

Effective 5/10/2016

Superseded 7/1/2024

34A-5-102 Definitions -- Unincorporated entities -- Joint employers -- Franchisors.

(1) As used in this chapter:

- (a) "Affiliate" means the same as that term is defined in Section 16-6a-102.
- (b) "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.
- (c) "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.
- (d) "Court" means:
 - (i) the district court in the judicial district of the state in which the asserted unfair employment practice occurs; or
 - (ii) if the district court is not in session at that time, a judge of the court described in Subsection (1)(d)(i).
- (e) "Director" means the director of the division.
- (f) "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.
- (g) "Division" means the Division of Antidiscrimination and Labor.
- (h) "Employee" means a person applying with or employed by an employer.
- (i)
 - (i) "Employer" means:
 - (A) the state;
 - (B) a political subdivision;
 - (C) a board, commission, department, institution, school district, trust, or agent of the state or a political subdivision of the state; 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, a religious corporation sole, a religious association, a religious society, a religious educational institution, or a religious leader, when that individual is acting in the capacity of a religious leader;
 - (B) any corporation or association constituting an affiliate, a wholly owned subsidiary, or an agency of any religious organization, religious corporation sole, religious association, or religious society; or
 - (C) the Boy Scouts of America or its councils, chapters, or subsidiaries.
- (j) "Employment agency" means a 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)(j)(i).
- (k) "Federal executive agency" means an executive agency, as defined in 5 U.S.C. Sec. 105, of the federal government.
- (l) "Franchise" means the same as that term is defined in 16 C.F.R. Sec. 436.1.
- (m) "Franchisee" means the same as that term is defined in 16 C.F.R. Sec. 436.1.
- (n) "Franchisor" means the same as that term is defined in 16 C.F.R. Sec. 436.1.
- (o) "Gender identity" has the meaning provided in the Diagnostic and Statistical Manual (DSM-5). A person's gender identity can be shown by providing evidence, including, but not limited to, medical history, care or treatment of the gender identity, consistent and uniform assertion

of the gender identity, or other evidence that the gender identity is sincerely held, part of a person's core identity, and not being asserted for an improper purpose.

- (p) "Joint apprenticeship committee" means an association of representatives of a labor organization and an employer providing, coordinating, or controlling an apprentice training program.
- (q) "Labor organization" means an 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.
- (r) "National origin" means the place of birth, domicile, or residence of an individual or of an individual's ancestors.
- (s) "On-the-job-training" means a 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.
- (t) "Person" means:
 - (i) one or more individuals, partnerships, associations, corporations, legal representatives, trusts or trustees, or receivers;
 - (ii) the state; and
 - (iii) a political subdivision of the state.
- (u) "Pregnancy, childbirth, or pregnancy-related conditions" includes breastfeeding or medical conditions related to breastfeeding.
- (v) "Presiding officer" means the same as that term is defined in Section 63G-4-103.
- (w) "Prohibited employment practice" means a practice specified as discriminatory, and therefore unlawful, in Section 34A-5-106.
- (x) "Religious leader" means an individual who is associated with, and is an authorized representative of, a religious organization or association or a religious corporation sole, including a member of clergy, a minister, a pastor, a priest, a rabbi, an imam, or a spiritual advisor.
- (y) "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:
 - (i) opposes an employment practice prohibited under this chapter; or
 - (ii) files charges, testifies, assists, or participates in any way in a proceeding, investigation, or hearing under this chapter.
- (z) "Sexual orientation" means an individual's actual or perceived orientation as heterosexual, homosexual, or bisexual.
- (aa) "Undue hardship" means an action that requires significant difficulty or expense when considered in relation to factors such as the size of the entity, the entity's financial resources, and the nature and structure of the entity's operation.
- (bb) "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.
- (cc) "Vocational school" means a 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."
- (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.