

**WORKERS' COMPENSATION AND UNINCORPORATED
ENTITIES AMENDMENTS**

2011 THIRD SPECIAL SESSION

STATE OF UTAH

Chief Sponsor: Michael T. Morley

Senate Sponsor: Karen Mayne

LONG TITLE

General Description:

This bill amends the Workers' Compensation Act to address workers' compensation requirements for unincorporated entities.

Highlighted Provisions:

This bill:

- ▶ addresses workers' compensation coverage requirements for unincorporated entities;
- and
- ▶ makes technical and conforming amendments.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill provides an immediate effective date.

This bill provides retrospective operation to July 1, 2011.

Utah Code Sections Affected:

AMENDS:

34A-2-103, as last amended by Laws of Utah 2011, Chapters 328 and 413

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.

30 (1) (a) The state, and each county, city, town, and school district in the state are
31 considered employers under this chapter and Chapter 3, Utah Occupational Disease Act.

32 (b) For the purposes of the exclusive remedy in this chapter and Chapter 3, Utah
33 Occupational Disease Act prescribed in Sections 34A-2-105 and 34A-3-102, the state is
34 considered to be a single employer and includes any office, department, agency, authority,
35 commission, board, institution, hospital, college, university, or other instrumentality of the
36 state.

37 (2) (a) Except as provided in Subsection (4), each person, including each public utility
38 and each independent contractor, who regularly employs one or more workers or operatives in
39 the same business, or in or about the same establishment, under any contract of hire, express or
40 implied, oral or written, is considered an employer under this chapter and Chapter 3, Utah
41 Occupational Disease Act.

42 (b) As used in this Subsection (2):

43 (i) "Independent contractor" means any person engaged in the performance of any work
44 for another who, while so engaged, is:

45 (A) independent of the employer in all that pertains to the execution of the work;

46 (B) not subject to the routine rule or control of the employer;

47 (C) engaged only in the performance of a definite job or piece of work; and

48 (D) subordinate to the employer only in effecting a result in accordance with the
49 employer's design.

50 (ii) "Regularly" includes all employments in the usual course of the trade, business,
51 profession, or occupation of the employer, whether continuous throughout the year or for only a
52 portion of the year.

53 (3) (a) The client under a professional employer organization agreement regulated
54 under Title 31A, Chapter 40, Professional Employer Organization Licensing Act:

55 (i) is considered the employer of a covered employee; and

56 (ii) subject to Section 31A-40-209, shall secure workers' compensation benefits for a
57 covered employee by complying with Subsection 34A-2-201(1) or (2) and commission rules.

58 (b) The division shall promptly inform the Insurance Department if the division has
59 reason to believe that a professional employer organization is not in compliance with
60 Subsection 34A-2-201(1) or (2) and commission rules.

61 (4) A domestic employer who does not employ one employee or more than one
62 employee at least 40 hours per week is not considered an employer under this chapter and
63 Chapter 3, Utah Occupational Disease Act.

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

65 (i) (A) "agricultural employer" means a person who employs agricultural labor as
66 defined in Subsections 35A-4-206(1) and (2) and does not include employment as provided in
67 Subsection 35A-4-206(3); and

68 (B) notwithstanding Subsection (5)(a)(i)(A), only for purposes of determining who is a
69 member of the employer's immediate family under Subsection (5)(a)(ii), if the agricultural
70 employer is a corporation, partnership, or other business entity, "agricultural employer" means
71 an officer, director, or partner of the business entity;

72 (ii) "employer's immediate family" means:

73 (A) an agricultural employer's:

74 (I) spouse;

75 (II) grandparent;

76 (III) parent;

77 (IV) sibling;

78 (V) child;

79 (VI) grandchild;

80 (VII) nephew; or

81 (VIII) niece;

82 (B) a spouse of any person provided in Subsection (5)(a)(ii)(A)(II) through (VIII); or

83 (C) an individual who is similar to those listed in Subsections (5)(a)(ii)(A) or (B) as
84 defined by rules of the commission; and

85 (iii) "nonimmediate family" means a person who is not a member of the employer's

86 immediate family.

87 (b) For purposes of this chapter and Chapter 3, Utah Occupational Disease Act, an
88 agricultural employer is not considered an employer of a member of the employer's immediate
89 family.

90 (c) For purposes of this chapter and Chapter 3, Utah Occupational Disease Act, an
91 agricultural employer is not considered an employer of a nonimmediate family employee if:

92 (i) for the previous calendar year the agricultural employer's total annual payroll for all
93 nonimmediate family employees was less than \$8,000; or

94 (ii) (A) for the previous calendar year the agricultural employer's total annual payroll
95 for all nonimmediate family employees was equal to or greater than \$8,000 but less than
96 \$50,000; and

97 (B) the agricultural employer maintains insurance that covers job-related injuries of the
98 employer's nonimmediate family employees in at least the following amounts:

99 (I) \$300,000 liability insurance, as defined in Section 31A-1-301; and

100 (II) \$5,000 for health care benefits similar to benefits under health care insurance as
101 defined in Section 31A-1-301.

102 (d) For purposes of this chapter and Chapter 3, Utah Occupational Disease Act, an
103 agricultural employer is considered an employer of a nonimmediate family employee if:

104 (i) for the previous calendar year the agricultural employer's total annual payroll for all
105 nonimmediate family employees is equal to or greater than \$50,000; or

106 (ii) (A) for the previous year the agricultural employer's total payroll for nonimmediate
107 family employees was equal to or exceeds \$8,000 but is less than \$50,000; and

108 (B) the agricultural employer fails to maintain the insurance required under Subsection
109 (5)(c)(ii)(B).

110 (6) An employer of agricultural laborers or domestic servants who is not considered an
111 employer under this chapter and Chapter 3, Utah Occupational Disease Act, may come under
112 this chapter and Chapter 3, Utah Occupational Disease Act, by complying with:

113 (a) this chapter and Chapter 3, Utah Occupational Disease Act; and

114 (b) the rules of the commission.

115 (7) (a) (i) As used in this Subsection (7)(a), "employer" includes any of the following
116 persons that procures work to be done by a contractor notwithstanding whether or not the
117 person directly employs a person:

118 (A) a sole proprietorship;

119 (B) a corporation;

120 (C) a partnership;

121 (D) a limited liability company; or

122 (E) a person similar to one described in Subsections (7)(a)(i)(A) through (D).

123 (ii) If an employer procures any work to be done wholly or in part for the employer by
124 a contractor over whose work the employer retains supervision or control, and this work is a
125 part or process in the trade or business of the employer, the contractor, all persons employed by
126 the contractor, all subcontractors under the contractor, and all persons employed by any of
127 these subcontractors, are considered employees of the original employer for the purposes of
128 this chapter and Chapter 3, Utah Occupational Disease Act.

129 (b) Any person who is engaged in constructing, improving, repairing, or remodelling a
130 residence that the person owns or is in the process of acquiring as the person's personal
131 residence may not be considered an employee or employer solely by operation of Subsection
132 (7)(a).

133 (c) A partner in a partnership or an owner of a sole proprietorship is not considered an
134 employee under Subsection (7)(a) if the employer who procures work to be done by the
135 partnership or sole proprietorship obtains and relies on either:

136 (i) a valid certification of the partnership's or sole proprietorship's compliance with
137 Section 34A-2-201 indicating that the partnership or sole proprietorship secured the payment of
138 workers' compensation benefits pursuant to Section 34A-2-201; or

139 (ii) if a partnership or sole proprietorship with no employees other than a partner of the
140 partnership or owner of the sole proprietorship, a workers' compensation coverage waiver
141 issued by an insurer pursuant to Part 10, Workers' Compensation Coverage Waivers Act,

142 stating that:

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

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

148 (d) A director or officer of a corporation is not considered an employee under
149 Subsection (7)(a) if the director or officer is excluded from coverage under Subsection
150 34A-2-104(4).

151 (e) A contractor or subcontractor is not an employee of the employer under Subsection
152 (7)(a), if the employer who procures work to be done by the contractor or subcontractor obtains
153 and relies on either:

154 (i) a valid certification of the contractor's or subcontractor's compliance with Section
155 34A-2-201; or

156 (ii) if a partnership, corporation, or sole proprietorship with no employees other than a
157 partner of the partnership, officer of the corporation, or owner of the sole proprietorship, a
158 workers' compensation coverage waiver issued by an insurer pursuant to Part 10, Workers'
159 Compensation Coverage Waivers Act, stating that:

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

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

166 (f) (i) For purposes of this Subsection (7)(f), "eligible employer" means a person who:

167 (A) is an employer; and

168 (B) procures work to be done wholly or in part for the employer by a contractor,
169 including:

170 (I) all persons employed by the contractor;
171 (II) all subcontractors under the contractor; and
172 (III) all persons employed by any of these subcontractors.
173 (ii) Notwithstanding the other provisions in this Subsection (7), if the conditions of
174 Subsection (7)(f)(iii) are met, an eligible employer is considered an employer for purposes of
175 Section 34A-2-105 of the contractor, subcontractor, and all persons employed by the contractor
176 or subcontractor described in Subsection (7)(f)(i)(B).
177 (iii) Subsection (7)(f)(ii) applies if the eligible employer:
178 (A) under Subsection (7)(a) is liable for and pays workers' compensation benefits as an
179 original employer under Subsection (7)(a) because the contractor or subcontractor fails to
180 comply with Section 34A-2-201;
181 (B) (I) secures the payment of workers' compensation benefits for the contractor or
182 subcontractor pursuant to Section 34A-2-201;
183 (II) procures work to be done that is part or process of the trade or business of the
184 eligible employer; and
185 (III) does the following with regard to a written workplace accident and injury
186 reduction program that meets the requirements of Subsection 34A-2-111(3)(d):
187 (Aa) adopts the workplace accident and injury reduction program;
188 (Bb) posts the workplace accident and injury reduction program at the work site at
189 which the eligible employer procures work; and
190 (Cc) enforces the workplace accident and injury reduction program according to the
191 terms of the workplace accident and injury reduction program; or
192 (C) (I) obtains and relies on:
193 (Aa) a valid certification described in Subsection (7)(c)(i) or (7)(e)(i);
194 (Bb) a workers' compensation coverage waiver described in Subsection (7)(c)(ii) or
195 (7)(e)(ii); or
196 (Cc) proof that a director or officer is excluded from coverage under Subsection
197 34A-2-104(4);

198 (II) is liable under Subsection (7)(a) for the payment of workers' compensation benefits
199 if the contractor or subcontractor fails to comply with Section 34A-2-201;

200 (III) procures work to be done that is part or process in the trade or business of the
201 eligible employer; and

202 (IV) does the following with regard to a written workplace accident and injury
203 reduction program that meets the requirements of Subsection 34A-2-111(3)(d):

204 (Aa) adopts the workplace accident and injury reduction program;

205 (Bb) posts the workplace accident and injury reduction program at the work site at
206 which the eligible employer procures work; and

207 (Cc) enforces the workplace accident and injury reduction program according to the
208 terms of the workplace accident and injury reduction program.

209 (8) (a) For purposes of this Subsection (8), "unincorporated entity" means an entity
210 organized or doing business in the state that is not:

211 (i) an individual;

212 (ii) a corporation; or

213 (iii) publicly traded.

214 (b) For purposes of this chapter and Chapter 3, Utah Occupational Disease Act, an
215 unincorporated entity that is required to be licensed under Title 58, Chapter 55, Utah
216 Construction Trades Licensing Act, is ~~considered~~ presumed to be the employer of each
217 individual who holds, directly or indirectly, an ownership interest in the unincorporated entity.
218 Notwithstanding Subsection (7)(c) and Subsection 34A-2-104(3), the unincorporated entity
219 shall provide the individual who holds the ownership interest workers' compensation coverage
220 under this chapter and Chapter 3, Utah Occupational Disease Act unless the presumption is
221 rebutted under Subsection (8)(c).

222 (c) Pursuant to rules made by the commission in accordance with Title 63G, Chapter 3,
223 Utah Administrative Rulemaking Act, an unincorporated entity may rebut the presumption
224 under Subsection (8)(b) for an individual by establishing by clear and convincing evidence that
225 the individual:

- 226 (i) is an active manager of the unincorporated entity;
- 227 (ii) directly or indirectly holds at least an 8% ownership interest in the unincorporated
- 228 entity; or
- 229 (iii) is not subject to supervision or control in the performance of work by:
- 230 (A) the unincorporated entity; or
- 231 (B) a person with whom the unincorporated entity contracts.
- 232 (d) As part of the rules made under Subsection (8)(c), the commission may define:
- 233 (i) "active manager";
- 234 (ii) "directly or indirectly holds at least an 8% ownership interest"; and
- 235 (iii) "subject to supervision or control in the performance of work."

236 **Section 2. Effective date.**

237 If approved by two-thirds of all the members elected to each house, this bill takes effect

238 upon approval by the governor, or the day following the constitutional time limit of Utah

239 Constitution Article VII, Section 8, without the governor's signature, or in the case of a veto,

240 the date of veto override.

241 **Section 3. Retrospective operation.**

242 This bill has retrospective operation to July 1, 2011.