

**MINIMUM WAGE AMENDMENTS**

2021 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Clare Collard**

Senate Sponsor: \_\_\_\_\_

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**LONG TITLE**

**General Description:**

This bill amends provisions related to minimum wages.

**Highlighted Provisions:**

This bill:

- ▶ modifies the minimum wage;
- ▶ modifies the cash wage obligation for a tipped employee;
- ▶ provides for future increases of the minimum wage; and
- ▶ makes technical and conforming changes.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

**34-40-102**, as last amended by Laws of Utah 2016, Chapter 370

**34-40-103**, as last amended by Laws of Utah 1997, Chapter 375

**34-40-104**, as last amended by Laws of Utah 2008, Chapter 382

**34-40-106**, as last amended by Laws of Utah 2005, Chapter 287

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



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

29 **34-40-102. Definitions -- Joint employees -- Franchisors.**

30 (1) Subject to Subsection (3), this chapter and the terms used in it, including the  
31 computation of wages, shall be interpreted consistently with the Fair Labor Standards Act of  
32 1938, 29 U.S.C. Sec. 201 et seq., as amended, to the extent that act relates to the payment of a  
33 minimum wage.

34 (2) As used in this chapter:

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

37 (b) "Commission" means the Labor Commission created in Section 34A-1-103.

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

40 (d) "Federal executive agency" means an executive agency, as defined in 5 U.S.C. Sec.  
41 105, of the federal government.

42 (e) "Franchise" means the same as that term is defined in 16 C.F.R. Sec. 436.1.

43 (f) "Franchisee" means the same as that term is defined in 16 C.F.R. Sec. 436.1.

44 (g) "Franchisor" means the same as that term is defined in 16 C.F.R. Sec. 436.1.

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

47 (i) "Minor" means an individual who is 16 years old or younger.

48 [(†)] (j) "Tipped employee" means an employee who customarily and regularly receives  
49 tips or gratuities.

50 (3) Notwithstanding Subsection (1), for purposes of determining whether two or more  
51 persons are considered joint employers under this chapter, an administrative ruling of a federal  
52 executive agency may not be considered a generally applicable law unless that administrative  
53 ruling is determined to be generally applicable by a court of law, or adopted by statute or rule.

54 (4) (a) For purposes of this chapter, a franchisor is not considered to be an employer of:

55 (i) a franchisee; or

56 (ii) a franchisee's employee.

57 (b) With respect to a specific claim for relief under this chapter made by a franchisee or  
58 a franchisee's employee, this Subsection (4) does not apply to a franchisor under a franchise

59 that exercises a type or degree of control over the franchisee or the franchisee's employee not  
60 customarily exercised by a franchisor for the purpose of protecting the franchisor's trademarks  
61 and brand.

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

63 **34-40-103. Minimum wage -- Commission to review and modify minimum wage.**

64 (1) ~~[(a)] The minimum wage for [all private and public employees within the state shall~~  
65 ~~be \$3.35 per hour]~~ a private or public employee within the state is the amount described in  
66 Subsection (2).

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

68 ~~[(2) (a) After July 1, 1990, the commission may by rule establish the minimum wage or~~  
69 ~~wages as provided in this chapter that may be paid to employees in public and private~~  
70 ~~employment within the state.]~~

71 ~~[(b) The minimum wage, as established by the commission, may not exceed the federal~~  
72 ~~minimum wage as provided in 29 U.S.C. Sec. 201 et seq., the Fair Labor Standards Act of~~  
73 ~~1938, as amended, in effect at the time of implementation of this section.]~~

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

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

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

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

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

80 (2) (a) On and after July 1, 2021, and before July 1, 2022, the minimum wage is \$12.00  
81 per hour.

82 (b) On and after July 1, 2022, and before July 1, 2023, the minimum wage is \$12.50  
83 per hour.

84 (c) On and after July 1, 2023, and before July 1, 2024, the minimum wage is \$13.25  
85 per hour.

86 (d) On and after July 1, 2024, and before July 1, 2025, the minimum wage is \$14.00  
87 per hour.

88 (e) On and after July 1, 2025, and before July 1, 2026, the minimum wage is \$15.00  
89 per hour.

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

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

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

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

98 **34-40-104. Exemptions.**

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

102 ~~[(a) any employee who is entitled to a minimum wage as provided in 29 U.S.C. Sec.~~  
 103 ~~201 et seq., the Fair Labor Standards Act of 1938, as amended;]~~

104 ~~[(b)]~~ (a) an outside sales [persons] person;

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

106 ~~[(d)]~~ (c) companionship service for [persons] a person who, because of age or  
 107 infirmity, [are] is unable to care for [themselves] his or herself;

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

109 ~~[(f)]~~ (e) a seasonal [employees] employee of a nonprofit camping [programs] program,  
 110 religious or recreation [programs, and] program, or nonprofit educational and charitable  
 111 [organizations] organization registered under Title 13, Chapter 22, Charitable Solicitations Act;

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

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

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

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

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

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

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

123 ~~[(j)]~~ (i) a registered ~~[apprentices or students]~~ apprentice or student employed by the  
124 educational institution in which ~~[they are]~~ the apprentice or student is enrolled; or

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

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

132 (ii) during the preceding calendar year ~~[its]~~ the seasonal amusement establishment's  
133 average receipts for any six months of that year were not more than 33-1/3% of ~~[its]~~ the  
134 seasonal amusement establishment's average receipts for the other six months of that year.

135 (2) (a) ~~[Persons]~~ A person with a disability whose earnings or productive capacities are  
136 impaired by age, physical or mental deficiencies, or injury may be employed at wages that are  
137 lower than the minimum wage, provided the wage is related to the employee's productivity.

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

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

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

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

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

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

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

152 employees.

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

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

157 **34-40-106. Limitations on minimum wage imposed by cities, towns, or counties.**

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

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

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

167 (c) Subsection (2)(a) applies to contracts executed on or after [~~April 30, 2001~~] July 1,  
168 2021.

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

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

177 (c) This Subsection (3) applies to contracts executed on or after [~~May 2, 2005~~] July 1,  
178 2021.

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

181 (b) This Subsection (4) applies to contracts executed on or after [~~May 2, 2005~~] July 1,  
182 2021.