

**R610. Labor Commission, Antidiscrimination and Labor, Labor.**

**R610-1. Minimum Wage, Clarify Tip Credit, and Enforcement.**

**R610-1-1. Authority.**

This rule is enacted under authority of Section 34-40-105.

**R610-1-2. Definitions.**

The following definitions are in addition to the statutory definitions specified in Section 34-40-102.

A. "Division" means the Division of Antidiscrimination and Labor within the Labor Commission and includes the personnel within the Division responsible for enforcement.

B. "Hours employed" includes all time during which an employee is required to be working, to be on the employer's premises ready to work, to be on duty, to be at a prescribed work place, to attend a meeting or training, and for time utilized during established rest or break periods excluding meal periods of 30 minutes or more where the employee is relieved of all responsibilities.

**R610-1-3. Coverage.**

A. All employers employing workers in the state of Utah, except those exempted by Section 34-40-104, shall pay the established minimum hourly wages of \$5.85 an hour for all hours employed effective September 8, 2007; \$6.55 an hour for all hours employed effective July 24, 2008; and \$7.25 an hour for all hours employed effective July 24, 2009.

B. As per Sections 34-23-301 and 34-40-103, effective July 23, 2007, a minor employee shall be paid at least \$4.25 per hour for the first 90 days of employment with an employer; and thereafter, minimum wage established in subsection A of this rule.

C. Any employer claiming exemption under Subsection 34-40-104(1)(k), shall provide to the Division a statistical report of the average wage paid within 60 days of the end of the regular operating season. The Division may, upon notice, perform an on-site inspection to verify the report in accordance with Sections 34-40-201 and 34-40-203.

**R610-1-4. Tips and Commissions.**

A. An employer may credit the tips, sometimes referred to as gratuities, received by tipped employees (an example would be waiters and waitresses) against the employer's minimum wage obligation. The tips must be received by the employee, reported to the employer, and must reach a threshold of at least \$30.00 per month before credit can be allowed.

B. An employer has a cash wage obligation of at least \$2.13 per hour in meeting the required minimum wage. If an employee's tips combined with the employer's cash wage obligation of \$2.13 per hour do not equal the minimum hourly wage requirement, the employer must increase its cash wage obligation to make up the difference.

C. A compulsory charge for service imposed on a customer by an employer's establishment, is not a tip. Such charges are part of the employer's gross receipts and within its discretion to allocate.

Where service charges are imposed and the employee receives no tips, the employer must pay the entire minimum wage and overtime required by law.

D. All tips shall be retained by the employee receiving the tips. However, this requirement does not preclude tip pooling or sharing arrangements where an employer mandates that tips be pooled and divided or shared among those employees who customarily and regularly receive tips.

1. A bona fide tip pooling or sharing arrangement may include employees who customarily and regularly receive tips from customers directly or via a tip pooling or sharing arrangement.

2. Dishwashers, chefs, cooks, and janitors are not tipped employees and do not qualify for a tip credit nor are they eligible to participate in an employer mandated tip pooling or sharing arrangement.

E. Every employer using the tip credit must so inform the affected employee at the time of hire. Any tip pooling or sharing arrangement must be made in writing and provided to each affected employee at the time of hire or prior to implementation.

F. Where tips are charged on a credit card, and the employer must pay the credit card company a percentage of the bill for its use, the employer may reduce the amount of the credit card tips paid over to the employee by a percentage no greater than that charged by the credit card company.

G. In computing the minimum wage, tips and commissions must be counted in the payroll period in which the tip or commission is earned.

H. This section does not apply to tips or commissions as delineated in Section 34-40-104(1).

#### **R610-1-5. Enforcement of Minimum Wage.**

A. The Division may enforce compliance with the state minimum wage in the same manner as outlined in R610-3.

B. When more than one employee is affected by noncompliance of minimum wage requirements, the Division shall treat this alleged infraction of noncompliance as a class action.

C. The Division may commence agency action in accordance with Section 63G-4-201 to investigate and determine compliance or noncompliance.

D. If an employer is found in noncompliance with the state minimum wage requirements, that employer shall be subject to penalties under Section 34-40-204.

E. If the employees determine that a civil action to enforce compliance with state minimum wage is necessary, they may bring an action under Section 34-40-205.

#### **R610-1-6. Filing Procedure and Commencement of Agency Action.**

For purposes of Section 63G-4-201, commencement of an adjudicative proceeding at the Division to resolve a complaint under minimum wage requirements is accomplished by the complainant filing a complaint form. The complaint form shall act as a request for agency action and the form and accompanying agency cover letter shall together include all information specified in Subsection 63G-4-201 (2).

#### **R610-1-7. Investigation and Enforcement.**

If, upon investigation, the Division concludes that a violation of Sections 34-40-103, 34-40-104, 34-40-201, or 34-40-203 has occurred

it may impose a penalty pursuant to Sections 34-40-202 and 34-40-204.

**R610-1-8. Time.**

A. An Order is deemed issued on the date on the face of the Order which is the date the presiding officer signs the Order.

B. In computing any period of time prescribed or allowed by these rules or by applicable statute:

1. The day of the act, event, finding, or default, or the date an Order is issued, shall not be included;

2. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a state legal holiday, in which event the period runs until the end of the next working day;

3. When the period of time prescribed is less than seven days, intermediate Saturdays, Sundays, and state legal holidays shall be excluded in the computation;

4. No additional time for mailing shall be allowed.

**KEY: wages, minors, labor, time**

**Date of Enactment or Last Substantive Amendment: June 13, 2008**

**Notice of Continuation: August 29, 2016**

**Authorizing, and Implemented or Interpreted Law: 34-23-101 et seq.; 34-28-1 et seq.; 34-40-101 et seq.; 63G-4-102 et seq.**