

Employment Claims in Release Agreements: Utah

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A Q&A guide to release of claims agreements for private employers in Utah. This Q&A addresses statutory and common law claims that may be released in a valid and enforceable written agreement, as well as employment claims or specific contract language that should be included or excluded. Federal, local, or municipal law may impose additional or different requirements. Answers to questions can be compared across several jurisdictions (see *Employment Claims in Release Agreements: State Q&A Tool* (<http://us.practicallaw.com/9-505-9590>)).

EMPLOYMENT CLAIMS THAT SHOULD BE RELEASED

1. What state-specific employment-based claims (statutory and common law) should be included in a release of claims agreement?

Utah law does not require a release of claims agreement to contain a provision expressly relinquishing particular statutory or common law employment claims for the release to be effective regarding those claims.

Still, it is common practice in Utah to include a non-exhaustive list of specific claims as examples of the types of claims released. Inclusion of any particular claim is a strategic decision based on the risk associated with each particular employer and employee.

COMMON LAW CLAIMS

Common law claims frequently listed as examples of the types of claims released include:

- Breach of implied or express contract.
- Breach of implied covenant of good faith and fair dealing.
- Breach of public policy.
- Libel.
- Slander.
- Defamation.
- Breach of privacy.
- Wrongful discharge or termination.
- Infliction of emotional distress.

STATUTORY CLAIMS

The statutory claim most frequently listed as an example of claims released is a claim for violation of the Utah Antidiscrimination Act (Utah Code §§ 34A-5-101 to 34A-5-112), which applies to employers with 15 or more employees and prohibits discrimination based on:

- Race.
- Color.
- Sex.
- Gender identity.
- Pregnancy.
- Childbirth.
- Pregnancy-related conditions.
- Age (40 or older).
- Religion.
- National origin.
- Sexual orientation.
- Disability.
- Retaliation.

Other statutory claims that may be listed as examples include claims for violations of:

- The Employment Relations and Collective Bargaining Act (Utah Code §§ 34-20-1 to 34-20-13), which prohibits employers from engaging in unfair labor practices.

- The Utah Right to Work Law (Utah Code §§ 34-34-1 to 34-34-17), which prohibits employers from interfering with an employee's exercise of his right to work.
- The Utah Drug and Alcohol Testing Act (Utah Code §§ 34-38-1 to 34-38-15), which permits drug testing and disciplinary and rehabilitative actions based on drug test results under a written and distributed drug testing policy.
- Utah's Local Governmental Entity/Drug-Free Workplace Policies Act (Utah Code §§ 34-41-101 to 34-41-107), which permits local government entities and state institutions of higher learning to drug test, and to take disciplinary and rehabilitative actions based on drug test results under a written and distributed drug testing policy.
- The Utah Minimum Wage Act (Utah Code §§ 34-40-101 to 34-40-205), which requires employers to pay a minimum wage to all nonexempt employees.
- Utah's Protection of Activities in Private Vehicles Act (Utah Code §§ 34-45-101 to 34-45-107), which prohibits employers from creating, maintaining, or enforcing any policy or rule that prohibits any individual from transporting or storing a firearm in a motor vehicle on property designated for parking, with certain exceptions.
- Utah's Employment Selection Procedures Act (Utah Code §§ 34-46-101 to 34-46-302), which prohibits employers from requesting or using job applicants' social security numbers, dates of birth, or driver's license numbers, with certain exceptions, and requires timely destruction of this information, with certain exceptions.
- The Utah Occupational Safety and Health Act (Utah Code §§ 34A-6-101 to 34A-6-307), which requires employers to provide employees with employment and a place of employment free from recognized hazards, and prohibits discharge or discrimination based on an employee's protected activity under the Act.

EMPLOYMENT CLAIMS THAT SHOULD NEVER BE INCLUDED IN A RELEASE AGREEMENT

2. Certain employment-based claims are never permitted to be released under law, and can invalidate an otherwise valid release agreement if included. Please identify any of these claims in your state.

In Utah, three types of employment-based claims cannot be released by agreement. They should not be included in a release agreement because they may invalidate an otherwise valid release. The non-releasable claims are claims for:

- Unemployment benefits under the Utah Employment Security Act (Utah Code §§ 35A-4-101 to 35A-4-508), which:
 - provides for unemployment benefits;
 - charges some or all of those benefit costs back to the employer; and
 - voids any agreement to waive, release, or diminish an employee's rights under the Act.

(Utah Code §§ 35A-4-103 and 35A-4-306.)

- Compensation under the Utah Workers' Compensation Act (Utah Code §§ 34A-2-101 to 34A-2-905), which:

- provides compensation to employees injured by accident arising from and during employment;
- prohibits agreements to waive an employee's compensation rights under the Act; and
- requires agency approval of all settlements of claims.

(Utah Code §§ 34A-2-102(j)(i), 34A-2-108(1) and 34A-2-420.)

- Compensation under the Utah Occupational Disease Act (Utah Code §§ 34A-3-101 to 34A-3-113), which:
 - provides compensation to employees who contract a disease or illness arising from and during employment;
 - prohibits agreements to waive an employee's compensation rights under the Act; and
 - requires agency approval of all settlements of claims.

(Utah Code §§ 34A-2-108(1), 34A-2-420, and 34A-3-103.)

EMPLOYMENT CLAIMS THAT MAY BE INCLUDED IN A RELEASE OF CLAIMS AGREEMENT UNDER CERTAIN CIRCUMSTANCES

3. Certain employment claims may be included in a release of claims agreement without invalidating the agreement under certain circumstances (for example, Fair Labor Standards Act claims can be validly released if approved by the Department of Labor or a court). Please identify any of these claims in your state.

In Utah, the only type of employment-based claim that can be released under certain circumstances is a claim for violation of the Utah Payment of Wages Act (Utah Code §§ 34-28-1 to 34-28-19), which addresses:

- The timing and form of wage payment.
- Deductions.
- Notice of paydays.
- Separation from payroll.
- Disputes over wages.

Claims under this statute can be released by mutual agreement if the Utah Antidiscrimination & Labor Division approves the agreement (Utah Code § 34-28-7).

WAIVER OF EMPLOYMENT AGENCY COMPLAINTS

4. Please identify any state governmental agencies in your state that oversee the administration of state employment laws and indicate whether complaints to those agencies may be validly waived in a release of claims agreement.

The Utah Labor Commission is the state agency that oversees, through its various divisions, the administration of most Utah state employment laws. Specifically:

- The Utah Antidiscrimination & Labor Division (UALD) administers:
 - the Wage Payment Act;

- the Utah Minimum Wage Act; and
 - the Utah Antidiscrimination Act.
- The Industrial Accidents Division (IAD) administers:
 - the Utah Workers' Compensation Act; and
 - the Utah Occupational Disease Act.
 - The Division of Occupational Safety and Health administers the Utah Occupational Safety and Health Act.

There are no statutory prohibitions against waiving the right to:

- Complain or file a charge of discrimination with the UALD alleging violations of the Utah Antidiscrimination Act.
- Complain or file a claim with the UALD alleging violations of the Utah Minimum Wage Act.
- Complain to the Division of Occupational Safety and Health alleging violations of the Utah Occupational Safety and Health Act.
- Complain to the UALD alleging violations of the Utah Wage Payment Act concerning a third party.
- Complain to the IAD alleging violations of the Workers' Compensation Act or the Occupational Disease Act if those complaints are not simply a claim by the employee for workers compensation or occupational disease benefits (which, as explained in Question 2, cannot be waived).

An employee can waive the right to complain to the UALD about violations of the Utah Wage Payment Act that directly impact the employee, but only if the division has approved the waiver. This is because the Act both:

- Expressly permits an aggrieved employee to file a request for agency action with the division (Utah Code § 34-28-19(2)(a)).
- Broadly states that "no provision of this chapter can in any way be contravened or set aside by mutual agreement unless the agreement is approved by the division" (Utah Code § 34-28-7).

The chapter provision that permits filing a request for agency action by an aggrieved employee arguably is "contravened or set aside" if the employee agrees to waive that right. As a result, the division likely would have to approve this kind of waiver.

OTHER ISSUES FOR RELEASE AGREEMENTS

5. Please describe any other issues particular to your state that should be considered when drafting an enforceable release agreement.

There are no other issues particular to Utah that should be considered when drafting an enforceable release agreement in the employment context.

STATE CLAIMS RELEASE PARAGRAPH

6. Please provide a paragraph that can be inserted into a separation and release of claims agreement identifying all state-specific claims (statutory and otherwise) that can be released in your jurisdiction.

LIST OF CLAIMS

This is a list of Utah claims only. For jurisdiction-neutral release language, see Standard Document, Separation and Release of Claims Agreement (<http://us.practicallaw.com/0-503-8253>).

Breach of implied or express contract, breach of implied covenant of good faith and fair dealing, breach of public policy, libel, slander, defamation, breach of privacy, wrongful discharge/termination, infliction of emotional distress, claims arising from the Utah Antidiscrimination Act, and/or other state or local laws (including claims based on race, color, sex, sexual orientation or identity, pregnancy, childbirth, pregnancy-related conditions, age, religion, national origin, disability, and retaliation), Employment Relations and Collective Bargaining Act, Utah Right to Work Act, Utah Drug and Alcohol Testing Act, Utah Minimum Wage Act, Utah Protection of Activities in Private Vehicles Act, Utah Employment Selection Procedures Act, and Utah Occupational Safety and Health Act.

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