

**Effective 12/31/2017**

**Superseded 5/5/2021**

**34A-2-103 Employers enumerated and defined -- Regularly employed -- Statutory employers -- Exceptions.**

- (1)
  - (a) The state, and each county, city, town, and school district in the state are considered employers under this chapter and Chapter 3, Utah Occupational Disease Act.
  - (b) For the purposes of the exclusive remedy in this chapter and Chapter 3, Utah Occupational Disease Act, prescribed in Sections 34A-2-105 and 34A-3-102, the state is considered to be a single employer and includes any office, department, agency, authority, commission, board, institution, hospital, college, university, or other instrumentality of the state.
- (2)
  - (a) Subject to the other provisions of this section, each person, including each public utility and each independent contractor, who regularly employs one or more workers or operatives in the same business, or in or about the same establishment, under any contract of hire, express or implied, oral or written, is considered an employer under this chapter and Chapter 3, Utah Occupational Disease Act.
  - (b) As used in this Subsection (2):
    - (i) "Independent contractor" means any person engaged in the performance of any work for another who, while so engaged, is:
      - (A) independent of the employer in all that pertains to the execution of the work;
      - (B) not subject to the routine rule or control of the employer;
      - (C) engaged only in the performance of a definite job or piece of work; and
      - (D) subordinate to the employer only in effecting a result in accordance with the employer's design.
    - (ii) "Regularly" includes all employments in the usual course of the trade, business, profession, or occupation of the employer, whether continuous throughout the year or for only a portion of the year.
- (3)
  - (a) The client under a professional employer organization agreement regulated under Title 31A, Chapter 40, Professional Employer Organization Licensing Act:
    - (i) is considered the employer of a covered employee; and
    - (ii) subject to Section 31A-40-209, shall secure workers' compensation benefits for a covered employee by complying with Subsection 34A-2-201(1) and commission rules.
  - (b) The division shall promptly inform the Insurance Department if the division has reason to believe that a professional employer organization is not in compliance with Subsection 34A-2-201(1) and commission rules.
- (4) A domestic employer who does not employ one employee or more than one employee at least 40 hours per week is not considered an employer under this chapter and Chapter 3, Utah Occupational Disease Act.
- (5)
  - (a) As used in this Subsection (5):
    - (i)
      - (A) "Agricultural employer" means a person who employs agricultural labor as defined in Subsections 35A-4-206(1) and (2) and does not include employment as provided in Subsection 35A-4-206(3).
      - (B) Notwithstanding Subsection (5)(a)(i)(A), only for purposes of determining who is a member of the employer's immediate family under Subsection (5)(a)(ii), if the agricultural

employer is a corporation, partnership, or other business entity, "agricultural employer" means an officer, director, or partner of the business entity.

- (ii) "Employer's immediate family" means:
    - (A) an agricultural employer's:
      - (I) spouse;
      - (II) grandparent;
      - (III) parent;
      - (IV) sibling;
      - (V) child;
      - (VI) grandchild;
      - (VII) nephew; or
      - (VIII) niece;
    - (B) a spouse of any person provided in Subsections (5)(a)(ii)(A)(II) through (VIII); or
    - (C) an individual who is similar to those listed in Subsection (5)(a)(ii)(A) or (B) as defined by rules of the commission.
  - (iii) "Nonimmediate family" means a person who is not a member of the employer's immediate family.
- (b) For purposes of this chapter and Chapter 3, Utah Occupational Disease Act, an agricultural employer is not considered an employer of a member of the employer's immediate family.
  - (c) For purposes of this chapter and Chapter 3, Utah Occupational Disease Act, an agricultural employer is not considered an employer of a nonimmediate family employee if:
    - (i) for the previous calendar year the agricultural employer's total annual payroll for all nonimmediate family employees was less than \$8,000; or
    - (ii)
      - (A) for the previous calendar year the agricultural employer's total annual payroll for all nonimmediate family employees was equal to or greater than \$8,000 but less than \$50,000; and
      - (B) the agricultural employer maintains insurance that covers job-related injuries of the employer's nonimmediate family employees in at least the following amounts:
        - (I) \$300,000 liability insurance, as defined in Section 31A-1-301; and
        - (II) \$5,000 for health care benefits similar to benefits under health care insurance as defined in Section 31A-1-301.
  - (d) For purposes of this chapter and Chapter 3, Utah Occupational Disease Act, an agricultural employer is considered an employer of a nonimmediate family employee if:
    - (i) for the previous calendar year the agricultural employer's total annual payroll for all nonimmediate family employees is equal to or greater than \$50,000; or
    - (ii)
      - (A) for the previous year the agricultural employer's total payroll for nonimmediate family employees was equal to or exceeds \$8,000 but is less than \$50,000; and
      - (B) the agricultural employer fails to maintain the insurance required under Subsection (5)(c)(ii)(B).
- (6) An employer of agricultural laborers or domestic servants who is not considered an employer under this chapter and Chapter 3, Utah Occupational Disease Act, may come under this chapter and Chapter 3, Utah Occupational Disease Act, by complying with:
    - (a) this chapter and Chapter 3, Utah Occupational Disease Act; and
    - (b) the rules of the commission.
- (7)
    - (a)

- (i) As used in this Subsection (7)(a), "employer" includes any of the following persons that procures work to be done by a contractor notwithstanding whether or not the person directly employs a person:
  - (A) a sole proprietorship;
  - (B) a corporation;
  - (C) a partnership;
  - (D) a limited liability company; or
  - (E) a person similar to one described in Subsections (7)(a)(i)(A) through (D).
- (ii) If an employer procures any work to be done wholly or in part for the employer by a contractor over whose work the employer retains supervision or control, and this work is a part or process in the trade or business of the employer, the contractor, all persons employed by the contractor, all subcontractors under the contractor, and all persons employed by any of these subcontractors, are considered employees of the original employer for the purposes of this chapter and Chapter 3, Utah Occupational Disease Act.
- (b) Any person who is engaged in constructing, improving, repairing, or remodeling a residence that the person owns or is in the process of acquiring as the person's personal residence may not be considered an employee or employer solely by operation of Subsection (7)(a).
- (c) A partner in a partnership or an owner of a sole proprietorship is not considered an employee under Subsection (7)(a) if the employer who procures work to be done by the partnership or sole proprietorship obtains and relies on either:
  - (i) a valid certification of the partnership's or sole proprietorship's compliance with Section 34A-2-201 indicating that the partnership or sole proprietorship secured the payment of workers' compensation benefits pursuant to Section 34A-2-201; or
  - (ii) if a partnership or sole proprietorship with no employees other than a partner of the partnership or owner of the sole proprietorship, a workers' compensation coverage waiver issued pursuant to Part 10, Workers' Compensation Coverage Waivers Act, stating that:
    - (A) the partnership or sole proprietorship is customarily engaged in an independently established trade, occupation, profession, or business; and
    - (B) the partner or owner personally waives the partner's or owner's entitlement to the benefits of this chapter and Chapter 3, Utah Occupational Disease Act, in the operation of the partnership or sole proprietorship.
- (d) A director or officer of a corporation is not considered an employee under Subsection (7)(a) if the director or officer is excluded from coverage under Subsection 34A-2-104(4).
- (e) A contractor or subcontractor is not an employee of the employer under Subsection (7)(a), if the employer who procures work to be done by the contractor or subcontractor obtains and relies on either:
  - (i) a valid certification of the contractor's or subcontractor's compliance with Section 34A-2-201; or
  - (ii) if a partnership, corporation, or sole proprietorship with no employees other than a partner of the partnership, officer of the corporation, or owner of the sole proprietorship, a workers' compensation coverage waiver issued pursuant to Part 10, Workers' Compensation Coverage Waivers Act, stating that:
    - (A) the partnership, corporation, or sole proprietorship is customarily engaged in an independently established trade, occupation, profession, or business; and
    - (B) the partner, corporate officer, or owner personally waives the partner's, corporate officer's, or owner's entitlement to the benefits of this chapter and Chapter 3, Utah Occupational Disease Act, in the operation of the partnership's, corporation's, or sole proprietorship's enterprise under a contract of hire for services.

(f)

- (i) For purposes of this Subsection (7)(f), "eligible employer" means a person who:
  - (A) is an employer; and
  - (B) procures work to be done wholly or in part for the employer by a contractor, including:
    - (I) all persons employed by the contractor;
    - (II) all subcontractors under the contractor; and
    - (III) all persons employed by any of these subcontractors.
- (ii) Notwithstanding the other provisions in this Subsection (7), if the conditions of Subsection (7)(f)(iii) are met, an eligible employer is considered an employer for purposes of Section 34A-2-105 of the contractor, subcontractor, and all persons employed by the contractor or subcontractor described in Subsection (7)(f)(i)(B).
- (iii) Subsection (7)(f)(ii) applies if the eligible employer:
  - (A) under Subsection (7)(a) is liable for and pays workers' compensation benefits as an original employer under Subsection (7)(a) because the contractor or subcontractor fails to comply with Section 34A-2-201;
  - (B)
    - (I) secures the payment of workers' compensation benefits for the contractor or subcontractor pursuant to Section 34A-2-201;
    - (II) procures work to be done that is part or process of the trade or business of the eligible employer; and
    - (III) does the following with regard to a written workplace accident and injury reduction program that meets the requirements of Subsection 34A-2-111(3)(d):
      - (Aa) adopts the workplace accident and injury reduction program;
      - (Bb) posts the workplace accident and injury reduction program at the work site at which the eligible employer procures work; and
      - (Cc) enforces the workplace accident and injury reduction program according to the terms of the workplace accident and injury reduction program; or
  - (C)
    - (I) obtains and relies on:
      - (Aa) a valid certification described in Subsection (7)(c)(i) or (7)(e)(i);
      - (Bb) a workers' compensation coverage waiver described in Subsection (7)(c)(ii) or (7)(e)(ii); or
      - (Cc) proof that a director or officer is excluded from coverage under Subsection 34A-2-104(4);
    - (II) is liable under Subsection (7)(a) for the payment of workers' compensation benefits if the contractor or subcontractor fails to comply with Section 34A-2-201;
    - (III) procures work to be done that is part or process in the trade or business of the eligible employer; and
    - (IV) does the following with regard to a written workplace accident and injury reduction program that meets the requirements of Subsection 34A-2-111(3)(d):
      - (Aa) adopts the workplace accident and injury reduction program;
      - (Bb) posts the workplace accident and injury reduction program at the work site at which the eligible employer procures work; and
      - (Cc) enforces the workplace accident and injury reduction program according to the terms of the workplace accident and injury reduction program.

(8)

- (a) For purposes of this Subsection (8), "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.
- (b) For purposes of this chapter and Chapter 3, Utah Occupational Disease Act, 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 holds, directly or indirectly, an ownership interest in the unincorporated entity. Notwithstanding Subsection (7)(c) and Subsection 34A-2-104(3), the unincorporated entity shall provide the individual who holds the ownership interest workers' compensation coverage under this chapter and Chapter 3, Utah Occupational Disease Act, unless the presumption is rebutted under Subsection (8)(c).
- (c) 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 (8)(b) 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.
- (d) As part of the rules made under Subsection (8)(c), 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."
- (9)
- (a) As used in this Subsection (9), "home and community based services" means one or more of the following services provided to an individual with a disability or to the individual's family that helps prevent the individual with a disability from being placed in a more restrictive setting:
- (i) respite care;
  - (ii) skilled nursing;
  - (iii) nursing assistant services;
  - (iv) home health aide services;
  - (v) personal care and attendant services;
  - (vi) other in-home care, such as support for the daily activities of the individual with a disability;
  - (vii) specialized in-home training for the individual with a disability or a family member of the individual with a disability;
  - (viii) specialized in-home support, coordination, and other supported living services; and
  - (ix) other home and community based services unique to the individual with a disability or the family of the individual with a disability that help prevent the individual with a disability from being placed in a more restrictive setting.
- (b) Notwithstanding Subsection (4) and subject to Subsection (9)(c), an individual with a disability or designated representative of the individual with a disability is considered an employer under this chapter and Chapter 3, Utah Occupational Disease Act, of an individual who provides home and community based services if the individual with a disability or designated representative of the individual with a disability:
- (i) employs the individual to provide home and community based services for seven hours per week or more; and

- (ii) pays the individual providing the home and community based services from state or federal money received by the individual with a disability or designated representative of the individual with a disability to fund home and community based services, including through a person designated by the Secretary of the Treasury in accordance with Section 3504, Internal Revenue Code, as a fiduciary, agent, or other person who has the control, receipt, custody, or disposal of, or pays the wages of, the individual providing the home and community based services.
  - (c) The state and federal money received by an individual with a disability or designated representative of an individual with a disability shall include the cost of the workers' compensation coverage required by this Subsection (9) in addition to the money necessary to fund the home and community based services that the individual with a disability or family of the individual with a disability is eligible to receive so that the home and community based services are not reduced in order to pay for the workers' compensation coverage required by this Subsection (9).
- (10)
  - (a) For purposes of this Subsection (10), "federal executive agency" means an executive agency, as defined in 5 U.S.C. Sec. 105, of the federal government.
  - (b) For purposes of determining whether two or more persons are considered joint employers under this chapter or Chapter 3, Utah Occupational Disease Act, 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 .
- (11)
  - (a) As used in this Subsection (11):
    - (i) "Franchise" means the same as that term is defined in 16 C.F.R. Sec. 436.1.
    - (ii) "Franchisee" means the same as that term is defined in 16 C.F.R. Sec. 436.1.
    - (iii) "Franchisor" means the same as that term is defined in 16 C.F.R. Sec. 436.1.
  - (b) For purposes of this chapter, a franchisor is not considered to be an employer of:
    - (i) a franchisee; or
    - (ii) a franchisee's employee.
  - (c) With respect to a specific claim for relief under this chapter made by a franchisee or a franchisee's employee, this Subsection (11) 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.