

CHAPTER 104

MINIMUM WAGE LAW

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Cross-reference: See definitions in s. 103.001.

Cross-reference: See also ch. DWD 272, Wis. adm. code.

104.001 Statewide concern; uniformity. (1) The legislature finds that the provision of a living wage that is uniform throughout the state is a matter of statewide concern and that the enactment of a living wage ordinance by a city, village, town, or county would be logically inconsistent with, would defeat the purpose of, and would go against the spirit of this chapter. Therefore, this chapter shall be construed as an enactment of statewide concern for the purpose of providing a living wage that is uniform throughout the state.

(2) A city, village, town, or county may not enact and administer an ordinance establishing a living wage. Any city, village, town, or county living wage ordinance that is in effect on June 16, 2005, is void.

(3) This section does not affect any of the following:

(a) The requirement that employees employed on a public works project contracted for by a city, village, town, or county be paid at the prevailing wage rate, as defined in s. 66.0903 (1) (g), as required under s. 66.0903.

(b) An ordinance that requires an employee of a county, city, village, or town, an employee who performs work under a contract for the provision of services to a county, city, village, or town, or an employee who performs work that is funded by financial assistance from a county, city, village, or town, to be paid at a minimum wage rate specified in the ordinance.

History: 2005 a. 12; 2009 a. 28; 2011 a. 32.

Madison's Minimum-Wage Ordinance, Section 104.001, and the Future of Home Rule in Wisconsin. Burchill. 2007 WLR 151.

104.01 Definitions. The following terms as used in this chapter shall be construed as follows:

(1) "Department" means the department of workforce development.

(2) (a) "Employee" means every individual who is in receipt of or is entitled to any compensation for labor performed for any employer.

(b) "Employee" does not mean:

1. Any individual engaged in the house to house delivery of newspapers to the consumer or engaged in direct retail sale to the consumer.

2. Any individual engaged in performing services for a person as a real estate agent or as a real estate salesperson, if all of those services are performed for remuneration solely by commission.

3. Any individual engaged in performing services for an employer described in sub. (3) (b) if that individual is not considered under 29 USC 203 (e) (4), as amended to April 15, 1986, to be an employee for the purposes of the fair labor standards act, 29 USC 201 to 219, or if that individual is exempt under 29 USC 213, as amended to April 1, 1990, from being paid at least the federal minimum hourly wage under 29 USC 206 (a) (1).

4. Any individual engaged in performing services for an employer described in sub. (3) (b) if that individual is not subject to the civil service laws of the employer and if that individual is

an elective officer; is on the personal staff of an elective officer, other than a member of the legislature; is appointed by an elective officer to serve on a policymaking level; or is an immediate adviser to an elective officer with respect to the constitutional or legal powers of the elective officer's office.

5. Any individual whose primary duty is making sales, as defined in 29 USC 203 (k), or obtaining orders or contracts for services or for the use of facilities for which a consideration will be paid by the client or customer and who is customarily and regularly engaged away from the employer's place of business in performing that primary duty.

(3) (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) "Employer" includes the state, its political subdivisions and any office, department, independent agency, authority, institution, association, society or other body in state or local government created or authorized to be created by the constitution or any law, including the legislature and the courts.

(5) "Living wage" means compensation for labor paid, whether by time, piecework, or otherwise, sufficient to enable the employee receiving the compensation to maintain himself or herself under conditions consistent with his or her welfare.

(6) "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 workers with disabilities and of providing workers with disabilities with remunerative employment or other occupational rehabilitating activity of an educational or therapeutic nature.

(7) "Student learner" means a student who is receiving instruction in an accredited school and who is employed on a part-time basis, pursuant to a bona fide school training program. A "bona fide school training program" means a program authorized and approved by the department of public instruction or the technical college system board, or other recognized educational body, and provided 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 accredited school.

(8) The term "wage" and the term "wages" shall each mean any compensation for labor measured by time, piece or otherwise.

(9) The term "welfare" shall mean and include reasonable comfort, reasonable physical well-being, decency, and moral well-being.

(10) "Worker with a disability" means a worker whose earning capacity is impaired by age or physical or mental deficiency or injury and who is being served in accordance with the recognized rehabilitation program of a sheltered workshop within the facilities of such agency or in or about the home of the worker.

History: 1977 c. 29; 1983 a. 189, 458; 1989 a. 225; 1993 a. 144, 399; 1995 a. 27 ss. 9130 (4), 9145 (1); 1997 a. 3, 27, 112; 2005 a. 12; 2013 a. 285.

104.02 Living wage prescribed. Every wage paid or agreed to be paid by any employer to any employee, except as otherwise provided in s. 104.07, shall be not less than a living wage.

History: 1975 c. 94; 2005 a. 12.

104.03 Unlawful wages. Any employer paying, offering to pay, or agreeing to pay any employee a wage lower or less in value than a living wage is guilty of a violation of this chapter.

History: 1975 c. 94; 2005 a. 12.

104.04 Classifications; department's authority. The department shall investigate, ascertain, determine, and fix such reasonable classifications, and shall impose general or special orders, determining the living wage, and shall carry out the purposes of this chapter. Such investigations, classifications, and orders shall be made as provided under s. 103.005, and the penalties specified in s. 103.005 (12) shall apply to and be imposed for any violation of this chapter. In determining the living wage, the department may consider the effect that an increase in the living wage might have on the economy of the state, including the effect of a living wage increase on job creation, retention, and expansion, on the availability of entry-level jobs, and on regional economic conditions within the state. The department may not establish a different minimum wage for men and women. Said orders shall be subject to review in the manner provided in ch. 227.

History: 1971 c. 228 s. 43; 1975 c. 94; 1995 a. 27; 2005 a. 12.

Cross-reference: See also ch. DWD 272, Wis. adm. code.

The department is charged with determining the living wage and carrying out the purposes of ch. 104 by establishing minimum wage rates. The minimum wage affected by the statute is defined as the hourly rate and does not consider benefits except tips, meals, and lodging. A municipal ordinance requiring paid sick leave did not increase the hourly wage rate as the department has defined it. *Metropolitan Milwaukee Association of Commerce, Inc. v. City of Milwaukee*, 2011 WI App 45, 332 Wis. 2d 459, 798 N.W.2d 287, 09–1874.

104.045 Tipped employees. The department shall by rule determine what amount of tips or similar gratuities may be counted toward fulfillment of the employer's obligation under this chapter.

History: 1977 c. 179.

104.05 Complaints; investigation. The department shall, within 20 days after the filing of a verified complaint of any person setting forth that the wages paid to any employee in any occupation are not sufficient to enable the employee to maintain himself or herself under conditions consistent with his or her welfare, investigate and determine whether there is reasonable cause to believe that the wage paid to any employee is not a living wage.

History: 1975 c. 94; 2005 a. 12.

104.06 Wage council; determination. If, upon investigation, the department finds that there is reasonable cause to believe that the wages paid to any employee are not a living wage, the department shall appoint a wage council, selected so as fairly to represent employers, employees, and the public, to assist in its investigations and determinations. The living wage so determined upon shall be the living wage for all employees within the same class as established by the classification of the department.

History: 1975 c. 94; 2005 a. 12.

104.07 Rules; license to employ; student learners; sheltered workshops. (1) The department shall make rules, and, except as provided under subs. (5), (6), and (7), grant licenses to any employer who employs any employee who is unable to earn the living wage determined by the department, permitting the employee to work for a wage that is commensurate with the employee's ability. Each license so granted shall establish a wage for the licensee.

(2) The department shall make rules, and, except as provided under subs. (5), (6), and (7), grant licenses to sheltered workshops, to permit the employment of workers with disabilities who are unable to earn the living wage at a wage that is commensurate with their ability and productivity. A license granted to a sheltered

workshop under this subsection may be issued for the entire workshop or a department of the workshop.

(3) No student learner or employee shall be employed at a wage less than the rate so established.

(4) (a) Except as provided in par. (bm), the department shall require each applicant for a license under sub. (1) or (2) who is an individual to provide the department with the applicant's social security number, and shall require each applicant for a license under sub. (1) or (2) who is not an individual to provide the department with the applicant's federal employer identification number, when initially applying for or applying to renew the license.

(b) If an applicant who is an individual fails to provide the applicant's social security number to the department or if an applicant who is not an individual fails to provide the applicant's federal employer identification number to the department, the department may not issue or renew a license under sub. (1) or (2) to or for the applicant unless the applicant is an individual who does not have a social security number and the applicant submits a statement made or subscribed under oath or affirmation as required under par. (bm).

(bm) If an applicant who is an individual does not have a social security number, the applicant shall submit a statement made or subscribed under oath or affirmation to the department that the applicant does not have a social security number. The form of the statement shall be prescribed by the department. A license issued under sub. (1) or (2) in reliance upon a false statement submitted under this paragraph is invalid.

(c) The department of workforce development may not disclose any information received under par. (a) to any person except to the department of revenue for the sole purpose of requesting certifications under s. 73.0301 or the department of children and families for purposes of administering s. 49.22.

(5) The department of workforce development shall deny, suspend, restrict, refuse to renew, or otherwise withhold a license under sub. (1) or (2) for failure of the applicant or licensee to pay court-ordered payments of child or family support, maintenance, birth expenses, medical expenses, or other expenses related to the support of a child or former spouse or for failure of the applicant or licensee to comply, after appropriate notice, with a subpoena or warrant issued by the department of children and families or a county child support agency under s. 59.53 (5) and related to paternity or child support proceedings, as provided in a memorandum of understanding entered into under s. 49.857. Notwithstanding s. 103.005 (10), an action taken under this subsection is subject to review only as provided in the memorandum of understanding entered into under s. 49.857 and not as provided in ch. 227.

(6) The department shall deny an application for the issuance or renewal of a license under sub. (1) or (2), or revoke such a license already issued, if the department of revenue certifies under s. 73.0301 that the applicant or licensee is liable for delinquent taxes. Notwithstanding s. 103.005 (10), an action taken under this subsection is subject to review only as provided under s. 73.0301 (5) and not as provided in ch. 227.

(7) (a) The department may deny an application for the issuance or renewal of a license under sub. (1) or (2), or revoke such a license already issued, if the department determines that the applicant or licensee is liable for delinquent contributions, as defined in s. 108.227 (1) (d). Notwithstanding s. 103.005 (10), an action taken under this paragraph is subject to review only as provided under s. 108.227 (5) and not as provided in ch. 227.

(b) If the department denies an application or revokes a license under par. (a), the department shall mail a notice of denial or revocation to the applicant or licensee. The notice shall include a statement of the facts that warrant the denial or revocation and a statement that the applicant or licensee may, within 30 days after the date on which the notice of denial or revocation is mailed, file a written request with the department to have the determination that

the applicant or licensee is liable for delinquent contributions reviewed at a hearing under s. 108.227 (5) (a).

(c) If, after a hearing under s. 108.227 (5) (a), the department affirms a determination under par. (a) that an applicant or licensee is liable for delinquent contributions, the department shall affirm its denial or revocation. An applicant or licensee may seek judicial review under s. 108.227 (6) of an affirmation by the department of a denial or revocation under this paragraph.

(d) If, after a hearing under s. 108.227 (5) (a), the department determines that a person whose license is revoked or whose application is denied under par. (a) is not liable for delinquent contributions, as defined in s. 108.227 (1) (d), the department shall reinstate the license or approve the application, unless there are other grounds for revocation or denial. The department may not charge a fee for reinstatement of a license under this paragraph.

History: 1977 c. 29 s. 1651; 1977 c. 273; 1997 a. 112, 191, 237; 1999 a. 9, 32; 2005 a. 12; 2009 a. 180; 2013 a. 36.

Cross-reference: See also s. DWD 272.09, Wis. adm. code.

104.08 Apprentices. (1m) In this section:

(a) “Trade” means an occupation involving physical labor and characterized by mechanical skill and training such as render a period of instruction reasonably necessary.

(b) “Trade industry” means an industry involving physical labor and characterized by mechanical skill and training such as render a period of instruction reasonably necessary.

(2m) Any person working in a trade industry for which a living wage has been established for minors, and who has no trade, shall be employed under an apprentice contract under s. 106.01.

(3) (a) The department shall investigate, determine, and declare what occupations and industries are included within a “trade” or a “trade industry.”

(b) The department may make exceptions to the operation of sub. (2m) when conditions make its application unreasonable.

History: 2005 a. 12; 2009 a. 291.

104.09 Records. Each employer shall keep a record of the names and addresses of all student learners and employees, the hours of employment and wages of each, and such other records pertaining to ability as the department requires, except that an employer is not required to keep a record of the hours of employment of an employee who is exempt under rules promulgated by the department from the requirement under s. 103.02 that an employee be paid overtime compensation, as defined in s. 103.025 (1) (c), and who is not compensated on an hourly rate basis.

History: 1977 c. 29 s. 1651; 1977 c. 273; 2013 a. 286.

104.10 Penalty for intimidating witness. Any employer who discharges or threatens to discharge, or in any way discriminates, or threatens to discriminate against any employee because the employee has testified or is about to testify, or because the employer believes that the employee may testify, in any investigation or proceeding relative to the enforcement of this chapter, is guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of \$25 for each offense.

History: 2005 a. 12.

104.11 Definition of violation. Each day during which any employer shall employ a person for whom a living wage has been fixed at a wage less than the living wage fixed shall constitute a separate and distinct violation of this chapter.

History: 2005 a. 12.

104.12 Complaints. Any person may register with the department a complaint that the wages paid to an employee for whom a living wage has been established are less than that living wage, and the department shall investigate the matter and take all proceedings necessary to enforce the payment of a wage that is not less than the living wage. Section 111.322 (2m) applies to discharge and other discriminatory acts arising in connection with any proceeding under this section.

History: 1989 a. 228; 2005 a. 12.