

HOURLY WAGE INCREASE AMENDMENTS

2018 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Lynn N. Hemingway

Senate Sponsor: _____

LONG TITLE**General Description:**

This bill amends the Utah Minimum Wage Act.

Highlighted Provisions:

This bill:

- defines the term "minor" as used in the Utah Minimum Wage Act;
- increases the minimum wage for a private or public employee within the state;
- provides for future increases of the minimum wage obligation;
- limits the Labor Commission's oversight 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

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

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

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

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

(2) As used in this chapter:

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

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

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

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

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

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

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

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

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

~~[(i)]~~ (j) "Tipped employee" means an employee who customarily and regularly receives tips or gratuities.

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

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

(i) a franchisee; or

(ii) a franchisee's employee.

(b) With respect to a specific claim for relief under this chapter made by a franchisee or

a franchisee's employee, this Subsection (4) does not apply to a franchisor under a franchise that exercises a type or degree of control over the franchisee or the franchisee's employee not customarily exercised by a franchisor for the purpose of protecting the franchisor's trademarks and brand.

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

34-40-103. Minimum wage -- Commission to review and modify minimum wage for minors.

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

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

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

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

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

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

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

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

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

(2) (a) On and after July 1, 2018, and before July 1, 2022, the minimum wage is \$10.25 per hour.

(b) On and after July 1, 2022, the minimum wage is \$12.00 per hour.

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

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

Section 3. 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 Standards Act of 1938, 29 U.S.C. Sec. 201 et seq., ~~[the Fair Labor Standards Act of 1938,]~~ as amended;

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

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

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

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

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

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

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

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

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

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

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

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

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

(k) ~~[any]~~ a seasonal hourly employee employed by a seasonal amusement establishment with permanent structures and facilities if the other direct monetary compensation from tips, incentives, commissions, end-of-season bonus, or other forms of pay is sufficient to cause the average hourly rate of total compensation for the season of seasonal

hourly employees who continue to work to the end of the operating season to equal the applicable minimum wage if [~~the seasonal amusement establishment~~]:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

161 (c) Subsection (2)(a) applies to contracts executed on or after [~~April 30, 2001~~] July 1,
162 2018.

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

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

171 (c) This Subsection (3) applies to contracts executed on or after [~~May 2, 2005~~] July 1,
172 2018.

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

175 (b) This Subsection (4) applies to contracts executed on or after [~~May 2, 2005~~] July 1,
176 2018.

Legislative Review Note
Office of Legislative Research and General Counsel