

**Superseded 7/1/2015**

**34A-2-104 "Employee," "worker," and "operative" defined -- Specific circumstances -- Exemptions.**

- (1) As used in this chapter and Chapter 3, Utah Occupational Disease Act, "employee," "worker," and "operative" mean:
  - (a)
    - (i) an elective or appointive officer and any other person:
      - (A) in the service of:
        - (I) the state;
        - (II) a county, city, or town within the state; or
        - (III) a school district within the state;
      - (B) serving the state, or any county, city, town, or school district under:
        - (I) an election;
        - (II) appointment; or
        - (III) any contract of hire, express or implied, written or oral; and
    - (ii) including:
      - (A) an officer or employee of the state institutions of learning; and
      - (B) a member of the National Guard while on state active duty; and
  - (b) a person in the service of any employer, as defined in Section 34A-2-103, who employs one or more workers or operatives regularly in the same business, or in or about the same establishment:
    - (i) under any contract of hire:
      - (A) express or implied; and
      - (B) oral or written;
    - (ii) including aliens and minors, whether legally or illegally working for hire; and
    - (iii) not including any person whose employment:
      - (A) is casual; and
      - (B) not in the usual course of the trade, business, or occupation of the employee's employer.
- (2)
  - (a) Unless a lessee provides coverage as an employer under this chapter and Chapter 3, Utah Occupational Disease Act, any lessee in mines or of mining property and each employee and sublessee of the lessee shall be:
    - (i) covered for compensation by the lessor under this chapter and Chapter 3, Utah Occupational Disease Act;
    - (ii) subject to this chapter and Chapter 3, Utah Occupational Disease Act; and
    - (iii) entitled to the benefits of this chapter and Chapter 3, Utah Occupational Disease Act, to the same extent as if the lessee, employee, or sublessee were employees of the lessor drawing the wages paid employees for substantially similar work.
  - (b) The lessor may deduct from the proceeds of ores mined by the lessees an amount equal to the insurance premium for that type of work.
- (3)
  - (a) A partnership or sole proprietorship may elect to include any partner of the partnership or owner of the sole proprietorship as an employee of the partnership or sole proprietorship under this chapter and Chapter 3, Utah Occupational Disease Act.
  - (b) If a partnership or sole proprietorship makes an election under Subsection (3)(a), the partnership or sole proprietorship shall serve written notice upon its insurance carrier naming the persons to be covered.

- (c) A partner of a partnership or owner of a sole proprietorship may not be considered an employee of the partner's partnership or the owner's sole proprietorship under this chapter or Chapter 3, Utah Occupational Disease Act, until the notice described in Subsection (3)(b) is given.
  - (d) For premium rate making, the insurance carrier shall assume the salary or wage of the partner or sole proprietor electing coverage under Subsection (3)(a) to be 100% of the state's average weekly wage.
- (4)
- (a) A corporation may elect not to include any director or officer of the corporation as an employee under this chapter and Chapter 3, Utah Occupational Disease Act.
  - (b) If a corporation makes an election under Subsection (4)(a), the corporation shall serve written notice naming the individuals who are directors or officers to be excluded from coverage:
    - (i) upon its insurance carrier, if any; or
    - (ii) upon the commission if the corporation is self-insured or has no employee other than the one or more directors or officers being excluded.
  - (c) A corporation may exclude no more than five individuals who are directors or officers under Subsection (4)(b)(ii).
  - (d) An exclusion under this Subsection (4) is subject to Subsection 34A-2-103(7)(d).
  - (e) A director or officer of a corporation is considered an employee under this chapter and Chapter 3, Utah Occupational Disease Act, until the notice described in Subsection (4)(b) is given.
  - (f) The commission may make rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, regarding the form of the notice described in Subsection (4)(b)(ii), including a requirement to provide documentation, if any.
- (5) As used in this chapter and Chapter 3, Utah Occupational Disease Act, "employee," "worker," and "operative" do not include:
- (a) a sales agent or associate broker, as defined in Section 61-2f-102, who performs services in that capacity for a principal broker if:
    - (i) substantially all of the sales agent's or associate broker's income for services is from real estate commissions; and
    - (ii) the sales agent's or associate broker's services are performed under a written contract that provides that:
      - (A) the real estate agent is an independent contractor; and
      - (B) the sales agent or associate broker is not to be treated as an employee for federal income tax purposes;
  - (b) an offender performing labor under Section 64-13-16 or 64-13-19, except as required by federal statute or regulation;
  - (c) an individual who for an insurance producer, as defined in Section 31A-1-301, solicits, negotiates, places, or procures insurance if:
    - (i) substantially all of the individual's income from those services is from insurance commissions; and
    - (ii) the services of the individual are performed under a written contract that states that the individual:
      - (A) is an independent contractor;
      - (B) is not to be treated as an employee for federal income tax purposes; and
      - (C) can derive income from more than one insurance company;
  - (d) notwithstanding Subsection 34A-2-103(4), an individual who provides domestic work for a person if:

- (i) the person for whom the domestic work is being provided receives or is eligible to receive the domestic work under a state or federal program designed to pay the costs of domestic work to prevent the person from being placed in:
    - (A) an institution; or
    - (B) a more restrictive placement than where that person resides at the time the person receives the domestic work;
  - (ii) the individual is paid by a person designated by the Secretary of the Treasury in accordance with Section 3504, Internal Revenue Code, as a fiduciary, agent, or other person that has the control, receipt, custody, or disposal of, or pays the wages of the individual; and
  - (iii) the domestic work is performed under a written contract that notifies the individual that the individual is not an employee under this chapter or Chapter 3, Utah Occupational Disease Act; or
- (e) subject to Subsections (6), (7), and (8), an individual who:
- (i)
    - (A) owns a motor vehicle; or
    - (B) leases a motor vehicle to a motor carrier;
  - (ii) personally operates the motor vehicle described in Subsection (5)(e)(i);
  - (iii) operates the motor vehicle described in Subsection (5)(e)(i) under a written agreement with the motor carrier that states that the individual operates the motor vehicle as an independent contractor; and
  - (iv)
    - (A) provides to the motor carrier at the time the written agreement described in Subsection (5)(e)(iii) is executed or as soon after the execution as provided by the commission, a copy of a workers' compensation coverage waiver issued pursuant to Part 10, Workers' Compensation Coverage Waivers Act, to the individual; and
    - (B) provides to the motor carrier at the time the written agreement described in Subsection (5)(e)(iii) is executed or as soon after the execution as provided by an insurer, proof that the individual is covered by occupational accident related insurance with the coverage and benefit limits listed in Subsection (7)(c).
- (6) An individual described in Subsection (5)(d) or (e) may become an employee under this chapter and Chapter 3, Utah Occupational Disease Act, if the employer of the individual complies with:
- (a) this chapter and Chapter 3, Utah Occupational Disease Act; and
  - (b) commission rules.
- (7) For purposes of Subsection (5)(e):
- (a) "Motor carrier" means a person engaged in the business of transporting freight, merchandise, or other property by a commercial vehicle on a highway within this state.
  - (b) "Motor vehicle" means a self-propelled vehicle intended primarily for use and operation on the highways, including a trailer or semitrailer designed for use with another motorized vehicle.
  - (c) "Occupational accident related insurance" means insurance that provides the following coverage at a minimum aggregate policy limit of \$1,000,000 for all benefits paid, including medical expense benefits, for an injury sustained in the course of working under a written agreement described in Subsection (5)(e)(iii):
    - (i) disability benefits;
    - (ii) death benefits; and
    - (iii) medical expense benefits, which include:
      - (A) hospital coverage;
      - (B) surgical coverage;
      - (C) prescription drug coverage; and

(D) dental coverage.

(8) For an individual described in Subsection (5)(e), the commission shall verify the existence of occupational accident insurance coverage with the coverage and benefit limits listed in Subsection (7)(c) before the commission may issue a workers' compensation coverage waiver to the individual pursuant to Part 10, Workers' Compensation Coverage Waivers Act.