

WORKERS' COMPENSATION REVISIONS

2024 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Anthony E. Loubet

Senate Sponsor: Todd D. Weiler

LONG TITLE

General Description:

This bill modifies provisions of the Workers' Compensation Act related to home and community based services.

Highlighted Provisions:

This bill:

► clarifies the circumstances under which an individual with a disability is the employer of an individual providing home and community based services.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

34A-2-103, as last amended by Laws of Utah 2021, Chapter 286

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 -- Exceptions.

(1) (a) The state, and each county, city, town, and school district in the state are



28 considered employers under this chapter and Chapter 3, Utah Occupational Disease Act.

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

34 (2) (a) Subject to the other provisions of this section, each person, including each
35 public utility and each independent contractor, who regularly employs one or more workers or
36 operatives in the same business, or in or about the same establishment, under any contract of
37 hire, express or implied, oral or written, is considered an employer under this chapter and
38 Chapter 3, Utah Occupational Disease Act.

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

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

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

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

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

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

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

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

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

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

55 (b) The division shall promptly inform the Insurance Department if the division has
56 reason to believe that a professional employer organization is not in compliance with
57 Subsection [34A-2-201](#)(1) and commission rules.

58 (4) A domestic employer who does not employ one employee or more than one

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

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

62 (i) (A) "Agricultural employer" means a person who employs agricultural labor as
63 defined in Subsections 35A-4-206(1) and (2) and does not include employment as provided in
64 Subsection 35A-4-206(3).

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

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

70 (A) an agricultural employer's:

71 (I) spouse;

72 (II) grandparent;

73 (III) parent;

74 (IV) sibling;

75 (V) child;

76 (VI) grandchild;

77 (VII) nephew; or

78 (VIII) niece;

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

80 (C) an individual who is similar to those listed in Subsection (5)(a)(ii)(A) or (B) as
81 defined by rules of the commission.

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

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

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

89 (i) for the previous calendar year the agricultural employer's total annual payroll for all

90 nonimmediate family employees was less than \$8,000; or

91 (ii) (A) for the previous calendar year the agricultural employer's total annual payroll
92 for all nonimmediate family employees was equal to or greater than \$8,000 but less than
93 \$50,000; and

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

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

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

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

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

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

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

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

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

111 (b) the rules of the commission.

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

115 (A) a sole proprietorship;

116 (B) a corporation;

117 (C) a partnership;

118 (D) a limited liability company; or

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

120 (ii) If an employer procures any work to be done wholly or in part for the employer by

121 a contractor over whose work the employer retains supervision or control, and this work is a
122 part or process in the trade or business of the employer, the contractor, all persons employed by
123 the contractor, all subcontractors under the contractor, and all persons employed by any of
124 these subcontractors, are considered employees of the original employer for the purposes of
125 this chapter and Chapter 3, Utah Occupational Disease Act.

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

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

133 (i) a valid certification of the partnership's or sole proprietorship's compliance with
134 Section [34A-2-201](#) indicating that the partnership or sole proprietorship secured the payment of
135 workers' compensation benefits pursuant to Section [34A-2-201](#); or

136 (ii) if a partnership or sole proprietorship with no employees other than a partner of the
137 partnership or owner of the sole proprietorship, a workers' compensation coverage waiver
138 issued pursuant to Part 10, Workers' Compensation Coverage Waivers Act, stating that:

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

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

144 (d) A director or officer of a corporation is not considered an employee under
145 Subsection (7)(a) if the director or officer is excluded from coverage under Subsection
146 [34A-2-104\(4\)](#).

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

150 (i) a valid certification of the contractor's or subcontractor's compliance with Section
151 [34A-2-201](#); or

152 (ii) if a partnership, corporation, or sole proprietorship with no employees other than a
153 partner of the partnership, officer of the corporation, or owner of the sole proprietorship, a
154 workers' compensation coverage waiver issued pursuant to Part 10, Workers' Compensation
155 Coverage Waivers Act, stating that:

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

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

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

163 (A) is an employer; and

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

166 (I) all persons employed by the contractor;

167 (II) all subcontractors under the contractor; and

168 (III) all persons employed by any of these subcontractors.

169 (ii) Notwithstanding the other provisions in this Subsection (7), if the conditions of
170 Subsection (7)(f)(iii) are met, an eligible employer is considered an employer for purposes of
171 Section 34A-2-105 of the contractor, subcontractor, and all persons employed by the contractor
172 or subcontractor described in Subsection (7)(f)(i)(B).

173 (iii) Subsection (7)(f)(ii) applies if the eligible employer:

174 (A) under Subsection (7)(a) is liable for and pays workers' compensation benefits as an
175 original employer under Subsection (7)(a) because the contractor or subcontractor fails to
176 comply with Section 34A-2-201;

177 (B) (I) secures, in accordance with Section 34A-2-201, the payment of workers'
178 compensation coverage for the contractor or subcontractor;

179 (II) procures work to be done that is part or process of the trade or business of the
180 eligible employer; and

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

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

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

186 (Cc) enforces the workplace accident and injury reduction program according to the
187 terms of the workplace accident and injury reduction program; or

188 (C) (I) obtains and relies on:

189 (Aa) a valid certification described in Subsection (7)(c)(i) or (7)(e)(i);

190 (Bb) a workers' compensation coverage waiver described in Subsection (7)(c)(ii) or
191 (7)(e)(ii); or

192 (Cc) proof that a director or officer is excluded from coverage under Subsection
193 34A-2-104(4);

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

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

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

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

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

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

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

207 (i) an individual;

208 (ii) a corporation; or

209 (iii) publicly traded.

210 (b) For purposes of this chapter and Chapter 3, Utah Occupational Disease Act, an
211 unincorporated entity that is required to be licensed under Title 58, Chapter 55, Utah
212 Construction Trades Licensing Act, is presumed to be the employer of each individual who
213 holds, directly or indirectly, an ownership interest in the unincorporated entity.

214 Notwithstanding Subsection (7)(c) and Subsection 34A-2-104(3), the unincorporated entity
215 shall provide the individual who holds the ownership interest workers' compensation coverage
216 under this chapter and Chapter 3, Utah Occupational Disease Act, unless the presumption is
217 rebutted under Subsection (8)(c).

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

222 (i) is an active manager of the unincorporated entity;

223 (ii) directly or indirectly holds at least an 8% ownership interest in the unincorporated
224 entity; or

225 (iii) is not subject to supervision or control in the performance of work by:

226 (A) the unincorporated entity; or

227 (B) a person with whom the unincorporated entity contracts.

228 (d) As part of the rules made under Subsection (8)(c), the commission may define:

229 (i) "active manager";

230 (ii) "directly or indirectly holds at least an 8% ownership interest"; and

231 (iii) "subject to supervision or control in the performance of work."

232 (9) (a) As used in this Subsection (9), "home and community based services" means
233 one or more of the following in-home services provided to an individual with a disability or to
234 the individual's family that helps prevent the individual with a disability from being placed in a
235 more restrictive setting:

236 (i) respite care;

237 (ii) skilled nursing;

238 (iii) nursing assistant services;

239 (iv) home health aide services;

240 (v) personal care and attendant services;

241 (vi) other in-home care, such as support for the daily activities of the individual with a
242 disability;

243 (vii) specialized in-home training for the individual with a disability or a family
244 member of the individual with a disability;

245 (viii) specialized in-home support, coordination, and other supported living services;
246 and

247 (ix) ~~[other home and community based services]~~ any other in-home service that is
248 unique to the individual with a disability or the family of the individual with a disability ~~[that~~
249 ~~help]~~ and helps prevent the individual with a disability from being placed in a more restrictive
250 setting.

251 (b) (i) Notwithstanding Subsection (4) and subject to Subsection (9)(c), an individual
252 with a disability or designated representative of the individual with a disability is considered an
253 employer under this chapter and Chapter 3, Utah Occupational Disease Act, of an individual
254 who provides home and community based services if the individual with a disability or
255 designated representative of the individual with a disability:

256 [(†)] (A) employs the individual to provide home and community based services for
257 seven hours per week or more; and

258 [(††)] (B) pays the individual providing the home and community based services from
259 state or federal money received by the individual with a disability or designated representative
260 of the individual with a disability to fund home and community based services, including
261 through a person designated by the Secretary of the Treasury in accordance with Section 3504,
262 Internal Revenue Code, as a fiduciary, agent, or other person who has the control, receipt,
263 custody, or disposal of, or pays the wages of, the individual providing the home and
264 community based services.

265 (ii) For purposes of Subsection (9)(b)(i), an entity is not a designated representative of
266 an individual with a disability solely because the entity, in the course of business, connects the
267 individual with a disability or the individual's family with an individual who provides home
268 and community based services.

269 (c) The state and federal money received by an individual with a disability or
270 designated representative of an individual with a disability shall include the cost of the workers'
271 compensation coverage required by this Subsection (9) in addition to the money necessary to
272 fund the home and community based services that the individual with a disability or family of
273 the individual with a disability is eligible to receive so that the home and community based
274 services are not reduced in order to pay for the workers' compensation coverage required by
275 this Subsection (9).

276 (10) (a) For purposes of this Subsection (10), "federal executive agency" means an
277 executive agency, as defined in 5 U.S.C. Sec. 105, of the federal government.

278 (b) For purposes of determining whether two or more persons are considered joint
279 employers under this chapter or Chapter 3, Utah Occupational Disease Act, an administrative
280 ruling of a federal executive agency may not be considered a generally applicable law unless
281 that administrative ruling is determined to be generally applicable by a court of law, or adopted
282 by statute or rule.

283 (11) (a) As used in this Subsection (11):

284 (i) "Franchise" means the same as that term is defined in 16 C.F.R. Sec. 436.1.

285 (ii) "Franchisee" means the same as that term is defined in 16 C.F.R. Sec. 436.1.

286 (iii) "Franchisor" means the same as that term is defined in 16 C.F.R. Sec. 436.1.

287 (b) For purposes of this chapter, a franchisor is not considered to be an employer of:

288 (i) a franchisee; or

289 (ii) a franchisee's employee.

290 (c) With respect to a specific claim for relief under this chapter made by a franchisee or
291 a franchisee's employee, this Subsection (11) does not apply to a franchisor under a franchise
292 that exercises a type or degree of control over the franchisee or the franchisee's employee not
293 customarily exercised by a franchisor for the purpose of protecting the franchisor's trademarks
294 and brand.

295 **Section 2. Effective date.**

296 This bill takes effect on May 1, 2024.