

MINIMUM WAGE MODIFICATIONS

2023 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Brett Garner

Senate Sponsor: _____

LONG TITLE

General Description:

This bill addresses the minimum wage.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ repeals provisions allowing an employee who is a minor or who has a disability to earn less than the minimum wage;
- ▶ adjusts the minimum wage;
- ▶ requires the Labor Commission to adjust the minimum wage at certain times;
- ▶ grants administrative rulemaking authority; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

34-23-301, as last amended by Laws of Utah 1997, Chapter 375

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

34-40-103, as last amended by Laws of Utah 1997, Chapter 375



28 [34-40-104](#), as last amended by Laws of Utah 2008, Chapter 382

29 [34-40-106](#), as last amended by Laws of Utah 2005, Chapter 287



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

32 Section 1. Section **34-23-301** is amended to read:

33 **34-23-301. Minimum hourly wages.**

34 The commission may establish minimum hourly wages for minors~~[- If there is an~~
35 ~~established minimum hourly wage for adults, the minimum hourly wages for minors may be~~
36 ~~established at a lesser amount.]~~ in accordance with Section [34-40-103](#).

37 Section 2. Section **34-40-102** is amended to read:

38 **34-40-102. Definitions -- Joint employees -- Franchisors.**

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

43 (2) As used in this chapter:

44 (a) "Adjust for inflation" means increase or decrease in accordance with the seasonally
45 adjusted consumer price index for all urban consumers published by the Bureau of Labor
46 Statistics within the United States Department of Labor.

47 (b) "Cash wage obligation" means an hourly wage that an employer pays a tipped
48 employee regardless of the tips or gratuities a tipped employee receives.

49 ~~[(b)]~~ (c) "Commission" means the Labor Commission.

50 ~~[(c)]~~ (d) "Division" means the Division of Antidiscrimination and Labor in the
51 commission.

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

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

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

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

57 ~~[(h)]~~ (i) "Minimum wage" means the state minimum hourly wage for adult employees
58 as established under this chapter, unless the context clearly indicates otherwise.

59 [(†)] (j) "Tipped employee" means an employee who customarily and regularly receives
60 tips or gratuities.

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

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

66 (i) a franchisee; or

67 (ii) a franchisee's employee.

68 (b) With respect to a specific claim for relief under this chapter made by a franchisee or
69 a franchisee's employee, this Subsection (4) does not apply to a franchisor under a franchise
70 that exercises a type or degree of control over the franchisee or the franchisee's employee not
71 customarily exercised by a franchisor for the purpose of protecting the franchisor's trademarks
72 and brand.

73 Section 3. Section **34-40-103** is amended to read:

74 **34-40-103. Minimum wage -- Commission to review and modify minimum wage.**

75 (1) (a) The minimum wage for all private and public employees within the state shall
76 be \$3.35 per hour.

77 (b) Effective April 1, 1990, the minimum wage shall be \$3.80 per hour.

78 (c) Effective December 31, 2023, the minimum wage shall be \$7.25 per hour.

79 (d) Effective January 1, 2025, the minimum wage shall be:

80 (i) for an employee who is younger than 18 years old, \$10 per hour;

81 (ii) for an employee who is 18 years old or older and younger than 21 years old, \$13
82 per hour;

83 (iii) for an employee who is 21 years old or older and younger than 23 years old, \$15
84 per hour; and

85 (iv) for an employee who is 23 years old or older, \$19 per hour.

86 (e) Beginning January 1, 2027, and each January 1 thereafter, the commission shall, by
87 rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act:

88 (i) adjust for inflation the minimum wages described in Subsection (1)(d) for the
89 immediately preceding two-year period; and

90 (ii) subject to Subsection (2)(a), establish a minimum wage for each category of
 91 employee described in Subsection (1)(d) that is equal to or greater than the adjusted amount for
 92 the category determined under Subsection (1)(e)(i).

93 ~~[(2) (a) After July 1, 1990, the commission may by rule establish the minimum wage or~~
 94 ~~wages as provided in this chapter that may be paid to employees in public and private~~
 95 ~~employment within the state.]~~

96 ~~[(b)] (2) (a) The minimum wage, as established by the commission, may not [exceed~~
 97 ~~the] at any time be lower than the federal minimum wage as provided in 29 U.S.C. Sec. 201 et~~
 98 ~~seq., the Fair Labor Standards Act of 1938[; as amended, in effect at the time of~~
 99 ~~implementation of this section].~~

100 ~~[(e)] (b) The commission:~~

101 ~~(i) may review the minimum wage at any time;~~

102 ~~[(ii) shall review the minimum wage at least every three years; and]~~

103 ~~[(iii)] (ii) shall review the minimum wage whenever the federal minimum wage is~~
 104 ~~changed[-];~~

105 (iii) may, by rule made in accordance with Title 63G, Chapter 3, Utah Administrative
 106 Rulemaking Act:

107 (A) adjust for inflation the minimum wages described in Subsection (1)(d) more often
 108 than is required under Subsection (1)(e); and

109 (B) subject to Subsection (2)(a), establish a minimum wage for a category of employee
 110 described in Subsection (1)(d) that is equal to or greater than the adjusted amount determined
 111 for the category under Subsection (2)(b)(iii)(A).

112 ~~[(3) The commission may provide for separate minimum hourly wages for minors.]~~

113 Section 4. Section **34-40-104** is amended to read:

114 **34-40-104. Exemptions.**

115 (1) The minimum wage established in this chapter does not apply to:

116 (a) any employee who is entitled to a minimum wage as provided in 29 U.S.C. Sec.
 117 201 et seq., the Fair Labor Standards Act of 1938, as amended;

118 (b) outside sales persons;

119 (c) an employee who is a member of the employer's immediate family;

120 ~~[(d) companionship service for persons who, because of age or infirmity, are unable to~~

121 ~~care for themselves;]~~

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

123 ~~[(f)]~~ (e) seasonal employees of nonprofit camping programs, religious or recreation

124 programs, and nonprofit educational and charitable organizations registered under Title 13,

125 Chapter 22, Charitable Solicitations Act;

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

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

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

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

130 (ii) is employed as a harvest laborer and is paid on a piece rate basis in an operation

131 that has been and is generally recognized by custom as having been paid on a piece rate basis in

132 the region of employment;

133 (iii) was employed in agriculture less than 13 weeks during the preceding calendar

134 year; or

135 (iv) is a retired or semiretired person performing part-time or incidental work as a

136 condition of the employee's residence on a farm or ranch;

137 ~~[(j)]~~ (i) registered apprentices or students employed by the educational institution in

138 which they are enrolled; or

139 ~~[(k)]~~ (j) any seasonal hourly employee employed by a seasonal amusement

140 establishment with permanent structures and facilities if the other direct monetary

141 compensation from tips, incentives, commissions, end-of-season bonus, or other forms of pay

142 is sufficient to cause the average hourly rate of total compensation for the season of seasonal

143 hourly employees who continue to work to the end of the operating season to equal the

144 applicable minimum wage if the seasonal amusement establishment:

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

146 (ii) during the preceding calendar year its average receipts for any six months of that

147 year were not more than 33-1/3% of its average receipts for the other six months of that year.

148 ~~[(2)(a)]~~ ~~Persons with a disability whose earnings or productive capacities are impaired~~

149 ~~by age, physical or mental deficiencies, or injury may be employed at wages that are lower than~~

150 ~~the minimum wage, provided the wage is related to the employee's productivity.]~~

151 ~~[(b)]~~ ~~The commission may establish and regulate the wages paid or wage scales for~~

152 ~~persons with a disability.]~~

153 ~~[(3)]~~ (2) The commission may establish or may set a lesser minimum wage for learners
154 not to exceed the first 160 hours of employment.

155 ~~[(4)]~~ (3) (a) An employer of a tipped employee shall pay the tipped employee at least
156 the minimum wage established by this chapter.

157 (b) In computing a tipped employee's wage under this Subsection ~~[(4)]~~ (3), an employer
158 of a tipped employee:

159 (i) shall pay the tipped employee at least the cash wage obligation as an hourly wage;
160 and

161 (ii) may compute the remainder of the tipped employee's wage using the tips or
162 gratuities the tipped employee actually receives.

163 (c) An employee shall retain all tips and gratuities except to the extent that the
164 employee participates in a bona fide tip pooling or sharing arrangement with other tipped
165 employees.

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

169 Section 5. Section **34-40-106** is amended to read:

170 **34-40-106. Limitations on minimum wage imposed by cities, towns, or counties.**

171 (1) A city, town, or county may not establish, mandate, or require a minimum wage
172 that exceeds ~~[the federal minimum wage as provided in 29 U.S.C. Sec. 201 et seq., Fair Labor~~
173 ~~Standards Act of 1938]~~ the established minimum wage for all private and public employees
174 under Section [34-40-103](#).

175 (2) (a) A city, town, or county may not require that a person who contracts with the
176 city, town, or county pay that person's employees a wage that exceeds the federal minimum
177 wage as provided in 29 U.S.C. Sec. 201 et seq., Fair Labor Standards Act of 1938.

178 (b) Subsection (2)(a) does not apply when federal law requires the payment of a
179 specified wage to persons working on projects funded in whole or in part by federal funds.

180 (c) Subsection (2)(a) applies to contracts executed on or after April 30, 2001.

181 (3) (a) If a city, town, or county contracts with a person for the direct purchase of goods
182 or services, in awarding or otherwise executing that contract, the city, town, or county may not

183 give any preferential treatment to a person on the basis that the person pays that person's
184 employees a wage that exceeds the minimum wage as provided in 29 U.S.C. 201 et seq., Fair
185 Labor Standards Act of 1938.

186 (b) This Subsection (3) does not apply when federal law requires the consideration of
187 whether a person pays the person's employees a specified wage to persons working on projects
188 funded in whole or in part by federal funds.

189 (c) This Subsection (3) applies to contracts executed on or after May 2, 2005.

190 (4) (a) The restrictions of this section on a city, town, or county apply to any entity
191 created by the city, town, or county.

192 (b) This Subsection (4) applies to contracts executed on or after May 2, 2005.