CHAPTER 104

MINIMUM WAGE LAW

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Cross−reference: See definitions in s. 103.001.
Cross−reference: See also ch. DWD 272, Wis. adm. code.

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

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

(3) This section does not affect an ordinance that, subject to s. 66.0903, requires an employee of a county, city, village, or town, an employee who performs work under a contract for the provision of services to a county, city, village, or town, or an employee who performs work that is funded by financial assistance from a county, city, village, or town, to be paid at a minimum wage rate specified in the ordinance.

History: 2005 a. 12; 2009 a. 28; 2011 a. 32; 2015 a. 55.

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

104.01 Definitions. In this chapter:

(1d) "Agricultural employee" means an employee who is employed in the operation of farm premises, as described in s. 102.04 (3).

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

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

(b) "Employee" does not mean:

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

2. An individual excluded under s. 452.38.

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

4. Any individual engaged in performing services for an employer described in sub. (3) (b) if that individual is not subject to the civil service laws of the employer and if that individual is an elective officer; is on the personal staff of an elective officer, other than a member of the legislature; is appointed by an elective officer to serve on a policymaking level; or is an immediate adviser to an elective officer with respect to the constitutional or legal powers of the elective officer's office.

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

(3) (a) The term "employer" shall mean and include every person, firm or corporation, agent, manager, representative, contractor, subcontractor or principal, or other person having control or direction of any person employed at any labor or responsible directly or indirectly for the wages of another.

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

(5g) "Minor employee" means an employee who is under 18 years of age.

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

(6) "Sheltered workshop" means a charitable organization or institution conducted not for profit, but for the purpose of carrying out a recognized program of rehabilitation for workers with disabilities and of providing workers with disabilities with remunerative employment or other occupational rehabilitating activity of an educational or therapeutic nature.

(7) "Student learner" means a student who is receiving instruction in an accredited school and who is employed on a part−time basis, pursuant to a bona fide school training program. A "bona fide school training program" means a program authorized and approved by the department of public instruction or the technical college system board, or other recognized educational body, and provided for part−time employment training which may be scheduled for a part of the workday or workweek, supplemented by and integrated with, a definitely organized plan of instruction and where proper scholastic credit is given by the accredited school.

(7m) "Tipped employee" means an employee who in the course of employment customarily and regularly receives money or other gratuities from persons other than the employee's employer.

(8) "Wage" means any compensation for labor measured by time, piece, or otherwise.

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

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

History: 1977 c. 29; 1983 a. 189, 458; 1989 a. 225; 1993 a. 144, 399; 1995 a. 27 ss. 9130 (4), 9145 (1); 1997 a. 3, 27, 112; 2005 a. 12; 2013 a. 285; 2015 a. 55, 258.

104.015 Franchisors excluded. For purposes of this chapter, a franchisor, as defined in 16 CFR 436.1 (k), is not considered to be an employer of a franchisee, as defined in 16 CFR 436.1 (i), or of an employee of a franchisee, unless any of the following applies:

(1) The franchisor has agreed in writing to assume that role.

(2) The franchisor has been found by the department to have exercised a type or degree of control over the franchisee or the franchisee's employees that is not customarily exercised by a franchisor for the purpose of protecting the franchisor's trademarks and brand.

History: 2015 a. 203.

104.02 Minimum wage: requirement to pay. Every wage paid or agreed to be paid by any employer to any employee, except as otherwise provided in s. 104.07, shall be not less than the applicable minimum wage established under s. 104.035. Any employer paying, offering to pay, or agreeing to pay any employee a wage lower or less in value than the applicable minimum wage established under s. 104.035 is guilty of a violation of this chapter as provided in s. 103.005 (11) and is subject to the penalties provided in s. 103.005 (12).

History: 1975 c. 94; 2005 a. 12; 2015 a. 55.

104.035 Minimum wage. (1) EMPLOYEES GENERALLY. (a) *Minimum rates*. Except as provided in subs. (2) to (8), the minimum wage is $7.25 per hour.

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

1. For lodging, $58 per week or $8.30 per day.
2. For meals, $87 per week or $4.15 per meal.

(2) MINOR EMPLOYEES. (a) *Minimum rates*. Except as provided in subs. (2m) to (8), the minimum wage for a minor employee is $7.25 per hour.

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

1. For lodging, $58 per week or $8.30 per day.
2. For meals, $87 per week or $4.15 per meal.

(2m) OPPORTUNITY EMPLOYEES. (a) *Minimum rates*. Except as provided in subs. (3) to (8), the minimum wage for an opportunity employee is $5.90 per hour.

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

1. For lodging, $47.20 per week or $6.75 per day.
2. For meals, $70.80 per week or $3.35 per meal.

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

1. For wages earned by a tipped employee who is not an opportunity employee, $2.33 per hour.
2. For wages earned by a tipped employee who is an opportunity employee, $2.13 per hour.

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

(4) AGRICULTURAL EMPLOYEES. (a) *Minimum rates*. Except as provided in subs. (7) and (8), the minimum wage for an agricultural employee is $7.25 per hour.

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

1. For lodging, $58 per week or $8.30 per day.
2. For meals, $87 per week or $4.15 per meal.

(5) CAMP COUNSELORS. The minimum wage for a counselor at a seasonal recreational or educational camp, including a day camp, is $350 per week if meals and lodging are not furnished, $265 per week if only meals are furnished, and $210 per week if both meals and lodging are furnished.

(6) GOLF CADDIES. The minimum wage for a golf caddy is $10.50 for caddying 18 holes and $5.90 for caddying 9 holes.

(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.

(9) GENDER−SPECIFIC MINIMUM WAGE PROHIBITED. The department may not establish a different minimum wage for men and women.

History: 2015 a. 55 ss. 3078h, 3078i.

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.

History: 1977 c. 179; 2015 a. 55.

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.

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

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

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

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

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

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

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

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

(b) If the department denies an application or revokes a license under par. (a), the department shall mail a notice of denial or revocation to the applicant or licensee. The notice shall include a statement of the facts that warrant the denial or revocation and a statement that the applicant or licensee may, within 30 days after the date on which the notice of denial or revocation is mailed, file a written request with the department to have the determination that the applicant or licensee is liable for delinquent contributions reviewed at a hearing under s. 108.227 (5) (a).

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

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

History: 1977 c. 29 s. 1651; 1977 c. 273; 1997 a. 112, 191, 237; 1999 a. 9, 32; 2005 a. 12; 2009 a. 180; 2013 a. 36; 2015 a. 55.

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

104.08 Apprentices. (1m) In this section:

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

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

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

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

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

History: 2005 a. 12; 2009 a. 291; 2015 a. 55.

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

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

104.10 Penalty for intimidating witness. Any employer who discharges or threatens to discharge, or who in any way discriminates or threatens to discriminate against, any employee because the employee has testified or is about to testify, or because the employer believes that the employee may testify, in any investigation or proceeding relative to the enforcement of this chapter, may be fined $25 for each offense.

History: 2005 a. 12; 2015 a. 55.

104.12 Complaints. Any person may register with the department a complaint that the wages paid to an employee for whom a minimum wage has been established under s. 104.035 are less than that minimum wage, and the department shall investigate the matter and take all proceedings necessary to enforce the payment of that minimum wage. Section 111.322 (2m) applies to discharge and other discriminatory acts arising in connection with any proceeding under this section.

History: 1989 a. 228; 2005 a. 12; 2015 a. 55.