

Effective 5/10/2016

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

- (1) Subject to Subsection (3), this chapter and the terms used in it, including the computation of wages, shall be interpreted consistently with the Fair Labor Standards Act of 1938, 29 U.S.C. Sec. 201 et seq., as amended, to the extent that act relates to the payment of a minimum wage.
- (2) As used in this chapter:
 - (a) "Cash wage obligation" means an hourly wage that an employer pays a tipped employee regardless of the tips or gratuities a tipped employee receives.
 - (b) "Commission" means the Labor Commission.
 - (c) "Division" means the Division of Antidiscrimination and Labor in the commission.
 - (d) "Federal executive agency" means an executive agency, as defined in 5 U.S.C. Sec. 105, of the federal government.
 - (e) "Franchise" means the same as that term is defined in 16 C.F.R. Sec. 436.1.
 - (f) "Franchisee" means the same as that term is defined in 16 C.F.R. Sec. 436.1.
 - (g) "Franchisor" means the same as that term is defined in 16 C.F.R. Sec. 436.1.
 - (h) "Minimum wage" means the state minimum hourly wage for adult employees as established under this chapter, unless the context clearly indicates otherwise.
 - (i) "Tipped employee" means an employee who customarily and regularly receives tips or gratuities.
- (3) Notwithstanding Subsection (1), for purposes of determining whether two or more persons are considered joint employers under this chapter, an administrative ruling of a federal executive agency may not be considered a generally applicable law unless that administrative ruling is determined to be generally applicable by a court of law, or adopted by statute or rule.
- (4)
 - (a) For purposes of this chapter, a franchisor is not considered to be an employer of:
 - (i) a franchisee; or
 - (ii) a franchisee's employee.
 - (b) With respect to a specific claim for relief under this chapter made by a franchisee or a franchisee's employee, this Subsection (4) does not apply to a franchisor under a franchise that exercises a type or degree of control over the franchisee or the franchisee's employee not customarily exercised by a franchisor for the purpose of protecting the franchisor's trademarks and brand.

Amended by Chapter 370, 2016 General Session