

PAYMENT OF WAGES ACT AMENDMENTS

2017 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Timothy D. Hawkes

Senate Sponsor: D. Gregg Buxton

LONG TITLE

General Description:

This bill modifies provisions related to the payment of wages.

Highlighted Provisions:

This bill:

- ▶ modifies the definition of "employer" under Title 34, Chapter 28, Payment of Wages;
- ▶ requires that an employee file certain wage claims with the Labor Commission; and
- ▶ provides a private cause of action against an employer for certain wage claims.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

34-28-2, as last amended by Laws of Utah 2016, Chapter 370

ENACTS:

34-28-9.5, Utah Code Annotated 1953

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

Section 1. Section **34-28-2** is amended to read:

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

29 (1) As used in this chapter:

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

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

32 (c) "Employer" [~~includes every person, firm, partnership, association, corporation,~~
33 ~~receiver or other officer of a court of this state, and any agent or officer of any of the~~
34 ~~above-mentioned classes, employing any person in this state.~~] means the same as that term is
35 defined in 29 U.S.C. Sec. 203.

36 (d) "Federal executive agency" means an executive agency, as defined in 5 U.S.C. Sec.
37 105, of the federal government.

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

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

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

41 (h) "Unincorporated entity" means an entity organized or doing business in the state
42 that is not:

43 (i) an individual;

44 (ii) a corporation; or

45 (iii) publicly traded.

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

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

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

56 the individual:

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

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

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

61 (A) the unincorporated entity; or

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

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

64 (i) "active manager";

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

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

67 (d) The commission by rule made in accordance with Title 63G, Chapter 3, Utah

68 Administrative Rulemaking Act, may establish a procedure, consistent with Section 34-28-7,

69 under which an unincorporated entity may seek approval of a mutual agreement to pay wages

70 on non-regular paydays.

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

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

76 (i) a franchisee; or

77 (ii) a franchisee's employee.

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

83 Section 2. Section 34-28-9.5 is enacted to read:

84 **34-28-9.5. Private cause of action.**

85 (1) Except as provided in Subsection (2), for a wage claim that is less than or equal to
86 \$10,000, the employee shall exhaust the employee's administrative remedies described in
87 Section 34-28-9 and rules made by the commission under Section 34-28-9 before the employee
88 may file an action in district court.

89 (2) An employee may file an action for a wage claim in district court without
90 exhausting the administrative remedies described in Section 34-28-9 and rules made by the
91 commission under Section 34-28-9 if:

92 (a) the employee's wage claim is over \$10,000;

93 (b) (i) the employee's wage claim is less than or equal to \$10,000;

94 (ii) the employee asserts one or more additional claims against the same employer; and

95 (iii) the aggregate amount of damages resulting from the claims described in this

96 Subsection (2)(b) is greater than \$10,000; or

97 (c) (i) in the same civil action, more than one employee files a wage claim against an
98 employer; and

99 (ii) the aggregate amount of the employees' combined wage claim is greater than
100 \$10,000.

101 (3) In an action under this section, the court may award an employee:

102 (a) actual damages;

103 (b) an amount equal to 2.5% of the unpaid wages owed to the employee, assessed daily
104 for the lesser of:

105 (i) the period beginning the day on which the court issues a final order and ending the
106 day on which the employer pays the unpaid wages owed to the employee; or

107 (ii) 20 days after the day on which the court issues a final order; and

108 (c) a penalty described in Subsection 34-28-5(1)(c), if applicable.