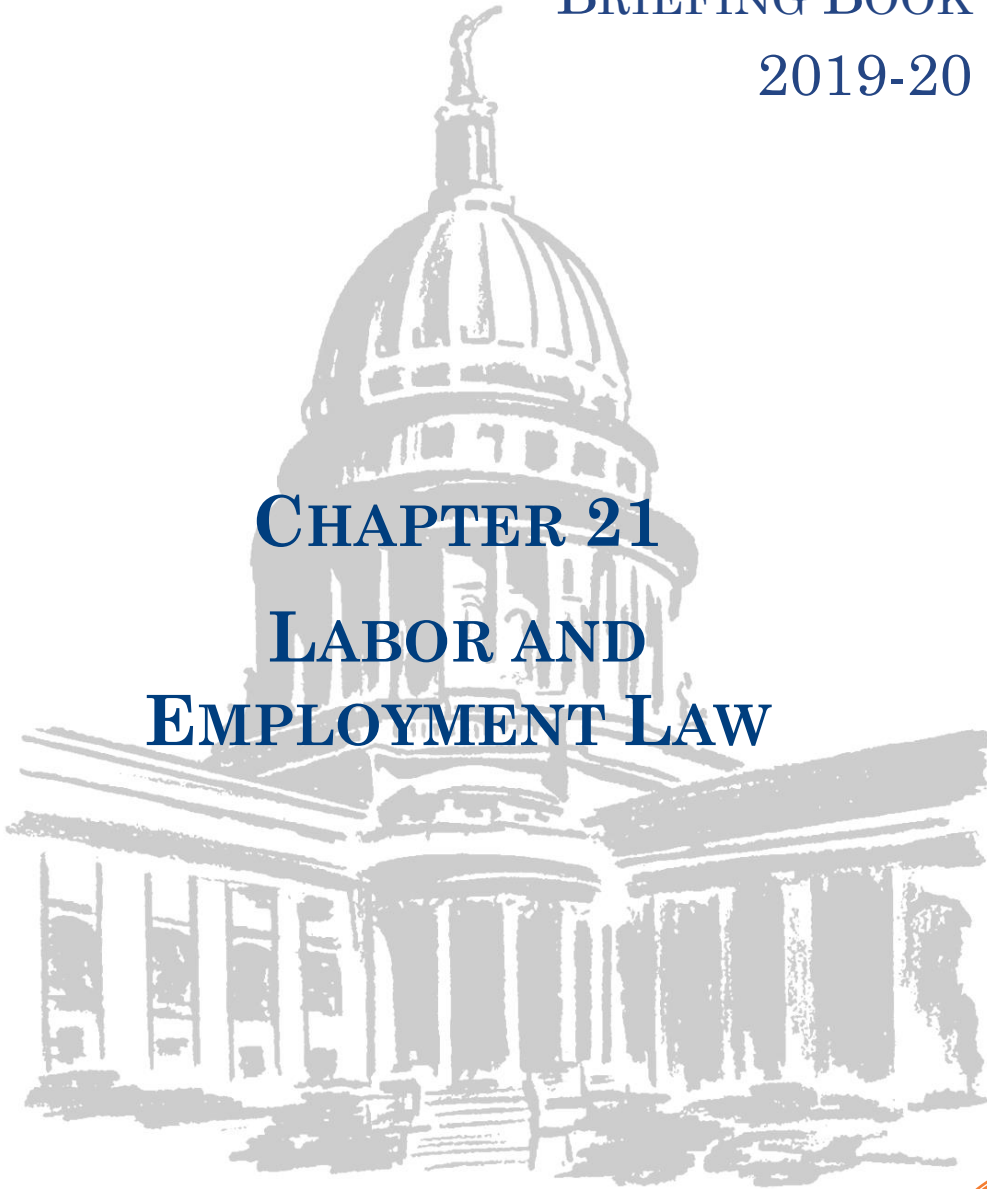


WISCONSIN LEGISLATOR
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CHAPTER 21
LABOR AND
EMPLOYMENT LAW



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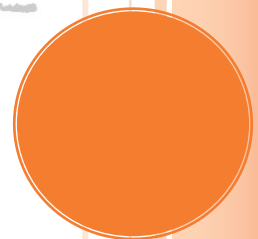


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INTRODUCTION

This chapter summarizes various state laws that affect the relationship between an employee and employer.

In general, Wisconsin's employment laws are administered by the state's Department of Workforce Development (DWD), including laws relating to wages and hours, employment discrimination, family and medical leave, unemployment insurance, and worker's compensation. The Wisconsin Employment Relations Commission (WERC) and the Division of Personnel Management (DPM), within the Department of Administration, play significant roles in the collective bargaining process.

In addition to state law, the employment relationship may also be governed by federal law and regulations, collective bargaining agreements, employment contracts, and employer policies. Although this chapter briefly describes the state laws relating to employment, any significant discussion of federal law and regulations, collective bargaining agreements, employment contracts, and employer policies is beyond the scope of this chapter.

WAGES AND HOURS

Minimum Wage

Wisconsin sets minimum wage rates that employers must comply with when paying employees. Wisconsin's minimum wage requirements generally apply to all public and private sector employers, including nonprofit organizations, regardless of whether they are covered by the federal minimum wage law.

The Wisconsin and federal minimum wages are \$7.25 per hour.

For most employees, including minor employees, the Wisconsin minimum wage is set at \$7.25 per hour. (The federal minimum wage is also \$7.25 per hour.)

Wages below the minimum wage are authorized in certain limited circumstances. In particular:

- For a “tipped employee” who customarily and regularly receives gratuities in the course of employment, the minimum wage is reduced. In that type of employment, the minimum wage is \$2.33 per hour, if, with tips, the wage adds up to at least \$7.25 per hour.
- For an employee who is under age 20, the minimum wage is \$5.90 per hour for the first 90 days of employment. The law refers to a young worker in this situation as an “opportunity employee.”
- For a camp counselor, the minimum wage ranges from \$210 to \$350 per week, depending on whether meals and lodgings are furnished.
- For golf caddies, the minimum wage is \$5.90 for nine holes and \$10.50 for 18 holes.

More information about the minimum wage and overtime requirements may be found at:

https://dwd.wisconsin.gov/er/labor_standards/

- For an employee with a disability, an employer may receive a special license from DWD to pay a wage that is commensurate with the person’s ability and productivity. If the employer is a charitable organization or not-for-profit institution with a recognized program for workers with disabilities, the law refers

to the situation as a “sheltered workshop.”

The state’s minimum wage law specifies that it is to be construed as providing a uniform minimum wage throughout the state. A city, village, town, or county may not enact a minimum wage ordinance.

[ch. 104, Stats.; ch. DWD 272, Wis. Adm. Code.]

Overtime Pay

In addition to the minimum wage, state law also requires the payment of overtime pay in certain situations. Generally, employees must be paid one and one-half times their regular rate of pay for all hours worked in excess of 40 hours per week.

Generally, employees must be paid one and one-half times their regular rate of pay for all hours worked in excess of 40 hours per week.

This requirement applies to most employees, but certain employees are exempt from overtime pay requirements, including certain administrative, executive, and professional employees; certain outside sales and commissioned employees; taxi drivers; employees of motor carriers who are covered by federal regulations; and salespersons, parts personnel, and mechanics employed by motor vehicle dealers.

[ss. 103.01 to 103.03, Stats.; ch. DWD 274, Wis. Adm. Code.]

Wage Payment and Wage Claims

With limited exceptions, Wisconsin law requires employers to pay their employees at least once per month. An employee who quits or is discharged from a job must be paid in accordance with the employer’s regularly established payroll schedule. If an employee is not paid in a timely manner, is not paid at all, or is paid an incorrect amount, the employee may file a wage claim with DWD for the unpaid wages or may bring an action in court against the employer.

If an employee is not paid, the employee may file a wage claim or bring an action in court against an employer.

Once a wage claim is filed, DWD must investigate and attempt to resolve the matter between the employer and employee. For purposes of the wage claim laws, wages include the following:

- Salaries.
- Commissions.
- Overtime pay.
- Holiday pay.
- Vacation pay.
- Severance pay.
- Dismissal pay.
- Bonuses.
- Other similar advantages that the employer and employee agree to or that are provided by the employer to employees as an established policy.

More information about wage payment and wage claims may be found at:
https://dwd.wisconsin.gov/er/labor_standards/

Typically, an employee must file a wage claim within two years of the wages being due. DWD or an employee who brings a wage claim has a lien for the amount of the wage claim or deficiency on the employer's property. If a lien from a lending institution was in place before

a wage lien took effect, the first \$3,000 of certain unpaid wages covered under the wage lien has priority over the lender's lien. A wage lien generally has priority over most other liens, except an environmental remediation lien.

[ch. 109, Stats.]

Employment of Minors

Wisconsin regulates the employment of minors with respect to types of employment and hours of work. In particular, a minor may not be employed to perform work that is dangerous or prejudicial to the minor's life, health, safety, or welfare. State laws and regulations identify a number of occupations in which a minor cannot be employed, depending in some cases on the minor's age.

State law regulates the types and hours of employment for minors.

More information about minor employment laws may be found at:
https://dwd.wisconsin.gov/er/labor_standards/

A minor under age 18 may not work at any gainful occupation during the hours that the minor is required to attend school, unless the minor has completed high school. In addition, a minor under age 16 may not work at any gainful occupation, other

than domestic service, farm labor, or public exhibitions, as follows:

- For more than three hours on a school day, or eight hours on a nonschool day.
- For more than 18 hours in a school week, or 40 hours in a nonschool week.
- For more than six days in a week.
- Before 7:00 a.m. or after 7:00 p.m., during the school year, from the day after Labor Day to May 31.
- Before 7:00 a.m. or after 9:00 p.m., during the summer, from June 1 to Labor Day.

An employer is required to provide meal periods to a minor if the minor works for more than six consecutive hours. Those meal periods must be at least 30 minutes in length and generally must be provided reasonably close to the meal times of 6:00 a.m., noon, 6:00 p.m., or midnight.

In most cases, an employer must obtain a permit to authorize the employment of a minor under age 16.

[ss. 103.64 to 103.82, Stats.; ch. DWD 270, Wis. Adm. Code.]

Employers are not required to provide rest periods or breaks to adult employees.

Breaks and Meal Periods

State law generally provides that the hours a person works should not be dangerous or prejudicial to the person's life, safety, health, or welfare. Wisconsin law does **not** require employers to provide specific rest periods or breaks to adult employees.

Similarly, employers are not required to provide meal periods to adult employees, but state law **recommends** that employers provide at least 30 minutes for a meal period for each shift longer than six hours. An employer must pay all employees for an "on-duty" meal period. An "on-duty" meal period is a period during which the worker is not provided at least 30 minutes away from work or allowed to leave the employer's premises.

More information about breaks and meal periods may be found at:

https://dwd.wisconsin.gov/er/labor_standards/

[s. 103.02, Stats.; s. DWD 274.02, Wis. Adm. Code.]

Prevailing Wage

Wisconsin does not use a prevailing wage structure for projects of public works. Effective September 23, 2017, the 2017-18 Biennial Budget Act (2017 Wisconsin Act 59) eliminated the prevailing wage law for state building and highway projects. Effective January 1, 2017, the 2015-17 Biennial Budget Act (2015 Wisconsin Act 55) eliminated the prevailing wage law for local projects of public works.

FAMILY AND MEDICAL LEAVE

Wisconsin is one of several states that has its own Family and Medical Leave Act (FMLA) in addition to the federal FMLA. Wisconsin's FMLA covers employers with 50 or more permanent employees. An employee is covered under Wisconsin's FMLA if the employee has been employed by the same employer for the prior 52 consecutive weeks and has worked at least 1,000 hours during that period.

Wisconsin's FMLA requires that employees be allowed leave for certain family or medical reasons.

The law requires that such employees be allowed up to the following amounts of leave in a 12-month period:

- Six weeks of leave for the birth or adoption of a child.
- Two weeks of leave to care for a parent, child, spouse, or domestic partner with a serious health condition.
- Two weeks of leave for the employee's own serious health condition.

More information about FMLA may be found at:

https://dwd.wisconsin.gov/er/civil_rights/fmla/

In addition, Wisconsin law allows employees to take up to six weeks of leave from employment in a 12-month period to serve as an organ or bone marrow donor.

The family, medical, and organ donor leave provisions require an employer to allow an employee to return to work in the same or an

equivalent position if the employee returns within the given time period. An employer is not required to provide wages or salary during the leave, but must continue group health insurance that was in effect before the leave. Other conditions and requirements also apply to an employer and employee under the FMLA provisions.

[ss. 103.10 and 103.11, Stats.; ch. DWD 225, Wis. Adm. Code.]

EMPLOYMENT DISCRIMINATION

More information about fair employment may be found at:

https://dwd.wisconsin.gov/er/civil_rights/discrimination/fair_employment/

Subject to certain exceptions, Wisconsin's Fair Employment Law prohibits discrimination in employment based on the following classifications:

- Age.
- Ancestry.
- Arrest record.

- Color.
- Conviction record.
- Creed.
- Declining to attend a meeting or to participate in any communication about religious matters or political matters.
- Disability.
- Genetic testing.
- Honesty testing.
- Marital status.
- Military service.
- National origin.
- Pregnancy or childbirth.
- Race.
- Sex.
- Sexual orientation.
- Use or nonuse of lawful products off the employer’s premises during nonworking hours.

Wisconsin’s Fair Employment Law prohibits employment discrimination based on certain classifications.

Employment discrimination includes refusing to employ or terminating any individual, or discriminating against any individual in compensation, promotion, or terms, privileges, or conditions of employment, based on any of the above classifications. If an individual is found to have been discriminated against in violation of the Fair Employment Law, the remedies may include reinstatement, back pay, attorney fees, and costs.

DWD, local governments with equal rights commissions, and the federal Equal Employment Opportunity Commission (EEOC) operate under work-sharing agreements that allow a person to file a single claim with one agency for investigation and resolution, while treating the claim as being cross-filed in the overlapping jurisdictions.

[ss. 111.31 to 111.395, Stats.; ch. DWD 218, Wis. Adm. Code.]

UNEMPLOYMENT INSURANCE

The Unemployment Insurance Division of DWD administers the state’s Unemployment Insurance (UI) program. Wisconsin’s UI law, which was enacted in 1932, provides temporary cash benefits to eligible employees when they are out of work. Financing for the program comes from a combination of federal and state taxes paid by employers who are subject to federal and state UI laws.

UI provides temporary cash benefits to eligible employees who become unemployed through no fault of their own.

Generally, the Federal Unemployment Tax Act (FUTA) imposes a tax on a portion of the wages paid for covered employment. That tax rate is 6% of the first \$7,000 of each employee's earnings for the calendar year. The federal tax rate is reduced for state taxes paid in contributions to the state UI program. The federal tax credit is designed to encourage states to have a broad UI program. Generally, some of the FUTA money that is collected is returned to the state in order for the state to administer the UI program.

Wisconsin imposes a contribution tax on employers to finance UI benefits paid to unemployed workers, which meets the requirements for employers' federal tax reduction. Generally, most private, for-profit employers make contribution payments into the state UI reserve fund. The contribution rate is paid on the first \$14,000 of wages paid by an employer to an employee during each calendar year and, after an initial standard rate for a new employer, the rate is generally based on an employer's experience with the amount of UI benefits paid to its employees.

Some employers, however, most notably governmental employers and nonprofit organizations, finance their UI benefits for their employees through a reimbursement system. Instead of paying a quarterly UI tax on payroll into the UI reserve fund, these employers reimburse DWD the actual amount of any benefits paid to their employees.

The maximum weekly UI benefit is \$370, and the minimum weekly UI benefit is \$54.

Generally, an employer is subject to Wisconsin's UI law if it paid \$1,500 or more in wages in any quarter in that year or the preceding calendar year or if it had at least one employee in at least 20 different weeks in that year or the preceding calendar year. Although the law exempts certain types of work from the UI law, the definition of employment in the UI law is, on the whole, very broad.

Typically, to qualify for UI benefits, an employee must satisfy the following requirements:

- Have sufficient base period wages in covered employment.
- Be available for work and able to work.
- Register for work.
- Undertake four work search actions per week.

The online application portal for UI benefits is available at:

my.unemployment.wisconsin.gov

Claims may be made with DWD online via the Internet. The major reasons that an unemployed worker would be disqualified from receiving benefits include discharge for misconduct or voluntarily leaving employment. Both of these disqualifications depend on the facts in a particular case.

In addition, the 2015-17 Biennial Budget Act (2015 Wisconsin Act 55) created drug testing requirements for UI claimants that are in the process of implementation. Under the Act, an applicant must undergo a screening process if the applicant's suitable work involves

occupations that regularly conduct drug testing, as identified by DWD or the U.S. Department of Labor. If the screening process indicates a reasonable suspicion of unlawful use of controlled substances, the applicant must undergo a test for the presence of controlled substances. An applicant is generally ineligible for UI benefits for a certain period of time if the applicant: (1) declines the testing; or (2) tests positive for the presence of controlled substances, without evidence of a valid prescription, and declines to participate in a substance abuse treatment program and job skills assessment.

The amount of UI benefits an eligible employee may receive is based on the applicant's prior wages. Typically, the weekly benefit will equal 4% of the wages paid to the employee in the calendar quarter in which the highest wages were paid to the employee, subject to certain statutory minimums and maximums. The amount is reduced if a person remains partially employed.

The maximum amount a claimant may normally receive is typically 26 weeks, based on 26 times the weekly benefit rate or 40% of the total base period wages, whichever is less. However, both state and federal law contain provisions allowing for the payment of extended unemployment benefits during difficult economic times when unemployment rates exceed certain levels. In all cases, a "waiting week" applies to an applicant's first week of benefits, which is paid out when the person reaches their maximum benefit amount.

Wisconsin has established an Unemployment Insurance Advisory Council (UIAC) to advise DWD and the Legislature regarding matters affecting the development and administration of the state's UI law. The UIAC is made up of five labor representatives, five management representatives, and one nonvoting chairperson. The UIAC is required to advise DWD on the administration of the UI law and to report its view on pending legislation concerning UI to the appropriate committees of the Legislature. In addition, the UIAC submits to the Legislature, generally on a biennial basis, legislation developed and agreed-upon unanimously by the UIAC members. [ch. 108, Stats.; chs. DWD 100 to 150, Wis. Adm. Code.]

More information about UI may be found at: <https://dwd.wisconsin.gov/ui/>

DWD and the Legislature regarding matters affecting the development and administration of the state's UI law. The UIAC is made up of five labor representatives, five management representatives, and one nonvoting

WORKER'S COMPENSATION

The Worker's Compensation Division of DWD administers the state's Worker's Compensation (WC) program. The WC law, established in 1911, provides for a system of no-fault insurance that pays benefits to employees for accidental injuries or diseases

WC pays benefits to employees for accidental injuries or diseases arising from employment.

arising from an employee’s job. Generally, for workplace injuries, WC is the exclusive remedy against the employer. In other words, an injured employee typically cannot sue the employer for the injury and may only recover those benefits authorized by the WC law.

An employer is required to cover employees with WC insurance if the employer usually has three or more employees or if the employer has fewer than three employees but a payroll of \$500 or more during any calendar quarter. In addition, farmers who employ six or more employees on any 20 days in a calendar year must have insurance within 10 days after the 20th day of employment. The law provides penalties for employers who fail to obtain insurance when required to do so.

The cost of WC insurance varies based on job classification. Insurance rates and classifications depend on past work-related injury experience, payroll, and level of hazard in an occupation. The Wisconsin Compensation Rating Bureau sets the premium rate for each class with the approval of the Commissioner of Insurance.

Some employers in Wisconsin, including some larger private sector and various governmental employers, are self-insured. They do not purchase WC insurance but pay their claims using their own funds. An employer must have written approval from DWD before becoming self-insured.

Benefits payable under WC include the following:

- All reasonable and necessary medical costs.
- Benefits for lost wages while recovering from an injury.
- Benefits for permanent disability if the employee does not fully recover from the injury.
- Death benefits and burial expenses up to certain limits.
- Vocational rehabilitation services.

Benefits payable under WC include reasonable and necessary medical costs and lost wages.

For the period when an employee is out of work and recovering from an injury, the employee may receive WC benefits in an amount that is up to two-thirds of weekly wages, subject to a weekly maximum.

A waiting period applies before a benefit may be paid. The waiting period is the first three days, excluding Sunday, after the accident in which an injury is received. If a disability from work lasts beyond the seventh day, the first three days are fully compensated, including Sunday if normally worked. Generally, the first insurance payment is made within 14 days of the report of the injury.

More information about WC may be found at:

<https://dwd.wisconsin.gov/wc/>

In addition to the above-described temporary benefit payments during the period of healing, if an employee has a permanent disability, the employee will receive

an additional period of compensation based upon statutory formulas in existence at the time of the injury.

Generally, an employer may not unreasonably refuse to rehire an injured employee if suitable employment is available within the employee’s physical and mental limitations. If the employer has suitable employment available and unreasonably refuses to rehire the employee, the employer is liable for any lost wages up to a total of one year’s wages. However, the employer is not required to hold or create a job for the employee after an injury.

As with UI, Wisconsin has implemented a Worker’s Compensation Advisory Council (WCAC). The WCAC was created to advise DWD and the Legislature regarding matters affecting the administration and development of the WC law. The membership of the WCAC is made up of five voting labor representatives, five voting management representatives, three nonvoting insurance representatives, and one representative from DWD. As with the UIAC, the WCAC forwards to the Legislature recommended changes to the WC law on a biennial basis.

[chs. 102 and 626, Stats.; chs. DWD 80 and 81, Wis. Adm. Code.]

COLLECTIVE BARGAINING

Collective bargaining is a process in which an employer and a representative for the employees negotiate over certain subjects relating to employment, with the intention of reaching an agreement. An agreement reached between the employer and the employees’ representative is typically formalized in a written document called a collective bargaining agreement.

Public Sector Employers and Employees

Collective bargaining for public sector employees is governed by the Municipal Employment Relations Act (MERA) for municipal employees and the State Employment Labor Relations Act (SELRA) for state employees. [subchs. IV and V of ch. 111, Stats.]

MERA distinguishes between three types of municipal employees:

(1) general municipal employees;
 (2) public safety employees; and (3) transit employees. SELRA distinguishes between two types of state employees: (1) general state employees; and (2) public safety employees. A “general municipal employee” is a municipal employee who is not a public safety employee or transit employee. Likewise, a “general

General public sector employees can collectively bargain on base wages but are prohibited from bargaining on other subjects. Public safety employees and certain transit employees generally can bargain on wages, hours, and conditions of employment.

state employee” is a state employee who is not a public safety employee. A “public safety employee” is generally a police officer, fire fighter, or emergency medical services provider.

General municipal employees and general state employees can collectively bargain with their employers on base wages but are prohibited from bargaining collectively on other subjects, including hours, conditions of employment, and “fair-share” agreements for agency fees. Base wages can be bargained on up to a maximum limit, which is determined by a statutory formula. Any increase in total base wages that exceeds the limit must be approved by referendum. Under MERA and SELRA, “base wages” does not include overtime, premium pay, merit pay, performance pay, supplemental compensation, pay schedules, or automatic pay progressions.

Public safety employees and transit employees can collectively bargain with their employers on wages, hours, and conditions of employment, with some exceptions. State law also allows public safety and transit employees to collectively bargain on “fair-share” agreements for agency fees, but that is overridden by the U.S. Supreme Court decision in *Jamus v. AFSCME*, which ruled that a public employee cannot be required to pay agency fees for the cost of the collective bargaining process and contract administration. [585 U.S. ___ (2018).]

Private Sector Employers and Employees

Collective bargaining for private sector employees is generally governed by federal law, specifically the federal National Labor Relations Act (NLRA), as amended. The National Labor Relations Board (NLRB) administers the NLRA. Private sector employees can collectively bargain on wages, hours, and other terms and conditions of employment.

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State law contains some provisions relating to collective bargaining for private sector employees. [subch. I of ch. 111, Stats.] For example, 2015 Wisconsin Act 1 created what is commonly referred to as a “right-to-work” law for private sector employers and employees. The law prohibits an employer and labor organization from entering into an agreement that requires membership in a labor organization as a condition of employment, and it prohibits a person from requiring an individual to pay dues to a labor organization.

Private Sector Employment Associated With Public Funding or Approval

State law prohibits the state and local governmental units from requiring private parties to enter into collective bargaining agreements.

In particular, 2017 Wisconsin Act 3 specified that the state and local governmental units cannot require a person to enter into an agreement with a labor organization on a project of

public works, and cannot consider, in reviewing bids, whether or not an agreement is in place with a labor organization. This applies to a collective bargaining agreement that may be used between contractors and labor organizations on an identified project of public works. This type of agreement is sometimes referred to as a project labor agreement, or, in some cases, as a community workforce agreement.

Additionally, 2017 Wisconsin Act 327 specified that the state and local governmental units cannot require a person to accept provisions of a collective bargaining agreement or to waive rights under state or federal labor relations laws. This applies to any action by ordinance, policy, regulation, contract, zoning, permitting, licensing, or any other condition of the state or a local governmental unit that affects a private employer. This type of agreement is sometimes referred to as a labor peace agreement.

ADDITIONAL REFERENCES

1. DWD has prepared a number of publications that provide information concerning employment laws. Those publications may be found at: <https://dwd.wisconsin.gov>.
2. The U.S. Department of Labor has information on federal employment laws available on its website at: <https://www.dol.gov/>.
3. The NLRB has information on private sector employment relations provisions under the NLRA available on its website at: <https://www.nlr.gov>.
4. Legislative Council Information Memorandum, *Wisconsin's "Right-to-Work" Law* (IM-2015-04), available at: <http://legis.wisconsin.gov/lc>.
5. At the beginning of each biennial legislative session, the Legislative Fiscal Bureau publishes Informational Papers that describe various state programs, including Wisconsin's UI system, available at: <http://www.legis.wisconsin.gov/lfb>.
6. Legislative Reference Bureau, *Worker's Compensation Law in Wisconsin*, Wis. Policy Project, Vol. 1, No. 1 (Jan. 2018), available at: www.lrbdigital.legis.wisconsin.gov.
7. Legislative Audit Bureau, Audit Report 17-10, *Unemployment Reserve Fund*, available at <http://www.legis.wisconsin.gov/lab/>.

GLOSSARY

Department of Workforce Development (DWD): The state agency that administers many of Wisconsin's employment laws and programs.

Division of Personnel Management (DPM): The division in the Department of Administration that administers various laws and policies relating to state employment, including the state civil service system, and that represents the state in collective bargaining with most state employees.

Family and Medical Leave Act (FMLA): The state or federal law that requires that employees be allowed leave for family or medical reasons.

Municipal Employment Relations Act (MERA): The state law that governs collective bargaining for municipal employers and employees.

National Labor Relations Act (NLRA): The federal law that governs collective bargaining for private sector employers and employees.

State Employment Labor Relations Act (SELRA): The state law that governs collective bargaining for state employers and employees.

Unemployment Insurance (UI): The state program that provides temporary cash benefits to eligible employees who become unemployed.

Wisconsin Employment Relations Commission (WERC): The state agency that processes cases and resolves disputes relating to collective bargaining.

Worker’s Compensation (WC): The state program that pays benefits to employees for accidental injuries or diseases arising out of employment.

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