

Workplace Protection Amendments

2025 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Jen Plumb

House Sponsor: Andrew Stoddard

LONG TITLE

General Description:

This bill amends provisions relating to employment.

Highlighted Provisions:

This bill:

- amends the definition of sexual harassment.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

34A-5-102, as last amended by Laws of Utah 2024, Chapter 158

34A-5-114, as enacted by Laws of Utah 2024, Chapter 95

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

Section 1. Section **34A-5-102** is amended to read:

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

Franchisors.

(1) As used in this chapter:

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

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

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

- 29 (i) is necessary to the operation; or
30 (ii) is the essence of the employee's employer's business.
- 31 (d) "Court" means a court with jurisdiction under Title 78A, Judiciary and Judicial
32 Administration.
- 33 (e) "Director" means the director of the division.
- 34 (f) "Disability" means a physical or mental disability as defined and covered by the
35 Americans with Disabilities Act of 1990, 42 U.S.C. Sec. 12102.
- 36 (g) "Division" means the Division of Antidiscrimination and Labor.
- 37 (h) "Employee" means a person applying with or employed by an employer.
- 38 (i)(i) "Employer" means:
39 (A) the state;
40 (B) a political subdivision;
41 (C) a board, commission, department, institution, school district, trust, or agent of
42 the state or a political subdivision of the state; or
43 (D) a person employing [~~15~~] 15 or more employees within the state for each
44 working day in each of 20 calendar weeks or more in the current or preceding
45 calendar year.
- 46 (ii) "Employer" does not include:
47 (A) a religious organization, a religious corporation sole, a religious association, a
48 religious society, a religious educational institution, or a religious leader, when
49 that individual is acting in the capacity of a religious leader;
50 (B) any corporation or association constituting an affiliate, a wholly owned
51 subsidiary, or an agency of any religious organization, religious corporation
52 sole, religious association, or religious society; or
53 (C) the Boy Scouts of America or its councils, chapters, or subsidiaries.
- 54 (j) "Employment agency" means a person:
55 (i) undertaking to procure employees or opportunities to work for any other person; or
56 (ii) holding the person out to be equipped to take an action described in Subsection
57 (1)(j)(i).
- 58 (k) "Federal executive agency" means an executive agency, as defined in 5 U.S.C. Sec.
59 105, of the federal government.
- 60 (l) "Franchise" means the same as that term is defined in 16 C.F.R. Sec. 436.1.
- 61 (m) "Franchisee" means the same as that term is defined in 16 C.F.R. Sec. 436.1.
- 62 (n) "Franchisor" means the same as that term is defined in 16 C.F.R. Sec. 436.1.

- (o) "Gender identity" has the meaning provided in the Diagnostic and Statistical Manual (DSM-5). A person's gender identity can be shown by providing evidence, including, but not limited to, medical history, care or treatment of the gender identity, consistent and uniform assertion of the gender identity, or other evidence that the gender identity is sincerely held, part of a person's core identity, and not being asserted for an improper purpose.
- (p) "Joint apprenticeship committee" means an association of representatives of a labor organization and an employer providing, coordinating, or controlling an apprentice training program.
- (q) "Labor organization" means an organization that exists for the purpose in whole or in part of:
- (i) collective bargaining;
 - (ii) dealing with employers concerning grievances, terms or conditions of employment; or
 - (iii) other mutual aid or protection in connection with employment.
- (r) "National origin" means the place of birth, domicile, or residence of an individual or of an individual's ancestors.
- (s) "On-the-job-training" means a program designed to instruct a person who, while learning the particular job for which the person is receiving instruction:
- (i) is also employed at that job; or
 - (ii) may be employed by the employer conducting the program during the course of the program, or when the program is completed.
- (t) "Person" means:
- (i) one or more individuals, partnerships, associations, corporations, legal representatives, trusts or trustees, or receivers;
 - (ii) the state; and
 - (iii) a political subdivision of the state.
- (u) "Pregnancy, childbirth, or pregnancy-related conditions" includes breastfeeding or medical conditions related to breastfeeding.
- (v) "Presiding officer" means the same as that term is defined in Section 63G-4-103.
- (w) "Prohibited employment practice" means a practice specified as discriminatory, and therefore unlawful, in Section 34A-5-106.
- (x) "Religious leader" means an individual who is associated with, and is an authorized representative of, a religious organization or association or a religious corporation

sole, including a member of clergy, a minister, a pastor, a priest, a rabbi, an imam, or a spiritual advisor.

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

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

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

(z) "Sexual orientation" means an individual's actual or perceived orientation as heterosexual, homosexual, or bisexual.

(aa) "Undue hardship" means an action that requires significant difficulty or expense when considered in relation to factors such as the size of the entity, the entity's financial resources, and the nature and structure of the entity's operation.

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

(i) an individual;

(ii) a corporation; or

(iii) publicly traded.

(cc) "Vocational school" means a school or institution conducting a course of instruction, training, or retraining to prepare individuals to follow an occupation or trade, or to pursue a manual, technical, industrial, business, commercial, office, personal services, or other nonprofessional occupations.

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

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

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

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

- 131 (iii) is not subject to supervision or control in the performance of work by:
132 (A) the unincorporated entity; or
133 (B) a person with whom the unincorporated entity contracts.
- 134 (c) As part of the rules made under Subsection (2)(b), the commission may define:
135 (i) "active manager";
136 (ii) "directly or indirectly holds at least an 8% ownership interest"; and
137 (iii) "subject to supervision or control in the performance of work."
- 138 (3) For purposes of determining whether two or more persons are considered joint
139 employers under this chapter, an administrative ruling of a federal executive agency may
140 not be considered a generally applicable law unless that administrative ruling is
141 determined to be generally applicable by a court of law, or adopted by statute or rule.
- 142 (4)(a) For purposes of this chapter, a franchisor is not considered to be an employer of:
143 (i) a franchisee; or
144 (ii) a franchisee's employee.
- 145 (b) With respect to a specific claim for relief under this chapter made by a franchisee or
146 a franchisee's employee, this Subsection (4) does not apply to a franchisor under a
147 franchise that exercises a type or degree of control over the franchisee or the
148 franchisee's employee not customarily exercised by a franchisor for the purpose of
149 protecting the franchisor's trademarks and brand.
- 150 (5) Notwithstanding Title 78B, Chapter 3a, Venue for Civil Actions, a person shall bring an
151 action under this chapter in the judicial district in which the asserted unfair employment
152 practice occurs if the action is brought in the district court.
- 153 Section 2. Section **34A-5-114** is amended to read:
- 154 **34A-5-114 . Limitations on enforceability of nondisclosure and**
155 **non-disparagement clauses -- Retaliation prohibited.**
- 156 (1) As used in this section:
- 157 (a) "Confidentiality clause" means a nondisclosure clause or a non-disparagement clause.
158 (b) "Employee" means a current or a former employee.
159 (c) "Nondisclosure clause" means an agreement between an employee and employer that[:]
160 [(+)] prevents, or has the effect of preventing, an employee from disclosing or
161 discussing:
162 [(A)] (i) sexual assault;
163 [(B)] (ii) allegations of sexual assault;
164 [(C)] (iii) sexual harassment; or

- 165 ~~[(D)]~~ (iv) allegations of sexual harassment.
- 166 (d) "Non-disparagement clause" means an agreement between an employee and
167 employer that prohibits, or has the effect of prohibiting, an employee from making a
168 negative statement that is:
169 (i) about the employer; and
170 (ii) related to:
171 (A) a claim of sexual assault or sexual harassment;
172 (B) a sexual assault dispute; or
173 (C) a sexual harassment dispute.
- 174 (e) "Post-employment restrictive covenant" means the same as that term is defined in
175 Section 34-51-102.
- 176 (f) "Proprietary information" means an employer's business plan or customer
177 information.
- 178 (g) "Retaliate" means taking an adverse action against an employee because the
179 employee made an allegation of sexual harassment or assault, including:
180 (i) discharge;
181 (ii) suspension;
182 (iii) demotion; or
183 (iv) discrimination in the terms, conditions, or privileges of employment.
- 184 (h) "Sexual assault" means:
185 (i) conduct that would constitute a violation of 18 U.S.C. Secs. 2241 through 2244; or
186 (ii) criminal conduct described in Title 76, Chapter 5, Part 4, Sexual Offenses.
- 187 (i) "Sexual assault dispute" means a dispute between an employer and the employer's
188 employee relating to alleged sexual assault.
- 189 ~~[(j) "Sexual harassment" means conduct that is a violation of:]~~
190 ~~[(i) Title VII of the Civil Rights Act of 1964, 42 U.S.C. Sec. 2000e et seq.; or]~~
191 ~~[(ii) Subsection 34A-5-106(1)(a)(i) prohibiting harassment on the basis of sex, sexual~~
192 ~~orientation, or gender.]~~
- 193 (j) "Sexual harassment" means harassment on the basis of sex, sexual orientation, or
194 gender, as prohibited in:
195 (i) Title VII of the Civil Rights Act of 1964, 42 U.S.C. Sec. 2000e et seq.; or
196 (ii) Subsection 34A-5-106(1)(a)(i).
- 197 (k) "Sexual harassment dispute" means a dispute between an employer and the
198 employer's employee relating to alleged sexual harassment.

- 199 (2)(a) A confidentiality clause regarding sexual misconduct, as a condition of
200 employment, is against public policy and is void and unenforceable.
- 201 (b) After an employee makes an allegation of sexual harassment or sexual assault, an
202 employer of any sized business, regardless of Subsection 34-5-102(1)(i)(D):
203 (i) may not retaliate against the employee because the employee made an allegation
204 of sexual harassment or assault; or
205 (ii) may not retaliate based on an employee's refusal to enter into a confidentiality
206 clause or an employment contract that, as a condition of employment, contains a
207 confidentiality clause.
- 208 (c) An employee may, within three business days after the day on which the employee
209 agrees to a settlement agreement that includes a confidentiality clause regarding
210 sexual misconduct, withdraw from the settlement agreement.
- 211 (3) An employer who attempts to enforce a confidentiality clause in violation of this section:
212 (a) is liable for all costs, including reasonable attorney fees, resulting from legal action
213 to enforce the confidentiality clause; and
214 (b) is not entitled to monetary damages resulting from a breach of a confidentiality
215 clause.
- 216 (4) This section does not:
217 (a) prohibit an agreement between an employee who alleges sexual assault or sexual
218 harassment and an employer from containing a nondisclosure clause, a
219 non-disparagement clause, or any other clause prohibiting disclosure of:
220 (i) the amount of a monetary settlement; or
221 (ii) at the request of the employee, facts that could reasonably lead to the
222 identification of the employee;
223 (b) prohibit an employer from requiring an employee to:
224 (i) sign a post-employment restrictive covenant; or
225 (ii) agree not to disclose an employer's non-public trade secrets, proprietary
226 information, or confidential information that does not involve illegal acts;
227 (c) authorize an employee to:
228 (i) disclose data otherwise protected by law or legal privilege; or
229 (ii) knowingly make statements or disclosures that are false or made with reckless
230 disregard of the truth;
231 (d) prohibit an employee from discussing sexual misconduct or allegations of sexual
232 misconduct in a civil or criminal case when subpoenaed if the sexual misconduct or

233 allegations of sexual misconduct are against the individual whom the employee
234 alleged engaged in sexual misconduct;
235 (e) permit a disclosure that would violate state or federal law; or
236 (f) limit other grounds that may exist at law or in equity for the unenforceability of a
237 confidentiality clause.

238 Section 3. **Effective Date.**

239 This bill takes effect on May 7, 2025.