

Superseded 5/12/2015

34A-5-102 Definitions -- Unincorporated entities.

- (1) As used in this chapter:
- (a) "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.
 - (b) "Bona fide occupational qualification" means a characteristic applying to an employee that:
 - (i) is necessary to the operation; or
 - (ii) is the essence of the employee's employer's business.
 - (c) "Court" means:
 - (i) the district court in the judicial district of the state in which the asserted unfair employment practice occurred; or
 - (ii) if this court is not in session at that time, a judge of the court described in Subsection (1)(c)(i).
 - (d) "Director" means the director of the division.
 - (e) "Disability" means a physical or mental disability as defined and covered by the Americans with Disabilities Act of 1990, 42 U.S.C. Sec. 12102.
 - (f) "Division" means the Division of Antidiscrimination and Labor.
 - (g) "Employee" means any person applying with or employed by an employer.
 - (h)
 - (i) "Employer" means:
 - (A) the state;
 - (B) any political subdivision;
 - (C) a board, commission, department, institution, school district, trust, or agent of the state or its political subdivisions; or
 - (D) a person employing 15 or more employees within the state for each working day in each of 20 calendar weeks or more in the current or preceding calendar year.
 - (ii) "Employer" does not include:
 - (A) a religious organization or association;
 - (B) a religious corporation sole; or
 - (C) any corporation or association constituting a wholly owned subsidiary or agency of any religious organization or association or religious corporation sole.
 - (i) "Employment agency" means any person:
 - (i) undertaking to procure employees or opportunities to work for any other person; or
 - (ii) holding the person out to be equipped to take an action described in Subsection (1)(i)(i).
 - (j) "Joint apprenticeship committee" means any association of representatives of a labor organization and an employer providing, coordinating, or controlling an apprentice training program.
 - (k) "Labor organization" means any organization that exists for the purpose in whole or in part of:
 - (i) collective bargaining;
 - (ii) dealing with employers concerning grievances, terms or conditions of employment; or
 - (iii) other mutual aid or protection in connection with employment.
 - (l) "National origin" means the place of birth, domicile, or residence of an individual or of an individual's ancestors.
 - (m) "On-the-job-training" means any program designed to instruct a person who, while learning the particular job for which the person is receiving instruction:
 - (i) is also employed at that job; or
 - (ii) may be employed by the employer conducting the program during the course of the program, or when the program is completed.

- (n) "Person" means one or more individuals, partnerships, associations, corporations, legal representatives, trusts or trustees, receivers, the state and all political subdivisions and agencies of the state.
 - (o) "Presiding officer" means the same as that term is defined in Section 63G-4-103.
 - (p) "Prohibited employment practice" means a practice specified as discriminatory, and therefore unlawful, in Section 34A-5-106.
 - (q) "Retaliate" means the taking of adverse action by an employer, employment agency, labor organization, apprenticeship program, on-the-job training program, or vocational school against one of its employees, applicants, or members because the employee, applicant, or member has:
 - (i) opposed any employment practice prohibited under this chapter; or
 - (ii) filed charges, testified, assisted, or participated in any way in any proceeding, investigation, or hearing under this chapter.
 - (r) "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.
 - (s) "Vocational school" means any school or institution conducting a course of instruction, training, or retraining to prepare individuals to follow an occupation or trade, or to pursue a manual, technical, industrial, business, commercial, office, personal services, or other nonprofessional occupations.
- (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."