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**AMENDMENTS TO AGRICULTURAL  
EXEMPTION FOR AGRICULTURAL WORKERS**

1998 GENERAL SESSION

STATE OF UTAH

**Sponsor: Robert C. Steiner**

AN ACT RELATING TO LABOR; DEFINING TERMS; MODIFYING EXEMPTION FOR AGRICULTURAL WORKERS; MAKING TECHNICAL CORRECTIONS; AND PROVIDING AN EFFECTIVE DATE.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:

**34A-2-103**, as last amended by Chapter 201 and renumbered and amended by Chapter 375, Laws of Utah 1997

*Be it enacted by the Legislature of the state of Utah:*

Section 1. Section **34A-2-103** is amended to read:

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

(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) Except as provided in Subsection (4), 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. As used in this Subsection (2):

1            ~~[(b)]~~ (a) "Independent contractor" means any person engaged in the performance of any  
2 work for another who, while so engaged, is:

3            (i) independent of the employer in all that pertains to the execution of the work~~[-is]~~;

4            (ii) not subject to the routine rule or control of the employer~~[-is]~~;

5            (iii) engaged only in the performance of a definite job or piece of work~~[-]~~; and [is]

6            (iv) subordinate to the employer only in effecting a result in accordance with the  
7 employer's design.

8            ~~[(a)]~~ (b) "Regularly" includes all employments in the usual course of the trade, business,  
9 profession, or occupation of the employer, whether continuous throughout the year or for only a  
10 portion of the year.

11            (3) (a) The client company in an employee leasing arrangement under Title 58, Chapter  
12 59, Employee Leasing Company Licensing Act, is considered the employer of leased employees  
13 and shall secure workers' compensation benefits for them by complying with Subsection  
14 34A-2-201(1)(a) or (b) and commission rules.

15            (b) Insurance carriers may underwrite workers' compensation secured in accordance with  
16 Subsection (3)(a) showing the leasing company as the named insured and each client company as  
17 an additional insured by means of individual endorsements.

18            (c) Endorsements shall be filed with the division as directed by commission rule.

19            (d) The division shall promptly inform the Division of Occupation and Professional  
20 Licensing within the Department of Commerce if the division has reason to believe that an  
21 employee leasing company is not in compliance with Subsection 34A-2-201(1)(a) or (b) and  
22 commission rules.

23            ~~[(4) (a) An agricultural employer is not considered an employer under this chapter and  
24 Chapter 3, Utah Occupational Disease Act, if:]~~

25            ~~[(i) (A) the employer's employees are all members of the employer's immediate family;  
26 and]~~

27            ~~[(B) the employer has a proprietary interest in the farm where they work; or]~~

28            ~~[(ii) the employer employed five or fewer persons other than immediate family members  
29 for 40 hours or more per week per employee for 13 consecutive weeks during any part of the  
30 preceding 12 months.]~~

31            ~~[(b)]~~ (4) A domestic employer who does not employ one employee or more than one

1 employee at least 40 hours per week is not considered an employer under this chapter and Chapter  
2 3, Utah Occupational Disease Act.

3 (5) (a) As used in this Subsection (5):

4 (i) (A) "Agricultural employer" means a person who employs agricultural labor as defined  
5 in Section 35A-4-206.

6 (B) Notwithstanding Subsection (5)(a)(i)(A), only for purposes of determining who is a  
7 member of the employer's immediate family under Subsection (5)(a)(ii), if the agricultural  
8 employer is a corporation, partnership, limited liability company, or other business entity,  
9 "agricultural employer" includes an officer, director, partner, or member of the business entity.

10 (ii) "Employer's immediate family" means:

11 (A) an agricultural employer's:

12 (I) spouse;

13 (II) grandparent;

14 (III) parent;

15 (IV) sibling;

16 (V) child; or

17 (VI) grandchild; or

18 (B) a spouse of any person provided in Subsection (5)(a)(ii)(A)(II) through (VI).

19 (iii) "Nonimmediate family" means a person who is not a member of the employer's  
20 immediate family.

21 (iv) "Workers' compensation threshold amount" means:

22 (A) for a calendar year beginning on January 1, 1996, \$25,000;

23 (B) for the calendar year beginning on January 1, 1997, \$20,000;

24 (C) for the calendar year beginning on January 1, 1998, \$15,000;

25 (D) for the calendar year beginning on January 1, 1999, \$10,000;

26 (E) for the calendar year beginning on or after January 1, 2000, \$5,000; and

27 (F) for a calendar year beginning on or after January 1, 2001, \$0.

28 (b) For purposes of this chapter and Chapter 3, Utah Occupational Disease Act:

29 (i) an agricultural employer is not considered an employer of the employer's immediate  
30 family; and

31 (ii) except as provided in Subsection (5)(c)(ii), an agricultural employer is not considered

1 an employer of a nonimmediate family employee for a calendar year if for the previous calendar  
2 year the agricultural employer's total annual payroll for all nonimmediate family employees was  
3 less than the workers' compensation threshold amount for the previous calendar year.

4 (c) For purposes of this chapter and Chapter 3, Utah Occupational Disease Act, an  
5 agricultural employer is considered an employer of a nonimmediate family employee in a calendar  
6 year:

7 (i) if for the previous calendar year the agricultural employer's total annual payroll for all  
8 nonimmediate family employees is equal to or greater than the workers' compensation threshold  
9 amount for the previous calendar year; or

10 (ii) beginning on the first day of the month immediately following the day that the  
11 agricultural employer's total payroll for nonimmediate family employees for that calendar year is  
12 equal to or exceeds the workers' compensation threshold amount for that calendar year.

13 ~~[(5)]~~ (6) An employer of agricultural laborers or domestic servants who is not considered  
14 an employer under this chapter and Chapter 3, Utah Occupational Disease Act, may come under  
15 this chapter and Chapter 3, Utah Occupational Disease Act, by complying with:

16 (a) this chapter and Chapter 3, Utah Occupational Disease Act~~[-];~~ and

17 (b) the rules of the commission.

18 ~~[(6)]~~ (7) (a) If any person who is an employer procures any work to be done wholly or in  
19 part for the employer by a contractor over whose work the employer retains supervision or control,  
20 and this work is a part or process in the trade or business of the employer, the contractor, all  
21 persons employed by the contractor, all subcontractors under the contractor, and all persons  
22 employed by any of these subcontractors, are considered employees of the original employer for  
23 the purposes of this chapter and Chapter 3, Utah Occupational Disease Act.

24 (b) Any person who is engaged in constructing, improving, repairing, or remodelling a  
25 residence that the person owns or is in the process of acquiring as the person's personal residence  
26 may not be considered an employee or employer solely by operation of Subsection ~~[(6)]~~ (7)(a).

27 (c) A partner in a partnership or an owner of a sole proprietorship may not be considered  
28 an employee under Subsection ~~[(6)]~~ (7)(a) if the employer who procures work to be done by the  
29 partnership or sole proprietorship obtains and relies on either:

30 (i) a valid certification of the partnership's or sole proprietorship's compliance with Section  
31 34A-2-201 indicating that the partnership or sole proprietorship secured the payment of workers'

1 compensation benefits pursuant to Section 34A-2-201; or

2 (ii) if a partnership or sole proprietorship with no employees other than a partner of the  
3 partnership or owner of the sole proprietorship, a workers' compensation policy issued by an  
4 insurer pursuant to Subsection 31A-21-104(8) stating that:

5 (A) the partnership or sole proprietorship is customarily engaged in an independently  
6 established trade, occupation, profession, or business; and

7 (B) the partner or owner personally waives the partner's or owner's entitlement to the  
8 benefits of this chapter and Chapter 3, Utah Occupational Disease Act, in the operation of the  
9 partnership or sole proprietorship.

10 (d) A director or officer of a corporation may not be considered an employee under  
11 Subsection [~~(6)~~] (7)(a) if the director or officer is excluded from coverage under Subsection  
12 34A-2-104(4).

13 (e) A contractor or subcontractor is not an employee of the employer under Subsection  
14 [~~(6)~~] (7)(a), if the employer who procures work to be done by the contractor or subcontractor  
15 obtains and relies on either:

16 (i) a valid certification of the contractor's or subcontractor's compliance with Section  
17 34A-2-201; or

18 (ii) if a partnership, corporation, or sole proprietorship with no employees other than a  
19 partner of the partnership, officer of the corporation, or owner of the sole proprietorship, a workers'  
20 compensation policy issued by an insurer pursuant to Subsection 31A-21-104(8) stating that:

21 (A) the partnership, corporation, or sole proprietorship is customarily engaged in an  
22 independently established trade, occupation, profession, or business; and

23 (B) the partner, corporate officer, or owner personally waives the partner's, corporate  
24 officer's, or owner's entitlement to the benefits of this chapter and Chapter 3, Utah Occupational  
25 Disease Act, in the operation of the partnership's, corporation's, or sole proprietorship's enterprise  
26 under a contract of hire for services.

27 Section 2. **Effective date.**

28 This act takes effect on July 1, 1998.

**Legislative Review Note**  
**as of 12-29-97 8:43 AM**

A limited legal review of this bill raises no obvious constitutional or statutory concerns.

**Office of Legislative Research and General Counsel**