

MINIMUM WAGE MODIFICATIONS

2021 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Ashlee Matthews

Senate Sponsor: _____

LONG TITLE

General Description:

This bill addresses minimum wages in Utah.

Highlighted Provisions:

This bill:

- ▶ modifies minimum wage for minors;
- ▶ defines terms;
- ▶ adjusts the minimum wage in the state;
- ▶ requires rulemaking; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

34-23-301, as last amended by Laws of Utah 1997, Chapter 375

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



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

29 Section 1. Section **34-23-301** is amended to read:

30 **34-23-301. Minimum hourly wages.**

31 [~~The commission may establish minimum hourly wages for minors. If there is an~~] The
32 established minimum hourly wage for adults[;] is the minimum hourly wages for [minors may
33 be established at a lesser amount] a minor.

34 Section 2. Section **34-40-102** is amended to read:

35 **34-40-102. Definitions -- Joint employees -- Franchisors.**

36 (1) Subject to Subsection (3), this chapter and the terms used in [~~it~~] this chapter,
37 including the computation of wages, shall be interpreted consistently with the Fair Labor
38 Standards Act of 1938, 29 U.S.C. Sec. 201 et seq., as amended, to the extent that act relates to
39 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 tipped employee receives.

43 (b) "Commission" means the Labor Commission.

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

45 (d) "Federal executive agency" means an executive agency, as defined in 5 U.S.C. Sec.
46 105, of the federal government.

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

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

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

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

52 (i) "Nonurban county" means any of the following counties:

53 (i) Beaver;

54 (ii) Carbon;

55 (iii) Daggett;

56 (iv) Duchesne;

57 (v) Emery;

58 (vi) Garfield;

- 59 (vii) Grand;
- 60 (viii) Juab;
- 61 (ix) Kane;
- 62 (x) Millard;
- 63 (xi) Piute;
- 64 (xii) San Juan;
- 65 (xiii) Sanpete;
- 66 (xiv) Sevier;
- 67 (xv) Uintah; and
- 68 (xvi) Wayne.

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

71 (k) "Urban growth boundary" means any of the following counties:

- 72 (i) Box Elder;
- 73 (ii) Cache;
- 74 (iii) Iron;
- 75 (iv) Morgan;
- 76 (v) Rich;
- 77 (vi) Wasatch; and
- 78 (vii) Washington.

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

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

- 84 (i) a franchisee; or
- 85 (ii) a franchisee's employee.

86 (b) With respect to a specific claim for relief under this chapter made by a franchisee or
 87 a franchisee's employee, this Subsection (4) does not apply to a franchisor under a franchise
 88 that exercises a type or degree of control over the franchisee or the franchisee's employee not
 89 customarily exercised by a franchisor for the purpose of protecting the franchisor's trademarks

90 and brand.

91 Section 3. Section **34-40-103** is amended to read:

92 **34-40-103. Minimum wage -- Commission to review and modify minimum wage.**

93 (1) ~~[(a) The]~~ Except as otherwise provided in this chapter, the minimum wage for [all
94 private and public employees] a private or public employee within the state shall be the
95 following based on where the employee performs the work: [\$3.35 per hour.]

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

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

100 ~~[(b) The minimum wage, as established by the commission, may not exceed the federal~~
101 ~~minimum wage as provided in 29 U.S.C. Sec. 201 et seq., the Fair Labor Standards Act of~~
102 ~~1938, as amended, in effect at the time of implementation of this section.]~~

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

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

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

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

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

109 (a) beginning on July 1, 2021, and ending on June 30, 2022, \$7.75 per hour;

110 (b) beginning on July 1, 2022, and ending on June 30, 2023, \$8.75 per hour;

111 (c) beginning on July 1, 2023, and ending on June 30, 2024, \$9.75 per hour;

112 (d) beginning on July 1, 2024, and ending on June 30, 2025, \$10.25 per hour;

113 (e) beginning on July 1, 2025, and ending on June 30, 2026, \$10.75 per hour;

114 (f) beginning on July 1, 2026, and ending on June 30, 2027, \$11.25 per hour;

115 (g) beginning on July 1, 2027, and ending on June 30, 2028, \$11.75 per hour; and

116 (h) beginning on July 1, 2028, and on July 1 of each year thereafter, a rate adjusted
117 annually for inflation by the commission as described in Subsection (4).

118 (2) If the employee performs the work within an urban growth boundary, the minimum
119 wage for the work of the employee is:

120 (a) beginning on July 1, 2021, and ending on June 30, 2022, \$7.50 per hour;

- 121 (b) beginning on July 1, 2022, and ending on June 30, 2023, \$8.25 per hour;
- 122 (c) beginning on July 1, 2023, and ending on June 30, 2024, \$8.75 per hour;
- 123 (d) beginning on July 1, 2024, and ending on June 30, 2025, \$9.50 per hour;
- 124 (e) beginning on July 1, 2025, and ending on June 30, 2026, \$10.00 per hour;
- 125 (f) beginning on July 1, 2026, and ending on June 30, 2027, \$10.25 per hour;
- 126 (g) beginning on July 1, 2027, and ending on June 30, 2028, \$10.75 per hour; and
- 127 (h) beginning on July 1, 2028, an employer shall pay an employee described in this

128 Subsection (2) no less than \$1 per hour less than the minimum wage determined under
129 Subsection (1)(h).

130 (3) If the employee performs the work within a nonurban county, the minimum wage
131 for the work of the employee is:

- 132 (a) beginning on July 1, 2021, and ending on June 30, 2022, \$7.50 per hour;
- 133 (b) beginning on July 1, 2022, and ending on June 30, 2023, \$8.00 per hour;
- 134 (c) beginning on July 1, 2023, and ending on June 30, 2024, \$8.25 per hour;
- 135 (d) beginning on July 1, 2024, and ending on June 30, 2025, \$8.50 per hour;
- 136 (e) beginning on July 1, 2025, and ending on June 30, 2026, \$8.75 per hour;
- 137 (f) beginning on July 1, 2026, and ending on June 30, 2027, \$9.00 per hour;
- 138 (g) beginning on July 1, 2027, and ending on June 30, 2028, \$9.25 per hour; and

139 (h) beginning on July 1, 2028, and each July 1 thereafter, for an employee described in
140 this Subsection (3), no less than \$1.50 per hour less than the minimum wage determined under
141 Subsection (1)(h).

142 (4) (a) The minimum wage shall be adjusted for inflation as provided in this
143 Subsection (4).

144 (b) Beginning on April 30, 2028, and each year thereafter, the commission shall
145 calculate an adjustment of the wage amount specified in Subsection (1)(h) based on the
146 increase, if any, from March of the preceding year to March of the year in which the calculation
147 is made in the United States City Average Consumer Price Index for All Urban Consumers for
148 All Items as prepared by the Bureau of Labor Statistics of the United States Department of
149 Labor or its successor.

150 (c) The wage amount as adjusted under this Subsection (4) shall be rounded to the
151 nearest five cents.

152 (d) The wage amount as adjusted under this Subsection (4) becomes effective as the
153 minimum wage amount, replacing the minimum wage amount specified in Subsection (1)(h),
154 on July 1 of the year in which the calculation is made.

155 (e) The commission shall publish on the commission's website the wage amount as
156 adjusted by this Subsection (4) within five business days of the day on which the commission
157 determines the wage adjustment under Subsection (4)(b).

158 (5) The commission shall define by rule, made in accordance with Title 63G, Chapter
159 3, Utah Administrative Rulemaking Act, how an employer determines where the employee
160 performs the work.

161 Section 4. Section **34-40-104** is amended to read:

162 **34-40-104. Exemptions.**

163 (1) The minimum wage established in this chapter does not apply to:

164 (a) any employee who is entitled to a minimum wage as provided in 29 U.S.C. Sec.
165 201 et seq., the Fair Labor Standards Act of 1938, as amended;

166 (b) outside sales persons;

167 (c) an employee who is a member of the employer's immediate family;

168 (d) companionship service for persons who, because of age or infirmity, are unable to
169 care for themselves;

170 (e) casual and domestic employees as defined by the commission;

171 (f) seasonal employees of nonprofit camping programs, religious or recreation
172 programs, and nonprofit educational and charitable organizations registered under Title 13,
173 Chapter 22, Charitable Solicitations Act;

174 (g) an individual employed by the United States of America;

175 (h) any prisoner employed through the penal system;

176 (i) any employee employed in agriculture if the employee:

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

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

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

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

185 (j) registered apprentices or students employed by the educational institution in which
186 they are enrolled; or

187 (k) any seasonal hourly employee employed by a seasonal amusement establishment
188 with permanent structures and facilities if the other direct monetary compensation from tips,
189 incentives, commissions, end-of-season bonus, or other forms of pay is sufficient to cause the
190 average hourly rate of total compensation for the season of seasonal hourly employees who
191 continue to work to the end of the operating season to equal the applicable minimum wage if
192 the seasonal amusement establishment:

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

194 (ii) during the preceding calendar year its average receipts for any six months of that
195 year were not more than 33-1/3% of its average receipts for the other six months of that year.

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

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

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

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

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

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

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

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

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