

## 2005 DRAFTING REQUEST

### Bill

Received: 01/14/2005

Received By: gmalaise

Wanted: As time permits

Identical to LRB:

For: James Kreuser (608) 266-5504

By/Representing: A.J. Wilson

This file may be shown to any legislator: NO

Drafter: gmalaise

May Contact:

Addl. Drafters:

Subject: Employ Priv - minimum wage

Extra Copies:

Submit via email: YES

Requester's email: Rep.Kreuser@legis.state.wi.us

Carbon copy (CC:) to:

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### Pre Topic:

No specific pre topic given

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### Topic:

Minimum wage; increase

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### Instructions:

See Attached--increase the minimum wage by statute in the same manner as the Governor attempted to do by administrative rule

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### Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	gmalaise 01/14/2005	wjackson 01/15/2005 wjackson 01/18/2005		_____			S&L
/1			jfrantze 01/19/2005	_____	lnorthro 01/19/2005	lnorthro 01/20/2005	

FE Sent For:

<END>

↳ At Intro.

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CR04-036

Report From AgencyReport From Agency 

**State of Wisconsin  
Department of Workforce Development  
Equal Rights Division**

**Chapter DWD 272**

**Increasing Wisconsin's Minimum Wages**

The Wisconsin Department of Workforce Development proposes an order to amend s. DWD 272.03 (1), (1m), (3), and (3m), s. DWD 272.05 (1)(a), (1)(b), (2)(a), and (2)(b), s. DWD 272.07 (3), and s. DWD 272.08; to repeal and recreate s. DWD 272.12(2)(g)6.; and to create ss. 272.01 (9m), 272.07 (3g), and 272.07 (3r), relating to increasing Wisconsin's minimum wages.

**Analysis Prepared by the Department of Workforce Development**

**Statutory authority:** Sections 104.04 and 227.11, Stats.

**Statutes interpreted:** Chapter 104, Stats.

**Wisconsin needs a minimum wage increase**

Creating good paying jobs and a "high end" economy is a top priority for Governor Jim Doyle's administration. A key focus of the Governor's *Grow Wisconsin* economic development plan is investing in people and helping families climb the economic ladder. One of the most important initiatives in the Governor's plan is raising the state minimum wage. Such an increase ensures that Wisconsin's lowest wage workers will share in the benefits of economic growth as Wisconsin's economy moves forward.

This is a critical time for Wisconsin to support low-wage workers by increasing the minimum wage. In 2004, the federal minimum wage will fall to its lowest inflation-adjusted value of all time. The buying power of the minimum wage in 1970 equaled about \$8.00 in 2003 dollars. Given the declining value of the minimum wage and the lack of federal action to increase it, 12 other states have already established minimum wages above the federal level.

When wages are so low that workers and their families can't afford their most basic needs, the costs that society, particularly taxpayers, must bear related to poverty are so insidious that anything that helps divert those expenses back to the consumers of the services provided by those low-wage workers is worthwhile. Educational failure, workforce failure, citizenship failure can very often be traced back to families forced to live in poverty. An adequate minimum wage supports workers, helps strengthen families and communities, and promotes the state's overall economic and fiscal health. Family-supporting wages reduce dependence on the state and increase tax revenue from these families, decreasing the burden on Wisconsin's taxpayers.

It is estimated that 200,000 workers will be affected by Wisconsin's minimum wage increase. Many of these workers are adults and a larger than proportionate share are minorities. Putting more money in the hand of these low-wage workers will result in \$175 million in consumer expenditures in Wisconsin's economy. Low-wage workers spend nearly their entire income in the local economy on basics. This spending stimulates the local economy and benefits local businesses because spending is concentrated locally on food, clothing, shelter, and transportation. Evidence of a negative effect on employment opportunities available to low-wage workers as a result of a minimum wage increase is inconclusive as both advocates and

opponents are able to produce studies supporting their side of the issue.

### **Minimum wage increases**

Chapter 104, Stats., and Chapter DWD 272 provide that Wisconsin's minimum wage should be sufficient to enable the employee receiving it to maintain himself or herself under conditions consistent with his or her reasonable comfort, physical well-being, decency, and moral well-being. Section 104.04, Stats., directs the Department of Workforce Development to determine the state's minimum wage taking into consideration the effect of the wage on the economy of the state, including employment opportunities for low-wage workers and regional economic conditions within the state.

Governor Doyle and the Department of Workforce Development convened a Minimum Wage Advisory Council to assist with determining whether there should be an increase in Wisconsin's minimum wage. The Council included leaders from the business community, labor organizations, and both houses of the legislature. The Department's Office of Economic Advisors provided the Advisory Council with data from the U.S. Census; Current Population Survey; and the U.S. Department of Labor, Bureau of Labor Statistics, Occupational Employment Statistics. The Council considered this data and made the following recommendations:

#### **General minimum wage rate**

- Increases to \$5.70/hour effective when rule is effective (currently \$5.15/hour)
- Increases to \$6.50/hour effective 10/01/05

#### **Minor minimum wage rate**

- Increases to \$5.30/hour effective when rule is effective (currently same as adult rate \$5.15/hour)
- Increases to \$5.90/hour effective 10/01/05

#### **Opportunity minimum wage rate**

- Increases to \$5.30/hour effective when rule is effective (currently \$4.25/hour)
- Increases to \$5.90/hour effective 10/01/05

#### **Agriculture minimum wage rate for workers age 18 and over**

Increases to \$5.15/hour effective when rule is effective (currently

#### **Agricultural minimum wage rate for workers age 17 and under**

Increases to \$4.25/hour effective when rule is effective (currently

#### **Golf caddy minimum wage rate**

Increases to \$10.50 for 18 holes, and \$5.90 for 9 holes effective when rule is effective (currently \$5.95 for 18 holes and \$3.35 for 9 holes)

The proposed rule as noticed for hearing incorporated the Advisory Council's recommendation to implement the camp counselor rate increase in two phases. In response to public hearing comments, the Department has adjusted the proposed rule to implement the increase in three phases as follows:

#### **Camp counselor minimum wage rate for workers age 18 and over**

- Increases to \$215/week effective when rule is effective, \$270/week effective 10/01/05, and \$315/week effective 10/01/06, if no room or board provided (currently \$140/week)
- Increases to \$164/week effective when rule is effective, \$217/week effective 10/01/05, and \$240 effective 10/01/06, if board provided (currently \$110/week)
- Increases to \$129/week effective when rule is effective, and \$171/week effective 10/01/05, and \$189 effective 10/01/06, if room and board provided (currently \$91/week)

**Camp counselor minimum wage rate for workers age 17 and under**

- Increases to \$175/week effective when rule is effective, \$225/week effective 10/01/05, and \$275 effective 10/01/06, if no room or board provided (currently \$123/week)
- Increases to \$133/week effective when rule is effective, \$171/week effective 10/01/05, and \$209 effective 10/01/06, if board provided (currently \$92/week)
- Increases to \$105/week effective when rule is effective, \$135/week effective 10/01/05, and \$165 effective 10/01/06, if room and board provided (currently \$74/week)

**Effect of minimum wage increases on Wisconsin's economy**

The Department of Workforce Development estimates that 200,000 workers will be affected by the minimum wage increases. The average wage increase among the 200,000 affected workers will be about \$.60 per hour.

- The \$5.15 to \$5.70 increase in the general rate that will occur when this rule is effective will directly raise the pay of 40,000 to 45,000 workers.
- The \$5.70 to \$6.50 increase in the general rate that will occur on October 1, 2005, will directly raise the pay of 50,000 to 60,000 workers.
- The \$5.15 to \$5.30 increase in the minor rate that will occur when this rule is effective will directly raise the pay of 15,000 to 20,000 workers.
- The \$5.30 to \$5.90 increase in the minor rate that will occur on October 1, 2005, will directly raise the pay of 20,000 to 30,000 workers.

CR04-036

Report From Agency

- It is expected that approximately 110,000 workers making slightly above the new minimum wages will be indirectly affected by the minimum wage increases and will also receive pay increases.

It is estimated that nearly 80% of these low-wage workers are over 18 years of age, 65% are female, and over one-third are heads of their household. These workers are African-American, Hispanic, and Asian in numbers larger than their proportion in the population. Over two-thirds of these low-wage workers work more than half-time:

30% work 1-19 hours per week

35% work 20-34 hours per week

35% work 35+ hours per week

They work as food service workers, retail clerks, cleaning and housekeeping laborers, personal care attendants, child care workers, telemarketers, laundry and dry cleaning workers, veterinary assistants, home health care aides, office workers, gaming change and booth cashiers, building and grounds maintenance laborers, and many other occupations in virtually all industries in the state.

The industry with the largest number of workers affected by a minimum wage increase is the leisure and hospitality industry—75% of affected employees work in this industry. Leisure and hospitality includes accommodations and foods as well as arts, entertainment, and recreation. Pay is low in the leisure and hospitality industry overall but particularly low in the accommodations and foods sector. In hotels and motels, 40% of workers earn less than \$6.50, and in restaurants 20% of workers earn less than \$6.50. The pay of Wisconsin workers in the accommodations and foods industry is almost the lowest in the country ranking 49<sup>th</sup> nationally.

**Anticipated cost incurred by private sector.** The effect of the wage increase on business will be \$175 million in increased payroll costs. Low-wage workers will circulate this money back into the economy immediately, representing a 0.1 percent increase in the gross state product. The increased spending by affected workers may be a revenue growth for some businesses. The effects may be slightly greater in northern, rural regions of the state where minimum wage jobs make up a greater percentage of the workforce. Higher wages also have a positive impact on both workers and their employers by reducing turnover, increasing work experience, and saving on training and recruitment costs for both workers and employers. Any increase in the cost of doing business will likely be passed on to consumers as part of the price of the product or service being purchased.

**Effect on small business.** Section 227.114, Stats., requires that the Department consider the effect of the rule on small business, which is defined as fewer than 25 employees or \$2.5 million in gross annual sales, and consider exemptions or less stringent deadlines for compliance if there is an effect on small business. The Department estimates that a very high percentage of workers affected by this minimum wage increase work for employers with less than 25 employees or \$2.5 million in gross annual sales. If the rule exempted these employers from minimum wage coverage, it would render the minimum wage nearly meaningless.

***Fiscal effect on state and local government***

It is estimated that 35% of the additional \$175 million in consumer expenditures will be on items subject to the sales tax. This translates to increased revenue of approximately \$3 million for the state and some increased revenue for counties with a local sales tax.

There may be increased state revenue from the income tax on higher incomes for approximately 200,000 workers. A request is being submitted to the Department of Revenue for an estimate of the increase and any possible offset due to decreased corporate tax revenue based on increased payroll costs. An amended fiscal estimate will be included when this information is received from the Department of Revenue.

It is estimated that 100-200 local governmental employees across the state who work as seasonal summer helpers may be affected by the increase. The increased cost is estimated at approximately \$20,000 across all local governments in the state.

The minimum wage increase is not expected to affect state employees.

#### **Federal law and adjacent states**

Section 227.14 (2)3. and 4., Stats., requires the Department to compare the proposed rule to any existing or proposed federal regulation and rules in adjacent states.

#### **General rate:**

Federal \$5.15

Iowa \$5.15

Michigan \$5.15

Minnesota \$5.15 for employers covered by Federal Labor Standards Act  
\$4.90 for employers not covered by Federal Labor Standards Act

Illinois \$5.50, increasing to \$6.50 on January 1, 2005

#### **Minor rate:**

Federal None

Iowa None

Michigan None

Minnesota None

Illinois \$5.00, increasing to \$6.00 on January 1, 2005

#### **Opportunity rate:**

Federal \$4.25 for employees under 20 years old for first 90 days of employment

Iowa \$4.25 for all employees for first 90 days of employment

Michigan \$4.25 for 16- to 19-year-olds for first 90 days of employment

Minnesota \$4.25 for employees under 20 years old for first 90 days of employment

Illinois No opportunity wage of general application. Employers may apply for license from Illinois Department of Labor to pay adult learners 70% of minimum wage rate for initial six months of employment.

#### **Agricultural rate:**

Federal None

Iowa None

Michigan None

Minnesota None

Illinois None

**Camp counselor rate:**

Federal None

Iowa None

Michigan None

Minnesota None

Illinois \$220 per week, increasing to \$260 per week on January 1, 2005

**Golf caddy rate:**

Federal: None

Iowa: None

Michigan: None



CR04-036

Report From Agency

Minnesota None

Illinois: Exempt from minimum wage

**Proposed federal change:**

Senator Kennedy introduced an amendment to the welfare reform reauthorization bill that would increase the federal minimum wage from \$5.15 to \$7.00 over 2 years. As of April 1, the Senate is deadlocked and the minimum wage increase and welfare reform reauthorization are in limbo. The current welfare reform authorization expires June 30. Senator Kennedy has vowed to attempt to attach his minimum wage measure to every bill that hits the Senate floor.

On April 14, Republican Senators announced that they are crafting legislation that would phase in an increase of the federal minimum wage to \$6.25, packaged with business-friendly measures.

**Technical correction**

The proposed rule also repeals and recreates the policy that travel time for the benefit of the employer is work time. It is rewritten for clarity and with no change in substance.

**SECTION 1. DWD 272.01 (9m) is created to read:**

**DWD 272.01 (9m)** "Minor employee" means a minor who is paid at the applicable minor minimum wage rate.

**SECTION 2. DWD 272.03 (1) and (1m) are amended to read:**

**DWD 272.03 (1) MINIMUM RATES.** This subsection is in effect from ~~October 1, 1996 to August 31, 1997~~ the effective date of this section ... [revisor inserts date] to September 30, 2005. Except as provided in ss. DWD 272.05 to 272.09, no employer shall employ any employee in any occupation, trade, or industry at a lesser hourly rate than is indicated below:

- (a) All employees except opportunity and minor employees ~~\$4.75~~ \$5.70 per hr hour.
- (b) Opportunity and minor employees ~~\$4.25~~ \$5.30 per hour.

**(1m) MINIMUM RATES.** This subsection becomes effective on ~~September 1, 1997~~ October 1, 2005. Except as provided in ss. DWD 272.05 to 272.09, no employer shall employ any employee in any occupation, trade, or industry at a lesser hourly rate than is indicated below:

- (a) All employees except opportunity and minor employees ~~\$5.15~~ \$6.50 per hr hour.
- (b) Opportunity and minor employees ~~\$4.25~~ \$5.90 per hr hour.

**SECTION 2. DWD 272.03 (3) and (3m) are amended to read:**

**DWD 272.03 (3) ALLOWANCE FOR BOARD AND LODGING.** This subsection is in effect from ~~October 1, 1996, to August 31, 1997~~ the effective date of this section ... [revisor inserts date] to September 30, 2005. Where board or lodging or both are furnished by the employer in accordance with s. DWD 272.04, and accepted and received by a particular employee, an allowance may be made not to exceed the following amounts:

- (a) *Lodging.* 1. All employees except opportunity and minor employees ~~\$38.00~~ \$45.60 per week or ~~\$5.45~~ \$6.50 per day.
- 2. Opportunity and minor employees ~~\$34.00~~ \$42.40 per week or ~~\$4.85~~ \$6.05 per day.
- (b) *Meals.* 1. All employees except opportunity and minor employees ~~\$57.00~~ \$68.40 per week or ~~\$2.70~~ \$3.25 per meal.
- 2. Opportunity and minor employees ~~\$51.00~~ \$63.60 per week or ~~\$2.45~~ \$3.00 per meal.

**(3m) ALLOWANCE FOR BOARD AND LODGING.** This subsection becomes effective on ~~September 1, 1997~~ October 1, 2005. Where board or lodging or both are furnished by the employer in accordance with s. DWD 272.04, and accepted and received by a particular employee, an allowance may be made not to exceed the following amounts:

(a) *Lodging*. All employees except opportunity and minor employees ~~\$41.20~~ \$52.00 per week or ~~\$5.90~~ \$7.40 per day.

~~2.~~ Opportunity employees ~~\$34.00~~ \$47.20 per week or ~~\$4.85~~ \$6.75 per day.

(b) *Meals*. All employees except opportunity and minor employees ~~\$61.80~~ \$78.00 per week or ~~\$2.95~~ \$3.70 per meal.

~~2.~~ Opportunity and minor employees ~~\$51.00~~ \$70.80 per week or ~~\$2.45~~ \$3.35 per meal.

**SECTION 3. DWD 272.05 (1)(a), (1)(b), (2)(a), and (2)(b) are amended to read:**

**DWD 272.05 (1) (a) ~~Adult employees~~ Employees 18 years of age and over:** ~~\$4.05~~ \$5.15 per ~~hr~~ hour.

(b) ~~Minors~~ Employees 17 years of age and under: ~~\$3.70~~ \$4.25 per ~~hr~~ hour.

(2) (a) Lodging— <del>Adults</del> <u>Employees 18 years of age and over:</u>	<del>\$32.40</del> <u>\$41.20</u> per week or <del>\$4.65</del> <u>\$5.90</u> per day.
<del>Minors</del> <u>Employees 17 years of age and under:</u>	<del>\$29.60</del> <u>\$34.00</u> per week or <del>\$4.25</del> <u>\$4.85</u> per day
(b) Meals— <del>Adults</del> <u>Employees 18 years of age and over:</u>	<del>\$48.60</del> <u>\$61.80</u> per week or <del>\$2.30</del> <u>\$2.95</u> per meal
<del>Minors</del> <u>Employees 17 years of age and under:</u>	<del>\$44.40</del> <u>\$51.00</u> per week or <del>\$2.10</del> <u>\$2.40</u> per meal

**SECTION 4. DWD 272.07 (3) is amended to read:**

**DWD 272.07 (3) COUNSELORS.** This subsection is in effect from the effective date of this section ... *[revisor inserts date]* to September 30, 2005. The minimum wage of counselors employed in seasonal recreational or educational camps and day camps may be computed on a weekly basis as follows:

- (a) Adult counselors 18 years of age and over: PER WEEK
  - 1. If board and lodging are not furnished ~~\$140.00~~ \$215
  - 2. If board only is furnished ~~\$110.00~~ \$164
  - 3. If board and lodging are furnished ~~\$91.00~~ \$129
- (b) Counselors 17 years of age and under: PER WEEK
  - 1. If board and lodging are not furnished ~~\$123.00~~ \$175
  - 2. If board only is furnished ~~\$92.00~~ \$133
  - 3. If board and lodging are furnished ~~\$74.00~~ \$105

**SECTION 5. DWD 272.07 (3g) and (3r) are created to read:**

**DWD 272.07 (3g) COUNSELORS.** This subsection is in effect from the October 1, 2005, to September 30, 2006. The minimum wage of counselors employed in seasonal recreational or educational camps and day camps may be computed on a weekly basis as follows:

- (a) Adult counselors 18 years of age and over: PER WEEK

1. If board and lodging are not furnished	\$270
2. If board only is furnished	\$217
3. If board and lodging are furnished	\$171
(b) Counselors 17 years of age and under:	PER WEEK
1. If board and lodging are not furnished	\$225
2. If board only is furnished	\$171
3. If board and lodging are furnished	\$135

**DWD 272.07 (3r) COUNSELORS.** This subsection becomes effective on October 1, 2006. The minimum wage of counselors employed in seasonal recreational or educational camps and day camps may be computed on a weekly basis as follows:

(a) Adult counselors 18 years of age and over:	PER WEEK
1. If board and lodging are not furnished	\$315
2. If board only is furnished	\$240
3. If board and lodging are furnished	\$189
(b) Counselors 17 years of age and under:	PER WEEK
1. If board and lodging are not furnished	\$275
2. If board only is furnished	\$209
3. If board and lodging are furnished	\$165

**SECTION 6. DWD 272.08 is amended to read:**

**DWD 272.08 Caddies.** The minimum wage of employees employed as caddies shall be:

~~\$3.35~~ \$5.90 9 holes

~~\$5.95~~ \$10.50 18 holes

**SECTION 7. DWD 272.12(2)(g)6. is repealed and recreated to read:**

**DWD 272.12(2)(g)6.** Travel away from home community. Travel time away from the home community for business purposes that occurs for the benefit of the employer is considered hours worked.

**SECTION 8. EFFECTIVE DATE.** This rule shall take effect on the first day of the third month commencing after the date of publication in the Wisconsin administrative register as provided in ss. 227.22(2)(b), Stats., and 227.22(2)(e), Stats., as created by 2003 Wisconsin Act 145.

Proposed Rules Relating To Increasing Wisconsin's Minimum Wages

Chapter DWD 272/CR 04-036

Rule Analysis for Legislative Review



employee as a probationary employee for less than the number of days specified in this chapter.

**History:** Cr. Register, June, 1989, No. 402, eff. 7-1-89; correction made under s. 13.93 (2m) (b) 7., Stats., Register, February, 1996, No. 482.

**DWD 272.03 Minimum rates. (1) MINIMUM RATES.** This subsection is in effect from October 1, 1996 to August 31, 1997. Except as provided in ss. DWD 272.05 to 272.09, no employer shall employ any employee in any occupation, trade, or industry at a lesser hourly rate than is indicated below:

- (a) All employees except opportunity employees \$4.75 per hr.
- (b) Opportunity employees \$4.25 per hour

**(1m) MINIMUM RATES.** This subsection becomes effective on September 1, 1997. Except as provided in ss. DWD 272.05 to 272.09, no employer shall employ any employee in any occupation, trade or industry at a lesser hourly rate than is indicated below:

- (a) All employees except opportunity employees \$5.15 per hr.
- (b) Opportunity employees \$4.25 per hr.

**(2) TIPS.** Where tips or gratuities are received by the employee 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 employee. The minimum rate shall be the rate established in par. (a).

(a) *Minimum rates for tipped employees.* All employees except opportunity employees \$2.33 per hr.

(am) *Opportunity employees.* Opportunity employees \$2.13 per hour.

(b) *Burden of proof.* 1. When the employer elects to take tip credit the employer must have a tip declaration signed by the tipped employee 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 employee. 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 employee who has refused or failed to file an accurate signed tip declaration for the employer each pay period.

(c) *General characteristics of "tips".* 1. Tip means a sum presented by a customer as a gift or gratuity in recognition of some service performed for them. It is to be distinguished from payment of a charge, if any, made for the service. Whether a tip is to be given, and its amount, are matters determined solely by the customer, and generally they have the right to determine who shall be the recipient of their gratuity. In the absence of an agreement to the contrary between the recipient and a third party, a tip becomes the property of the person in recognition of whose service it is presented by the customer. Only tips actually received by an employee as money belonging to them which they may use as they choose free of any control by the employer, may be counted in determining whether they are a "tipped employee."

2. In addition to cash sums presented by customers which an employee keeps as their own, tips received by an employee include, amounts paid by bank check or other negotiable instrument payable at par and amounts transferred by the employer to the employee pursuant to directions from credit customers who designate amounts to be added to their bills as tips. Special gifts in forms other than money or its equivalent as above described, such as theater tickets, passes, or merchandise, are not counted as tips received by the employee.

(d) *Tip pooling.* Where employees practice tip splitting, as where waiters or waitresses give a portion of their tips to the bus persons, both the amounts retained by the waiters or waitresses

and those given the bus persons are considered tips of the individuals who retain them.

(e) *Service charge.* 1. A compulsory charge for service, such as 15% of the amount of the bill, imposed on a customer by an employer's establishment, is not a tip unless distributed by the employer to their employees.

2. Similarly, where negotiations between a hotel or restaurant and a customer for banquet facilities include amounts for distribution to employees of the hotel or restaurant, the amounts must be so distributed to the employees at the end of the pay period in which it is earned.

3. If the employer in their payroll records can establish a breakdown of the service charge, such as how much is for tips, room charge, decorations, and other chargeable services, only the amount for tips must be paid to the employee at the end of the pay period in which it is earned.

4. Similarly, where an accounting is made to an employer for their information only or in furtherance of a pooling arrangement whereby the employer redistributes the tips to the employees upon some basis to which they have mutually agreed among themselves, the amounts received and retained by each individual as their own are counted as their tips.

(f) *Receiving the minimum amount "customarily and regularly".* The employee must receive tips "customarily and regularly" in the occupation in which they are engaged in order to qualify as a tipped employee. If it is known that they always receive more than the stipulated amount each month, as may be the case with many employees in occupations such as those of waiters, waitresses, bellhops, taxicab drivers, barbers, or beauty operators, the employee will qualify and the tip credit provisions of s. DWD 272.03 may be applied. On the other hand, an employee who only occasionally or sporadically receives tips such as at Christmas or New Years when customers may be more generous than usual, will not be deemed a tipped employee. The phrase "customarily and regularly" signifies a frequency which must be greater than occasional, but which may be less than constant. If an employee is in an occupation in which they normally and recurrently receive tips, they will be considered a tipped employee even though occasionally, because of sickness, vacation, seasonal fluctuations or the like, they fail to receive tips in a particular month.

(g) *The tip wage credit.* 1. In determining compliance with the wage payment requirements the amount paid to a tipped employee as allowable under par. (a) by an employer is deemed to be increased on account of tips to equal the minimum wage applicable under sub. (1) to such employee in the pay period for which the wage payment is made. This credit is in addition to any credit for board, lodging, or other facilities which may be allowable under s. DWD 272.03. The credit allowed on account of tips may be less than the difference between the applicable minimum wage and the rate for a tipped employee; it cannot be more.

2. It is presumed that in the application of this special provision the employee will be receiving at least the maximum tip credit in actual tips: "If the employee is receiving less than the amount credited, the employer is required to pay the balance so that the employee receives at least the minimum wage with the defined combination of wages and tips."

3. Under employment agreements requiring tips to be turned over or credited to the employer to be treated by them as part of their gross receipts, it is clear that the employer must pay the employee the full minimum hourly wage, since for all practical purposes the employee is not receiving tip income.

(h) *Overtime payments.* When overtime is worked by a tipped employee who is subject to the overtime pay of ch. DWD 274, their regular rate of pay is determined by dividing their total remuneration for employment in any workweek by the total number of hours actually worked by them in that workweek for which such compensation was paid. A tipped employee's regular rate of pay includes the amount of tip credit taken by the employer, and the

cash wages including commissions and certain bonuses paid by the employer. Any tips received by the employee in excess of the tip credit need not be included in the regular rate. Such tips are not payments made by the employer to the employee as remuneration for employment within the meaning of ch. DWD 274.

**(3) ALLOWANCE FOR BOARD AND LODGING.** This subsection is in effect from October 1, 1996, to August 31, 1997. Where board or lodging or both are furnished by the employer in accordance with s. DWD 272.04, and accepted and received by a particular employee, an allowance may be made not to exceed the following amounts:

(a) *Lodging.* 1. All employees except opportunity employees \$38.00 per week or \$5.45 per day.

2. Opportunity employees \$34.00 per week or \$4.85 per day.

(b) *Meals.* 1. All employees except opportunity employees \$57.00 per week or \$2.70 per meal.

2. Opportunity employees \$51.00 per week or \$2.45 per meal.

**(3m) ALLOWANCE FOR BOARD AND LODGING.** This subsection becomes effective on September 1, 1997. Where board or lodging or both are furnished by the employer in accordance with s. DWD 272.04, and accepted and received by a particular employee, an allowance may be made not to exceed the following amounts:

(a) *Lodging.* 1. All employees except opportunity employees \$41.20 per week or \$5.90 per day.

2. Opportunity employees \$34.00 per week or \$4.85 per day.

(b) *Meals.* 1. All employees except opportunity employees \$61.80 per week or \$2.95 per meal.

2. Opportunity employees \$51.00 per week or \$2.45 per meal.

**(4) BOARD AND LODGING VALUE.** Where board, lodging or other necessities of life, are furnished by the employer, in accordance with s. DWD 272.04, and accepted and received by the employee or their spouse or both, minor children or other dependents, an allowance may be made, not to exceed the "fair value" of such necessities on the basis of average cost to the employer, or to groups of employers similarly situated, or average values to groups of employees or other appropriate measures of fair value.

**(5) PAYMENT OF WAGES ON OTHER THAN TIME BASIS.** Where payment of wages is made upon a basis or system other than time rate, the actual wage paid per payroll period shall not be less than provided for in this order.

**(6) HOMEWORK.** Wages paid to homeworkers shall be not less than the rates prescribed in this order.

**(7) DETERMINATION OF COMPLIANCE.** The payroll period shall be taken as the unit of determining compliance with the minimum rates prescribed in this order.

**(8) PROOF OF PREVIOUS EMPLOYMENT.** An employee is responsible for providing the proof of previous employment necessary to determine whether the person is a probationary employee. An employer shall not be liable for a violation of this section if the violation is caused by the employer's good faith reliance of the proof presented by an employee under this subsection.

**History:** Cr. Register, July, 1978, No. 271, eff. 8-1-78; am. (1) and (2) (a), Register, August, 1987, No. 380, eff. 9-1-87; am. (1), (2) (a) and (3), Register, June, 1989, No. 402, eff. 7-1-89; am. (1), (2) (intro.) and (3) cr. (8), Register, March, 1990, No. 411, eff. 4-1-90; am. (1), (2) (a) and (3), Register, February, 1992, No. 434, eff. 3-1-92; corrections made under s. 13.93 (2m) (b) 7., Stats., Register, February, 1996, No. 482; r. and rec. (1), (2) (a) and (3), cr. (1m) and (3m), Register, May, 1997, No. 497, eff. 6-1-97; emerg. cr. (1) (b), (1m) (b), (2) (b), am. (3) and (3m), eff. 5-31-97; cr. (1) (b), (1m) (b), (2) (am), am. (3), (3m), Register, September, 1997, No. 501, eff. 10-1-97.

#### DWD 272.04 Deductions for meals and lodging.

**(1)** A meal means an adequate well-balanced serving of a variety of wholesome and nutritious foods.

(a) Deductions may be made only for bona fide meals consistent with employee's work shift. No deductions shall be made or credit given for meals not eaten except in employments where weekly room and board is provided and accepted.

(b) An employer shall not require that meals be accepted as part payment of wages.

(c) Employer must pay all employees for "on duty" meal periods. Such periods are to be counted as work time. An "on duty" meal period is one where the employer does not provide at least 30 minutes free from work. Any meal period where the employee is not free to leave the premises of the employer will also be considered an "on duty" meal period.

(d) Authorized rest periods or breaks of less than 30 consecutive minutes per shift shall be counted as work time for which there shall be no deduction from wages.

(e) Whenever a collective bargaining agreement exists, the department may consider the written application of labor and management for a waiver or modification to the requirements of par. (c) or (d), based upon practical difficulties or unnecessary hardship in compliance. If the department determines that compliance with par. (c) or (d) is unjust or unreasonable and that granting a waiver or modification will not be dangerous or prejudicial to the life, health, safety or welfare of the employees, the department may grant a waiver or modification.

**(2)** Lodging means living accommodations which are adequate, decent and sanitary, according to usual and customary standards. Employees shall not be required to share a bed.

**(3)** Room and board deductions may not be made from the wages of a seasonal non-resident agricultural employee that would result in the employee receiving less than the prescribed minimum rate.

**History:** Cr. Register, July, 1978, No. 271, eff. 8-1-78; cr. (1) (c), Register, February, 1992, No. 434, eff. 3-1-92.

**DWD 272.05 Agriculture. (1) MINIMUM RATES.** The minimum wage of employees employed in agriculture shall be as follows:

(a) Adult employees 18 years of age and over: \$4.05 per hr.

(b) Minors 17 years of age and under: \$3.70 per hr.

**(2) ALLOWANCE FOR BOARD AND LODGING.** Where board or lodging or both are furnished by the employer in accordance with s. DWD 272.04, and accepted and received by the employee, an allowance may be made not to exceed the following amounts:

(a) Lodging—Adults 18 years of age and over:	\$32.40 per week or \$4.65 per day.
Minors 17 years of age and under:	\$29.60 per week or \$4.25 per day.
(b) Meals—Adults 18 years of age and over:	\$48.60 per week or \$2.30 per meal.
Minors 17 years of age and under:	\$44.40 per week or \$2.10 per meal.

**History:** Cr. Register, July, 1978, No. 271, eff. 8-1-78; am. (1), Register, August, 1987, No. 380, eff. 9-1-87; am. Register, June, 1989, No. 402, eff. 7-1-89; am. Register, March, 1990, No. 411, eff. 4-1-90; am. (5), Register, February, 1992, No. 434, eff. 3-1-92; correction made under s. 13.93 (2m) (b) 7., Stats., Register, February, 1996, No. 482.

#### DWD 272.06 Domestic service employment, casual employment, and companions in private homes.

**(1) DOMESTIC SERVICE EMPLOYMENT.** (a) "Domestic service employment" means all services related to the care of persons or maintenance of a private household or its premises, on a regular basis, by an employee of a private householder. Such occupations shall include, but not be limited to, the following: butlers, chauffeurs, cooks, day workers, gardeners, graduate nurses, grooms, handy persons, house cleaners, housekeepers, laundry persons, practical nurses, tutors, valets and other similar occupations.

(b) Domestic workers who reside in the employer's household are covered under the rates prescribed by s. DWD 272.03. Employers may take credit for board and lodging as prescribed by s. DWD 272.03 (3). Record keeping requirement provided in s. DWD 272.11 shall apply.

(2) **CASUAL EMPLOYMENT.** "Casual employment" means employment which is on an irregular or intermittent basis for not more than 15 hours per week for any one employer. This applies to the following: baby-sitting, mowing lawns, raking leaves, shoveling snow or other similar odd jobs. The minimum rates prescribed by s. DWD 272.03 shall not apply to casual employment in or around a home in work usual to the home of the employer, and not in connection with or part of the business, trade or profession of the employer.

(3) **COMPANIONS IN PRIVATE HOMES.** Persons who reside in the employer's household for the purpose of companionship and who spend less than 15 hours per week on general household work are not covered under the rates prescribed in s. DWD 272.03. As used in this section, the term "companionship services" shall mean those services which provide fellowship, care and protection for a person, who, because of advanced age or physical mental infirmity, cannot care for his or her own needs. Such services may include, but not be limited to, household work related to the care of the aged or infirmed person such as meal preparation, bed making, washing of clothes and other similar services. They may also include the performance of general household work. The term "companionship services" does not include services relating to the care and protection of the aged or infirmed which require and are performed by trained personnel such as registered or practical nurses. While trained personnel do not qualify as companions, this fact does not remove them from the category of covered domestic service employees when employed in or about a private household.

**History:** Cr. Register, July, 1978, No. 271, eff. 8-1-78; corrections made under s. 13.93 (2m) (b) 7., Stats., Register, February, 1996, No. 482.

#### DWD 272.07 Recreational or educational camps.

(1) **MINIMUM RATES.** The minimum wage of all employees employed in recreational or educational camps and day camps, except counselors, shall be computed on an hourly basis as prescribed in s. DWD 272.03 (1).

(2) **ALLOWANCE FOR BOARD AND LODGING.** Where board or lodging or both are furnished by the employer in accordance with s. DWD 272.04, and accepted and received by the employee, an allowance may be made not to exceed the amounts specified in s. DWD 272.03 (3).

(3) **COUNSELORS.** The minimum wage of counselors employed in seasonal recreational or educational camps and day camps may be computed on a weekly basis as follows:

(a) Adult counselors 18 years of age and over:

	PER WEEK
1. If board and lodging are not furnished	\$140.00
2. If board only is furnished	\$110.00
3. If board and lodging are furnished	\$91.00

(b) Counselors 17 years of age and under:

	PER WEEK
1. If board and lodging are not furnished	\$123.00
2. If board only is furnished	\$92.00
3. If board and lodging are furnished	\$74.00

(4) **RECORDS.** Recreational or educational camps and day camps are not required to keep the daily and weekly time records required by s. DWD 272.11 (1) (d), (e), and (f), for counselors employed and paid on a weekly basis.

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

(a) A "recreational or educational camp" means a camp operated under trained leadership for the purpose of providing group experience for 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 "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, spiri-

tual and social growth of campers who participate in such camping program during daytime periods, but not overnight.

(c) A "camp counselor" means a person employed by a "recreational or educational camp" or "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; am. (3) (a) and (b), Register, February, 1992, No. 434, eff. 3-1-92; corrections made under s. 13.93 (2m) (b) 7., Stats., Register, February, 1996, No. 482; am. (title), (1), (4) and (5), Register, May, 1997, No. 497, eff. 6-1-97.

**DWD 272.08 Caddies.** The minimum wage of employees employed as caddies shall be:

\$3.35 9 holes

\$5.95 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; am. Register, February, 1992, No. 434, eff. 3-1-92.

#### DWD 272.085 Student worklike activities and employment. (1) INDEPENDENT COLLEGES AND UNIVERSITIES.

(a) Independent colleges and universities may employ full-time students who are 18 years of age and over for 20 hours per week or less at the federal minimum wage rates established under 29 USC 206.

(b) Students who work at independent colleges or universities for over 20 hours per week shall be paid at the rates established under s. DWD 272.03.

(2) **ELEMENTARY AND SECONDARY SCHOOLS.** Student worklike activities that meet the criteria of s. DWD 270.085 are not covered by the minimum wage provisions of this chapter.

**History:** Cr. Register, July, 1978, No. 271, eff. 8-1-78; correction made under s. 13.93 (2m) (b) 7., Stats., Register, February, 1996, No. 482; r. and recr. Register, October, 2000, No. 538, eff. 11-1-00.

#### DWD 272.09 Subminimum wage licenses for rehabilitation facilities and for the employment of workers with disabilities and student learners. (1) DEFINITIONS.

For the purposes of this section:

(a) "Commensurate wage" means a special minimum wage paid to a worker with a disability.

(b) "Employ" means to permit work.

(c) "Employment relationship" means the relationship that exists whenever an individual, including an individual with a disability, is permitted to work.

(d) "Experienced worker" means a worker who has learned the basic elements or requirements of the work to be performed, ordinarily by completion of a probationary or training period.

(dm) "TWRP" means individualized written rehabilitation plan.

(e) "Institution" means an entity which may be either a public or private entity and either a nonprofit or a for profit entity that receives more than 50% of its income from providing residential care for sick, aged, mentally ill or retarded persons. "Institution" includes hospitals, nursing homes, intermediate care facilities, rest homes, convalescent homes, homes for the elderly and infirm, halfway houses, and residential centers for the treatment of drug addiction or alcoholism, whether licensed under s. 50.01, Stats., or not licensed.

(f) "Patient worker" means a worker with a disability employed by a hospital or institution providing residential care where the worker receives treatment or care without regard to whether the worker is a resident of the establishment. In determining whether a patient worker is "employed", the department shall consider whether the work performed is of any consequential economic benefit to the institution. Work is considered to be of consequential economic benefit if it is of the type that workers without disabilities normally perform. A patient does not become an employee if the patient merely performs personal housekeeping



State of Wisconsin  
2005 - 2006 LEGISLATURE

LRB-1719/?

GMM.....

Wlj

NOTE  
Week of 1/17

Gen

1 AN ACT ...; relating to: a state minimum wage, granting rule-making authority,  
2 and providing a penalty.

*Analysis by the Legislative Reference Bureau*

Currently, the state minimum wage law requires that employers pay a living wage to their employees. Under that law, the Department of Workforce Development (DWD) has provided, by rule, minimum wages for various types of employees, including employees, generally; opportunity employees, which are defined as employees under 20 years of age in their first 90 days of employment with a particular employer; tipped employees; agricultural employees; camp counselors; golf caddies; students employed at independent colleges and universities for less than 20 hours per week; student learners employed in bona fide school training programs; and individuals who are unable to earn the standard minimum wage because of a disability. DWD has exempted, by rule, from the minimum wage law employees who perform less than 15 hours per week of casual employment, such as baby-sitting or lawn mowing, in and around an employer's home; employees who provide companionship services to elderly or infirm individuals; and elementary and secondary school students performing work-like activities in their schools. DWD has also promulgated rules providing allowances against the minimum wage for employers that provide meals or lodging for their employees. ~~the~~ <sup>(listed above)</sup>

Under this bill, DWD will continue to provide ~~those exemptions~~ and separate minimum wages for students employed at independent colleges and universities for less than 20 hours per week, student learners employed in bona fide school training programs, and individuals who are unable to earn the standard minimum wage because of a disability. For other employees, however, the bill sets the minimum wage<sup>s</sup> as follows:

\*

LPS: Please use the table in 03-071<sup>1539/1</sup> (attached) for formatting this table.

Employees generally

Current minimum wage	\$5.15 per hour
Minimum wage on enactment	\$5.70 per hour
Minimum wage on October 1, 2005	\$6.50 per hour

Minor employees

Current minimum wage	\$5.15 per hour
Minimum wage on enactment	\$5.30 per hour
Minimum wage on October 1, 2005	\$5.90 per hour

Opportunity employees

Current minimum wage	\$4.25 per hour
Minimum wage on enactment	\$5.30 per hour
Minimum wage on October 1, 2005	\$5.90 per hour

Tipped employees

Current minimum wage	\$2.33 per hour for nonopportunity employees	} (FL)
	\$2.13 per hour for opportunity employees	
Minimum wage on enactment	No change	

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Agricultural employees

LPS: Please make the margins in this table uniform. Also, headings = JC and text = (FL)

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Current minimum wage

\$4.05 per hour for adults

\$3.70 per hour for minors

Minimum wage on enactment

\$5.15 per hour for adults

\$4.25 per hour for minors

Adult camp counselors

Current minimum wage

\$140 per week if meals and lodging not furnished

\$110 per week if meals, but not lodging, furnished

\$91 per week if meals and lodging furnished

Minimum wage on enactment

\$215 per week if meals and lodging not furnished

\$164 per week if meals, but not lodging, furnished

\$129 per week if meals and lodging furnished

Minimum wage on October 1, 2005

\$270 per week if meals and lodging not furnished

\$217 per week if meals, but not lodging, furnished

\$171 per week if meals and lodging furnished

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Minimum wage on October 1, 2006

\$315 per week if meals and lodging not furnished

\$240 per week if meals, but not lodging, furnished

\$189 per week if meals and lodging furnished

Minor camp counselors

Current minimum wage

\$123 per week if meals and lodging not furnished

\$92 per week if meals, but not lodging, furnished

\$74 per week if meals and lodging furnished

Minimum wage on enactment

\$175 per week if meals and lodging not furnished

\$133 per week if meals, but not lodging, furnished ✓

\$105 per week if meals and lodging furnished

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Minimum wage on October 1, 2005	\$225 per week if meals and lodging not furnished \$171 per week if meals, but not lodging, furnished \$135 per week if meals and lodging furnished
Minimum wage on October 1, 2006	\$275 per week if meals and lodging not furnished \$209 per week if meals, but not lodging, furnished \$165 per week if meals and lodging furnished

Golf caddies

Current minimum wage	\$5.95 for 18 holes \$3.35 for nine holes
Minimum wage on enactment	\$10.50 for 18 holes \$5.90 for nine holes

The bill also increases the allowance against the minimum wage that an employer who provides room and board for an employee may take as follows:

Employees generally

Lodging	
Current allowance	\$41.20 per week or \$5.90 per day
Allowance on enactment	\$45.60 per week or \$6.50 per day

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Allowance on October 1, 2005	\$52 per week or \$7.40 per day
Meals	
Current allowance	\$61.80 per week or \$2.95 per meal
Allowance on enactment	\$68.40 per week or \$3.25 per meal
Allowance on October 1, 2005	\$78 per week or \$3.70 per meal

Minor employees

Lodging	
Current allowance	\$41.20 per week or \$5.90 per day
Allowance on enactment	\$42.40 per week or \$6.05 per day
Allowance on October 1, 2005	\$47.20 per week or \$6.75 per day
Meals	
Current allowance	\$61.80 per week or \$2.95 per meal
Allowance on enactment	\$63.60 per week or \$3 per meal
Allowance on October 1, 2005	\$70.80 per week or \$3.35 per meal

Opportunity employees

Lodging	
Current allowance	\$34 per week or \$4.85 per day
Allowance on enactment	\$42.40 per week or \$6.05 per day

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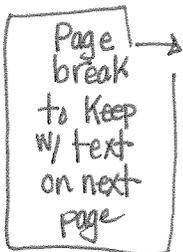
Allowance on October 1, 2005	\$47.20 per week or \$6.75 per day
Meals	
Current allowance	\$51 per week or \$2.45 per meal
Allowance on enactment	\$63.60 per week or \$3 per meal
Allowance on October 1, 2005	\$70.80 per week or \$3.35 per meal

Adult agricultural employees

Lodging	
Current allowance	\$32.40 per week or \$4.65 per day
Allowance on enactment	\$41.20 per week or \$5.90 per day
Meals	
Current allowance	\$48.60 per week or \$2.30 per meal
Allowance on enactment	\$61.80 per week or \$2.95 per meal

Minor agricultural employees

Lodging	
Current allowance	\$29.60 per week or \$4.25 per day
Allowance on enactment	\$34 per week or \$4.85 per day


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Meals

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Current allowance	\$44.40 per week or \$2.10 per meal
Allowance on enactment	\$51 per week or \$2.40 per meal

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. 49.141 (1) (g) of the statutes is amended to read:

2 49.141 (1) (g) "Minimum wage" means the state minimum hourly wage under  
3 ~~ch. 104 s. 104.035 (1)~~ or the federal minimum hourly wage under 29 USC 206 (a) (1),  
4 whichever is applicable.

5 SECTION 2. 104.01 (intro.) of the statutes is amended to read:

6 **104.01 Definitions.** (intro.) ~~The following terms as used in ss. 104.01 to~~  
7 ~~104.12 shall be construed as follows~~ In this chapter:

8 SECTION 3. 104.01 (1) of the statutes is renumbered 104.01 (1m).

9 SECTION 4. 104.01 (1d) of the statutes is created to read:

10 104.01 (1d) "Agricultural employee" means an employee who is employed in  
11 farming, as defined in s. 102.04 (3).

12 SECTION 5. 104.01 (5) of the statutes is amended to read:

13 104.01 (5) ~~The term "living-wage" shall mean~~ "Living wage" means  
14 compensation for labor paid, whether by time, piecework, or otherwise, sufficient to  
15 enable the employee receiving it to maintain himself or herself under conditions  
16 consistent with his or her welfare.

17 SECTION 6. 104.01 (5g) of the statutes is created to read:

1           104.01 (5g) “Minor employee” means a minor who is paid at the applicable  
2           minimum wage rate for minors.

3           **SECTION 7.** 104.01 (5m) of the statutes is created to read:

4           104.01 (5m) “Opportunity employee” means a person under 20 years of age who  
5           is in the first 90 consecutive days of employment with his or her employer.

6           **SECTION 8.** 104.01 (7m) of the statutes is created to read:

7           104.01 (7m) “Tipped employee” means an employee who in the course of  
8           employment customarily and regularly receives money or other gratuities from  
9           persons other than the employee’s employer.

10          **SECTION 9.** 104.01 (8) of the statutes is amended to read:

11          104.01 (8) ~~The term “wage” and the term “wages” shall each mean~~ “Wage”  
12          means any compensation for labor measured by time, piece, or otherwise.

13          **SECTION 10.** 104.02 of the statutes is amended to read:

14          **104.02 ~~Living wage prescribed~~ Living wage required.** Every wage paid  
15          or agreed to be paid by any employer to any employee, except as otherwise provided  
16          in s. 104.07, shall be not less than a ~~living wage~~ living wage.

17          **SECTION 11.** 104.03 of the statutes is amended to read:

18          **104.03 Unlawful wages.** Any employer paying, offering to pay, or agreeing  
19          to pay any employee a wage lower or less in value than a ~~living wage~~ living wage is  
20          guilty of a violation of ~~ss. 104.01 to 104.12~~ this chapter.

21          **SECTION 12.** 104.035 of the statutes is created to read:

22          **104.035 Minimum wage.** (1) EMPLOYEES GENERALLY. (a) *Minimum rates.*  
23          Except as provided in subs. (2) to (8), the minimum wage is as follows:

- 24           1. For wages earned before October 1, 2005, \$5.70 per hour.  
25           2. For wages earned beginning on October 1, 2005, \$6.50 per hour.

1 (b) *Allowances for meals and lodging.* Except as provided in subs. (2) (b) and  
2 (4) (b), if an employer furnishes an employee with meals or lodging in accordance  
3 with rules promulgated by the department under s. 104.045 (2), the employer may  
4 deduct the following amounts from the wages of the employee:

5 1. For lodging furnished before October 1, 2005, \$45.60 per week or \$6.50 per  
6 day and for meals furnished before October 1, 2005, \$68.40 per week or \$3.25 per  
7 meal.

8 2. For lodging furnished beginning on October 1, 2005, \$52 per week or \$7.40  
9 per day and for meals furnished beginning on October 1, 2005, \$78 per week or \$3.70  
10 per meal.

11 (2) MINOR AND OPPORTUNITY EMPLOYEES. (a) *Minimum rates.* Except as provided  
12 in subs. (3) to (8), the minimum wage for a minor <sup>employee</sup> employer or an opportunity  
13 employee is as follows:

14 1. For wages earned before October 1, 2005, \$5.30 per hour.

15 2. For wages earned beginning on October 1, 2005, \$5.90 per hour.

16 (b) *Allowances for meals and lodging.* Except as provided in sub. (4) (b), if an  
17 employer furnishes an <sup>g</sup> minor employee or an opportunity employee with meals or  
18 lodging in accordance with rules promulgated by the department under s. 104.045  
19 (2), the employer may deduct the following amounts from the wages of the employee:

20 1. For lodging furnished before October 1, 2005, \$42.40 per week or \$6.05 per  
21 day and for meals furnished before October 1, 2005, \$63.60 per week or \$3 per meal.

22 2. For lodging furnished beginning on October 1, 2005, \$47.20 per week or \$6.75  
23 per day and for meals furnished beginning on October 1, 2005, \$70.80 per week or  
24 \$3.35 per meal.

1 (3) TIPPED EMPLOYEES. (a) *Minimum rates*. Except as provided in subs. (4) to  
2 (8), if an employer of a tipped <sup>employee</sup> employer establishes by the employer's payroll records  
3 that, when adding the tips received by the tipped employee in a week to the wages  
4 paid to the tipped employee in that week, the tipped employee receives not less than  
5 the applicable minimum wage specified in sub. (1) or (2), the minimum wage for the  
6 tipped employee is as follows:

7 1. For wages earned by a tipped employee who is not an opportunity employee,  
8 \$2.33 per hour.

9 2. For wages earned by a tipped employee who is an opportunity employee,  
10 \$2.13 per hour.

11 (b) *Allowances for meals and lodging*. If an employer furnishes a tipped  
12 employee with meals or lodging in accordance with rules promulgated by the  
13 department under s. 104.045 (2), the employer may deduct the applicable amounts  
14 specified in subs. (1) (b) or (2) (b) from the wages of the tipped employee.

15 (4) AGRICULTURAL EMPLOYEES. (a) *Minimum rates*. Except as provided in subs.  
16 (7) and (8), the minimum wage for an agricultural employee is as follows:

17 1. For wages earned by an adult agricultural employee, \$5.15 per hour.

18 2. For wages earned by a minor agricultural employee, \$4.25 per hour.

19 (b) *Allowances for meals and lodging*. If an employer furnishes an agricultural  
20 employee with meals or lodging in accordance with rules promulgated by the  
21 department under s. 104.045 (2), the employer may deduct the following amounts  
22 from the wages of the employee:

23 <sup>\$5.95</sup> 1. For lodging furnished to an adult agricultural employee, \$41.20 per week or  
24 ~~\$5.95~~ per day and for meals furnished to an adult agricultural employee, \$61.80 per  
25 week or \$2.95 per meal.

1           2. For lodging furnished to a minor agricultural employee, \$34 per week or <sup>\$</sup>4.85  
2 per day and for meals furnished to a minor agricultural employee, \$51 per week or  
3 \$2.40 per meal.

4           **(5) CAMP COUNSELORS.** (a) *Minimum rates for adult counselors.* The minimum  
5 wage for a counselor at a seasonal recreational or educational camp, including a day  
6 camp, who is an adult is as follows:

7           1. For wages earned before October 1, 2005, \$215 per week if meals and lodging  
8 are not furnished, \$164 per week if only meals are furnished, and \$129 per week if  
9 both meals and lodging are furnished.

10          2. For wages earned beginning on October 1, 2005, \$270 per week if meals and  
11 lodging are not furnished, \$217 per week if only meals are furnished, and \$171 per  
12 week if both meals and lodging are furnished.

13          3. For wages earned beginning on October 1, 2006, \$315 per week if meals and  
14 lodging are not furnished, \$240 per week if only meals are furnished, and \$189 per  
15 week if both meals and lodging are furnished.

16          (b) *Minimum rates for minor counselors.* The minimum wage for a counselor  
17 at a seasonal recreational or educational camp, including a day camp, who is a minor  
18 is as follows:

19          1. For wages earned before October 1, 2005, \$175 per week if meals and lodging  
20 are not furnished, \$133 per week if only meals are furnished, and \$105 per week if  
21 both meals and lodging are furnished.

22          2. For wages earned beginning on October 1, 2005, \$225 per week if meals and  
23 lodging are not furnished, \$171 per week if only meals are furnished, and \$135 per  
24 week if both meals and lodging are furnished.

1           3. For wages earned beginning on October 1, 2006, \$275 per week if meals and  
2 lodging are not furnished, \$209 per week if only meals are furnished, and \$165 per  
3 week if both meals and lodging are furnished.

4           **(6) GOLF CADDIES.** The minimum wage for a golf caddy is as follows:

5           (a) For 18 holes, \$10.50.

6           (b) For 9 holes, \$5.90.

7           **(7) MINIMUM WAGE ESTABLISHED BY DEPARTMENT.** The department shall  
8 promulgate rules providing the minimum wage for all of the following:

9           (a) An employee or worker with a disability covered under a license under s.  
10 104.07.

11           (b) A student learner.

12           (c) A student employed by an independent college or university for less than  
13 20 hours per week.

14           **(8) EMPLOYMENT EXEMPTED BY DEPARTMENT.** The department shall promulgate  
15 rules exempting from the minimum wage requirements under subs. (1) to (7) all of  
16 the following:

17           (a) A person engaged in casual employment in and around an employer's home  
18 on an irregular or intermittent basis for not more than 15 hours per week.

19           (b) A person who resides with and who provides companionship and care, not  
20 including practical or professional nursing, as defined in s. 441.001 (3) and (4), and  
21 not more than 15 hours per week of general household work for an employer who, due  
22 to advanced age or physical or mental disability, cannot care for his or her own needs.

23           (c) An elementary or secondary school student performing student work-like  
24 activities in the student's school.

1           (9) DEPARTMENT MAY REVISE. The department may promulgate rules to increase  
2 a minimum wage or an allowance for meals and lodging provided under subs. (1) to  
3 (7).

4           **SECTION 13.** 104.04 of the statutes is amended to read:

5           **104.04 Classifications; department's authority.** The department shall  
6 investigate, ascertain, determine, and fix such reasonable classifications, and shall  
7 impose general or special orders, determining the ~~living-wage~~ living wage, and shall  
8 carry out the purposes of ~~ss. 104.01 to 104.12.~~ Such this chapter. Those  
9 investigations, classifications, and orders shall be made as provided under s.  
10 103.005, and the penalties specified in s. 103.005 (12) shall apply to and be imposed  
11 for any violation of ~~ss. 104.01 to 104.12~~ this chapter. In determining the ~~living-wage~~  
12 living wage, the department may consider the effect that an increase in the  
13 ~~living-wage~~ living wage might have on the economy of the state, including the effect  
14 of a ~~living-wage~~ living wage increase on job creation, retention, and expansion, on  
15 the availability of entry-level jobs, and on regional economic conditions within the  
16 state. The department may not establish a different minimum wage for men and  
17 women. Said Those orders shall be subject to review in the manner provided in ch.  
18 227.

19           **SECTION 14.** 104.045 of the statutes is renumbered 104.045 (intro.) and  
20 amended to read:

21           **104.045 ~~Tipped employees~~ Tips, meals, lodging, and hours worked.**  
22 (intro.) The department shall ~~by rule determine what amount of~~ promulgate rules  
23 governing all of the following:

24           (1) The counting of tips or similar gratuities may be counted toward fulfillment  
25 of the employer's obligation under this chapter.

1           **SECTION 15.** 104.045 (2) and (3) of the statutes are created to read:

2           104.045 (2) The deduction of meals or lodging provided by an employer to an  
3 employee from the employer's obligation under this chapter.

4           (3) The determination of hours worked by an employee during which the  
5 employee is entitled to a living wage under this chapter.

6           **SECTION 16.** 104.05 of the statutes is amended to read:

7           **104.05 Complaints; investigation.** The department shall, within 20 days  
8 after the filing of a verified complaint of any person ~~setting forth~~ alleging that the  
9 wages paid to any employee ~~in any occupation~~ are not sufficient to enable the  
10 employee to maintain himself or herself under conditions consistent with his or her  
11 welfare, investigate and determine whether there is reasonable cause to believe that  
12 the wage paid to ~~any~~ the employee is not a ~~living-wage~~ living wage.

13           **SECTION 17.** 104.06 of the statutes is amended to read:

14           **104.06 Wage council; determination.** If, upon investigation, the  
15 department finds that there is reasonable cause to believe that the wages paid to any  
16 employee are not a ~~living-wage~~, it living wage, ~~the department~~ shall appoint a wage  
17 council, selected so as fairly to represent employers, employees, and the public, to  
18 assist in its investigations and determinations. ~~The living-wage~~ department may  
19 use the results of an investigation under this section to establish a living wage. A  
20 living wage so determined ~~upon~~ shall be the ~~living-wage~~ living wage for all  
21 employees within the same class as established by the ~~classification of the~~  
22 department under s. 104.04.

23           **SECTION 18.** 104.07 (1) of the statutes is amended to read:

24           104.07 (1) The department shall ~~make~~ promulgate rules and, except as  
25 provided under subs. (5) and (6), grant licenses, to any employer who employs any

1 employee who is unable to earn the ~~living wage~~ theretofore determined upon,  
2 ~~permitting such person to~~ a living wage so that the employee may work for a wage  
3 ~~which shall be~~ that is commensurate with the employee's ability and each. Each  
4 license so granted shall establish a wage for the licensee employees of the licensee  
5 who are unable to earn a living wage.

6 **SECTION 19.** 104.07 (2) of the statutes is amended to read:

7 104.07 (2) The department shall ~~make~~ promulgate rules and, except as  
8 provided under subs. (5) and (6), grant licenses to sheltered workshops to permit the  
9 employment of workers with disabilities who are unable to earn ~~the living wage at~~  
10 a living wage so that those workers may work for a wage that is commensurate with  
11 their ability abilities and productivity. A license granted to a sheltered workshop  
12 under this section may be issued for the entire workshop or a department of the  
13 workshop.

14 **SECTION 20.** 104.08 (1) of the statutes is renumbered 104.08 (2m) and amended  
15 to read:

16 104.08 (2m) ~~All persons~~ Any person working in an ~~occupation~~ trade industry  
17 for which a ~~living wage~~ living wage has been established for minors, and who shall  
18 ~~have~~ has no trade, shall, ~~if employed in an occupation which is a trade industry,~~ be  
19 indentured under ~~the provisions of s. 106.01.~~

20 **SECTION 21.** 104.08 (1m) (b) of the statutes is created to read:

21 104.08 (1m) (b) "Trade industry" means an industry involving physical labor  
22 and characterized by mechanical skill and training such as render a period of  
23 instruction reasonably necessary.

24 **SECTION 22.** 104.08 (2) of the statutes is renumbered 104.08 (1m) (intro.) and  
25 amended to read:

1           104.08 (1m) (intro.) A ~~“trade” or a “trade industry”~~ within the meaning of ss.  
2   104.01 to 104.12 shall be a trade or In this section:

3           (a) “Trade” means an industry occupation involving physical labor and  
4   characterized by mechanical skill and training such as render a period of instruction  
5   reasonably necessary. ~~The department shall investigate, determine and declare~~  
6   ~~what occupations and industries are included within the phrase a “trade” or a “trade~~  
7   ~~industry”.~~

8           **SECTION 23.** 104.08 (3) of the statutes is renumbered 104.08 (3) (b) and  
9   amended to read:

10          104.08 (3) (b) The department may make exceptions to the operation of subs.  
11   ~~(1) and (2)~~ (1m) and (2m) where conditions make their application unreasonable.

12          **SECTION 24.** 104.08 (3) (a) of the statutes is created to read:

13          104.08 (3) (a) The department shall investigate, determine, and declare what  
14   occupations and industries are included within a trade or a trade industry.

15          **SECTION 25.** 104.10 of the statutes is amended to read:

16          **104.10 Penalty for intimidating witness.** Any employer who discharges or  
17   threatens to discharge, or who in any way discriminates, or threatens to  
18   discriminate, against any employee because the employee has testified or is about  
19   to testify, or because the employer believes that the employee may testify, in any  
20   investigation or proceeding relative to the enforcement of ss. ~~104.01 to 104.12,~~ is  
21   ~~guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of~~  
22   \$25 this chapter may be fined \$500 for each offense.

23          **SECTION 26.** 104.11 of the statutes is amended to read:

24          **104.11 Definition of violation.** Each day during which ~~any~~ an employer  
25   ~~shall employ~~ employs a person for whom a ~~living wage~~ living wage has been fixed

1 established at a wage less than the ~~living-wage fixed~~ established living wage shall  
2 constitute a separate and distinct violation of ~~ss. 104.01 to 104.12~~ this chapter.

3 **SECTION 27.** 104.12 of the statutes is amended to read:

4 **104.12 Complaints.** Any person may register with the department a  
5 complaint that the wages paid to employees for whom a ~~living-wage~~ living wage has  
6 been established are less than that rate, and the department shall investigate the  
7 matter and take all proceedings necessary to enforce the payment of a wage not less  
8 than ~~the living-wage~~ a living wage. Section 111.322 (2m) applies to discharge and  
9 other discriminatory acts arising in connection with any proceeding under this  
10 section.

11 **SECTION 28.** 234.94 (5) of the statutes is amended to read:

12 234.94 (5) “Primary employment” means work ~~which~~ that pays at least the  
13 minimum wage as established under ~~ch. 104 s. 104.035 (1)~~ or under federal law,  
14 whichever is greater, offers adequate fringe benefits, including health insurance,  
15 and is not seasonal or part time.

16 **SECTION 29.** 234.94 (8) of the statutes is amended to read:

17 234.94 (8) “Target group” means a population group for which the  
18 unemployment level is at least 25% higher than the statewide unemployment level,  
19 or a population group for which the average wage received is less than 1.2 times the  
20 minimum wage as established under ~~ch. 104 s. 104.035 (1)~~ or under federal law,  
21 whichever is greater. No population group is required to be located within a  
22 contiguous geographic area to be considered a target group.

23 **SECTION 30.** 800.09 (1) (b) of the statutes is amended to read:

24 800.09 (1) (b) If the defendant agrees to perform community service work in  
25 lieu of making restitution or paying the forfeiture, assessments, and costs, or both,

1 the court may order that the defendant perform community service work for a public  
2 agency or a nonprofit charitable organization that is designated by the court.  
3 Community service work may be in lieu of restitution only if also agreed to by the  
4 public agency or nonprofit charitable organization and by the person to whom  
5 restitution is owed. The court may utilize any available resources, including any  
6 community service work program, in ordering the defendant to perform community  
7 service work. The number of hours of community service work required may not  
8 exceed the number determined by dividing the amount owed on the forfeiture by the  
9 minimum wage established under ~~ch. 104 for adults in nonagriculture, nontipped~~  
10 ~~employment s. 104.035 (1)~~. The court shall ensure that the defendant is provided a  
11 written statement of the terms of the community service order and that the  
12 community service order is monitored.

13 **SECTION 31.** 800.095 (4) (b) 3. of the statutes is amended to read:

14 800.095 (4) (b) 3. That the defendant perform community service work for a  
15 public agency or a nonprofit charitable organization designated by the court, except  
16 that the court may not order the defendant to perform community service work  
17 unless the defendant agrees to perform community service work and, if the  
18 community service work is in lieu of restitution, unless the person to whom the  
19 restitution is owed agrees. The court may utilize any available resources, including  
20 any community service work program, in ordering the defendant to perform  
21 community service work. The number of hours of community service work required  
22 may not exceed the number determined by dividing the amount owed on the  
23 forfeiture, or restitution, or both, by the minimum wage established under ~~ch. 104~~  
24 ~~for adults in nonagriculture, nontipped employment s. 104.035 (1)~~. The court shall

1 ensure that the defendant is provided a written statement of the terms of the  
2 community service order and that the community service order is monitored.

3 **SECTION 32.** 895.035 (2m) (c) of the statutes is amended to read:

4 895.035 (2m) (c) The court assigned to exercise jurisdiction under chs. 48 and  
5 938 may order that the juvenile perform community service work for a public agency  
6 or nonprofit charitable organization that is designated by the court in lieu of making  
7 restitution or paying the forfeiture or surcharge. If the parent agrees to perform  
8 community service work in lieu of making restitution or paying the forfeiture or  
9 surcharge, the court may order that the parent perform community service work for  
10 a public agency or a nonprofit charitable organization that is designated by the court.  
11 Community service work may be in lieu of restitution only if also agreed to by the  
12 public agency or nonprofit charitable organization and by the person to whom  
13 restitution is owed. The court may utilize any available resources, including any  
14 community service work program, in ordering the juvenile or parent to perform  
15 community service work. The number of hours of community service work required  
16 may not exceed the number determined by dividing the amount owed on the  
17 restitution, forfeiture, or surcharge by the minimum wage established under ~~ch. 104~~  
18 ~~for adults in nonagriculture, nontipped employment s. 104.035 (1)~~. The court shall  
19 ensure that the juvenile or parent is provided with a written statement of the terms  
20 of the community service order and that the community service order is monitored.

21 **SECTION 33. Effective date.**

22 (1) MINIMUM WAGE. This act takes effect on the first day of the <sup>3d</sup> ~~third~~ month  
23 beginning after publication.

**DRAFTER'S NOTE  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRB-1719/1dn

GMM...:.....

WLJ

Representative Kreuser:

This draft increases the minimum wage in the same manner as the ~~G~~Governor attempted to do by rule.

If you have any questions about the draft, please do not hesitate to contact me at the phone number or e-mail address listed below.

Gordon M. Malaise  
Senior Legislative Attorney  
Phone: (608) 266-9738  
E-mail: [gordon.malaise@legis.state.wi.us](mailto:gordon.malaise@legis.state.wi.us)

**BILL**

Employees generally

Opportunity employees (Employees under 20 years of age in their first 90 days of employment with a particular employer)	\$4.25
Nonopportunity employees	\$5.15

Tipped employees

Opportunity employees	\$2.13
Nonopportunity employees	\$2.33

Agricultural employees

Adults	\$4.05
Minors	\$3.70

Example for LPS →

Also under current law, DWD has provided, by rule, separate minimum wage rates for counselors at recreational or educational camps, golf caddies, students employed at independent colleges and universities for less than 20 hours per week, student learners employed in bona fide school training programs, and individuals who are unable to earn the standard minimum wage because of a disability; and DWD has exempted, by rule, from the minimum wage law employees who perform less than 15 hours per week of casual employment, such as baby-sitting or lawn mowing, in and around an employer's home, employees who provide companionship services to elderly or infirm individuals, and elementary and secondary school students performing work-like activities in their schools. Under this bill, DWD will continue to provide those separate minimum wage rates and exemptions. For other employees, however, including agricultural employees and tipped employees, the bill provides the method by which DWD must calculate the minimum wage.

Specifically, for employees generally, that is, employees who are not agricultural employees, tipped employees, opportunity employees (defined in the bill as employees under 20 years of age who have been employed for a cumulative total of 30 calendar days or less within the preceding three-year period) or employees for whom DWD provides a separate minimum wage, the bill directs DWD to calculate the minimum hourly wage by dividing the federal poverty line for a family of three persons (federal poverty line) (currently \$15,020 per year), by 2,080 (52 weeks in a year times 40 hours per week), and rounding the quotient to the nearest multiple of five cents. Accordingly, at the current federal poverty line, this bill raises the minimum wage for employees generally to \$7.20 per hour.

For other employees, the bill directs DWD to calculate the minimum hourly wage by multiplying the result obtained under the previous paragraph as follows:

**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-1719/1dn  
GMM:wlj:jf

January 19, 2005

Representative Kreuser:

This draft increases the minimum wage in the same manner as the governor attempted to do by rule.

If you have any questions about the draft, please do not hesitate to contact me at the phone number or e-mail address listed below.

Gordon M. Malaise  
Senior Legislative Attorney  
Phone: (608) 266-9738  
E-mail: [gordon.malaise@legis.state.wi.us](mailto:gordon.malaise@legis.state.wi.us)

**Northrop, Lori**

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**From:** Wilson, A.J.  
**Sent:** Wednesday, January 19, 2005 4:01 PM  
**To:** LRB.Legal  
**Subject:** Draft review: LRB 05-1719/1 Topic: Minimum wage; increase

It has been requested by <Wilson, A.J.> that the following draft be jacketed for the ASSEMBLY:

Draft review: LRB 05-1719/1 Topic: Minimum wage; increase

## Emery, Lynn

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**From:** Wilson, A.J.  
**Sent:** Monday, January 24, 2005 11:28 AM  
**To:** Emery, Lynn  
**Subject:** LRB 1719

Hi Lynn,

Please give Sen. Hansen's office access to our LRB 1719. They are looking at drafting it as a senate companion.

thanks,

AJ