

Wage and Hour Laws: Utah

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A Q&A guide to state-specific wage and hour laws for private employers in Utah. This Q&A addresses nuances of state law, including minimum wage, overtime, exemption and litigation questions. Federal, local or municipal law may impose additional or different requirements. Answers to questions can be compared across a number of jurisdictions (see Wage and Hour Laws: State Q&A Tool (<http://us.practicallaw.com/3-505-9593>)).

OVERVIEW OF STATE WAGE AND HOUR LAW

1. Please list each wage and hour statute (for example, mini-FLSA laws, minimum wage, overtime, child labor, state government contracts, wage payment, timekeeping and callback/report-in pay statutes). For each, please describe:

- Which employers are covered.
- Whether it provides for a private right of action.
- The entity that administers the statute.

UTAH MINIMUM WAGE ACT: UTAH CODE §§ 34-40-101 TO 34-40-205 AND UTAH ADMIN. CODE R. 610-1

Utah employers must pay nonexempt employees at least \$7.25 per hour (Utah Code § 34-40-103; Utah Admin. Code r. 610-1-3).

Covered Employers

All employers except those who employ specifically exempted employees are covered by this law. Unless an individual is entitled to a minimum wage under the Fair Labor Standards Act, the following are exempted from coverage:

- Non-profit camping programs, religious or recreation programs, and non-profit educational and charitable organizations that hire seasonal employees.

- The federal government.
- Institutions employing registered apprentices or enrolled students.
- Seasonal amusement establishments with permanent structures employing seasonal workers if other forms of the workers' compensation equal the minimum wage and the establishment:
 - is not in operation for more than seven months in a calendar year; or
 - during the preceding year its receipts for any six months do not exceed 33.33% of its average receipts for the other six months.

(Utah Code § 34-40-104(1); Utah Admin. Code r. 610-1-3; see Question 2).

Private Right of Action

Employees may bring a civil action within two years of the alleged violation (Utah Code § 34-40-205).

Administration

The Utah Labor Commission (ULC) and the Utah Antidiscrimination & Labor Division (UALD) administer the Utah Minimum Wage Act (Utah Code § 34A-1-103).

CHILD LABOR: UTAH CODE §§ 34-23-101 TO 34-23-402

Under Utah's child labor law, employers may not employ minor children in specified occupations. The number of hours minor children may work also is limited (see Question 6).

Covered Employers

Every employer in Utah is covered by this law, except those employing individuals 16 years or older in which:

- Employment would not threaten the individual's health and safety.
- The individual:
 - has received a high school diploma;
 - has received a school release certificate;
 - is legally married; or
 - is head of household.

(Utah Code § 34-23-208.)

Private Right of Action

The child labor law provides for a private right of action. Minors may bring a civil action within two years of the alleged violation (Utah Code § 34-23-303).

Administration

The ULC and the UALD administer this statute.

WAGE PAYMENT: UTAH CODE §§ 34-28-1 TO 34-28-19

Employers must pay wages at regular intervals, but in periods no longer than semimonthly on days designated in advance (Utah Code § 34-28-3).

Covered Employers

All employers are covered except:

- The state.
- A county.
- An incorporated city, town or political subdivision.
- Unless Section 34-38-5 of the Utah Code applies, employers engaged in:
 - farming;
 - dairy;
 - agriculture;
 - horticulture; or
 - stock or poultry raising.
- Household domestic service.
- Employers bound by an agreement providing different terms of payment with an employee.

(Utah Code §§ 34-28-1 and 34-28-2(1)(c).)

Private Right of Action

Employees may file a wage claim with the UALD and may file an enforcement action against the employer to collect the judgment (Utah Code § 34-28-9). The statute does not specify whether there is a private right of action.

Administration

The ULC and the UALD administer this statute.

STATE GOVERNMENT CONTRACTS: UTAH CODE §§ 34-30-1 TO 34-30-14

Utah has special wage and hour rules pertaining to contractors or subcontractors of public works (Utah Code §§ 34-30-1 to 34-30-14).

Covered Employers

All employers are covered by this law (Utah Code § 34-30-1).

Private Right of Action

The law does not address a private right of action.

Administration

The ULC and the UALD administer this statute.

EXEMPT EMPLOYEES**2. With regard to your state's primary wage and hour statute (the one most similar to the federal FLSA), please describe:**

- Exempt classifications of employees and what provisions of the law(s) they are exempt from.
- The test(s) used to determine whether an employee is exempt.
- Any significant differences with the FLSA regarding exemptions that practitioners should be aware of.

EXEMPT CLASSIFICATIONS

Unless an individual is entitled to a minimum wage under the Fair Labor Standards Act, the Utah minimum wage requirements do not apply to:

- Outside sales persons.
- A member of the employer's immediate family.
- Employees of companionship services for persons unable to care for themselves due to:
 - age; or
 - infirmity.
- Casual and domestic employees as defined by the Utah Labor Commission.
- Seasonal employees of:
 - non-profit camping programs;
 - religious programs;
 - recreation programs; and
 - non-profit educational and charitable organizations.
- Federal government employees.
- Prisoners employed through the penal system.
- Individuals employed in agriculture if they are:
 - engaged in the range production of livestock;
 - harvest laborers paid on a piece rate basis generally recognized by regional custom;
 - employed in agriculture less than 13 weeks during the previous calendar year; or
 - retired or semi-retired performing part-time or incidental work as a condition of the employee's residence on a farm or ranch.
- Registered apprentices or students employed by the educational institution where they are enrolled.
- Employees working at an amusement establishment with permanent structures if the monetary compensation from tips, incentives, commissions, bonus, or other forms of pay causes the employee's total compensation for the operating season to equal the minimum wage and the establishment:
 - operates at most seven months each calendar year; or
 - earns average receipts for any six months in the last calendar year that were at most 33.33% of its average receipts for the rest of the year.
- Disabled persons impaired by:

- age;
- physical or mental deficiencies; or
- injury.

(Utah Code § 34-40-104.)

EXEMPTION TESTS

The law does not specify any exemption tests.

OTHER SIGNIFICANT EXEMPTION RULES

There are no other significant exemption rules in Utah.

OVERTIME PAYMENT REQUIREMENTS

3. Please state whether overtime requirements exist in your state. If so, please describe:

- How overtime due is calculated (by day or by week or both).
- How a workday and a workweek are defined.
- The rate at which overtime must be paid and how the rate is defined.
- The penalties for failure to pay overtime.

Utah does not have overtime requirements except for employees working on public works projects (see Question 14). For more information on overtime requirements under the federal FLSA, see Practice Note, Wage and Hour Overview: Employees Exempt from FLSA Overtime Requirements (<http://us.practicallaw.com/2-506-0530#a899522>) and Calculating Overtime Correctly (<http://us.practicallaw.com/2-506-0530#a764710>).

MINIMUM WAGE

4. If there is a state minimum wage, please describe:

- The current minimum wage and the period it will remain current for.
- Any expected increases in the minimum wage rate, when they will take effect, and how long they are expected to be in effect for.
- How tipped employees are treated under the hourly minimum wage.
- Any circumstances under which employers are allowed to pay rates below the minimum wage (for example, obtaining a permit from the appropriate state agency for workers with disabilities, in vocational programs or students), and any requirements for doing so (for example, obtaining a permit).

CURRENT MINIMUM WAGE

The current minimum wage in Utah is \$7.25 per hour (Utah Admin. Code r. 610-1-3).

EXPECTED INCREASES IN MINIMUM WAGE

No increase in the state minimum wage is currently expected.

TREATMENT OF TIPS

Employers may not share in or keep any portion of a gratuity that a patron gives to an employee. An employer may credit the tips received

by tipped employees against the minimum wage obligation if the employer pays at least \$2.13 per hour to the employee and tips are:

- Received by the employee.
- Reported to the employer.
- At least \$30.00 per month.

Every employer using the tip credit must also:

- Inform employees at hiring.
- Produce in writing any tip pooling or sharing arrangement.
- Provide written arrangements to each affected employee at hiring or before implementing the arrangement.
- Count the tips in the payroll period in which the tip is earned in calculating the minimum wage.

(Utah Admin. Code r. 610-1-4.)

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 (Utah Admin. Code r. 610-1-4).

PAYING BELOW MINIMUM WAGE

Employers may pay minor employees at least \$4.25 per hour for the first 90 days of employment and the standard minimum wage of \$7.25 afterwards. Additionally, certain employees are excluded from the minimum wage requirements (see Question 2) (Utah Code § 34-40-104; Utah Admin. Code r. 610-1-3).

COMPENSABLE TIME

5. Please state whether the following categories of time are generally compensable, and if so, under what circumstances:

- Donning and doffing protective gear, clothing or uniforms.
- Participating in security checks.
- Checking e-mail, voicemail or assignments from home.
- Attending lectures, meetings or training programs.
- Traveling to and from work and traveling for work.
- Taking breaks and meal periods.
- Preparatory time (for example, oiling machinery before its use).
- Waiting time (also called "on-call" or "stand-by" time).

Under Utah law, "hours employed" includes all time in which an employee is:

- Working.
- On the employer's premises ready to work.
- On duty.
- At a prescribed work place.
- Attending a meeting or training.
- Taking an established rest or break period excluding meal periods of 30 minutes or more where the employee is relieved of all responsibilities.

(Utah Admin. Code r. 610-3-2(H).)

CHILD LABOR LAWS

6. Please describe any child labor laws in your jurisdiction, including:

- Any minimum working age.
- Any limits on hours that may be worked by minors.
- Any permits or certificates required to employ minors.

MINIMUM WORKING AGE

Under Utah law, a minor is any person under the age of 18 years (Utah Code § 34-23-103(5)). However, certain individuals 16 years and older are exempt from the child labor laws (see Question 1: Child Labor: Covered Employers).

A minor may not work in any hazardous occupation except when both:

- Authorized by the Utah Antidiscrimination & Labor Division (UALD) in writing.
- Under careful supervision, in connection with or following the completion of:
 - an apprenticeship;
 - vocational training; or
 - a rehabilitation program.

(Utah Code § 34-23-201.)

LIMITS ON OCCUPATIONS

With the consent of the minor's parent, guardian or custodian, there are no age limitations to work in:

- Home chores or work done for the parent or guardian.
- Casual work not deemed harmful by the UALD.
- Agriculture including operating farm machinery.
- Activities the UALD has specifically authorized in writing.

(Utah Code § 34-23-207.)

16 Years Old or Older

There are no age limitations to work in occupations:

- Not declared hazardous.
- Involving usage of motor vehicles if the minor is licensed to operate the vehicle.

(Utah Code § 34-23-203.)

14 Years Old or Older

There are no age limitations to work in:

- Nonhazardous fields such as manufacturing, warehousing and storage, construction and areas not determined harmful by the UALD.
- Retail food services.
- Car service stations, except for operating motor vehicles and the use of hoists.

- Public messenger service.
- Janitorial and custodial service.
- Lawn care.
- Use of approved types of vacuum cleaners, floor polishers, power lawn mowers and snow removal equipment.
- Other similar work approved by the UALD.

(Utah Code § 34-23-204.)

12 Years Old or Older

There are no age limitations to work in:

- Sale or delivery of periodicals.
- Door-to-door sale and delivery of merchandise.
- Baby-sitting.
- Nonhazardous agricultural work.
- Occupations not deemed to be harmful by the UALD.

(Utah Code § 34-23-205.)

Ten Years Old or Older

There are no age limitations to work in:

- Delivery of handbills, newspapers, advertising and advertising samples.
- Shoe-shining.
- Gardening and lawn care involving no power-driven lawn or snow removal equipment.
- Caddying.
- Occupations not deemed to be harmful by the UALD.

(Utah Code § 34-23-206.)

LIMITS ON HOURS

A minor under the age of 16 may not work:

- During school hours unless authorized by school authorities.
- Before or after school more than four hours a day.
- Before 5:00 a.m. or after 9:30 p.m. unless the next day is not a school day.
- More than eight hours in any 24-hour period.
- More than 40 hours in a week.

(Utah Code § 34-23-202.)

All minor employees must receive a meal period of at least 30 minutes not later than five hours after the beginning of the minor's workday. If the minor cannot be completely relieved of all duties and is not allowed to leave the work area, the meal period must be compensable time. (Utah Admin. Code r. 610-2-3.)

All minor employees must receive a paid break of at least ten minutes every four hours, or a fraction thereof. No minor will be required to work over three consecutive hours without a ten minute rest period. (Utah Admin. Code r. 610-2-3.)

REQUIRED PERMITS OR CERTIFICATIONS

All schools must issue:

- Age certificates.
- Lists of students indicating their birth dates according to school records.

The certificates do not relieve employers of responsibility from complying with all laws regarding the employment of minors. (Utah Code § 34-23-209.)

Utah law requires special licensing for employers employing minors in door-to-door sales (Utah Admin. Code r. 610-2-4).

WAGE PAYMENT REQUIREMENTS

7. Please state whether:

- The law prescribes a regular pay period, and if so, what that pay period is.
- The law prescribes a maximum time following a pay period that payment must be received, and if so, what that time is.
- The law prescribes a maximum time following termination that a final pay check must be received, and if so, what that time is.
- The law prescribes that accrued and unused vacation time is a type of compensation, and if an employer chooses to provide vacation, how it is to be administered, including how much can be carried over from year to year.
- The law prescribes penalties for failure to comply, and if so, what those penalties are.

REGULAR PAY PERIOD

Employers must:

- Establish regular paydays.
- Pay wages at least twice a month on days designated as regular paydays.

(Utah Code § 34-28-3(1).)

Employers must also notify employees at hiring:

- The date and place of payment.
- The rate of pay.
- Any changes to the date, place and rate of pay.

The employer may satisfy the notice requirement by posting these facts where they can be seen by employees. (Utah Code § 34-28-4.)

If an employer hires an employee on a yearly salary basis, the employee may be paid:

- On a monthly basis.
- On or before the seventh of the month following the month in which the services are rendered.

(Utah Code § 34-28-3(1)(d).)

PAYMENT FOLLOWING PAY PERIOD

Employers must pay wages earned within ten days after the close of the pay period. If a payday falls on a Saturday, Sunday, or legal holiday, an employer must pay wages earned during the pay period on the day before the Saturday, Sunday or legal holiday. (Utah Code § 34-28-3(1)(b), (c).)

PAYMENT FOLLOWING TERMINATION

Employers must pay a discharged employee all of his wages within 24 hours after termination. If work is stopped because of an industrial dispute, wages earned must be paid at the next regular payday. If an employee, who does not have a written contract for a definite period, resigns, the wages earned must be paid on the next regular payday (Utah Code § 34-28-5).

These requirements do not apply to the earnings of a commission-based sales agent who has custody of accounts, money or the employer's goods if the wages due are to be determined after an audit or verification of sales, accounts, funds or stocks (Utah Code § 34-28-5(4)).

VACATION

Vacation leave, holiday leave, sick leave, and any other paid time off are treated as "wages" and due on termination from employment. Unless the employer specifically implements a "use it or lose it policy," explicitly stating that leave does not accrue and employees are not paid unused leave, the employer must pay the employee for any accrued unused leave on the employee's termination. (Utah Admin. Code r. 610-3-4.)

PENALTIES

Employers failing to pay wages to a discharged employee within 24 hours of the employee's written demand must pay the daily rate of pay for each day the wages are unpaid, up to a maximum of 60 days from the date of discharge. An employee who has not made a written demand is not entitled to any penalty. (Utah Code § 34-28-5(1)(c).)

TIMEKEEPING REQUIREMENTS

8. Does the law require employees or employers to record employees' working time using a specific method? Please describe.

Utah law does not require a specific method for timekeeping requirements.

DEDUCTIONS FROM PAY

9. Please describe any circumstances under which a deduction from wages can be made. Please also describe any deductions that could place an employee's exemption from overtime or minimum wage requirements at risk, and under what circumstances.

An employer may not withhold amounts from an employee's wages unless:

- The employer is required to do so by court order or state or federal law.
- The employee authorizes the deduction in writing.
- The employer withholds wages according to an approved retirement plan.
- A deduction to cover health, welfare, or pension contributions is authorized by a wage or collective bargaining agreement.

An employer may not otherwise require an employee to rebate, refund, offset, or return part of the employee's wage, salary, or compensation. (Utah Code § 34-28-3(6), (7).)

CALLBACK/REPORT-IN PAY

10. Please describe any callback and report-in pay requirements.

Utah has no callback or report-in pay requirements.

NOTICE TO EMPLOYEES

11. For each wage and hour law, what obligations does an employer have to inform its employees of their rights?

UTAH MINIMUM WAGE ACT: UTAH CODE §§ 34-40-101 TO 34-40-205 AND UTAH ADMIN. CODE R. 610-1

The law does not address notice to employees.

CHILD LABOR: UTAH CODE §§ 34-23-101 TO 34-23-402

The law does not address notice to employees.

WAGE PAYMENT: UTAH CODE §§ 34-28-1 TO 34-28-19

Employers must post a notice specifying the regular paydays and the time and place of payment (Utah Code § 34-28-4).

STATE GOVERNMENT CONTRACTS: UTAH CODE §§ 34-30-1 TO 34-30-14

The law does not address notice to employees.

CONSEQUENCES FOR VIOLATION

12. For each wage and hour law listed in response to Question 1, what are possible consequences for employers who violate the law?

UTAH MINIMUM WAGE ACT: UTAH CODE §§ 34-40-101 TO 34-40-205 AND UTAH ADMIN. CODE R. 610-1

Penalties for failure to comply with the minimum wage law include:

- The difference between the wage paid and minimum wage, plus interest.
- Court costs.
- Attorneys' fees.
- \$500 per violation.

- A class B misdemeanor for a repeated violation.
- Criminal prosecution by the Utah Labor Commission (ULC) for a third violation within a three-year period.

(Utah Code §§ 34-40-202, 34-40-204 and 34-40-205.)

CHILD LABOR: UTAH CODE §§ 34-23-101 TO 34-23-402

Penalties for violating the child labor law include:

- The difference between the wage paid and the minimum wage, plus interest.
- Court costs.
- Attorneys' fees.
- \$500 per violation after an investigation by the Utah Antidiscrimination and Labor Division and administrative proceeding.
- A class B misdemeanor for a repeated violation.
- Criminal prosecution of a misdemeanor in the name of the state by the ULC.

(Utah Code §§ 34-23-302 to 34-23-402.)

WAGE PAYMENT: UTAH CODE §§ 34-28-1 TO 34-28-19

Failure to comply with the wage payment laws may result in both a:

- Misdemeanor.
- Penalty of 5% of the unpaid wages owing to the employee.

This penalty may be assessed daily for a maximum of 20 days (Utah Code § 34-28-9).

Willful failure to pay wages within 24 hours of a written request may result in a penalty of up to 60 days' wages (Utah Code § 34-28-5(1)).

STATE GOVERNMENT CONTRACTS: UTAH CODE §§ 34-30-1 TO 34-30-14

Violating the requirements regarding public works projects is a misdemeanor (Utah Code § 34-30-9).

RECORDKEEPING

13. What are the recordkeeping obligations for each wage and hour law listed in response to Question 1?

UTAH MINIMUM WAGE ACT: UTAH CODE §§ 34-40-101 TO 34-40-205 AND UTAH ADMIN. CODE R. 610-1

Employers must keep payroll records of employees covered by the Utah Minimum Wage Act showing:

- Names.
- Addresses.
- Dates of birth.
- Hours worked.
- Wages paid.

Records are maintained for three years. (Utah Code § 34-40-201.)

CHILD LABOR: UTAH CODE §§ 34-23-101 TO 34-23-402

There are no recordkeeping requirements under this law.

WAGE PAYMENT: UTAH CODE §§ 34-28-1 TO 34-28-19

Employers must keep a true and accurate record of:

- Time worked.
- Wages paid to employees working on an hourly or a daily basis.

Employers must keep the records on file for at least one year. (Utah Code § 34-28-10.)

STATE GOVERNMENT CONTRACTS: UTAH CODE §§ 34-30-1 TO 34-30-14

Employers must keep accurate records of:

- Names.
- Occupations.
- Wages paid.

Employers must allow for access of the records at any reasonable hour to any person. (Utah Code § 34-30-9.)

STATE GOVERNMENT CONTRACTS

14. Are state government contracts subject to additional wage and hour requirements? If so please describe the governing law and its requirements.

Employers must pay employees who work on public works projects and work longer than a 40-hour week an overtime rate of 1.5 times the regular rate (Utah Code § 34-30-8).

Public works means a:

- Building.
- Road.

- Street.
- Sewer.
- Storm drain.
- Water system.
- Irrigation system.
- Reclamation project.
- Facility owned or contracted for by the state or a political subdivision paid for with state tax revenues.

(Utah Code § 34-30-14(1)(b).)

OTHER SIGNIFICANT DIFFERENCES

15. Please describe any other significant differences between wage and hour law in your state and federal wage and hour law.

There are no other significant differences between federal and Utah wage and hour laws.

OFTEN USED WAGE AND HOUR FORMS

16. Please insert web links to any wage and hour forms that are often used by employers from your state's administrative entity administering wage and hour laws.

Wage and hour forms often used by employers are available at the Utah Labor Commission's website.

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