

Effective 5/3/2023

34-40-104 Exemptions.

- (1) The minimum wage established in this chapter does not apply to:
 - (a) 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.;
 - (b) an outside sales person;
 - (c) an employee who is a member of the employer's immediate family;
 - (d) companionship service for an individual who, because of age or infirmity, is unable to care for the individual's self;
 - (e) casual and domestic employees as defined by the commission;
 - (f) a seasonal employee of a nonprofit camping program, religious or recreation program, or nonprofit educational or charitable organization registered under Title 13, Chapter 22, Charitable Solicitations Act;
 - (g) an individual employed by the United States of America;
 - (h) a prisoner employed through the penal system;
 - (i) an employee employed in agriculture if the employee:
 - (i) is principally engaged in the range production of livestock;
 - (ii) is employed as a harvest laborer and is paid on a piece rate basis in an operation that has been and is generally recognized by custom as having been paid on a piece rate basis in the region of employment;
 - (iii) was employed in agriculture less than 13 weeks during the preceding calendar year; or
 - (iv) is a retired or semiretired individual performing part-time or incidental work as a condition of the employee's residence on a farm or ranch;
 - (j) a registered apprentice or student employed by the educational institution in which the apprentice or student is enrolled; or
 - (k) a seasonal hourly employee employed by a seasonal amusement establishment with permanent structures and facilities if the other direct monetary compensation from tips, incentives, commissions, end-of-season bonus, or other forms of pay is sufficient to cause the average hourly rate of total compensation for the season of seasonal hourly employees who continue to work to the end of the operating season to equal the applicable minimum wage if:
 - (i) the seasonal amusement establishment does not operate for more than seven months in any calendar year; or
 - (ii) during the preceding calendar year the seasonal amusement establishment's average receipts for any six months of that year were not more than 33-1/3% of the seasonal amusement establishment's average receipts for the other six months of that year.
- (2)
 - (a) An individual with a disability whose earnings or productive capacities are impaired by age, physical or mental deficiency, or injury may be employed at wages that are lower than the minimum wage, provided the wage is related to the individual's productivity.
 - (b) The commission may establish and regulate the wages paid or wage scales for an individual with a disability.
- (3) The commission may establish or set a lesser minimum wage for learners not to exceed the first 160 hours of employment.
- (4)
 - (a) An employer of a tipped employee shall pay the tipped employee at least the minimum wage established by this chapter.
 - (b) In computing a tipped employee's wage under this Subsection (4), an employer of a tipped employee:

- (i) shall pay the tipped employee at least the cash wage obligation as an hourly wage; and
- (ii) may compute the remainder of the tipped employee's wage using the tips or gratuities the tipped employee actually receives.
- (c) A tipped employee shall retain all tips and gratuities except to the extent that the employee participates in a bona fide tip pooling or sharing arrangement with other tipped employees.
- (d) An employer may allow an employee who is not a tipped employee to participate in a bona fide tip pooling or sharing arrangement with another employee who is not a tipped employee in accordance with the Fair Labor Standards Act of 1938, 29 U.S.C. Sec. 201 et seq., and 29 C.F.R. Sec. 531.50 through 531.60.
- (e) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission shall by rule establish the cash wage obligation in conjunction with the commission's review of the minimum wage under Section 34-40-103.

Amended by Chapter 491, 2023 General Session