-09-01. Liability of uninsured employer for injury to employees.

1. Any employer subject to this title who is in violation of subsection 1 or 2 of section 65-04-33 or declared uninsured pursuant to section 65-04-22 is not protected by the immunity from civil liability granted to employers under this title for injuries to that employer's employees for damages suffered by reason of injuries sustained in the course of employment and to the dependents and legal representatives of an employee whose death results from injuries sustained in the course of employment. The employer is liable for the premiums, reimbursements, penalties, and interest provided for in this title.
2. The organization may establish a procedure to determine whether a person is an employer required to obtain workers' compensation coverage under this title and to require a person asserting independent contractor status to file a statement annually with the organization certifying that status. A determination under this section that a person is not required to be insured is effective for no more than one year from the date the person is notified of the determination. The organization retains continuing jurisdiction over determinations made under this section and may reconsider or revoke its decision at any time.

65-09-02. Application for compensation - Common-law defenses not available - Fund subrogated to recovery - Hearing - Time for filing. An employee whose employer is in violation of section 65-04-33, who has been injured in the course of employment, or the employee's dependents or legal representatives in case death has ensued, may file an application with the organization for an award of compensation under this title and in addition may maintain a civil action against the employer for damages resulting from the injury or death. In the action, the employer may not assert the common-law defenses of:

1. The fellow servant rule.
2. Assumption of risk.
3. Contributory negligence.

The organization is subrogated to the recovery made in the action against the uninsured employer. The subrogation interest is determined according to section 65-01-09, with the uninsured employer being the person other than the fund with a legal liability to pay damages with respect to the employee's injury or death. An injured employee, or the dependents of an employee who died as a result of a work-related accident, shall file the original claim for compensation within one year after the injury or within two years after the death. The organization shall notify the claimant and the employer that the matter is being processed under this chapter, and subsequently shall hear and determine the application for compensation as it would for other claims before the organization. A determination by the organization that a person is not an employer required to obtain workforce safety and insurance coverage under this title is a defense to any claim that the person failed to obtain coverage for the time period during which the determination is effective.

65-09-03. Award - Payroll reports - Notice - Premium - Judgment. Repealed by S.L. 2001, ch. 578, § 17.

65-09-04. Premiums and penalties to be paid by employer. Repealed by S.L. 2001, ch. 578, § 17.