

# SB0086S01 compared with SB0086

{Omitted text} shows text that was in SB0086 but was omitted in SB0086S01

inserted text shows text that was not in SB0086 but was inserted into SB0086S01

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## Workplace Protection Amendments

2025 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Jen Plumb

House Sponsor:

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### LONG TITLE

#### General Description:

This bill amends provisions relating to {~~the definition of an employer~~} employment.

#### Highlighted Provisions:

This bill:

- reduces the number of employees a person may employ before being considered an employer subject to the {~~state~~} Utah Antidiscrimination Act for employment{-} ; and

- amends the definition of sexual harassment.

#### Money Appropriated in this Bill:

None

None

#### AMENDS:

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

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

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SB0086

## SB0086 compared with SB0086S01

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- 20 *Be it enacted by the Legislature of the state of Utah:*
- 21 Section 1. Section **34A-5-102** is amended to read:
- 22 **34A-5-102. Definitions -- Unincorporated entities -- Joint employers -- Franchisors.**
- 22 (1) As used in this chapter:
- 23 (a) "Affiliate" means the same as that term is defined in Section 16-6a-102.
- 24 (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.
- 27 (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 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 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 the state or a  
political subdivision of the state; or
- 43 (D) a person employing [~~15~~ five] or more employees within the state for each working day in each  
of 20 calendar weeks or more in the current or preceding calendar year.
- 46 (ii) "Employer" does not include:
- 47 (A) a religious organization, a religious corporation sole, a religious association, a religious society, a  
religious educational institution, or a religious leader, when that individual is acting in the capacity  
of a religious leader;
- 50 (B) any corporation or association constituting an affiliate, a wholly owned subsidiary, or an agency of  
any religious organization, religious corporation sole, religious association, or religious society; or

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- 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 (1)(j)(i).
- 57 (k) "Federal executive agency" means an executive agency, as defined in 5 U.S.C. Sec. 105, of the
- 58 federal government.
- 59 (l) "Franchise" means the same as that term is defined in 16 C.F.R. Sec. 436.1.
- 60 (m) "Franchisee" means the same as that term is defined in 16 C.F.R. Sec. 436.1.
- 61 (n) "Franchisor" means the same as that term is defined in 16 C.F.R. Sec. 436.1.
- 62 (o) "Gender identity" has the meaning provided in the Diagnostic and Statistical Manual (DSM-5). A
- 63 person's gender identity can be shown by providing evidence, including, but not limited to, medical
- 64 history, care or treatment of the gender identity, consistent and uniform assertion of the gender
- 65 identity, or other evidence that the gender identity is sincerely held, part of a person's core identity,
- 66 and not being asserted for an improper purpose.
- 67 (p) "Joint apprenticeship committee" means an association of representatives of a labor organization
- 68 and an employer providing, coordinating, or controlling an apprentice training program.
- 69 (q) "Labor organization" means an organization that exists for the purpose in whole or in part of:
- 70 (i) collective bargaining;
- 71 (ii) dealing with employers concerning grievances, terms or conditions of employment; or
- 72 (iii) other mutual aid or protection in connection with employment.
- 73 (r) "National origin" means the place of birth, domicile, or residence of an individual or of an
- 74 individual's ancestors.
- 75 (s) "On-the-job-training" means a program designed to instruct a person who, while learning the
- 76 particular job for which the person is receiving instruction:
- 77 (i) is also employed at that job; or
- 78 (ii) may be employed by the employer conducting the program during the course of the program, or
- 79 when the program is completed.
- 80 (t) "Person" means:
- 81 (i) one or more individuals, partnerships, associations, corporations, legal representatives, trusts or
- 82 trustees, or receivers;
- 83 (ii) the state; and
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- 89 (iii) a political subdivision of the state.
- 90 (u) "Pregnancy, childbirth, or pregnancy-related conditions" includes breastfeeding or medical  
conditions related to breastfeeding.
- 92 (v) "Presiding officer" means the same as that term is defined in Section 63G-4-103.
- 93 (w) "Prohibited employment practice" means a practice specified as discriminatory, and therefore  
unlawful, in Section 34A-5-106.
- 95 (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.
- 99 (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:
- 103 (i) opposes an employment practice prohibited under this chapter; or
- 104 (ii) files charges, testifies, assists, or participates in any way in a proceeding, investigation, or hearing  
under this chapter.
- 106 (z) "Sexual orientation" means an individual's actual or perceived orientation as heterosexual,  
homosexual, or bisexual.
- 108 (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.
- 111 (bb) "Unincorporated entity" means an entity organized or doing business in the state that is not:
- 113 (i) an individual;
- 114 (ii) a corporation; or
- 115 (iii) publicly traded.
- 116 (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.
- 120 (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.

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- 124 (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:
- 128 (i) is an active manager of the unincorporated entity;
- 129 (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 employers under this  
chapter, an administrative ruling of a federal executive agency may not be considered a generally  
applicable law unless that administrative ruling is 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 a franchisee's  
employee, this Subsection (4) does not apply to a franchisor under a franchise that exercises a type  
or degree of control over the franchisee or the franchisee's employee not customarily exercised by a  
franchisor for the purpose of protecting the franchisor's trademarks and brand.
- 150 (5) Notwithstanding Title 78B, Chapter 3a, Venue for Civil Actions, a person shall bring an action  
under this chapter in the judicial district in which the asserted unfair employment practice occurs if  
the action is brought in the district court.

155 Section 2. Section 34A-5-114 is amended to read:

156 **34A-5-114. Limitations on enforceability of nondisclosure and non-disparagement clauses --  
Retaliation prohibited.**

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- 158 (1) As used in this section:
- 159 (a) "Confidentiality clause" means a nondisclosure clause or a non-disparagement clause.
- 160 (b) "Employee" means a current or a former employee.
- 161 (c) "Nondisclosure clause" means an agreement between an employee and employer that<sup>[:]</sup>
- 162 ~~[(+)]~~ prevents, or has the effect of preventing, an employee from disclosing or discussing:
- 164 ~~[(A)]~~ (i) sexual assault;
- 165 ~~[(B)]~~ (ii) allegations of sexual assault;
- 166 ~~[(C)]~~ (iii) sexual harassment; or
- 167 ~~[(D)]~~ (iv) allegations of sexual harassment.
- 168 (d) "Non-disparagement clause" means an agreement between an employee and employer that prohibits,
- or has the effect of prohibiting, an employee from making a negative statement that is:
- 171 (i) about the employer; and
- 172 (ii) related to:
- 173 (A) a claim of sexual assault or sexual harassment;
- 174 (B) a sexual assault dispute; or
- 175 (C) a sexual harassment dispute.
- 176 (e) "Post-employment restrictive covenant" means the same as that term is defined in Section
- 34-51-102.
- 178 (f) "Proprietary information" means an employer's business plan or customer information.
- 180 (g) "Retaliate" means taking an adverse action against an employee because the employee made an
- allegation of sexual harassment or assault, including:
- 182 (i) discharge;
- 183 (ii) suspension;
- 184 (iii) demotion; or
- 185 (iv) discrimination in the terms, conditions, or privileges of employment.
- 186 (h) "Sexual assault" means:
- 187 (i) conduct that would constitute a violation of 18 U.S.C. Secs. 2241 through 2244; or
- 188 (ii) criminal conduct described in Title 76, Chapter 5, Part 4, Sexual Offenses.
- 189 (i) "Sexual assault dispute" means a dispute between an employer and the employer's employee relating
- to alleged sexual assault.
- 191 ~~[(j) "Sexual harassment" means conduct that is a violation of:]~~

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- 192 [(i) Title VII of the Civil Rights Act of 1964, 42 U.S.C. Sec. 2000e et seq.; or]
- 193 [(ii) Subsection 34A-5-106(1)(a)(i) prohibiting harassment on the basis of sex, sexual orientation, or  
gender.]
- 195 (j) "Sexual harassment" means harassment on the basis of sex, sexual orientation, or gender, as  
prohibited in:
- 197 (i) Title VII of the Civil Rights Act of 1964, 42 U.S.C. Sec. 200e et seq.; or
- 198 (ii) Subsection 34A-5-106(1)(a)(i).
- 199 (k) "Sexual harassment dispute" means a dispute between an employer and the employer's employee  
relating to alleged sexual harassment.
- 201 (2)
- . (a) A confidentiality clause regarding sexual misconduct, as a condition of employment, is against  
public policy and is void and unenforceable.
- 203 (b) After an employee makes an allegation of sexual harassment or sexual assault, an employer of any  
sized business, regardless of Subsection 34-5-102(1)(i)(D):
- 205 (i) may not retaliate against the employee because the employee made an allegation of sexual  
harassment or assault; or
- 207 (ii) may not retaliate based on an employee's refusal to enter into a confidentiality clause or an  
employment contract that, as a condition of employment, contains a confidentiality clause.
- 210 (c) An employee may, within three business days after the day on which the employee agrees to a  
settlement agreement that includes a confidentiality clause regarding sexual misconduct, withdraw  
from the settlement agreement.
- 213 (3) An employer who attempts to enforce a confidentiality clause in violation of this section:
- 214 (a) is liable for all costs, including reasonable attorney fees, resulting from legal action to enforce the  
confidentiality clause; and
- 216 (b) is not entitled to monetary damages resulting from a breach of a confidentiality clause.
- 218 (4) This section does not:
- 219 (a) prohibit an agreement between an employee who alleges sexual assault or sexual harassment and an  
employer from containing a nondisclosure clause, a non-disparagement clause, or any other clause  
prohibiting disclosure of:
- 222 (i) the amount of a monetary settlement; or
- 223 (ii) at the request of the employee, facts that could reasonably lead to the identification of the employee;

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- 225 (b) prohibit an employer from requiring an employee to:
- 226 (i) sign a post-employment restrictive covenant; or
- 227 (ii) agree not to disclose an employer's non-public trade secrets, proprietary information, or confidential  
information that does not involve illegal acts;
- 229 (c) authorize an employee to:
- 230 (i) disclose data otherwise protected by law or legal privilege; or
- 231 (ii) knowingly make statements or disclosures that are false or made with reckless disregard of the truth;
- 233 (d) prohibit an employee from discussing sexual misconduct or allegations of sexual misconduct in a  
civil or criminal case when subpoenaed if the sexual misconduct or allegations of sexual misconduct  
are against the individual whom the employee alleged engaged in sexual misconduct;
- 237 (e) permit a disclosure that would violate state or federal law; or
- 238 (f) limit other grounds that may exist at law or in equity for the unenforceability of a confidentiality  
clause.

240 Section 3. **Effective date.**

This bill takes effect on May 7, 2025.

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