

SB0213S01 compared with SB0213S04

19 **34-28-9.5** , as last amended by Laws of Utah 2024, Chapter 158

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

22 Section 1. Section 34-28-2 is amended to read:

23 **34-28-2. Definitions -- Unincorporated entities -- Joint employers -- Franchisors.**

24 (1) As used in this chapter:

25 (a) "Commission" means the Labor Commission.

26 (b) "Division" means the Division of Antidiscrimination and Labor.

27 (c)

(i) "Employer" means the same as that term is defined in 29 U.S.C. Sec. 203.

28 (ii) "Employer" does not include an individual who is not^[:] an executive.

29 (d) "Executive" means an individual who is:

30 [~~(A)~~] (i) an officer;

31 [~~(B)~~] (ii) a manager of a manager-managed limited liability company;

32 [~~(C)~~] (iii) a member of a member-managed limited liability company;

33 [~~(D)~~] (iv) a general partner of a limited partnership; or

34 [~~(E)~~] (v) a partner of a partnership.

35 [~~(d)~~] (e) "Federal executive agency" means an executive agency, as defined in 5 U.S.C. Sec. 105, of the federal government.

37 [~~(e)~~] (f) "Franchise" means the same as that term is defined in 16 C.F.R. Sec. 436.1.

38 [~~(f)~~] (g) "Franchisee" means the same as that term is defined in 16 C.F.R. Sec. 436.1.

39 [~~(g)~~] (h) "Franchisor" means the same as that term is defined in 16 C.F.R. Sec. 436.1.

40 [~~(h)~~] (i) "Unincorporated entity" means an entity organized or doing business in the state that is not:

42 (i) an individual;

43 (ii) a corporation; or

44 (iii) publicly traded.

45 [~~(i)~~] (j) "Wages" means the amounts due the employee for labor or services, whether the amount is fixed or ascertained on a time, task, piece, commission basis or other method of calculating such amount.

48 (2)

SB0213S01 compared with SB0213S04

- (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.
- 52 (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:
- 56 (i) is an active manager of the unincorporated entity;
- 57 (ii) directly or indirectly holds at least an 8% ownership interest in the unincorporated entity; or
- 59 (iii) is not subject to supervision or control in the performance of work by:
- 60 (A) the unincorporated entity; or
- 61 (B) a person with whom the unincorporated entity contracts.
- 62 (c) As part of the rules made under Subsection (2)(b), the commission may define:
- 63 (i) "active manager";
- 64 (ii) "directly or indirectly holds at least an 8% ownership interest"; and
- 65 (iii) "subject to supervision or control in the performance of work."
- 66 (d) The commission by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, may establish a procedure, consistent with Section 34-28-7, under which an unincorporated entity may seek approval of a mutual agreement to pay wages on non-regular paydays.
- 70 (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.
- 74 (4)
- (a) For purposes of this chapter, a franchisor is not considered to be an employer of:
- 75 (i) a franchisee; or
- 76 (ii) a franchisee's employee.
- 77 (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

SB0213S01 compared with SB0213S04

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.

82 Section 2. Section **34-28-9.5** is amended to read:

83 **34-28-9.5. Private cause of action.**

20 ~~[(1) Except as provided in Subsection (2), for a wage claim that is less than or equal to \$10,000, the employee shall exhaust the employee's administrative remedies described in Section 34-28-9 and rules made by the commission under Section 34-28-9 before the employee may file an action in a court with jurisdiction under Title 78A, Judiciary and Judicial Administration.]~~

25 ~~[(2) An employee may file an action for a wage claim in a court without exhausting the administrative remedies described in Section 34-28-9 and rules made by the commission under Section 34-28-9 if:]~~

28 ~~[(a) the employee's wage claim is over \$10,000;]~~

29 ~~[(b)~~

~~(i) the employee's wage claim is less than or equal to \$10,000;]~~

30 ~~[(ii) the employee asserts one or more additional claims against the same employer; and]~~

32 ~~[(iii) the aggregate amount of damages resulting from the claims described in this Subsection (2)(b) is greater than \$10,000; or]~~

34 ~~[(e)~~

~~(i) in the same civil action, more than one employee files a wage claim against an employer; and]~~

36 ~~[(ii) the aggregate amount of the employees' combined wage claim is greater than \$10,000.]~~

102 ~~(1)~~

~~(a) Except as provided in Subsection (2), an employee may only file a claim for a wage claim under this chapter that is less than or equal to \$10,000 in accordance with Section 34-28-9 and rules the commission makes in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.~~

106 ~~(b) After complying with Subsection (1)(a), an employee may only file a petition for judicial review in accordance with Section 63G-4-402.~~

108 ~~(2) For a wage claim under this chapter, an employee may only file an action in a court with jurisdiction, if:~~

110 ~~(a) the employee's wage claim is over \$10,000;~~

111 ~~(b)~~

~~(i) the employee's wage claim is less than or equal to \$10,000;~~

112 ~~(ii) the employee asserts one or more additional claims against the same employer; and~~

SB0213S01 compared with SB0213S04

114 (iii) the aggregate amount of damages resulting from the claims described in this Subsection (2)(b)(ii) is
greater than \$10,000; or

116 (c)

(i) in the same civil action, more than one employee files a wage claim against an employer; and

118 (ii) the aggregate amount of the employees' combined wage claims is greater than \$10,000.

120 (3) An employee may only file a wage claim in a court with jurisdiction against an employer under this
section for two years after the day on which the employee earns the wages.

38 ~~[(3)]~~ (4) In an action under this section, the court may award an employee:

39 (a) actual damages;

40 (b) an amount equal to 2.5% of the unpaid wages owed to the employee, assessed daily for the lesser of:

42 (i) the period beginning the day on which the court issues a final order and ending the day on which the
employer pays the unpaid wages owed to the employee; or

44 (ii) 20 days after the day on which the court issues a final order; and

45 (c) a penalty described in Subsection 34-28-5(1)(c), if applicable.

46 ~~{(4) In an action under this section, an employee may only file a wage claim in a court with jurisdiction~~
for three years after the day on which the employee earns the wages.}

131 Section 3. **Effective date.**

Effective Date.

This bill takes effect on May 6, 2026.

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