

STATEMENT OF SCOPE

Department of Workforce Development

Rule No.

Chapter DWD 272, Wis. Admin. Code

Relating to

Minimum Wage

Rule Type

Permanent

Detailed Description of the Objective of the Proposed Rule

The proposed rule will modify ch. DWD 272 relating to minimum wages to implement statutory updates from 2015 Wisconsin Act 55 (Act 55) and to ensure conformity with federal regulations.

Description of Existing Policies Relevant to the Rule, New Policies Proposed to be Included in the Rule, and an Analysis of Policy Alternatives

Definitions under s. DWD 272.01 for "minor employee," "opportunity employee," and "tipped employee" are outdated. The proposed rule will update these definitions.

Under s. DWD 272.09 the definitions "Institution," "IWRP," "sheltered workshop," "student learner," and "worker with a disability" are outdated. In addition, the language under this section references terms such as "mentally ill" and "retarded person." The proposed rule will update these definitions and modernize the language to remove archaic references.

Currently, ch. DWD 272 references the term "living wage." Act 55 repealed the definition of "living wage" and references "minimum wage." The proposed rule will align ch. DWD 272 with state statute by modifying references to "living wage."

The existing rule requires employers to keep time records for specified exempt employees. Federal law does not extend record-keeping requirements to exempt persons, while state law does. The proposed rule will remove the requirement that employers keep time records for the specified exempt employees.

Chapter DWD 272 does not contain any provisions about the use of direct deposit or payroll debit cards for an employee's paycheck, or an employee having electronic access to their pay stub. The proposed rule will allow these payroll practices as long as the services are available to employees at no additional cost.

The proposed rule will also modify ch. DWD 272 and make other minor revisions necessary to conform to federal regulations and state statute.

The alternative to proceeding with this rule is to do nothing, which would leave the unchanged provisions that are out of date in conflict with state statutes and federal regulations.

Detailed explanation of statutory authority for the rule, including the statutory citation and language

Section 104.035(7) and (8), Stats., provides:

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

- (a) An employee or worker with a disability covered under a license under s. 104.07.
- (b) A student learner.
- (c) A student employed by an independent college or university for less than 20 hours per week.

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

- (a) A person engaged in casual employment in and around an employer's home on an irregular or intermittent basis for not more than 15 hours per week.
- (b) A person who resides in the home of an employer who, due to advanced age or physical or mental disability, cannot care for his or her own needs, for the purpose of companionship and who spends not more than 15 hours per week on general household work for the employer.
- (c) An elementary or secondary school student performing student work-like activities in the student's school."

Section 104.045, Stats., provides:

"104.045 Tips, meals, lodging, and hours worked. The department shall promulgate rules governing all of the following:

- (1) The counting of tips or similar gratuities toward fulfillment of the employer's obligation under this chapter.
- (2) The deduction of meals or lodging provided by an employer to an employee from the employer's obligation under this chapter.
- (3) The determination of hours worked by an employee during which the employee is entitled to the minimum wage established under s. 104.035."

Section 104.07, Stats., provides:

"104.07 Rules; license to employ; student learners; sheltered workshops. (1) The department shall promulgate rules, and, except as provided under subs. (5), (6), and (7), grant a license to any employer who employs any employee for whom the minimum wage established under s. 104.035 is not commensurate with the employee's ability. Each license so granted shall establish a wage for any such employees of the licensee.

(2) The department shall promulgate rules, and, except as provided under subs. (5), (6), and (7), grant a license to a sheltered workshop, to permit the employment of workers with disabilities 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."

Section 103.005(1), Stats., provides :

"103.005 Powers, duties and jurisdiction of department. (1) The department shall adopt reasonable and proper rules and regulations relative to the exercise of its powers and authorities and proper rules to govern its proceedings and to regulate the mode and manner of all investigations and hearings."

Estimate of amount of time that state employees will spend developing the rule, and other resources necessary to develop the rule

The total amount of staff time is estimated to be 100 hours.

List with description of all entities that may be affected by the proposed rule

The proposed rule would affect employers, employees, and organizations that operate sheltered workshops or other programs which receive licenses to pay wages at a subminimum rate.

Summary and preliminary comparison with any existing or proposed federal regulation that is intended to address the activities to be regulated by the proposed rule

The Wages and Fair Labor Standards Act (FLSA) establishes minimum wage, overtime pay, recordkeeping, and youth employment standards affecting employees in the private sector and in Federal, State and local governments. There are no federal regulations related to direct deposit, payroll debit cards or access to employee paystubs electronically. The proposed rule will modify and update ch. DWD 272 to conform to standards specified by FLSA.

Anticipated economic impact of implementing the rule (note if the rule is likely to have an economic impact on small businesses)

It is anticipated that the proposed rule would make regulatory compliance easier for small businesses. The rule will not have a significant economic impact on a substantial number of small businesses.

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