

CR 90-258

# RULES CERTIFICATE

STATE OF WISCONSIN )  
 ) SS  
DEPT. OF INDUSTRY, )  
LABOR & HUMAN RELATIONS)

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Revisor of Statutes  
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TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETINGS:

I, Carol Skornicka, Secretary of the Department of Industry, Labor and Human Relations, and custodian of the official records of said department, do hereby certify that the annexed rule(s) relating to overtime exemptions for state and local governments were duly (Subject) approved and adopted by this department on August 5, 1991. (Date)

I further certify that said copy has been compared by me with the original on file in this department and that the same is a true copy thereof, and of the whole of such original.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the official seal of the department at 9:00 a.m. in the city of Madison, this 5th day of August A.D. 1991.

[Signature]  
Secretary

# ORDER OF ADOPTION

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Pursuant to authority vested in the Department of Industry, Labor and Human Relations by section(s) 101.02(1) and 103.02,

Stats., the Department of Industry, Labor and Human Relations  creates;

amends;  repeals and recreates;  repeals and adopts rules of Wisconsin Administrative Code chapter (s):

Ind 74 Hours of Work and Overtime  
(Number) (Title)

The attached rules shall take effect on the first day of the month following  
publication in the Wis. Adm. Register pursuant to section  
227.22, Stats.

Adopted at Madison, Wisconsin, this

date: August 5, 1991

DEPARTMENT OF INDUSTRY, LABOR AND HUMAN  
RELATIONS

K. C. W. for Carol Skonieczka  
Secretary

Tommy G. Thompson  
Governor  
Carol Skornicka  
Secretary



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## State of Wisconsin Department of Industry, Labor and Human Relations

August 5, 1991

Gary Poulson  
Assistant Revisor of Statutes  
2nd Floor  
119 Martin Luther King Blvd.  
Madison, Wisconsin 53703

Douglas LaFollette  
Secretary of State  
10th Floor  
30 West Mifflin Street  
Madison, Wisconsin 53703

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Dear Messrs. Poulson and LaFollette:

### TRANSMITTAL OF RULE ADOPTION

CLEARINGHOUSE RULE NO. 90-258  
RULE NO. Ind 74  
RELATING TO: Overtime Exemptions for State and Local Governments

Pursuant to section 227.20, Stats., agencies are required to file a certified copy of every rule adopted by the agency with the offices of the Secretary of State and the Revisor of Statutes.

At this time, the following material is being submitted to you:

1. Order of Adoption.
2. Rules Certificate Form.
3. Rules in Final Draft Form.

Pursuant to section 227.114, Stats., a summary of the final regulatory flexibility analysis is included for permanent rules. A fiscal estimate and fiscal estimate worksheet is included with an emergency rule.

Respectfully submitted,

  
Carol Skornicka  
Secretary



# RULES in FINAL DRAFT FORM

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Rule: Ind 74

Relating to: Overtime Exemptions for State and Local  
Governments

TEXT OF PROPOSED RULE

Pursuant to the authority vested in the Department of Industry, Labor and Human Relations under secs. 101.02(1) and 103.02, Wis. Stats., the Department of Industry, Labor and Human Relations hereby proposes a rule to create sec. Ind 74.08, Wis. Adm. Code, and to amend secs. Ind 74.015 and Ind 74.03, Wis. Adm. Code.

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Analysis

1989 Wisconsin Act 225 amended the state laws on the minimum wage and hours of labor to include the state and its political subdivisions within the definition of "employer". Before this act, state and local employes were subject to the federal Fair Labor Standards Act on minimum wage and overtime issues but were not covered by the state law.

This rule amends the state rules on overtime to reflect the inclusion of the state and its political subdivisions as employers. It also creates a provision adopting into the state overtime rules the policies currently applied to public employes under the federal Fair Labor Standards Act. This will have the effect of continuing the allowance of "compensatory time" as a system of overtime compensation for public employes and recognizing the same exceptions to overtime requirements as are allowed by the federal law.

In addition, the note at the beginning of ch. Ind 74, Wis. Adm. Code, will be amended to reflect the coverage of the state and its political subdivisions.

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SECTION 1. Ind 74.015 is amended to read:

Ind 74.015 Pursuant to s. 103.01(1), Stats., employes employed in manufactories, mechanical or mercantile establishments, beauty parlors, laundries, restaurants, confectionary stores, telegraph or telephone offices or exchanges or express or transportation establishments, and hotels, and by the state, its political subdivisions and any office, department, independent agency, authority, institution, association, society or other body in state or local government created or authorized to be created by the constitution or any law, including the legislature and the courts, are covered by this chapter. Employes employed in farming, as defined in s. 102.04(3), Stats., or in domestic service in household are not subject to this chapter.

SECTION 2. Ind 74.03 is amended to read:

Ind 74.03 ~~Each~~ Except as provided in s. Ind 74.08, each employer subject to ~~ch. Ind 74 this chapter~~ shall pay to each employe time and one-half their regular rate of pay for all hours worked in excess of 40 hours per week. ~~Except in restaurants time and one-half the regular rate of pay shall be paid for all hours worked in excess of 44 hours per week. Effective January 1, 1982, in excess of 42 hours per week. Effective January 1, 1983, in excess of 40 hours per week.~~

SECTION 3. Ind 74.04 (intro.) is amended to read:

Ind 74.04 (intro.) ~~Each~~ Except as provided in s. Ind 74.08, each employer subject to ch. Ind 74 shall be exempt from the overtime pay requirements in s. Ind 74.03 and these exemptions shall be interpreted in such a manner as to be consistent with any-comparable the Federal Fair Labor Standards Act and the Code of Federal Regulations as amended, relating to the application statute-or-regulation of that act to all issues of overtime in respect to the following employees:

SECTION 4. Ind 74.05 is amended to read:

Ind 74.05 Except as provided in s. Ind 74.08, the department may consider Upon the written application of labor and management for a waiver or modification to the requirements of ~~ch. Ind-74,~~ this chapter based upon practical difficulties or unnecessary hardship in complying therewith, If the department determines that in the circumstances existing compliance with ~~ch. Ind-74~~ this chapter is unjust or unreasonable and that granting such waiver or modification will not be dangerous or prejudicial to the life, health, safety or welfare of the employes, the department may grant such waiver or modification as may be appropriate to the case.

SECTION 5. Ind 74.06 is amended to read:

Ind 74.06 ~~Each~~ Except as provided in s. Ind 74.08, each employer shall keep permanent records for at least 3 years, available for inspection and transcription by a duly authorized deputy of the department, showing the name and address of each employe, the hours of employment and wages of each and such other records as the department may require.

SECTION 6. Ind 74.08 is created to read:

Ind 74.08 COVERAGE OF PUBLIC EMPLOYES. (1) This section applies to employes of the state, its political subdivisions, and any office, department, independent agency, authority, institution, association, society or other body in state or local government created or authorized to be created by the constitution or any law, including the legislature and the courts.

(2) The provisions of ss. Ind 74.03 through 74.06 regarding overtime pay, exemptions, and records shall not be applicable to employes identified in (1). The provisions applicable to employes identified in (1) shall be the provisions of the federal Fair Labor Standards Act, 29 CFR Part 553, the regulations of the U.S. Department of Labor relating to the application of the Act to employes of state and local governments, and other federal regulations relating to the application of the Act to overtime issues affecting employes of state and local governments.

(3) Where there is a valid collective bargaining agreement in effect as of December 18, 1990, the provisions of this chapter shall not become effective for employes identified in sub. (1) until one day after expiration of the collective bargaining agreement, unless it is otherwise modified prior to expiration.

SECTION 8. EFFECTIVE DATE. This rule shall take effect on the first day of the month following publication in the Wisconsin administrative register as provided in s. 227.22(2)(intro.), Stats.