

Effective 5/8/2018

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

- (1) As used in this chapter:
 - (a) "Commission" means the Labor Commission.
 - (b) "Division" means the Division of Antidiscrimination and Labor.
 - (c)
 - (i) "Employer" means the same as that term is defined in 29 U.S.C. Sec. 203.
 - (ii) "Employer" does not include an individual who is not:
 - (A) an officer;
 - (B) a manager of a manager-managed limited liability company;
 - (C) a member of a member-managed limited liability company;
 - (D) a general partner of a limited partnership; or
 - (E) a partner of a partnership.
 - (d) "Federal executive agency" means an executive agency, as defined in 5 U.S.C. Sec. 105, of the federal government.
 - (e) "Franchise" means the same as that term is defined in 16 C.F.R. Sec. 436.1.
 - (f) "Franchisee" means the same as that term is defined in 16 C.F.R. Sec. 436.1.
 - (g) "Franchisor" means the same as that term is defined in 16 C.F.R. Sec. 436.1.
 - (h) "Unincorporated entity" means an entity organized or doing business in the state that is not:
 - (i) an individual;
 - (ii) a corporation; or
 - (iii) publicly traded.
 - (i) "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.
- (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.
 - (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:
 - (i) is an active manager of the unincorporated entity;
 - (ii) directly or indirectly holds at least an 8% ownership interest in the unincorporated entity; or
 - (iii) is not subject to supervision or control in the performance of work by:
 - (A) the unincorporated entity; or
 - (B) a person with whom the unincorporated entity contracts.
 - (c) As part of the rules made under Subsection (2)(b), the commission may define:
 - (i) "active manager";
 - (ii) "directly or indirectly holds at least an 8% ownership interest"; and
 - (iii) "subject to supervision or control in the performance of work."
 - (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.

- (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.
- (4)
 - (a) For purposes of this chapter, a franchisor is not considered to be an employer of:
 - (i) a franchisee; or
 - (ii) a franchisee's employee.
 - (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.

Amended by Chapter 386, 2018 General Session