

1 **Workplace Protection Amendments**

2025 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Jen Plumb

2
3 **LONG TITLE**

4 **General Description:**

5 This bill amends provisions relating to the definition of an employer.

6 **Highlighted Provisions:**

7 This bill:

8 ▶ reduces the number of employees a person may employ before being considered an
9 employer subject to the state Antidiscrimination Act for employment.

10 **Money Appropriated in this Bill:**

11 None

12 **Other Special Clauses:**

13 None

14 **Utah Code Sections Affected:**

15 AMENDS:

16 **34A-5-102**, as last amended by Laws of Utah 2024, Chapter 158

17
18 *Be it enacted by the Legislature of the state of Utah:*

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

20 **34A-5-102 . Definitions -- Unincorporated entities -- Joint employers --**

21 **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
25 program providing the training of those persons defined as apprentices by Section
26 35A-6-102.

27 (c) "Bona fide occupational qualification" means a characteristic applying to an
28 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~~] five 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.
- 63 (o) "Gender identity" has the meaning provided in the Diagnostic and Statistical Manual
64 (DSM-5). A person's gender identity can be shown by providing evidence, including,
65 but not limited to, medical history, care or treatment of the gender identity, consistent

- 66 and uniform assertion of the gender identity, or other evidence that the gender
67 identity is sincerely held, part of a person's core identity, and not being asserted for
68 an improper purpose.
- 69 (p) "Joint apprenticeship committee" means an association of representatives of a labor
70 organization and an employer providing, coordinating, or controlling an apprentice
71 training program.
- 72 (q) "Labor organization" means an organization that exists for the purpose in whole or in
73 part of:
- 74 (i) collective bargaining;
- 75 (ii) dealing with employers concerning grievances, terms or conditions of
76 employment; or
- 77 (iii) other mutual aid or protection in connection with employment.
- 78 (r) "National origin" means the place of birth, domicile, or residence of an individual or
79 of an individual's ancestors.
- 80 (s) "On-the-job-training" means a program designed to instruct a person who, while
81 learning the particular job for which the person is receiving instruction:
- 82 (i) is also employed at that job; or
- 83 (ii) may be employed by the employer conducting the program during the course of
84 the program, or when the program is completed.
- 85 (t) "Person" means:
- 86 (i) one or more individuals, partnerships, associations, corporations, legal
87 representatives, trusts or trustees, or receivers;
- 88 (ii) the state; and
- 89 (iii) a political subdivision of the state.
- 90 (u) "Pregnancy, childbirth, or pregnancy-related conditions" includes breastfeeding or
91 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
94 therefore unlawful, in Section 34A-5-106.
- 95 (x) "Religious leader" means an individual who is associated with, and is an authorized
96 representative of, a religious organization or association or a religious corporation
97 sole, including a member of clergy, a minister, a pastor, a priest, a rabbi, an imam, or
98 a spiritual advisor.
- 99 (y) "Retaliate" means the taking of adverse action by an employer, employment agency,

- 100 labor organization, apprenticeship program, on-the-job training program, or
101 vocational school against one of its employees, applicants, or members because the
102 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,
105 investigation, or hearing under this chapter.
- 106 (z) "Sexual orientation" means an individual's actual or perceived orientation as
107 heterosexual, homosexual, or bisexual.
- 108 (aa) "Undue hardship" means an action that requires significant difficulty or expense
109 when considered in relation to factors such as the size of the entity, the entity's
110 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
112 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
117 instruction, training, or retraining to prepare individuals to follow an occupation or
118 trade, or to pursue a manual, technical, industrial, business, commercial, office,
119 personal services, or other nonprofessional occupations.
- 120 (2)(a) For purposes of this chapter, an unincorporated entity that is required to be
121 licensed under Title 58, Chapter 55, Utah Construction Trades Licensing Act, is
122 presumed to be the employer of each individual who, directly or indirectly, holds an
123 ownership interest in the unincorporated entity.
- 124 (b) Pursuant to rules made by the commission in accordance with Title 63G, Chapter 3,
125 Utah Administrative Rulemaking Act, an unincorporated entity may rebut the
126 presumption under Subsection (2)(a) for an individual by establishing by clear and
127 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
130 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. **Effective Date.**

154 This bill takes effect on May 7, 2025.