

LABOR RELATED AMENDMENTS

2012 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Michael T. Morley

Senate Sponsor: _____

LONG TITLE

General Description:

This bill modifies the provisions of Labor in General and the Utah Labor Code to correct language regarding the issuance of waivers and to modify standard of proof under certain circumstances.

Highlighted Provisions:

This bill:

- ▶ changes the burden of proof for rebutting the presumption of employee status to preponderance of the evidence for purposes of wages, workers' compensation, antidiscrimination, and occupational safety;
- ▶ removes incorrect language regarding insurers issuing workers' compensation coverage waivers; and
- ▶ makes technical and conforming amendments.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

34-28-2, as last amended by Laws of Utah 2011, Chapter 413

34A-2-103, as last amended by Laws of Utah 2011, Third Special Session, Chapter 4



28 **34A-2-104**, as last amended by Laws of Utah 2011, Chapter 328
 29 **34A-5-102**, as last amended by Laws of Utah 2011, Chapter 413
 30 **34A-6-103**, as last amended by Laws of Utah 2011, Chapter 413



31
 32 *Be it enacted by the Legislature of the state of Utah:*

33 Section 1. Section **34-28-2** is amended to read:

34 **34-28-2. Definitions -- Unincorporated entities.**

35 (1) As used in this chapter:

36 (a) "Commission" means the Labor Commission.

37 (b) "Division" means the Division of Antidiscrimination and Labor.

38 (c) "Employer" includes every person, firm, partnership, association, corporation,
 39 receiver or other officer of a court of this state, and any agent or officer of any of the
 40 above-mentioned classes, employing any person in this state.

41 (d) "Unincorporated entity" means an entity organized or doing business in the state
 42 that is not:

43 (i) an individual;

44 (ii) a corporation; or

45 (iii) publicly traded.

46 (e) "Wages" means the amounts due the employee for labor or services, whether the
 47 amount is fixed or ascertained on a time, task, piece, commission basis or other method of
 48 calculating such amount.

49 (2) (a) For purposes of this chapter, an unincorporated entity that is required to be
 50 licensed under Title 58, Chapter 55, Utah Construction Trades Licensing Act, is presumed to
 51 be the employer of each individual who, directly or indirectly, holds an ownership interest in
 52 the unincorporated entity.

53 (b) Pursuant to rules made by the commission in accordance with Title 63G, Chapter 3,
 54 Utah Administrative Rulemaking Act, an unincorporated entity may rebut the presumption
 55 under Subsection (2)(a) for an individual by establishing by ~~[clear and convincing]~~ a
 56 preponderance of the evidence that the individual:

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

58 (ii) directly or indirectly holds at least an 8% ownership interest in the unincorporated

59 entity; or

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

61 (A) the unincorporated entity; or

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

63 (c) As part of the rules made under Subsection (2)(b), the commission may define:

64 (i) "active manager";

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

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

67 (d) The commission by rule made in accordance with Title 63G, Chapter 3, Utah
68 Administrative Rulemaking Act, may establish a procedure, consistent with Section 34-28-7,
69 under which an unincorporated entity may seek approval of a mutual agreement to pay wages
70 on non-regular paydays.

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

72 **34A-2-103. Employers enumerated and defined -- Regularly employed --**

73 **Statutory employers.**

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

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

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

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

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

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

90 (B) not subject to the routine rule or control of the employer;
91 (C) engaged only in the performance of a definite job or piece of work; and
92 (D) subordinate to the employer only in effecting a result in accordance with the
93 employer's design.

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

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

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

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

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

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

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

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

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

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

117 (A) an agricultural employer's:

118 (I) spouse;

119 (II) grandparent;

120 (III) parent;

- 121 (IV) sibling;
- 122 (V) child;
- 123 (VI) grandchild;
- 124 (VII) nephew; or
- 125 (VIII) niece;
- 126 (B) a spouse of any person provided in Subsection (5)(a)(ii)(A)(II) through (VIII); or
- 127 (C) an individual who is similar to those listed in Subsections (5)(a)(ii)(A) or (B) as
- 128 defined by rules of the commission; and

129 (iii) "nonimmediate family" means a person who is not a member of the employer's
130 immediate family.

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

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

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

138 (ii) (A) for the previous calendar year the agricultural employer's total annual payroll
139 for all nonimmediate family employees was equal to or greater than \$8,000 but less than
140 \$50,000; and

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

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

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

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

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

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

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

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

- 157 (a) this chapter and Chapter 3, Utah Occupational Disease Act; and
- 158 (b) the rules of the commission.

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

- 162 (A) a sole proprietorship;
- 163 (B) a corporation;
- 164 (C) a partnership;
- 165 (D) a limited liability company; or
- 166 (E) a person similar to one described in Subsections (7)(a)(i)(A) through (D).

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

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

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

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

183 (ii) if a partnership or sole proprietorship with no employees other than a partner of the
184 partnership or owner of the sole proprietorship, a workers' compensation coverage waiver
185 issued [~~by an insurer~~] pursuant to Part 10, Workers' Compensation Coverage Waivers Act,
186 stating that:

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

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

192 (d) A director or officer of a corporation is not considered an employee under
193 Subsection (7)(a) if the director or officer is excluded from coverage under Subsection
194 34A-2-104(4).

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

198 (i) a valid certification of the contractor's or subcontractor's compliance with Section
199 34A-2-201; or

200 (ii) if a partnership, corporation, or sole proprietorship with no employees other than a
201 partner of the partnership, officer of the corporation, or owner of the sole proprietorship, a
202 workers' compensation coverage waiver issued [~~by an insurer~~] pursuant to Part 10, Workers'
203 Compensation Coverage Waivers Act, stating that:

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

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

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

211 (A) is an employer; and

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

214 (I) all persons employed by the contractor;
215 (II) all subcontractors under the contractor; and
216 (III) all persons employed by any of these subcontractors.
217 (ii) Notwithstanding the other provisions in this Subsection (7), if the conditions of
218 Subsection (7)(f)(iii) are met, an eligible employer is considered an employer for purposes of
219 Section 34A-2-105 of the contractor, subcontractor, and all persons employed by the contractor
220 or subcontractor described in Subsection (7)(f)(i)(B).
221 (iii) Subsection (7)(f)(ii) applies if the eligible employer:
222 (A) under Subsection (7)(a) is liable for and pays workers' compensation benefits as an
223 original employer under Subsection (7)(a) because the contractor or subcontractor fails to
224 comply with Section 34A-2-201;
225 (B) (I) secures the payment of workers' compensation benefits for the contractor or
226 subcontractor pursuant to Section 34A-2-201;
227 (II) procures work to be done that is part or process of the trade or business of the
228 eligible employer; and
229 (III) does the following with regard to a written workplace accident and injury
230 reduction program that meets the requirements of Subsection 34A-2-111(3)(d):
231 (Aa) adopts the workplace accident and injury reduction program;
232 (Bb) posts the workplace accident and injury reduction program at the work site at
233 which the eligible employer procures work; and
234 (Cc) enforces the workplace accident and injury reduction program according to the
235 terms of the workplace accident and injury reduction program; or
236 (C) (I) obtains and relies on:
237 (Aa) a valid certification described in Subsection (7)(c)(i) or (7)(e)(i);
238 (Bb) a workers' compensation coverage waiver described in Subsection (7)(c)(ii) or
239 (7)(e)(ii); or
240 (Cc) proof that a director or officer is excluded from coverage under Subsection
241 34A-2-104(4);
242 (II) is liable under Subsection (7)(a) for the payment of workers' compensation benefits
243 if the contractor or subcontractor fails to comply with Section 34A-2-201;
244 (III) procures work to be done that is part or process in the trade or business of the

245 eligible employer; and

246 (IV) does the following with regard to a written workplace accident and injury

247 reduction program that meets the requirements of Subsection 34A-2-111(3)(d):

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

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

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

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

255 (i) an individual;

256 (ii) a corporation; or

257 (iii) publicly traded.

258 (b) For purposes of this chapter and Chapter 3, Utah Occupational Disease Act, an
259 unincorporated entity that is required to be licensed under Title 58, Chapter 55, Utah

260 Construction Trades Licensing Act, is presumed to be the employer of each individual who
261 holds, directly or indirectly, an ownership interest in the unincorporated entity.

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

266 (c) Pursuant to rules made by the commission in accordance with Title 63G, Chapter 3,
267 Utah Administrative Rulemaking Act, an unincorporated entity may rebut the presumption
268 under Subsection (8)(b) for an individual by establishing by ~~clear and convincing~~ a
269 preponderance of the evidence that the individual:

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

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

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

274 (A) the unincorporated entity; or

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

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

277 (i) "active manager";

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

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

280 Section 3. Section 34A-2-104 is amended to read:

281 **34A-2-104. "Employee," "worker," and "operative" defined -- Specific**
282 **circumstances -- Exemptions.**

283 (1) As used in this chapter and Chapter 3, Utah Occupational Disease Act, "employee,"

284 "worker," and "operative" mean:

285 (a) (i) an elective or appointive officer and any other person:

286 (A) in the service of:

287 (I) the state;

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

289 (III) a school district within the state;

290 (B) serving the state, or any county, city, town, or school district under:

291 (I) an election;

292 (II) appointment; or

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

294 (ii) including:

295 (A) an officer or employee of the state institutions of learning; and

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

297 (b) a person in the service of any employer, as defined in Section 34A-2-103, who

298 employs one or more workers or operatives regularly in the same business, or in or about the
299 same establishment:

300 (i) under any contract of hire:

301 (A) express or implied; and

302 (B) oral or written;

303 (ii) including aliens and minors, whether legally or illegally working for hire; and

304 (iii) not including any person whose employment:

305 (A) is casual; and

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

307 employer.

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

311 (i) covered for compensation by the lessor under this chapter and Chapter 3;

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

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

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

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

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

324 (c) A partner of a partnership or owner of a sole proprietorship may not be considered
325 an employee of the partner's partnership or the owner's sole proprietorship under this chapter or
326 Chapter 3 until the notice described in Subsection (3)(b) is given.

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

330 (4) (a) A corporation may elect not to include any director or officer of the corporation
331 as an employee under this chapter and Chapter 3.

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

335 (c) A director or officer of a corporation is considered an employee under this chapter
336 and Chapter 3 until the notice described in Subsection (4)(b) is given.

337 (5) As used in this chapter and Chapter 3, "employee," "worker," and "operative" do

338 not include:

339 (a) a sales agent or associate broker, as defined in Section 61-2f-102, who performs
340 services in that capacity for a principal broker if:

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

343 (ii) the sales agent's or associate broker's services are performed under a written
344 contract that provides that:

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

346 (B) the sales agent or associate broker is not to be treated as an employee for federal
347 income tax purposes;

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

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

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

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

356 (A) is an independent contractor;

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

358 (C) can derive income from more than one insurance company;

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

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

364 (A) an institution; or

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

367 (ii) the individual is paid by a person designated by the Secretary of the Treasury in
368 accordance with Section 3504, Internal Revenue Code, as a fiduciary, agent, or other person

369 that has the control, receipt, custody, or disposal of, or pays the wages of the individual; and

370 (iii) the domestic work is performed under a written contract that notifies the

371 individual that the individual is not an employee under this chapter or Chapter 3; or

372 (e) subject to Subsections (6) and (7), an individual who:

373 (i) (A) owns a motor vehicle; or

374 (B) leases a motor vehicle to a motor carrier;

375 (ii) personally operates the motor vehicle described in Subsection (5)(e)(i);

376 (iii) operates the motor vehicle described in Subsection (5)(e)(i) under a written

377 agreement with the motor carrier that states that the individual operates the motor vehicle as an

378 independent contractor; and

379 (iv) (A) provides to the motor carrier at the time the written agreement described in

380 Subsection (5)(e)(iii) is executed or as soon after the execution as provided by [~~an insurer: (A)~~]

381 the commission, a copy of a workers' compensation coverage waiver issued pursuant to Part

382 10, Workers' Compensation Coverage Waivers Act, [~~by an insurer~~] to the individual; and

383 (B) provides to the motor carrier at the time the written agreement described in

384 Subsection (5)(e)(iii) is executed or as soon after the execution as provided by an insurer, proof

385 that the individual is covered by occupational accident related insurance.

386 (6) An individual described in Subsection (5)(d) or (e) may become an employee under

387 this chapter and Chapter 3 if the employer of the individual complies with:

388 (a) this chapter and Chapter 3; and

389 (b) commission rules.

390 (7) For purposes of Subsection (5)(e):

391 (a) "Motor carrier" means a person engaged in the business of transporting freight,

392 merchandise, or other property by a commercial vehicle on a highway within this state.

393 (b) "Motor vehicle" means a self-propelled vehicle intended primarily for use and

394 operation on the highways, including a trailer or semitrailer designed for use with another

395 motorized vehicle.

396 (c) "Occupational accident related insurance" means insurance that provides the

397 following coverage for an injury sustained in the course of working under a written agreement

398 described in Subsection (5)(e)(iii):

399 (i) disability benefits;

- 400 (ii) death benefits;
- 401 (iii) medical expense benefits, which include:
- 402 (A) hospital coverage;
- 403 (B) surgical coverage;
- 404 (C) prescription drug coverage; and
- 405 (D) dental coverage.

406 Section 4. Section **34A-5-102** is amended to read:

407 **34A-5-102. Definitions -- Unincorporated entities.**

408 (1) As used in this chapter:

409 (a) "Apprenticeship" means a program for the training of apprentices including a
410 program providing the training of those persons defined as apprentices by Section 35A-6-102.

411 (b) "Bona fide occupational qualification" means a characteristic applying to an
412 employee that:

- 413 (i) is necessary to the operation; or
- 414 (ii) is the essence of the employee's employer's business.

415 (c) "Court" means:

416 (i) the district court in the judicial district of the state in which the asserted unfair
417 employment practice occurred; or

418 (ii) if this court is not in session at that time, a judge of the court described in
419 Subsection (1)(c)(i).

420 (d) "Director" means the director of the division.

421 (e) "Disability" means a physical or mental disability as defined and covered by the
422 Americans with Disabilities Act of 1990, 42 U.S.C. Sec. 12102.

423 (f) "Division" means the Division of Antidiscrimination and Labor.

424 (g) "Employee" means any person applying with or employed by an employer.

425 (h) (i) "Employer" means:

426 (A) the state;

427 (B) any political subdivision;

428 (C) a board, commission, department, institution, school district, trust, or agent of the
429 state or its political subdivisions; or

430 (D) a person employing 15 or more employees within the state for each working day in

431 each of 20 calendar weeks or more in the current or preceding calendar year.

432 (ii) "Employer" does not include:

433 (A) a religious organization or association;

434 (B) a religious corporation sole; or

435 (C) any corporation or association constituting a wholly owned subsidiary or agency of
436 any religious organization or association or religious corporation sole.

437 (i) "Employment agency" means any person:

438 (i) undertaking to procure employees or opportunities to work for any other person; or

439 (ii) holding the person out to be equipped to take an action described in Subsection
440 (1)(i)(i).

441 (j) "Joint apprenticeship committee" means any association of representatives of a
442 labor organization and an employer providing, coordinating, or controlling an apprentice
443 training program.

444 (k) "Labor organization" means any organization that exists for the purpose in whole or
445 in part of:

446 (i) collective bargaining;

447 (ii) dealing with employers concerning grievances, terms or conditions of employment;

448 or

449 (iii) other mutual aid or protection in connection with employment.

450 (l) "National origin" means the place of birth, domicile, or residence of an individual or
451 of an individual's ancestors.

452 (m) "On-the-job-training" means any program designed to instruct a person who, while
453 learning the particular job for which the person is receiving instruction:

454 (i) is also employed at that job; or

455 (ii) may be employed by the employer conducting the program during the course of the
456 program, or when the program is completed.

457 (n) "Person" means one or more individuals, partnerships, associations, corporations,
458 legal representatives, trusts or trustees, receivers, the state and all political subdivisions and
459 agencies of the state.

460 (o) "Presiding officer" means the same as that term is defined in Section 63G-4-103.

461 (p) "Prohibited employment practice" means a practice specified as discriminatory, and

462 therefore unlawful, in Section 34A-5-106.

463 (q) "Retaliate" means the taking of adverse action by an employer, employment
464 agency, labor organization, apprenticeship program, on-the-job training program, or vocational
465 school against one of its employees, applicants, or members because the employee, applicant,
466 or member has:

- 467 (i) opposed any employment practice prohibited under this chapter; or
- 468 (ii) filed charges, testified, assisted, or participated in any way in any proceeding,
469 investigation, or hearing under this chapter.

470 (r) "Unincorporated entity" means an entity organized or doing business in the state
471 that is not:

- 472 (i) an individual;
- 473 (ii) a corporation; or
- 474 (iii) publicly traded.

475 (s) "Vocational school" means any school or institution conducting a course of
476 instruction, training, or retraining to prepare individuals to follow an occupation or trade, or to
477 pursue a manual, technical, industrial, business, commercial, office, personal services, or other
478 nonprofessional occupations.

479 (2) (a) For purposes of this chapter, an unincorporated entity that is required to be
480 licensed under Title 58, Chapter 55, Utah Construction Trades Licensing Act, is presumed to
481 be the employer of each individual who, directly or indirectly, holds an ownership interest in
482 the unincorporated entity.

483 (b) Pursuant to rules made by the commission in accordance with Title 63G, Chapter 3,
484 Utah Administrative Rulemaking Act, an unincorporated entity may rebut the presumption
485 under Subsection (2)(a) for an individual by establishing by ~~clear and convincing~~ a
486 preponderance of the evidence that the individual:

- 487 (i) is an active manager of the unincorporated entity;
- 488 (ii) directly or indirectly holds at least an 8% ownership interest in the unincorporated
489 entity; or
- 490 (iii) is not subject to supervision or control in the performance of work by:
491 (A) the unincorporated entity; or
492 (B) a person with whom the unincorporated entity contracts.

493 (c) As part of the rules made under Subsection (2)(b), the commission may define:

494 (i) "active manager";

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

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

497 Section 5. Section **34A-6-103** is amended to read:

498 **34A-6-103. Definitions -- Unincorporated entities.**

499 (1) As used in this chapter:

500 (a) "Administrator" means the director of the Division of Occupational Safety and
501 Health.

502 (b) "Amendment" means such modification or change in a code, standard, rule, or
503 order intended for universal or general application.

504 (c) "Commission" means the Labor Commission.

505 (d) "Council" means the Utah Occupational Safety and Health Advisory Council.

506 (e) "Division" means the Division of Occupational Safety and Health.

507 (f) "Employee" includes any person suffered or permitted to work by an employer.

508 (g) "Employer" means:

509 (i) the state;

510 (ii) a county, city, town, and school district in the state; and

511 (iii) a person, including a public utility, having one or more workers or operatives
512 regularly employed in the same business, or in or about the same establishment, under any
513 contract of hire.

514 (h) "Hearing" means a proceeding conducted by the commission.

515 (i) "Imminent danger" means a danger exists which reasonably could be expected to
516 cause an occupational disease, death, or serious physical harm immediately, or before the
517 danger could be eliminated through enforcement procedures under this chapter.

518 (j) "National consensus standard" means any occupational safety and health standard or
519 modification:

520 (i) adopted by a nationally recognized standards-producing organization under
521 procedures where it can be determined by the administrator and division that persons interested
522 and affected by the standard have reached substantial agreement on its adoption;

523 (ii) formulated in a manner which affords an opportunity for diverse views to be

524 considered; and

525 (iii) designated as such a standard by the Secretary of the United States Department of
526 Labor.

527 (k) "Person" means the general public, one or more individuals, partnerships,
528 associations, corporations, legal representatives, trustees, receivers, and the state and its
529 political subdivisions.

530 (l) "Publish" means publication in accordance with Title 63G, Chapter 3, Utah
531 Administrative Rulemaking Act.

532 (m) "Secretary" means the Secretary of the United States Department of Labor.

533 (n) "Standard" means an occupational health and safety standard or group of standards
534 which requires conditions, or the adoption or use of one or more practices, means, methods,
535 operations, or processes, reasonably necessary to provide safety and healthful employment and
536 places of employment.

537 (o) "Unincorporated entity" means an entity organized or doing business in the state
538 that is not:

539 (i) an individual;

540 (ii) a corporation; or

541 (iii) publicly traded.

542 (p) "Variance" means a special, limited modification or change in the code or standard
543 applicable to the particular establishment of the employer or person petitioning for the
544 modification or change.

545 (q) "Workplace" means any place of employment.

546 (2) (a) For purposes of this chapter, an unincorporated entity that is required to be
547 licensed under Title 58, Chapter 55, Utah Construction Trades Licensing Act, is presumed to
548 be the employer of each individual who, directly or indirectly, holds an ownership interest in
549 the unincorporated entity.

550 (b) Pursuant to rules made by the commission in accordance with Title 63G, Chapter 3,
551 Utah Administrative Rulemaking Act, an unincorporated entity may rebut the presumption
552 under Subsection (2)(a) for an individual by establishing by ~~[clear and convincing]~~ a
553 preponderance of the evidence that the individual:

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

- 555 (ii) directly or indirectly holds at least an 8% ownership interest in the unincorporated
556 entity; or
- 557 (iii) is not subject to supervision or control in the performance of work by:
- 558 (A) the unincorporated entity; or
- 559 (B) a person with whom the unincorporated entity contracts.
- 560 (c) As part of the rules made under Subsection (2)(b), the commission may define:
- 561 (i) "active manager";
- 562 (ii) "directly or indirectly holds at least an 8% ownership interest"; and
- 563 (iii) "subject to supervision or control in the performance of work."

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