Chapter 28
Payment of Wages

34-28-1 Public and certain other employments excepted.

None of the provisions of this chapter shall apply to the state, or to any county, incorporated city or town, or other political subdivision, or to employers and employees engaged in farm, dairy, agricultural, viticultural or horticultural pursuits or to stock or poultry raising, or to household domestic service, or to any other employment where an agreement exists between employer and employee providing for different terms of payment, except the provisions of Section 34-28-5 shall apply to employers or employees engaged in farm, dairy, agricultural, viticultural, horticultural or stock or poultry raising.

Amended by Chapter 64, 1973 General Session

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

34-28-3 Regular paydays -- Currency or negotiable checks required -- Deposit in financial institution -- Statement of total deductions -- Unlawful withholding or diversion of wages.
(1)
(a) An employer shall pay the wages earned by an employee at regular intervals, but in periods no longer than semimonthly on days to be designated in advance by the employer as the regular payday.
(b) An employer shall pay for services rendered during a pay period within 10 days after the close of that pay period.
(c) If a payday falls on a Saturday, Sunday, or legal holiday, an employer shall pay wages earned during the pay period on the day preceding the Saturday, Sunday, or legal holiday.
(d) If an employer hires an employee on a yearly salary basis, the employer may pay the employee on a monthly basis by paying on or before the seventh of the month following the month for which services are rendered.
(e) Wages shall be paid in full to an employee:
(i) in lawful money of the United States;
(ii) by a check or draft on a depository institution, as defined in Section 7-1-103, that is convertible into cash on demand at full face value; or
(iii) by electronic transfer to the depository institution designated by the employee.

(2) An employer may not issue in payment of wages due or as an advance on wages to be earned for services performed or to be performed within this state an order, check, or draft unless:
(a) it is negotiable and payable in cash, on demand, without discount, at a depository institution; and
(b) the name and address of the depository institution appears on the instrument.
(3)
(a) Except as provided in Subsection (3)(b), an employee may refuse to have the employee's wages deposited by electronic transfer under Subsection (1)(e)(iii) by filing a written request with the employer.
(b) An employee may not refuse to have the employee's wages deposited by electronic transfer under Subsection (3)(a) if:
(i) for the calendar year preceding the pay period for which the employee is being paid, the employer's federal employment tax deposits are equal to or in excess of $250,000; and
(ii) at least two-thirds of the employees of the employer have their wages deposited by electronic transfer.
(c) An employer may not designate a particular depository institution for the exclusive payment or deposit of a check or draft for wages.
(4) If a deduction is made from the wages paid, the employer shall, on each regular payday, furnish the employee with a statement showing the total amount of each deduction.
(5) An employer licensed under Title 58, Chapter 55, Utah Construction Trades Licensing Act, shall:
(a) on the day on which the employer pays an employee, give the employee a written or electronic pay statement that states:
(i) the employee's name;
(ii) the employee's base rate of pay;
(iii) the dates of the pay period for which the individual is being paid;
(iv) if paid hourly, the number of hours the employee worked during the pay period;
(v) the amount of and reason for any money withheld in accordance with state or federal law, including:
(A) state and federal income tax;
(B) Social Security tax;
(C) Medicare tax; and
(D) court-ordered withholdings; and
(vi) the total amount paid to the employee for that pay period; and
(b) comply with the requirements described in Subsection (5)(a) regardless of whether the employer pays the employee by check, cash, or other means.
(6) An employer may not withhold or divert part of an employee's wages unless:
(a) the employer is required to withhold or divert the wages by:
(i) court order; or
(ii) state or federal law;
(b) the employee expressly authorizes the deduction in writing;
(c) the employer presents evidence that in the opinion of a hearing officer or an administrative law judge would warrant an offset; or
(d) subject to Subsection (8), the employer withholds or diverts the wages:
(i) as a contribution of the employee under a contract or plan that is:
(A) described in Section 401(k), 403(b), 408, 408A, or 457, Internal Revenue Code; and
(B) established by the employer; and

(ii) the contract or plan described in Subsection (6)(d)(i) provides that an employee's compensation is reduced by a specified contribution:
(A) under the contract or plan; and
(B) that is made for the employee unless the employee affirmatively elects:
(I) to not have a reduction made as a contribution by the employee under the contract or plan; or
(II) to have a different amount be contributed by the employee under the contract or plan.

(7) An employer may not require an employee to rebate, refund, offset, or return a part of the wage, salary, or compensation to be paid to the employee except as provided in Subsection (6).

(8)
(a) An employer shall notify an employee in writing of the right to make an election under Subsection (6)(d).
(b) An employee may make an election described in Subsection (6)(d) at any time by providing the employer written notice of the election.
(c) An employer shall modify or terminate the withholding or diversion described in Subsection (6)(d) beginning with a pay period that begins no later than 30 days following the day on which the employee provides the employer the written notice described in Subsection (8)(b).

(9) An employer is not prohibited from pursuing legitimate claims of damages, offsets, or recoupments in a civil action against an employee.

Amended by Chapter 188, 2014 General Session

34-28-4 Notice of paydays -- Failure to notify a misdemeanor.

(1) It shall be the duty of every employer to notify the employer's employees at the time of hiring of the day and place of payment, of the rate of pay, and of any change with respect to any of these items prior to the time of the change. Alternatively, however, every employer shall have the option of giving such notification by posting these facts and keeping them posted conspicuously at or near the place of work where such posted notice can be seen by each employee as the employee comes or goes to the employee's place of work.

(2) Failure to post and to keep posted any notice or failure to give notice as prescribed in this section is a class B misdemeanor.

Amended by Chapter 148, 2018 General Session

34-28-5 Separation from payroll -- Resignation -- Cessation because of industrial dispute.

(1)
(a) When an employer separates an employee from the employer's payroll the unpaid wages of the employee become due immediately, and the employer shall pay the wages to the employee within 24 hours of the time of separation at the specified place of payment.
(b) An employer satisfies the 24-hour time requirement described in Subsection (1)(a) if:
(i)
(A) the employer mails the wages to the employee; and
(B) the envelope that contains the wages is postmarked with a date that is no more than one day after the day on which the employer separates the employee from the employer's payroll; or
(ii) within 24 hours after the employer separates the employee from the employer's payroll, the employer:

(A) initiates a direct deposit of the wages into the employee's account; or
(B) hand delivers the wages to the employee.
(c)
(i) In case of failure to pay wages due an employee within 24 hours of written demand, the wages of the employee shall continue from the date of demand until paid, but in no event to exceed 60 days, at the same rate that the employee received at the time of separation.
(ii) The employee may recover the penalty thus accruing to the employee in a civil action. This action shall be commenced within 60 days from the date of separation.
(iii) An employee who has not made a written demand for payment is not entitled to any penalty under this Subsection (1)(c).
(2) If an employee does not have a written contract for a definite period and resigns the employee's employment, the wages earned and unpaid together with any deposit held by the employer and properly belonging to the resigned employee for the performance of the employee's employment duties become due and payable on the next regular payday.
(3) If work ceases as the result of an industrial dispute, the wages earned and unpaid at the time of this cessation become due and payable at the next regular payday, as provided in Section 34-28-3, including, without abatement or reduction, all amounts due all persons whose work has been suspended as a result of the industrial dispute, together with any deposit or other guaranty held by the employer for the faithful performance of the duties of the employment.
(4) For a sales agent employed in whole or in part on a commission basis who has custody of accounts, money, or goods of the sales agent's principal, this section does not apply to the commission-based portion of the sales agent's earnings if the net amount due the agent is determined only after an audit or verification of sales, accounts, funds, or stocks.

Amended by Chapter 307, 2018 General Session

34-28-6 Dispute over wages -- Notice and payment.
(1) In case of a dispute over wages, the employer shall give written notice to the employee of the amount of wages that the employer concedes to be due and shall pay such amount without condition within the time set by this chapter.
(2) Acceptance by an employee of a payment described in Subsection (1) does not constitute a release as to the balance of the employee's claim.

Amended by Chapter 297, 2011 General Session

34-28-7 Payment at more frequent intervals permitted -- Agreements to contravene chapter prohibited unless approved by division.
Nothing contained in this chapter shall in any way limit or prohibit the payment of wages or compensation at more frequent intervals, or in greater amounts or in full when or before due, but no provisions of this chapter can in any way be contravened or set aside by a mutual agreement unless the agreement is approved by the division.

Amended by Chapter 240, 1996 General Session

34-28-9 Enforcement of chapter -- Rulemaking authority.
(1)
(a) The division shall:
(i) ensure compliance with this chapter;

(ii) investigate any alleged violations of this chapter; and
(iii) determine the validity of a claim for any violation of this chapter that is filed with the division by an employee.
(b) The commission may make rules consistent with this chapter governing wage claims and payment of wages.
(c) The minimum wage claim that the division may accept is $50.
(d) The maximum wage claim that the division may accept is $10,000.
(e) A wage claim shall be filed within one year after the day on which the wages were earned.
(2)
(a) The division may assess against an employer who fails to pay an employee in accordance with this chapter, a penalty of 5% of the unpaid wages owing to the employee which shall be assessed daily until paid for a period not to exceed 20 days.
(b) The division shall:
(i) retain 50% of the money received from a penalty payment under Subsection (2)(a) for the costs of administering this chapter;
(ii) pay all the sums retained under Subsection (2)(b)(i) to the state treasurer; and
(iii) pay the 50% not retained under Subsection (2)(b)(i) to the employee.
(c) Subsections (2)(a) and (b) do not apply to a violation of Subsection 34-28-3(5).
(3)
(a) A person who violates Subsection 34-28-3(5) is subject to a civil fine of:
(i) $50 for the first violation within a one-year period;
(ii) $100 for the second violation within a one-year period;
(iii) $100 for the third violation within a one-year period; and
(iv) $500 for the fourth violation and each subsequent violation within a one-year period.
(b) The division shall deposit the money that the division receives under Subsection (3)(a) into the General Fund as a dedicated credit to the division to pay for the costs of administering this chapter.
(4)
(a) An abstract of any final award under this section may be filed in the office of the clerk of the district court of any county in the state. If so filed, the abstract shall be docketed in the judgment docket of that district court.
(b) The time of the receipt of the abstract shall be noted by the clerk and entered in the judgment docket.
(c) Unless the award was previously satisfied, if an abstract is filed and docketed, the award constitutes a lien upon the employer's real property that is situated in the county in which the abstract is filed for a period of eight years after the day on which the award is granted.
(d) The district court may issue an execution or a renewal on the order within the same time and in the same manner and with the same effect as if the order were a judgment issued by the district court.
(5)
(a) The commission may employ counsel, appoint a representative, or request the attorney general, or the county attorney for the county in which the final award is filed and docketed, to represent the commission on all appeals and to enforce judgments.
(b) The counsel employed by the commission, the attorney general, or the county representing the commission, shall be awarded:
(i) reasonable attorney fees, as specified by the commission; and
(ii) costs for:
(A) appeals when the plaintiff prevails; and

(B) judgment enforcement proceedings.

(6)

(a) The commission may enter into reciprocal agreements with the labor department or a corresponding agency of any other state or with the person, board, officer, or commission authorized to act on behalf of that department or agency, for the collection in any other state of claims or judgments for wages and other demands based upon claims previously assigned to the commission.

(b) The commission may, to the extent provided by any reciprocal agreement entered into under Subsection (6)(a), or by the laws of any other state, maintain actions in the courts of the other states for the collection of any claims for wages, judgments, and other demands and may assign the claims, judgments, and demands to the labor department or an agency of any other state for collection to the extent that may be permitted or provided by the laws of that state or by reciprocal agreement.

(c) The commission may maintain actions in the courts of this state upon assigned claims for wages, judgments, and demands arising in any other state in the same manner and to the same extent that the actions by the commission are authorized when arising in this state if:

(i) the labor department or a corresponding agency of any other state or of any person, board, officer, or commission of that state authorized to act on behalf of the labor department or corresponding agency requests in writing that the commission commence and maintain the action; and

(ii) the other state by legislation or reciprocal agreement extends the same comity to this state.

Amended by Chapter 461, 2017 General Session

34-28-9.5 Private cause of action.

(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.

(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:

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

(b)

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

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

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

(c)

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

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

(3) In an action under this section, the court may award an employee:

(a) actual damages;

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

(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

(ii) 20 days after the day on which the court issues a final order; and
(c) a penalty described in Subsection 34-28-5(1)(c), if applicable.

Amended by Chapter 158, 2024 General Session

34-28-10 Employers' records -- Inspection by division.

(1)
(a) Every employer shall keep a true and accurate record of time worked and wages paid each pay period to each employee who is employed on an hourly or a daily basis in the form required by the commission rules.
(b) The employer shall keep the records on file for at least one year after the entry of the record.
(2) An employer licensed under Title 58, Chapter 55, Utah Construction Trades Licensing Act, shall retain a copy of each pay statement described in Subsection 34-28-3(5) for at least three years after the day on which the employer gives a copy of the pay statement to the employee.
(3) The director of the division or the director's designee may enter any place of employment during business hours to inspect the records described in this section and to ensure compliance with this section.
(4) Any effort of any employer to obstruct the commission in the performance of its duties is considered to be a violation of this chapter and may be punished as any other violation of this chapter.

Amended by Chapter 188, 2014 General Session

34-28-12 Violations -- Misdemeanor.

(1) Any employer who violates or fails to comply with any of the provisions of this chapter is guilty of a class B misdemeanor.
(2) Any employer who shall refuse to pay the wages due and payable when demanded as in this chapter provided, or who shall falsely deny the amount thereof, or that the same is due, with intent to secure for the employer or any other person any discount upon such indebtedness or with intent to annoy, harass, oppress, hinder, delay or defraud the person to whom such indebtedness is due, or who hires additional employees without advising each of them of every wage claim due and unpaid and of every judgment that the employer has failed to satisfy, is guilty of a class B misdemeanor.

Amended by Chapter 148, 2018 General Session

34-28-13 Assignment of wage claims -- Powers of division.

(1) The division may take assignments of wage claims, rights of actions for penalties under Section 34-28-5, mechanics' and other liens of workers and rights of action against sureties, without being bound to any of the technical rules with reference to the validity of the assignments.
(2) The division may prosecute actions for the collection of claims which are valid and enforceable in the courts. The division may join various claimants in one preferred claim or lien, and in case of suit to join them in one cause of action.

Amended by Chapter 240, 1996 General Session

34-28-14 Actions by division as assignee -- Costs need not be advanced.

(1) In all actions brought by the division as assignee under Section 34-28-13, no court costs of any nature shall be required to be advanced nor shall any bond or other security be required from the division in connection with the same.
(2) Any sheriff, constable, or other officer requested by the division to serve summons, writs, complaints, orders, including any garnishment papers, and all necessary and legal papers within his jurisdiction shall do so without requiring the division to advance the fees or furnish any security or bond.
(3) Whenever the division shall require the sheriff, constable, or other officer whose duty it is to seize property or levy thereon in any attachment proceedings to satisfy any wage claim judgment to perform any such duty, this officer shall do so without requiring the division to furnish any security or bond in the action.
(4) The officer in carrying out the provisions of this Subsection (4) is not responsible in damages for any wrongful seizure made in good faith.
(5) Whenever anyone other than the defendant claims the right of possession or ownership to such seized property, then in such case the officer may permit such claimant to have the custody of such property pending a determination of the court as to who has right of possession or ownership of such property.
(6) Any garnishee defendant shall be required to appear and make answer in any such action, as required by law, without having paid to the garnishee defendant in advance witness fees, but such witness fees shall be included as part of the taxable costs of such action. Out of any recovery on a judgment in such a suit, there shall be paid the following: first, the witness fees to the garnishee defendant; second, the wage claims involved; third, the sheriff's or constable's fees; and fourth, the court costs.

Amended by Chapter 297, 2011 General Session

34-28-19 Retaliation prohibited -- Administrative process -- Enforcement -- Rulemaking.

(1)
(a) An employer violates this chapter if the employer takes an action described in Subsection (1)(b) against an employee because:
(i) the employee files a complaint or testifies in a proceeding relative to the enforcement of this chapter;
(ii) the employee is going to file a complaint or testify in a proceeding relative to the enforcement of this chapter; or
(iii) the employer believes that the employee may file a complaint or testify in any proceeding relative to the enforcement of this chapter.
(b) Subsection (1)(a) applies to the following actions of an employer:
(i) the discharge of an employee;
(ii) the demotion of an employee; or
(iii) any other form of retaliation against an employee in the terms, privileges, or conditions of employment.

(2)
(a) An employee claiming to be aggrieved by an action of the employer in violation of Subsection (1) may file with the division a request for agency action.
(b) On receipt of a request for agency action under Subsection (2)(a), the division:
(i) shall conduct an adjudicative proceeding pursuant to Title 63G, Chapter 4, Administrative Procedures Act; and
(ii) may attempt to reach a settlement between the parties through a settlement conference.

(3) If the division determines that a violation has occurred, the division may require the employer to:
  (a) cease and desist any retaliatory action;
  (b) compensate the employee, which compensation may not exceed reimbursement for, and payment of, lost wages and benefits to the employee; or
  (c) do both Subsections (3)(a) and (b).
(4) The division may enforce this section in accordance with Subsections 34-28-9(4) and (5).
(5) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission shall adopt rules, as required, to implement this section.

Amended by Chapter 188, 2014 General Session