

WAGES FOR TIPPED EMPLOYEES

2003 GENERAL SESSION

STATE OF UTAH

Sponsor: David Ure

This act modifies the Utah Minimum Wage Act to modify the method an employer uses to calculate wage payments to a tipped employee, and to make technical changes.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:

34-40-102, as last amended by Chapter 375, Laws of Utah 1997

34-40-104, as last amended by Chapter 73, Laws of Utah 2001

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

Section 1. Section **34-40-102** is amended to read:

34-40-102. Definitions.

(1) This chapter and the terms used in it, including the computation of wages, shall be interpreted consistently with 29 U.S.C. Sec. 201 et seq., the Fair Labor Standards Act of 1938, 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.

~~(a)~~ (b) "Commission" means the Labor Commission.

~~(b)~~ (c) "Division" means the Division of Antidiscrimination and Labor in the commission.

~~(c)~~ (d) "Minimum wage" means the state minimum hourly wage for adult employees as established under this chapter, unless the context clearly indicates otherwise.

(e) "Tipped employee" means an employee who customarily and regularly receives tips or gratuities.

Section 2. 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 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) Employees tipped may be paid not less than 55% of the minimum wage when the balance received from tips, either directly or by pooling of tip receipts, is sufficient to bring the employee to the minimum wage. Employees]~~

(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 [they participate] the employee participates in a bona fide tip pooling or sharing arrangement with other tipped employees. [The]

(d) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the commission [may] shall by rule [provide for a greater tip allowance,] establish the cash wage obligation in conjunction with its review of the minimum wage[;] under Section 34-40-103.