

**UNEMPLOYMENT BENEFITS - EXEMPTION  
FOR CORPORATE OFFICERS**

2002 GENERAL SESSION  
STATE OF UTAH

**Sponsor: Parley G. Hellewell**

**This act modifies the Employment Security Act. The act provides an exemption from unemployment insurance taxes for corporate officers. This act provides an effective date.**

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

AMENDS:

**35A-4-205**, as last amended by Chapter 21, Laws of Utah 1999

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

Section 1. Section **35A-4-205** is amended to read:

**35A-4-205. Exempt employment.**

(1) If the services are also exempted under the Federal Unemployment Tax Act, as amended, employment does not include:

(a) service performed prior to January 1, 1973, in the employ of a state, except as provided in Subsection 35A-4-204(2)(d);

(b) service performed in the employ of a political subdivision of a state, except as provided in Subsection 35A-4-204(2)(d);

(c) service performed in the employ of the United States Government or an instrumentality of the United States immune under the United States Constitution from the contributions imposed by this chapter, except that, to the extent that the Congress of the United States shall permit, this chapter shall apply to those instrumentalities and to services performed for the instrumentalities to the same extent as to all other employers, employing units, individuals and services; provided, that if this state is not certified for any year by the Secretary of Labor under Section 3304 of the Federal Internal Revenue Code of 1954, 26 U.S.C. 3304, the payments required of the instrumentalities with respect to that year shall be refunded by the division from the fund in the



28 same manner and within the same period as is provided in Subsection 35A-4-306(5) with respect  
29 to contributions erroneously collected;

30 (d) service performed after June 30, 1939, as an employee representative as defined in the  
31 Railroad Unemployment Insurance Act, 45 U.S.C. 351 et seq., and service performed after June  
32 30, 1939, for an employer as defined in that act except that if the division determines that any  
33 employing unit which is principally engaged in activities not included in those definitions  
34 constitutes such an employer only to the extent of an identifiable and separable portion of its  
35 activities, this exemption applies only to services performed for the identifiable and separable  
36 portion of its activities;

37 (e) agricultural labor as defined in Section 35A-4-206;

38 (f) domestic service in a private home, local college club, or local chapter of a college  
39 fraternity or sorority, except as provided in Subsection 35A-4-204(2)(k);

40 (g) (i) service performed in the employ of a school, college, or university, if the service  
41 is performed:

42 (A) by a student who is enrolled and is regularly attending classes at that school, college,  
43 or university; or

44 (B) by the spouse of the student, if the spouse is advised, at the time the spouse  
45 commences to perform that service, that the employment of that spouse to perform that service is  
46 provided under a program to provide financial assistance to the student by the school, college, or  
47 university, and that the employment will not be covered by any program of unemployment  
48 insurance;

49 (ii) service performed by an individual who is enrolled at a nonprofit or public educational  
50 institution, that normally maintains a regular faculty and curriculum and normally has a regularly  
51 organized body of students in attendance at the place where its educational activities are carried  
52 on, as a student in a full-time program taken for credit at the institution, that combines academic  
53 instruction with work experience, if the service is an integral part of the program and the institution  
54 has so certified to the employer, but this subsection does not apply to service performed in a  
55 program established for or on behalf of an employer or group of employers; or

56 (iii) service performed in the employ of a hospital, if the service is performed by a patient  
57 of the hospital;

58 (h) service performed by an individual in the employ of the individual's son, daughter, or

59 spouse, and service performed by a child under the age of 21 in the employ of the child's parent;

60 (i) for the purposes of Subsections 35A-4-204(2)(d) and (e), service performed:

61 (i) in the employ of:

62 (A) a church or convention or association of churches; or

63 (B) an organization that is operated primarily for religious purposes and that is operated,

64 supervised, controlled, or principally supported by a church or convention or association of

65 churches;

66 (ii) by a duly ordained, commissioned, or licensed minister of a church in the exercise of

67 the minister's ministry or by a member of a religious order in the exercise of duties required by the

68 order;

69 (iii) after December 31, 1977, in the employ of a governmental entity referred to in

70 Subsection 35A-4-204(2) if the service is performed by an individual in the exercise of the

71 individual's duties:

72 (A) as an elected official;

73 (B) as a member of a legislative body or the judiciary of the state or its political

74 subdivisions;

75 (C) as a member of the National Guard or Air National Guard;

76 (D) as an employee serving on a temporary basis in case of fire, storm, snow, earthquake,

77 flood, or similar emergency; or

78 (E) in an advisory position or a policymaking position the performance of the duties of

79 which ordinarily does not require more than eight hours per week;

80 (iv) in a facility conducted for the purpose of carrying out a program of rehabilitation for

81 individuals whose earning capacity is impaired by age, physical or mental deficiency, injury, or

82 providing a remunerative work for individuals who, because of their impaired physical or mental

83 capacity, cannot be readily absorbed in the competitive labor market by an individual receiving that

84 rehabilitation or remunerative work;

85 (v) as part of an unemployment work-relief or work-training program, assisted or financed

86 in whole or in part by any federal agency or an agency of a state or political subdivision of the

87 state, by an individual receiving the work-relief or work-training;

88 (vi) prior to January 1, 1978, for a hospital in a state prison or other state correctional

89 institution by an inmate of the prison or correctional institution and after December 31, 1977, by

90 an inmate of a custodial or penal institution;

91 (j) casual labor not in the course of the employing unit's trade or business;

92 (k) service performed in any calendar quarter in the employ of any organization exempt  
93 from income tax under Subsection 501(a), Internal Revenue Code, other than an organization  
94 described in Subsection 401(a) or Section 521 Internal Revenue Code, if the remuneration for the  
95 service is less than \$50;

96 (l) service is performed in the employ of a foreign government, including service as a  
97 consular or other officer, other employee, or a nondiplomatic representative;

98 (m) service performed in the employ of an instrumentality wholly owned by a foreign  
99 government:

100 (i) if the service is of a character similar to that performed in foreign countries by  
101 employees of the United States government or its instrumentalities; and

102 (ii) if the division finds that the United States Secretary of State has certified to the United  
103 States Secretary of the Treasury that the foreign government with respect to whose instrumentality  
104 exemption is claimed grants an equivalent exemption with respect to similar service performed in  
105 the foreign country by employees of the United States government and its instrumentalities;

106 (n) service performed by an individual for a person as an insurance agent or as an  
107 insurance solicitor, if all the service performed by the individual for that person is performed for  
108 remuneration solely by way of commission;

109 (o) service performed by an individual in the delivery or distribution of newspapers or  
110 shopping news, not including delivery or distribution to any point for subsequent delivery or  
111 distribution;

112 (p) service covered by an arrangement between the division and the agency charged with  
113 the administration of any other state or federal unemployment compensation law under which all  
114 services performed by an individual for an employing unit during the period covered by the  
115 employing unit's duly approved election, are considered to be performed entirely within the  
116 agency's state or under the federal law;

117 (q) service performed by lessees engaged in metal mining under lease agreements, unless  
118 the individual lease agreement, or the practice in actual operation under the agreement, is such as  
119 would constitute the lessees' employees of the lessor at common law;

120 (r) service performed by an individual for a person as a licensed real estate agent or

121 salesman if all the service performed by the individual for that person is performed for  
122 remuneration solely by way of commission;

123 (s) service performed by an individual for a person as a licensed securities agent or  
124 salesman, registered representative, if the service performed by the individual for that person is  
125 performed for remuneration solely by way of commission;

126 (t) services as an outside salesman paid solely by way of commission if the services were  
127 performed outside of all places of business of the enterprises for which the services are performed  
128 except:

129 (i) as provided in Subsection 35A-4-204(2)(i); or  
130 (ii) if the services would constitute employment at common law;

131 (u) service performed by an individual as a telephone survey conductor or pollster if:  
132 (i) the individual does not perform the service on the principal's premises; and  
133 (ii) the individual is paid for the service solely on a piece-rate or commission basis; ~~or~~

134 (v) service performed by a nurse licensed or registered under Title 58, Chapter 31b, Nurse  
135 Practice Act, if:  
136 (i) the service of the nurse is performed in the home of the patient;  
137 (ii) substantially all of the nurse's compensation for the service is from health insurance  
138 proceeds; and  
139 (iii) no compensation or fee for the service is paid to any agency or company as a business  
140 furnishing nursing services[-]; or

141 (w) services performed by:  
142 (i) the officers of a corporation who are the sole shareholders of the corporation; or  
143 (ii) an officer of a corporation who is the sole shareholder, or the only shareholder other  
144 than his or her spouse.

145 (2) "Included and excluded service" means if the services performed during 1/2 or more  
146 of any pay period by an individual for the person employing the individual constitute employment,  
147 all the services of the individual for the period are considered to be employment; but if the services  
148 performed during more than half of any such pay period by an individual for the person employing  
149 the individual do not constitute employment, then none of the services of the individual for the  
150 period are considered to be employment. As used in this Subsection (2), "pay period" means a  
151 period of not more than 31 consecutive days for which payment of remuneration is ordinarily made

152 to the individual by the person employing the individual.

153           Section 2. **Effective date.**

154           This act takes effect on July 1, 2002.

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**Legislative Review Note**

**as of 2-6-02 3:32 PM**

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

**Office of Legislative Research and General Counsel**