

Chapter Ind 72

MINIMUM WAGES

Ind 72.001	Declaration of policy (p. 33)	Ind 72.08	Caddies (p. 41)
Ind 72.01	Definitions (p. 33)	Ind 72.085	Independent colleges and universities (p. 41)
Ind 72.02	Applicability of orders (p. 35)	Ind 72.09	Subminimum wage licenses (p. 41)
Ind 72.025	Statement of intent (p. 36)	Ind 72.10	Listing deductions from wages (p. 47)
Ind 72.03	Minimum rates (p. 36)	Ind 72.11	Permanent records to be kept by the employer (p. 48)
Ind 72.04	Deductions for meals and lodging (p. 39)	Ind 72.12	Interpretation of hours worked (p. 49)
Ind 72.05	Agriculture (p. 40)	Ind 72.13	Forms (p. 54)
Ind 72.06	Casual employment, live-in workers and companions in private homes (p. 40)		
Ind 72.07	Seasonal, recreational or educational camps (p. 40-1)		

Note: Chapter Ind 72 as it existed on July 31, 1978 was repealed and a new chapter Ind 72 was created effective August 1, 1978.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

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

(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 s. Ind 72.11 (1) (d), (e), and (f), for counselors employed and paid on a weekly basis.

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

(a) A "seasonal recreational or educational 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 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 day-time 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 s. 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 subcontract 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.

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 s. 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 s. 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 subds. 6. and 7.

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 employees 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 s. 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 s. 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 s. 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 he or she is unable to earn the rate prescribed in s. Ind 72.03.

(a) Application for an individual handicapped worker license. 1. Two types of handicapped worker licenses may be issued.

a. A type one is a license issued to the employer to employ a handicapped worker in their establishment.

b. A type 2 license shall be requested by a sponsoring agency on behalf of a handicapped worker. A type 2 license may be issued by the department to a handicapped worker and will authorize an employer to pay the rate of pay stated on the license. An employer who hires a licensed handi-

capped worker shall retain a photocopy of the license for the employer's records. This license may be issued for a period of time not to exceed one year.

Note: The intent of issuing a type 2 license to the handicapped worker instead of to the employer is to permit the sponsoring agency to make short-term placements which would enable the handicapped worker to gain a variety of experiences without putting the burden on each employer to obtain a license. This should not be interpreted as relieving any employer from complying with the federal Fair Labor Standards Act which requires an individual sub-minimum wage certificate be issued to the federally covered employer.

2. The application must be signed by the employer (type one only), 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 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 s. 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 s. 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 s. Ind 72.03 (3).

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

Ind 72

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

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

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

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

6. The employment must not have the effect of displacing a worker employed in the establishment. A student learner must be paid minimum wage for time spent doing work which would be normally done by a regular paid 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 s. 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 s. Ind 70.05, and that the pay for such hours is not less than that prescribed in s. 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 s. 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 s. 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 s. 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; r. and recr. (2) (a) 1. and am. (2) (a) intro. and 2., Register, August, 1987, No. 380, eff. 9-1-87.

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.

Ind 72

(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. Employes 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 employe 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. 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 em-