

GRATUITY AMENDMENTS

2023 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Stephanie Pitcher

House Sponsor: _____

LONG TITLE

General Description:

This bill addresses sharing of employee tips and gratuities.

Highlighted Provisions:

This bill:

▶ allows ~~§~~ **→ [a tipped employee] an employee that is not customarily tipped ←** § to participate in a tip sharing arrangement ~~§~~ **→ [with another employee who is not a tipped employee] ←** § under certain circumstances; and

▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

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

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

Section 1. 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]~~ an employee who is entitled to a minimum wage as provided in the Fair Labor

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

62 (2) (a) ~~[Persons]~~ An individual with a disability whose earnings or productive
 63 capacities are impaired by age, physical or mental ~~[deficiencies]~~ deficiency, or injury may be
 64 employed at wages that are lower than the minimum wage, provided the wage is related to the
 65 ~~[employee's]~~ individual's productivity.

66 (b) The commission may establish and regulate the wages paid or wage scales for
 67 ~~[persons]~~ an individual with a disability.

68 (3) The commission may establish or ~~[may]~~ set a lesser minimum wage for learners not
 69 to exceed the first 160 hours of employment.

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

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

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

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

78 (c) An employee shall retain all tips and gratuities except to the extent that the
 79 employee participates in a bona fide tip pooling or sharing arrangement with other ~~[tipped]~~
 80 employees.

81 ~~(d) An employer~~ ~~**§**~~ ~~**→**~~ ~~**[of a tipped employee]**~~ ~~**←**~~ ~~**§**~~ may allow an employee who is not a tipped
 82 employee to participate in a bona fide tip pooling or sharing arrangement ~~**§**~~ ~~**→**~~ ~~**[with a tipped**~~
 83 ~~**employee]**~~ ~~**←**~~ ~~**§**~~ in accordance with the Fair Labor Standards Act of 1938, 29 U.S.C. Sec. 201 et seq.,
 84 and 29 C.F.R. Sec. 531.50 through 531.60.

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