

## CHAPTER 104

### MINIMUM WAGE LAW

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**Cross–reference:** See definitions in s. 103.001.

**104.01 Definitions.** The following terms as used in ss. 104.01 to 104.12 shall be construed as follows:

(1) “Department” means the department of industry, labor and job development.

**NOTE:** 1995 Wis. Act 289, s. 275, authorizes the department of industry, labor and job development to use the name “department of workforce development” for any official purpose.

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

(b) “Employe” 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 employe 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.

(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.

(4) “Handicapped” worker means one 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 handicapped person.

(5) The term “living–wage” shall mean compensation for labor paid, whether by time, piecework or otherwise, sufficient to enable the employe receiving it 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 handicapped workers and of providing such workers 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 education 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.

**NOTE:** Sub. (7) is shown as amended eff. 1–1–96 by 1995 Wis. Act 27. The treatment by Act 27 was held unconstitutional and declared void by the Supreme Court in *Thompson v. Craney*, case no. 95–2168–OA. Prior to Act 27 it read:

(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.

**History:** 1977 c. 29; 1983 a. 189, 458; 1989 a. 225; 1993 a. 144, 399; 1995 a. 27 ss. 9130 (4), 9145 (1).

Sections 104.01 to 104.12 do not apply to the state or its political subdivisions as employers. 62 Atty. Gen. 47.

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

**History:** 1975 c. 94.

**104.03 Unlawful wages.** Any employer paying, offering to pay, or agreeing to pay any employe a wage lower or less in value than a living–wage is guilty of a violation of ss. 104.01 to 104.12.

**History:** 1975 c. 94.

**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 ss. 104.01 to 104.12. 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 ss. 104.01 to 104.12. 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.

**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 employe in any occupation are not sufficient to enable the employe 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 employe is not a living–wage.

**History:** 1975 c. 94.

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

**History:** 1975 c. 94.

**104.07 Rules; license to employ; student learners; sheltered workshops. (1)** The department shall make rules and grant licenses, to any employer who employs any employe unable to earn the living–wage theretofore determined upon, permitting such person to work for a wage which shall be commensurate with ability and each license so granted shall establish a wage for the licensee.

**(2)** The department shall make rules and grant licenses to sheltered workshops to permit the employment of handicapped workers unable to earn the living–wage theretofore determined upon permitting such persons to work for a wage which shall be commensurate with his or her ability and productivity. A license granted to a sheltered workshop, under this section, may be issued for the entire workshop or a department thereof.

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

**History:** 1977 c. 29 s. 1651; 1977 c. 273.

**104.08 Apprentices. (1)** All persons working in an occupation for which a living–wage has been established for minors, and who shall have no trade, shall, if employed in an occupation which is a trade industry, be indentured under the provisions of s. 106.01.

**(2)** A “trade” or a “trade industry” within the meaning of ss. 104.01 to 104.12 shall be a trade or an industry involving physical labor and characterized by mechanical skill and training such as render a period of instruction reasonably necessary. The department shall investigate, determine and declare what occupations and industries are included within the phrase a “trade” or a “trade industry”.

**(3)** The department may make exceptions to the operation of subs. (1) and (2) where conditions make their application unreasonable.

**104.09 Records.** Each employer shall keep a record of the names and addresses of all student learners and employes, the hours of employment and wages of each, and such other records pertaining to ability as the department requires.

**History:** 1977 c. 29 s. 1651; 1977 c. 273.

**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 employe because the employe has testified or is about to testify, or because the employer believes that the employe may testify, in any investigation or proceeding relative to the enforcement of ss. 104.01 to 104.12, is guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of \$25 for each offense.

**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 ss. 104.01 to 104.12.

**104.12 Complaints.** Any person may register with the department a complaint that the wages paid to employes for whom a living–wage has been established are less than that rate, and the department shall investigate the matter and take all proceedings necessary to enforce the payment of a wage 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.