

Chapter 40
Utah Minimum Wage Act

Part 1

Title - Definitions - Minimum Wage - Exemptions

34-40-101 Short title.

This chapter is known as the "Utah Minimum Wage Act."

Enacted by Chapter 8, 1990 General Session

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

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

- (1)
 - (a) The minimum wage for all private and public employees within the state shall be \$3.35 per hour.
 - (b) Effective April 1, 1990, the minimum wage shall be \$3.80 per hour.
- (2)
 - (a) After July 1, 1990, the commission may by rule establish the minimum wage or wages as provided in this chapter that may be paid to employees in public and private employment within the state.
 - (b) The minimum wage, as established by the commission, may not exceed the federal minimum wage as provided in 29 U.S.C. Sec. 201 et seq., the Fair Labor Standards Act of 1938, as amended, in effect at the time of implementation of this section.
 - (c) The commission:
 - (i) may review the minimum wage at any time;
 - (ii) shall review the minimum wage at least every three years; and
 - (iii) shall review the minimum wage whenever the federal minimum wage is changed.
- (3) The commission may provide for separate minimum hourly wages for minors.

Amended by Chapter 375, 1997 General Session

34-40-104 Exemptions.

- (1) The minimum wage established in this chapter does not apply to:
 - (a) any employee who is entitled to a minimum wage as provided in 29 U.S.C. Sec. 201 et seq., the Fair Labor Standards Act of 1938, as amended;
 - (b) outside sales persons;
 - (c) an employee who is a member of the employer's immediate family;
 - (d) companionship service for persons who, because of age or infirmity, are unable to care for themselves;
 - (e) casual and domestic employees as defined by the commission;
 - (f) seasonal employees of nonprofit camping programs, religious or recreation programs, and nonprofit educational and charitable organizations registered under Title 13, Chapter 22, Charitable Solicitations Act;
 - (g) an individual employed by the United States of America;
 - (h) any prisoner employed through the penal system;
 - (i) any 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 person performing part-time or incidental work as a condition of the employee's residence on a farm or ranch;
 - (j) registered apprentices or students employed by the educational institution in which they are enrolled; or
 - (k) any 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 the seasonal amusement establishment:

- (i) does not operate for more than seven months in any calendar year; or
 - (ii) during the preceding calendar year its average receipts for any six months of that year were not more than 33-1/3% of its average receipts for the other six months of that year.
- (2)
- (a) Persons with a disability whose earnings or productive capacities are impaired by age, physical or mental deficiencies, or injury may be employed at wages that are lower than the minimum wage, provided the wage is related to the employee's productivity.
 - (b) The commission may establish and regulate the wages paid or wage scales for persons with a disability.
- (3) The commission may establish or may 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) An 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) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission shall by rule establish the cash wage obligation in conjunction with its review of the minimum wage under Section 34-40-103.

Amended by Chapter 382, 2008 General Session

34-40-105 Grant of rulemaking authority.

In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may issue rules that are consistent with this chapter.

Amended by Chapter 382, 2008 General Session

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

- (1) A city, town, or county may not establish, mandate, or require a minimum wage that exceeds the federal minimum wage as provided in 29 U.S.C. Sec. 201 et seq., Fair Labor Standards Act of 1938.
- (2)
- (a) A city, town, or county may not require that a person who contracts with the city, town, or county pay that person's employees a wage that exceeds the federal minimum wage as provided in 29 U.S.C. Sec. 201 et seq., Fair Labor Standards Act of 1938.
 - (b) Subsection (2)(a) does not apply when federal law requires the payment of a specified wage to persons working on projects funded in whole or in part by federal funds.
 - (c) Subsection (2)(a) applies to contracts executed on or after April 30, 2001.
- (3)

- (a) If a city, town, or county contracts with a person for the direct purchase of goods or services, in awarding or otherwise executing that contract, the city, town, or county may not give any preferential treatment to a person on the basis that the person pays that person's employees a wage that exceeds the minimum wage as provided in 29 U.S.C. 201 et seq., Fair Labor Standards Act of 1938.
- (b) This Subsection (3) does not apply when federal law requires the consideration of whether a person pays the person's employees a specified wage to persons working on projects funded in whole or in part by federal funds.
- (c) This Subsection (3) applies to contracts executed on or after May 2, 2005.
- (4)
 - (a) The restrictions of this section on a city, town, or county apply to any entity created by the city, town, or county.
 - (b) This Subsection (4) applies to contracts executed on or after May 2, 2005.

Amended by Chapter 287, 2005 General Session

Part 2

Enforcement - Penalties

34-40-201 Recordkeeping.

Employers shall keep payroll records of employees covered by this chapter showing names, addresses, and dates of birth. Such records shall also show hours worked and wages paid to all covered employees. Records shall be maintained for three years.

Enacted by Chapter 8, 1990 General Session

34-40-202 Enforcement.

The division shall enforce this chapter and investigate complaints under this chapter. The division may commence administrative proceedings in accordance with Title 63G, Chapter 4, Administrative Procedures Act, and may impose a penalty of up to \$500 per violation of this chapter.

Amended by Chapter 382, 2008 General Session

34-40-203 Investigation authority.

- (1) The division shall have access to all payroll records of any place of business or establishment, required by this chapter to pay its employees a minimum wage, to investigate for compliance with this chapter.
- (2) The division shall have access to business records kept at the place of business or establishment which may aid in the enforcement of this chapter.

Amended by Chapter 240, 1996 General Session

34-40-204 Criminal penalty -- Enforcement.

- (1) As used in this section, "violation" includes separate violations as to individual employees arising out of the same investigation or enforcement action.

- (2)
 - (a) A violation of this chapter is an infraction.
 - (b) A second violation of this chapter is a class C misdemeanor.
 - (c) A third or subsequent violation of this chapter is a class B misdemeanor.
- (3) Upon an employer's violation of this section, the commission may prosecute a criminal action in the name of the state.
- (4) The county attorney, district attorney, or attorney general shall provide assistance in prosecutions under this section at the request of the commission.

Amended by Chapter 189, 2019 General Session

34-40-205 Civil action allowed.

- (1) In addition to the administrative and criminal actions authorized by this chapter, an employee may bring a civil action to enforce his rights under this chapter.
- (2)
 - (a) An aggrieved employee is entitled to injunctive relief and may recover the difference between the wage paid and the minimum wage, plus interest.
 - (b) The court may award court costs and attorney fees to the prevailing party.
- (3) An action brought under this section shall be brought within two years of the alleged violation.

Enacted by Chapter 8, 1990 General Session