

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Note: Chapter Ind 72 as it existed on July 31, 1978 was repealed and a new chapter Ind 72 was created effective August 1, 1978.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 s. Ind 72.03 (1).

(5) Minors 17 years of age and under:

Except as provided in s. Ind 72.03 (1) (b), 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; am (5) (a), Register, March, 1990, No. 411, eff. 4-1-90.

Ind 72.01 Definitions. As used in this chapter:

Register, March, 1990, No. 411

(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 industry, labor and human relations.

(5) "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.

(6) "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.

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

(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) "Probationary employe" means a person who has been in employment status for a cumulative total of 2 months or less within a three-year period.

Note: If employe is in employment status 40 calendar days (even if the employe works and is paid for less than 40 calendar days) in one employment period and then returns to any employer within 3 years for another employment period, the employe would not have to start over to reach 60 calendar days, but would only have to be in employment status for 20 additional calendar days to reach the non-probationary rate.

Note: Subsection (11) [(16)] was partially suspended by the joint committee for review of administrative rules on July 1, 1989. The result of the suspension was a 3 day non-repeating probationary wage period.

(12) "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.

(13) "Sheltered workshop training program" means a program of not more than 12 months duration designed to

(a) Develop the patterns of 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.

(14) "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.

(15) "Student learner" 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.

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

(17) "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.

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.

Ind 72.02 Applicability of orders. 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.

Register, March, 1990, No. 411

Ind 72.025 **Statement of intent.** Nothing contained in s. Ind 72.03 prohibits an employer from paying more than the minimum rates listed in this chapter or from treating an employe as a probationary employe for less than the number of days specified in this chapter.

History: Cr. Register, June, 1989, No. 402, eff. 7-1-89.

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

	EFFECTIVE 4-1-90 PROBATIONARY EMPLOYES	EFFECTIVE 4-1-90 NON-PROBATIONARY EMPLOYES
(a) Adult employes 18 years of age and over:	\$3.50 per hr.	\$0.30 per hr, more than the rate applicable to probationary employes
(b) Minors 17 years of age and under:	\$3.25 per hr.	\$0.20 per hr, more than the rate applicable to probationary employes

(2) **TIPS.** Where tips or gratuities are received by the employe 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 employe. The minimum rate shall be either 55% of the rate prescribed in sub. (1) or the rate established in par. (a), whichever is higher.

(a) *Minimum rates for tipped employes:*

	EFFECTIVE 7-1-89 PROBATIONARY EMPLOYES	EFFECTIVE 7-1-89 NON-PROBATIONARY EMPLOYES
1. Adult employes 18 years of age and over:	\$2.07 per hr.	\$0.12 per hr, more than the rate applicable to probationary employes
2. Minors 17 years of age and under:	\$1.86 per hr.	\$0.12 per hr, more than the rate applicable to probationary employes

(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.

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 s. 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 par. (a) 1. or 2. by an employer is deemed to be increased on account of tips to equal the minimum wage applicable under sub. (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 s. 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 ch. 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 employe'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 employe 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 employe as remuneration for employment within the meaning of ch. Ind 74.

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

	EFFECTIVE 4-1-90 PROBATIONARY EMPLOYEES	EFFECTIVE 4-1-90 NON-PROBATIONARY EMPLOYEES
(a) Lodging—adults 18 years of age and over	\$28.00 per week or \$4.00 per day	\$2.40 per week or \$0.35 per day more than the applicable probationary employe rate
minors 17 years of age and under	\$26.00 per week or \$3.70 per day	\$1.60 per week or \$0.25 per day more than the applicable probationary employe rate
	EFFECTIVE 4-1-90 PROBATIONARY EMPLOYEES	EFFECTIVE 4-1-90 NON-PROBATIONARY EMPLOYEES
(b) Meals—adults 18 years of age and over	\$42.00 per week or \$2.00 per meal	\$3.60 per week or \$0.15 per meal more than the applicable probationary employe rate
minors 17 years of age and under	\$39.00 per week or \$1.85 per meal	\$2.40 per week or \$0.10 per meal more than the applicable probationary employe rate

(4) **BOARD AND LODGING, VALUE.** Where board, lodging or other necessities of life, are furnished by the employer, in accordance with s. Ind Register, March, 1990, No. 411

72.04, and accepted and received by the employe 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 employes 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 employe is responsible for providing the proof of previous employment necessary to determine whether the person is a probationary employe. 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 employe 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.

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 employe'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 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.

Register, March, 1990, No. 411

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

	EFFECTIVE 4-1-90
(a) Adult employes 18 years of age and over:	\$3.60 per hr.
(b) Minors 17 years of age and under:	\$3.25 per hr.

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

	EFFECTIVE 4-1-90
(a) Lodging—adults 18 years of age and over:	\$28.80 per week or \$4.10 per day.
(b) Minors 17 years of age and under:	\$26.00 per week or \$3.70 per day

	EFFECTIVE 4-1-90
(b) Meals—adults 18 years of age and over:	\$43.20 per week or \$2.05 per meal
Minors 17 years of age and under:	\$39.00 per week or \$1.85 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.

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 s. Ind 72.03. Employers may take credit for board and lodging as prescribed by s. Ind 72.03 (3). Record keeping requirement provided in s. 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 s. 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 s. Ind 72.03. As used in this section, the term Register, March, 1990, No. 411

"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 s. Ind 72.03 (1).

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

	EFFECTIVE 3-1-80 PER WEEK	EFFECTIVE 1-1-81 PER WEEK
1. If board and lodging are not furnished	\$116.00	\$125.00
2. If board only is furnished	\$88.00	\$98.00
3. If board and lodging are furnished	\$71.00	\$81.00