

**MINIMUM WAGE AMENDMENTS**

2022 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Clare Collard**

Senate Sponsor: \_\_\_\_\_

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**LONG TITLE**

**General Description:**

This bill amends the Utah Minimum Wage Act regarding the minimum wage for a tipped employee.

**Highlighted Provisions:**

This bill:

- ▶ requires an employer to pay a tipped employee at least the minimum wage without the computation of a cash wage obligation and tips or gratuities; and
- ▶ makes technical and conforming changes.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

**34-40-102**, as last amended by Laws of Utah 2016, Chapter 370

**34-40-104**, as last amended by Laws of Utah 2008, Chapter 382

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

Section 1. Section **34-40-102** is amended to read:

**34-40-102. Definitions -- Joint employees -- Franchisors.**



28 (1) Subject to Subsection (3), this chapter and the terms used in it, including the  
29 computation of wages, shall be interpreted consistently with the Fair Labor Standards Act of  
30 1938, 29 U.S.C. Sec. 201 et seq., as amended, to the extent that act relates to the payment of a  
31 minimum wage.

32 (2) As used in this chapter:

33 ~~[(a) "Cash wage obligation" means an hourly wage that an employer pays a tipped~~  
34 ~~employee regardless of the tips or gratuities a tipped employee receives.]~~

35 ~~[(b)]~~ (a) "Commission" means the Labor Commission created in Section [34A-1-103](#).

36 ~~[(c)]~~ (b) "Division" means the Division of Antidiscrimination and Labor in the  
37 commission.

38 ~~[(d)]~~ (c) "Federal executive agency" means an executive agency, as defined in 5 U.S.C.  
39 Sec. 105, of the federal government.

40 ~~[(e)]~~ (d) "Franchise" means the same as that term is defined in 16 C.F.R. Sec. 436.1.

41 ~~[(f)]~~ (e) "Franchisee" means the same as that term is defined in 16 C.F.R. Sec. 436.1.

42 ~~[(g)]~~ (f) "Franchisor" means the same as that term is defined in 16 C.F.R. Sec. 436.1.

43 ~~[(h)]~~ (g) "Minimum wage" means the state minimum hourly wage for an adult  
44 ~~[employees]~~ employee as established under this chapter, unless the context clearly indicates  
45 otherwise.

46 ~~[(i)]~~ (h) "Tipped employee" means an employee who customarily and regularly  
47 receives tips or gratuities.

48 (3) Notwithstanding Subsection (1), for purposes of determining whether two or more  
49 persons are considered joint employers under this chapter, an administrative ruling of a federal  
50 executive agency may not be considered a generally applicable law unless that administrative  
51 ruling is determined to be generally applicable by a court of law, or adopted by statute or rule.

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

53 (i) a franchisee; or

54 (ii) a franchisee's employee.

55 (b) With respect to a specific claim for relief under this chapter made by a franchisee or  
56 a franchisee's employee, this Subsection (4) does not apply to a franchisor under a franchise  
57 that exercises a type or degree of control over the franchisee or the franchisee's employee not  
58 customarily exercised by a franchisor for the purpose of protecting the franchisor's trademarks

59 and brand.

60 Section 2. Section **34-40-104** is amended to read:

61 **34-40-104. Exemptions -- Tipped employees.**

62 (1) ~~[The]~~ Unless the individual is entitled to a minimum wage under the Fair Labor  
 63 Standards Act of 1938, 29 U.S.C. Sec. 201 et seq., as amended, the minimum wage established  
 64 in this chapter does not apply to:

65 ~~[(a) any employee who is entitled to a minimum wage as provided in 29 U.S.C. Sec.~~  
 66 ~~201 et seq., the Fair Labor Standards Act of 1938, as amended;]~~

67 ~~[(b)]~~ (a) an outside sales ~~[persons]~~ person;

68 ~~[(c)]~~ (b) an employee who is a member of the employer's immediate family;

69 ~~[(d)]~~ (c) companionship service for ~~[persons]~~ a person who, because of age or  
 70 infirmity, [are] is unable to care for ~~[themselves]~~ his or herself;

71 ~~[(e)]~~ (d) a casual and domestic ~~[employees]~~ employee as defined by the commission;

72 ~~[(f)]~~ (e) a seasonal ~~[employees]~~ employee of a nonprofit camping ~~[programs]~~ program,  
 73 religious or recreation ~~[programs, and]~~ program, or nonprofit educational and charitable  
 74 ~~[organizations]~~ organization registered under Title 13, Chapter 22, Charitable Solicitations Act;

75 ~~[(g)]~~ (f) an individual employed by the United States of America;

76 ~~[(h)]~~ (g) ~~[any]~~ a prisoner employed through the penal system;

77 ~~[(i)]~~ (h) ~~[any]~~ an employee employed in agriculture if the employee:

78 (i) is principally engaged in the range production of livestock;

79 (ii) is employed as a harvest laborer and is paid on a piece rate basis in an operation  
 80 that has been and is generally recognized by custom as having been paid on a piece rate basis in  
 81 the region of employment;

82 (iii) was employed in agriculture less than 13 weeks during the preceding calendar  
 83 year; or

84 (iv) is a retired or semiretired person performing part-time or incidental work as a  
 85 condition of the employee's residence on a farm or ranch;

86 ~~[(j)]~~ (i) a registered ~~[apprentices or students]~~ apprentice or student employed by the  
 87 educational institution in which ~~[they are]~~ the apprentice or student is enrolled; or

88 ~~[(k)]~~ (j) ~~[any]~~ a seasonal hourly employee employed by a seasonal amusement  
 89 establishment with permanent structures and facilities if the other direct monetary

90 compensation from tips, incentives, commissions, end-of-season bonus, or other forms of pay  
91 is sufficient to cause the average hourly rate of total compensation for the season of seasonal  
92 hourly employees who continue to work to the end of the operating season to equal the  
93 applicable minimum wage if the seasonal amusement establishment:

94 (i) does not operate for more than seven months in any calendar year; or

95 (ii) during the preceding calendar year ~~[its]~~ the seasonal amusement establishment's  
96 average receipts for any six months of that year were not more than 33-1/3% of ~~[its]~~ the  
97 seasonal amusement establishment's average receipts for the other six months of that year.

98 (2) (a) ~~[Persons]~~ A person with a disability whose earnings or productive capacities are  
99 impaired by age, physical or mental deficiencies, or injury may be employed at wages that are  
100 lower than the minimum wage, provided the wage is related to the employee's productivity.

101 (b) The commission may establish and regulate the wages paid or wage scales for  
102 persons with a disability.

103 (3) The commission may establish or may set a lesser minimum wage for learners not  
104 to exceed the first 160 hours of employment.

105 (4) (a) An employer of a tipped employee shall pay the tipped employee at least the  
106 minimum wage established by this chapter without considering tips or gratuities the tipped  
107 employee receives.

108 ~~[(b) In computing a tipped employee's wage under this Subsection (4), an employer of~~  
109 ~~a tipped employee:]~~

110 ~~[(i) shall pay the tipped employee at least the cash wage obligation as an hourly wage;~~  
111 ~~and]~~

112 ~~[(ii) may compute the remainder of the tipped employee's wage using the tips or~~  
113 ~~gratuities the tipped employee actually receives:]~~

114 ~~[(c)]~~ (b) An employee shall retain all tips and gratuities except to the extent that the  
115 employee participates in a bona fide tip pooling or sharing arrangement with other tipped  
116 employees.

117 ~~[(d) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act,~~  
118 ~~the commission shall by rule establish the cash wage obligation in conjunction with its review~~  
119 ~~of the minimum wage under Section [34-40-103](#).]~~