

GRATUITY AMENDMENTS

2023 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Stephanie Pitcher

House Sponsor: Tyler Clancy

LONG TITLE

General Description:

This bill addresses sharing of employee tips and gratuities.

Highlighted Provisions:

This bill:

▶ allows ~~§~~ **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

S.B. 73



28 Standards Act of 1938, 29 U.S.C. Sec. 201 et seq., ~~the Fair Labor Standards Act of 1938, as~~
29 ~~amended~~];

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

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

32 (d) companionship service for ~~[persons]~~ an individual who, because of age or infirmity,
33 ~~[are]~~ is unable to care for ~~[themselves]~~ the individual's self;

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

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

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

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

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

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

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

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

47 (iv) is a retired or semiretired ~~[person]~~ individual performing part-time or incidental
48 work as a condition of the employee's residence on a farm or ranch;

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

51 (k) ~~[any]~~ a seasonal hourly employee employed by a seasonal amusement
52 establishment with permanent structures and facilities if the other direct monetary
53 compensation from tips, incentives, commissions, end-of-season bonus, or other forms of pay
54 is sufficient to cause the average hourly rate of total compensation for the season of seasonal
55 hourly employees who continue to work to the end of the operating season to equal the
56 applicable minimum wage if ~~[the seasonal amusement establishment]~~;

57 (i) the seasonal amusement establishment does not operate for more than seven months
58 in any calendar year; or

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 ~~Ŝ→ [of a tipped employee] ←Ŝ~~ may allow an employee who is not a tipped
 82 employee to participate in a bona fide tip pooling or sharing arrangement ~~Ŝ→ [with a tipped~~
 83 ~~employee] ←Ŝ~~ 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](#).