



1995 ASSEMBLY BILL 524

August 28, 1995 - Introduced by Representatives BELL, BOCK, L. YOUNG, BALDWIN, GRONEMUS, BOYLE, WIRCH and MORRIS-TATUM, cosponsored by Senators BURKE and CHVALA. Referred to Committee on Labor and Employment.

1 **AN ACT to repeal** 103.68 (3) and 103.935 (2) and (3); **to renumber and amend**
2 103.02, 103.03 and 103.935 (1); **to amend** 103.01 (intro.), 103.74 (2), 103.82 (1)
3 (b), 109.09 (1) and 111.322 (2m) (a) and (b); and **to create** 103.02 (3), 103.023,
4 103.03 (3), 103.685 and 103.937 of the statutes; **relating to:** rest and meal
5 periods for employees.

Analysis by the Legislative Reference Bureau

Under current law, employes engaged in certain types of employment (generally at factories or mercantile establishments) may not work or be permitted to work for periods that are dangerous to their health. Current law also specifically requires that an employe under the age of 18 receive a meal break if the employe works 6 or more consecutive hours. Further, a migrant worker may not be required to work more than 6 consecutive hours without a meal break under current law, unless the work will be completed in less than 7 hours. Migrant workers who are not engaged exclusively in agricultural labor are also entitled to a paid 10-minute rest break for each 5 hours of employment.

Under this bill, all employers, including state and local governmental units, must provide employes, including migrant workers and minors, with at least a paid 15-minute rest period for each 4 hours worked in an 8-hour period and an unpaid meal period for 6 or more consecutive hours of work, unless the employe is covered by a collective bargaining agreement that addresses the issue of rest periods and meal periods; the employe with the permission of his or her employer works a shorter workday in lieu of a rest period or a meal period required under the bill; the employe provides health care services, maintenance services or personal care services for an ambulance service provider, a health care facility or a health care provider and is involved in an emergency situation; or the department of industry, labor and human relations grants an employer a waiver of the rest period and meal period requirement

based on a determination that providing a classification of employes a rest period or a meal period as required by the bill would cause a demonstrable decrease in the efficiency of employer's operations.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 103.01 (intro.) of the statutes is amended to read:

2 **103.01 Hours of labor; definitions.** (intro.) In ss. ~~103.01 to 103.03~~ this
3 section and s. 103.02:

4 **SECTION 2.** 103.02 of the statutes is renumbered 103.02 (1) and amended to
5 read:

6 103.02 (1) No person may be employed or be permitted to work in any place of
7 employment or at any employment for such period of time during any day, night or
8 week, as is dangerous or prejudicial to the person's life, health, safety or welfare. The

9 (2) Subject to s. 103.023, the department shall investigate, ascertain,
10 determine and fix such reasonable classification, and promulgate rules fixing a
11 period of time, or hours of beginning and ending work during any day, night or week,
12 which shall be necessary to protect the life, health, safety or welfare of any person,
13 or to carry out the purposes of ~~ss. 103.01 to 103.03~~ this section. The department shall,
14 by rule, classify such periods of time into periods to be paid for at regular rates and
15 periods to be paid for at the rate of at least one and one-half times the regular rates.

16 Such investigations, classifications and orders shall be made pursuant to the
17 proceeding in ss. 101.01 to 101.25 which are hereby made a part hereof, so far as not
18 inconsistent with ~~ss. 103.01 to 103.03~~ this section, and every order of the department
19 shall have the same force and effect as the orders issued under ss. 101.01 to 101.25
20 ~~and the penalties therein shall apply to and be imposed for any violation of ss. 103.01~~

1 ~~to 103.03.~~ Such orders shall be subject to review in the manner provided in ch. 227.

2 ~~Section 111.322 (2m) applies to discharge or other discriminatory acts arising in~~
3 ~~connection with any proceeding under this section.~~

4 **SECTION 3.** 103.02 (3) of the statutes is created to read:

5 103.02 (3) The employment of any person in any employment or place of
6 employment at any time other than the permissible hours of labor under this section
7 is prima facie evidence of a violation of this section.

8 **SECTION 4.** 103.023 of the statutes is created to read:

9 **103.023 Rest and meal periods.** (1) In this section, “employer” means a
10 person engaging in any activity, enterprise or business in this state employing at
11 least one individual. “Employer” includes the state and any office, department,
12 independent agency, authority, institution, association, society or other body in state
13 or local government created or authorized to be created by the constitution or any
14 law, including the legislature and the courts.

15 (2) Except as provided in sub. (5), an employer shall provide at least all of the
16 following:

17 (a) A 15-minute rest period to an employe for each 4 hours of work, not
18 including meal periods under par. (b), within an 8-hour period.

19 (b) A 30-minute meal period, in addition to any rest period under par. (a), to
20 an employe who works 6 or more consecutive hours, including rest periods.

21 (3) An employer shall provide compensation to an employe on a rest period
22 under sub. (2) (a) at the applicable rate of pay for the employe when the rest period
23 occurs.

1 (4) The department shall determine whether rest periods and meal periods
2 required under sub. (2) are counted in the hours of labor established by the
3 department under ss. 66.293 (3), 103.49 and 103.50.

4 (5) Subsections (2) and (3) do not apply to any of the following:

5 (a) An employe covered under a collective bargaining agreement if the
6 collective bargaining agreement addresses the issue of rest periods and meal periods.

7 (b) A minor employe whose rest periods or meal periods are regulated under
8 s. 103.685.

9 (c) A migrant worker whose rest periods or meal periods are regulated under
10 s. 103.937.

11 (d) An employe who works a shorter workday because the employe's employer,
12 upon request of the employe or the collective bargaining representative of the
13 employe, permits the employe to work a shorter workday in lieu of a rest period
14 required under sub. (2) (a) or a meal period required under sub. (2) (b).

15 (e) An employe in a job classification for which the department grants a waiver
16 under sub. (6).

17 (f) In cases of emergency, an employe of an ambulance service provider, as
18 defined in s. 146.50 (1) (c), a health care facility, as defined in s. 155.01 (6), or a health
19 care provider, as defined in s. 155.01 (7), who provides health care, as defined in s.
20 155.01 (3), services, maintenance services, as defined in s. 647.01 (5), or personal care
21 services, as defined in s. 647.01 (8). In this paragraph, "emergency" means a sudden
22 and unexpected situation that could not reasonably have been anticipated or
23 prevented in which a person is in imminent danger of death or serious physical or
24 mental injury unless immediate action is taken.

1 **(6)** The department may grant an employer a waiver exempting employees in
2 a job classification from the requirements under subs. (2) and (3) if the department
3 determines that providing a rest period or a meal period to employees in that
4 classification would cause a demonstrable decrease in the efficiency of the employer's
5 operations. The determination of the department shall be subject to review in the
6 manner provided in ch. 227.

7 **SECTION 5.** 103.03 of the statutes is renumbered 103.03 (1) and amended to
8 read:

9 103.03 **(1)** ~~The employment of any person in any employment or place of~~
10 ~~employment at any time other than the permissible hours of labor shall be prima~~
11 ~~facie evidence of a violation of this section. An employer who violates s. 103.02 or~~
12 ~~103.023 is subject to the penalties imposed under s. 101.02 (13).~~

13 **(2)** Every day for each person employed, and every week for each person
14 employed, during which any employer fails to observe or to comply with any order
15 of the department, or to perform any duty ~~enjoined by ss. 103.01 to 103.03~~ required
16 by s. 103.02 or 103.023, shall constitute a separate offense.

17 **SECTION 6.** 103.03 (3) of the statutes is created to read:

18 103.03 **(3)** Section 111.322 (2m) applies to discharge or other discriminatory
19 acts arising in connection with any proceedings under s. 103.02 or 103.023.

20 **SECTION 7.** 103.68 (3) of the statutes is repealed.

21 **SECTION 8.** 103.685 of the statutes is created to read:

22 **103.685 Rest and meal periods; minors. (1)** An employer of a minor shall
23 provide at least all of the following:

24 (a) A 15-minute rest period to the minor for each 4 hours of work, not including
25 meal periods under par. (b), within an 8-hour period.

1 (b) A 30-minute meal period, in addition to any rest period under par. (a), to
2 the minor if the minor works 6 or more consecutive hours, including rest periods.

3 (2) An employer shall provide compensation to a minor employe on a rest period
4 under sub. (1) (a) at the applicable rate of pay for the minor employe when the rest
5 period occurs.

6 (3) A meal period under sub. (1) (b) shall commence reasonably close to 6 a.m.,
7 12 noon, 6 p.m. or 12 midnight or approximately midway of any work period or at
8 such other times as may be considered reasonable by the department.

9 **SECTION 9.** 103.74 (2) of the statutes is amended to read:

10 103.74 (2) Keep a record for each employed minor of the minor's name, address,
11 date of birth, ~~the time of beginning and ending work and the~~ each day, time for meals
12 and rest periods each day and ~~the~~ total hours worked each day and each week.

13 **SECTION 10.** 103.82 (1) (b) of the statutes is amended to read:

14 103.82 (1) (b) In addition to the penalties provided in par. (a), any employer who
15 employs any minor in violation of s. 103.68 or 103.685, or rules of the department
16 shall be liable, in addition to the wages paid, to pay to each minor affected, an amount
17 equal to twice the regular rate of pay as liquidated damages, for all hours worked in
18 violation per day or per week, whichever is greater.

19 **SECTION 11.** 103.935 (1) of the statutes is renumbered 103.935, and 103.935 (3),
20 as renumbered, is amended to read:

21 103.935 (3) Nothing in this section or s. 103.937 shall prohibit a migrant
22 worker from voluntarily exceeding the limits prescribed by ~~pars. (a) and (b)~~ subs. (1)
23 and (2) and s. 103.937.

24 **SECTION 12.** 103.935 (2) and (3) of the statutes are repealed.

25 **SECTION 13.** 103.937 of the statutes is created to read:

1 **103.937 Rest and meal periods; migrant workers. (1)** An employer of a
2 migrant worker shall provide at least all of the following:

3 (a) A 15-minute rest period to the migrant worker for each 4 hours of work, not
4 including meal periods under par. (b), within an 8-hour period.

5 (b) A 30-minute meal period, in addition to any rest period under par. (a), to
6 the migrant worker if the migrant worker works 6 or more consecutive hours,
7 including rest periods.

8 **(2)** An employer shall provide compensation to a migrant worker on a rest
9 period under sub. (1) (a) at the applicable rate of pay for the migrant worker when
10 the rest period occurs.

11 **SECTION 14.** 109.09 (1) of the statutes is amended to read:

12 109.09 (1) The department shall investigate and attempt equitably to adjust
13 controversies between employers and employes as to alleged wage claims. The
14 department may receive and investigate any wage claim which is filed with the
15 department, or received by the department under s. 109.10 (4), no later than 2 years
16 after the date the wages are due. The department may, after receiving a wage claim,
17 investigate any wages due from the employer against whom the claim is filed to any
18 employe during the period commencing 2 years before the date the claim is filed. The
19 department shall enforce this chapter and ss. 66.293, 103.02, 103.023, 103.49,
20 103.82, 103.93 to 103.937 and 104.12. In pursuance of this duty, the department may
21 sue the employer on behalf of the employe to collect any wage claim or wage
22 deficiency and ss. 109.03 (6) and 109.11 (2) and (3) shall apply to such actions. Except
23 for actions under s. 109.10, the department may refer such an action to the district
24 attorney of the county in which the violation occurs for prosecution and collection and
25 the district attorney shall commence an action in the circuit court having appropriate

1 jurisdiction. Any number of wage claims or wage deficiencies against the same
2 employer may be joined in a single proceeding, but the court may order separate
3 trials or hearings. In actions that are referred to a district attorney under this
4 subsection, any taxable costs recovered by the district attorney shall be paid into the
5 general fund of the county in which the violation occurs and used by that county to
6 meet its financial responsibility under s. 978.13 (2) for the operation of the office of
7 the district attorney who prosecuted the action.

8 **SECTION 15.** 111.322 (2m) (a) and (b) of the statutes are amended to read:

9 111.322 **(2m)** (a) The individual files a complaint or attempts to enforce any
10 right under s. 103.02, 103.023, 103.10, 103.13, 103.28, 103.32, 103.455, 103.50,
11 104.12, 109.03 or 109.07 or ss. 101.58 to 101.599 ~~or~~, 103.64 to 103.82 or 103.90 to
12 103.97.

13 (b) The individual testifies or assists in any action or proceeding held under or
14 to enforce any right under s. 103.02, 103.023, 103.10, 103.13, 103.28, 103.32,
15 103.455, 103.50, 104.12, 109.03 or 109.07 or ss. 101.58 to 101.599 ~~or~~, 103.64 to 103.82
16 or 103.90 to 103.97.

17 (END)