

Chapter Ind 72

MINIMUM WAGES

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Note: Chapter Ind 72 as it existed on July 31, 1978 was repealed and a new chapter Ind 72 was created effective August 1, 1978.

Ind 72.001 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) It is the determination of the department that the consumer's price index prepared by the U. S. department of labor, in spite of its limitations, is the best index available for keeping a "living wage rate" reasonably up to date.

(3) The rates adopted in this chapter reflect compensation that has been determined to be adequate to permit any employe to maintain herself or himself in minimum comfort, decency, physical and moral well-being.

(4) The minimum hourly rate for employes in agriculture 18 years of age and over shall be computed on the basis of 20 cents per hour less than the rates for employes 18 years of age and over in nonagriculture as provided in section Ind 72.03 (1), Wis. Adm. Code.

(5) Minors 17 years of age and under:

(a) The minimum hourly rate for minors 17 years of age and under in both agriculture and nonagriculture shall be computed on the basis of 35 cents per hour less than the minimum rates for employes 18 years of age and over.

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

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

Ind 72.01 Definitions. As used in this chapter:

Register, July, 1978, No. 271
Labor Standards

(1) "Agriculture" will mean the same as "farm premises" as defined in section 102.04 (3), Wis. 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) "Department" means the department of industry, labor and human relations.

(4) "Employer." (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.

(5) "Evaluation program" means a program of not more than 6 months duration, except that longer periods may be approved in unusual circumstances, using the medium of work to determine a client's potential, and which meets the department of health and social services, division of vocational rehabilitation or equivalent standards.

(6) "Handicapped worker" means an individual whose earning capacity is impaired by age, or physical, mental, or social disability.

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

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

(9) "Sheltered workshop" means 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.

(10) "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.

(11) "Sheltered workshop training program" means a program of not more than 12 months duration designed to (a) develop the patterns of

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 employe 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 employes 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 employe must receive tips "customarily and regularly" in the occupation in which they are engaged in order to qualify as a tipped employe. If it is known that they always receive more than the stipulated amount each month, as may be the case with many employes in occupations such as those of waiters, waitresses, bellhops, taxicab drivers, barbers, or beauty operators, the employe will qualify and the tip credit provisions of section Ind 72.03 may be applied. On the other hand, an employe 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 employe. The phrase "customarily and regularly" signifies a frequency which must be greater than occasional, but which may be less than constant. If an employe is in an occupation in which they normally and recurrently receive tips, they will be considered a tipped employe 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 employe as allowable under section Ind 72.03 (2) (a) 1. or 2. by an employer is deemed to be increased on account of tips to equal the minimum wage applicable under section Ind 72.03 (1) (a) or (b) to such employe 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 section Ind 72.03. The credit allowed on account of tips may be less than the difference between the applicable minimum wage and the rate for a tipped employe; it cannot be more.

2. It is presumed that in the application of this special provision the employe will be receiving at least the maximum tip credit in actual tips: "If the employe is receiving less than the amount credited, the employer is required to pay the balance so that the employe 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 employe the full minimum hourly wage, since for all practical purposes the employe is not receiving tip income.

(h) *Overtime payments.* When overtime is worked by a tipped employe who is subject to the overtime pay of chapter Ind 74, 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 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 chapter Ind 74.

(3) **ALLOWANCE FOR BOARD AND LODGING.** Where board or lodging or both are furnished by the employer in accordance with section Ind 72.04, Wis. Adm. Code, and accepted and received by a particular employee, an allowance may be made not to exceed the following amounts:

	EFFECTIVE 8-1-78	EFFECTIVE 1-1-79	EFFECTIVE 1-1-80	EFFECTIVE 1-1-81
(a) Lodging—adults 18 years of age and over	\$20.40 per week or \$2.90 per day	\$22.40 per week or \$3.20 per day	\$24.00 per week or \$3.45 per day	\$26.00 per week or \$3.70 per day
minors 17 years of age and under	\$17.60 per week or \$2.50 per day	\$19.60 per week or \$2.80 per day	\$21.20 per week or \$3.05 per day	\$23.20 per week or \$3.30 per day
(b) Meals—adults 18 years of age and over	\$30.60 per week or \$1.45 per meal	\$33.60 per week or \$1.60 per meal	\$36.00 per week or \$1.70 per meal	\$39.00 per week or \$1.85 per meal
minors 17 years of age and under	\$26.40 per week or \$1.25 per meal	\$29.40 per week or \$1.40 per meal	\$31.80 per week or \$1.50 per meal	\$34.80 per week or \$1.65 per meal

(4) **BOARD AND LODGING, VALUE.** Where board, lodging or other necessities of life, are furnished by the employer, in accordance with section Ind 72.04, Wis. Adm. Code, 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.

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

Ind 72.04 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.

behavior which will help a client adjust to a work environment, or (b) 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.

(12) "Work activity center" means 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.

(13) 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.

(14) "Tipped employe" means any employe 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.

Ind 72.02 Applicability of orders. (1) The rates prescribed in this chapter shall apply to all employes, 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.

Ind 72.03 Minimum rates. (1) **MINIMUM RATES.** Except as provided for in sections Ind 72.05 through Ind 72.09, Wis. Adm. Code, no employer shall employ any employe in any occupation, trade, or industry at a lesser hourly rate than is indicated below:

	EFFECTIVE 8-1-78	EFFECTIVE 1-1-79	EFFECTIVE 1-1-80	EFFECTIVE 1-1-81
(a) Adult employes 18 years of age and over:	\$2.55 per hr.	\$2.80 per hr.	\$3.00 per hr.	\$3.25 per hr.
(b) Minors 17 years of age and under:	\$2.20 per hr.	\$2.45 per hr.	\$2.65 per hr.	\$2.90 per hr.

(2) **TIPS.** Where tips or gratuities are received by the employe from patrons or others, the employer may pay the following minimum wage rates, providing the employer can establish by their 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 section Ind 72.03 (1), Wis. Adm. Code, was received by the employe.

(a) *Minimum rates for tipped employes:*

	EFFECTIVE 8-1-78	EFFECTIVE 1-1-79	EFFECTIVE 1-1-80	EFFECTIVE 1-1-81
1. Adult employes 18 years of age and over:	\$1.80 per hr.	\$1.85 per hr.	\$1.90 per hr.	\$1.95 per hr.
2. Minors 17 years of age and under:	\$1.50 per hr.	\$1.55 per hr.	\$1.60 per hr.	\$1.65 per hr.

(b) *Burden of proof.* 1. When the employer elects to take tip credit the employer must have a tip declaration signed by the tipped employe 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 employe. 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 employe 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 employe 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 employe."

2. In addition to cash sums presented by customers which an employe keeps as their own, tips received by an employe include, amounts paid by bank check or other negotiable instrument payable at par and amounts transferred by the employer to the employe 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 employe.

(d) *Tip pooling.* Where employes 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 employes.

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

(c) Employer must pay all employes 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 employe 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.

(2) Lodging means living accommodations which are adequate, decent and sanitary, according to usual and customary standards. Employes 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 employe that would result in the employe receiving less than the prescribed minimum rate.

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

Ind 72.05 Agriculture. (1) **MINIMUM RATES.** The minimum wage of employes employed in agriculture shall be as follows:

	EFFECTIVE 8-1-78	EFFECTIVE 1-1-79	EFFECTIVE 1-1-80	EFFECTIVE 1-1-81
(a) Adult employes 18 years of age and over:	\$2.35 per hour	\$2.60 per hour	\$2.80 per hour	\$3.05 per hour
(b) Minors 17 years of age and under:	\$2.00 per hour	\$2.25 per hour	\$2.45 per hour	\$2.70 per hour

(2) **ALLOWANCE FOR BOARD AND LODGING.** Where board or lodging or both are furnished by the employer in accordance with section Ind 72.04, and accepted and received by the employe, an allowance may be made not to exceed the following amounts:

(a) Lodging—adults 18 years of age and over:	\$18.80 per week or \$2.70 per day	\$20.80 per week or \$2.95 per day	\$22.40 per week or \$3.20 per day	\$24.40 per week or \$3.50 per day
minors 17 years of age and under:	\$16.00 per week or \$2.30 per day	\$18.00 per week or \$2.55 per day	\$19.60 per week or \$2.80 per day	\$21.60 per week or \$3.10 per day
(b) Meals—adults 18 years of age and over:	\$28.20 per week or \$1.35 per meal	\$31.20 per week or \$1.50 per meal	\$33.60 per week or \$1.60 per meal	\$36.60 per week or \$1.75 per meal
minors 17 years of age and under:	\$24.00 per week or \$1.15 per meal	\$27.00 per week or \$1.30 per meal	\$29.40 per week or \$1.40 per meal	\$32.40 per week or \$1.55 per meal

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

Ind 72.06 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 employe 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 section Ind 72.03. Employers may take credit for board and lodging as prescribed by section Ind 72.03 (3). Record keeping requirement provided in Ind 72.11 shall apply.

(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 section Ind 72.03 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 section Ind 72.03. 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 employes when employed in or about a private household.

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

Ind 72.07 Seasonal recreational or educational camps. (1) **MINIMUM RATES.** The minimum wage of all employes employed in seasonal recreational or educational camps and day camps, except counselors, shall be computed on an hourly basis as prescribed in section Ind 72.03 (1), Wis. Adm. Code.

(2) **ALLOWANCE FOR BOARD AND LODGING.** Where board or lodging or both are furnished by the employer in accordance with section Ind 72.04, Wis. Adm. Code, and accepted and received by the employe, an allowance may be made not to exceed the amounts specified in Ind 72.03 (3), Wis. Adm. Code.

(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:

	EFFECTIVE 3-1-80 PER WEEK	EFFECTIVE 1-1-81 PER WEEK
1. If board and lodging are not furnished	\$115.00	\$125.00
2. If board only is furnished	\$88.00	\$98.00
3. If board and lodging are furnished	\$71.00	\$81.00

(b) Counselors 17 years of age and under:

	EFFECTIVE 3-1-80 PER WEEK	EFFECTIVE 1-1-81 PER WEEK
1. If board and lodging are not furnished	\$100.00	\$110.00
2. If board only is furnished	\$73.00	\$82.00
3. If board and lodging are furnished	\$56.00	\$66.00

(4) **RECORDS.** Seasonal recreational or educational camps and day camps will not have to keep the daily and weekly time records required by Ind 72.11 (1) (d), (e), and (f), Wis. Adm. Code, for counselors employed and paid on a weekly basis.

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

(a) A "seasonal 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 "seasonal 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, spiritual 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 "seasonal recreational or educational camp" or "seasonal 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.

Ind 72.08 Caddies. (1) The minimum wage of employes employed as caddies shall be:

EFFECTIVE 3-1-80
\$3.00 9 holes
\$5.30 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.

Ind 72.085 Independent colleges and universities. (1) Independent colleges and universities may employ full-time students 18 years of age and over 20 hours per week at the established Federal Fair Labor Standards Act rates.

(2) All hours worked over 20 hours per week must be paid for at the rates established under Wis. Adm. Code section Ind 72.03.

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

Ind 72.09 Subminimum wage licenses. (1) **SHELTERED WORKSHOPS.** Licenses may be issued for: the entire workshop, a department of the workshop, a work activities center, a training or evaluation program, and an individual handicapped worker or any combination thereof.

(a) *Application for a workshop license.* 1. Applications for licenses may be filed with the department.

2. The application shall contain answers to all questions presented on the form supplied by the department, including among other things, a description of the nature of the disabilities of the persons served by the workshop, a description of the type of employment and the programs and services provided by the workshop.

3. The application shall be signed by the president of the board of directors and by a duly authorized officer of the workshop.

(b) *Renewal of license.* Applications for renewal shall be filed 30 days prior to the expiration date.

(c) *Criteria for issuance of a license.* 1. The following criteria may be considered by the department in determining the necessity of issuing a license and the conditions to be specified therein.

a. The present and previous earnings of handicapped workers of the workshop.

b. Whether the individual handicapped workers are being paid wage rates commensurate with those paid nonhandicapped workers in industry in the vicinity for essentially the same type, quality and quantity of work.

c. The nature and extent of the disabilities of individuals served by the workshop.

d. The types and duration of medical, educational, therapeutic, social work, and other rehabilitative services given to handicapped workers.

e. The extent to which the handicapped workers share, through wages, in the receipts for work done in the workshop.

f. The extent to which the handicapped workers may be learners or in other ways inexperienced.

g. The extent to which earned operating income, other than normal depreciation allowances, is used for capital expenditures for equipment, buildings or expansion of activities in situations where the adequacy of the wage rates proposed by the workshop cannot clearly be established.

h. Whether there exists any workshop/customer arrangement or sub-contract agreement which constitutes an unfair method of competition in commerce and which tends to spread or perpetuate substandard wage levels.

i. Whether, in the case of nongovernment operated workshops, the organization has obtained an exemption under section 501 (c) (3) of the internal revenue code of 1954 [26 U.S.C. 501 (c) (3)] and has registered as a nonprofit organization with the appropriate state or local agencies providing for such registration.

2. In addition, the following criteria will be considered in determining the advisability of issuing a special certificate for a training or evaluation program.

a. Whether there is competent instruction or supervision.

b. Whether there is a written curriculum or job description or plan of procedures designed to obtain the objectives of the program for the individuals.

c. Whether there are written records made at periodic intervals of not more than 3 months, showing progress of individual clients, and,

d. Whether in the case of a training program, there is a provision for rate increases as the trainee advances through the steps of the program.

(d) *Terms and conditions of license.* 1. The license shall specify the terms and conditions under which it is granted.

2. The license shall apply to every handicapped worker in the workshop or department thereof, for which the license is granted.

3. The license shall be effective for the period designated thereon. Handicapped workers may be paid wages lower than the rates prescribed in section Ind 72.03 only during the effective period of the license.

4. Except for licenses for work activities centers and for training or evaluation programs, and unless a lower special individual wage has been authorized, the license shall provide a minimum wage, or different minimum wages for different departments, but none of them shall be less than 50% of the rates prescribed in section Ind 72.03.

5. A license issued to a work activities center or for a training or evaluation program need not set a minimum rate except the rate paid must be commensurate with the individual's ability as provided under paragraph (d) 6. and 7. of this section.

6. The wage rates paid handicapped workers working at time rates shall be commensurate with those paid nonhandicapped workers in the vicinity in industry maintaining approved labor standards for essentially the same type, quality, and quantity of work.

7. The wage rates paid handicapped workers working at piece rates shall not be less than the prevailing piece rates paid nonhandicapped employes in the same work in the vicinity in industry maintaining approved labor standards. In the absence of industry piece rates, time studies or other tests may be used by the workshop to establish piece rates. Such time studies should be made with nonhandicapped persons, although handicapped workers may be used in those situations where they are not handicapped for the type of work being tested and their production is comparable to that of nonhandicapped persons of minimum ability. The base hourly rate used in making time studies must not be less than the prevailing rate in industry for work requiring similar skill. Each handicapped worker working at piece rates must be paid their full piece rate earnings. Pooling of earnings is not permitted except where piece rates cannot be established for each individual worker, in a team operation where each worker's individual contribution to the finished product cannot be separately tallied.

8. An individual license may provide a lower minimum rate for a handicapped worker unable to earn the workshop or applicable department minimum rate. Such individual minimum rates may not be set at less than 50% of the rates in section Ind 72.03, except for a handicapped

worker whose earning capacity is so severely impaired that they are unable to engage in competitive employment. The individual minimum rate for a handicapped worker so certified may not be less than 25% of the minimum rates in section Ind 72.03.

9. The workshop may not compete unfairly in obtaining subcontract work or in the sale of its products.

10. The terms of any license may be amended for cause, upon request of the workshop, handicapped worker, or upon the initiative of the department.

(e) *Records to be kept.* Every workshop shall maintain for 3 years, and have available for inspection by the department, records of:

1. Disability, which shows the nature of the handicapped worker's disability. Disabilities must be substantiated by medical or psychiatric reports or results of psychological tests, as appropriate.

2. Productivity, which shows the productivity of each handicapped worker on a continuing basis or at periodic intervals not exceeding 6 months. Where productivity is measured by means of progress reports, records must relate the worker's performance to that of a nonhandicapped person receiving the prevailing wage in industry for similar work requiring similar skills. Records of time studies made to establish piece rates must be kept.

3. Learning periods, when such periods are authorized by the certificate, which shows the daily hours worked by each handicapped worker during the learning period (s), and the cumulative total of such hours.

4. Pricing of work, which shows that part of the unit prices which are allocated to direct labor (labor rate) and the average expected earnings of nonhandicapped workers at a normal expected production rate. Records of time studies made to establish prices must be kept.

5. Records of all employes including those who are not handicapped workers or clients shall be kept as required in section Ind 72.11.

6. Certification of state agencies, including copies of training or evaluation agreements, authorizations for extensions of such periods, progress reports made during such periods and evaluation of other reports on which a judgment relating to certification was made.

(f) *Posting of license.* Every workshop having a license shall post the license, or a copy of it, in a conspicuous place where it may be readily observed by all workers.

(2) **HANDICAPPED WORKER.** A license may be issued for a handicapped employe engaged in work whose earning capacity is so impaired that they are unable to earn the rate prescribed in section Ind 72.03.

(a) *Application for an individual handicapped worker license.* 1. Applications shall be filed with the department by the employer.

2. The application must be signed by the employer, the employe, and the appropriate sponsoring agency official if an agency is involved. It shall contain answers to all of the questions presented on the form furnished by the department, including: a description of the employe's disabilities, type of work to be performed, schedule of the hours to be

worked per day and per week, and proposed hourly rate or progressive wage schedule. If room or board are to be provided as part payment of wages, the number of meals and nights' lodging to be furnished must be stated.

(b) *Terms and conditions of license.* 1. The license shall specify the terms and conditions under which it is granted.

2. The rate shall not be less than 75% of the rates in section Ind 72.03.

3. The license shall be issued only on the basis of an hourly rate.

4. The license shall be effective for the period designated thereon, and no license shall be issued retroactively, nor shall a license be issued for more than one year unless a longer period is found to be justified by extraordinary circumstances.

5. The department may set a rate of less than 75% of the rates in section Ind 72.03 based on justification of extraordinary circumstances. The rate set shall be commensurate with his or her ability. No licensee shall be employed at a rate less than the rate established.

6. The department may request an evaluation or reevaluation of the worker's abilities by the department of health and social services, division of vocational rehabilitation.

7. Where room and board are furnished by the employer as part of wages, the allowance may not exceed the amounts in section Ind 72.03 (3).

(c) *Employment records to be kept.* Permanent records shall be kept by the employer as required in section Ind 72.11.

(3) **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 section 104.01 (6), Wis. 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 employe 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 section Ind 72.03.

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 section Ind 70.05, and that the pay for such hours is not less than that prescribed in section Ind 72.03.

5. Students under 18 years of age may not serve at any job prohibited by statute, or orders of the department. (See section Ind 70.03.)

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 section Ind 72.03 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 section Ind 72.11 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 his 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 three years.

(4) **REFUSAL TO ISSUE AND REVOCATION OF LICENSE.** The department may refuse to issue a license or may revoke, amend or modify any license it has issued, if, in its opinion, conditions or extraordinary circumstances warrant such action.

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

Ind 72.10 Listing deductions from wages. An employer shall state clearly on the employe'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 employe, except such miscellaneous deductions as may have been authorized by request of individual employes 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.

Ind 72.11 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 employes 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 employe'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 employe, 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 employe 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.

Ind 72.12 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 employe 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 employe'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 employe commences or ceases their "principal" activities.

(2) **APPLICATION OF PRINCIPLES.** (a) *Employes "suffered or permitted" to work.* 1. General. 1. Work not requested but suffered or permitted is work time. For example, an employe may voluntarily 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 employe 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 employes while waiting for machinery to be repaired are all working during their periods of inactivity. The rule also applies to employes who work away from the plant. For example, a

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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 employe 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 employe 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 employe is engaged to wait.

3. Off duty. Periods during which an employe 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 employe 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 employe 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 employe 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 employe 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 employe is not relieved if they are required to perform any duties, whether active or inactive, while eating. For example, an office employe 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.* 1. General. Under certain conditions an employe is considered to be working even though some of their time is spent in sleeping or in certain other activities.

2. Less than 24-hour duty. a. An employe 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 Ind 72.03 (3) or (4) may be considered by a mutual written or implied agreement.

3. Duty of 24 hours or more. a. Where an employe is required to be on duty for 24 consecutive hours of more or required to be on duty during a

regularly scheduled sleeping period, the employer and the employe 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 employe can usually enjoy an uninterrupted night's sleep. If sleeping period is of more than 8 hours, only 8 hours will be credited per 24 hour period. Where no expressed or implied 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 must be counted as hours worked. Employers may take credit for board and lodging as prescribed by section Ind 72.03 (3) or (4), whichever is applicable. Record keeping requirements provided in Ind 72.11 shall apply.

b. Interruptions of sleep. 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 employe cannot get a reasonable night's sleep, the entire period must be counted.

4. Employes residing on employer's premises or working at home. An employe who resides on their employer's premises on a permanent basis or for extended periods of time is not considered as working all the time they are on the premises. Ordinarily, they 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 they may leave the premises for purposes of their own. It is of course difficult to determine the exact hours worked under these circumstances and any reasonable agreement of the parties which takes into consideration all of the pertinent facts will be accepted.

(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 employe 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 employes report to commence their principal activities, and who during such 30 minutes distributes clothing or parts of clothing at the workbenches of other employes and gets machines in readiness for operation by other employes, such activities are among the principal activities of such employe. 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 employe 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 employe's principal activity. On the other hand, if changing clothes is merely a convenience to the employe and not directly related to their principal activities, it would be considered as a "preliminary" or "postliminary" activity rather than a

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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 employe's regular working hours;
- b. Attendance is in fact voluntary;
- c. The course, lecture, or meeting is not directly related to the employe's job; and
- d. The employe 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 employe is given to understand or led to believe that their present working conditions or the continuance of their employment would be adversely affected by nonattendance.

3. Training directly related to employe's job. The training is directly related to the employe's job if it is designed to make the employe 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 employe to a higher skill, and is not intended to make the employe more efficient in their present job, the training is not considered directly related to the employe's job even though the course incidentally improves their skill in doing their regular work.

4. Independent training. Of course, if an employe 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 employes 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 division of apprenticeship and training 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 employe 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 employe 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 employe 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 employe 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 employe 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 employe 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 employe 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 employe 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 employe 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 employe away from home overnight is travel away from home. Travel away from home is clearly work time when it cuts across the employe's workday. The employe 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.

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Thus, if an employe 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 employe 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 employe had used the public conveyance.

8. Work performed while traveling. Any work which an employe is required to perform while traveling must of course be counted as hours worked. An employe who drives a truck, bus, automobile, boat or airplane, or an employe who is required to ride therein as an assistant or helper, is working while riding, except during bona fide meal periods or when the employe 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 employes during the time the employes 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 employe in waiting for and receiving medical attention on the premises or at the direction of the employer during the employe'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 employe is required to be on the premises, is working time. However, time spent voluntarily in such activities outside of the employe's normal working hours is not hours worked.

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

Ind 72.13 Forms. The following forms are listed in accordance with section 227.013, Wis. Stats. These forms are issued by and may be obtained from the Equal Rights Division, Department of Industry, Labor and Human Relations, P. O. Box 7946, Madison, Wisconsin, 53707.

(1) ER-39 Minimum Wage Poster.

(2) LS-37, Application for Subminimum Wage License. This particular form is used for both handicapped workers and student learners.

LS-37a is the application for a sheltered workshop to employ handicapped workers at a subminimum wage.

LS-37b is a supplement data sheet for sheltered workshop certificate.

LS-37c is an application for a certificate for a training or evaluation program in a sheltered workshop.

LS-37d is an application for a special individual rate in a sheltered workshop.

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