

**CASH WAGE OBLIGATION MINIMUM FOR TIPPED  
EMPLOYEES**

2018 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Lynn N. Hemingway**

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

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**LONG TITLE**

**General Description:**

This bill modifies the Utah Minimum Wage Act.

**Highlighted Provisions:**

This bill:

- ▶ specifies the minimum cash wage obligation an employer is required to pay a tipped employee;
- ▶ limits the Labor Commission's oversight of the cash wage obligation; and
- ▶ makes technical and conforming 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

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*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.**



- 28 (1) The minimum wage established in this chapter does not apply to:
- 29 (a) ~~[any]~~ an employee who is entitled to a minimum wage as provided in the Fair Labor
- 30 Standards Act of 1938, 29 U.S.C. Sec. 201 et seq., ~~[the Fair Labor Standards Act of 1938,]~~ as
- 31 amended;
- 32 (b) an outside sales ~~[persons]~~ person;
- 33 (c) an employee who is a member of the employer's immediate family;
- 34 (d) a companionship service for persons who, because of age or infirmity, are unable to
- 35 care for themselves;
- 36 (e) a casual and domestic ~~[employees]~~ employee as defined by the commission;
- 37 (f) a seasonal ~~[employees]~~ employee of a nonprofit camping ~~[programs]~~ program, a
- 38 religious or recreation ~~[programs, and]~~ program, or a nonprofit educational ~~[and]~~ or charitable
- 39 ~~[organizations]~~ organization registered under Title 13, Chapter 22, Charitable Solicitations Act;
- 40 (g) an individual employed by the United States of America;
- 41 (h) ~~[any]~~ a prisoner employed through the penal system;
- 42 (i) ~~[any]~~ an employee employed in agriculture if the employee:
- 43 (i) is principally engaged in the range production of livestock;
- 44 (ii) is employed as a harvest laborer and is paid on a ~~[piece-rate]~~ piece-rate basis in an
- 45 operation that has been and is generally recognized by custom as having been paid on a ~~[piece~~
- 46 rate] piece-rate basis in the region of employment;
- 47 (iii) was employed in agriculture for less than 13 weeks during the preceding calendar
- 48 year; or
- 49 (iv) is a retired or semiretired person performing part-time or incidental work as a
- 50 condition of the employee's residence on a farm or ranch;
- 51 (j) a registered ~~[apprentices or students]~~ apprentice or student employed by the
- 52 educational institution in which ~~[they are]~~ the apprentice or student is enrolled; or
- 53 (k) ~~[any]~~ a seasonal hourly employee employed by a seasonal amusement
- 54 establishment with permanent structures and facilities if the other direct monetary
- 55 compensation from tips, incentives, commissions, end-of-season bonus, or other forms of pay
- 56 is sufficient to cause the average hourly rate of total compensation for the season of seasonal
- 57 hourly employees who continue to work to the end of the operating season to equal the
- 58 applicable minimum wage if ~~[the seasonal amusement establishment]:~~

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

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

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

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

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

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

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

76 (i) shall pay the tipped employee at least ~~[the]~~ a cash wage obligation of \$3.25 as an  
77 hourly wage; and

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

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

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