

**EXEMPTION FOR DOMESTIC WORKERS FOR PERSONS  
ELIGIBLE FOR STATE AND FEDERAL PROGRAMS**

2001 GENERAL SESSION

STATE OF UTAH

**Sponsor: Trisha S. Beck**

**This act modifies the Utah Labor Code to exempt certain domestic workers from coverage under workers' compensation provisions and to make technical and conforming changes.**

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

AMENDS:

**34A-2-104**, as last amended by Chapter 45, Laws of Utah 1998

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

Section 1. Section **34A-2-104** is amended to read:

**34A-2-104. "Employee," "worker," or "operative" defined -- Mining lessees and sublessees -- Corporate officers and directors -- Real estate agents and brokers -- Prison inmates -- Insurance agents -- Certain domestic workers.**

(1) As used in this chapter and Chapter 3, Utah Occupational Disease Act, "employee," "worker," and "operative" mean:

(a) (i) each elective and appointive officer and any other person[;];

(A) in the service of;

(I) the state[;]; [~~or of any~~]

(II) a county, city, or town[;] within the state; or

(III) a school district within the state[;];

(B) serving the state, or any county, city, town, or school district under [~~any~~];

(I) an election [~~or~~];

(II) appointment[;]; or [~~under~~]

(III) any contract of hire, express or implied, written or oral[;]; and

(ii) including [~~each~~];

(A) an officer [~~and~~] or employee of the state institutions of learning; and [~~members~~]

(B) a member of the National Guard while on state active duty; and

(b) each person in the service of any employer, as defined in Section 34A-2-103, who employs one or more workers or operatives regularly in the same business, or in or about the same establishment[;];

(i) under any contract of hire[;];

(A) express or implied[;]; and

(B) oral or written[;];

(ii) including aliens and minors, whether legally or illegally working for hire[~~, but~~]; and

(iii) not including any person whose employment:

(A) is casual; and

(B) not in the usual course of the trade, business, or occupation of the employee's employer.

(2) (a) Unless a lessee provides coverage as an employer under this chapter and Chapter 3, any lessee in mines or of mining property and each employee and sublessee of the lessee shall be:

(i) covered for compensation by the lessor under this chapter and Chapter 3[~~, and shall be~~];

(ii) subject to this chapter and Chapter 3; and

(iii) entitled to [its] the benefits of this chapter and Chapter 3, to the same extent as if [they] the lessee, employee, or sublessee were employees of the lessor drawing the wages paid employees for substantially similar work.

(b) The lessor may deduct from the proceeds of ores mined by the lessees an amount equal to the insurance premium for that type of work.

(3) (a) A partnership or sole proprietorship may elect to include any partner of the partnership or owner of the sole proprietorship as an employee of the partnership or sole proprietorship under this chapter and Chapter 3.

(b) If a partnership or sole proprietorship makes an election under Subsection (3)(a), [it] the partnership or sole proprietorship shall serve written notice upon its insurance carrier naming the persons to be covered.

(c) A partner of a partnership or owner of a sole proprietorship may not be considered an employee of the partner's partnership or the owner's sole proprietorship under this chapter or Chapter 3[~~, Utah Occupational Disease Act,~~] until [this] the notice [has been] described in Subsection (3)(b)

is given.

~~[(c)]~~ (d) For premium rate making, the insurance carrier shall assume the salary or wage of the partner or sole proprietor electing coverage under Subsection (3)(a) to be 100% of the state's average weekly wage.

(4) (a) A corporation may elect not to include any director or officer of the corporation as an employee under this chapter and Chapter 3~~[-Utah Occupational Disease Act]~~.

(b) If a corporation makes an election under Subsection (4)(a), ~~[it]~~ the corporation shall serve written notice upon its insurance carrier naming the persons to be excluded from coverage.

(c) A director or officer of a corporation is considered an employee under this chapter and Chapter 3~~[-Utah Occupational Disease Act,]~~ until ~~[this]~~ the notice ~~[has been]~~ described in Subsection (4)(b) is given.

(5) As used in this chapter and Chapter 3, "employee," "worker," and "operative" do not include:

(a) a real estate sales agent or real estate broker, as defined in Section 61-2-2, who performs services in that capacity for a real estate broker if:

(i) substantially all of the real estate sales agent's or associated broker's income for services is from real estate commissions; and

(ii) the services of the real estate sales agent or associated broker are performed under a written contract that:

(A) the real estate agent is an independent contractor; and

(B) the real estate sales agent or associated broker is not to be treated as an employee for federal income tax purposes;

(b) an offender performing labor under Section 64-13-16 or 64-13-19, except as required by federal statute or regulation; ~~[or]~~

(c) an individual who for an insurance agent or broker, as defined in Section 31A-1-301, solicits, negotiates, places or procures insurance if:

(i) substantially all of the individual's income from those services is from insurance commissions; and

(ii) the services of the individual are performed under a written contract that states that the individual:

(A) is an independent contractor;

(B) is not to be treated as an employee for federal income tax purposes; and

(C) can derive income from more than one insurance company[-]; or

(d) notwithstanding Subsection 34A-2-103(4), an individual who provides domestic work for a person if:

(i) the person for whom the domestic work is being provided receives or is eligible to receive the domestic work under a state or federal program designed to pay the costs of domestic work to prevent the person from being placed in:

(A) an institution; or

(B) a more restrictive placement than where that person resides at the time the person receives the domestic work;

(ii) the individual is paid by a person designated by the Secretary of the Treasury in accordance with Section 3504, Internal Revenue Code, as a fiduciary, agent, or other person that has the control, receipt, custody, or disposal of, or pays the wages of the individual; and

(iii) the domestic work is performed under a written contract that notifies the individual that the individual is not an employee under this chapter or Chapter 3.

(6) An individual described in Subsection (5)(d) may become an employee under this chapter and Chapter 3 if the employer of the individual complies with:

(a) this chapter and Chapter 3; and

(b) commission rules.