

Jen Plumb proposes the following substitute bill:

Workplace Protection Amendments

2025 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Jen Plumb

House Sponsor:

LONG TITLE

General Description:

This bill amends provisions relating to employment.

Highlighted Provisions:

This bill:

▸ reduces the number of employees a person may employ before being considered an employer subject to the Utah Antidiscrimination Act for employment; and

▸ 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

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

- 64 (n) "Franchisor" means the same as that term is defined in 16 C.F.R. Sec. 436.1.
- 65 (o) "Gender identity" has the meaning provided in the Diagnostic and Statistical Manual
66 (DSM-5). A person's gender identity can be shown by providing evidence, including,
67 but not limited to, medical history, care or treatment of the gender identity, consistent
68 and uniform assertion of the gender identity, or other evidence that the gender
69 identity is sincerely held, part of a person's core identity, and not being asserted for
70 an improper purpose.
- 71 (p) "Joint apprenticeship committee" means an association of representatives of a labor
72 organization and an employer providing, coordinating, or controlling an apprentice
73 training program.
- 74 (q) "Labor organization" means an organization that exists for the purpose in whole or in
75 part of:
- 76 (i) collective bargaining;
- 77 (ii) dealing with employers concerning grievances, terms or conditions of
78 employment; or
- 79 (iii) other mutual aid or protection in connection with employment.
- 80 (r) "National origin" means the place of birth, domicile, or residence of an individual or
81 of an individual's ancestors.
- 82 (s) "On-the-job-training" means a program designed to instruct a person who, while
83 learning the particular job for which the person is receiving instruction:
- 84 (i) is also employed at that job; or
- 85 (ii) may be employed by the employer conducting the program during the course of
86 the program, or when the program is completed.
- 87 (t) "Person" means:
- 88 (i) one or more individuals, partnerships, associations, corporations, legal
89 representatives, trusts or trustees, or receivers;
- 90 (ii) the state; and
- 91 (iii) a political subdivision of the state.
- 92 (u) "Pregnancy, childbirth, or pregnancy-related conditions" includes breastfeeding or
93 medical conditions related to breastfeeding.
- 94 (v) "Presiding officer" means the same as that term is defined in Section 63G-4-103.
- 95 (w) "Prohibited employment practice" means a practice specified as discriminatory, and
96 therefore unlawful, in Section 34A-5-106.
- 97 (x) "Religious leader" means an individual who is associated with, and is an authorized

98 representative of, a religious organization or association or a religious corporation
99 sole, including a member of clergy, a minister, a pastor, a priest, a rabbi, an imam, or
100 a spiritual advisor.

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

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

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

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

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

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

115 (i) an individual;

116 (ii) a corporation; or

117 (iii) publicly traded.

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

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

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

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

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

- 132 entity; or
- 133 (iii) is not subject to supervision or control in the performance of work by:
- 134 (A) the unincorporated entity; or
- 135 (B) a person with whom the unincorporated entity contracts.
- 136 (c) As part of the rules made under Subsection (2)(b), the commission may define:
- 137 (i) "active manager";
- 138 (ii) "directly or indirectly holds at least an 8% ownership interest"; and
- 139 (iii) "subject to supervision or control in the performance of work."
- 140 (3) For purposes of determining whether two or more persons are considered joint
- 141 employers under this chapter, an administrative ruling of a federal executive agency may
- 142 not be considered a generally applicable law unless that administrative ruling is
- 143 determined to be generally applicable by a court of law, or adopted by statute or rule.
- 144 (4)(a) For purposes of this chapter, a franchisor is not considered to be an employer of:
- 145 (i) a franchisee; or
- 146 (ii) a franchisee's employee.
- 147 (b) With respect to a specific claim for relief under this chapter made by a franchisee or
- 148 a franchisee's employee, this Subsection (4) does not apply to a franchisor under a
- 149 franchise that exercises a type or degree of control over the franchisee or the
- 150 franchisee's employee not customarily exercised by a franchisor for the purpose of
- 151 protecting the franchisor's trademarks and brand.
- 152 (5) Notwithstanding Title 78B, Chapter 3a, Venue for Civil Actions, a person shall bring an
- 153 action under this chapter in the judicial district in which the asserted unfair employment
- 154 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**
- 157 **non-disparagement clauses -- Retaliation prohibited.**
- 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^[:]
- 162 ~~[(†)]~~ prevents, or has the effect of preventing, an employee from disclosing or
- 163 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
169 employer that prohibits, or has the effect of prohibiting, an employee from making a
170 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
177 Section 34-51-102.
- 178 (f) "Proprietary information" means an employer's business plan or customer
179 information.
- 180 (g) "Retaliate" means taking an adverse action against an employee because the
181 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
190 employee relating to alleged sexual assault.
- 191 ~~[(j) "Sexual harassment" means conduct that is a violation of:]~~
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~~
194 ~~orientation, or gender.]~~
- 195 (j) "Sexual harassment" means harassment on the basis of sex, sexual orientation, or
196 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

- 200 employer's employee relating to alleged sexual harassment.
- 201 (2)(a) A confidentiality clause regarding sexual misconduct, as a condition of
202 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
204 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
206 of sexual harassment or assault; or
- 207 (ii) may not retaliate based on an employee's refusal to enter into a confidentiality
208 clause or an employment contract that, as a condition of employment, contains a
209 confidentiality clause.
- 210 (c) An employee may, within three business days after the day on which the employee
211 agrees to a settlement agreement that includes a confidentiality clause regarding
212 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
215 to enforce the confidentiality clause; and
- 216 (b) is not entitled to monetary damages resulting from a breach of a confidentiality
217 clause.
- 218 (4) This section does not:
- 219 (a) prohibit an agreement between an employee who alleges sexual assault or sexual
220 harassment and an employer from containing a nondisclosure clause, a
221 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
224 identification of the employee;
- 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
228 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
232 disregard of the truth;
- 233 (d) prohibit an employee from discussing sexual misconduct or allegations of sexual

234 misconduct in a civil or criminal case when subpoenaed if the sexual misconduct or
235 allegations of sexual misconduct are against the individual whom the employee
236 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
239 confidentiality clause.

240 Section 3. **Effective Date.**

241 This bill takes effect on May 7, 2025.