

**UTAH LABOR COMMISSION
ANTIDISCRIMINATION AND LABOR DIVISION**

**160 East 300 South, Third Floor
PO Box 146630
Salt Lake City, Utah 84114-6630
(801) 530-6801
(800) 222-1238**

www.laborcommission.utah.gov



2010

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EMPLOYEE RIGHTS

UNDER THE FAIR LABOR STANDARDS ACT

THE UNITED STATES DEPARTMENT OF LABOR WAGE AND HOUR DIVISION

FEDERAL MINIMUM WAGE

\$5.85 PER HOUR

BEGINNING JULY 24, 2007

6.55 PER HOUR

BEGINNING JULY 24, 2008

7.25 PER HOUR

BEGINNING JULY 24, 2009

OVERTIME PAY

At least 1^{1/2} times your regular rate of pay for all hours worked over 40 in a workweek.

YOUTH EMPLOYMENT

An employee must be at least 16 years old to work in most non-farm jobs and at least 18 to work in non-farm jobs declared hazardous by the Secretary of Labor.

Youths 14 and 15 years old may work outside school hours in various non-manufacturing, non-mining, non-hazardous jobs under the following conditions:

No more than

- 3 hours on a school day or 18 hours in a school week;
- 8 hours on a non-school day or 40 hours in a non-school week.

Also, work may not begin before 7 a.m. or end after 7 p.m., except from June 1 through Labor Day, when evening hours are extended to 9 p.m. Different rules apply in agricultural employment. For more information, visit the YouthRules! Web site at www.youthrules.dol.gov.

TIP CREDIT

Employers of "tipped employees" must pay a cash wage of at least \$2.13 per hour if they claim a tip credit against their minimum wage obligation. If an employee's tips combined with the employer's cash wage of at least \$2.13 per hour do not equal the minimum hourly wage, the employer must make up the difference. Certain other conditions must also be met.

ENFORCEMENT

The Department of Labor may recover back wages either administratively or through court action, for the employees that have been underpaid in violation of the law. Violations may result in civil or criminal action.

Civil money penalties of up to \$11,000 per violation may be assessed against employers who violate the youth employment provisions of the law and up to \$1,100 per violation against employers who willfully or repeatedly violate the minimum wage or overtime pay provisions. This law prohibits discriminating against or discharging workers who file a complaint or participate in any proceedings under the Act.

ADDITIONAL INFORMATION

- Certain occupations and establishments are exempt from the minimum wage and/or overtime pay provisions.
- Special provisions apply to workers in American Samoa and the Commonwealth of the Northern Mariana Islands.
- Some state laws provide greater employee protections; employers must comply with both.
- The law requires employers to display this poster where employees can readily see it.
- Employees under 20 years of age may be paid \$4.25 per hour during their first 90 consecutive calendar days of employment with an employer.
- Certain full-time students, student learners, apprentices, and workers with disabilities may be paid less than the minimum wage under special certificates issued by the Department of Labor.

For additional information:



1 -866-4-USWAGE WHIti

(1-866-487-9243) TTY: 1-877-889-5627

WWW.WAGEHOUR.DOL.GOV

U.S. Department of Labor Employment Standards Administration Wage and Hour Division

WHO Publication 1083 (Revised: June 2007)

Federal Minimum Wage Poster

UTAH MINIMUM WAGE SUMMARY

I. MINIMUM WAGE REQUIREMENT AND HOURLY RATES

All employers employing workers in the state of Utah, except those exempted by the Utah Minimum Wage Act, shall pay their workers the established minimum hourly wage for all hours employed, as follows.

EFFECTIVE

July 24, 2009

\$7.25

II. HOURS EMPLOYED

"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.

III. TIPPED EMPLOYEES

An employer of a tipped employee shall pay the tipped employee at least the minimum wage. A tipped employee is one who regularly and customarily receives tips. An employer may credit the tips 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 toward minimum wage can be allowed.

An employer has a cash wage obligation of \$2.13 per hour in meeting the required minimum wage. If an employee's tips combined with the cash wage obligation of \$2.13 per hour do not equal the minimum wage hourly rate, the employer must increase its cash wage obligation to make up the difference. 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 voluntarily or as mandated by the employer. Dishwashers, janitors, and chefs other than sushi chefs cannot be tipped employees.

IV. TRAINING WAGE

Minor employees (under the age of 18 years old) may be paid \$4.25 an hour for every hour of employment, for their first ninety days of work. At the completion of their first ninety days of work, their pay must be increased to, at least, minimum wage.

V. EXEMPTIONS

(1) The Utah minimum wage does not apply to:

- (a) any employee who is entitled to a minimum wage as provided in 29 U.S.C. Sec. 201 et seq., the Fair Labor Standards Act of 1938, as amended;
- (b) outside sales persons;
- (c) an employee who is a member of the employer's immediate family;
- (d) companionship service for persons who, because of age or infirmity, are unable to care for themselves;
- (e) casual and domestic employees as defined by the commission;
- (f) seasonal employees of nonprofit camping programs, religious or recreation programs, and nonprofit educational and charitable organizations registered under Title 13, Chapter 22, Charitable Solicitations Act;
- (g) an individual employed by the United States of America;
- (h) any prisoner employed through the penal system;

- (i) any 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 basis in an operation that has been and is generally recognized by custom as having been paid on a piece rate basis in the region of employment;
 - (iii) was employed in agriculture less than 13 weeks during the preceding calendar year; or
 - (iv) is a retired or semi-retired person performing part-time or incidental work as a condition of the employee's residence on a farm or ranch;
 - (j) registered apprentices or students employed by the educational institution in which they are enrolled; or
 - (k) any 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) does not operate for more than seven months in any calendar year; or
 - (ii) during the preceding calendar year its average receipts for any six months of that year were not more than 33-1/3% of its average receipts for the other six months of that year.
- (2)(a) Persons with a disability whose earnings or productive capacities are impaired by age, physical or mental deficiencies, or injury may be employed at wages that are 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.

VI. RECORDKEEPING

Employers shall keep payroll records of employees covered by the Utah Minimum Wage Act ("Act") showing names, addresses, and dates of birth. Such records shall also show hours worked and wages paid to all covered employees. Records shall be maintained for three years.

VII. INVESTIGATION AUTHORITY

- (1) The Commission shall have access to all payroll records of any place of business or establishment, required by the Act to pay its employees a minimum wage, to investigate for compliance with the Act.
- (2) The Commission shall have access to business records kept at the place of business or establishment which may aid in the enforcement of the Act.

VIII. ENFORCEMENT

A. Administrative

The Commission shall enforce the Act and investigate complaints under the Act. The Commission may commence administrative proceedings in accordance with Title 63, Chapter 46b, the Administrative Procedures Act, and may impose a penalty of up to \$500 per violation of the Act.

B. Criminal

- (1)(a) Repeated violation of the Act is a class B misdemeanor.
 - (b) "Repeated violations" does not include separate violations as to individual employees arising out of the same investigation or enforcement action.
- (2) Upon the third violation by the same employer within a three-year period, the commission may prosecute a criminal action in the name of the state.

(3) The county attorney, district attorney, or attorney general shall provide assistance in prosecutions under this section at the request of the commission.

C. Civil Action

(1) In addition to the administrative and criminal actions authorized by the Act, an employee may bring a civil action to enforce his rights under the Act.

(2)(a) An aggrieved employee is entitled to injunctive relief and may recover the difference between the wage paid and the minimum wage, plus interest.

(b) The court may award court costs and attorney fees to the prevailing party.

(3) An action brought under this section shall be brought within two years of the alleged violation.

Reference: Minimum Wage Act, Utah Code Annotated, Title 34, Chapter 40

UTAH PAYMENT OF WAGES ACT

Section

- 34-28-1. Public and certain other employments excepted.
- 34-28-2. Definitions
- 34-28-3. Regular paydays - Currency or negotiable checks required - Deposit in financial institution - Statement of total deductions - Unlawful withholding or diversion of wages.
- 34-28-4. Notice of paydays - Failure to notify a misdemeanor.
- 34-28-5. Separation from payroll - Resignation - Cessation because of industrial dispute.
- 34-28-6. Dispute over wages - Notice and payment.
- 34-28-7. Payment at more frequent intervals permitted - Agreements to contravene chapter prohibited unless approved by division.
- 34-28-9. Enforcement of chapter - Rulemaking authority.
- 34-28-10. Employers' records - Inspection by division.
- 34-28-12. Violations - Misdemeanor.
- 34-28-13. Assignment of wage claims - Powers of division.
- 34-28-14. Actions by division as assignee - Costs need not be advanced.
- 34-28-19. Retaliation prohibited - Administrative process - Enforcement - Rulemaking.

34-28-1. Public and certain other employments excepted.

None of the provisions of this chapter shall apply to the state, or to any county, incorporated city or town, or other political subdivision, or to employers and employees engaged in farm, dairy, agricultural, viticultural or horticultural pursuits or to stock or poultry raising, or to household domestic service, or to any other employment where an agreement exists between employer and employee providing for different terms of payment, except the provisions of Section 34-28-5 shall apply to employers or employees engaged in farm, dairy, agricultural, viticultural, horticultural or stock or poultry raising.

34-28-2. Definitions

- (1) "Commission" means the Labor Commission.
- (2) "Division" means the Division of Antidiscrimination and Labor.
- (3) "Employer" includes every person, firm, partnership, association, corporation, receiver or other officer of a court of this state, and any agent or officer of any of the above-mentioned classes, employing any person in this state.
- (4) "Wages" means all amounts due the employee for labor or services, whether the amount is fixed or ascertained on a time, task, piece, commission basis or other method of calculating such amount.

34-28-3. Regular paydays - Currency or negotiable checks required - Deposit in financial institution - Statement of total deductions - Unlawful withholding or diversion of wages

- (1)(a) An employer shall pay the wages earned by an employee at regular intervals but in periods no longer than semimonthly on days to be designated in advance by the employer as the regular payday.
 - (b) An employer shall pay for services rendered during each pay period within ten days after the close of that period.
 - (c) If a payday falls on a Saturday, Sunday, or legal holiday, an employer shall pay wages earned during the pay period on the day preceding the Saturday, Sunday, or legal holiday.
 - (d) If an employer hires employees on a yearly salary basis, the employer may pay an employee on a monthly basis by paying on or before the seventh of the month following the month for which services were rendered.
 - (e) All wages shall be paid in full to the employee:
 - (i) in lawful money of the United States;
 - (ii) by checks or drafts on a depository institution, as defined in Section 7-1-103, convertible into cash on demand at full face value; or
 - (iii) by electronic transfer to the depository institution designated by the employee.
- (2) A person, firm, corporation, agent, or officer may not issue in payment of wages due or as an advance on wages to be earned for services performed or to be performed within this state any order, check, or draft unless:
- (a) it is negotiable and payable in cash, on demand, without discount, at a depository institution; and
 - (b) the name and address of the depository institution appears on the instrument.

(3)(a) Except as provided in Subsection (3) (b), an employee may refuse to have the employee's wages deposited by electronic transfer under Subsection (1) (e) (iii) by filing a written request with the employer.

(b) An employee may not refuse to have the employee's wages deposited by electronic transfer under Subsection (3) (a) if:

(i) for the calendar year preceding the pay-period for which the employee is being paid, the employer's federal employment tax deposits were equal to or in excess of \$250,000; and

(ii) at least two-thirds of the employees of the employer have their wages deposited by electronic transfer.

(c) An employer may not designate a particular depository institution for the exclusive payment or deposit of a check for wages.

(4) If any deduction is made from the wages paid, the employer shall, on each regular payday, furnish the employee with a statement showing the total amount of each deduction.

(5) It is unlawful for an employer to withhold or divert part of an employee's wages unless:

(a) the employer is required to withhold or divert the wages by:

(i) court order; or

(ii) state or federal law;

(b) the employee expressly authorizes the deduction in writing; or

(c) the employer presents evidence that in the opinion of the hearing officer or the administrative law judge would warrant an offset; or

(d) subject to Subsection (7), the employer withholds or diverts the wages:

(i) as a contribution of the employee under a contract or plan that is:

(A) described in Section 401(k), 403(b), 408, 408A, or 457, Internal Revenue Code; and

(B) established by the employer; and

(ii) the contract or plan described in Subsection (5)(d)(i) provides that an employee's compensation is reduced by a specified contribution:

(A) under the contract or plan; and

(B) that is made for the employee unless the employee affirmatively elects:

(I) to not have a reduction made as a contribution by the employee under the contract or Plan; or

(II) to have a different amount be contributed by the employee under the contract or plan.

(6) An employer may not require an employee to rebate, refund, offset, or return any part of the wage, salary, or compensation to be paid to the employee except as provided in Subsection (5).

(7) (a) An employer shall notify an employee in writing of the right to make an election under Subsection (5)(d).

(b) An employee may make an election described in Subsection (5)(d) at any time by providing the employer written notice of the election.

(c) An employer shall modify or terminate the withholding or diversion described in Subsection(5)(d) beginning with a pay period that begins no later than 30 days following the day on which the employee provides the employer the written notice described in Subsection (7)(b).

(8) An employer is not prohibited from pursuing legitimate claims of damages, offsets, or recoupments in a civil action against an employee.

34-28-4. Notice of paydays - Failure to notify a misdemeanor.

(1) It shall be the duty of every employer to notify his employees at the time of hiring of the day and place of payment, of the rate of pay, and of any change with respect to any of these items prior to the time of the change. Alternatively, however, every employer shall have the option of giving such notification by posting these facts and keeping them posted conspicuously at or near the place of work where such posted notice can be seen by each employee as he comes or goes to his place of work.

(2) Failure to post and to keep posted any notice or failure to give notice as prescribed in this section shall be deemed a misdemeanor and punishable as such.

34-28-5. Separation from payroll - Resignation - Cessation because of industrial dispute.

(1)(a) Whenever an employer separates an employee from the employer's payroll the unpaid wages of the employee become due immediately, and the employer shall pay the wages to the employee within 24 hours of the time of separation at the specified place of payment.

(b)(i) In case of failure to pay wages due an employee within 24 hours of written demand, the wages of the employee shall continue from the date of demand until paid, but in no event to exceed 60 days, at the same rate that the employee received at the time of separation.

(ii) The employee may recover the penalty thus accruing to the employee in a civil action. This action must be commenced within 60 days from the date of separation.

(iii) An employee who has not made a written demand for payment is not entitled to any penalty under Subsection (1)(b).

(2) If an employee does not have a written contract for a definite period and resigns the employee's employment, the wages earned and unpaid together with any deposit held by the employer and properly belonging to the resigned employee for the performance of the employee's employment duties become due and payable on the next regular payday.

(3) If work ceases as the result of an industrial dispute, the wages earned and unpaid at the time of this cessation become due and payable at the next regular payday, as provided in Section 34-28-3, including, without abatement or reduction, all amounts due all persons whose work has been suspended as a result of the industrial dispute, together with any deposit or other guaranty held by the employer for the faithful performance of the duties of the employment.

(4) This section does not apply to the earnings of a sales agent employed on a commission basis who has custody of accounts, money, or goods of the sales agent's principal if the net amount due the agent is determined only after an audit or verification of sales, accounts, funds, or stocks.

34-28-6. Dispute over wages - Notice and payment.

In case of a dispute over wages, the employer shall give written notice to the employee of the amount of wages which he concedes to be due and shall pay such amount without condition within the time set by this chapter; but acceptance by the employee of any such payment made shall not constitute a release as to the balance of his claim.

34-28-7. Payment at more frequent intervals permitted - Agreements to contravene chapter prohibited unless approved by division.

Nothing contained in this chapter shall in any way limit or prohibit the payment of wages or compensation at more frequent intervals, or in greater amounts or in full when or before due, but no provisions of this chapter can in any way be contravened or set aside by a mutual agreement unless the agreement is approved by the division.

34-28-9. Enforcement of chapter - Rulemaking authority.

(1)(a) The division shall:

- (i) ensure compliance with this chapter;
- (ii) investigate any alleged violations of this chapter; and
- (iii) determine the validity of any claim for any violation of this chapter filed with it by an employee.

(b) The commission may make rules consistent with this chapter governing wage claims and payment of wages.

(c) The minimum wage claim that the division may accept is \$50.

(d) The maximum wage claim that the division may accept is \$10,000.

(e) The wage claim shall be filed within one year of the date the wages were earned.

(2)(a) The division may assess against an employer who fails to pay an employee in accordance with this chapter, a penalty of 5% of the unpaid wages owing to the employee which shall be assessed daily until paid for a period not to exceed 20 days.

(b) The division shall:

(i) retain 50% of the money received from the penalty payments for the costs of administering this chapter;

(ii) pay all the sums retained under Subsection (2)(b)(i) to the state treasurer; and

(iii) pay the 50% not retained under Subsection (2)(b)(i) to the employee. (3)(a) An abstract of any final award may be filed in the office of the clerk of the district court of any county in the state. If so filed, it shall be docketed in the judgment docket of that district court.

(b) The time of the receipt of the abstract shall be noted by the clerk and entered in the judgment docket.

(c) If filed and docketed, the award constitutes a lien from the time of the docketing upon the real property of the employer situated in the county for a period of eight years from the date of the award unless previously satisfied.

(d) Execution may be issued on the award within the same time and in the same manner and with the same effect as if the award were a judgment of the district court.

(4)(a) The commission may employ counsel, appoint a representative, or request the attorney general, or the county attorney for the county in which the plaintiff or the defendant resides, depending on the district in which the final award is docketed, to represent the commission on all appeals and to enforce judgments.

(b) The counsel employed by the commission, the attorney general, or the county representing the commission, shall be awarded:

- (i) reasonable attorneys' fees, as specified by the commission; and
- (ii) costs for:
 - (A) appeals when the plaintiff prevails; and
 - (B) judgment enforcement proceedings.

(5)(a) The commission may enter into reciprocal agreements with the labor department or corresponding agency of any other state or with the person, board, officer, or commission authorized to act on behalf of that department or agency, for the collection in any other state of claims or judgments for wages and other demands based upon claims previously assigned to the commission.

(b) The commission may, to the extent provided by any reciprocal agreement entered into under Subsection (5)(a), or by the laws of any other state, maintain actions in the courts of the other states for the collection of any claims for wages, judgments, and other demands and may assign the claims, judgments, and demands to the labor department or agency of any other state for collection to the extent that may be permitted or provided by the laws of that state or by reciprocal agreement.

(c) The commission may maintain actions in the courts of this state upon assigned claims for wages, judgments, and demands arising in any other state in the same manner and to the same extent that the actions by the commission are authorized when arising in this state if:

- (i) the labor department or other corresponding agency of any other state or of any person, board, officer, or commission of that state authorized to act on behalf of the labor department or corresponding agency requests in writing that the commission commence and maintain the action; and
- (ii) the other state by legislation or reciprocal agreement extends the same comity to this state.

34-28-10. Employers' records - Inspection by division.

(1)(a) Every employer shall keep a true and accurate record of time worked and wages paid each pay period to each employee who is employed on an hourly or a daily basis in the form required by the commission rules. (b) The employer shall keep the records on file for at least one year after the entry of the record.

(2) The director of the division or the director's designee may enter any place of employment during business hours to inspect the records and to ensure compliance with this section.

(3) Any effort of any employer to obstruct the commission in the performance of its duties is considered to be a violation of this chapter and may be punished as any other violation of this chapter.

34-28-12. Violations - Misdemeanor.

(1) Any employer who shall violate, or fail to comply with any of the provisions of this chapter shall be guilty of a misdemeanor.

(2) Any employer who shall refuse to pay the wages due and payable when demanded as in this chapter provided, or who shall falsely deny the amount thereof, or that the same is due, with intent to secure for himself or any other person any discount upon such indebtedness or with intent to annoy, harass, oppress, hinder, delay or defraud the person to whom such indebtedness is due, or who hires additional employees without advising each of them of every wage claim due and unpaid and of every judgment that the employer has failed to satisfy, shall be guilty of a misdemeanor.

34-28-13. Assignment of wage claims - Powers of division.

(1) The division may take assignments of wage claims, rights of actions for penalties under Section 34-28-5, mechanics' and other liens of workers and rights of action against sureties, without being bound to any of the technical rules with reference to the validity of the assignments.

(2) The division may prosecute actions for the collection of claims which are valid and enforceable in the courts. The division may join various claimants in one preferred claim or lien, and in case of suit to join them in one cause of action.

34-28-14. Actions by division as assignee - Costs need not be advanced.

(1) In all actions brought by the division as assignee under Section 34-28-13, no court costs of any nature shall be required to be advanced nor shall any bond or other security be required from the division in connection with the same.

(2) Any sheriff, constable, or other officer requested by the division to serve summons, writs, complaints, orders, including any garnishment papers, and all necessary and legal papers within his jurisdiction shall do so without requiring the division to advance the fees or furnish any security or bond.

(3) Whenever the division shall require the sheriff, constable, or other officer whose duty it is to seize property or levy thereon in any attachment proceedings to satisfy any wage claim judgment to perform any such duty, this officer shall do so without requiring the division to furnish any security or bond in the action.

(4) The officer in carrying out the provisions of this subsection shall not be responsible in damages for any wrongful seizure made in good faith.

(5) Whenever anyone other than the defendant claims the right of possession or ownership to such seized property, then in such case the officer may permit such claimant to have the custody of such property pending a determination of the court as to who has right of possession or ownership of such property.

(6) Any garnishee defendant shall be required to appear and make answer in any such action, as required by law, without having paid to him in advance witness fees, but such witness fees shall be included as part of the taxable costs of such action. Out of any recovery on a judgment in such a suit, there shall be paid the following: first, the witness fees to the garnishee defendant; second, the wage claims involved; third, the sheriffs or constable's fees; and fourth, the court costs.

34-28-19. Retaliation prohibited - Administrative process - Enforcement Rulemaking.

(1)(a) An employer violates this chapter if the employer takes an action described in Subsection (1)(b) against an employee because:

(i) the employee files a complaint or testifies in a proceeding relative to the enforcement of this chapter;

(ii) the employee is going to file a complaint or testify in a proceeding relative to the enforcement of this chapter; or

(iii) the employer believes that the employee may file a complaint or testify in any proceeding relative to the enforcement of this chapter. (b) Subsection

(1)(a) applies to the following actions of an employer:

(i) the discharge of an employee;

(ii) the demotion of an employee; or

(iii) any other form of retaliation against an employee in the terms, privileges, or conditions of employment.

(2)(a) An employee claiming to be aggrieved by an action of the employer in violation of Subsection (1) may file with the division a request for agency action.

(b) On receipt of a request for agency action under Subsection (2)(a), the division:

(i) shall conduct an adjudicative proceeding pursuant to Title 63, Chapter 46b, Administrative Procedures Act; and

(ii) may attempt to reach a settlement between the parties through a settlement conference.

(3) If the division determines that a violation has occurred, the division may require the employer to:

(a) cease and desist any retaliatory action;

(b) compensate the employee, which compensation may not exceed reimbursement for, and payment of, lost wages and benefits to the employee; or

(c) do both (3)(a) and (b).

(4) The division may enforce this section in accordance with Subsections 34-28-9(3) and (4).

(5) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the commission shall adopt rules, as required, to implement this section.

Reference: Payment of Wages Act, Utah Code Annotated, Title 34, Chapter 28

Deductions and Offsets From Wages

The following sums shall constitute lawful deductions or offsets from wages due an employee:

- A. Sums deducted from wages pursuant to the Internal Revenue Code or other Federal tax provision;**
- B. Sums deducted from wages pursuant to the Social Security Administration Act and Federal Insurance Contribution Act;**
- C. Sums deducted from wages pursuant to any Utah city, county, or state tax;**
- D. Sums deducted from wages as dues, contributions, or other fees to a labor, employee, professional, or other employer-related organization or association; provided that 1) The Employee has granted written authorization for the deductions, and 2) Deductions shall terminate upon the written revocation of the authorization; and sums deducted from wages as contributions for an employee's participation or eligibility in a health, welfare, insurance, retirement, or other benefit plan or program in accordance with Section 34-28-3(5)(d) of the Utah Payment of Wages Act (see page 6 above);**
- E. Sums deducted from wages as payments, repayments, contributions, deposits, to a credit union, banking, and savings. loan, trust or other financial institution, provided that the:**
 - 1. Employee has granted written authorization for the deductions; and**
 - 2. Deductions shall terminate upon the written revocation of the authorization;**
- F. Sums deducted from wages as payment for the purchase of goods or services by the employee from the employer. provided that the:**
 - 1. Employee has actual or constructive possession of the goods or services purchased; and**
 - 2. Employee's purchase is evidenced by the employee's written acknowledgment;**
- G. Sums deducted from wages for damages suffered by the employer due to the employee's negligence:**
 - 1. A potential deduction shall meet the following pre-conditions:**
 - a. negligence and damages arise out of the course of employment;**
 - b. employer has not received payments. compensation, or any form of restitution for the same monetary loss from an insurer, assurer, surety, or guarantor to cover the injuries, losses, or damages;**
 - c. offset is reasonably related to the amount of the damage; and**
 - d. damage is over and above wear and tear reasonably expected in the normal course of business.**
 - 2. Methods of determining an employee's negligence and amount of damage are:**
 - a. by a judicial proceeding;**
 - b. by an employer's written and published procedures coupled with an employee's express authorization for the deduction in writing; or**
 - c. by any other provision allowed or required by law pursuant to Section 34-28-3(5).**
- H. Sums deducted from wages, in the proper amounts, for enforcement of a valid attachment or garnishment shall be honored by the Division;**
- I. Sums deducted from wages as repayment to the employer by the employee of advances or loans made to the employee by the employer, provided that the:**
 - 1. Advance or loan to the employee occurred while the employee was in the employ of the employer; and**
 - 2. Employee's receipt of the advance or loan is evidenced by the employee's written acknowledgment;**
- J. Sums deducted from wages as a result of loss or damage occurring from the criminal conduct of the employee against the property of the employer, provided that:**
 - 1. The employee has been adjudged guilty by a judicial proceeding of the specified crime committed against the property of the employer;**
 - 2. The crime occurred during the employment relationship or out of the employment relationship; and**
 - 3. The property of the employer cannot or has not been reunited with the employer; or**
 - 4. The employee willfully and through his own admission did in fact destroy company property. An offset against the earned wages may be allowed at the hearing officer's discretion.**
- K. Sums deducted from the wages resulting from cash shortages, provided that the:**
 - 1. Employee gives written acknowledgment upon beginning employment that he or she shall be responsible for shortages;**

2. Employee shall at the beginning of his or her work period be checked in or verified on the register or with the cash amount by the employer in the employee's presence and give written acknowledgment of the verification;

3. Employee at the end of the work period be checked out or verified on the register or with the cash amount by the employer in the employee's presence and give written acknowledgment of the verification; and

4. Employee be the sole and absolute user and have sole access to the register or cash amount from the time checked in under Subsection (2) until the time checked out under Subsection (3);

L. Sums deducted from wages as payment for the purchase of goods, tools, equipment, or other items required for the employment of a person, provided that the:

1. Employee's purchase and receipt of the items is evidenced by a written acknowledgment;

2. Employee has actual or constructive possession of the goods or items; and

3. Employer repurchases the items from the employee at the employee's option upon the termination of employment at a fair and reasonable price;

M. Sums deducted from wages as payment for goods, tools, equipment, or other items furnished and assigned to the employee by the employer, provided that:

1. The item was assigned during the employment of the employee;

2. The employee gave written acknowledgment of the receipt of the item; and

3. The item was not returned to the employer upon termination.

Reference: Utah Labor Rule 610-3-18

THE WAGE CLAIM PROCESS

How do I file a wage claim with the Antidiscrimination and Labor Division (“Division”) of the Utah Labor Commission?

Step One: Before you file, you should ask yourself the following five questions:

- **First, do I work for a private company, or do I work for the State, a County or a City?**
 - Unless you work for a private company, the Division cannot help you with your wage claim.
 - If you work for the State, a County or a City, you should follow your employer’s policies and procedures for filing grievances. You may also be able to file a claim for unpaid wages in State Court.
- **Second, am I an employee or an independent contractor?**
 - If you are an independent contractor, you may pursue monetary relief by filing a breach of contract claim in State Court.
- **Third, did I earn the wages within the last year?**
 - If you earned the unpaid wages more than a year ago, you may file a claim in State Court, but the Division will not be able to help you.
- **Fourth, am I claiming unpaid wages of at least \$50 but not more than \$10,000?**
 - If not, you may file a claim in State Court, but the Division will not be able to help you.
- **Fifth, is my claim for unpaid overtime only?**
 - The State of Utah has no overtime law. You should contact the U.S. Department of Labor at (801) 524-5706 about filing an overtime claim.
- **Please note that you also have the option of filing a claim for unpaid wages in State Court and you are not obligated to file with the Division first.**
 - However, if you do file a claim in Court, you cannot also file a wage claim with the Division. You cannot file in both places.
- **If you have any questions about whether you have a wage claim, or about wages in general, please contact us at by phone or in person at:**
 - 160 East 300 South, Third Floor
 - Salt Lake City, UT 84114
 - Phone: (801) 530-6801
 - Toll Free: (800) 222-1238
 - TDD 801-530-7685
 - Fax: (801) 530-7609
 - [Email: the Division@utah.gov](mailto:the.Division@utah.gov)
- **Due to the many calls we receive, you may have to leave a voice message. However, a Wage Claim Specialist will return your call as soon as possible.**
- **You do not need to make an appointment.**

Step Two: Filing Your Claim

- **To file a wage claim, you must obtain and complete a Wage Claim Assignment Form.**
 - You may download a form by clicking here.
 - If you prefer, you can contact the Division by phone or in person to obtain the Form, or if you need help completing the form.
 - ⊕ A Wage Claim Specialist will review your completed form with you to make sure you filled it out completely and provided all necessary information, and to answer any questions you may have.
 - Fill out the form.
 - Be as specific as you can
 - Return it to us, either in person or by mailing it to the address listed on the first page of the form.
 - You can also fax the form to us at (801) 530-7609.
- **After the Division receives your form, we will review it to make sure you completed the form properly.**
 - If you did not fill out the form properly, or you did not meet all the requirements for filing a wage claim, the form will be mailed back to you, along with an indication of the problem.
- **If you completed the form properly, your claim will be assigned a case number and a Wage Claim Specialist who will process and track your claim through the wage claim process.**

Step Three: Notice, Investigation and Settlement

- **Within two business days after receipt of your form, notice of your claim and a Wage Claim Investigation Form will be mailed to your employer.**
- **Within 10 business days from the date of the notice, your employer must complete the Wage Claim Investigation Form and submit it to the Division.**
 - The Division may grant an employer's request for a reasonable extension of time to file its response.
- **You will be sent notice of the employer's written response and required to provide a written reply unless the Division instructs you otherwise.**
 - The Division may grant your reasonable extension of time to file your written reply.
- **The Wage Claim Specialist will review the parties' written submissions and determine the next steps in the investigation. This may include:**
 - **Requesting additional documentation from you or your employer, including:**
 - ⊕ Pay check stubs
 - ⊕ Work orders
 - ⊕ Company policies
 - ⊕ Written agreements between you and your employer
 - ⊕ Schedules or time cards
 - Interviewing you
 - Interviewing your employer
 - Interviewing other witnesses
- **The Wage Claim Specialist may also discuss possibilities of settlement with you and your employer, separately or jointly over the telephone, in an effort to settle the dispute.**

Step Four: The Settlement Conference

- **If the Wage Claim Specialist can't help you and your employer settle the dispute, your case will be scheduled for a Settlement Conference and Hearing.**
- **A Notice of Settlement Conference and Hearing will be mailed to you and your employer to let you know the date and time of the Conference.**
 - **You will also receive a small brochure entitled "Wage Claim Settlement Conference and Hearing Guidelines" which will explain in more detail what you can expect at the Conference.**
- **If you need to reschedule the Settlement Conference, you must do so in writing at least 5 days before hearing.**
 - **If you have an emergency, like a death in the family or some other family emergency, you may call us anytime before the hearing.**
- **If you cannot attend the hearing in person, you may be able to participate by telephone.**
 - **Please call us as far in advance as you can to request permission to participate by phone.**
- **The Settlement Conference is a voluntary opportunity to mediate your wage dispute.**
- **The Settlement Conference is informal and voluntary.**
- **The purpose of the Settlement Conference is to bring the parties together, with a mediator provided by the Division, to facilitate communication between the parties who are in disagreement and see if the differences can be resolved.**
- **The Settlement Conference is not a hearing on the facts of the case, and the mediator will not issue a decision on the merits of your case.**
- **Early resolution of the charge has many advantages, some of which include**
 - **Minimizing the time, energy and expense which is often required to address a complaint of discrimination;**
 - **Better use of your resources;**
 - **Allowing you and the employer to decide how a dispute will be resolved without a third party imposing a resolution.**
- **You do not need to have legal representation to participate in the settlement conference but you and your employer must each have authority to agree upon a settlement.**
- **All issues that reach resolution and all agreements made during the Settlement Conference are legal and binding after the UALD Director has signed the Settlement Agreement. If the Settlement Conference is successful, and the parties satisfy the terms of the Settlement Agreement, the case will be closed.**
- **If you and your employer enter into a Settlement Agreement, but there follows a failure to comply with its terms, the Division may enter an Order for breach of the Settlement Agreement against the non-complying party that includes penalty.**
- **For more information about our mediation program or the Settlement Conference, please click [here](#).**

Step Five: The Hearing

- **If you and your employer are unable to resolve the wage claim dispute in the Settlement Conference, the case will go immediately to a hearing before an Administrative Law Judge (“ALJ”).**
- **This is an informal administrative hearing.**
- **The purpose of the hearing is for the ALJ to obtain evidence in your case so he or she may evaluate those facts and make a written decision about whether you are entitled to the wages you claim.**
- **You and your employer are required to attend the hearing.**
 - **This is the only opportunity you will have to present evidence in a hearing at the Division.**
- **You may choose to represent yourself or you can have a lawyer help you.**
- **It is your responsibility to prove that you are entitled to the wages you claim. It is your employer’s responsibility to prove that you have already been fully compensated.**
- **At the hearing, you will need to present evidence, including:**
 - **Your own testimony**
 - **Testimony from witnesses**
 - **Documents such as:**
 - ⊙ **Check stubs**
 - ⊙ **Written employer policies**
 - ⊙ **Written contracts**
 - ⊙ **Whatever else you think may help support your position**
- **Your employer will also be able to present their own evidence.**
- **You are responsible for arranging for your own witnesses to attend the hearing.**
 - **If there is a witness you wish to call who is unwilling to attend, you may send a letter to the ALJ requesting that the Division issue a subpoena that legally requires the witness to attend.**
 - ⊙ **The ALJ will consider your request and issue the subpoena, but you are responsible to arrange for the subpoena to be served on the witness.**
- **The ALJ will not issue a written decision on the day of the hearing but will issue one within a reasonable time after the hearing.**
 - **The written decision will be mailed to you and your employer.**
 - **It informs you of the decision as well as your appeal rights.**

Step Six: Appealing the Decision

- **If you disagree with the final Order, you have two options.**
 - **Option #1: Request that the Director reconsider the Order.**
 - ⊙ **Your request must be received within 20 days after the date that the Order was sent to you.**
 - ⊙ **Your request must be made in writing and must state the specific reasons why you think the Order is wrong.**
 - ⊙ **The Director will issue a written decision granting or denying your request. Her reconsideration will be based on the contents of the file. She cannot consider any new evidence.**

- ⦿ You must send your request to the Division Director at:
 Kerry Chlarson, Director
 Utah Antidiscrimination & Labor Division
 160 East 300 South, Third Floor
 PO Box 146630
 Salt Lake City, UT 84114-6630
- ⦿ You may also fax the request for reconsideration to Kerry Chlarson at (801) 530-7609.
- ⦿ Remember that the Division must receive your request within 20 days. It is not enough for you to simply put it in the mail on the 20th day.
- Option #2: File an appeal in State District Court.
 - ⦿ You have up to 30 days from the date of the Order to file an appeal in Court.
- If the Division does not receive a timely request for reconsideration, the Order will be considered final.
 - If your employer fails to pay an Order for Payment, that Order will be docketed in State Court and the Division will start a legal action to collect the amount awarded.

YOUR OPTIONS AT ANY POINT IN THE WAGE CLAIM PROCESS

- Both you and your employer may offer to try to mediate or settle the case at any time in the process. A mediator or wage claim specialist can assist with settlement discussions.
- You may withdraw your wage claim with the Division and file your case in State Court.
- Either party can obtain legal counsel or other representation at any time. The Division must have written notice of representation before it will communicate with your representative.
- Both you and your employer are obligated to keep the Division informed of a current address and phone number. The Division may close your case if you cannot be located.
- The parties are also required to cooperate fully with the process. The Division may close your case if you do not cooperate with the investigation.

Persons needing reasonable accommodations, interpreters, or assistive devices due to a disability should contact the Division three days in advance of their appointment or hearing.

UTAH CHILD LABOR SUMMARY

I. POLICY

It is a policy of the state of Utah to encourage the growth and development of minors (persons under the age 18) through providing opportunities for work and for related work learning experience while at the same time adopting reasonable safeguards for their health, safety, and education.

II. COVERAGE

All private sector employers and minor employees in the State of Utah are covered by the Utah Employment of Minors Act ("Act"). The provisions of the Act shall not apply to a person who is 16 years of age or older and for whom employment would not endanger his health and safety if that person: (1) November 5, 2003) has received a high school diploma; (2) has received a school release certificate; (3) is legally married; or (4) is head of a household

III. STANDARDS PROHIBITING HAZARDOUS EMPLOYMENT

It is the responsibility of the employer to determine that the work being performed by the minor is not prohibited by the state or federal child labor laws. Federal child labor law information is available from the U.S. Department of Labor ("USDOL"), Wage and Hour Division, Salt Lake City, Utah, telephone number: (801) 524-5706. Information on the federal standards can also be obtained from the USDOL website: www.youthrules.dol.gov/index.htm

a. The USDOL has determined specific occupations to be particularly hazardous. The Act has adopted this determination to prohibit the employment of minors in such occupations in Utah. These prohibited occupations are:

1. Operation in or about establishments manufacturing or storing explosives or articles containing explosive components.
2. Motor vehicle drivers and helpers (with exceptions).
3. Coal mining operations.
4. Logging operation of any sawmill, lath mill, shingle mill or cooperage-stock mill.
5. Operation of power-driven woodworking machines.
6. Jobs involving exposure to radioactive substances and to ionizing radiations.
7. Operation of power-driven hoisting apparatus.
8. Operation of power-driven, metal forming, punching and shearing machines.
9. Operations connected with mining other than coal.
10. Meat processing operations.
11. Operation of certain power-driven bakery machines.
12. Operation of certain power-driven paper-products machines.
13. Manufacture of brick, tile and clay products.
14. Operation of circular saws, band saws and guillotine shears.
15. Wrecking, demolition and ship breaking operations.
16. Roofing operations.
17. Excavation operations.

b. A minor may not be employed or permitted to work in any hazardous occupation except as authorized by the Labor Commission in writing when the minor is under careful supervision in connection with or following completion of an apprentice program, vocational training, or rehabilitation program as approved by the Labor Commission.

IV. PERMITTED EMPLOYMENT

a. Minors 16 years of age or older may work: (1) in all occupations not declared hazardous; and (2) in occupations which involve the use of motor vehicles if the minor is licensed to operate the motor vehicle for employment purposes under state law.

b. Minors 14 years of age or older may work in a wide variety of non-hazardous occupations including: (1) retail food services; (2) automobile service stations, except for the operation of motor vehicles and the use of hoists; (3) public messenger service; (4) janitorial - 19 - and custodial service; (5) lawn care; (6) the use of

approved types of vacuum cleaners, floor polishers, power lawn mowers, and sidewalk snow removal equipment; and (7) other similar work as approved by the division. Minors 14 years of age or older may also work in non-hazardous areas in manufacturing; warehousing and storage, construction, and other such areas; not determined harmful by the Labor Commission.

c. Minors 12 years of age or older may work in occupations such as: (1) the sale and delivery of periodicals; (2) door-to-door sale and delivery of merchandise; (3) baby-sitting; (4) non-hazardous agricultural work; and (5) any other occupation not determined harmful by the division.

d. Minors 10 years of age or older may work in occupations such as: (1) delivery of handbills, newspapers, advertising, and advertising samples; (2) shoe-shining; (3) gardening and lawn care involving no power-driven lawn or snow removal equipment; (4) caddying; and (5) any occupation not determined harmful by the Labor Commission.

e. With consent of the minor's parent, guardian, or custodian, no specific age limitations or restrictions are imposed for: (1) home chores and other work done for parent or guardian; (2) any casual work not determined harmful by the Labor Commission; (3) agricultural work including the operation of power-driven farm machinery in the production of agricultural products; or (4) work for which a specific, written authorization has been made by the Labor Commission.

V. WORK HOURS AND AUTHORIZATION

a. A minor under the age of 16 may not be employed or permitted to work during school hours except as authorized by the proper school authorities.

b. A minor under the age of 16 may not be permitted to work:

1. before or after school in excess of four hours a day;
2. Before 5:00 a.m. or after 9:30 p.m., unless the next day is not a school day;
3. In excess of eight hours in any 24 hour period; or
4. More than 40 hours in any week.

c. No work permit requirement: A minor is not required to have a work permit in order to be employed. The Labor Commission neither requires nor issues work permits. However, all public and private schools and school districts within the state shall cooperate with employers or prospective employers by issuing age certificates or lists of students or recent students showing their dates of birth according to school records. Such requirement and the lack of a work permit requirement do not relieve employers of full responsibility for knowing and complying with all state and federal laws governing the employment of minors.

VI. REST AND MEAL PERIODS

All minor employees must receive rest and meal periods as outlined below:

a. A meal period of not less than 30 minutes and not later than five hours after the beginning of a minor employee's workday. If, during the meal period, the employee cannot be completely relieved of all duties and permitted to leave the work station or area, the meal period must be paid as time worked.

b. At least a 10 minute paid rest period for each four hours, or fraction thereof, shall be provided for each minor employee; however, no minor employee shall be required to work over three consecutive hours without a 10 minute rest period.

c. In those unusual situations where the specific provisions of sub-sections a or b cannot be met, the Division may decide whether the general intent of the rules has been met to ensure attainment of reasonable safeguards for a minor's health, safety, and education.

VII. INVESTIGATION – PENALTIES

a. An authorized representative of the Labor Commission has authority to enter and inspect any place or establishment covered by the Act and to have access to such records as may aid in the enforcement of the Act. The Labor Commission may investigate any complaint under the Act and may commence an administrative proceeding with a penalty of up to \$500 per violation.

b. It is a class B misdemeanor for a person, whether individually or as an officer, agent, or employee of any person, firm, or corporation to: (a) knowingly employ a minor or permit a minor to work in a repeated violation of the Act; (b) refuse or knowingly neglect to furnish to the Labor Commission, any information requested by the Labor Commission under the Act; (c) refuse access to that person's place of business or employment to the Labor Commission or its authorized representative when access has been requested in conjunction with an investigation related to the Act; (d) hinder the Labor Commission or its authorized representative in the securing of any information authorized by the Act; (e) refuse or knowingly omit or neglect to keep any of the records required by the Act; (f) knowingly make any false statement, representation or certification in any application, record, report, plan, or other document filed or required to be maintained under the Act; (g) discharge an employee or threaten to retaliate against an employee because: (i) the employee has testified; (ii) is about to testify; or (iii) the employer believes that the employee may testify in any investigation or proceedings relative to the enforcement of the Act; and (h) willfully violate any rule or order issued under the Act.

Reference: Employment of Minors Act, Utah Code Annotated, Title 34, Chapter 23

FAIR EMPLOYMENT LAWS

Age Discrimination in Employment Act

Coverage: Employers who are engaged in an industry affecting commerce and who have 20 or more employees are prohibited from discriminating against individuals on the basis of age in hiring or discharge decisions or with respect to compensation, terms, conditions or privileges of employment. The Act protects employees who are at least 40 years of age. There are no upper limits to the protected age class. Employees of Federal, state, and local governments are also protected.

Enforcement: The Act is administered by the EEOC. Charges may be filed with EEOC or a designated state fair employment agency. Aggrieved employees are required to file a charge and attempts at conciliation must be made before a complainant may bring a private suit. Private suits under 118 Act may be tried to a jury except in the case of Federal employees.

Consequences/Penalties: The standard remedies are monetary damages for back pay and benefits. However, if the employer's violation is willful, liquidated damages equal to the amount of back pay can also be assessed. Remedies of reinstatement, retroactive seniority, and appropriate equitable relief (e.g. an injunction) are also available. Attorney's fees may be awarded to successful plaintiffs.

Americans with Disabilities Act

Coverage: Title I of the ADA prohibits an employer from discriminating against qualified individuals with disabilities in all aspects of employment. An employer must make reasonable accommodations for a person with a disability unless it poses an undue hardship on the employer. Furthermore, an employer is prohibited from inquiring whether an applicant has a disability, but may inquire as to his/her ability to perform job-related functions. The ADA also prohibits pre-employment medical examinations. Tests for the presence of illegal drugs or alcohol are not considered medical examinations under the act, and therefore are not prohibited.

Beginning July 26, 1992, the ADA will cover employers with 25 or more employees. After July 26, 1994, the ADA will cover employers with 15 or more employees.

Enforcement: Complaints may be filed with EEOC or designated fair employment practice agencies.

Consequences/Remedies: Available remedies will include hiring, reinstatement, back pay, and injunctive relief. The ADA, as amended by the Civil Rights Act of 1991, also provides for punitive and compensatory damages where the employer is found to have acted with "malice or reckless indifference."

Civil Rights Act of 1964
Title VII - Equal Employment Opportunity

Coverage: Employers with 15 or more employees are prohibited from discriminating against any individual with respect to compensation, terms, conditions, or privileges of employment because of an individual's race, color, religion, sex, or national origin.

Enforcement: Title VII is administered by the Equal Employment Opportunity Commission (EEOC), and employees must file a charge of discriminating with the EEOC or with designated state fair employment agencies as a condition to filing a private suit. The EEOC investigates and attempts conciliation between the employer and the affected employee. The EEOC may also bring suit in Federal court against an uncooperative employer.

Consequences/Penalties: Remedies of back pay, reinstatement, retroactive seniority and appropriate equitable relief (e.g., an injunction) may be sought under Title VII. With the enactment of the Civil Rights Act of 1991, an employee may additionally be liable for compensatory and punitive damages.

Civil Rights Act of 1991

Coverage: The Civil Rights Act of 1991 amends Title VII of the Civil Rights Act of 1964, Section 19851 of the Civil Rights Act of 1866, the Attorney's Fees Awards Act of 1976, the Americans with Disabilities Act of 1990, and the Age Discrimination in Employment Act of 1967. It addresses such subjects as disparate impact, business necessity, bias after hiring, challenges to consent decrees, timeliness of challenges to seniority systems, mixed motives, expert witness fees, extraterritoriality, compensatory and punitive damages, jury trials, interest and filing time in actions against the federal government and "race norming" of test scores.

Enforcement: EEOC is empowered to enforce the Civil Rights Act of 1991. Either party may request a jury trial in which compensatory or punitive damages are sought.

Consequences/Remedies: With the enactment of the Civil Rights Act of 1991, punitive damages are available when the employee can prove the employer has acted "with malice, or with reckless indifference." Depending on the number of employees, the employer's liability is limited by salary caps for compensatory and punitive damages.

Equal Pay Act of 1963

Coverage: The Equal Pay Act is an amendment to the Fair Labor Standards Act (FLSA). However, the protections of the Equal Pay Act are extended to apply to executive, administrative, or professional employees, and outside salesmen, even though other FLSA requirements do not. The Equal Pay Act prohibits an employer from paying persons of one sex less than the wage paid to persons of the opposite sex in the same establishment "for equal work on jobs the performance of which requires equal skill, effort, and responsibility and which are performed under similar working conditions." Excepted are wage differentials based on seniority, merit pay, and piecework, and a "differential based on any other factor other than sex."

Enforcement: The Act is administered by EEOC but employees are not required to file a charge with EEOC before filing suit.

Consequences/Penalties: A successful plaintiff will receive back pay for up to two years (or three years if the employer's violation is willful). The court may award liquidated damages in an amount equal to the back pay. Attorney's fees are also available to the successful plaintiff. These cases may be tried to a jury.

Fair Labor Standards Act of 1938

Coverage: The Fair Labor Standards Act (FLSA) covers most employers in the public and private sectors. The Act requires that employees be paid a minimum wage, currently 5.15 per hour, and that they be paid time and one-half for any hours worked in excess of 40 in a given week. Additionally, all persons employed in hazardous occupations must be over 18 years of age and fourth, that minors employed in other occupations be above 14 or 16 years of age depending on the type of work and the employer. The Act was amended in 1985 to permit public employers to give compensatory time off in lieu of overtime pay.

Enforcement: The Act is administered by the Department of Labor. Suits based on violations of the Act can be brought by the Secretary of Labor or by the aggrieved employee. Criminal actions can be initiated by the Department of Justice in the case of a "willful" violation of the Act.

Consequences/Penalties: The plaintiff may recover back pay and an equal amount in liquidated damages. The Secretary may sue to enjoin violations of the Act or to enjoin the interstate shipment of goods produced by an employer who violates the Act. A prevailing plaintiff may also recover attorney's fees. These cases may be tried to a jury.

Pregnancy Discrimination Act

Coverage: The Pregnancy Discrimination Act is an amendment to Title VII of the Civil Rights Act of 1964. Employers with 15 or more employees are prohibited from discriminating on the basis of pregnancy, childbirth, or related medical conditions. Women affected by pregnancy or related conditions must be treated in the same manner as other applicants or employees with similar abilities or limitations.

Enforcement: Complaints may be filed at EEOC or at a designated state fair employment agency.

Consequences/Penalties: Remedies of back pay, reinstatement, retroactive seniority and appropriate equitable relief (e.g., an injunction) may be sought under title VII. With the enactment of the Civil Rights Act of 1991, an employee may additionally be liable for compensatory and punitive damages.

Utah Anti-Discrimination Act of 1965

Coverage: The Utah Anti-Discrimination Act of 1965, as amended, prohibits employers with 15 or more employees from discriminating on the basis of race, color, sex, pregnancy, childbirth or pregnancy related conditions, age (40 or over), religion, national origin, or handicap/disability.

Enforcement: Charges must be filed with the Utah Anti-Discrimination Division within 180 days from the last date of harm.

FILING A CHARGE OF EMPLOYMENT DISCRIMINATION

A general definition of employment discrimination is when an employer takes action against an employee because of the employee's race, color, sex, national origin, religion, disability, or age (over 40).

GENERAL INFORMATION

- A. You may call the Utah Antidiscrimination & Labor Division (UALD) to ask about filing a charge of employment discrimination. Office hours are 8 a.m. to 5 p.m., Monday through Friday. Due to the many calls received, you may need to leave a voice message. An investigator will return your phone call. Call 530-6801, toll-free in state at (800) 222-1238, or TDD (801) 530-7685. You will be given information that can help you decide if you have grounds to file a charge of employment discrimination.
- B. There may be a difference between *unfair treatment* and *illegal discrimination*. Discrimination occurs when an employee is singled out and treated differently than other employees because of that employee's race, color, sex, national origin, religion, disability, or age (over 40). On the other hand, unfair treatment may apply to all employees and may or may not be illegal. The UALD will only take complaints of illegal employment discrimination. UALD advises persons who have been treated unfairly, but in a non-discriminatory manner, to seek other possible solutions. You may want to consult an attorney.

THE FILING PROCESS

A. FILING YOUR CHARGE

Your employer must have at least 15 employees. You must file your charge of employment discrimination within 180 days of the alleged discriminatory act. If more than 180 days have passed since the last date of harm, but less than 300 days, your charge will be sent to the Equal Employment Opportunity Commission (EEOC) for its consideration.

Definitions:

1. Charging Party - person or employee filing the charge of employment discrimination.
2. Respondent - employer against whom the charge is being filed.

B. FILING BY PERSON OR MAIL

1. Contact UALD to obtain filing materials. You will be interviewed to assure that UALD has authority to accept your complaint.
2. Fill out the forms. Be specific.
3. If you do not have an appointment already, you may call UALD and make an appointment with the intake officer, or, if filing by mail, simply mail the completed form to UALD.
4. Meet with the intake officer, and discuss the alleged charge of discrimination. If you decide to file a Charge, you will sign it at this meeting. If filing by mail, the intake officer will type up a charge from the information you provide on the questionnaire. The Charge is sent back to you for your signature. Sign the Charge and have it notarized, (notaries can usually be found in a bank or library) and return the form immediately to UALD.
5. The Charge will be assigned a case number. Within 10 days or less, the Charging party and Respondent will have a copy of the complaint by mail.

C. ALTERNATIVE DISPUTE RESOLUTION (ADR)

Within 10 days from the filing of the Charge, a letter will be mailed to the parties informing them of the process, the UALD will follow to resolve the complaint and to schedule a Resolution Conference. The purpose of the Resolution Conference is to bring the parties together, with a facilitator provided by UALD, to facilitate communication between the parties who are in disagreement and see if the differences can be resolved before an investigation. The letter will contain a date for the Resolution Conference. The conference does not preclude the Charging Party or Respondent from a more formal investigation or diminish the rights of either party given to them under the law.

1. Both parties are requested to bring all information that may support their positions. Witnesses may be used and affidavits (written notarized witness statements) can also be presented.
2. All issues that reach resolution and all agreements made during the Conference are legal and binding. If the Resolution Conference is successful, the case will be closed.
3. If the Parties cannot resolve their issues during the Conference, the case is assigned to an Investigator for further processing.

D. THE INVESTIGATIVE PROCESS

1. The Respondent will have an opportunity to review the Charge and submit a response to UALD.
2. The Charging Party will have an opportunity to submit a rebuttal and produce any additional evidence or documentation.
3. The Investigator will determine the next steps in the investigation, which may include additional documentation from either party, interviews with witnesses, examination of evidence, on-site inspections and additional fact finding.

E. RIGHTS AND OBLIGATIONS OF THE INVOLVED PARTIES

1. Either party may make an offer of resolution at any time.
2. The Charging Party may withdraw his or her charge with UALD and request a Right to Sue Letter (issued by the EEOC), which can be used to start court proceedings.
3. Either party can obtain legal counsel or other representation at any time. UALD must have written notice of representation from you before it will communicate with your representative.
4. The parties are obligated to keep UALD informed of their current address and phone number. UALD may close the case if the Charging Party cannot be located.
5. The Charging Party and Respondent are asked to cooperate fully with the process.
6. The Respondent will have an opportunity to review the Charge and submit a response to UALD. This can include any documentation or evidence which may support the response.

F. THE DETERMINATION PROCESS

Once the investigation has been completed, a Determination and Order are issued by the Division Director to both the Charging Party and Respondent. The Director will either:

1. Issue a No Cause Finding. This means that the UALD has found that there is insufficient evidence to prove that a discriminatory act has occurred. After a No Cause Finding, the Charging Party may request a hearing within 30 days of the Determination and Order. A formal hearing will take place before an Administrative Law Judge (ALJ). This process takes place outside of the UALD Investigation and Resolution process. If no such request is made, the case is then dismissed. The Charging Party may also request a Notice of Right To Sue, or ask for a Substantial Weight Review from the EEOC within 15 days of the date of the order.

OR

2. Issue a Cause Finding. This finding means the UALD has found that a discriminatory act has occurred. After a Cause Finding is issued, UALD will contact the employer to schedule a Conciliation Conference. The purpose of the conference is to discuss the terms of relief for the Charging Party. The employer also has the opportunity to request a formal hearing in front of an ALJ.

REFERRAL AGENCIES

Family Medical Leave Act (FMLA) - U.S. Department of Labor	524-5706
Payment of Overtime - U.S. Department of Labor.....	524-5706
Lost or Unpaid Wages – UALD/Wage Claim Unit.....	530-6801
Unemployment - Job Service.....	536-7111
Legal Referrals	
Utah Bar Lawyer Referral	531-9075
or.....	(800) 662-9054
Legal Aid.....	328-8849
Utah Legal Services.....	328-8891
Tuesday Night Bar	531-9077
Disability Law Center	363-1347
COBRA - Federal Pension/Welfare.....	(414) 744-6700
Worker's Compensation	530-6842

Persons needing special accommodations, interpreters, or assistive devices due to a disability should contact the Division three days in advance of their appointment or hearing.

The Division does not provide translation services. You need to bring your own interpreter to the Conference. La Division no ofrece servicios de traducción. Usted necesita traer su propio interprete a la Conferencia.

FACT SHEET ON EMPLOYER RETALIATION

The Utah Anti-Discrimination Act prohibits employers from retaliating against any employee regarding a charge of employment discrimination. Section 34-35-2(17) of the Utah Anti-Discrimination Act defines “retaliate” as:

[T]he taking of adverse action by an employer ... against one of its employees ... because he or she has opposed any employment practice prohibited under this chapter or because he or she has filed charges, testified, assisted, or participated in any way in any proceeding, investigation, or hearing under this chapter.

Therefore, protection against employer retaliation applies not only to the complaining employee, but to all other employees who might participate in the investigatory process. This protection applies regardless of the validity of the complaining employee’s charge.

Examples of prohibited retaliation may include, but are not limited to:

- 1. Harassing, intimidating or taking any unwarranted adverse action against an employee.**
- 2. Threatening or taking disciplinary action against an employee for speaking to or assisting the complaining employee.**
- 3. Threatening or taking disciplinary action against an employee for speaking to or assisting the investigator responsible for investigating the charge.**
- 4. Issuing an unwarranted negative recommendation to a potential employer, or any other unwarranted adverse post-employment action.**

PLEASE NOTE: Applicable Federal laws have similar prohibitions against employer retaliation. See: Civil Rights Act of 1964, section 704(a); Age Discrimination in Employment Act of 1967, section 4(d); and Americans With Disabilities Act of 1970, section 503.

Your Rights under the Family and Medical Leave Act of 1993

FMLA requires covered employers to provide up to 12 weeks of unpaid, job-protected leave to "eligible" employees for certain family and medical reasons. Employees are eligible if they have worked for their employer for at least one year, and for 1,250 hours over

the previous 12 months, and if there are at least 50 employees within 75 miles. The FMLA permits employees to take leave on an intermittent basis or to work a reduced schedule under certain circumstances.

Reasons for Taking Leave:

Unpaid leave must be granted for *any* of the following reasons:

- to care for the employee's child after birth, or placement for adoption or foster care;
- to care for the employee's spouse, son or daughter, or parent who has a serious health condition; or
- for a serious health condition that makes the employee unable to perform the employees job.

At the employee's or employer's option, certain kinds of *paid leave* may be substituted for unpaid leave.

Advance Notice and Medical Certification:

The employee may be required to provide advance leave notice and medical certification. Taking of leave may be denied if requirements are not met.

- The employee ordinarily must provide 30 days advance notice when the leave is "foreseeable."
- An employer may require medical certification to support a request for leave because of a serious health condition, and may require second or third opinions (at the employer's expense) and a fitness for duty report to return to work.

Job Benefits and Protection:

- For the duration of FMLA leave, the employer must maintain the employee's health coverage under any "group health plan."

- Upon return from FMLA leave, most employees must be restored to their original or equivalent positions with equivalent pay, benefits, and other employment terms.
- The use of FMLA leave cannot result in the loss of any employment benefit that accrued prior to the start of an employee's leave.

Unlawful Acts by Employers:

FMLA makes it unlawful for any employer to:

- interfere with, restrain, or deny the exercise of any right provided under FMLA;
- discharge or discriminate against any person for opposing any practice made unlawful by FMLA or for involvement in any proceeding under or relating to FMLA.

Enforcement:

- The U.S. Department of Labor is authorized to investigate and resolve complaints of violations.
- An eligible employee may bring a civil action against an employer for violations.

FMLA does not affect any Federal or State law prohibiting discrimination, or supersede any State or local law or collective bargaining agreement which provides greater family or medical leave rights.

For Additional Information:

If you have access to the Internet visit our FMLA website : <http://www.del.gov/lesalwhdffmla>. To locate your nearest Wage-Hour Office, telephone our Wage-Hour toll-free information and help line at 1-866- 4USWAGE (1-866-487-9243); a customer service representative is available to assist you with referral information from Sam to 5pm in your time zone; or log onto our Home Page at <http://nvw.vvagehour.dol.gov>.

U.S. Department of Labor
* Employment Standards Administration
Wage and Hour Division
Washington, D.C. 20210

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Family and Medical Leave Act Poster

Rule R606-2-2. Pre-Employment Inquiry Guide

Any inquiry is improper which, although not specifically listed below, is designed to elicit information as to Race, Color, Sex, Age, Religion, National Origin, or Handicap. The prime consideration for any job is the ability to perform it.

A. NAME

1. Proper Pre-Employment Inquiries: First, Middle, and Last Name and any other name used for prior employment.
2. Improper Pre-Employment Inquiries: Inquiry into original name cannot be used for discriminatory purposes. Inquiries concerning specific questions about the name which would indicate applicant's lineage, ancestry, national origin, or descent; or to require prefix to applicant's name, (Mr., Mrs., Miss, Ms.); or to inquire into marital status unless based on legitimate bona fide occupational qualifications or prior employment history are considered improper.

B. ADDRESS

1. Proper Pre-employment Inquiries: Applicant's place of residence.
2. Improper Pre-employment Inquiries: Inquiry into foreign addresses which would indicate national origin.

C. BIRTHPLACE

1. Proper Pre-employment Inquiries: Proof of citizenship may be requested prior to hiring in accordance with the Immigration Reform and Control Act of 1986 (IRCA).
2. Improper Pre-Employment Inquiries: Inquiry into birthplace of applicant, or birthplace of applicant's parents, spouse, or relatives. Require prior to hiring, birth certificate, naturalization or baptismal record.

D. RACE OR COLOR

1. Proper Pre-Employment Inquiries: None.
2. Improper Pre-Employment Inquiries: Any inquiry which would indicate race or color is prohibited.

E. AGE

1. Proper Pre-Employment Inquiries:

Are you under the age of 18? If there is a question as to applicant being of legal working age, proof may be requested in form of work permit.

2. Improper Pre-Employment Inquiries:

Requesting an individual's date of birth prior to employment is prohibited, unless relative to whether the individual is a minor.

F. HANDICAP/DISABILITY

1. Proper Pre-Employment Inquiries:

a. an inquiry about ability to perform job-related functions as long as the questions are not phrased in terms of a disability.

b. asking a job applicant to describe or demonstrate, with or without reasonable accommodation, his ability to perform job-related functions.

2. Improper Pre-Employment Inquiries:

a. any inquiry whether an applicant is disabled or about the nature or severity of a disability. b. any requirement for an applicant to take a medical examination prior to an offer of employment.

G. SEX

1. Proper Pre-Employment Inquiries:

Where a bona fide occupational qualification is reasonably necessary to the normal operation of that business, or enterprise.

2. Improper Pre-Employment Inquiries:

Any other inquiry which would indicate sex or related conditions such as pregnancy or plans to have children. Inquiry into sex of applicant.

H. PHOTOGRAPHS

1. Proper Pre-Employment Inquiries:

Photograph may be requested only after hiring and then only for legitimate business purpose.

2. Improper Pre-Employment Inquiries:

Any request for photograph prior to hiring is prohibited.

I. RELIGION-CREED

1. Proper Pre-Employment Inquiries:

None.

2. Improper Pre-Employment Inquiries:

Inquiry into an applicant's religious denomination, religious affiliations, church, parish, pastor, or religious holidays observed prior to hiring is prohibited.

J. RELATIVES

- 1. Proper Pre-Employment Inquiries: Inquiry into name and address and relationship of persons to be notified in case of emergency. For a minor it must be a parent or guardian.
- 2. Improper Pre-Employment Inquiries: Names and addresses of any relatives other than those listed as proper.

K. ORGANIZATIONS

- 1. Proper Pre-Employment Inquiries: Inquiry into organization memberships including professional, scientific and civic groups, but excluding any organization, the name or charter of which indicate the race, religion, color, sex, and national origin of its members.
- 2. Improper Pre-Employment Inquiries: Requirement that applicant list all organizations, clubs, societies, and lodges to which he belongs. Unlawful to inquire into organizations which may indicate race, religion, color, sex, and national origin of their members.

L. NOTICE IN CASE OF EMERGENCY

- 1. Proper Pre-Employment Inquiries: Name and address and relationship of "Persons" to be notified in case of accident or emergency.
- 2. Improper Pre-Employment Inquiries: Name and address of all others except those listed as proper.

M. REFERENCES

- 1. Proper Pre-Employment Inquiries: Persons willing to give references.
- 2. Improper Pre-Employment Inquiries: Request of name of applicant's bishop, pastor, or religious leader.

N. MILITARY EXPERIENCE

- 1. Proper Pre-Employment Inquiries: Inquiry into applicant's military experience or duties in United States Armed Forces.
- 2. Improper Pre-Employment Inquiries: To require copy of military discharge paper or type of discharge, unless such inquiry is based upon a bona fide occupational qualification.

O. EXPERIENCE

- 1. Proper Pre-Employment Inquiries: Inquiry into work experience.
- 2. Improper Pre-Employment Inquiries: Any inquiries into work history which are not work-related.

P. CHARACTER

- 1. Proper Pre-Employment Inquiries: Permissible to ask applicant for character references.
- 2. Improper Pre-Employment Inquiries: Questions about applicant's sexual preferences or economic status.

Q. NUMBER OF DEPENDENTS

- 1. Proper Pre-Employment Inquiries: This information may be requested only after hiring for legitimate purposes.
- 2. Improper Pre-Employment Inquiries: Asking an applicant's number of dependents prior to employment is prohibited.

R. COLOR OF HAIR OR EYES

- 1. Proper Pre-Employment Inquiries: None. Asking questions regarding hair color and eye color are not job relevant.

S. HEIGHT AND WEIGHT

- 1. Proper Pre-Employment Inquiries: None.
- 2. Improper Pre-Employment Inquiries: It is unlawful for an employer to set minimum height or weight requirements for hiring unless based on a bona fide occupational qualification.

T. EDUCATION

- 1. Proper Pre-Employment Inquiries: Inquiry into what academic, professional, or vocational schools attended.
- 2. Improper Pre-Employment Inquiries: It is unlawful to ask specifically the nationality, racial, or religious affiliation of a school attended by the applicant.

U. PRIOR ARREST RECORD

- 1. Proper Pre-Employment Inquiries: None. It is not proper to ask about arrest records.

V. CRIMINAL RECORD

- 1. Proper Pre-Employment Inquiries: Have you ever been convicted of a felony? It is proper to ask about a felony conviction.
- 2. Improper Pre-Employment Inquiries: Inquiry advisable only if job related.

W. ECONOMIC STATUS

- 1. Proper Pre-Employment Inquiries: None.
- 2. Improper Pre-Employment Inquiries: It is generally prohibited to inquire as to bankruptcy, car ownership, rental or ownership of a house, length of residence at an address, or past garnishment of wages as poor credit ratings have a disparate impact on women and minorities.