

1 **Workers' Compensation Amendments**

2025 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Anthony E. Loubet

3 **LONG TITLE**

4 **General Description:**

5 This bill modifies provisions of the Workers' Compensation Act related to home and
6 community based services.

7 **Highlighted Provisions:**

8 This bill:

- 9 ▶ clarifies the circumstances under which an individual with a disability is the employer of
- 10 an individual providing home and community based services; and
- 11 ▶ makes technical and conforming changes.

12 **Money Appropriated in this Bill:**

13 None

14 **Other Special Clauses:**

15 None

16 **Utah Code Sections Affected:**

17 AMENDS:

18 **34A-2-103**, as last amended by Laws of Utah 2021, Chapter 286

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

21 Section 1. Section **34A-2-103** is amended to read:

22 **34A-2-103 . Employers enumerated and defined -- Regularly employed --**

23 **Statutory employers -- Exceptions.**

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

27 (b) For the purposes of the exclusive remedy in this chapter and Chapter 3, Utah
28 Occupational Disease Act, [~~prescribed~~] provided in Sections 34A-2-105 and
29 34A-3-102, the state is considered to be a single employer and includes any office,
30 department, agency, authority, commission, board, institution, hospital, college,
31 university, or other instrumentality of the state.

- 32 (2)(a) Subject to the other provisions of this section, each person, including each public
33 utility and each independent contractor, [~~who~~] that regularly employs one or more
34 workers or operatives in the same business, or in or about the same establishment,
35 under any contract of hire, express or implied, oral or written, is considered an
36 employer under this chapter and Chapter 3, Utah Occupational Disease Act.
- 37 (b) As used in this Subsection (2):
- 38 (i) "Independent contractor" means any person engaged in the performance of any
39 work for another who, while so engaged, is:
- 40 (A) independent of the employer in all that pertains to the execution of the work;
41 (B) not subject to the routine rule or control of the employer;
42 (C) engaged only in the performance of a definite job or piece of work; and
43 (D) subordinate to the employer only in effecting a result in accordance with the
44 employer's design.
- 45 (ii) "Regularly" includes all employments in the usual course of the trade, business,
46 profession, or occupation of the employer, whether continuous throughout the
47 year or for only a portion of the year.
- 48 (3)(a) The client under a professional employer organization agreement regulated under
49 Title 31A, Chapter 40, Professional Employer Organization Licensing Act:
- 50 (i) is considered the employer of a covered employee; and
51 (ii) subject to Section 31A-40-209, shall secure workers' compensation benefits for a
52 covered employee by complying with Subsection 34A-2-201(1) and commission
53 rules.
- 54 (b) The division shall promptly inform the Insurance Department if the division has
55 reason to believe that a professional employer organization is not in compliance with
56 Subsection 34A-2-201(1) and commission rules.
- 57 (4) A domestic employer who does not employ one employee or more than one employee at
58 least 40 hours per week is not considered an employer under this chapter and Chapter 3,
59 Utah Occupational Disease Act.
- 60 (5)(a) As used in this Subsection (5):
- 61 (i)(A) "Agricultural employer" means a person who employs agricultural labor as
62 defined in Subsections 35A-4-206(1) and (2) and does not include employment
63 as provided in Subsection 35A-4-206(3).
64 (B) Notwithstanding Subsection (5)(a)(i)(A), only for purposes of determining
65 who is a member of the employer's immediate family under Subsection

- 66 (5)(a)(ii), if the agricultural employer is a corporation, partnership, or other
67 business entity, "agricultural employer" means an officer, director, or partner
68 of the business entity.
- 69 (ii) "Employer's immediate family" means:
- 70 (A) an agricultural employer's:
- 71 (I) spouse;
- 72 (II) grandparent;
- 73 (III) parent;
- 74 (IV) sibling;
- 75 (V) child;
- 76 (VI) grandchild;
- 77 (VII) nephew; or
- 78 (VIII) niece;
- 79 (B) a spouse of any person provided in Subsections (5)(a)(ii)(A)(II) through (VIII);
80 or
- 81 (C) an individual who is similar to those listed in Subsection (5)(a)(ii)(A) or (B) as
82 defined by rules of the commission.
- 83 (iii) "Nonimmediate family" means a person who is not a member of the employer's
84 immediate family.
- 85 (b) For purposes of this chapter and Chapter 3, Utah Occupational Disease Act, an
86 agricultural employer is not considered an employer of a member of the employer's
87 immediate family.
- 88 (c) For purposes of this chapter and Chapter 3, Utah Occupational Disease Act, an
89 agricultural employer is not considered an employer of a nonimmediate family
90 employee if:
- 91 (i) for the previous calendar year the agricultural employer's total annual payroll for
92 all nonimmediate family employees was less than \$8,000; or
- 93 (ii)(A) for the previous calendar year the agricultural employer's total annual
94 payroll for all nonimmediate family employees was equal to or greater than
95 \$8,000 but less than \$50,000; and
- 96 (B) the agricultural employer maintains insurance that covers job-related injuries
97 of the employer's nonimmediate family employees in at least the following
98 amounts:
- 99 (I) \$300,000 liability insurance, as defined in Section 31A-1-301; and

- 100 (II) \$5,000 for health care benefits similar to benefits under health care
101 insurance as defined in Section 31A-1-301.
- 102 (d) For purposes of this chapter and Chapter 3, Utah Occupational Disease Act, an
103 agricultural employer is considered an employer of a nonimmediate family employee
104 if:
- 105 (i) for the previous calendar year the agricultural employer's total annual payroll for
106 all nonimmediate family employees is equal to or greater than \$50,000; or
107 (ii)(A) for the previous year the agricultural employer's total payroll for
108 nonimmediate family employees was equal to or exceeds \$8,000 but is less
109 than \$50,000; and
110 (B) the agricultural employer fails to maintain the insurance required under
111 Subsection (5)(c)(ii)(B).
- 112 (6) An employer of agricultural laborers or domestic servants who is not considered an
113 employer under this chapter and Chapter 3, Utah Occupational Disease Act, may come
114 under this chapter and Chapter 3, Utah Occupational Disease Act, by complying with:
- 115 (a) this chapter and Chapter 3, Utah Occupational Disease Act; and
116 (b) the rules of the commission.
- 117 (7)(a)(i) As used in this Subsection (7)(a), "employer" includes any of the following
118 persons that procures work to be done by a contractor notwithstanding whether or
119 not the person directly employs a person:
- 120 (A) a sole proprietorship;
121 (B) a corporation;
122 (C) a partnership;
123 (D) a limited liability company; or
124 (E) a person similar to one described in Subsections (7)(a)(i)(A) through (D).
- 125 (ii) If an employer procures any work to be done wholly or in part for the employer
126 by a contractor over whose work the employer retains supervision or control, and
127 this work is a part or process in the trade or business of the employer, the
128 contractor, all persons employed by the contractor, all subcontractors under the
129 contractor, and all persons employed by any of these subcontractors, are
130 considered employees of the original employer for the purposes of this chapter
131 and Chapter 3, Utah Occupational Disease Act.
- 132 (b) Any person who is engaged in constructing, improving, repairing, or remodeling a
133 residence that the person owns or is in the process of acquiring as the person's

- 134 personal residence may not be considered an employee or employer solely by
135 operation of Subsection (7)(a).
- 136 (c) A partner in a partnership or an owner of a sole proprietorship is not considered an
137 employee under Subsection (7)(a) if the employer who procures work to be done by
138 the partnership or sole proprietorship obtains and relies on either:
- 139 (i) a valid certification of the partnership's or sole proprietorship's compliance with
140 Section 34A-2-201 indicating that the partnership or sole proprietorship secured
141 the payment of workers' compensation benefits pursuant to Section 34A-2-201; or
142 (ii) if a partnership or sole proprietorship with no employees other than a partner of
143 the partnership or owner of the sole proprietorship, a workers' compensation
144 coverage waiver issued pursuant to Part 10, Workers' Compensation Coverage
145 Waivers Act, stating that:
- 146 (A) the partnership or sole proprietorship is customarily engaged in an
147 independently established trade, occupation, profession, or business; and
148 (B) the partner or owner personally waives the partner's or owner's entitlement to
149 the benefits of this chapter and Chapter 3, Utah Occupational Disease Act, in
150 the operation of the partnership or sole proprietorship.
- 151 (d) A director or officer of a corporation is not considered an employee under
152 Subsection (7)(a) if the director or officer is excluded from coverage under
153 Subsection 34A-2-104(4).
- 154 (e) A contractor or subcontractor is not an employee of the employer under Subsection
155 (7)(a), if the employer who procures work to be done by the contractor or
156 subcontractor obtains and relies on either:
- 157 (i) a valid certification of the contractor's or subcontractor's compliance with Section
158 34A-2-201; or
159 (ii) if a partnership, corporation, or sole proprietorship with no employees other than
160 a partner of the partnership, officer of the corporation, or owner of the sole
161 proprietorship, a workers' compensation coverage waiver issued pursuant to Part
162 10, Workers' Compensation Coverage Waivers Act, stating that:
- 163 (A) the partnership, corporation, or sole proprietorship is customarily engaged in
164 an independently established trade, occupation, profession, or business; and
165 (B) the partner, corporate officer, or owner personally waives the partner's,
166 corporate officer's, or owner's entitlement to the benefits of this chapter and
167 Chapter 3, Utah Occupational Disease Act, in the operation of the

168 partnership's, corporation's, or sole proprietorship's enterprise under a contract
169 of hire for services.

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

171 (A) is an employer; and

172 (B) procures work to be done wholly or in part for the employer by a contractor,
173 including:

174 (I) all persons employed by the contractor;

175 (II) all subcontractors under the contractor; and

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

177 (ii) Notwithstanding the other provisions in this Subsection (7), if the conditions of
178 Subsection (7)(f)(iii) are met, an eligible employer is considered an employer for
179 purposes of Section 34A-2-105 of the contractor, subcontractor, and all persons
180 employed by the contractor or subcontractor described in Subsection (7)(f)(i)(B).

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

182 (A) under Subsection (7)(a) is liable for and pays workers' compensation benefits
183 as an original employer under Subsection (7)(a) because the contractor or
184 subcontractor fails to comply with Section 34A-2-201;

185 (B)(I) secures, in accordance with Section 34A-2-201, the payment of workers'
186 compensation coverage for the contractor or subcontractor;

187 (II) procures work to be done that is part or process of the trade or business of
188 the eligible employer; and

189 (III) does the following with regard to a written workplace accident and injury
190 reduction program that meets the requirements of Subsection
191 34A-2-111(3)(d):

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

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

195 (Cc) enforces the workplace accident and injury reduction program
196 according to the terms of the workplace accident and injury reduction
197 program; or

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

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

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

- 202 (Cc) proof that a director or officer is excluded from coverage under
203 Subsection 34A-2-104(4);
- 204 (II) is liable under Subsection (7)(a) for the payment of workers' compensation
205 benefits if the contractor or subcontractor fails to comply with Section
206 34A-2-201;
- 207 (III) procures work to be done that is part or process in the trade or business of
208 the eligible employer; and
- 209 (IV) does the following with regard to a written workplace accident and injury
210 reduction program that meets the requirements of Subsection
211 34A-2-111(3)(d):
- 212 (Aa) adopts the workplace accident and injury reduction program;
- 213 (Bb) posts the workplace accident and injury reduction program at the work
214 site at which the eligible employer procures work; and
- 215 (Cc) enforces the workplace accident and injury reduction program
216 according to the terms of the workplace accident and injury reduction
217 program.
- 218 (8)(a) For purposes of this Subsection (8), "unincorporated entity" means an entity
219 organized or doing business in the state that is not:
- 220 (i) an individual;
- 221 (ii) a corporation; or
- 222 (iii) publicly traded.
- 223 (b) For purposes of this chapter and Chapter 3, Utah Occupational Disease Act, an
224 unincorporated entity that is required to be licensed under Title 58, Chapter 55, Utah
225 Construction Trades Licensing Act, is presumed to be the employer of each
226 individual who holds, directly or indirectly, an ownership interest in the
227 unincorporated entity. Notwithstanding Subsection (7)(c) and Subsection
228 34A-2-104(3), the unincorporated entity shall provide the individual who holds the
229 ownership interest workers' compensation coverage under this chapter and Chapter 3,
230 Utah Occupational Disease Act, unless the presumption is rebutted under Subsection
231 (8)(c).
- 232 (c) Pursuant to rules made by the commission in accordance with Title 63G, Chapter 3,
233 Utah Administrative Rulemaking Act, an unincorporated entity may rebut the
234 presumption under Subsection (8)(b) for an individual by establishing by clear and
235 convincing evidence that the individual:

- 236 (i) is an active manager of the unincorporated entity;
- 237 (ii) directly or indirectly holds at least an 8% ownership interest in the unincorporated
- 238 entity; or
- 239 (iii) is not subject to supervision or control in the performance of work by:
- 240 (A) the unincorporated entity; or
- 241 (B) a person with whom the unincorporated entity contracts.
- 242 (d) As part of the rules made under Subsection (8)(c), the commission may define:
- 243 (i) "active manager";
- 244 (ii) "directly or indirectly holds at least an 8% ownership interest"; and
- 245 (iii) "subject to supervision or control in the performance of work."
- 246 (9)(a) As used in this Subsection (9), "home and community based services" means one
- 247 or more of the following services provided to an individual with a disability or to the
- 248 individual's family that helps prevent the individual with a disability from being
- 249 placed in a more restrictive setting:
- 250 (i) respite care;
- 251 (ii) skilled nursing;
- 252 (iii) nursing assistant services;
- 253 (iv) home health aide services;
- 254 (v) personal care and attendant services;
- 255 (vi) other in-home care, such as support for the daily activities of the individual with
- 256 a disability;
- 257 (vii) specialized in-home training for the individual with a disability or a family
- 258 member of the individual with a disability;
- 259 (viii) specialized in-home support, coordination, and other supported living services;
- 260 and
- 261 (ix) ~~[other home and community based services]~~ any other in-home service that is
- 262 unique to the individual with a disability or the family of the individual with a
- 263 disability~~[that help prevent the individual with a disability from being placed in a~~
- 264 ~~more restrictive setting]~~.
- 265 (b)(i) Notwithstanding Subsection (4) and subject to Subsection (9)(c), an individual
- 266 with a disability or designated representative of the individual with a disability is
- 267 considered an employer under this chapter and Chapter 3, Utah Occupational
- 268 Disease Act, of an individual who provides home and community based services
- 269 if the individual with a disability or designated representative of the individual

- 270 with a disability:
- 271 [(i)] (A) employs the individual to provide home and community based services
272 for seven hours per week or more; and
- 273 [(ii)] (B) pays the individual providing the home and community based services
274 from state or federal money received by the individual with a disability or
275 designated representative of the individual with a disability to fund home and
276 community based services, including through a person designated by the
277 Secretary of the Treasury in accordance with Section 3504, Internal Revenue
278 Code, as a fiduciary, agent, or other person who has the control, receipt,
279 custody, or disposal of, or pays the wages of, the individual providing the
280 home and community based services.
- 281 (ii) For purposes of Subsection (9)(b)(i), an entity is not a designated representative
282 of an individual with a disability solely because the entity, in the course of
283 business, connects the individual with a disability or the individual's family with
284 an individual who provides home and community based services.
- 285 (c) The state and federal money received by an individual with a disability or designated
286 representative of an individual with a disability shall include the cost of the workers'
287 compensation coverage required by this Subsection (9) in addition to the money
288 necessary to fund the home and community based services that the individual with a
289 disability or family of the individual with a disability is eligible to receive so that the
290 home and community based services are not reduced in order to pay for the workers'
291 compensation coverage required by this Subsection (9).
- 292 (10)(a) For purposes of this Subsection (10), "federal executive agency" means an
293 executive agency, as defined in 5 U.S.C. Sec. 105, of the federal government.
- 294 (b) For purposes of determining whether two or more persons are considered joint
295 employers under this chapter or Chapter 3, Utah Occupational Disease Act, an
296 administrative ruling of a federal executive agency may not be considered a generally
297 applicable law unless that administrative ruling is determined to be generally
298 applicable by a court of law, or adopted by statute or rule.
- 299 (11)(a) As used in this Subsection (11):
- 300 (i) "Franchise" means the same as that term is defined in 16 C.F.R. Sec. 436.1.
301 (ii) "Franchisee" means the same as that term is defined in 16 C.F.R. Sec. 436.1.
302 (iii) "Franchisor" means the same as that term is defined in 16 C.F.R. Sec. 436.1.
- 303 (b) For purposes of this chapter, a franchisor is not considered to be an employer of:

- 304 (i) a franchisee; or
- 305 (ii) a franchisee's employee.
- 306 (c) With respect to a specific claim for relief under this chapter made by a franchisee or
- 307 a franchisee's employee, this Subsection (11) does not apply to a franchisor under a
- 308 franchise that exercises a type or degree of control over the franchisee or the
- 309 franchisee's employee not customarily exercised by a franchisor for the purpose of
- 310 protecting the franchisor's trademarks and brand.

311 Section 2. **Effective date.**

312 This bill takes effect on May 7, 2025.