

LIVING WAGE AMENDMENTS

2016 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Lynn N. Hemingway

Senate Sponsor: _____

LONG TITLE

General Description:

This bill amends Title 34, Chapter 40, Utah Minimum Wage Act.

Highlighted Provisions:

This bill:

▶ provides that:

- the minimum wage for a private or public employee within the state is \$12.00 per hour;
- the cash wage obligation for a tipped employee within the state is \$5.00 per hour; and
- on the first day of every even-numbered year, beginning on January 1, 2018, the minimum wage and the cash wage obligation shall increase by a percentage equal to the percentage difference between the average of the Consumer Price Index for the two preceding calendar years and the Consumer Price Index for calendar year 2015; and

▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:



28 AMENDS:

29 [34-40-102](#), as last amended by Laws of Utah 2003, Chapter 151

30 [34-40-103](#), as last amended by Laws of Utah 1997, Chapter 375

31 [34-40-104](#), as last amended by Laws of Utah 2008, Chapter 382

32 [34-40-106](#), as last amended by Laws of Utah 2005, Chapter 287



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

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

36 **34-40-102. Definitions.**

37 (1) This chapter and the terms used in it, including the computation of wages, shall be
38 interpreted consistently with 29 U.S.C. Sec. 201 et seq., the Fair Labor Standards Act of 1938,
39 as amended, to the extent that act relates to the payment of a minimum wage.

40 (2) As used in this chapter:

41 (a) "Cash wage obligation" means an hourly wage that an employer pays a tipped
42 employee regardless of the tips or gratuities [a] the tipped employee receives.

43 (b) "Commission" means the Labor Commission created in Section [34A-1-103](#).

44 (c) "Division" means the Division of Antidiscrimination and Labor [~~in the~~
45 ~~commission~~] created in Section [34A-1-202](#).

46 (d) "Minimum wage" means the state minimum hourly wage for an adult [~~employees~~
47 ~~employee~~] as established under this chapter[~~, unless the context clearly indicates otherwise~~].

48 (e) "Minor" means an individual who is 16 years of age or younger.

49 [~~(e)~~] (f) "Tipped employee" means an employee who customarily and regularly
50 receives tips or gratuities.

51 Section 2. Section **34-40-103** is amended to read:

52 **34-40-103. Minimum wage and cash wage obligation -- Commission to review**
53 **and modify minimum wage and cash wage obligation.**

54 (1) [~~(a)~~] The minimum wage for [~~an~~] a private [~~and~~] or public [~~employees~~] employee
55 within the state [~~shall be \$3.35~~] is \$12.00 per hour.

56 [~~(b)~~] ~~Effective April 1, 1990, the minimum wage shall be \$3.80 per hour.~~

57 [~~(2)~~] (a) ~~After July 1, 1990, the commission may by rule establish the minimum wage or~~
58 ~~wages as provided in this chapter that may be paid to employees in public and private~~

59 employment within the state.]

60 ~~[(b) The minimum wage, as established by the commission, may not exceed the federal~~
61 ~~minimum wage as provided in 29 U.S.C. Sec. 201 et seq., the Fair Labor Standards Act of~~
62 ~~1938, as amended, in effect at the time of implementation of this section.]~~

63 ~~[(c) The commission:]~~

64 ~~[(i) may review the minimum wage at any time;]~~

65 ~~[(ii) shall review the minimum wage at least every three years; and]~~

66 ~~[(iii) shall review the minimum wage whenever the federal minimum wage is~~
67 ~~changed].~~

68 ~~[(3) The commission may provide for separate minimum hourly wages for minors.]~~

69 (2) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
70 commission may establish by rule a minimum hourly wage for minors that is different from the
71 minimum wage described in Subsection (1).

72 (3) The cash wage obligation for a tipped employee within the state is \$5.00 per hour.

73 (4) (a) Except as provided in Subsection (4)(b), on the first day of every
74 even-numbered year, beginning on January 1, 2018, the minimum wage and the cash wage
75 obligation shall increase by a percentage equal to the percentage difference between the
76 average of the Consumer Price Index for the two preceding calendar years and the Consumer
77 Price Index for calendar year 2015.

78 (b) If the percentage difference described in Subsection (4)(a) is negative, the
79 minimum wage and the cash wage obligation do not change.

80 (c) For purposes of Subsection (4)(a), the Consumer Price Index shall be calculated as
81 provided in 26 U.S.C. Sections 1(f)(4) and (5).

82 (5) The commission shall post, on the home page of the commission's website, a
83 conspicuous and clearly identified link to the current minimum wage and the current cash wage
84 obligation.

85 Section 3. Section **34-40-104** is amended to read:

86 **34-40-104. Exemptions.**

87 (1) [The] Unless the individual is entitled to a minimum wage under the Fair Labor
88 Standards Act of 1938, 29 U.S.C. Section 201 et seq., as amended, the minimum wage
89 established in this chapter does not apply to:

90 ~~[(a) any employee who is entitled to a minimum wage as provided in 29 U.S.C. Sec.~~
91 ~~201 et seq., the Fair Labor Standards Act of 1938, as amended;]~~

92 ~~[(b)]~~ (a) outside sales persons;

93 ~~[(c)]~~ (b) an employee who is a member of the employer's immediate family;

94 ~~[(d)]~~ (c) companionship service for persons who, because of age or infirmity, are
95 unable to care for themselves;

96 ~~[(e)]~~ (d) casual and domestic employees as defined by the commission;

97 ~~[(f)]~~ (e) seasonal employees of nonprofit camping programs, religious or recreation
98 programs, and nonprofit educational and charitable organizations registered under Title 13,
99 Chapter 22, Charitable Solicitations Act;

100 ~~[(g)]~~ (f) an individual employed by the United States of America;

101 ~~[(h)]~~ (g) any prisoner employed through the penal system;

102 ~~[(i)]~~ (h) any employee employed in agriculture if the employee:

103 (i) is principally engaged in the range production of livestock;

104 (ii) is employed as a harvest laborer and is paid on a piece rate basis in an operation
105 that has been and is generally recognized by custom as having been paid on a piece rate basis in
106 the region of employment;

107 (iii) was employed in agriculture less than 13 weeks during the preceding calendar
108 year; or

109 (iv) is a retired or semiretired person performing part-time or incidental work as a
110 condition of the employee's residence on a farm or ranch;

111 ~~[(j)]~~ (i) registered apprentices or students employed by the educational institution in
112 which they are enrolled; or

113 ~~[(k)]~~ (j) any seasonal hourly employee employed by a seasonal amusement
114 establishment with permanent structures and facilities if the other direct monetary
115 compensation from tips, incentives, commissions, end-of-season bonus, or other forms of pay
116 is sufficient to cause the average hourly rate of total compensation for the season of seasonal
117 hourly employees who continue to work to the end of the operating season to equal the
118 applicable minimum wage if the seasonal amusement establishment:

119 (i) does not operate for more than seven months in any calendar year; or

120 (ii) during the preceding calendar year its average receipts for any six months of that

121 year were not more than 33-1/3% of its average receipts for the other six months of that year.

122 (2) (a) Persons with a disability whose earnings or productive capacities are impaired
123 by age, physical or mental deficiencies, or injury may be employed at wages that are lower than
124 the minimum wage, provided the wage is related to the employee's productivity.

125 (b) The commission may establish and regulate the wages paid or wage scales for
126 persons with a disability.

127 (3) The commission may establish or may set a lesser minimum wage for learners not
128 to exceed the first 160 hours of employment.

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

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

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

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

137 (c) An employee shall retain all tips and gratuities except to the extent that the
138 employee participates in a bona fide tip pooling or sharing arrangement with other tipped
139 employees.

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

143 Section 4. Section **34-40-106** is amended to read:

144 **34-40-106. Limitations on minimum wage imposed by cities, towns, or counties.**

145 (1) A city, town, or county may not establish, mandate, or require a minimum wage
146 that exceeds the [federal] minimum wage [as provided in 29 U.S.C. Sec. 201 et seq., Fair Labor
147 Standards Act of 1938] described in Section 34-40-103.

148 (2) (a) A city, town, or county may not require that a person who contracts with the
149 city, town, or county pay [that] the person's employees a wage that exceeds the [federal]
150 minimum wage [as provided in 29 U.S.C. Sec. 201 et seq., Fair Labor Standards Act of 1938]
151 described in Section 34-40-103.

152 (b) Subsection (2)(a) does not apply when federal law requires the payment of a
153 specified wage to persons working on projects funded in whole or in part by federal funds.

154 (c) Subsection (2)(a) applies to contracts executed on or after [~~April 30, 2001~~] May 9,
155 2016.

156 (3) (a) If a city, town, or county contracts with a person for the direct purchase of goods
157 or services, in awarding or otherwise executing that contract, the city, town, or county may not
158 give any preferential treatment to a person on the basis that the person pays that person's
159 employees a wage that exceeds the minimum wage [~~as provided in 29 U.S.C. 201 et seq., Fair~~
160 ~~Labor Standards Act of 1938~~] described in Section 34-40-103.

161 (b) This Subsection (3) does not apply when federal law requires the consideration of
162 whether a person pays the person's employees a specified wage to persons working on projects
163 funded in whole or in part by federal funds.

164 (c) This Subsection (3) applies to contracts executed on or after [~~May 2, 2005~~] May 9,
165 2016.

166 (4) (a) The restrictions of this section on a city, town, or county apply to any entity
167 created by the city, town, or county.

168 (b) This Subsection (4) applies to contracts executed on or after [~~May 2, 2005~~] May 9,
169 2016.

Legislative Review Note
Office of Legislative Research and General Counsel