

**GRATUITY AMENDMENTS**

2023 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Stephanie Pitcher**

House Sponsor: Tyler Clancy

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**LONG TITLE**

**General Description:**

This bill addresses sharing of employee tips and gratuities.

**Highlighted Provisions:**

This bill:

- ▶ allows an employee who is not customarily tipped to participate in a tip sharing arrangement under certain circumstances; and
- ▶ makes technical changes.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

**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 **34-40-104** is amended to read:

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

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

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

- 29 amended];
- 30 (b) an outside sales ~~[persons]~~ person;
- 31 (c) an employee who is a member of the employer's immediate family;
- 32 (d) companionship service for ~~[persons]~~ an individual who, because of age or infirmity,
- 33 ~~[are]~~ is unable to care for ~~[themselves]~~ the individual's self;
- 34 (e) casual and domestic employees as defined by the commission;
- 35 (f) a seasonal ~~[employees]~~ employee of a nonprofit camping ~~[programs]~~ program,
- 36 religious or recreation ~~[programs, and]~~ program, or nonprofit educational ~~[and]~~ or charitable
- 37 ~~[organizations]~~ organization registered under Title 13, Chapter 22, Charitable Solicitations Act;
- 38 (g) an individual employed by the United States of America;
- 39 (h) ~~[any]~~ a prisoner employed through the penal system;
- 40 (i) ~~[any]~~ an employee employed in agriculture if the employee:
- 41 (i) is principally engaged in the range production of livestock;
- 42 (ii) is employed as a harvest laborer and is paid on a piece rate basis in an operation
- 43 that has been and is generally recognized by custom as having been paid on a piece rate basis in
- 44 the region of employment;
- 45 (iii) was employed in agriculture less than 13 weeks during the preceding calendar
- 46 year; or
- 47 (iv) is a retired or semiretired ~~[person]~~ individual performing part-time or incidental
- 48 work as a condition of the employee's residence on a farm or ranch;
- 49 (j) a registered ~~[apprentices or students]~~ apprentice or student employed by the
- 50 educational institution in which ~~[they are]~~ the apprentice or student is enrolled; or
- 51 (k) ~~[any]~~ a seasonal hourly employee employed by a seasonal amusement
- 52 establishment with permanent structures and facilities if the other direct monetary
- 53 compensation from tips, incentives, commissions, end-of-season bonus, or other forms of pay
- 54 is sufficient to cause the average hourly rate of total compensation for the season of seasonal
- 55 hourly employees who continue to work to the end of the operating season to equal the

56 applicable minimum wage if [~~the seasonal amusement establishment~~]:

57 (i) the seasonal amusement establishment does not operate for more than seven months  
58 in any calendar year; or

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

62 (2) (a) [~~Persons~~] An individual with a disability whose earnings or productive  
63 capacities are impaired by age, physical or mental [~~deficiencies~~] deficiency, or injury may be  
64 employed at wages that are lower than the minimum wage, provided the wage is related to the  
65 [~~employee's~~] individual's productivity.

66 (b) The commission may establish and regulate the wages paid or wage scales for  
67 [~~persons~~] an individual with a disability.

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

70 (4) (a) An employer of a tipped employee shall pay the tipped employee at least the  
71 minimum wage established by this chapter.

72 (b) In computing a tipped employee's wage under this Subsection (4), an employer of a  
73 tipped employee:

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

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

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

81 (d) An employer may allow an employee who is not a tipped employee to participate in  
82 a bona fide tip pooling or sharing arrangement with another employee who is not a tipped

83 employee in accordance with the Fair Labor Standards Act of 1938, 29 U.S.C. Sec. 201 et seq.,  
84 and 29 C.F.R. Sec. 531.50 through 531.60.

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