

1 **EMPLOYMENT LAW AMENDMENTS**

2 2018 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Timothy D. Hawkes**

5 Senate Sponsor: Curtis S. Bramble

7 **LONG TITLE**

8 **General Description:**

9 This bill modifies and enacts provisions related to employment.

10 **Highlighted Provisions:**

11 This bill:

- 12 ▶ modifies the definition of "employer" for purposes of Title 34, Chapter 28, Payment
- 13 of Wages;
- 14 ▶ enacts the Service Marketplace Platforms Act; and
- 15 ▶ establishes a presumption that a building service contractor who affiliates with a
- 16 service marketplace platform is an independent contractor, not an employee.

17 **Money Appropriated in this Bill:**

18 None

19 **Other Special Clauses:**

20 None

21 **Utah Code Sections Affected:**

22 AMENDS:

23 **34-28-2**, as last amended by Laws of Utah 2017, Chapter 85

24 ENACTS:

25 **34-53-101**, Utah Code Annotated 1953

26 **34-53-102**, Utah Code Annotated 1953

27 **34-53-201**, Utah Code Annotated 1953

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

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

31 **34-28-2. Definitions -- Unincorporated entities -- Joint employers -- Franchisors.**

32 (1) As used in this chapter:

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

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

35 (c) (i) "Employer" means the same as that term is defined in 29 U.S.C. Sec. 203.

36 (ii) "Employer" does not include an individual who is not:

37 (A) an officer;

38 (B) a manager of a manager-managed limited liability company;

39 (C) a member of a member-managed limited liability company;

40 (D) a general partner of a limited partnership; or

41 (E) a partner of a partnership.

42 (d) "Federal executive agency" means an executive agency, as defined in 5 U.S.C. Sec.

43 105, of the federal government.

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

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

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

47 (h) "Unincorporated entity" means an entity organized or doing business in the state

48 that is not:

49 (i) an individual;

50 (ii) a corporation; or

51 (iii) publicly traded.

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

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

58 the unincorporated entity.

59 (b) Pursuant to rules made by the commission in accordance with Title 63G, Chapter 3,
60 Utah Administrative Rulemaking Act, an unincorporated entity may rebut the presumption
61 under Subsection (2)(a) for an individual by establishing by clear and convincing evidence that
62 the individual:

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

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

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

67 (A) the unincorporated entity; or

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

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

70 (i) "active manager";

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

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

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

77 (3) For purposes of determining whether two or more persons are considered joint
78 employers under this chapter, an administrative ruling of a federal executive agency may not be
79 considered a generally applicable law unless that administrative ruling is determined to be
80 generally applicable by a court of law, or adopted by statute or rule.

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

82 (i) a franchisee; or

83 (ii) a franchisee's employee.

84 (b) With respect to a specific claim for relief under this chapter made by a franchisee or
85 a franchisee's employee, this Subsection (4) does not apply to a franchisor under a franchise

86 that exercises a type or degree of control over the franchisee or the franchisee's employee not
87 customarily exercised by a franchisor for the purpose of protecting the franchisor's trademarks
88 and brand.

89 Section 2. Section 34-53-101 is enacted to read:

90 **CHAPTER 53. SERVICE MARKETPLACE PLATFORMS ACT**

91 **Part 1. General Provisions**

92 **34-53-101. Title.**

93 This chapter is known as "Service Marketplace Platforms Act."

94 Section 3. Section 34-53-102 is enacted to read:

95 **34-53-102. Definitions.**

96 As used in this chapter:

97 (1) "Building service" means any of the following services, if the charge for the service
98 is \$3,000 or less:

99 (a) cleaning or janitorial;

100 (b) furniture delivery, assembly, moving, or installation;

101 (c) landscaping;

102 (d) home repair; or

103 (e) any service similar to the services described in Subsections (1)(a) through (d).

104 (2) "Building service contractor" means a person who enters into an agreement with a
105 service marketplace platform to use the service marketplace platform's software platform to
106 connect with and receive requests from customers seeking a building service.

107 (3) "Service marketplace platform" means an entity that:

108 (a) uses an Internet-connected software platform, including a mobile application:

109 (i) to connect building service contractors with customers seeking a building service;

110 and

111 (ii) through which a customer may request a building service; and

112 (b) charges the building service contractor a fee to use the software platform.

113 Section 4. Section 34-53-201 is enacted to read:

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Part 2. Employment Status

34-53-201. Independent contractor presumption.

(1) A building service contractor may affiliate with a service marketplace platform as an independent contractor or as an employee.

(2) (a) There is a presumption that a building service contractor who affiliates with a service marketplace platform is an independent contractor, unless there is clear and convincing evidence that the parties intended the building service contractor to be an employee.

(b) The presumption described in Subsection (2)(a) extends to each act the building service contractor performs in connection with a request for a building service placed through the service marketplace platform.