



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

Ronald Sklansky
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CLEARINGHOUSE REPORT TO AGENCY

[THIS REPORT HAS BEEN PREPARED PURSUANT TO S. 227.15, STATS. THIS IS A REPORT ON A RULE AS ORIGINALLY PROPOSED BY THE AGENCY; THE REPORT MAY NOT REFLECT THE FINAL CONTENT OF THE RULE IN FINAL DRAFT FORM AS IT WILL BE SUBMITTED TO THE LEGISLATURE. THIS REPORT CONSTITUTES A REVIEW OF, BUT NOT APPROVAL OR DISAPPROVAL OF, THE SUBSTANTIVE CONTENT AND TECHNICAL ACCURACY OF THE RULE.]

CLEARINGHOUSE RULE 04-036

AN ORDER to amend DWD 272.03 (1), (1m), (3) and (3m), 272.05 (1) (a) and (b), (2) (a) and (b), 272.07 (3) and 272.08; to repeal and recreate DWD 272.12 (2) (g) 6.; and to create DWD 272.01 (9m) and 272.07 (3m), relating to increasing Wisconsin's minimum wages.

Submitted by **DEPARTMENT OF WORKFORCE DEVELOPMENT**

04-15-2004 RECEIVED BY LEGISLATIVE COUNCIL.

05-04-2004 REPORT SENT TO AGENCY.

RNS:RJC

LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT

This rule has been reviewed by the Rules Clearinghouse. Based on that review, comments are reported as noted below:

1. STATUTORY AUTHORITY [s. 227.15 (2) (a)]

Comment Attached YES NO

2. FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE [s. 227.15 (2) (c)]

Comment Attached YES NO

3. CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.15 (2) (d)]

Comment Attached YES NO

4. ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS
[s. 227.15 (2) (e)]

Comment Attached YES NO

5. CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE [s. 227.15 (2) (f)]

Comment Attached YES NO

6. POTENTIAL CONFLICTS WITH, AND COMPARABILITY TO, RELATED FEDERAL
REGULATIONS [s. 227.15 (2) (g)]

Comment Attached YES NO

7. COMPLIANCE WITH PERMIT ACTION DEADLINE REQUIREMENTS [s. 227.15 (2) (h)]

Comment Attached YES NO



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CLEARINGHOUSE RULE 04-036

Comments

[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated October 2002.]

General Comment

2003 Wisconsin Act 118 imposed new rule-making requirements on certain agencies, including the Department of Workforce Development. In order to facilitate uniform rule-making and rule review processes, the Clearinghouse is recommending that uniform headings be used in the analysis of rules submitted by those agencies. The attached memorandum identifies the uniform headings the Clearinghouse is recommending.

2. Form, Style and Placement in Administrative Code

In s. DWD 272.12 (2) (g) 6., the title of the provision should be shown even though it is not being amended. [See s. 1.05 (3) (c), Manual.]

5. Clarity, Grammar, Punctuation and Use of Plain Language

a. In s. DWD 272.03 (1) (intro.), and elsewhere in the rule, the quotation marks around the phrase “the effective date of this section...[revisor inserts date]” should be deleted. In addition, in par. (a), and elsewhere throughout the rule, the term “hr.” should be replaced by the word “hour.”

b. In s. DWD 272.03 (3) (a) 1., a “\$” should be inserted immediately before “45.60.”

c. In s. DWD 272.05 (1) and (2), because the term “minor” is defined in the current rule as anyone under the age of 18, the use of the phrase “17 years of age and under” to modify the term “minors” is redundant and can be deleted.

FISCAL ESTIMATE
DOA-2048 N(R03/97)

ORIGINAL UPDATED
 CORRECTED SUPPLEMENTAL

LRB or Bill No./Adm. Rule No.
DWD 272
Amendment No. if Applicable

Subject
Increasing Wisconsin's Minimum Wages

Fiscal Effect

State: No State Fiscal Effect

Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation.

Increase Costs - May be possible to Absorb Within Agency's Budget Yes No

Increase Existing Appropriation Increase Existing Revenues
 Decrease Existing Appropriation Decrease Existing Revenues
 Create New Appropriation

Decrease Costs

Local: No local government costs

1. Increase Costs
 Permissive Mandatory
2. Decrease Costs
 Permissive Mandatory

3. Increase Revenues
 Permissive Mandatory
4. Decrease Revenues
 Permissive Mandatory

5. Types of Local Governmental Units Affected:
 Towns Villages Cities
 Counties Others _____
 School Districts WTCS Districts

Fund Sources Affected

GPR FED PRO PRS SEG SEG-S

Affected Ch. 20 Appropriations

Assumptions Used in Arriving at Fiscal Estimate

DWD economists estimate that 35% of the additional \$175 million in consumer expenditures will be on items subject to the sales tax. This translates to increased revenue of approximately \$3 million for the state and some increased revenue for counties with a local sales tax.

It is estimated that 100-200 local governmental employees across the state who work as seasonal summer helpers may be affected by the increase. The increased cost is estimated at approximately \$20,000 across all local governments in the state. The minimum wage increase is not expected to affect state employees.

The Department of Revenue estimates that the additional individual income tax revenue on the additional wages paid due to the minimum wage increase will be \$4.725 million. This amount will be offset by the decline of business tax revenue estimated at \$5.495 million. The net effect on income tax revenue is estimated to be a decline of \$770,000. The Department of Revenue assumptions are contained in the attached letter.

The net effect on state revenue based on a \$3 million sales tax increase, \$4.725 million revenue increase from income tax on worker's increased income, and a \$5.495 million decline in business tax revenue equals an increase in state revenue of \$2.23 million.

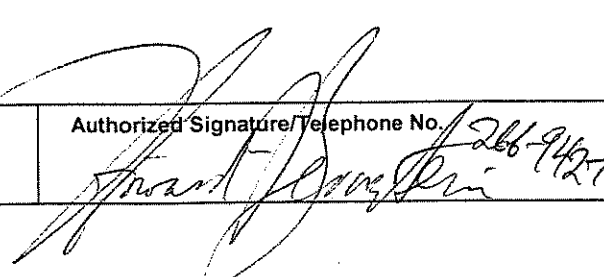
Long-Range Fiscal Implications

none

Agency/Prepared by: (Name & Phone No.)
DWD/Elaine Pridden 267-9403

Authorized Signature/Telephone No. 266-9427

Date 6/25/04



FISCAL ESTIMATE WORKSHEET

2004 Session

Detailed Estimate of Annual Fiscal Effect
DOA-2047 (R10/94)

ORIGINAL UPDATED
 CORRECTED SUPPLEMENTAL

LRB or Bill No./Adm. Rule No.
DWD 272

Amendment No.

Subject
Increasing Wisconsin's Minimum Wages

I. One-time Costs or Revenue Impacts for State and/or Local Government (do not include in annualized fiscal effect):

0

II. Annualized Costs:		Annualized Fiscal impact on State funds from:	
		Increased Costs	Decreased Costs
A. State Costs by Category			
State Operations - Salaries and Fringes		\$0	\$0 -
(FTE Position Changes)		0 (FTE)	0
State Operations - Other Costs		0	0
Local Assistance		0	-
Aids to Individuals or Organizations		0	-
TOTAL State Costs by Category		\$0	\$0
B. State Costs by Source of Funds			
GPR		\$0	\$0-
FED		0	0
PRO/PRS		0	-
SEG/SEG-S		0	-
III. State Revenues -		Increased Rev.	Decreased Rev.
Complete this only when proposal will increase or decrease state revenues (e.g., tax increase, decrease in license fee, etc.)			
GPR Taxes		\$7,725,000	\$5,495,000
GPR Earned			-
FED			-
PRO/PRS			-
SEG/SEG-S			-
TOTAL State Revenues		\$7,725,000	\$5,495,000

NET ANNUALIZED FISCAL IMPACT

STATE

LOCAL

NET CHANGE IN COSTS

0

\$20,000

NET CHANGE IN REVENUES

\$2,230,000

increase for counties with local sales tax

Agency/Prepared by: (Name & Phone No.)
DWD/ Elaine Pridgen 267-9403

Authorized Signature/Telephone No.

Howard Pridgen 266-9427

Date

6/25/04

FISCAL ESTIMATE
DOA-2048 N(R03/97)

- ORIGINAL UPDATED
 CORRECTED SUPPLEMENTAL

Subject
Increasing Wisconsin's Minimum Wages

Fiscal Effect

State: No State Fiscal Effect

Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation.

Increase Costs - May be possible to Absorb Within Agency's Budget Yes No

- Increase Existing Appropriation Increase Existing Revenues
 Decrease Existing Appropriation Decrease Existing Revenues
 Create New Appropriation

Decrease Costs

Local: No local government costs

1. Increase Costs
 Permissive Mandatory
2. Decrease Costs
 Permissive Mandatory

3. Increase Revenues
 Permissive Mandatory
4. Decrease Revenues
 Permissive Mandatory

5. Types of Local Governmental Units Affected:
 Towns Villages Cities
 Counties Others _____
 School Districts WTCS Districts

Fund Sources Affected

- GPR FED PRO PRS SEG SEG-S

Affected Ch. 20 Appropriations

Assumptions Used in Arriving at Fiscal Estimate

It is estimated that 35% of the additional \$175 million in consumer expenditures will be on items subject to the sales tax. This translates to increased revenue of approximately \$3 million for the state and some increased revenue for counties with a local sales tax.

There may be increased state revenue from the income tax on higher incomes for approximately 200,000 workers. A request is being submitted to the Department of Revenue for an estimate of the increase and any possible offset due to decreased corporate tax revenue based on increased payroll costs. An amended fiscal estimate will be included when the proposed rule is submitted for legislative review.

It is estimated that 100-200 local governmental employees across the state who work as seasonal summer helpers may be affected by the increase. The increased cost is estimated at approximately \$20,000 across all local governments in the state. The minimum wage increase is not expected to affect state employees.

Long-Range Fiscal Implications

Agency/Prepared by: (Name & Phone No.)
DWD/Elaine Pridgen 267-9403

Authorized Signature/Telephone No.

Elaine Pridgen 266-9427

Date

4/15/04

FISCAL ESTIMATE WORKSHEET

2004 Session

Detailed Estimate of Annual Fiscal Effect
DOA-2047 (R10/94)

ORIGINAL UPDATED
 CORRECTED SUPPLEMENTAL

LRB or Bill No./Adm. Rule No. Amendment No.
DWD 272

Subject
Increasing Wisconsin's Minimum Wages

I. One-time Costs or Revenue Impacts for State and/or Local Government (do not include in annualized fiscal effect):

II. Annualized Costs:		Annualized Fiscal impact on State funds from:	
		Increased Costs	Decreased Costs
A. State Costs by Category			
State Operations - Salaries and Fringes		\$0	\$0 -
(FTE Position Changes)		0 (FTE)	0
State Operations - Other Costs		0	0
Local Assistance		0	0
Aids to Individuals or Organizations		0	0
TOTAL State Costs by Category		\$0	\$0
B. State Costs by Source of Funds			
GPR		\$0	\$0-
FED		0	0
PRO/PRS		0	0
SEG/SEG-S		0	0
III. State Revenues -			
Complete this only when proposal will increase or decrease state revenues (e.g., tax increase, decrease in license fee, etc.)			
GPR Taxes		\$3,000,000 plus possible increased income tax revenue	\$ -
GPR Earned			-
FED			-
PRO/PRS			-
SEG/SEG-S			-
TOTAL State Revenues		\$3,000,000	\$0-

NET ANNUALIZED FISCAL IMPACT

STATE

LOCAL

NET CHANGE IN COSTS

0

\$20,000

NET CHANGE IN REVENUES

\$3,000,000

increase for counties with local sales tax

Agency/Prepared by: (Name & Phone No.)
DWD/ Elaine Pridgen 267-9403

Authorized Signature/Telephone No.

Howard Pridgen

266-9427

Date

4/15/04

Jim Doyle
Governor

Roberta Gassman
Secretary



State of Wisconsin

Department of Workforce Development

OFFICE OF THE SECRETARY

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Proposed Rules Relating To Increasing Wisconsin's Minimum Wages

Chapter DWD 272/CR 04-036

Rule Analysis for Legislative Review

Need for rules

Chapter 104, Stats., provides that Wisconsin's minimum wage should be sufficient to enable the employee receiving it to maintain himself or herself under conditions consistent with his or her reasonable comfort, physical well-being, decency, and moral well-being. Governor Doyle and the Department of Workforce Development appointed a Minimum Wage Advisory Council to assist in determining whether there should be an increase in Wisconsin's minimum wage. The Advisory Council included leaders from the business community, labor organizations, and both houses of the legislature. The proposed rule incorporates the Advisory Council's recommendations.

Public hearing response

Public hearings were held in Janesville, Milwaukee, Eau Claire, Wausau, and Green Bay during the week of May 17, 2004. A summary of the hearing comments and the Department's responses is attached.

Response to Legislative Council staff recommendations

All Legislative Council staff recommendations were accepted.

Final regulatory flexibility analysis

The proposed rule will have an effect on small business as defined in s. 227.114 (1), Stats. A final regulatory flexibility analysis is attached.

Department contacts

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Chapter DWD 272

MINIMUM WAGES

DWD 272.001	Declaration of policy.	DWD 272.08	Caddies.
DWD 272.01	Definitions.	DWD 272.085	Student worklike activities and employment.
DWD 272.02	Applicability of orders.	DWD 272.09	Subminimum wage licenses for rehabilitation facilities and for the employment of workers with disabilities and student learners.
DWD 272.025	Statement of intent.		
DWD 272.03	Minimum rates.	DWD 272.10	Listing deductions from wages.
DWD 272.04	Deductions for meals and lodging.	DWD 272.11	Permanent records to be kept by the employer.
DWD 272.05	Agriculture.	DWD 272.12	Interpretation of hours worked.
DWD 272.06	Domestic service employment, casual employment, and companions in private homes.	DWD 272.13	Forms.
DWD 272.07	Recreational or educational camps.	DWD 272.14	Prohibition of displacement.

Note: Chapter Ind 72 as it existed on July 31, 1978 was repealed and a new chapter Ind 72 was created effective August 1, 1978. Chapter Ind 72 was renumbered Chapter ILHR 272, Register, February, 1996, No. 482, effective March 1, 1996. Chapter ILHR 272 was renumbered chapter DWD 272 under s. 13.93 (2m) (b) 1., Stats., and corrections were made under s. 13.93 (2m) (b) 6. and 7., Stats., Register, May, 1997, No. 497.

DWD 272.001 Declaration of policy. (1) The department, in fulfilling its statutory mandate, has caused extensive studies to be made relative to the consideration of a "living wage" and how the wage should be computed. The concept of "cost of living" and "living wage" is very complex because of the many variables. Any single concept is difficult to apply because of different assumptions, techniques and local conditions.

(2) The rates adopted in this chapter reflect compensation that has been determined to be adequate to permit any employee to maintain herself or himself in minimum comfort, decency, physical and moral well-being. The department has also considered the effect that an increase in the living-wage might have on the economy of the state, including the effect of a living-wage increase on job creation, retention and expansion, on the availability of entry-level jobs and on regional economic conditions within the state.

(6) Room allowances shall be computed on the basis of 20% of the prescribed minimum rate for employees based on a 40 hour week, rounded off to the nearest 5 cents.

(7) Meal allowance shall be computed on the basis of 30% of the prescribed minimum rate for employees based on a 40 hour week, rounded off to the nearest 5 cents.

History: Cr. Register, July, 1978, No. 271, eff. 8-1-78; am (5) (a), Register, March, 1990, No. 411, eff. 4-1-90; r. (2), renum. (3) to be (2), cr. (3), Register, February, 1992, No. 434, eff. 3-1-92; am. (2), Register, February, 1996, No. 482, eff. 3-1-96; corrections made under s. 13.93 (2m) (b) 7., Stats., Register, February, 1996, No. 482; r. (3), (4) and (5), Register, May, 1997, No. 497, eff. 6-1-97.

DWD 272.01 Definitions. As used in this chapter:

(1) "Agriculture" will mean the same as "farm premises" as defined in s. 102.04 (3), Stats., of the worker's compensation act.

(2) "Bona fide school training program" means a program sponsored by an accredited school and authorized and approved by the state department of public instruction or the board of vocational, technical and adult education or other recognized educational body and provides for part-time employment training which may be scheduled for a part of the workday or workweek, supplemented by and integrated with a definitely organized plan of instruction and where proper scholastic credit is given by the school.

(3) A "bona fide vocational training program" is one authorized and approved by the state board of vocational, technical and adult education or other recognized educational body and provides for part-time employment training which may be scheduled for a part of the workday or workweek, for alternating weeks or for other limited periods during the year, supplemented by and integrated with a definitely organized plan of instruction designed to teach technical knowledge and related to industrial information

given as a regular part of a student learner's course by an accredited school, college or university.

(4) "Department" means the department of workforce development.

(5) (a) The term "employer" shall mean and include every person, firm or corporation, agent, manager, representative, contractor, subcontractor or principal, or other person having control or direction of any person employed at any labor or responsible directly or indirectly for the wages of another.

(b) The term "employer" shall also include any person, partnership, or corporation engaged in the processing of cucumbers into pickles, who is responsible directly or indirectly for the wages paid for the services of "workers" engaged in the harvesting of cucumbers providing:

1. That the processor or the processor's agent directly or indirectly pays each "worker" performing services in the harvesting of cucumbers or,

2. That the processor or the processor's agent has the right (whether exercised or not) to terminate the services of the "worker" or to transfer a worker's services from one grower to another.

(8) "Industry" means a trade, business, industry, or branch thereof, or group of industries in which individuals are gainfully employed.

(9) A "minor" shall mean any person under 18 years of age.

(10) "Month" means 30 days.

(11) "Opportunity employee" means an employee who is not yet 20 years old, during the first 90 consecutive days after the employee is initially employed by the employer.

(12) "Tipped employee" means any employee engaged in an occupation in which they customarily and regularly receive tips or gratuities from patrons or others.

History: Cr. Register, July, 1978, No. 271, eff. 8-1-78; cr. (15), Register, August, 1987, No. 380, eff. 9-1-87; cr. (16), Register, June, 1989, No. 402, eff. 7-1-89; renum. (3) to (16) to be (4) to (9), (12), (15), (13), (17), (3), (16), (14) and (11) and am. (11), cr. (10), Register, March, 1990, No. 411, eff. 4-1-90; r. (6) and (7), Register, February, 1992, No. 434, eff. 3-1-92; renum. (12) to (17) to be ILHR 272.09 (1) (g), (h), (j), (k), ILHR 272.01 (12) and ILHR 272.09 (1) (m), Register, February, 1996, No. 482, eff. 3-1-96; am. (4) and r. (11), Register, May, 1997, No. 497, eff. 6-1-97; em-erg. cr. (11), eff. 5-31-97; cr. (11), Register, September, 1997, No. 501, eff. 10-1-97.

DWD 272.02 Applicability of orders. The rates prescribed in this chapter shall apply to all employees, including indentured apprentices, employed at private employments including nonprofit organizations, whether paid on a time, piece rate, commission, or other basis.

History: Cr. Register, July, 1978, No. 271, eff. 8-1-78.

DWD 272.025 Statement of intent. Nothing contained in s. DWD 272.03 prohibits an employer from paying more than the minimum rates listed in this chapter or from treating an em-

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ployee as a probationary employee for less than the number of days specified in this chapter.

History: Cr. Register, June, 1989, No. 402, eff. 7-1-89; correction made under s. 13.93 (2m) (b) 7., Stats., Register, February, 1996, No. 482.

DWD 272.03 Minimum rates. (1) MINIMUM RATES. This subsection is in effect from October 1, 1996 to August 31, 1997. Except as provided in ss. DWD 272.05 to 272.09, no employer shall employ any employee in any occupation, trade, or industry at a lesser hourly rate than is indicated below:

- (a) All employees except opportunity employees \$4.75 per hr.
- (b) Opportunity employees \$4.25 per hour

(1m) MINIMUM RATES. This subsection becomes effective on September 1, 1997. Except as provided in ss. DWD 272.05 to 272.09, no employer shall employ any employee in any occupation, trade or industry at a lesser hourly rate than is indicated below:

- (a) All employees except opportunity employees \$5.15 per hr.
- (b) Opportunity employees \$4.25 per hr.

(2) TIPS. Where tips or gratuities are received by the employee from patrons or others, the employer may pay the minimum wage rate established by this subsection, providing the employer can establish by its payroll records that for each week where credit is taken, when adding the tips received to the wages paid, no less than the minimum rate prescribed in sub. (1), was received by the employee. The minimum rate shall be the rate established in par. (a).

(a) *Minimum rates for tipped employees.* All employees except opportunity employees \$2.33 per hr.

(am) *Opportunity employees.* Opportunity employees \$2.13 per hour.

(b) *Burden of proof.* 1. When the employer elects to take tip credit the employer must have a tip declaration signed by the tipped employee each pay period and show on the payroll records that any required social security or taxes have been withheld each pay period to show that when adding the tips received to the wages paid by the employer, no less than the minimum rate was received by the employee. When the employer's time and payroll records do not contain these requirements, no tip credit shall be allowed.

2. The department may refuse to take action to collect minimum wage deficiencies for a tipped employee who has refused or failed to file an accurate signed tip declaration for the employer each pay period.

(c) *General characteristics of "tips".* 1. Tip means a sum presented by a customer as a gift or gratuity in recognition of some service performed for them. It is to be distinguished from payment of a charge, if any, made for the service. Whether a tip is to be given, and its amount, are matters determined solely by the customer, and generally they have the right to determine who shall be the recipient of their gratuity. In the absence of an agreement to the contrary between the recipient and a third party, a tip becomes the property of the person in recognition of whose service it is presented by the customer. Only tips actually received by an employee as money belonging to them which they may use as they choose free of any control by the employer, may be counted in determining whether they are a "tipped employee."

2. In addition to cash sums presented by customers which an employee keeps as their own, tips received by an employee include, amounts paid by bank check or other negotiable instrument payable at par and amounts transferred by the employer to the employee pursuant to directions from credit customers who designate amounts to be added to their bills as tips. Special gifts in forms other than money or its equivalent as above described, such as theater tickets, passes, or merchandise, are not counted as tips received by the employee.

(d) *Tip pooling.* Where employees practice tip splitting, as where waiters or waitresses give a portion of their tips to the bus persons, both the amounts retained by the waiters or waitresses

and those given the bus persons are considered tips of the individuals who retain them.

(e) *Service charge.* 1. A compulsory charge for service, such as 15% of the amount of the bill, imposed on a customer by an employer's establishment, is not a tip unless distributed by the employer to their employees.

2. Similarly, where negotiations between a hotel or restaurant and a customer for banquet facilities include amounts for distribution to employees of the hotel or restaurant, the amounts must be so distributed to the employees at the end of the pay period in which it is earned.

3. If the employer in their payroll records can establish a breakdown of the service charge, such as how much is for tips, room charge, decorations, and other chargeable services, only the amount for tips must be paid to the employee at the end of the pay period in which it is earned.

4. Similarly, where an accounting is made to an employer for their information only or in furtherance of a pooling arrangement whereby the employer redistributes the tips to the employees upon some basis to which they have mutually agreed among themselves, the amounts received and retained by each individual as their own are counted as their tips.

(f) *Receiving the minimum amount "customarily and regularly".* The employee must receive tips "customarily and regularly" in the occupation in which they are engaged in order to qualify as a tipped employee. If it is known that they always receive more than the stipulated amount each month, as may be the case with many employees in occupations such as those of waiters, waitresses, bellhops, taxicab drivers, barbers, or beauty operators, the employee will qualify and the tip credit provisions of s. DWD 272.03 may be applied. On the other hand, an employee who only occasionally or sporadically receives tips such as at Christmas or New Years when customers may be more generous than usual, will not be deemed a tipped employee. The phrase "customarily and regularly" signifies a frequency which must be greater than occasional, but which may be less than constant. If an employee is in an occupation in which they normally and recurrently receive tips, they will be considered a tipped employee even though occasionally, because of sickness, vacation, seasonal fluctuations or the like, they fail to receive tips in a particular month.

(g) *The tip wage credit.* 1. In determining compliance with the wage payment requirements the amount paid to a tipped employee as allowable under par. (a) by an employer is deemed to be increased on account of tips to equal the minimum wage applicable under sub. (1) to such employee in the pay period for which the wage payment is made. This credit is in addition to any credit for board, lodging, or other facilities which may be allowable under s. DWD 272.03. The credit allowed on account of tips may be less than the difference between the applicable minimum wage and the rate for a tipped employee; it cannot be more.

2. It is presumed that in the application of this special provision the employee will be receiving at least the maximum tip credit in actual tips: "If the employee is receiving less than the amount credited, the employer is required to pay the balance so that the employee receives at least the minimum wage with the defined combination of wages and tips."

3. Under employment agreements requiring tips to be turned over or credited to the employer to be treated by them as part of their gross receipts, it is clear that the employer must pay the employee the full minimum hourly wage, since for all practical purposes the employee is not receiving tip income.

(h) *Overtime payments.* When overtime is worked by a tipped employee who is subject to the overtime pay of ch. DWD 274, their regular rate of pay is determined by dividing their total remuneration for employment in any workweek by the total number of hours actually worked by them in that workweek for which such compensation was paid. A tipped employee's regular rate of pay includes the amount of tip credit taken by the employer, and the

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cash wages including commissions and certain bonuses paid by the employer. Any tips received by the employee in excess of the tip credit need not be included in the regular rate. Such tips are not payments made by the employer to the employee as remuneration for employment within the meaning of ch. DWD 274.

(3) ALLOWANCE FOR BOARD AND LODGING. This subsection is in effect from October 1, 1996, to August 31, 1997. Where board or lodging or both are furnished by the employer in accordance with s. DWD 272.04, and accepted and received by a particular employee, an allowance may be made not to exceed the following amounts:

(a) *Lodging.* 1. All employees except opportunity employees \$38.00 per week or \$5.45 per day.

2. Opportunity employees \$34.00 per week or \$4.85 per day.

(b) *Meals.* 1. All employees except opportunity employees \$57.00 per week or \$2.70 per meal.

2. Opportunity employees \$51.00 per week or \$2.45 per meal.

(3m) ALLOWANCE FOR BOARD AND LODGING. This subsection becomes effective on September 1, 1997. Where board or lodging or both are furnished by the employer in accordance with s. DWD 272.04, and accepted and received by a particular employee, an allowance may be made not to exceed the following amounts:

(a) *Lodging.* 1. All employees except opportunity employees \$41.20 per week or \$5.90 per day.

2. Opportunity employees \$34.00 per week or \$4.85 per day.

(b) *Meals.* 1. All employees except opportunity employees \$61.80 per week or \$2.95 per meal.

2. Opportunity employees \$51.00 per week or \$2.45 per meal.

(4) BOARD AND LODGING, VALUE. Where board, lodging or other necessities of life, are furnished by the employer, in accordance with s. DWD 272.04, and accepted and received by the employee or their spouse or both, minor children or other dependents, an allowance may be made, not to exceed the "fair value" of such necessities on the basis of average cost to the employer, or to groups of employers similarly situated, or average values to groups of employees or other appropriate measures of fair value.

(5) PAYMENT OF WAGES ON OTHER THAN TIME BASIS. Where payment of wages is made upon a basis or system other than time rate, the actual wage paid per payroll period shall not be less than provided for in this order.

(6) HOMEWORK. Wages paid to homeworkers shall be not less than the rates prescribed in this order.

(7) DETERMINATION OF COMPLIANCE. The payroll period shall be taken as the unit of determining compliance with the minimum rates prescribed in this order.

(8) PROOF OF PREVIOUS EMPLOYMENT. An employee is responsible for providing the proof of previous employment necessary to determine whether the person is a probationary employee. An employer shall not be liable for a violation of this section if the violation is caused by the employer's good faith reliance of the proof presented by an employee under this subsection.

History: Cr. Register, July, 1978, No. 271, eff. 8-1-78; am. (1) and (2) (a), Register, August, 1987, No. 380, eff. 9-1-87; am. (1), (2) (a) and (3), Register, June, 1989, No. 402, eff. 7-1-89; am. (1), (2) (intro.) and (3) cr. (8), Register, March, 1990, No. 411, eff. 4-1-90; am. (1), (2) (a) and (3), Register, February, 1992, No. 434, eff. 3-1-92; corrections made under s. 13.93 (2m) (b) 7., Stats., Register, February, 1996, No. 482; r. and recr. (1), (2) (a) and (3), cr. (1m) and (3m), Register, May, 1997, No. 497, eff. 6-1-97; emerg. cr. (1) (b), (1m) (b), (2) (b), am. (3) and (3m), eff. 5-31-97; cr. (1) (b), (1m) (b), (2) (am), am. (3), (3m), Register, September, 1997, No. 501, eff. 10-1-97.

DWD 272.04 Deductions for meals and lodging.

(1) A meal means an adequate well-balanced serving of a variety of wholesome and nutritious foods.

(a) Deductions may be made only for bona fide meals consistent with employee's work shift. No deductions shall be made or credit given for meals not eaten except in employments where weekly room and board is provided and accepted.

(b) An employer shall not require that meals be accepted as part payment of wages.

(c) Employer must pay all employees for "on duty" meal periods. Such periods are to be counted as work time. An "on duty" meal period is one where the employer does not provide at least 30 minutes free from work. Any meal period where the employee is not free to leave the premises of the employer will also be considered an "on duty" meal period.

(d) Authorized rest periods or breaks of less than 30 consecutive minutes per shift shall be counted as work time for which there shall be no deduction from wages.

(e) Whenever a collective bargaining agreement exists, the department may consider the written application of labor and management for a waiver or modification to the requirements of par. (c) or (d), based upon practical difficulties or unnecessary hardship in compliance. If the department determines that compliance with par. (c) or (d) is unjust or unreasonable and that granting a waiver or modification will not be dangerous or prejudicial to the life, health, safety or welfare of the employees, the department may grant a waiver or modification.

(2) Lodging means living accommodations which are adequate, decent and sanitary, according to usual and customary standards. Employees shall not be required to share a bed.

(3) Room and board deductions may not be made from the wages of a seasonal non-resident agricultural employee that would result in the employee receiving less than the prescribed minimum rate.

History: Cr. Register, July, 1978, No. 271, eff. 8-1-78; cr. (1) (c), Register, February, 1992, No. 434, eff. 3-1-92.

DWD 272.05 Agriculture. (1) MINIMUM RATES. The minimum wage of employees employed in agriculture shall be as follows:

(a) Adult employees 18 years of age and over: \$4.05 per hr.

(b) Minors 17 years of age and under: \$3.70 per hr.

(2) ALLOWANCE FOR BOARD AND LODGING. Where board or lodging or both are furnished by the employer in accordance with s. DWD 272.04, and accepted and received by the employee, an allowance may be made not to exceed the following amounts:

(a) Lodging—Adults 18 years of age and over:	\$32.40 per week or \$4.65 per day.
Minors 17 years of age and under:	\$29.60 per week or \$4.25 per day
(b) Meals—Adults 18 years of age and over:	\$48.60 per week or \$2.30 per meal
Minors 17 years of age and under:	\$44.40 per week or \$2.10 per meal

History: Cr. Register, July, 1978, No. 271, eff. 8-1-78; am. (1), Register, August, 1987, No. 380, eff. 9-1-87; am. Register, June, 1989, No. 402, eff. 7-1-89; am. Register, March, 1990, No. 411, eff. 4-1-90; am. (5), Register, February, 1992, No. 434, eff. 3-1-92; correction made under s. 13.93 (2m) (b) 7., Stats., Register, February, 1996, No. 482.

DWD 272.06 Domestic service employment, casual employment, and companions in private homes.

(1) DOMESTIC SERVICE EMPLOYMENT. (a) "Domestic service employment" means all services related to the care of persons or maintenance of a private household or its premises, on a regular basis, by an employee of a private householder. Such occupations shall include, but not be limited to, the following: butlers, chauffeurs, cooks, day workers, gardeners, graduate nurses, grooms, handy persons, house cleaners, housekeepers, laundry persons, practical nurses, tutors, valets and other similar occupations.

(b) Domestic workers who reside in the employer's household are covered under the rates prescribed by s. DWD 272.03. Employers may take credit for board and lodging as prescribed by s. DWD 272.03 (3). Record keeping requirement provided in s. DWD 272.11 shall apply.

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(2) **CASUAL EMPLOYMENT.** "Casual employment" means employment which is on an irregular or intermittent basis for not more than 15 hours per week for any one employer. This applies to the following: baby-sitting, mowing lawns, raking leaves, shoveling snow or other similar odd jobs. The minimum rates prescribed by s. DWD 272.03 shall not apply to casual employment in or around a home in work usual to the home of the employer, and not in connection with or part of the business, trade or profession of the employer.

(3) **COMPANIONS IN PRIVATE HOMES.** Persons who reside in the employer's household for the purpose of companionship and who spend less than 15 hours per week on general household work are not covered under the rates prescribed in s. DWD 272.03. As used in this section, the term "companionship services" shall mean those services which provide fellowship, care and protection for a person, who, because of advanced age or physical mental infirmity, cannot care for his or her own needs. Such services may include, but not be limited to, household work related to the care of the aged or infirmed person such as meal preparation, bed making, washing of clothes and other similar services. They may also include the performance of general household work. The term "companionship services" does not include services relating to the care and protection of the aged or infirmed which require and are performed by trained personnel such as registered or practical nurses. While trained personnel do not qualify as companions, this fact does not remove them from the category of covered domestic service employees when employed in or about a private household.

History: Cr. Register, July, 1978, No. 271, eff. 8-1-78; corrections made under s. 13.93 (2m) (b) 7., Stats., Register, February, 1996, No. 482.

DWD 272.07 Recreational or educational camps.

(1) **MINIMUM RATES.** The minimum wage of all employees employed in recreational or educational camps and day camps, except counselors, shall be computed on an hourly basis as prescribed in s. DWD 272.03 (1).

(2) **ALLOWANCE FOR BOARD AND LODGING.** Where board or lodging or both are furnished by the employer in accordance with s. DWD 272.04, and accepted and received by the employee, an allowance may be made not to exceed the amounts specified in s. DWD 272.03 (3).

(3) **COUNSELORS.** The minimum wage of counselors employed in seasonal recreational or educational camps and day camps may be computed on a weekly basis as follows:

(a) Adult counselors 18 years of age and over:

	PER WEEK
1. If board and lodging are not furnished	\$140.00
2. If board only is furnished	\$110.00
3. If board and lodging are furnished	\$91.00

(b) Counselors 17 years of age and under:

	PER WEEK
1. If board and lodging are not furnished	\$123.00
2. If board only is furnished	\$92.00
3. If board and lodging are furnished	\$74.00

(4) **RECORDS.** Recreational or educational camps and day camps are not required to keep the daily and weekly time records required by s. DWD 272.11 (1) (d), (e), and (f), for counselors employed and paid on a weekly basis.

(5) **DEFINITIONS.** For the purpose of this section:

(a) A "recreational or educational camp" means a camp operated under trained leadership for the purpose of providing group experience for and contributing to the physical, mental, spiritual and social growth of campers who are less than 18 years of age and who make such camp their residence during the camping period.

(b) A "recreational or educational day camp" means a camp operated under trained leadership for the purpose of providing group experience and contributing to the physical, mental, spiritu-

al and social growth of campers who participate in such camping program during daytime periods, but not overnight.

(c) A "camp counselor" means a person employed by a "recreational or educational camp" or "recreational or educational day camp" who leads, directs and instructs campers in such camps in their camping program and activities and shares responsibility for the total care and well-being of campers.

History: Cr. Register, July, 1978, No. 271, eff. 8-1-78; r. and recr. (3) (a) and (b), Register, February, 1980, No. 290, eff. 3-1-80; am. (3) (a) and (b), Register, February, 1992, No. 434, eff. 3-1-92; corrections made under s. 13.93 (2m) (b) 7., Stats., Register, February, 1996, No. 482; am. (title), (1), (4) and (5), Register, May, 1997, No. 497, eff. 6-1-97.

DWD 272.08 Caddies. The minimum wage of employees employed as caddies shall be:

\$3.35 9 holes

\$5.95 18 holes

History: Cr. Register, July, 1978, No. 271, eff. 8-1-78; r. and recr. Register, February, 1980, No. 290, eff. 3-1-80; am. Register, February, 1992, No. 434, eff. 3-1-92.

DWD 272.085 Student worklike activities and employment. (1) INDEPENDENT COLLEGES AND UNIVERSITIES.

(a) Independent colleges and universities may employ full-time students who are 18 years of age and over for 20 hours per week or less at the federal minimum wage rates established under 29 USC 206.

(b) Students who work at independent colleges or universities for over 20 hours per week shall be paid at the rates established under s. DWD 272.03.

(2) **ELEMENTARY AND SECONDARY SCHOOLS.** Student worklike activities that meet the criteria of s. DWD 270.085 are not covered by the minimum wage provisions of this chapter.

History: Cr. Register, July, 1978, No. 271, eff. 8-1-78; correction made under s. 13.93 (2m) (b) 7., Stats., Register, February, 1996, No. 482; r. and recr. Register, October, 2000, No. 538, eff. 11-1-00.

DWD 272.09 Subminimum wage licenses for rehabilitation facilities and for the employment of workers with disabilities and student learners. (1) DEFINITIONS.

For the purposes of this section:

(a) "Commensurate wage" means a special minimum wage paid to a worker with a disability.

(b) "Employ" means to permit work.

(c) "Employment relationship" means the relationship that exists whenever an individual, including an individual with a disability, is permitted to work.

(d) "Experienced worker" means a worker who has learned the basic elements or requirements of the work to be performed, ordinarily by completion of a probationary or training period.

(dm) "TWRP" means individualized written rehabilitation plan.

(e) "Institution" means an entity which may be either a public or private entity and either a nonprofit or a for profit entity that receives more than 50% of its income from providing residential care for sick, aged, mentally ill or retarded persons. "Institution" includes hospitals, nursing homes, intermediate care facilities, rest homes, convalescent homes, homes for the elderly and infirm, halfway houses, and residential centers for the treatment of drug addiction or alcoholism, whether licensed under s. 50.01, Stats., or not licensed.

(f) "Patient worker" means a worker with a disability employed by a hospital or institution providing residential care where the worker receives treatment or care without regard to whether the worker is a resident of the establishment. In determining whether a patient worker is "employed", the department shall consider whether the work performed is of any consequential economic benefit to the institution. Work is considered to be of consequential economic benefit if it is of the type that workers without disabilities normally perform. A patient does not become an employee if the patient merely performs personal housekeeping

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chores and receives token remuneration in connection with this activity. It may also be possible for patients in group homes or other family like settings to rotate or share household tasks or chores without becoming employees.

(g) "Sheltered workshop" means a rehabilitation facility which is a charitable organization or institution conducted not for profit, but for the purpose of carrying out a recognized program of rehabilitation for handicapped workers providing such individuals with remunerative employment or other occupational rehabilitating activity of an educational or therapeutic nature.

(h) "Sheltered workshop training program" or "rehabilitation training program" means a program of not more than 12 months duration designed to:

1. Develop the patterns of behavior which will help a client adjust to a work environment, or
2. Teach the skills and knowledge related to a specific occupational objective of a job family, and which meets the department of health and social services, division of vocational rehabilitation or equivalent standards.

(i) "Special minimum wage" means a wage authorized under a license issued to an employer that is less than the statutory minimum wage.

(j) "Sponsoring agency" means a sheltered workshop, governmental agency or a nonprofit charitable organization or institution carrying out an occupational rehabilitating activity of an educational or therapeutic nature.

(k) "Student learner" means a student who is receiving instruction in an accredited school, college or university and who is employed on a part-time basis, pursuant to a bona fide vocational training program.

(L) "Vicinity" or "locality" means the geographic area from which the labor force of the community is drawn.

(m) "Work activity center" means a rehabilitation facility, a workshop or a physically separated department of a workshop having an identifiable program, separate supervision and records, planned and designed exclusively to provide therapeutic activities for handicapped workers whose physical or mental impairment is so severe as to make their productive capacity inconsequential.

(n) "Worker with a disability" means an individual whose earnings or productive capacity is impaired by a physical or mental disability, including those relating to age or injury, for the work to be performed. Disabilities which may affect earning or productive capacity include blindness, mental illness, mental retardation, cerebral palsy, alcoholism and drug addiction. The following, taken by themselves, are not considered disabilities for the purposes of this section: vocational, social, cultural, or educational disabilities; chronic unemployment; receipt of welfare benefits; non-attendance at school; juvenile delinquency; and correctional parole or probation. Further, a disability which may affect earning or productive capacity for one type of work may not have this effect for another type of work.

(2) **WAGE PAYMENTS.** (a) An individual whose earning or productive capacity is not impaired for the work being performed cannot be employed under a license and shall be paid at least the applicable minimum wage. An individual whose earning or productive capacity is impaired to the extent that the individual is unable to earn at least the applicable minimum wage may be paid a commensurate wage, but only after the employer has obtained a license authorizing the payment of a special minimum wage from the department.

(b) The employer may not deduct from the commensurate wages of patient workers employed in institutions to cover the cost of room, board or other services provided by the facility. A patient worker shall receive wages with no deductions except for amounts deducted for taxes and any voluntary wage assignments. These rules do not preclude the institution from assessing or collecting charges for room, board and other services actually pro-

vided to an individual to the extent permitted by federal or state law and on the same basis as it assesses and collects from non-working patients.

(c) Under this chapter, an employment relationship arises whenever an individual is permitted to work. The determination as to the existence of an employment relationship does not depend upon the level of performance or whether the work is of some therapeutic benefit. It does not include such activities as making craft products when the individual voluntarily participates in such activities and the products become the property of the individual making them, or all the funds resulting from the sale of the products are divided among the participants in the activity or are used in purchasing additional materials to make craft products.

(3) **COMPENSABLE TIME.** The employer shall compensate employees for all hours worked. Compensable time includes not only those hours during which the individual is actually performing productive work but also includes those hours when no work is performed but the individual is required by the employer to remain available for the next assignment. If the individual is completely relieved from duty and is not required to remain available for the next assignment, the time will not be considered compensable time. The burden of establishing that any hours are not compensable rests with the facility and the hours must be clearly distinguishable from compensable hours.

Note: As an example, a person employed by a rehabilitation facility would not be engaged in a compensable activity if the person is completely relieved from duty but is provided therapy or the opportunity to participate in an alternative program or activity in the facility that does not involve work and is not directly related to the person's job (examples are self-help skills training, recreation, job seeking skills training, independent living skills, or adult basic education).

(4) **SPECIAL PROVISIONS FOR TEMPORARY AUTHORITY.** (a) The department may grant temporary authority to an employer to permit the employment of workers with disabilities pursuant to a vocational rehabilitation program of the U.S. department of veterans affairs for veterans with a service-incurred disability or a vocational rehabilitation program administered by a state agency.

(b) Temporary authority under this subsection is effective for 90 days from the date that the designated section of the application form is completed and signed by the representative of the state agency or the U.S. department of veterans affairs, if the application form is sent to the department within 10 days of the signing. Temporary authority under this subsection may not be renewed or extended by the department.

(c) The signed application form constitutes the temporary authority to employ workers with disabilities at special minimum wage rates. The department shall review all applications under this subsection upon receipt and shall issue a license when the criteria for licensing are met. The department shall promptly notify the applicant if additional information is required or if the license is denied.

(5) **CRITERIA FOR EMPLOYMENT UNDER A SPECIAL MINIMUM WAGE RATE LICENSE.** (a) To determine whether the approval of special minimum wage rates is necessary in order to prevent the curtailment of opportunities for employment and to determine whether a particular employee will receive a commensurate wage, the department shall consider the following criteria:

1. The nature and extent of the disabilities of the employee as these disabilities relate to the employee's productivity.

2. The prevailing wages of experienced employees not disabled for the job that are employed in the vicinity in industry engaged in work comparable to the work under consideration.

3. The productivity of a worker with a disability compared to the norm established for nondisabled employees through the use of a verifiable work measurement method, or the productivity of experienced nondisabled employees employed in the vicinity on comparable work.

4. The wage rates to be paid to a worker with a disability for work comparable to that performed by experienced nondisabled employees.

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(b) Before the license authorizing special minimum wage rates for workers with disabilities is issued, the employer shall provide the following written assurances concerning the employment:

1. In the case of employees paid at hourly rates, the special minimum wage rates shall be reviewed by the employer at periodic intervals with a minimum interval of once every 6 months.

2. Wages for all employees shall be adjusted by the employer at periodic intervals with a minimum interval of once each year to reflect changes in the prevailing wages paid to experienced non-disabled employees employed in the locality for essentially the same type of work.

(6) **PREVAILING WAGE RATES.** (a) A prevailing wage rate is a wage rate that is paid to an experienced employee not disabled for the work to be performed. There may be more than one prevailing wage rate for a specific type of work in the given area. The department shall require an employer applying for a special minimum wage rate license to demonstrate that the wage rate used as prevailing for determining a commensurate wage was objectively determined according to the requirements of this subsection.

(b) An employer whose work force consists primarily of non-disabled employees or who employs more than a token number of nondisabled employees doing similar work shall use as the prevailing wage the wage rate paid to that employer's experienced nondisabled employees performing similar work. This requirement also applies to the determination of the prevailing wage rate when a sponsoring agency places a disabled employee on the premises of an employer covered by this paragraph.

(c) An employer whose work force primarily consists of employees disabled for the work to be performed may determine the prevailing wage by ascertaining the wage rates paid to the experienced nondisabled employees of other employers in the vicinity. This information may be obtained by conducting a survey of comparable businesses in the area that employ primarily nondisabled employees doing similar work. The businesses that are surveyed should be representative of the area in terms of wages paid to experienced employees doing similar work. The appropriate size of the sample will depend on the number of firms doing similar work but should include no less than 3 businesses unless there are fewer businesses doing similar work in the area. A comparable firm is one which is of similar size in terms of employees or which competes for or bids on contracts of a similar size or nature.

(d) If a survey is not practical, an employer may contact other sources such as the federal bureau of labor statistics or private or state employment services. If similar businesses cannot be found in the area defined by the geographic labor market, the closest comparable community may be used.

(e) The prevailing wage rate shall be based upon the wage rate paid to experienced nondisabled employees. Employment services which only provide entry level wage data are not acceptable as sources for prevailing wage information.

(f) The prevailing wage survey shall be based upon work utilizing similar methods and equipment. The employer shall employ a consistent methodology for tabulating the results of the survey.

(g) The employer shall record the following information in documenting the determination of prevailing wage rates:

1. Date of contact with a firm or other source.
2. Name, address and phone number of firm or other source contact.
3. Title and name of the individual contacted within the firm or source.
4. Wage rate information provided.
5. Brief description of work for which wage information is provided.
6. Basis for the conclusion that the wage rate is not based upon an entry level position.

(h) A prevailing wage may not be less than the minimum wage specified in this chapter.

Note: If the employer is unable to obtain the prevailing wage for a specific job to be performed on the premises (for example, collating documents), it is acceptable to use as the prevailing wage the wage paid to experienced individuals employed in similar jobs requiring the same general skill levels (for example, file clerk or general office clerk).

(7) **ISSUANCE OF LICENSES.** (a) After considering the criteria given in sub. (5), the department may issue a special license.

(b) If the department issues a special minimum wage license, it shall send a copy to the employer. If the department denies a license, it shall notify the employer in writing and provide the reasons for the denial.

(8) **TERMS AND CONDITIONS OF SPECIAL MINIMUM WAGE LICENSES.** (a) The department shall specify the terms and conditions under which a special minimum wage license is granted.

(b) The department shall provide that a special minimum wage license applies to each worker employed by the employer receiving the license, provided that the worker is in fact disabled for the work that he or she is to perform.

(c) The department shall designate the period for which a special minimum wage license shall be effective. The employer may pay a wage lower than the minimum wage to a worker with a disability only during the effective period of a license which applies to that worker.

(d) No special minimum wage license shall authorize workers with disabilities to be paid wages that are less than commensurate with those paid to experienced nondisabled workers employed in the vicinity for essentially the same type, quality and quantity of work.

(e) Any special minimum wage license issued by the department shall require that workers with disabilities be paid not less than one and one half times the regular rate of pay for all hours worked in excess of 40 hours per week.

(f) The special minimum wage license shall require that the wage of each worker covered by the license be adjusted by the employer at periodic intervals of at least once per year to reflect changes in the prevailing wages paid to experienced persons who are not disabled and who are employed in the vicinity for essentially the same type of work.

(g) Each worker with a disability and, when appropriate, a parent or guardian of the worker, shall be informed, verbally and in writing, of the terms of the license under which the worker is employed. This requirement may be satisfied by making copies of the license available. If a worker with a disability displays an understanding of the terms of the license and requests that other parties not be informed, it is not necessary to inform a parent or guardian.

(h) The department shall use the criteria in this paragraph to establish piece rates for workers with disabilities.

1. The employer may establish standard production rates for workers not disabled for the work to be performed by using industrial work measurement methods, including but not limited to stop watch time studies, predetermined time systems, or standard data. The department may require the employer to demonstrate that a particular method is generally accepted by industrial engineers and has been properly executed. The employer may not require specific training or certification. An employer shall not be required to repeat the application of work measurement methods that have already been applied by another employer or source and that can be properly documented.

a. The piece rate paid to a worker with a disability shall be based on the standard production rate. The standard production rate is the number of units that an experienced worker who is not disabled for the work is expected to produce in one hour. The piece rate paid to a worker with a disability shall also be based on the prevailing industry wage rate paid to an experienced nondisabled worker in the vicinity for essentially the same type and quality of

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work or for work requiring similar skill. The piece rate is determined by dividing the prevailing industry wage rate by the standard number of units per hour.

b. The piece rate for a worker with a disability shall not be less than the actual prevailing piece rate paid to any experienced worker not disabled for the work who is doing the same or similar work in the vicinity.

2. Work measurement methods used to establish piece rates shall meet the following criteria:

a. If a stop watch time study is made, it shall be made with a person whose productivity represents normal performance. If this is not possible, an appropriate adjustment shall be made. An adjustment of this type, which may be referred to as a "performance rating" or "leveling", may be made only by a person knowledgeable in this technique, as evidenced by successful completion of training. The person observed in the stop watch time study shall be given time to practice the work to be performed in order to provide the person with an opportunity to overcome the initial learning curve. In addition, the person observed shall be trained to use the specific work method and tools which are available to the disabled workers for whom rates are to be established.

b. Work measurement methods shall allow appropriate time for personal time, fatigue, and unavoidable delays. In general, this should amount to an allowance of at least 15%, or nine to ten minutes per hour.

c. A work measurement study shall be conducted using the same work method that will be utilized by the workers with disabilities. If a modification such as a jig or a fixture must be made to a production method to accommodate the special needs of an individual worker with a disability, an additional work measurement study need not be conducted as long as the modification enables the disabled worker to perform the work or to increase productivity but would impede the worker without disabilities. If, in a particular case, it is not possible to accommodate a worker with a disability, as for example where an adequate number of machines are not available, a second work measurement study may be required.

(i) The employer shall pay full earnings to each worker with a disability who is employed on a piece rate basis. Employers may "pool" earnings only where piece rates cannot be established for each individual worker.

Note: An example of this situation is a team production operation where each worker's individual contribution to the finished product cannot be determined separately. However, the employer should still make every effort to objectively divide the earnings according to the productivity level of each individual worker.

(j) The requirements of this paragraph apply to the payment of a worker with a disability who is employed at hourly rates.

1. The employer shall base hourly rates upon the prevailing hourly wage rate paid to an experienced worker not disabled for the job who is doing essentially the same type of work and using similar methods or equipment in the vicinity.

2. The employer shall make an initial evaluation of the worker's productivity within the first month after employment begins in order to determine the worker's commensurate wage rate. The employer shall record the results of the evaluation and the employer shall adjust the worker's wages accordingly no later than the first complete pay period following the initial evaluation. The employer shall pay commensurate wages to each worker for all hours worked. If the initial evaluation shows that the wages paid to the worker during pay periods prior to the evaluation were less than the commensurate wage, the employer shall compensate the worker for the difference in pay.

3. Upon the completion of not more than 6 months of employment, the employer shall review the quantity and quality of the work of each hourly wage rate worker with a disability as compared to a nondisabled worker engaged in similar work. The review shall be in writing and shall be recorded. The employer shall conduct and record a similar productivity review at least ev-

ery 6 months thereafter. The employer shall also conduct and record a productivity review after a worker changes to a new job. After any review, the employer shall adjust the worker's wages appropriately no later than the first complete pay period following the review. Because the purpose of such reviews is to ensure that a worker with a disability receives commensurate wages for all hours worked, conducting reviews at 6-month intervals is a minimum requirement. The employer shall conduct reviews in the manner and frequency necessary to ensure the payment of commensurate wages.

Note: Note: For example, evaluations shall not be conducted before a worker has had an opportunity to become familiar with the job, or at a time when the worker is fatigued or subject to conditions that result in less than normal productivity.

4. Any employer conducting a review covered by this paragraph must include for each review the name of the individual worker, the date and time of the review, and the name and position of the person conducting the review.

(9) RENEWAL OF SPECIAL MINIMUM WAGE LICENSES. (a) An employer with a special minimum wage license may file a written application for renewal with the department.

(b) When an application for renewal of a special minimum wage license has been properly and timely filed with the department, the existing special minimum wage license shall remain in effect until the application for renewal has been granted or denied.

(c) If an application for renewal is denied, the employer may not by the license.

(d) Before any application for renewal is denied, the department shall notify the employer in writing of the facts or conduct which may warrant denial and provide the employer an opportunity to demonstrate or achieve compliance with all legal requirements before a final decision on denial or approval of the application is made.

(10) POSTER. An employer that is operating under a special minimum wage license shall at all times display and make available to employees a poster as prescribed by the department. The poster shall explain, in general terms, the conditions under which special minimum wages may be paid. The employer shall post the poster in a conspicuous place on the employer's premises where it may be readily observed by workers with disabilities, the parents and guardians of workers, and other employees. As a substitute for posting, the employer may provide a copy of the poster directly to each employee subject to its terms.

(11) RECORDS TO BE KEPT BY EMPLOYERS. Every employer of workers under a special minimum wage license, or the referring agency or facility in the case of records verifying a worker's disabilities, shall maintain and have available for inspection the records specified in this subsection.

(a) Verification of the worker's disability.

(b) Evidence of the productivity of each worker with a disability which has been gathered on a continuing basis or at periodic intervals which do not exceed 6 months in the case of employees paid hourly wage rates.

(c) The prevailing wage paid to a worker who is not disabled for the job performed and who is employed in industry in the vicinity for the same type of work using similar methods and equipment as that used by the worker with a disability employed under the special minimum wage license.

(d) The production standards and supporting documentation for nondisabled workers for each job being performed by a worker with disabilities employed under the special license.

(e) In the case of workers with disabilities who are employed by a recognized non-profit rehabilitation facility and who are working in or about a home, apartment, or room in the residential establishment, the records required under s. DWD 272.11.

(f) The employer shall maintain and preserve the records required by this section for 3 years.

(12) RELATION TO OTHER LAWS. No provision of these rules, or of any special minimum wage license issued under this section,

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shall excuse noncompliance with any federal law or municipal ordinance which establishes higher standards.

(13) WORK ACTIVITY CENTERS. This section does not prevent an employer from maintaining or establishing a work activity center to provide therapeutic activities for workers with disabilities as long as the employer complies with the requirements of this section.

(14) LICENSING UNDER A SPECIAL LICENSE REQUESTED BY A SPONSORING AGENCY. A sponsoring agency may request a special minimum wage license on behalf of a worker with a disability. The department may issue a license to a worker with a disability which will authorize an employer to pay the rate of pay stated on the license. An employer that hires a licensed worker with a disability shall retain a photocopy of the license for the employer's records. A license issued under this subsection is effective for not more than one year.

Note: The intent of issuing this type of license to a worker with a disability instead of to the employer is to permit the sponsoring agency to make short term placements which enable the worker to gain a variety of experiences without putting the burden on each employer to obtain a license. However, this does not relieve an employer from complying with the Federal Labor Standards Act which requires that an individual subminimum wage license be issued to any federally covered employer.

(15) STUDENT LEARNERS. A license may be issued for a student who is enrolled in a bona fide school training program.

(a) Application for a student learner license. 1. Applications shall be filed with the department by the school on behalf of the employer.

2. The application must be made on a form provided by the department, and accompanied by a copy of the training agreement, or, in the absence of such agreement, a copy of the program or curriculum may be submitted. The application must be signed by the employer, the appropriate school official, the student, and the student's parent or guardian.

(b) Conditions for issuing a license for a student. 1. Each program must be a bona fide school training program.

2. The employment at subminimum rates is necessary to provide employment opportunities under the program.

3. The student must be at least 14 years of age and obtain a work permit if under 18 years of age.

4. The occupation for which the student is receiving preparatory training must require a sufficient degree of skill to necessitate a learning period.

5. The training must not be for the specific purpose of acquiring manual dexterity and high production speed in repetitive operation. In case of a training program which does not qualify as a bona fide training program within the meaning of s. 104.01 (6), Stats., the employer must pay the trainee the minimum wage for all time spent on the training program whether such time is instructional or work in nature.

6. The employment must not have the effect of displacing a worker employed in the establishment. A student learner must be paid minimum wage for time spent doing work which would be normally done by a regular paid employee if the student learner performed the work.

7. The employment must not tend to impair or depress the wage rates or working standards established for experienced workers for work of a like or comparable character.

8. The issuance of such license must not tend to prevent the development of apprenticeship nor impair established apprenticeship standards in the occupation or industry involved.

(c) Terms and conditions of license. 1. The license shall specify, among other things:

a. The name and address of the student.

b. The name and address of the employer.

c. The name and address of the school which provides the related school instructions.

d. The effective and expiration dates of the license.

2. The rate shall not be less than 75% of the applicable rates in s. DWD 272.03.

3. The license shall be effective for the period designated thereon, and no license shall be issued retroactively.

4. A student may work a number of hours in addition to the daily and weekly hours of employment training authorized by the license provided the total hours of work shall not exceed the limits set forth in s. DWD 270.05, and that the pay for such hours is not less than that prescribed in s. DWD 272.03.

5. Students under 18 years of age may not serve at any job prohibited by statute, or orders of the department. (See s. DWD 270.03.)

6. A training agreement shall set down the scheduled duties and responsibilities of the local school, the employer, the student, and the student's parent or guardian. The training agreement shall be signed by an appropriate school official, the employer, the student, and the student's parent or guardian.

7. The department may set a rate of less than 75% of the rates in s. DWD 272.03 for handicapped student learners if justified by extraordinary circumstances. The rates granted shall be commensurate with the student's ability.

(d) Employment records to be kept. In addition to the records required in s. DWD 272.11 the employer shall keep the following for each student employed at a subminimum wage rate.

1. The student shall be identified on the payroll records, showing the student's occupation and rate of pay.

2. The employer's copy of the license and training agreement must be available at all times for inspection for a period of 3 years.

(16) DENIAL AND REVOCATION OF LICENSES. (a) The department may deny or revoke a special minimum wage or student learner license for cause at any time. The department may amend or modify a special minimum wage or student learner license if conditions or extraordinary circumstances warrant the action. The grounds for revocation or denial include but are not limited to the facts specified in this subsection.

1. A license may be revoked or denied if misrepresentations or false statements have been made to obtain the license or to permit a worker with a disability to be employed under the license.

2. A license may be revoked or denied if any provision of the Wisconsin labor standards law or any of the terms of the license has been violated.

3. A license may be revoked or denied if the license is no longer necessary in order to prevent a curtailment of opportunities for employment.

(b) Unless the public interest requires otherwise, the department shall notify the employer of facts or conduct which may warrant revocation before beginning revocation proceedings and shall provide the employer an opportunity to demonstrate or achieve compliance with all legal requirements.

Note: The legal procedure for license revocations is established by ch. 227, Stats.

(17) REVIEW. Any person that is aggrieved by an action of the department taken under this section may, within 60 days after learning of the action or within any additional time that the department might allow, file with the department a request for reconsideration or review. The department shall determine if a review shall be granted. If a review is conducted, it shall be conducted by the department. The department may provide other interested persons an opportunity to present data and views.

(18) REHABILITATION FACILITIES. (a) The department and community-based rehabilitation organizations are committed to the continued development and implementation of individual vocational rehabilitation programs that will facilitate the transition of persons with disabilities into employment within their communities. This transition must take place under conditions that will not jeopardize the protection afforded by the minimum wage law to program participants, employees, employers or other

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programs providing rehabilitation services to individuals with disabilities.

(b) When all of the following criteria are met, the department shall not assert an employment relationship for the purposes of the minimum wage:

1. Participants are individuals with physical or mental disabilities for whom competitive employment at or above the minimum wage level is not immediately obtainable and who, because of their disabilities, will need intensive ongoing support to perform in a work setting.

2. Participation is for vocational exploration, assessment or training in a community-based placement work site under the general supervision of rehabilitation organization personnel.

3. Community-based placements are clearly defined components of individual rehabilitation programs developed and designed for the benefit of each participant. The statement of needed transition services established for the exploration assessment or training components shall be included in each participant's IWRP.

4. The department does not require disclosure of the information contained in the IWRP. However, the department does require documentation as to the participant's enrollment in the community-based placement program. The participant and, when appropriate, the parent or guardian of the participant, shall be fully informed of the IWRP and the community-based placement component and shall have indicated voluntary participation with the understanding that participation in such a component does not entitle the participant to wages.

5. The activities of the participants at the community-based placement site do not result in an immediate advantage to the business. The department shall be more likely to conclude that there has been no immediate advantage to the business if all of the following determinations can be made:

a. There has been no displacement of employees, vacant positions have not been filled, employees have not been relieved of assigned duties, and the participants are not performing services that, although not ordinarily performed by employees, clearly are of benefit to the business.

b. The participants are under continued and direct supervision by either representatives of the rehabilitation facility or by employees of the business.

c. The placements are made according to the requirements of the participant's IWRP and not to meet the labor needs of the business.

d. The periods of time spent by the participants at any one site or in any clearly distinguishable job classification are specifically limited by the IWRP.

6. Each component of the IWRP may not exceed the following limitations:

a. Vocational explorations: 5 hours per job experienced.

b. Vocational assessment: 90 hours per job experienced.

c. Vocational training: 120 hours per job experienced.

7. A participant is not entitled to employment at the business at the conclusion of his or her IWRP, however, if a participant does become an employee, he or she cannot be considered to be a trainee at that particular community-based placement unless he or she is in a clearly distinguishable occupation.

(c) An employment relationship shall exist unless all of the criteria described in par. (b) are met. If an employment relationship is found to exist, the business shall be held responsible for full compliance with the applicable sections of the minimum wage law.

(d) Businesses and rehabilitation organizations may, at any time, consider participants to be employees and may structure a program so that the participants are compensated in accordance with the requirements of the minimum wage law. Whenever an employment relationship is established, the business may make

use of the special minimum wage provisions provided by this section.

History: Cr. Register, July, 1978, No. 271, eff. 8-1-78; r. and recr. (2) (a) 1. and am. (2) (a) intro. and 2., Register, August, 1987, No. 380, eff. 9-1-87; r. (1), (2) and (4), renum. (3) to be (15), cr. (1) to (14), (16) and (17), Register, January, 1991, No. 421, eff. 2-1-91; am. (1) (g) (h) (intro.) and (m), Register, May, 1997, No. 497, eff. 6-1-97.

DWD 272.10 Listing deductions from wages. An employer shall state clearly on the employee's paycheck, pay envelope, or paper accompanying the wage payment the number of hours worked, the rate of pay and the amount of and reason for each deduction from the wages due or earned by the employee, except such miscellaneous deductions as may have been authorized by request of individual employees for reasons personal to themselves. A reasonable coding system may be used by the employers.

History: Cr. Register, July, 1978, No. 271, eff. 8-1-78; cr. (1) (dm) and (18), renum. (1) (g) to (i) to be (1) (i), (L) and (n), (1) (g), (h), (j), (k) and (m) renum. from Ind 72.01 (12) to (15) and (17), Register, February, 1996, No. 482, eff. 3-1-96.

DWD 272.11 Permanent records to be kept by the employer. (1) Every employer shall make and keep for at least 3 years payroll or other records for each of their employees which contain:

(a) Name and address.

(b) Date of birth.

(c) Date of entering and leaving employment.

(d) Time of beginning and ending of work each day.

(e) Time of beginning and ending of meal periods:

1. When employee's meal periods are required or when such meal periods are to be deducted from work time.

2. This requirement shall not apply when work is of such a nature that production or business activity ceases on a regularly scheduled basis.

(f) Total number of hours worked per day and per week.

(g) Rate of pay and wages paid each payroll period.

(h) The amount of and reason for each deduction from the wages earned.

(i) Output of employee, if paid on other than time basis.

(2) The required records or a duplicate copy thereof shall be kept safe and accessible at the place of employment or business at which the employee is employed, or at one or more established central record keeping offices in the state of Wisconsin.

(3) The required records shall be made available for inspection and transcription by a duly authorized deputy of the department during the business hours generally observed by the office at which they are kept or in the community generally.

History: Cr. Register, July, 1978, No. 271, eff. 8-1-78.

DWD 272.12 Interpretation of hours worked.

(1) PRINCIPLES FOR DETERMINATION OF HOURS WORKED. (a) *General requirements of sections.* 1. Employees subject to the statutes must be paid for all time spent in "physical or mental exertion (whether burdensome or not) controlled or required by the employer and pursued necessarily and primarily for the benefit of the employer's business." The workweek ordinarily includes "all time during which an employee is necessarily required to be on the employer's premises, on duty or at a prescribed work place."

2. "Workday," in general, means the period between "the time on any particular workday at which such employee commences their principal activity or activities" and "the time on any particular workday at which they cease such principal activity or activities." The "workday" may thus be longer than the employee's scheduled shift, hours, tour of duty, or time on the production line. Also, its duration may vary from day to day depending upon when the employee commences or ceases their "principal" activities.

(2) APPLICATION OF PRINCIPLES. (a) *Employees "suffered or permitted" to work.* 1. General. Work not requested but suffered or permitted is work time. For example, an employee may volun-

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tarily continue to work at the end of the shift. They may be a pieceworker, they may desire to finish an assigned task or they may wish to correct errors, past work tickets, prepare time reports or other records. The reason is immaterial. The employer knows or has reason to believe that they are continuing to work and the time is working time.

2. Work performed away from the premises or job site. The rule is also applicable to work performed away from the premises or the job site, or even at home. If the employer knows or has reason to believe that the work is being performed, they must count the time as hours worked.

3. Duty of management. In all such cases it is the duty of the management to exercise its control and see that the work is not performed if it does not want it to be performed. It cannot sit back and accept the benefits without compensating for them. The mere promulgation of a rule against such work is not enough. Management has the power to enforce the rule and must make every effort to do so.

(b) *Waiting time.* 1. General. Whether waiting time is time worked depends upon particular circumstances. The determination involves "scrutiny and construction of the agreements between particular parties, appraisal of their practical construction of the working agreement by conduct, consideration of the nature of the service, and its relation to the waiting time, and all of the circumstances. Facts may show that the employee was engaged to wait, or they may show that he/she waited to be engaged."

2. On duty. A stenographer who reads a book while waiting for dictation, a messenger who works a crossword puzzle while awaiting assignments, a firefighter who plays checkers while waiting for alarms and a factory worker who talks to fellow employees while waiting for machinery to be repaired are all working during their periods of inactivity. The rule also applies to employees who work away from the plant. For example, a repairperson is working while they wait for their employer's customer to get the premises in readiness. The time is work time even though the employee is allowed to leave the premises or the job site during such periods of inactivity. The periods during which these occur are unpredictable. They are usually of short duration. In either event the employee is unable to use the time effectively for their own purposes. It belongs to and is controlled by the employer. In all of these cases waiting is an integral part of the job. The employee is engaged to wait.

3. Off duty. Periods during which an employee is completely relieved from duty and which are long enough to enable them to use the time effectively for their own purposes are not hours worked. They are not completely relieved from duty and cannot use the time effectively for their own purposes unless they are definitely told in advance that they may leave the job and that they will not have to commence work until a definitely specified hour has arrived.

4. On-call time. An employee who is required to remain on call on the employer's premises or so close thereto that they cannot use the time effectively for their own purposes is working while "on call." An employee who is not required to remain on the employer's premises but is merely required to leave word at their home or with company officials where they may be reached is not working while on call.

(c) *Rest and meal periods.* 1. Rest. Rest periods of short duration, running less than 30 minutes are common in industry. They promote the efficiency of the employee and are customarily paid for as working time. They must be counted as hours worked. Compensable time of rest periods may not be offset against other working time such as compensable waiting time or on-call time.

2. Meal. Bona fide meal periods of 30 minutes or more are not work time. Bona fide meal periods do not include coffee breaks or time for snacks. These are rest periods. The employee must be completely relieved from duty for the purposes of eating regular meals. Ordinarily 30 minutes or more is long enough for

a bona fide meal period. The employee is not relieved if they are required to perform any duties, whether active or inactive, while eating. For example, an office employee who is required to eat at their desk or a factory worker who is required to be at their machine is working while eating.

(d) *Sleeping time and certain other activities.* Under certain conditions an employee is considered to be working even though some of their time is spent in sleeping or in certain other activities.

1. Definitions. In this paragraph:

a. "Day" means a calendar day or a period of 24 consecutive hours.

b. "Home care premises" means premises or locations, including group homes, in which the employer is acting either directly or indirectly as an agent to provide home care services for an elderly person, a person with a disability, a person otherwise in need of care and assistance in the home, or for the family of such a person.

c. "Homelike environment" means facilities, including private quarters as defined in par. (f), and also including facilities for cooking and eating on the same premises; for bathing in private; and for recreation, such as television. The amenities and quarters shall be suitable for long-term residence by individuals and shall be similar to those found in typical private residence or apartment, rather than those found in institutional facilities such as dormitories, barracks, and short-term facilities for travelers.

d. "Off-duty" means the time period during which the employee is completely relieved from duty and is free to leave the home care premises or otherwise use the time for his or her benefit.

e. "On-duty" means the period of time the employee is required to be on the home care premises or otherwise working for the employer.

f. "Private quarters" means living quarters that are furnished, are separate from the clients and from any other staff members, have as a minimum the same furnishings available to clients, such as bed, table, chair, lamp, dresser, closet, and in which the employee is able to leave his or her belongings during on-duty and off-duty periods.

g. "Workweek" means 7 consecutive 24-hour periods.

2. Less than 24-hour duty. a. An employee who is required to be on duty for less than 24 hours is working even though they are permitted to sleep or engage in other personal activities when not busy. A telephone operator, for example, who is required to be on duty for specified hours is working even though they are permitted to sleep when not busy answering calls. It makes no difference that they are furnished facilities for sleeping. Their time is given to their employer. They are required to be on duty and the time is work time.

b. Allowances for board and lodging as provided in s. DWD 272.03 (3) or (4) may be considered by a mutual written or implied agreement.

3. a. Where an employee is required to be on duty for 24 consecutive hours or more, the employer and the employee pursuant to a mutual written agreement may agree to exclude bona fide meal periods and a bona fide regularly scheduled sleeping period of not more than 8 hours from hours worked per 24-hour period, provided adequate sleeping facilities are furnished by the employer and the employee can usually enjoy an uninterrupted night's sleep. If the sleeping period is more than 8 hours, only 8 hours shall be credited per 24-hour period. Where no written agreement to the contrary is present, the 8 hours of sleeping time and lunch periods constitute hours worked. If the sleeping period is interrupted by a call to duty, the interruption shall be counted as hours worked. Employers may take credit for board and lodging as prescribed by s. DWD 272.03 (3) or (4), whichever is applicable. Record keeping requirements provided in s. DWD 272.11 shall apply.

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b. If the sleeping period is interrupted by a call to duty, the interruption must be counted as hours worked. If the period is interrupted to such an extent that the employee cannot get a reasonable night's sleep, the entire period must be counted.

4. Employees residing on employer's premises, home care premises or working at home. An employee who resides on his or her employer's premises or home care premises on a permanent basis or for extended periods of time is not considered as working all the time he or she is on the premises. Ordinarily, the employees may engage in normal private pursuits and thus have enough time for eating, sleeping, entertaining, and other periods of complete freedom from all duties when he or she may leave the premises for purposes of his or her own. It is of course difficult to determine the exact hours worked under these circumstances and any reasonable written agreement of the parties which takes into consideration all of the pertinent facts shall be accepted.

5. Home care premises. a. When an employee who provides home care services does not maintain his or her permanent residence on the home care premises and does not otherwise reside on the premises 7 days a week, the department shall consider an employee who sleeps in private quarters, in a homelike environment, to reside on the premises for an extended period of time within the meaning of par. (d) 4, if the employee resides on the premises for a period of at least 120 hours in a workweek.

b. An employee shall be found to reside on the premises for extended periods of time if both of the following apply: the employee is on duty at the home care premises and is compensated for at least 8 hours in each of 5 consecutive 24-hour periods; and the employee sleeps on the premises for all sleep periods between the beginning and end of the 120 hour period. Any 24-hour period can be utilized, and the 8 compensated hours per 24-hour period need not be consecutive. An employee who is on duty and compensated for the period 5:00 p. m. to 10:00 p. m. Monday, 6:00 a. m. to 9:00 a. m. and 3:00 p. m. to 10:00 p. m. Tuesday through Friday, and 6:00 a. m. to 9:00 a. m. Saturday, and who sleeps on the premises (10:00 p. m. to 6:00 a. m.) for all sleep periods from Monday night through Friday night, has been compensated for at least 8 hours in 5 consecutive 24-hour periods between 5:00 p. m. Monday and 5:00 p. m. Saturday. The employee would also have slept 5 consecutive nights on the premises. Provided the other conditions were met, this would be considered to be residing on the premises for an extended period of time. An employee who is on duty and is compensated from 6:00 a. m. to 9:00 a. m. and 5:00 p. m. to 10:00 p. m., Monday through Friday, and who sleeps Monday through Thursday nights on the premises, would be considered to reside on the premises for extended periods of time. These employees are called "full-time" employees.

c. Where one or more employees meet the "full-time employee residing on the premises test" of subd. 5. b., the department shall apply the provisions of par. (d) 4. to one or more "relief" employees who reside on the premises for 1 to 3 nights, provided these employees are on duty and are compensated for at least 8 hours in each 24-hour period in question and sleep on the premises all intervening nights. Although it is anticipated that there will be no more than one relief employee for each full-time employee, it is possible that there may be more than one. To come within the provisions the relief employee shall be relieving a full-time employee. That is, the full-time employee and the employee or employees relieving that employee may not be on duty for more than a combined total of 7 days and 7 nights in each workweek. A part-time employee shall not be considered a relief employee if that employee and the full-time employee being relieved are on duty simultaneously for more than one hour a day.

d. In order to deduct sleep time for full-time and relief employees, the employees shall be provided private quarters in a homelike environment. A reasonable agreement shall be reached, in advance, regarding compensable time. The employer and the employee may agree to exclude up to 8 hours per night of uninterrupted sleep time. They may also agree to exclude a period of off-

duty time during the day when the employee is completely relieved of all responsibilities. These exclusions shall be the result of an employee-employer agreement and not a unilateral decision of the employer. Such an agreement should normally be in writing to preclude any possible misunderstanding of the terms and conditions of the individual's employment.

e. Where sleep time is to be deducted, the employer should determine if the following criteria are met: the employer and the employee have reached agreement in advance that sleep time is being deducted; adequate sleeping facilities with private quarters were furnished; if interruptions occurred, employees got at least 5 hours of sleep during the scheduled sleeping period; employees are compensated for any interruptions in sleep; and no more than 8 hours of sleep time is deducted for each full 24-hour on-duty period.

f. Sleep time may not be deducted for relief or other part-time employees who are not relieving a full-time employee, unless such employees are themselves on duty for 24 hours or more as provided in subd. 3. An off-duty period during a weekday for such employees breaks an on-duty period for the purposes of subd. 3. For example, a duty period from 5:00 p. m. of one day to 5:00 p. m. the following day, during which an employee has uncompensated free time between 9:00 a. m. and 3:00 p. m. of the on-duty period, is not considered to be a 24-hour period.

(e) *Preparatory and concluding activities.* 1. The term "principal activities" includes all activities which are an integral part of a principal activity. Two examples of what is meant by an integral part of a principal activity are the following:

a. In connection with the operation of a lathe, an employee will frequently, at the commencement of their workday, oil, grease, or clean their machine, or install a new cutting tool. Such activities are an integral part of the principal activity, and are included within such term.

b. In the case of a garment worker in a textile mill, who is required to report 30 minutes before other employees report to commence their principal activities, and who during such 30 minutes distributes clothing or parts of clothing at the workbenches of other employees and gets machines in readiness for operation by other employees, such activities are among the principal activities of such employee. Such preparatory activities are compensable under this chapter.

c. Among the activities included as an integral part of the principal activity are those closely related activities which are indispensable to its performance. If an employee in a chemical plant, for example, cannot perform their principal activities without putting on certain clothes, changing clothes on the employer's premises at the beginning and end of the workday would be an integral part of the employee's principal activity. On the other hand, if changing clothes is merely a convenience to the employee and not directly related to their principal activities, it would be considered as a "preliminary" or "postliminary" activity rather than a principal part of the activity. However, activities such as checking in and out and waiting in line to do so would not ordinarily be regarded as integral parts of the principal activity or activities.

(f) *Lectures, meetings and training programs.* 1. General. Attendance at lectures, meetings, training programs and similar activities need not be counted as working time if the following 4 criteria are met:

a. Attendance is outside of the employee's regular working hours;

b. Attendance is in fact voluntary;

c. The course, lecture, or meeting is not directly related to the employee's job; and

d. The employee does not perform any productive work during such attendance.

2. Involuntary attendance. Attendance is not voluntary, of course, if it is required by the employer. It is not voluntary in fact if the employee is given to understand or led to believe that their

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present working conditions or the continuance of their employment would be adversely affected by nonattendance.

3. Training directly related to employee's job. The training is directly related to the employee's job if it is designed to make the employee handle their job more effectively as distinguished from training them for another job, or to a new or additional skill. For example, stenographers who are given a course in stenography are engaged in an activity to make them a better stenographer. Time spent in such a course given by the employer or under their auspices is hours worked. However, if the stenographers take a course in bookkeeping, it may not be directly related to their job. Thus, the time they spend voluntarily in taking such a bookkeeping course, outside of regular working hours, need not be counted as working time. Where a training course is instituted for the bona fide purpose of preparing for advancement through upgrading the employee to a higher skill, and is not intended to make the employee more efficient in their present job, the training is not considered directly related to the employee's job even though the course incidentally improves their skill in doing their regular work.

4. Independent training. Of course, if an employee on their own initiative attends an independent school, college or independent trade school after hours, the time is not hours worked for their employer even if the courses are related to their job.

5. Apprenticeship training. As an enforcement policy, time spent in an organized program of related, supplemental instruction by employees working under bona fide apprenticeship programs may be excluded from working time if the following criteria are met:

a. The apprentice is employed under a written apprenticeship agreement or program which substantially meets the fundamental standards of the bureau of apprenticeship standards of the department of industry, labor and human relations, and

b. Such time does not involve productive work or performance of the apprentice's regular duties. If the above criteria are met the time spent in such related supplemental training shall not be counted as hours worked unless the written agreement specifically provides that it is hours worked. The mere payment or agreement to pay for time spent in related instruction does not constitute an agreement that such time is hours worked.

(g) *Travel time.* 1. General. The principles which apply in determining whether or not time spent in travel is working time depend upon the kind of travel involved.

2. Home to work; ordinary situation. An employee who travels from home before their regular workday and returns to their home at the end of the workday is engaged in ordinary home to work travel which is a normal incident of employment. This is true whether they work at a fixed location or at different job sites. Normal travel from home to work is not work time.

3. Home to work in emergency situations. There may be instances when travel from home to work is work time. For example, if an employee who has gone home after completing their day's work is subsequently called out at night to travel a substantial distance to perform an emergency job for one of their employer's customers, all time spent on such travel is working time.

4. Home to work on special one-day assignment in another city. A problem arises when an employee who regularly works at a fixed location in one city is given a special one-day work assignment in another city. Such travel cannot be regarded as ordinary home-to-work travel occasioned merely by the fact of employment if performed for the employer's benefit and at their special request to meet the needs of the particular and unusual assignment. It would thus qualify as an integral part of the "principal" activity which the employee was hired to perform on the workday in question; it is like travel involved in an emergency call, or like travel that is all in the day's work. All the time involved, however, need not be counted. Since, except for the special assignment, the

employee would have had to report to their regular work site, the travel between their home and the railroad depot may be deducted, it being in the "home-to-work" category. Also, of course, the usual meal time would be deductible.

5. Travel that is all in the day's work. Time spent by an employee in travel as part of their principal activity, such as travel from job site to job site during the workday, must be counted as hours worked. Where an employee is required to report at a meeting place to receive instructions or to perform other work there, or to pick up and to carry tools, the travel from the designated place to the workplace is part of the day's work, and must be counted as hours worked regardless of contract, custom, or practice. If an employee normally finished their work on the premises at 5 p.m. and is sent to another job which they finish at 8 p.m. and is required to return to their employer's premises arriving at 9 p.m. all of the time is working time. However, if the employee goes home instead of returning to their employer's premises, the travel after 8 p.m. is home-to-work travel and is not hours worked.

6. Travel away from home community. Travel that keeps an employee away from home overnight is travel away from home. Travel away from home is clearly work time when it cuts across the employee's workday. The employee is simply substituting travel for other duties. The time is not only hours worked on regular working days during normal working hours but also during the corresponding hours on nonworking days. Thus, if an employee regularly works from 9 a.m. to 5 p.m. from Monday through Friday the travel time during these hours is work time on Saturday and Sunday as well as on the other days. Regular meal period time is not counted. As an enforcement policy, work time is that time spent in travel away from home outside of regular working hours as a passenger on an airplane, train, boat, bus, or automobile.

7. When private automobile is used in travel away from home community. If an employee is offered public transportation but requests permission to drive their car instead, the employer may count as hours worked either the time spent driving the car or the time they would have had to count as hours worked during working hours if the employee had used the public conveyance.

8. Work performed while traveling. Any work which an employee is required to perform while traveling must of course be counted as hours worked. An employee who drives a truck, bus, automobile, boat or airplane, or an employee who is required to ride therein as an assistant or helper, is working while riding, except during bona fide meal periods or when the employee is permitted to sleep in adequate facilities furnished by the employer.

(h) *Adjusting grievances, medical attention, civic and charitable work, and suggestion systems.* 1. Adjusting grievances. Time spent in adjusting grievances between an employer and employees during the time the employees are required to be on the premises is hours worked, but in the event a bona fide union is involved the counting of such time will, as a matter of enforcement policy, be left to the process of collective bargaining or to the custom or practice under the collective bargaining agreement.

2. Medical attention. Time spent by an employee in waiting for and receiving medical attention on the premises or at the direction of the employer during the employee's normal working hours on days when they are working, constitutes hours worked.

3. Civic and charitable work. Time spent in work for public or charitable purposes at the employer's request, or under their direction or control, or while the employee is required to be on the premises, is working time. However, time spent voluntarily in such activities outside of the employee's normal working hours is not hours worked.

4. Suggestions systems. Generally, time spent by employees outside of their regular working hours in developing suggestions under a general suggestion system is not working time, but if employees are permitted to work on suggestion during regular working hours the time spent must be counted as hours worked. Where

Unofficial Text (See Printed Volume). Current through date and Register shown on Title Page.

an employee is assigned to work on the development of a suggestion, the time is considered hours worked.

History: Cr. Register, July, 1978, No. 271, eff. 8-1-78; corrections in (2) (f) 5. a. made under s. 13.93 (2m) (b) 6., Stats., Register, August, 1987, No. 380; cr. (2) (d) 1. and 5., am. (2) (d) 3. a. and 4., Register, February, 1996, No. 482, eff. 3-1-96.

DWD 272.13 Forms. The following forms are listed in accordance with s. 227.23, Stats. These forms are issued by and may be obtained from the Equal Rights Division, Department of Workforce Development, P. O. Box 8928, Madison, Wisconsin, 53708.

- (1) ERD-9247 Minimum Wage Rates.
- (2) LS-37, Application for Subminimum Wage License. This particular form is used for both handicapped workers and student

learners. WH-226 is the application for a sheltered workshop to employ handicapped workers at a subminimum wage. WH-227 is a supplement data sheet for sheltered workshop certificate. WH-247 is an application for a certificate for a training or evaluation program in a sheltered workshop. WH-249 is an application for a special individual rate in a sheltered workshop.

History: Cr. Register, July, 1978, No. 271, eff. 8-1-78; corrections in (intro.) made under s. 13.93 (2m) (b) 6., Stats., Register, August, 1987, No. 380; am. (intro.) and (1), Register, May, 1997, No. 497, eff. 6-1-97.

DWD 272.14 Prohibition of displacement. An employer may not displace an employee solely for the purpose of hiring an employee to be paid the opportunity wage.

History: Cr. Register, November, 1997, No. 503, eff. 12-1-97.

State of Wisconsin
Department of Workforce Development
Equal Rights Division

Chapter DWD 272

Increasing Wisconsin's Minimum Wages

The Wisconsin Department of Workforce Development proposes an order to amend s. DWD 272.03 (1), (1m), (3), and (3m), s. DWD 272.05 (1)(a), (1)(b), (2)(a), and (2)(b), s. DWD 272.07 (3), and s. DWD 272.08; to repeal and recreate s. DWD 272.12(2)(g)6.; and to create ss. 272.01 (9m), 272.07 (3g), and 272.07 (3r), relating to increasing Wisconsin's minimum wages.

Analysis Prepared by the Department of Workforce Development

Statutory authority: Sections 104.04 and 227.11, Stats.

Statutes interpreted: Chapter 104, Stats.

Wisconsin needs a minimum wage increase

Creating good paying jobs and a "high end" economy is a top priority for Governor Jim Doyle's administration. A key focus of the Governor's *Grow Wisconsin* economic development plan is investing in people and helping families climb the economic ladder. One of the most important initiatives in the Governor's plan is raising the state minimum wage. Such an increase ensures that Wisconsin's lowest wage workers will share in the benefits of economic growth as Wisconsin's economy moves forward.

This is a critical time for Wisconsin to support low-wage workers by increasing the minimum wage. In 2004, the federal minimum wage will fall to its lowest inflation-adjusted value of all time. The buying power of the minimum wage in 1970 equaled about \$8.00 in 2003 dollars. Given the declining value of the minimum wage and the lack of federal action to increase it, 12 other states have already established minimum wages above the federal level.

When wages are so low that workers and their families can't afford their most basic needs, the costs that society, particularly taxpayers, must bear related to poverty are so insidious that anything that helps divert those expenses back to the consumers of the services provided by those low-wage workers is worthwhile. Educational failure, workforce failure, citizenship failure can very often be traced back to families forced to live in poverty. An adequate minimum wage supports workers, helps strengthen families and communities, and promotes the state's overall economic and fiscal health. Family-supporting wages reduce dependence on the state and increase tax revenue from these families, decreasing the burden on Wisconsin's taxpayers.

It is estimated that 200,000 workers will be affected by Wisconsin's minimum wage increase. Many of these workers are adults and a larger than proportionate share are minorities. Putting more money in the hand of these low-wage workers will result in \$175 million in consumer expenditures in Wisconsin's economy. Low-wage workers spend nearly their entire income in the local economy on basics. This spending stimulates the local economy and benefits local businesses because spending is concentrated locally on food, clothing, shelter, and transportation. Evidence of a negative effect on employment opportunities available to low-wage workers as a result of a minimum wage increase is inconclusive as both advocates and opponents are able to produce studies supporting their side of the issue.

Minimum wage increases

Chapter 104, Stats., and Chapter DWD 272 provide that Wisconsin's minimum wage should be sufficient to enable the employee receiving it to maintain himself or herself under conditions consistent with his or her reasonable comfort, physical well-being, decency, and moral well-being. Section 104.04, Stats., directs the Department of Workforce Development to determine the state's minimum wage taking into consideration the effect of the wage on the economy of the state, including employment opportunities for low-wage workers and regional economic conditions within the state.

Governor Doyle and the Department of Workforce Development convened a Minimum Wage Advisory Council to assist with determining whether there should be an increase in Wisconsin's minimum wage. The Council included leaders from the business community, labor organizations, and both houses of the legislature. The Department's Office of Economic Advisors provided the Advisory Council with data from the U.S. Census; Current Population Survey; and the U.S. Department of Labor, Bureau of Labor Statistics, Occupational Employment Statistics. The Council considered this data and made the following recommendations:

General minimum wage rate

- Increases to \$5.70/hour effective when rule is effective (currently \$5.15/hour)
- Increases to \$6.50/hour effective 10/01/05

Minor minimum wage rate

- Increases to \$5.30/hour effective when rule is effective (currently same as adult rate \$5.15/hour)
- Increases to \$5.90/hour effective 10/01/05

Opportunity minimum wage rate

- Increases to \$5.30/hour effective when rule is effective (currently \$4.25/hour)
- Increases to \$5.90/hour effective 10/01/05

Agriculture minimum wage rate for workers age 18 and over

Increases to \$5.15/hour effective when rule is effective (currently \$4.05/hour)

Agricultural minimum wage rate for workers age 17 and under

Increases to \$4.25/hour effective when rule is effective (currently \$3.70/hour)

Golf caddy minimum wage rate

Increases to \$10.50 for 18 holes, and \$5.90 for 9 holes effective when rule is effective (currently \$5.95 for 18 holes and \$3.35 for 9 holes)

The proposed rule as noticed for hearing incorporated the Advisory Council's recommendation to implement the camp counselor rate increase in two phases. In response to public hearing comments, the Department has adjusted the proposed rule to implement the increase in three phases as follows:

Camp counselor minimum wage rate for workers age 18 and over

- Increases to \$215/week effective when rule is effective, \$270/week effective 10/01/05, and \$315/week effective 10/01/06, if no room or board provided (currently \$140/week)
- Increases to \$164/week effective when rule is effective, \$217/week effective 10/01/05, and \$240 effective 10/01/06, if board provided (currently \$110/week)
- Increases to \$129/week effective when rule is effective, and \$171/week effective 10/01/05, and \$189 effective 10/01/06, if room and board provided (currently \$91/week)

Camp counselor minimum wage rate for workers age 17 and under

- Increases to \$175/week effective when rule is effective, \$225/week effective 10/01/05, and \$275 effective 10/01/06, if no room or board provided (currently \$123/week)
- Increases to \$133/week effective when rule is effective, \$171/week effective 10/01/05, and \$209 effective 10/01/06, if board provided (currently \$92/week)
- Increases to \$105/week effective when rule is effective, \$135/week effective 10/01/05, and \$165 effective 10/01/06, if room and board provided (currently \$74/week)

Effect of minimum wage increases on Wisconsin's economy

The Department of Workforce Development estimates that 200,000 workers will be affected by the minimum wage increases. The average wage increase among the 200,000 affected workers will be about \$.60 per hour.

- The \$5.15 to \$5.70 increase in the general rate that will occur when this rule is effective will directly raise the pay of 40,000 to 45,000 workers.
- The \$5.70 to \$6.50 increase in the general rate that will occur on October 1, 2005, will directly raise the pay of 50,000 to 60,000 workers.
- The \$5.15 to \$5.30 increase in the minor rate that will occur when this rule is effective will directly raise the pay of 15,000 to 20,000 workers.
- The \$5.30 to \$5.90 increase in the minor rate that will occur on October 1, 2005, will directly raise the pay of 20,000 to 30,000 workers.
- It is expected that approximately 110,000 workers making slightly above the new minimum wages will be indirectly affected by the minimum wage increases and will also receive pay increases.

It is estimated that nearly 80% of these low-wage workers are over 18 years of age, 65% are female, and over one-third are heads of their household. These workers are African-American, Hispanic, and Asian in numbers larger than their proportion in the population. Over two-thirds of these low-wage workers work more than half-time:

- 30% work 1-19 hours per week
- 35% work 20-34 hours per week
- 35% work 35+ hours per week

They work as food service workers, retail clerks, cleaning and housekeeping laborers, personal care attendants, child care workers, telemarketers, laundry and dry cleaning workers, veterinary assistants, home health care aides, office workers, gaming change and booth cashiers, building and grounds maintenance laborers, and many other occupations in virtually all industries in the state.

The industry with the largest number of workers affected by a minimum wage increase is the leisure and hospitality industry—75% of affected employees work in this industry. Leisure and hospitality includes accommodations and foods as well as arts, entertainment, and recreation. Pay is low in the leisure and hospitality industry overall but particularly low in the accommodations and foods sector. In hotels and motels, 40% of workers earn less than \$6.50, and in restaurants 20% of workers earn less than \$6.50. The pay of Wisconsin workers in the accommodations and foods industry is almost the lowest in the country ranking 49th nationally.

Anticipated cost incurred by private sector. The effect of the wage increase on business will be \$175 million in increased payroll costs. Low-wage workers will circulate this money back into the economy immediately, representing a 0.1 percent increase in the gross state product. The increased spending by affected workers may be a revenue growth for some businesses. The effects may be slightly greater in northern, rural regions of the state where minimum wage jobs make up a greater percentage of the workforce. Higher wages also have a positive impact on both workers and their employers by reducing turnover, increasing work experience, and saving on training and recruitment costs for both workers and employers. Any increase in the cost of doing business will likely be passed on to consumers as part of the price of the product or service being purchased.

Effect on small business. Section 227.114, Stats., requires that the Department consider the effect of the rule on small business, which is defined as fewer than 25 employees or \$2.5 million in gross annual sales, and consider exemptions or less stringent deadlines for compliance if there is an effect on small business. The Department estimates that a very high percentage of workers affected by this minimum wage increase work for employers with less than 25 employees or \$2.5 million in gross annual sales. If the rule exempted these employers from minimum wage coverage, it would render the minimum wage nearly meaningless.

Fiscal effect on state and local government

It is estimated that 35% of the additional \$175 million in consumer expenditures will be on items subject to the sales tax. This translates to increased revenue of approximately \$3 million for the state and some increased revenue for counties with a local sales tax.

There may be increased state revenue from the income tax on higher incomes for approximately 200,000 workers. A request is being submitted to the Department of Revenue for an estimate of the increase and any possible offset due to decreased corporate tax revenue based on increased payroll costs. An amended fiscal estimate will be included when this information is received from the Department of Revenue.

It is estimated that 100-200 local governmental employees across the state who work as seasonal summer helpers may be affected by the increase. The increased cost is estimated at approximately \$20,000 across all local governments in the state. The minimum wage increase is not expected to affect state employees.

Federal law and adjacent states

Section 227.14 (2)3. and 4., Stats., requires the Department to compare the proposed rule to any existing or proposed federal regulation and rules in adjacent states.

General rate:

Federal	\$5.15
Iowa	\$5.15
Michigan	\$5.15
Minnesota	\$5.15 for employers covered by Federal Labor Standards Act \$4.90 for employers not covered by Federal Labor Standards Act
Illinois	\$5.50, increasing to \$6.50 on January 1, 2005

Minor rate:

Federal	None
Iowa	None
Michigan	None
Minnesota	None
Illinois	\$5.00, increasing to \$6.00 on January 1, 2005

Opportunity rate:

Federal	\$4.25 for employees under 20 years old for first 90 days of employment
Iowa	\$4.25 for all employees for first 90 days of employment
Michigan	\$4.25 for 16- to 19-year-olds for first 90 days of employment
Minnesota	\$4.25 for employees under 20 years old for first 90 days of employment
Illinois	No opportunity wage of general application. Employers may apply for license from Illinois Department of Labor to pay adult learners 70% of minimum wage rate for initial six months of employment.

Agricultural rate:

Federal	None
Iowa	None
Michigan	None
Minnesota	None
Illinois	None

Camp counselor rate:

Federal	None
Iowa	None
Michigan	None
Minnesota	None
Illinois	\$220 per week, increasing to \$260 per week on January 1, 2005

Golf caddy rate:

Federal:	None
Iowa:	None
Michigan:	None
Minnesota	None
Illinois:	Exempt from minimum wage

Proposed federal change:

Senator Kennedy introduced an amendment to the welfare reform reauthorization bill that would increase the federal minimum wage from \$5.15 to \$7.00 over 2 years. As of April 1, the Senate is deadlocked and the minimum wage increase and welfare reform reauthorization are in limbo. The current welfare reform authorization expires June 30. Senator Kennedy has vowed to attempt to attach his minimum wage measure to every bill that hits the Senate floor.

On April 14, Republican Senators announced that they are crafting legislation that would phase in an increase of the federal minimum wage to \$6.25, packaged with business-friendly measures.

Technical correction

The proposed rule also repeals and recreates the policy that travel time for the benefit of the employer is work time. It is rewritten for clarity and with no change in substance.

SECTION 1. DWD 272.01 (9m) is created to read:

DWD 272.01 (9m) "Minor employee" means a minor who is paid at the applicable minor minimum wage rate.

SECTION 2. DWD 272.03 (1) and (1m) are amended to read:

DWD 272.03 (1) MINIMUM RATES. This subsection is in effect from ~~October 1, 1996 to August 31, 1997~~ the effective date of this section ... [revisor inserts date] to September 30, 2005. Except as provided in ss. DWD 272.05 to 272.09, no employer shall employ any employee in any occupation, trade, or industry at a lesser hourly rate than is indicated below:

(a) All employees except opportunity and minor employees ~~\$4.75~~ \$5.70 per ~~hr~~ hour.

(b) Opportunity and minor employees ~~\$4.25~~ \$5.30 per hour.

(1m) MINIMUM RATES. This subsection becomes effective on ~~September 1, 1997~~ October 1, 2005. Except as provided in ss. DWD 272.05 to 272.09, no employer shall employ any employee in any occupation, trade, or industry at a lesser hourly rate than is indicated below:

(a) All employees except opportunity and minor employees ~~\$5.15~~ \$6.50 per ~~hr~~ hour.

(b) Opportunity and minor employees ~~\$4.25~~ \$5.90 per ~~hr~~ hour.

SECTION 2. DWD 272.03 (3) and (3m) are amended to read:

DWD 272.03 (3) ALLOWANCE FOR BOARD AND LODGING. This subsection is in effect from ~~October 1, 1996, to August 31, 1997~~ the effective date of this section ... [revisor inserts date] to September 30, 2005. Where board or lodging or both are furnished by the employer in accordance with s. DWD 272.04, and accepted and received by a particular employee, an allowance may be made not to exceed the following amounts:

(a) *Lodging.* 1. All employees except opportunity and minor employees ~~\$38.00~~ \$45.60 per week or ~~\$5.45~~ \$6.50 per day.

2. Opportunity and minor employees ~~\$34.00~~ \$42.40 per week or ~~\$4.85~~ \$6.05 per day.

(b) *Meals.* 1. All employees except opportunity and minor employees ~~\$57.00~~ \$68.40 per week or ~~\$2.70~~ \$3.25 per meal.

2. Opportunity and minor employees ~~\$51.00~~ \$63.60 per week or ~~\$2.45~~ \$3.00 per meal.

(3m) ALLOWANCE FOR BOARD AND LODGING. This subsection becomes effective on ~~September 1, 1997~~ October 1, 2005. Where board or lodging or both are furnished by the employer in accordance with s. DWD 272.04, and accepted and received by a particular employee, an allowance may be made not to exceed the following amounts:

(a) *Lodging.* 1. All employees except opportunity and minor employees ~~\$41.20~~ \$52.00 per week or ~~\$5.90~~ \$7.40 per day.

2. Opportunity employees ~~\$34.00~~ \$47.20 per week or ~~\$4.85~~ \$6.75 per day.

(b) *Meals.* 1. All employees except opportunity and minor employees ~~\$61.80~~ \$78.00 per week or ~~\$2.95~~ \$3.70 per meal.

2. Opportunity and minor employees ~~\$51.00~~ \$70.80 per week or ~~\$2.45~~ \$3.35 per meal.

SECTION 3. DWD 272.05 (1)(a), (1)(b), (2)(a), and (2)(b) are amended to read:

DWD 272.05 (1) (a) Adult employees ~~Employees~~ Employees 18 years of age and over: ~~\$4.05~~ \$5.15 per ~~hr~~ hour.

(b) ~~Minors~~ Employees 17 years of age and under: ~~\$3.70~~ \$4.25 per ~~hr~~ hour.

(2) (a) Lodging— Adults <u>Employees</u> 18 years of age and over:	\$32.40 <u>\$41.20</u> per week or \$4.65 <u>\$5.90</u> per day.
Minors <u>Employees</u> 17 years of age and under:	\$29.60 <u>\$34.00</u> per week or \$4.25 <u>\$4.85</u> per day
(b) Meals— Adults <u>Employees</u> 18 years of age and over:	\$48.60 <u>\$61.80</u> per week or \$2.30 <u>\$2.95</u> per meal
Minors <u>Employees</u> 17 years of age and under:	\$44.40 <u>\$51.00</u> per week or \$2.10 <u>\$2.40</u> per meal

SECTION 4. DWD 272.07 (3) is amended to read:

DWD 272.07 (3) COUNSELORS. This subsection is in effect from the effective date of this section ...[revisor inserts date] to September 30, 2005. The minimum wage of counselors employed in seasonal recreational or educational camps and day camps may be computed on a weekly basis as follows:

(a) Adult counselors 18 years of age and over:	PER WEEK
1. If board and lodging are not furnished	\$140.00 <u>\$215</u>
2. If board only is furnished	\$110.00 <u>\$164</u>
3. If board and lodging are furnished	\$91.00 <u>\$129</u>
(b) Counselors 17 years of age and under:	PER WEEK
1. If board and lodging are not furnished	\$123.00 <u>\$175</u>
2. If board only is furnished	\$92.00 <u>\$133</u>
3. If board and lodging are furnished	\$74.00 <u>\$105</u>

SECTION 5. DWD 272.07 (3g) and (3r) are created to read:

DWD 272.07 (3g) COUNSELORS. This subsection is in effect from the October 1, 2005, to September 30, 2006. The minimum wage of counselors employed in seasonal recreational or educational camps and day camps may be computed on a weekly basis as follows:

(a) Adult counselors 18 years of age and over:	PER WEEK
1. If board and lodging are not furnished	\$270
2. If board only is furnished	\$217
3. If board and lodging are furnished	\$171
(b) Counselors 17 years of age and under:	PER WEEK
1. If board and lodging are not furnished	\$225
2. If board only is furnished	\$171
3. If board and lodging are furnished	\$135

DWD 272.07 (3r) COUNSELORS. This subsection becomes effective on October 1, 2006. The minimum wage of counselors employed in seasonal recreational or educational camps and day camps may be computed on a weekly basis as follows:

(a) Adult counselors 18 years of age and over:	PER WEEK
1. If board and lodging are not furnished	\$315
2. If board only is furnished	\$240
3. If board and lodging are furnished	\$189
(b) Counselors 17 years of age and under:	PER WEEK
1. If board and lodging are not furnished	\$275
2. If board only is furnished	\$209
3. If board and lodging are furnished	\$165

SECTION 6. DWD 272.08 is amended to read:

DWD 272.08 Caddies. The minimum wage of employees employed as caddies shall be:

\$3.35 <u>\$5.90</u>	9 holes
\$5.95 <u>\$10.50</u>	18 holes

SECTION 7. DWD 272.12(2)(g)6. is repealed and recreated to read:

DWD 272.12(2)(g)6. Travel away from home community. Travel time away from the home community for business purposes that occurs for the benefit of the employer is considered hours worked.

SECTION 8. EFFECTIVE DATE. This rule shall take effect on the first day of the third month commencing after the date of publication in the Wisconsin administrative register as provided in ss. 227.22(2)(b), Stats., and 227.22(2)(e), Stats., as created by 2003 Wisconsin Act 145.

Proposed Rules Relating to Increasing Wisconsin's Minimum Wages

Chapter DWD 272/CR04-036

Hearing Summary

Public hearings were held in Janesville, Milwaukee, Eau Claire, Wausau, and Green Bay during the week of May 17, 2004.

110 registered support for the proposed rules (includes 7 listed in the subminimum wage section below)
3 registered opposition to the proposed rules

1 opposed the minor rate

1 requested modification of the agricultural rate

4 requested modification of the camp counselor rate

25 requested that the Department create a task force to consider modifications to the subminimum wage guidelines

5 expressed concern with modifications that would require a higher subminimum wage

60 observed for information only

The following registered in support of the proposed rules:

- | | |
|---|--|
| 1. Senator Dave Hansen (D-30th Senate District)
Green Bay | 2. Representative Christine Sinicki (D-20th Assembly District)
Milwaukee |
| 3. Representative Johnnie Morris-Tatum (D-11th
Assembly District)
Milwaukee | 4. Representative Lena Taylor (D-18th Assembly District)
Milwaukee |
| 5. Bruce Willeth, Chair
Eau Claire County Board
Eau Claire | 6. Colleen A. Bates
Eau Claire County Board Member and Chair of Eau Claire
County Human Services Board
Eau Claire |
| 7. Deborah Blanks, CEO
Social Development Commission
Milwaukee | 8. Ellen Bravo, Director
9 to 5, National Association of Working Women
Milwaukee |
| 9. Dian Palmer, President
Service Employees International Union
Brookfield | 10. Sheila Cochran, Secretary-Treasurer
Milwaukee Labor Council
Milwaukee |
| 11. Ed Lump, President
Wisconsin Restaurant Association
Madison | 12. Trish Pugal, President and CEO
Wisconsin Innkeepers Association
Brookfield
(conditional support-see business section for details) |
| 13. John Exner, President
Midwest Food Processors Association, Inc.
Madison | 14. Robert Andersen, Legislative Director
Wisconsin Council on Children and Families
Madison |

Supporters (cont.)

15. Laura Dresser, Economist
Madison
16. Kathleen Mulligan-Hansel, Director
Working Families Project
Institute for Wisconsin's Future
Milwaukee
17. John Huebscher, Executive Director
Wisconsin Catholic Conference
Madison
(opposed to minor rate)
18. Pat DeLessio, Attorney
Legal Action of Wisconsin
Milwaukee
19. Mary Goulding, President
Greater Green Bay Labor Council
Green Bay
20. Sheila DeForest-Davis, Chair
Poverty Response Team of Rock County (30+organizations)
Beloit
21. Dan Aude
Business Owner, Charisma Styles
Green Bay
22. Heidi Rattner, Director of Justice Programs
Interfaith Conference of Milwaukee
Milwaukee
23. Pamela Fendt, Policy Analyst
UWM Center for Economic Development
Milwaukee
24. Kenneth Evans on behalf of Julie Kersick, Executive Director
New Hope Project, Inc.
Milwaukee
25. Julie McNaughton, Coordinator
Menomonie Area Bread for the World
Menomonie
26. Jeff Knaus, Business Representative
Northeast Wisconsin Building Trades Council
Green Bay
27. Celia Jackson
Catholic Campaign for Human Development
Milwaukee
28. Mary Patoka, Vice-President and Director of Family Services
CAP Services
Stevens Point
29. Marcus White, Executive Director
Interfaith Conference of Milwaukee
Milwaukee
30. Jeff Sargent, Area Supervisor
Children's Service Society of Wisconsin
Wausau
31. Jean Verber, Administrative Coordinator
Women and Poverty Public Education Initiative
Milwaukee
32. William Lange, Board Member
Faith Community for Worker Justice
Wauwatosa
33. Will Altizar
New Hope Project, Inc.
Racine
34. Laura Manriquez
Milwaukee Innerscity Congregations Allied for Hope
Milwaukee
35. Francis X. Vogel
Milwaukee Fatherhood Collaborative
Milwaukee
36. Gilbert Vasquez
Milwaukee Innerscity Congregations Allied for Hope
Milwaukee
37. Blong Moua, Employment Counselor
Marathon County Job Center
Wausau
38. Mildred Navedo, Organizer
9 to 5
Milwaukee

Supporters (cont.)

- | | |
|---|--|
| 39. Kevin Magee, Migrant Project Director
Legal Action of Wisconsin, Inc.
Madison
(opposed to agricultural rate) | 40. Amy Stear, Organizer
9 to 5
Milwaukee |
| 41. August Stellberg
Beloit | 42. Sangita Nayak, Organizer
9 to 5
Milwaukee |
| 43. Curtis Marshall, Public Health Worker
SEIU
Milwaukee | 44. Tracy Jones
9 to 5
Milwaukee |
| 45. Vickie Strattner, Meal Program Volunteer
Milwaukee | 46. Reverend Karen Hagen
Tippecanoe Presbyterian Church
Milwaukee |
| 47. Lidaydra Linyard
Milwaukee | 48. Ronald McNeal
Milwaukee |
| 49. Yolanda Wallace
Milwaukee | 50. Lajuanda Reynolds
Milwaukee |
| 51. Connie Smith
Milwaukee | 52. Sandra Novak
Milwaukee |
| 53. Loc Truong
Milwaukee | 54. Donald Seidel
Milwaukee |
| 55. Ajeenah Akbar
Beloit | 56. Steve Poppo
Beloit |
| 57. Jolena Presti, Policy Advocate
New Hope Project, Inc.
Milwaukee | 58. Martha Pearson, Case Manager
YWCA of Rock County
Janesville |
| 59. Ann McNeary
Sun Prairie | 60. Carmen Behringer, Director
Childcare
Wausau |
| 61. Betsey Swenson
Janesville | 62. Keith Schmitz, Board Member
Milwaukee Interfaith Congregational Action Committee
Shorewood |
| 63. Houa Lee, Minority Student Advisor
Northcentral Technical College
Weston | 64. Richard Berling, Legislative Committee Chair
Community Alliance of Providers of Wisconsin
and MARC Executive Director
Madison |
| 65. Liz Williams
Social Development Commission
Milwaukee | 66. Tammie King
Community Action
Beloit |

Supporters (cont.)

- | | |
|--|--|
| 67. Michael Bonus, Jr.
SEIU
Sussex | 68. Robert Kraig
SEIU
Milwaukee |
| 69. Jodi Farrington
SEIU
Burnett | 70. Vernon Lynn
SEIU
Milwaukee |
| 71. Kelvin Jefferson, Sr.
SEIU
Milwaukee | 72. Priscilla Jones
SEIU
Wauwatosa |
| 73. Joanne Augsburger
SEIU
Winneconne | 74. Gloria Martin
SEIU
Milwaukee |
| 75. Carmen Granados, Farmworker Programs
Manager
UMOS
Milwaukee | 76. Daniel Hudyma, President
United Food & Commercial Workers Union
Duluth, MN |
| 77. John Bauknecht, Attorney
UMOS
Cross Plains | 78. Judene Walsh
The Adult Learning Center
Milwaukee |
| 79. Doris Washington
UMOS
Milwaukee | 80. Rachel Jorgenson
Janesville |
| 81. Sue Boehm
Dodgeville | 82. Kathleen Meisner-Altman, Benefit and Employment Program Director
Independent First/Wisconsin Coalition of Independent Living Centers
Milwaukee |
| 83. Ann Evansen
Wausau | 84. Frank Gonzales, Jr.
Milwaukee |
| 85. Shannon McManamon
Milwaukee | 86. Royce Austin
Milwaukee |
| 87. Carol Jacquin
Milwaukee | 88. Fernando Fletes Rodriguez
Milwaukee |
| 89. Wilbert Mackey, Jr.
Milwaukee | 90. Melanie Johnson
Milwaukee |
| 91. Roger Brooks
Milwaukee | 92. Oscar Tovar
Milwaukee |
| 93. Patricia Mars
Milwaukee | 94. Chyoma Huntington
Milwaukee |
| 95. Carol Rivera
Milwaukee | 96. Marsha Logan
Milwaukee |

Supporters (cont.)

- | | |
|---|-------------------------------------|
| 97. Michael Dietrich
South Milwaukee | 98. Yanilka Diaz
Milwaukee |
| 99. Maria Alonso
St. Francis | 100. Juanita Rodriguez
Milwaukee |
| 101. Silvia Perez
Milwaukee | 102. Alanna Ashley
Milwaukee |
| 103. Carolyn Vandevyver | |

The following registered against the proposed rules:

1. Robert Alford, Vice-President Human Resources
Figi's
Mosinee
2. Charles Sanford, Retired GM worker
Janesville
3. Beverly Van Deurzen
Green Bay

Commenters requesting elimination of or modifications to special wage rates:

Minor rate

John Huebscher, Executive Director
Wisconsin Catholic Conference
Madison

Agricultural rate

Kevin Magee, Migrant Project Director
Legal Action of Wisconsin, Inc.
Madison

Camp counselor rate

Michael Blumenfeld, Executive Director
Wisconsin Jewish Conference
Madison

Jay Roth, President
Harry & Rose Samson Family Jewish Community Center
Milwaukee

Ron Levin, Executive Director
Camp Chi of Lake Delton
Jewish Community Centers of Chicago

Sid Slinger, Director
Camp Moshava of Wild Rose
Religious Zionists of Chicago and its youth affiliate Bnei Akiva of Chicago

Commenters requesting the creation of a task force to consider modifications to the subminimum wage guidelines:

Commenters listed as numbers 1 to 7 below also expressed support for the minimum wage increases in the proposed rules and are numbers 104 to 110 in the count of overall supporters.

1. Douglas Gruber, Director
Successful Work Options
Madison
2. Virginia Lloyd and other members
People First of Outagamie County
3. Dan Remick, President
People First of Wisconsin
4. Katie Eggleston
5. Amber Eggleston
6. Diane Burgette
People First of Richland County
7. Gerry Born, Chairperson
Wisconsin Council on Developmental
Disabilities
Madison
8. Cynthia Bentley, Specialist
People First of Wisconsin
Glendale
9. Siri Kasperson, Client
People First of Wisconsin
Ashland
10. Tina Viater, Client
People First of Wisconsin
Ashland
11. Suzette Doleshal, Client
People First of Wisconsin
Ironwood, MI
12. Shelley Hansen, Regional Director
REM Wisconsin
Portage
13. Eydie Penn, Director
MARC-South Center
Madison
14. Tom Hlavacek
Wisconsin Coalition for Advocacy
Milwaukee
15. Mike Daniel, Client
People First of Wisconsin
Washburn
16. Denise Swisron, Client
People First of Wisconsin
Ashland
17. Daire Keane
Greenfield
18. Donald Damm, Client
People First of Wisconsin
Washburn
19. Cathy Maccani
Wauwatosa
20. Jeffrey Johnson
Madison
21. Mary Clare Carlson
People First of Wisconsin
22. David Martinson, Client
People First of Wisconsin
Iron River
23. Lisa Gilson, Client and Membership Director
People First of Wisconsin
Minocqua
24. Jason Endres, Vice President
People First of Wisconsin
Eau Claire
25. Connie Pajac, Client
People First of Wisconsin
Ashland

The following commenters expressed concern with requiring a higher subminimum wage:

1. Jay Hein, Regional Services Director
Riverfront, Inc.
La Crosse
2. Nancy Wagner, Regional Services Director
Riverfront, Inc.
La Crosse
3. Kim Cable, Regional Services Director
Riverfront, Inc.
La Crosse
4. Ed Watson
Riverfront, Inc.
La Crosse
5. David Walker
Greendale

The following 60 individuals observed a hearing for information only:

Gary Steiner
Wisconsin Farm Bureau
Mondovi

Michael Surger
National Foundation of Independent Business
Oconomowoc

Lynn Scotch
Sentry Insurance
Plover

James Neuens
IBEW 158
Green Bay

Heather Niles
Mercy Health System
Janesville

Kimberly Porter
Harambee Ombudsman
Milwaukee

Joe Heyrman
Laborers Local 539
Denmark

Jackie Pavelski
Eau Claire Area Chamber of Commerce
Eau Claire

Carmen Santos
Milwaukee

Eric Janelke, Professor
Department of Economics
UW-Eau Claire
Eau Claire

Esmeralda Acevedo
Oak Creek

Carmen Santiago
Milwaukee

Magaly Amador
Oak Creek

Shirley Pitt
Milwaukee

Sylvia Orozco
Milwaukee

Nicole Folley
Milwaukee

Eric Bagley
UMOS
Milwaukee

Robert Webb
Beloit

Magdelana Ruiz
Milwaukee

Rudy Longaric
Milwaukee

Samuel Mikulu
UMOS
Milwaukee

Barbara Piquette
UMOS
South Milwaukee

Observers (cont.)

Lori Hall
Milwaukee

Celestine Nunn
Milwaukee

Judith Montoya
Milwaukee

Andrea Cowser
Milwaukee

Vivan Flores
Milwaukee

Rafael Carabello
Milwaukee

George Haramis
Milwaukee

Mary Granado
Milwaukee

Sheila Wilkerson
Milwaukee

Kathiria Valentin
Milwaukee

Beverly Newson
Milwaukee

Laura Jones
UMOS
Milwaukee

Frank Owens
Milwaukee

Ofelia Rodriguez
Milwaukee

Yinelis Arce
Milwaukee

Crystalee Bess
UMOS
Milwaukee

Chad Lamon
Milwaukee

Brenda Wiebel
Milwaukee

Lilian Lorenzo
Milwaukee

Francisca Carrillo
Milwaukee

Emily Kiley
Milwaukee

Ada Lopez Corbelo
Milwaukee

Huett Ballard
Milwaukee

Courtney Faver
Milwaukee

Delirien McClure
Milwaukee

Maria Martinez
Milwaukee

Adelaida Alvarez
Milwaukee

Vicky Jordan
UMOS
Milwaukee

Donald Leonard
Job Club
South Milwaukee

Stephanie Soto
Milwaukee

Barbara Wien
Janesville

Lois Prochnow
Menomonie

Observers (cont.)

Judith Mathews
Janesville

Annette Olmeda
Milwaukee

Joanne Becker
Janesville

Douglas Kranig
REACH, Inc.
Eau Claire

Shannon Campero
Oak Creek

Ian Dennis
Edgerton

Personal Testimony on the Need for a Minimum Wage Increase

Yolanda Wallace. She worked at a fast food restaurant for 7.5 years, five of them as a manager. In that job, she hired people of all different ages to work for minimum wage. They never got raises, and upper management told her to cut back their hours if they complained. Workers need an increase to meet their expenses. Even teens need to help out with expenses at home because their parents are not making enough to survive.

Ron McNeal. He is 48 years old and a Vietnam veteran. He finds it practically impossible to pay child support for his two children. His most recent job paid \$6.00 per hour with no overtime eligibility. He supports the minimum wage increase so he can better provide for his family.

Connie Smith. She has worked for a fast food restaurant for the past four years. The work is hard both physically and mentally, and work schedules are irregular and often split. Most of the workers are hired at minimum wage and may not get an increase the entire time they work there. Many co-workers are supporting families on this pay.

Lidaydra Linyard. She is a full-time student who works at minimum wage to help her mother with financial support. She has been promised a raise 6 times but it never happens. She feels that she won't get a raise unless the state raises the minimum wage, especially with 25 applicants for every job posting.

Lajuanda Reynolds. She is a student and lives with her mother, who is unemployed and has only child support income. She needs to work so she and her mother can pay bills. It would help if she could make more money per hour so she could work fewer hours and focus on her schoolwork more.

Sandra Novak. She had to go back on W-2 because she couldn't afford transportation when she was working.

Loc Truong. He has a child in his home and also pays child support for two other children. He earns \$6/hour. After the \$360/month child support is deducted, his take home pay averages \$92 a week. He supports a minimum wage increase because it is very difficult to carry on a daily life and provide enrichment for his children.

Support from Public Officials

Senator Dave Hansen (D-Green Bay) is a member of the Senate Labor Committee and is a strong supporter of increasing Wisconsin's minimum wage. He supported the proposed increases as a member of the Minimum Wage Advisory Council and sponsored an unsuccessful bill to increase the minimum wage to \$6.80/hour in the 2001-2002 legislative session. He was a member of the listening panel at the Green Bay hearing and also testified about the large disparity between the pay of executives and workers, the loss of buying power of the current minimum wage, and the difficulty individuals and families have in paying for increased costs of housing, health care, and fuel.

Representative Christine Sinicki (D-Milwaukee) is a member of the Assembly Labor Committee and is also a strong supporter of increasing the minimum wage. She supported the proposed increases as a member of the Minimum Wage Advisory Council and sponsored an unsuccessful bill to tie the minimum wage to the poverty threshold for a family of three in the 2003 legislative session. She was a member of the listening panel at the Milwaukee hearing along with Governor Jim Doyle, DWD Secretary Roberta Gassman, and Department staff.

Representative Johnnie Morris-Tatum (D-Milwaukee) testified that there is no more important issue than increasing the minimum wage. People who are willing and able to work should be paid a wage that allows them to meet their responsibilities. This is particularly important for W-2 moms.

Representative Lena Taylor (D-Milwaukee) registered her support at the Milwaukee hearing.

Eau Claire County Board Chair Bruce Willety heartily supports the proposed minimum wage increase. He is especially concerned about child care workers, who don't have a future in the field at the pay they often receive. This proposal is a good start. He is also especially concerned with Hmong refugees. The influx of refugees will have a significant impact on government services. Hmong refugees often must accept jobs at minimum wage, and they need to be able to support themselves at this wage.

Colleen Bates, Eau Claire County Board member and Chair of the Human Services Board, testified that wages are particularly low in the Eau Claire region. It is important for individuals leaving W-2 to receive pay that is enough to meet their needs, or they are off to a very wobbly start. Financial reward for work is an important first step to moving on.

Support from Labor

The following labor leaders served as members of the Minimum Wage Advisory Council and voted to support the proposed minimum wage increases:

- Sheila Cochran, Milwaukee, Secretary-Treasurer of the Milwaukee Labor Council
- Phil Neuenfeldt, Milwaukee, Secretary-Treasurer for the Wisconsin State AFL-CIO
- Dian Palmer, Madison, President of the Service Employees International Union
- Ann McNeary, Sun Prairie, Chair of the Standing Committee on Community Services of the AFL-CIO, Communications Workers of America 4671
- Jim Cavanaugh, Madison, President of the South Central Federation of Labor
- Dan Welch, Milwaukee, President of Local 1444 United Food and Commercial Workers

Milwaukee Labor Council. Sheila Cochran, Secretary-Treasurer and Minimum Wage Advisory Council member, testified that even though minimum wage workers are not generally union members, a minimum wage increase is an imperative for organized labor.

Service Employees International Union. Ten SEIU members registered support at the Milwaukee hearing, including Dian Palmer, President of Local 119W and Minimum Wage Advisory Council member. SEIU member Curtis Marshall testified that in his job as a public

health worker he now sees different people at food pantries than he did in the past. A minimum wage increase does not cause job loss; what is happening at the federal level causes the loss.

Greater Green Bay Labor Council. Mary Goulding, President, commented on behalf of the 8,000 workers that are represented by the AFL-CIO in the Green Bay area. She testified that although most the Labor Council's members make more than minimum wage, they support doing the right thing for all working people. Even a single person could not live on \$5.15/hour for a 40-hour work week. Raising the minimum wage will help local economies as the working poor immediately spend the money in their communities. We should respect and honor each worker. If you work hard and are responsible, you should not have to live in poverty.

North East Wisconsin Building Trades Council. Jeff Knaus, Business Representative, testified in support of the increase because it will help the state economy.

Support from Business

The following business leaders were members of the Minimum Wage Advisory Council and voted to support the minimum wage increases:

- James Buchen, Madison, Vice President of Government Relations for Wisconsin Manufacturers and Commerce
- Craig Culver, Prairie du Sac, Co-founder of Culver's Restaurants
- Ed Lump, Madison, President and CEO of the Wisconsin Restaurant Association
- Brandon Scholz, Madison, President and CEO of the Wisconsin Grocers Association
- Bill Smith, Madison, State Director for the Wisconsin Chapter of the National Federation of Independent Business
- Chris Tackett, Madison, Wisconsin Merchant Federation

Wisconsin Restaurant Association. Ed Lump, President, submitted a hearing comment affirming support for the proposed increases as approved by the Minimum Wage Advisory Council.

Wisconsin Innkeepers Association. Trish Pugal, President and CEO, submitted a comment expressing conditional support for the proposed increases, provided that legislation would first be passed that would prohibit any local minimum wage from being higher than the state minimum wage.

Department response: The Department has no control over whether such a provision will be passed by the legislature or signed by the Governor. Any such legislative agreement would clearly violate the logrolling prohibition in s. 13.05, Stats.

Midwest Food Processors Association. John Exner, President and Legal Counsel, commented that although his members prefer that the state minimum wage be no higher than the federal, the association is not opposing the increases in the proposed rule. The association also requests that the effective date of the first stage be a date certain, such as January 1 or April 1, 2005, or upon the effective date of promulgation, whichever is later. Also, the second stage of the increase should be one year after the effective date of phase one rather than October 1, 2005,

to better reflect the advisory committee position that the increase comes in predictable stages one year apart.

Department response: The Advisory Council recommendations are to implement the two phases of the increase on October 1, 2004, and October 1, 2005. The Department is attempting to comply with these recommendations as closely as possible within the limitations of the statutory process for promulgating administrative rules. The Department does not agree that it was the clear intent of the Advisory Council that the increases be one year apart regardless of the effective date of the first phase of the increase. Many members of the Council viewed the recommendations as too little and too late but compromised to ensure business and legislative support and timely implementation of the recommendations. If legislative opposition delays implementation of the first phase, the Department does not want to compound this breakdown of the underpinning of the compromise by requiring an arbitrary time period between the two phases of the increase.

Two small business representatives spoke in support of the minimum wage increases. Dan Aude, owner of a spa and salon, testified that his business pays more than minimum wage and could not attract good employees at the current minimum wage. He supports a living wage and this increase is a first step toward that. Carmen Behringer, director of a child care center, supports the increase because families she sees in her business need the extra pay to meet expenses and increase their self-esteem.

One large business representative spoke against the minimum wage increase. A summary of the comments of Robert Alford, Vice-President of Human Resources for Figi's in Marshfield, is in the section entitled "opposition to the minimum wage increase" on page 19.

Support from Research and Advocacy Organizations

Institute for Wisconsin's Future. Kathleen Mulligan-Hansel, Director of the Working Families Project, testified that raising Wisconsin's minimum wage is a proposal that is long overdue.

- Since the late 1970s, the percentage of working families with children that are poor has almost doubled.
- Wisconsin has one of the nation's highest percentages of female labor-force participation, yet women's wages in this state lag behind other states. Raising the minimum wage is one step toward gender equity for workers.
- Raising the minimum wage is critical to ensure that poor families moving into the workforce due to welfare reform have a strong foundation to support their families. The most recent data on the earnings of W-2 participants in Milwaukee shows that their annual wages amount to about \$5,000 a year.
- Workers with children often rely on state- and federally-funded support programs to make ends meet when their earnings are low. IWF research shows that a single parent with two children who makes minimum wage is eligible for almost \$2,000 a month in the form of food stamps, BadgerCare, and child care subsidies. This means that Wisconsin taxpayers are picking up the slack when the wages paid by employers do not keep up with the cost of living.

Wisconsin Council on Children & Families. Robert Andersen, Legislative Director, submitted detailed comments with many statistics in support of increasing the minimum wage. The highlights of his comments include the following:

- In the 1950s and 1960s, the minimum wage averaged 50% of average hourly earnings. The minimum wage is now only 33% of average hourly earnings, its lowest level in more than 50 years.
- A minimum wage increase reduces the problems of poverty. An increase in the minimum wage especially important for Wisconsin Works (W-2) to succeed. Workers who have left W-2 have new expenses for clothing, food, and transportation that make an adequate wage vitally important for them. A 2001 report found that two-thirds of the adults who left W-2 had filed income taxes, and only 46.7% of those individuals had an income above the poverty line. Also, data on housing affordability in Wisconsin shows that a full-time worker must earn \$11.63/hour to afford a two-bedroom apartment. This is 226% of the current \$5.15/hour minimum wage.
- The Earned Income Tax Credit (EITC) combined with the minimum wage helps to reduce poverty, but the EITC is not a replacement for a minimum wage increase. The EITC is designed so that the amount of the credit rises as earnings from work rise. Since the eligibility threshold for EITC is adjusted annually for inflation while the minimum wage is not, a single mother with two children working full-time at \$5.15/hour would no longer be eligible for the maximum EITC beginning in 2005. In addition, the EITC is funded by taxpayers who are subsidizing employers that pay wages below the poverty line.
- Most minimum wage workers are adults from lower-income families, and their wages are a major source of their families' earnings. They are not typically teenagers and young adults. Forty-seven percent of minimum wage workers in Wisconsin are over the age of 25.
- A minimum wage increase will help rectify the inequities that exist for women and minorities. In Wisconsin, nearly two out of every three minimum wage workers are women and a larger than proportionate share are minorities.
- Raising the minimum wage will not result in job losses, including employment in small business.
 - A comprehensive examination of minimum wage increases in all 50 states and the District of Columbia over a period of 19 years found no statistically significant relationship between the value of the minimum wage and employment growth in industries reliant on low wage workers.
 - Research following the 1996-97 increase found that the weight of the evidence suggests that the modest increase in the minimum wage had very little or no effect on employment.
 - Research following the 1990-91 increase, while the economy was in a recession, also showed no negative effects on employment generated by the increase.
 - Recent research found that the number and size of small businesses grew more in the states with minimum wages higher than the federal rate than in other states in the period from 1998 to 2004.
 - An opponent of increasing the minimum wage has stated it is perhaps no coincidence that the three states with the highest minimum wages in the nation—Oregon, Washington, and Alaska—are among the five states with the highest unemployment

in the nation. A recent study refutes this allegation of causation by showing that the high unemployment rates in these states are the result of growth in the labor force and severe decline in manufacturing employment and not layoffs of minimum wage workers.

UWM Center for Economic Development. Pamela Fendt, Policy Analyst, commented on the proposed changes as they relate to welfare reform and current local labor market realities.

- Parents who seek help from W-2 are generally often only qualified for jobs at or near the minimum wage. Welfare reform promises that families will be better off working. Full-time work at an hourly wage of \$7.53 is necessary just to meet the poverty threshold for a family of three. There is a structural problem with a labor market where minimum wage jobs keep a family in poverty.
- The occupations that will offer the greatest number of job openings in the metro Milwaukee area in the coming years are retail salespersons, food preparers and servers, cashiers, and waiters and waitresses. The living situation for these workers and their families will be greatly improved by raising the minimum wage. The overall economy will also benefit as these workers spend their increased earnings.

Women and Poverty Public Education Initiative. Jean Verber, Administrative Coordinator, testified that many low-wage workers are reluctant to make their stories public in fear that they may lose the little they do get. The situation is exacerbated because there is a scarcity of jobs in central Milwaukee and families struggling to get off welfare as they face time limits. Every person who works should earn enough to access the basic necessities of life.

Support from Human Service and Advocacy Organizations

Social Development Commission. Deborah Blanks, CEO and Minimum Wage Advisory Council member, testified on the importance of a viable job with viable wages so everyone has the opportunity to pursue the American dream. We must value family and hardworking people and reward those with a strong work ethic.

9 to 5, National Association of Working Women. Ellen Bravo, Director, testified that although the proposed raise isn't much, a little help matters. It will help people catch up with some of what has been lost due to inflation.

Amy Stear, organizer for 9 to 5's Poverty Network Initiative, commented on the problems of women she meets who are employed in minimum wage jobs. She meets them in free meal lines, food pantries, school supply giveaways, food stamp offices, and clothing banks. The women are rarely able to become active in 9 to 5's efforts to ensure families living in struggle have input into policies that affect them because they are overwhelmed just trying to survive on \$5.15/hour. A minimum wage increase won't be a major change for these women but the small changes will make a difference in the quality of life for their families.

Legal Action of Wisconsin, Inc. Pat DeLessio, Attorney, commented on the importance of increasing the minimum wage to help what's been lost due to inflation and help families meet their expenses. Increased wages may decrease reliance on taxpayer-funded programs such as W-2, food stamps, and child care. She also provided examples of LAW clients facing utility disconnection and eviction while earning slightly above the current minimum wage.

New Hope Project. Kenneth Evans on behalf of Julie Kersick, Executive Director, testified on the difficulty their clients face paying child support and meeting expenses as they are trying to get out of poverty through work. The minimum wage has not increased in 7 years while prices have grown.

Will Altizar of New Hope-Racine also testified in support.

Poverty Response Team of Rock County. Sheila Deforest-Davis, Chair, represents a coalition of 30 plus members who are human service providers, educators, professionals, clergy, and community members. She testified on the importance of a livable wage, particularly given the philosophy of W-2 that people need to work. The self-sufficiency standard in the Janesville/Beloit area is \$6.51/hour for a single adult and \$12.91/hour for a single adult with an infant. She supports the increase and is pleased with the Governor's proposal.

Menomonie Area Bread for the World. Julie McNaughton, Coordinator, testified in support of increasing the minimum wage as an important step in ending hunger. Recent statistics from a local food pantry show double the use over the previous year with significant numbers of working people. The state's loss of manufacturing jobs and increase in service and retail jobs makes the minimum wage more important than ever.

CAP Services of Stevens Point. Mary Patoka, Vice-President, commented on the demoralization some workers feel as they lose manufacturing jobs and are forced to accept minimum wage work. The value of the minimum wage has decreased due to inflation and studies show that increasing the minimum wage causes no significant loss of jobs.

Milwaukee Fatherhood Collaborative. Francis Vogel, Coordinator, commented that MFC highly supports the proposed increase because it will better enable working fathers to help themselves and their families.

Children's Service Society of Wisconsin. Jeff Sargent, Area Supervisor, works with W-2 participants in Marathon County and supports the increase because he sees families not meeting their housing, child care, and transportation needs. They also often struggle with medical issues. Many do not have many skills and will remain in these jobs, so any minimum wage increase will help them support their own families better.

Marathon County Job Center. Blong Moua, Employment Counselor, works with Asian and Hispanic families who have minimum wage jobs. He supports an increase because some of his clients are working 3 jobs and still having difficulty supporting their families.

Support from Faith-Based Organizations

Wisconsin Catholic Conference. John Huebscher, Executive Director, supports an increase as it is consistent with the tenets of Catholic social teaching on the dignity of workers, the principles of welfare reform, and the needs of low-wage workers.

- The value of work is grounded in the dignity of the human beings who do it. Every worker has dignity, and wages are a critical way by which we recognize that dignity. Dignity of work flourishes best when grounded in the responsibility to provide for one's own needs and the needs of family through a living wage.
- The responsibility to treat workers justly includes employers, institutions that influence conditions of work, and individuals who contribute to economic conditions as indirect employers. Seventy-five percent of our minimum wage workers are in the leisure and hospitality industry. Pay for Wisconsin workers in the accommodations and food sector of this industry is almost the lowest in the country. As consumers of these leisure services, we have an obligation to these workers.
- If society tells the poor they must work and then refuses to insist that they receive a just wage for their work, the welfare reform principle that "only work should pay" will ring hollow and fail a basic test of social justice.

Interfaith Conference of Greater Milwaukee. Marcus White, Executive Director, testified that there should be fair and just wages that don't require people to rely on charity as a wage supplement.

Heidi Rattner, Director of Justice Programs, expressed strong support for the increase because:

- Every person is endowed with inherent dignity. Every worker should receive decent wages that recognize the need to support oneself and one's family and that recognize the worker's dignity.
- Minimum wage has not increased for many years, yet costs for most living essentials has gone up. Food pantries and meal programs are becoming a regular part of necessary budgeting for working families. We should be shocked by this.

Catholic Conference for Human Development. Celia Jackson, Director, testified on the importance of caring for people. The proposed increase is not enough.

Faith Community for Worker Justice. William Lange, Board member, testified on the importance of leading a dignified life. We should be advocating for a living wage, but he appreciates the increase that is proposed.

Milwaukee Innerscity Congregations Allied for Hope. Laura Manriquez, representing MICAHA and herself, testified about the long struggle it took her to get where she is now, and she does not forget where she came from. We are our brother's keeper. Gilbert Vazquez, representing MICAHA and himself, testified about how hard it is to get a raise and how much it is needed as he is the father of 5 children.

Milwaukee Interfaith Congregational Action Committee. Keith Schmitz, Board member, registered support.

Tippecanoe Presbyterian Church. Rev. Karen Hagen, Pastor, registered support.

Support from Other Individuals

Laura Dresser, Economist and member of the Governor's Minimum Wage Advisory Council, supports the proposed increase and hopes that these rule changes will be rapidly approved by the legislature so some 200,000 low-wage workers can get a raise.

- The federal minimum wage is at its lowest inflation-adjusted value of all time.
- Increasing the minimum wage honors and affirms the value of work and puts money directly in the hand of the low-wage workers who need the reward. The increase will also help strengthen their families and their communities.
- There is no reasonable study of the effects of minimum wage increases that shows substantial job loss.

Vicki Strattner has been a meal program volunteer for 20 years. She is surprised at the number of men coming from work and doesn't believe they would stand in line on cold nights if they had a better alternative. Working people should not have to rely on the kindness of others to have a nutritious meal.

Betsey Swenson testified in support because she is interested in justice for her community.

August Stellberg testified in support because he has compassion for workers serving him who live on minimum wage.

Donald Seidel testified that an increase is desperately needed. He can't imagine how people raise a family on this wage.

Sue Boehm commented in support because it is important to support low-wage workers, and other states have already increased their minimum wage.

Ann Evansen commented in support because it is important to help people get out of the cycle of poverty. Being able to support yourself and your family increases the dignity of work and self and reduces the need for public assistance. Increased costs of higher education means students are working more. This increase will help them improve themselves.

Carolyn Vandevyver commented in support because she doesn't know how poor families live on the current minimum wage.

Other

Community Alliance of Providers of Wisconsin. Richard Berling, Legislative Committee Chair, represents organizations that provide vocational and residential services to 4,500 citizens with developmental disabilities throughout Wisconsin. Member organizations are generally 100% funded by state and county purchase-of-service contracts. CAPOW supports an increase in the minimum wage, but increased public funding will be required to pay for it.