

1 **DETERMINATION OF EMPLOYER STATUS AMENDMENTS**

2 2016 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Brian M. Greene**

5 Senate Sponsor: Jerry W. Stevenson

7 **LONG TITLE**

8 **General Description:**

9 This bill modifies provisions related to insurance, labor, and employment security to
10 address the determination of who is an employer.

11 **Highlighted Provisions:**

12 This bill:

- 13 ▶ amends definition provisions;
- 14 ▶ addresses when a franchisor is considered an employer;
- 15 ▶ addresses federal executive branch rulings in determining whether two or more
16 persons are joint employers; and
- 17 ▶ makes technical changes.

18 **Money Appropriated in this Bill:**

19 None

20 **Other Special Clauses:**

21 None

22 **Utah Code Sections Affected:**

23 AMENDS:

24 **31A-40-102**, as enacted by Laws of Utah 2008, Chapter 318

25 **34-20-2**, as last amended by Laws of Utah 1997, Chapter 375

26 **34-28-2**, as last amended by Laws of Utah 2011, Chapter 413

27 **34-40-102**, as last amended by Laws of Utah 2003, Chapter 151

28 **34A-2-103**, as last amended by Laws of Utah 2014, Chapter 303

29 **34A-5-102**, as last amended by Laws of Utah 2015, Chapters 13 and 23

30 [34A-6-103](#), as last amended by Laws of Utah 2013, Chapter 413

31 [35A-4-203](#), as last amended by Laws of Utah 2003, Chapter 17

32 ENACTS:

33 [31A-40-212](#), Utah Code Annotated 1953

34 [34-20-14](#), Utah Code Annotated 1953

35

36 *Be it enacted by the Legislature of the state of Utah:*

37 Section 1. Section [31A-40-102](#) is amended to read:

38 **[31A-40-102. Definitions.](#)**

39 As used in this chapter:

40 (1) (a) Except as provided in Subsection (1)(b), "administrative fee" means a fee
41 charged to a client by a professional employer organization for a professional employer service.

42 (b) "Administrative fee" does not include an amount or a fee received by a professional
43 employer organization that is:

44 (i) compensation of a covered employee;

45 (ii) a benefit for a covered employee;

46 (iii) a payroll-related tax;

47 (iv) an unemployment insurance contribution;

48 (v) withholding of compensation for a covered employee;

49 (vi) a workers' compensation premium; or

50 (vii) another assessment paid by a professional employer organization to or on behalf
51 of a covered employee under a professional employer agreement.

52 (2) "Assurance organization" means a person designated as an assurance organization
53 in accordance with Section [31A-40-303](#).

54 (3) "Client" means a person who enters into a professional employer agreement with a
55 professional employer organization.

56 (4) "Coemployer" means:

57 (a) a client; or

58 (b) a professional employer organization.

59 (5) "Coemployment relationship" means a relationship:

60 (a) that is intended to be ongoing rather than a temporary or project specific
61 relationship; and

62 (b) wherein the rights and obligations of an employer that arise out of an employment
63 relationship are allocated between coemployers pursuant to:

64 (i) a professional employer agreement; or

65 (ii) this chapter.

66 (6) Notwithstanding Section 31A-1-301, "controlling person" means a person who,
67 individually or acting in concert with one or more persons, owns, directly or indirectly, 10% or
68 more of the equity interest in a professional employer organization.

69 (7) "Covered employee" means an individual who has a coemployment relationship
70 with a client and a professional employer organization if the conditions of Section 31A-40-203
71 are met.

72 (8) ~~(a)~~ "Employment related economic incentive" means:

73 ~~(a)~~ (i) ~~(A)~~ a credit against or exemption from taxes due the state or a political
74 subdivision of the state; or

75 ~~(B)~~ (ii) an economic inducement, including a loan or a grant; and

76 ~~(i)~~ (b) if the credit, exemption, or economic inducement described in Subsection
77 (8)(a)~~(i)~~:

78 ~~(A)~~ (i) is offered by the state or a political subdivision of the state; and

79 ~~(B)~~ (ii) has an eligibility requirement that relates in whole or in part to employment
80 including:

81 ~~(i)~~ (A) the number of employees; or

82 ~~(ii)~~ (B) the nature of the employment.

83 (9) "Federal executive agency" means an executive agency, as defined in 5 U.S.C.
84 Sec.105, of the federal government.

85 (10) "Franchise" means the same as that term is defined in 16 C.F.R. Sec. 436.1.

86 (11) "Franchisee" means the same as that term is defined in 16 C.F.R. Sec. 436.1.

87 (12) "Franchisor" means the same as that term is defined in 16 C.F.R. Sec. 436.1.

88 ~~[(9)]~~ (13) "Guarantee" means to assume an obligation of another person if that person
89 fails to meet the obligation.

90 ~~[(10)]~~ (14) "Licensee" means a person licensed under this chapter.

91 ~~[(11)]~~ (15) "Professional employer agreement" means a written contract by and
92 between a client and a professional employer organization that provides for:

93 (a) the coemployment of a covered employee;

94 (b) with respect to a covered employee, the allocation of a right or obligation of an
95 employer between:

96 (i) the client; and

97 (ii) the professional employer organization; and

98 (c) the assumption of the obligations imposed by this chapter by:

99 (i) the client; or

100 (ii) the professional employer organization.

101 ~~[(12)]~~ (16) (a) Subject to Subsection ~~[(12)]~~ (16)(b), "professional employer
102 organization" means a person engaged in the business of providing a professional employer
103 service.

104 (b) "Professional employer organization" does not include:

105 (i) a person that:

106 (A) does not:

107 (I) have as a principal business activity the entering into of a professional employer
108 arrangement; or

109 (II) hold the person out as a professional employer organization; and

110 (B) shares an employee with a commonly owned company within the meaning of
111 Sections 414(b) and (c), Internal Revenue Code;

112 (ii) an independent contractor arrangement by which a person:

113 (A) assumes responsibility for the product produced or service performed by the person

114 or the person's agent; and

115 (B) retains and exercises primary direction and control over the work performed by an
116 individual whose service is supplied under the independent contractor arrangement; or

117 (iii) a person providing temporary help service.

118 [~~(13)~~] (17) "Professional employer organization group" means two or more
119 professional employer organizations that are majority owned or commonly controlled or
120 directed by the same one or more persons.

121 [~~(14)~~] (18) "Professional employer service" means the service of entering into a
122 coemployment relationship under this chapter under which all or a majority of the employees
123 who provide a service to a client, or a division or work unit of a client, are covered employees.

124 [~~(15)~~] (19) "Qualified actuary" means an individual who:

125 (a) is a member in good standing of a professional actuarial accreditation organization
126 designated by the department by rule;

127 (b) is qualified to sign a statement of actuarial opinion or annual statement for a
128 professional employer organization in accordance with the qualification standards for an
129 actuary signing an opinion or annual statement as provided by the professional actuarial
130 accreditation organization designated under Subsection [~~(15)~~] (19)(a);

131 (c) is familiar with the valuation requirements applicable to a professional employer
132 organization;

133 (d) has not been found by the commissioner, or if so found has subsequently been
134 reinstated as a qualified actuary, following appropriate notice and hearing to have:

135 (i) violated a provision of, or an obligation imposed by, statute or other law in the
136 course of the actuary's dealings as a qualified actuary;

137 (ii) been found guilty of a fraudulent or dishonest practice;

138 (iii) demonstrated the actuary's incompetency, lack of cooperation, or
139 untrustworthiness to act as a qualified actuary;

140 (iv) submitted to the commissioner during the past five years, pursuant to this rule, an
141 actuarial opinion or memorandum that the commissioner rejected because it did not meet the

142 provisions of rule; or

143 (v) resigned or been removed as an actuary within the past five years as a result of an
144 act or omission indicated in an adverse report on examination or as a result of failure to adhere
145 to a generally acceptable actuarial standard; and

146 (e) has not failed to notify the commissioner of an action taken by any commissioner of
147 another state similar to that under Subsection [~~(15)~~] (19)(d).

148 [~~(16)~~] (20) "Temporary help service" means a service consisting of a person:

149 (a) recruiting and hiring the person's own employee;

150 (b) finding another person that wants the services of that employee;

151 (c) assigning the employee to:

152 (i) perform services at or for the other person to support or supplement the other
153 person's employees;

154 (ii) provide assistance in a special work situation such as:

155 (A) an employee absence;

156 (B) a skill shortage; or

157 (C) a seasonal workload; or

158 (iii) perform a special assignment or project; and

159 (d) customarily reassigning the employee to another organization when the employee
160 finishes an assignment.

161 [~~(17)~~] (21) "Working capital" means the current assets minus the current liabilities of a
162 professional employer organization determined in accordance with generally accepted
163 accounting principles.

164 Section 2. Section 31A-40-212 is enacted to read:

165 **31A-40-212. Determination of joint employers -- Franchisors excluded.**

166 (1) (a) For purposes of determining whether two or more persons are considered joint
167 employers under this chapter, an administrative ruling of a federal executive agency may not be
168 considered a generally applicable law unless that administrative ruling is determined to be
169 generally applicable by a court of law, or adopted by statute or rule.

170 (b) Nothing in this Subsection (1) prohibits the commissioner, in making policy
171 decisions and taking enforcement action, from applying an administrative ruling or opinion
172 issued by the United States Department of Labor that decides or opines on whether an
173 employee welfare benefit plan is established and maintained for a single employer, multiple
174 employer, or co-employer under the Employee Retirement Income Security Act of 1974, 29
175 U.S.C. Sec. 1001 et seq.

176 (2) (a) For purposes of this chapter, a franchisor is not considered to be an employer of:

177 (i) a franchisee; or

178 (ii) a franchisee's employee.

179 (b) With respect to a specific claim for relief under this chapter made by a franchisee or
180 a franchisee's employee, this Subsection (2) does not apply to a franchisor under a franchise
181 that exercises a type or degree of control over the franchisee or the franchisee's employee not
182 customarily exercised by a franchisor for the purpose of protecting the franchisor's trademarks
183 and brand.

184 Section 3. Section **34-20-2** is amended to read:

185 **34-20-2. Definitions.**

186 As used in this chapter:

187 (1) "Affecting commerce" means in commerce, or burdening or obstructing commerce
188 or the free flow of commerce, or having led or tending to lead to a labor dispute burdening or
189 obstructing commerce or the free flow of commerce within the state.

190 (2) "Commerce" means trade, traffic, commerce, transportation, or communication
191 within the state.

192 (3) "Election" means a proceeding in which the employees in a collective bargaining
193 unit cast a secret ballot for collective bargaining representatives or for any other purpose
194 specified in this chapter and includes elections conducted by the board or by any tribunal
195 having competent jurisdiction or whose jurisdiction was accepted by the parties.

196 (4) (a) "Employee" includes any employee unless this chapter explicitly states
197 otherwise, and includes an individual whose work has ceased as a consequence of, or in

198 connection with, any current labor dispute or because of any unfair labor practice, and who has
199 not obtained any other regular and substantially equivalent employment.

200 (b) "Employee" does not include an individual employed as an agricultural laborer, or
201 in the domestic service of a family or person at his home, or an individual employed by his
202 parent or spouse.

203 (5) "Employer" includes a person acting in the interest of an employer, directly or
204 indirectly, but does not include:

205 (a) the United States;

206 (b) a state or political subdivision of a state;

207 (c) a person subject to the federal Railway Labor Act;

208 (d) a labor organization, other than when acting as an employer;

209 (e) a corporation or association operating a hospital if no part of the net earnings inures
210 to the benefit of any private shareholder or individual; or

211 (f) anyone acting in the capacity of officer or agent of a labor organization.

212 (6) "Federal executive agency" means an executive agency, as defined in 5 U.S.C.
213 Sec.105, of the federal government.

214 (7) "Franchise" means the same as that term is defined in 16 C.F.R. Sec. 436.1.

215 (8) "Franchisee" means the same as that term is defined in 16 C.F.R. Sec. 436.1.

216 (9) "Franchisor" means the same as that term is defined in 16 C.F.R. Sec. 436.1.

217 [~~(6)~~] (10) "Labor dispute" means any controversy between an employer and the
218 majority of [~~his~~] the employer's employees in a collective bargaining unit concerning the right
219 or process or details of collective bargaining or the designation of representatives.

220 [~~(7)~~] (11) "Labor organization" means an organization of any kind or any agency or
221 employee representation committee or plan in which employees participate that exists for the
222 purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes,
223 wages, rates of pay, hours of employment, or conditions of work.

224 [~~(8)~~] (12) "Labor relations board" or "board" means the board created in Section
225 [34-20-3](#).

226 ~~[(9)]~~ (13) "Person" includes an individual, partnership, association, corporation, legal
227 representative, trustee, trustee in bankruptcy, or receiver.

228 ~~[(10)]~~ (14) "Representative" includes an individual or labor organization.

229 ~~[(11)]~~ (15) "Secondary boycott" includes combining or conspiring to cause or threaten
230 to cause injury to one with whom no labor dispute exists, whether by:

231 (a) withholding patronage, labor, or other beneficial business intercourse;

232 (b) picketing;

233 (c) refusing to handle, install, use, or work on particular materials, equipment, or
234 supplies; or

235 (d) by any other unlawful means, in order to bring him against his will into a concerted
236 plan to coerce or inflict damage upon another.

237 ~~[(12)]~~ (16) "Unfair labor practice" means any unfair labor practice listed in Section
238 [34-20-8](#).

239 Section 4. Section **34-20-14** is enacted to read:

240 **34-20-14. Determining joint employment status -- Franchisors excluded.**

241 (1) For purposes of determining whether two or more persons are considered joint
242 employers under this chapter, an administrative ruling of a federal executive agency may not be
243 considered a generally applicable law unless that administrative ruling is determined to be
244 generally applicable by a court of law, or adopted by statute or rule.

245 (2) (a) For purposes of this chapter, a franchisor is not considered to be an employer of:

246 (i) a franchisee; or

247 (ii) a franchisee's employee.

248 (b) With respect to a specific claim for relief under this chapter made by a franchisee or
249 a franchisee's employee, this Subsection (2) does not apply to a franchisor under a franchise
250 that exercises a type or degree of control over the franchisee or the franchisee's employee not
251 customarily exercised by a franchisor for the purpose of protecting the franchisor's trademarks
252 and brand.

253 Section 5. Section **34-28-2** is amended to read:

254 **34-28-2. Definitions -- Unincorporated entities -- Joint employers -- Franchisors.**

255 (1) As used in this chapter:

256 (a) "Commission" means the Labor Commission.

257 (b) "Division" means the Division of Antidiscrimination and Labor.

258 (c) "Employer" includes every person, firm, partnership, association, corporation,
259 receiver or other officer of a court of this state, and any agent or officer of any of the
260 above-mentioned classes, employing any person in this state.

261 (d) "Federal executive agency" means an executive agency, as defined in 5 U.S.C. Sec.
262 105, of the federal government.

263 (e) "Franchise" means the same as that term is defined in 16 C.F.R. Sec. 436.1.

264 (f) "Franchisee" means the same as that term is defined in 16 C.F.R. Sec. 436.1.

265 (g) "Franchisor" means the same as that term is defined in 16 C.F.R. Sec. 436.1.

266 ~~(h)~~ (h) "Unincorporated entity" means an entity organized or doing business in the
267 state that is not:

268 (i) an individual;

269 (ii) a corporation; or

270 (iii) publicly traded.

271 ~~(i)~~ (i) "Wages" means the amounts due the employee for labor or services, whether
272 the amount is fixed or ascertained on a time, task, piece, commission basis or other method of
273 calculating such amount.

274 (2) (a) For purposes of this chapter, an unincorporated entity that is required to be
275 licensed under Title 58, Chapter 55, Utah Construction Trades Licensing Act, is presumed to
276 be the employer of each individual who, directly or indirectly, holds an ownership interest in
277 the unincorporated entity.

278 (b) Pursuant to rules made by the commission in accordance with Title 63G, Chapter 3,
279 Utah Administrative Rulemaking Act, an unincorporated entity may rebut the presumption
280 under Subsection (2)(a) for an individual by establishing by clear and convincing evidence that
281 the individual:

- 282 (i) is an active manager of the unincorporated entity;
- 283 (ii) directly or indirectly holds at least an 8% ownership interest in the unincorporated
- 284 entity; or
- 285 (iii) is not subject to supervision or control in the performance of work by:
- 286 (A) the unincorporated entity; or
- 287 (B) a person with whom the unincorporated entity contracts.
- 288 (c) As part of the rules made under Subsection (2)(b), the commission may define:
- 289 (i) "active manager";
- 290 (ii) "directly or indirectly holds at least an 8% ownership interest"; and
- 291 (iii) "subject to supervision or control in the performance of work."
- 292 (d) The commission by rule made in accordance with Title 63G, Chapter 3, Utah
- 293 Administrative Rulemaking Act, may establish a procedure, consistent with Section 34-28-7,
- 294 under which an unincorporated entity may seek approval of a mutual agreement to pay wages
- 295 on non-regular paydays.

296 (3) For purposes of determining whether two or more persons are considered joint

297 employers under this chapter, an administrative ruling of a federal executive agency may not be

298 considered a generally applicable law unless that administrative ruling is determined to be

299 generally applicable by a court of law, or adopted by statute or rule.

300 (4) (a) For purposes of this chapter, a franchisor is not considered to be an employer of:

- 301 (i) a franchisee; or
- 302 (ii) a franchisee's employee.

303 (b) With respect to a specific claim for relief under this chapter made by a franchisee or

304 a franchisee's employee, this Subsection (4) does not apply to a franchisor under a franchise

305 that exercises a type or degree of control over the franchisee or the franchisee's employee not

306 customarily exercised by a franchisor for the purpose of protecting the franchisor's trademarks

307 and brand.

308 Section 6. Section 34-40-102 is amended to read:

309 **34-40-102. Definitions -- Joint employees -- Franchisors.**

310 (1) ~~[This]~~ Subject to Subsection (3), this chapter and the terms used in it, including the
311 computation of wages, shall be interpreted consistently with ~~[29 U.S.C. Sec. 201 et seq.,]~~ the
312 Fair Labor Standards Act of 1938, 29 U.S.C. Sec. 201 et seq., as amended, to the extent that act
313 relates to the payment of a minimum wage.

314 (2) As used in this chapter:

315 (a) "Cash wage obligation" means an hourly wage that an employer pays a tipped
316 employee regardless of the tips or gratuities a tipped employee receives.

317 (b) "Commission" means the Labor Commission.

318 (c) "Division" means the Division of Antidiscrimination and Labor in the commission.

319 (d) "Federal executive agency" means an executive agency, as defined in 5 U.S.C. Sec.
320 105, of the federal government.

321 (e) "Franchise" means the same as that term is defined in 16 C.F.R. Sec. 436.1.

322 (f) "Franchisee" means the same as that term is defined in 16 C.F.R. Sec. 436.1.

323 (g) "Franchisor" means the same as that term is defined in 16 C.F.R. Sec. 436.1.

324 ~~[(d)]~~ (h) "Minimum wage" means the state minimum hourly wage for adult employees
325 as established under this chapter, unless the context clearly indicates otherwise.

326 ~~[(e)]~~ (i) "Tipped employee" means an employee who customarily and regularly receives
327 tips or gratuities.

328 (3) Notwithstanding Subsection (1), for purposes of determining whether two or more
329 persons are considered joint employers under this chapter, an administrative ruling of a federal
330 executive agency may not be considered a generally applicable law unless that administrative
331 ruling is determined to be generally applicable by a court of law, or adopted by statute or rule.

332 (4) (a) For purposes of this chapter, a franchisor is not considered to be an employer of:

333 (i) a franchisee; or

334 (ii) a franchisee's employee.

335 (b) With respect to a specific claim for relief under this chapter made by a franchisee or
336 a franchisee's employee, this Subsection (4) does not apply to a franchisor under a franchise
337 that exercises a type or degree of control over the franchisee or the franchisee's employee not

338 customarily exercised by a franchisor for the purpose of protecting the franchisor's trademarks
339 and brand.

340 Section 7. Section 34A-2-103 is amended to read:

341 **34A-2-103. Employers enumerated and defined -- Regularly employed --**
342 **Statutory employers -- Exceptions.**

343 (1) (a) The state, and each county, city, town, and school district in the state are
344 considered employers under this chapter and Chapter 3, Utah Occupational Disease Act.

345 (b) For the purposes of the exclusive remedy in this chapter and Chapter 3, Utah
346 Occupational Disease Act, prescribed in Sections 34A-2-105 and 34A-3-102, the state is
347 considered to be a single employer and includes any office, department, agency, authority,
348 commission, board, institution, hospital, college, university, or other instrumentality of the
349 state.

350 (2) (a) Except as provided in Subsection (4), each person, including each public utility
351 and each independent contractor, who regularly employs one or more workers or operatives in
352 the same business, or in or about the same establishment, under any contract of hire, express or
353 implied, oral or written, is considered an employer under this chapter and Chapter 3, Utah
354 Occupational Disease Act.

355 (b) As used in this Subsection (2):

356 (i) "Independent contractor" means any person engaged in the performance of any work
357 for another who, while so engaged, is:

358 (A) independent of the employer in all that pertains to the execution of the work;

359 (B) not subject to the routine rule or control of the employer;

360 (C) engaged only in the performance of a definite job or piece of work; and

361 (D) subordinate to the employer only in effecting a result in accordance with the
362 employer's design.

363 (ii) "Regularly" includes all employments in the usual course of the trade, business,
364 profession, or occupation of the employer, whether continuous throughout the year or for only a
365 portion of the year.

366 (3) (a) The client under a professional employer organization agreement regulated
367 under Title 31A, Chapter 40, Professional Employer Organization Licensing Act:

368 (i) is considered the employer of a covered employee; and

369 (ii) subject to Section 31A-40-209, shall secure workers' compensation benefits for a
370 covered employee by complying with Subsection 34A-2-201(1) or (2) and commission rules.

371 (b) The division shall promptly inform the Insurance Department if the division has
372 reason to believe that a professional employer organization is not in compliance with
373 Subsection 34A-2-201(1) or (2) and commission rules.

374 (4) A domestic employer who does not employ one employee or more than one
375 employee at least 40 hours per week is not considered an employer under this chapter and
376 Chapter 3, Utah Occupational Disease Act.

377 (5) (a) As used in this Subsection (5):

378 (i) (A) "agricultural employer" means a person who employs agricultural labor as
379 defined in Subsections 35A-4-206(1) and (2) and does not include employment as provided in
380 Subsection 35A-4-206(3); and

381 (B) notwithstanding Subsection (5)(a)(i)(A), only for purposes of determining who is a
382 member of the employer's immediate family under Subsection (5)(a)(ii), if the agricultural
383 employer is a corporation, partnership, or other business entity, "agricultural employer" means
384 an officer, director, or partner of the business entity;

385 (ii) "employer's immediate family" means:

386 (A) an agricultural employer's:

387 (I) spouse;

388 (II) grandparent;

389 (III) parent;

390 (IV) sibling;

391 (V) child;

392 (VI) grandchild;

393 (VII) nephew; or

394 (VIII) niece;

395 (B) a spouse of any person provided in Subsections (5)(a)(ii)(A)(II) through (VIII); or

396 (C) an individual who is similar to those listed in Subsection (5)(a)(ii)(A) or (B) as

397 defined by rules of the commission; and

398 (iii) "nonimmediate family" means a person who is not a member of the employer's

399 immediate family.

400 (b) For purposes of this chapter and Chapter 3, Utah Occupational Disease Act, an

401 agricultural employer is not considered an employer of a member of the employer's immediate

402 family.

403 (c) For purposes of this chapter and Chapter 3, Utah Occupational Disease Act, an

404 agricultural employer is not considered an employer of a nonimmediate family employee if:

405 (i) for the previous calendar year the agricultural employer's total annual payroll for all

406 nonimmediate family employees was less than \$8,000; or

407 (ii) (A) for the previous calendar year the agricultural employer's total annual payroll

408 for all nonimmediate family employees was equal to or greater than \$8,000 but less than

409 \$50,000; and

410 (B) the agricultural employer maintains insurance that covers job-related injuries of the

411 employer's nonimmediate family employees in at least the following amounts:

412 (I) \$300,000 liability insurance, as defined in Section 31A-1-301; and

413 (II) \$5,000 for health care benefits similar to benefits under health care insurance as

414 defined in Section 31A-1-301.

415 (d) For purposes of this chapter and Chapter 3, Utah Occupational Disease Act, an

416 agricultural employer is considered an employer of a nonimmediate family employee if:

417 (i) for the previous calendar year the agricultural employer's total annual payroll for all

418 nonimmediate family employees is equal to or greater than \$50,000; or

419 (ii) (A) for the previous year the agricultural employer's total payroll for nonimmediate

420 family employees was equal to or exceeds \$8,000 but is less than \$50,000; and

421 (B) the agricultural employer fails to maintain the insurance required under Subsection

422 (5)(c)(ii)(B).

423 (6) An employer of agricultural laborers or domestic servants who is not considered an
424 employer under this chapter and Chapter 3, Utah Occupational Disease Act, may come under
425 this chapter and Chapter 3, Utah Occupational Disease Act, by complying with:

426 (a) this chapter and Chapter 3, Utah Occupational Disease Act; and

427 (b) the rules of the commission.

428 (7) (a) (i) As used in this Subsection (7)(a), "employer" includes any of the following
429 persons that procures work to be done by a contractor notwithstanding whether or not the
430 person directly employs a person:

431 (A) a sole proprietorship;

432 (B) a corporation;

433 (C) a partnership;

434 (D) a limited liability company; or

435 (E) a person similar to one described in Subsections (7)(a)(i)(A) through (D).

436 (ii) If an employer procures any work to be done wholly or in part for the employer by
437 a contractor over whose work the employer retains supervision or control, and this work is a
438 part or process in the trade or business of the employer, the contractor, all persons employed by
439 the contractor, all subcontractors under the contractor, and all persons employed by any of
440 these subcontractors, are considered employees of the original employer for the purposes of
441 this chapter and Chapter 3, Utah Occupational Disease Act.

442 (b) Any person who is engaged in constructing, improving, repairing, or remodeling a
443 residence that the person owns or is in the process of acquiring as the person's personal
444 residence may not be considered an employee or employer solely by operation of Subsection
445 (7)(a).

446 (c) A partner in a partnership or an owner of a sole proprietorship is not considered an
447 employee under Subsection (7)(a) if the employer who procures work to be done by the
448 partnership or sole proprietorship obtains and relies on either:

449 (i) a valid certification of the partnership's or sole proprietorship's compliance with

450 Section 34A-2-201 indicating that the partnership or sole proprietorship secured the payment of
451 workers' compensation benefits pursuant to Section 34A-2-201; or

452 (ii) if a partnership or sole proprietorship with no employees other than a partner of the
453 partnership or owner of the sole proprietorship, a workers' compensation coverage waiver
454 issued pursuant to Part 10, Workers' Compensation Coverage Waivers Act, stating that:

455 (A) the partnership or sole proprietorship is customarily engaged in an independently
456 established trade, occupation, profession, or business; and

457 (B) the partner or owner personally waives the partner's or owner's entitlement to the
458 benefits of this chapter and Chapter 3, Utah Occupational Disease Act, in the operation of the
459 partnership or sole proprietorship.

460 (d) A director or officer of a corporation is not considered an employee under
461 Subsection (7)(a) if the director or officer is excluded from coverage under Subsection
462 34A-2-104(4).

463 (e) A contractor or subcontractor is not an employee of the employer under Subsection
464 (7)(a), if the employer who procures work to be done by the contractor or subcontractor obtains
465 and relies on either:

466 (i) a valid certification of the contractor's or subcontractor's compliance with Section
467 34A-2-201; or

468 (ii) if a partnership, corporation, or sole proprietorship with no employees other than a
469 partner of the partnership, officer of the corporation, or owner of the sole proprietorship, a
470 workers' compensation coverage waiver issued pursuant to Part 10, Workers' Compensation
471 Coverage Waivers Act, stating that:

472 (A) the partnership, corporation, or sole proprietorship is customarily engaged in an
473 independently established trade, occupation, profession, or business; and

474 (B) the partner, corporate officer, or owner personally waives the partner's, corporate
475 officer's, or owner's entitlement to the benefits of this chapter and Chapter 3, Utah
476 Occupational Disease Act, in the operation of the partnership's, corporation's, or sole
477 proprietorship's enterprise under a contract of hire for services.

478 (f) (i) For purposes of this Subsection (7)(f), "eligible employer" means a person who:

479 (A) is an employer; and

480 (B) procures work to be done wholly or in part for the employer by a contractor,

481 including:

482 (I) all persons employed by the contractor;

483 (II) all subcontractors under the contractor; and

484 (III) all persons employed by any of these subcontractors.

485 (ii) Notwithstanding the other provisions in this Subsection (7), if the conditions of

486 Subsection (7)(f)(iii) are met, an eligible employer is considered an employer for purposes of

487 Section 34A-2-105 of the contractor, subcontractor, and all persons employed by the contractor

488 or subcontractor described in Subsection (7)(f)(i)(B).

489 (iii) Subsection (7)(f)(ii) applies if the eligible employer:

490 (A) under Subsection (7)(a) is liable for and pays workers' compensation benefits as an

491 original employer under Subsection (7)(a) because the contractor or subcontractor fails to

492 comply with Section 34A-2-201;

493 (B) (I) secures the payment of workers' compensation benefits for the contractor or

494 subcontractor pursuant to Section 34A-2-201;

495 (II) procures work to be done that is part or process of the trade or business of the

496 eligible employer; and

497 (III) does the following with regard to a written workplace accident and injury

498 reduction program that meets the requirements of Subsection 34A-2-111(3)(d):

499 (Aa) adopts the workplace accident and injury reduction program;

500 (Bb) posts the workplace accident and injury reduction program at the work site at

501 which the eligible employer procures work; and

502 (Cc) enforces the workplace accident and injury reduction program according to the

503 terms of the workplace accident and injury reduction program; or

504 (C) (I) obtains and relies on:

505 (Aa) a valid certification described in Subsection (7)(c)(i) or (7)(e)(i);

506 (Bb) a workers' compensation coverage waiver described in Subsection (7)(c)(ii) or
507 (7)(e)(ii); or

508 (Cc) proof that a director or officer is excluded from coverage under Subsection
509 34A-2-104(4);

510 (II) is liable under Subsection (7)(a) for the payment of workers' compensation benefits
511 if the contractor or subcontractor fails to comply with Section 34A-2-201;

512 (III) procures work to be done that is part or process in the trade or business of the
513 eligible employer; and

514 (IV) does the following with regard to a written workplace accident and injury
515 reduction program that meets the requirements of Subsection 34A-2-111(3)(d):

516 (Aa) adopts the workplace accident and injury reduction program;

517 (Bb) posts the workplace accident and injury reduction program at the work site at
518 which the eligible employer procures work; and

519 (Cc) enforces the workplace accident and injury reduction program according to the
520 terms of the workplace accident and injury reduction program.

521 (8) (a) For purposes of this Subsection (8), "unincorporated entity" means an entity
522 organized or doing business in the state that is not:

523 (i) an individual;

524 (ii) a corporation; or

525 (iii) publicly traded.

526 (b) For purposes of this chapter and Chapter 3, Utah Occupational Disease Act, an
527 unincorporated entity that is required to be licensed under Title 58, Chapter 55, Utah
528 Construction Trades Licensing Act, is presumed to be the employer of each individual who
529 holds, directly or indirectly, an ownership interest in the unincorporated entity.

530 Notwithstanding Subsection (7)(c) and Subsection 34A-2-104(3), the unincorporated entity
531 shall provide the individual who holds the ownership interest workers' compensation coverage
532 under this chapter and Chapter 3, Utah Occupational Disease Act, unless the presumption is
533 rebutted under Subsection (8)(c).

534 (c) Pursuant to rules made by the commission in accordance with Title 63G, Chapter 3,
535 Utah Administrative Rulemaking Act, an unincorporated entity may rebut the presumption
536 under Subsection (8)(b) for an individual by establishing by clear and convincing evidence that
537 the individual:

538 (i) is an active manager of the unincorporated entity;

539 (ii) directly or indirectly holds at least an 8% ownership interest in the unincorporated
540 entity; or

541 (iii) is not subject to supervision or control in the performance of work by:

542 (A) the unincorporated entity; or

543 (B) a person with whom the unincorporated entity contracts.

544 (d) As part of the rules made under Subsection (8)(c), the commission may define:

545 (i) "active manager";

546 (ii) "directly or indirectly holds at least an 8% ownership interest"; and

547 (iii) "subject to supervision or control in the performance of work."

548 (9) (a) As used in this Subsection (9), "home and community based services" means
549 one or more of the following services provided to an individual with a disability or to the
550 individual's family that helps prevent the individual with a disability from being placed in a
551 more restrictive setting:

552 (i) respite care;

553 (ii) skilled nursing;

554 (iii) nursing assistant services;

555 (iv) home health aide services;

556 (v) personal care and attendant services;

557 (vi) other in-home care, such as support for the daily activities of the individual with a
558 disability;

559 (vii) specialized in-home training for the individual with a disability or a family
560 member of the individual with a disability;

561 (viii) specialized in-home support, coordination, and other supported living services;

562 and

563 (ix) other home and community based services unique to the individual with a
564 disability or the family of the individual with a disability that help prevent the individual with a
565 disability from being placed in a more restrictive setting.

566 (b) Notwithstanding Subsection (4) and subject to Subsection (9)(c), an individual with
567 a disability or designated representative of the individual with a disability is considered an
568 employer under this chapter and Chapter 3, Utah Occupational Disease Act, of an individual
569 who provides home and community based services if the individual with a disability or
570 designated representative of the individual with a disability:

571 (i) employs the individual to provide home and community based services for seven
572 hours per week or more; and

573 (ii) pays the individual providing the home and community based services from state or
574 federal money received by the individual with a disability or designated representative of the
575 individual with a disability to fund home and community based services, including through a
576 person designated by the Secretary of the Treasury in accordance with Section 3504, Internal
577 Revenue Code, as a fiduciary, agent, or other person who has the control, receipt, custody, or
578 disposal of, or pays the wages of, the individual providing the home and community based
579 services.

580 (c) The state and federal money received by an individual with a disability or
581 designated representative of an individual with a disability shall include the cost of the workers'
582 compensation coverage required by this Subsection (9) in addition to the money necessary to
583 fund the home and community based services that the individual with a disability or family of
584 the individual with a disability is eligible to receive so that the home and community based
585 services are not reduced in order to pay for the workers' compensation coverage required by
586 this Subsection (9).

587 (10) (a) For purposes of this Subsection (10), "federal executive agency" means an
588 executive agency, as defined in 5 U.S.C. Sec. 105, of the federal government.

589 (b) For purposes of determining whether two or more persons are considered joint

590 employers under this chapter or Chapter 3, Utah Occupational Disease Act, an administrative
591 ruling of a federal executive agency may not be considered a generally applicable law unless
592 that administrative ruling is determined to be generally applicable by a court of law, or adopted
593 by statute or rule.

594 (11) (a) As used in this Subsection (11):

595 (i) "Franchise" means the same as that term is defined in 16 C.F.R. Sec. 436.1.

596 (ii) "Franchisee" means the same as that term is defined in 16 C.F.R. Sec. 436.1.

597 (iii) "Franchisor" means the same as that term is defined in 16 C.F.R. Sec. 436.1.

598 (b) For purposes of this chapter, a franchisor is not considered to be an employer of:

599 (i) a franchisee; or

600 (ii) a franchisee's employee.

601 (c) With respect to a specific claim for relief under this chapter made by a franchisee or
602 a franchisee's employee, this Subsection (11) does not apply to a franchisor under a franchise
603 that exercises a type or degree of control over the franchisee or the franchisee's employee not
604 customarily exercised by a franchisor for the purpose of protecting the franchisor's trademarks
605 and brand.

606 Section 8. Section **34A-5-102** is amended to read:

607 **34A-5-102. Definitions -- Unincorporated entities -- Joint employers --**

608 **Franchisors.**

609 (1) As used in this chapter:

610 (a) "Affiliate" means the same as that term is defined in Section **16-6a-102**.

611 (b) "Apprenticeship" means a program for the training of apprentices including a
612 program providing the training of those persons defined as apprentices by Section **35A-6-102**.

613 (c) "Bona fide occupational qualification" means a characteristic applying to an
614 employee that:

615 (i) is necessary to the operation; or

616 (ii) is the essence of the employee's employer's business.

617 (d) "Court" means:

618 (i) the district court in the judicial district of the state in which the asserted unfair
619 employment practice occurs; or

620 (ii) if the district court is not in session at that time, a judge of the court described in
621 Subsection (1)(d)(i).

622 (e) "Director" means the director of the division.

623 (f) "Disability" means a physical or mental disability as defined and covered by the
624 Americans with Disabilities Act of 1990, 42 U.S.C. Sec. 12102.

625 (g) "Division" means the Division of Antidiscrimination and Labor.

626 (h) "Employee" means a person applying with or employed by an employer.

627 (i) (i) "Employer" means:

628 (A) the state;

629 (B) a political subdivision;

630 (C) a board, commission, department, institution, school district, trust, or agent of the
631 state or a political subdivision of the state; or

632 (D) a person employing 15 or more employees within the state for each working day in
633 each of 20 calendar weeks or more in the current or preceding calendar year.

634 (ii) "Employer" does not include:

635 (A) a religious organization, a religious corporation sole, a religious association, a
636 religious society, a religious educational institution, or a religious leader, when that individual
637 is acting in the capacity of a religious leader;

638 (B) any corporation or association constituting an affiliate, a wholly owned subsidiary,
639 or an agency of any religious organization, religious corporation sole, religious association, or
640 religious society; or

641 (C) the Boy Scouts of America or its councils, chapters, or subsidiaries.

642 (j) "Employment agency" means a person:

643 (i) undertaking to procure employees or opportunities to work for any other person; or

644 (ii) holding the person out to be equipped to take an action described in Subsection
645 (1)(j)(i).

646 (k) "Federal executive agency" means an executive agency, as defined in 5 U.S.C. Sec.
647 105, of the federal government.

648 (l) "Franchise" means the same as that term is defined in 16 C.F.R. Sec. 436.1.

649 (m) "Franchisee" means the same as that term is defined in 16 C.F.R. Sec. 436.1.

650 (n) "Franchisor" means the same as that term is defined in 16 C.F.R. Sec. 436.1.

651 ~~(k)~~ (o) "Gender identity" has the meaning provided in the Diagnostic and Statistical
652 Manual (DSM-5). A person's gender identity can be shown by providing evidence, including,
653 but not limited to, medical history, care or treatment of the gender identity, consistent and
654 uniform assertion of the gender identity, or other evidence that the gender identity is sincerely
655 held, part of a person's core identity, and not being asserted for an improper purpose.

656 ~~(f)~~ (p) "Joint apprenticeship committee" means an association of representatives of a
657 labor organization and an employer providing, coordinating, or controlling an apprentice
658 training program.

659 ~~(m)~~ (q) "Labor organization" means an organization that exists for the purpose in
660 whole or in part of:

- 661 (i) collective bargaining;
- 662 (ii) dealing with employers concerning grievances, terms or conditions of employment;
- 663 or
- 664 (iii) other mutual aid or protection in connection with employment.

665 ~~(n)~~ (r) "National origin" means the place of birth, domicile, or residence of an
666 individual or of an individual's ancestors.

667 ~~(o)~~ (s) "On-the-job-training" means a program designed to instruct a person who,
668 while learning the particular job for which the person is receiving instruction:

- 669 (i) is also employed at that job; or
- 670 (ii) may be employed by the employer conducting the program during the course of the
671 program, or when the program is completed.

672 ~~(p)~~ (t) "Person" means:

- 673 (i) one or more individuals, partnerships, associations, corporations, legal

674 representatives, trusts or trustees, or receivers;

675 (ii) the state; and

676 (iii) a political subdivision of the state.

677 ~~[(t)]~~ (u) "Pregnancy, childbirth, or pregnancy-related conditions" includes
678 breastfeeding or medical conditions related to breastfeeding.

679 ~~[(r)]~~ (v) "Presiding officer" means the same as that term is defined in Section
680 [63G-4-103](#).

681 ~~[(s)]~~ (w) "Prohibited employment practice" means a practice specified as
682 discriminatory, and therefore unlawful, in Section [34A-5-106](#).

683 ~~[(t)]~~ (x) "Religious leader" means an individual who is associated with, and is an
684 authorized representative of, a religious organization or association or a religious corporation
685 sole, including a member of clergy, a minister, a pastor, a priest, a rabbi, an imam, or a spiritual
686 advisor.

687 ~~[(u)]~~ (y) "Retaliate" means the taking of adverse action by an employer, employment
688 agency, labor organization, apprenticeship program, on-the-job training program, or vocational
689 school against one of its employees, applicants, or members because the employee, applicant,
690 or member:

691 (i) opposes an employment practice prohibited under this chapter; or

692 (ii) files charges, testifies, assists, or participates in any way in a proceeding,
693 investigation, or hearing under this chapter.

694 ~~[(v)]~~ (z) "Sexual orientation" means an individual's actual or perceived orientation as
695 heterosexual, homosexual, or bisexual.

696 ~~[(w)]~~ (aa) "Unincorporated entity" means an entity organized or doing business in the
697 state that is not:

698 (i) an individual;

699 (ii) a corporation; or

700 (iii) publicly traded.

701 ~~[(x)]~~ (bb) "Vocational school" means a school or institution conducting a course of

702 instruction, training, or retraining to prepare individuals to follow an occupation or trade, or to
703 pursue a manual, technical, industrial, business, commercial, office, personal services, or other
704 nonprofessional occupations.

705 (2) (a) For purposes of this chapter, an unincorporated entity that is required to be
706 licensed under Title 58, Chapter 55, Utah Construction Trades Licensing Act, is presumed to
707 be the employer of each individual who, directly or indirectly, holds an ownership interest in
708 the unincorporated entity.

709 (b) Pursuant to rules made by the commission in accordance with Title 63G, Chapter 3,
710 Utah Administrative Rulemaking Act, an unincorporated entity may rebut the presumption
711 under Subsection (2)(a) for an individual by establishing by clear and convincing evidence that
712 the individual:

713 (i) is an active manager of the unincorporated entity;
714 (ii) directly or indirectly holds at least an 8% ownership interest in the unincorporated
715 entity; or

716 (iii) is not subject to supervision or control in the performance of work by:

717 (A) the unincorporated entity; or

718 (B) a person with whom the unincorporated entity contracts.

719 (c) As part of the rules made under Subsection (2)(b), the commission may define:

720 (i) "active manager";

721 (ii) "directly or indirectly holds at least an 8% ownership interest"; and

722 (iii) "subject to supervision or control in the performance of work."

723 (3) For purposes of determining whether two or more persons are considered joint
724 employers under this chapter, an administrative ruling of a federal executive agency may not be
725 considered a generally applicable law unless that administrative ruling is determined to be
726 generally applicable by a court of law, or adopted by statute or rule.

727 (4) (a) For purposes of this chapter, a franchisor is not considered to be an employer of:

728 (i) a franchisee; or

729 (ii) a franchisee's employee.

730 (b) With respect to a specific claim for relief under this chapter made by a franchisee or
 731 a franchisee's employee, this Subsection (4) does not apply to a franchisor under a franchise
 732 that exercises a type or degree of control over the franchisee or the franchisee's employee not
 733 customarily exercised by a franchisor for the purpose of protecting the franchisor's trademarks
 734 and brand.

735 Section 9. Section 34A-6-103 is amended to read:

736 **34A-6-103. Definitions -- Unincorporated entities -- Joint employers --**
 737 **Franchisors.**

738 (1) As used in this chapter:

739 (a) "Administrator" means the director of the Division of Occupational Safety and
 740 Health.

741 (b) "Amendment" means such modification or change in a code, standard, rule, or
 742 order intended for universal or general application.

743 (c) "Commission" means the Labor Commission.

744 (d) "Division" means the Division of Occupational Safety and Health.

745 (e) "Employee" includes any person suffered or permitted to work by an employer.

746 (f) "Employer" means:

747 (i) the state;

748 (ii) a county, city, town, and school district in the state; and

749 (iii) a person, including a public utility, having one or more workers or operatives
 750 regularly employed in the same business, or in or about the same establishment, under any
 751 contract of hire.

752 (g) "Federal executive agency" means an executive agency, as defined in 5 U.S.C. Sec.
 753 105, of the federal government.

754 (h) "Franchise" means the same as that term is defined in 16 C.F.R. Sec. 436.1.

755 (i) "Franchisee" means the same as that term is defined in 16 C.F.R. Sec. 436.1.

756 (j) "Franchisor" means the same as that term is defined in 16 C.F.R. Sec. 436.1.

757 [~~(g)~~] (k) "Hearing" means a proceeding conducted by the commission.

758 ~~[(h)]~~ (l) "Imminent danger" means a danger exists which reasonably could be expected
759 to cause an occupational disease, death, or serious physical harm immediately, or before the
760 danger could be eliminated through enforcement procedures under this chapter.

761 ~~[(i)]~~ (m) "National consensus standard" means any occupational safety and health
762 standard or modification:

763 (i) adopted by a nationally recognized standards-producing organization under
764 procedures where it can be determined by the administrator and division that persons interested
765 and affected by the standard have reached substantial agreement on its adoption;

766 (ii) formulated in a manner which affords an opportunity for diverse views to be
767 considered; and

768 (iii) designated as such a standard by the secretary of the United States Department of
769 Labor.

770 ~~[(j)]~~ (n) "Person" means the general public, one or more individuals, partnerships,
771 associations, corporations, legal representatives, trustees, receivers, and the state and its
772 political subdivisions.

773 ~~[(k)]~~ (o) "Publish" means publication in accordance with Title 63G, Chapter 3, Utah
774 Administrative Rulemaking Act.

775 ~~[(l)]~~ (p) "Secretary" means the secretary of the United States Department of Labor.

776 ~~[(m)]~~ (q) "Standard" means an occupational health and safety standard or group of
777 standards which requires conditions, or the adoption or use of one or more practices, means,
778 methods, operations, or processes, reasonably necessary to provide safety and healthful
779 employment and places of employment.

780 ~~[(n)]~~ (r) "Unincorporated entity" means an entity organized or doing business in the
781 state that is not:

782 (i) an individual;

783 (ii) a corporation; or

784 (iii) publicly traded.

785 ~~[(o)]~~ (s) "Variance" means a special, limited modification or change in the code or

786 standard applicable to the particular establishment of the employer or person petitioning for the
787 modification or change.

788 ~~[(p)]~~ (t) "Workplace" means any place of employment.

789 (2) (a) For purposes of this chapter, an unincorporated entity that is required to be
790 licensed under Title 58, Chapter 55, Utah Construction Trades Licensing Act, is presumed to
791 be the employer of each individual who, directly or indirectly, holds an ownership interest in
792 the unincorporated entity.

793 (b) Pursuant to rules made by the commission in accordance with Title 63G, Chapter 3,
794 Utah Administrative Rulemaking Act, an unincorporated entity may rebut the presumption
795 under Subsection (2)(a) for an individual by establishing by clear and convincing evidence that
796 the individual:

797 (i) is an active manager of the unincorporated entity;

798 (ii) directly or indirectly holds at least an 8% ownership interest in the unincorporated
799 entity; or

800 (iii) is not subject to supervision or control in the performance of work by:

801 (A) the unincorporated entity; or

802 (B) a person with whom the unincorporated entity contracts.

803 (c) As part of the rules made under Subsection (2)(b), the commission may define:

804 (i) "active manager";

805 (ii) "directly or indirectly holds at least an 8% ownership interest"; and

806 (iii) "subject to supervision or control in the performance of work."

807 (3) For purposes of determining whether two or more persons are considered joint
808 employers under this chapter, an administrative ruling of a federal executive agency may not be
809 considered a generally applicable law unless that administrative ruling is determined to be
810 generally applicable by a court of law, or adopted by statute or rule.

811 (4) (a) For purposes of this chapter, a franchisor is not considered to be an employer of:

812 (i) a franchisee; or

813 (ii) a franchisee's employee.

814 (b) With respect to a specific claim for relief under this chapter made by a franchisee or
815 a franchisee's employee, this Subsection (4) does not apply to a franchisor under a franchise
816 that exercises a type or degree of control over the franchisee or the franchisee's employee not
817 customarily exercised by a franchisor for the purpose of protecting the franchisor's trademarks
818 and brand.

819 Section 10. Section **35A-4-203** is amended to read:

820 **35A-4-203. Definition of employer -- Joint employers -- Franchisors.**

821 (1) As used in this chapter "employer" means:

822 [(+)] (a) an individual or employing unit which employs one or more individuals for
823 some portion of a day during a calendar year, or that, as a condition for approval of this chapter
824 for full tax credit against the tax imposed by the Federal Unemployment Tax Act, is required,
825 under the act, to be an employer;

826 [(2)] (b) an employing unit that, having become an employer under Subsection (1)(a),
827 has not, under Sections 35A-4-303 and 35A-4-310, ceased to be an employer subject to this
828 chapter; or

829 [(3)] (c) for the effective period of its election under Subsection 35A-4-310(3), an
830 employing unit that has elected to become fully subject to this chapter.

831 (2) (a) For purposes of this Subsection (2), "federal executive agency" means an
832 executive agency, as defined in 5 U.S.C. Sec. 105, of the federal government.

833 (b) For purposes of determining whether two or more persons are considered joint
834 employers under this chapter, an administrative ruling of a federal executive agency may not be
835 considered a generally applicable law unless that administrative ruling is determined to be
836 generally applicable by a court of law, or adopted by statute or rule.

837 (3) (a) As used in this Subsection (3):

838 (i) "Franchise" means the same as that term is defined in 16 C.F.R. Sec. 436.1.

839 (ii) "Franchisee" means the same as that term is defined in 16 C.F.R. Sec. 436.1.

840 (iii) "Franchisor" means the same as that term is defined in 16 C.F.R. Sec. 436.1.

841 (b) For purposes of this chapter, a franchisor is not considered to be an employer of:

842 (i) a franchisee; or

843 (ii) a franchisee's employee.

844 (c) With respect to a specific claim for relief under this chapter made by a franchisee or
845 a franchisee's employee, this Subsection (3) does not apply to a franchisor under a franchise
846 that exercises a type or degree of control over the franchisee or the franchisee's employee not
847 customarily exercised by a franchisor for the purpose of protecting the franchisor's trademarks
848 and brand.