

## CHAPTER 103

## EMPLOYMENT REGULATIONS

103 01	Hours of labor for women; definitions	103 465	Restrictive covenants in employment contracts
103 02	Hours of labor for women	103 49	Wage rate on state work
103 04	Violations; penalty	103 50	Highway contracts
103 06	Employment of illiterate minors	103 51	Public policy as to collective bargaining
103 07	Duty of parents	103 52	"Yellow-dog" contracts
103 08	Vocational school records to be filed with employer	103 53	Lawful conduct in labor disputes
103 09	Physician's certificate excusing attendance	103 535	Unlawful conduct in labor controversies
103 10	Penalties on employers for violations	103 54	Responsibility for unlawful acts
103 11	Penalty on parent or guardian	103 55	Public policy as to labor litigation
103 16	Seats for females; penalty	103 56	Injunctions; conditions of issuance; restraining orders
103 17	Mutual forfeit	103 57	Clean hands doctrine
103 18	Threat or promise, to influence vote	103 58	Injunctions; contents
103 19	Children in shows	103 59	Injunctions; appeals
103 20	Penalty	103 60	Contempt cases
103 21	Street trades; definitions	103 61	Punishment for contempt
103 22	General standards and powers of the department	103 62	Definitions
103 23	Age minimum	103 64	Employment of minors; definitions
103 24	Hours of work	103 65	General standards for employment of minors
103 25	Permits and identification cards	103 66	Powers and duties of the department
103 26	Refusal or revocation of permits and identification cards	103 67	Minimum ages in various employments
103 27	Duties of employers of minors in street trades	103 68	Hours of labor
103 28	Enforcement	103 69	Council on child labor
103 29	Penalties	103 70	Permits necessary for minors; exceptions
103 30	Penalty on newspapers for allowing minors to loiter around premises	103 71	Conditions for issuance of permits
103 31	Penalty on parent or guardian	103 72	Refusal and revocation of permits
103 32	Recovery of arrears of wages	103 73	Form and requisites of permit; as evidence
103 37	Certain requirements to obtaining employment prohibited	103 74	Duties of employers of minors
103 38	Eight hours a day's work, when	103 75	Certificates of age
103 39	When wages payable; pay orders	103 76	Proof of age in court
103 43	Fraudulent advertising for labor	103 78	Minors in public exhibitions, radio and television broadcasts, modeling
103 45	Time checks; penalty	103 79	Minor golf caddies
103 455	Deductions for faulty workmanship, loss, theft or damage	103 80	Inspection
103 457	Listing deductions from wages	103 805	Fees; permits and certificates of age
103 46	Contracts; promises to withdraw from or not to join labor, employers' or co-operative organizations are void	103 81	Advertising; penalty
		103 82	Penalties
		103 85	One day of rest in seven
		103 86	Employee welfare funds; default in payments

**103.01 Hours of labor for women; definitions.** The following terms as used in sections 103.01 to 103.04, inclusive, shall be construed as follows:

(1) The term "place of employment" shall mean and include any manufactory, mechanical or mercantile establishment, beauty parlor, laundry, restaurant, confectionery store, or telegraph or telephone office or exchange, or any express or transportation establishment.

(2) The term "employment" shall mean and include any trade, occupation or process of manufacture, or any method of carrying on such trade or occupation in which any female may be engaged, or for any place of employment, as herein defined.

(3) The term "employer" shall mean and include every person, firm, corporation, agent, manager, representative, or other person having

control or custody of any employment or place of employment, as herein defined

(4) The terms "order," "general order," "special order," "safe," "safety," and "welfare" shall be construed as defined in s. 101.01.

History: 1971 c. 228 s. 44.

**103.02 Hours of labor for women.** (1) No female shall be employed or be permitted to work in any place of employment or at any employment for such period or periods of time during any day, night or week, as shall be dangerous or prejudicial to the life, health, safety or welfare of such female. It shall be the duty of the department and it shall have power, jurisdiction and authority to investigate, ascertain, determine and fix such reasonable classification, and to issue general or special orders fixing a period or periods of time, or hours of beginning and ending work during any day,

night or week, which shall be necessary to protect the life, health, safety or welfare of any female, or to carry out the purposes of ss. 103.01 to 103.04, inclusive, of the statutes. Such investigations, classifications and orders shall be made pursuant to the proceeding in ss. 101.01 to 101.25 which are hereby made a part hereof, so far as not inconsistent with ss. 103.01, 103.02 (1) and 103.04, and every order of the department shall have the same force and effect as the orders issued pursuant to ss. 101.01 to 101.25 and the penalties therein shall apply to and be imposed for any violation of ss. 103.01, 103.02, and 103.04. Such orders shall be subject to review in the manner provided in ch. 227. Until such time as the department shall so investigate, ascertain, determine and fix, and shall issue general or special orders thereon, the periods of time specified in the attached schedule shall be deemed to be dangerous or prejudicial to the life, health, safety or welfare of females.

#### SCHEDULE

At day work, more than nine hours in any one day, or more than fifty hours in any one week. Provided, that during emergency periods of not to exceed four weeks in any calendar year any female may be employed for not to exceed ten hours in any one day and not more than fifty-five hours in any one week, such excess time to be paid for at the rate of one and one-half times the regular rates.

At night work, more than eight hours in any one night, or more than forty-eight hours in any one week.

Day work is work done between six o'clock A.M., and eight o'clock P.M., of the same day; provided, that employment not more than one night in the week after eight o'clock P.M. shall not be considered night work.

Night work is work done between eight o'clock P.M. and six o'clock A.M. of the following day.

Less than one hour during each day or night for dinner or other meals.

(2) No female shall be employed or be permitted to work in any hotel:

(a) At day work, more than ten hours in any one day, or more than fifty-five hours in any one week;

(b) At night work, more than nine hours in any one day or more than fifty-four hours in any one week.

(3) For the purpose of subsection (2) of this section night work is defined as a period of employment which in whole or in part falls between nine o'clock P.M. and six o'clock A.M. of the day following.

(4) The powers granted, imposed and conferred upon the department by sub. (1) shall

not apply to the hours of employment fixed by subs. (2) and (3).

History: 1971 c. 228 s. 43

103.02, Stats. 1969, and administrative rules limiting the maximum hours women may work are superseded by provisions of the Civil Rights Act of 1964 as to employers covered by that act, but other employers remain subject to the state law. 59 Atty. Gen. 114.

**103.04 Violations; penalty.** The employment of any female in any such employment or place of employment, as defined in ss. 103.01 and 103.02 (2) and (3), at any time other than those of the posted hours of labor, as hereinbefore provided for, shall be prima facie evidence of a violation of this section. Every day for each female employed, and every week for each female employed, during which any employer shall fail to observe or to comply with any order of the department, or to perform any duty enjoined by ss. 103.01 to 103.04, shall constitute a separate and distinct offense.

#### **103.06 Employment of illiterate minors.**

No person shall employ an illiterate minor over 17 years of age in any city, village or town in which a public evening school or school of vocational, technical and adult education is maintained, unless such minor is a regular attendant at the public evening school or school of vocational, technical and adult education. An illiterate minor within the meaning of this section is a minor who cannot read at sight and write legibly simple sentences in the English language. Attendance of 4 hours per week at the public evening school or school of vocational, technical and adult education shall be deemed regular attendance within the meaning of this section.

History: 1971 c. 154

**103.07 Duty of parents.** No parent, guardian or custodian shall permit a minor over seventeen years of age to be employed in violation of section 103.06.

#### **103.08 Vocational school records to be filed with employer.**

Any minor required by s. 103.06 to attend an evening school or school of vocational, technical and adult education shall furnish to his employer each week during its session a record showing that he is a regular attendant at the evening school or school of vocational, technical and adult education. The employer shall file all records of attendance in his office and no minor, subject to ss. 103.06 to 103.11, shall be employed unless the records of attendance or absence for valid cause during the previous week are on file.

History: 1971 c. 154

**103.09 Physician's certificate excusing attendance.** Upon presentation by a minor of a certificate signed by a registered practicing physician, showing that his physical condition, or the distance necessary to be traveled, would render the required school attendance, in addition to his daily labor, prejudicial to his health, the department may in its discretion authorize his employment for such period as it may determine.

**103.10 Penalties on employers for violations.** Any person who violates or fails to comply with ss. 103.06 to 103.09 shall be fined not less than \$10 nor more than \$100 for each offense. Any corporation which by its agents, officers or servants violates or fails to comply with ss. 103.06 to 103.09 shall be liable to the same penalty which may be recovered against such corporation in a civil action.

**103.11 Penalty on parent or guardian.** Any parent or guardian who suffers or permits a minor to be employed, or suffered or permitted to work in violation of sections 103.07 and 103.08 of the statutes, shall be guilty of a misdemeanor, and upon conviction thereof, shall be fined not less than five nor more than twenty-five dollars.

**103.16 Seats for females; penalty.** Every person or corporation employing females in any manufacturing, mechanical or mercantile establishment in the state of Wisconsin shall provide suitable seats for the females so employed, and shall permit the use of such seats by them when they are not necessarily engaged in the active duties for which they are employed. Any person or corporation who shall violate the provisions of this section shall, upon conviction thereof, be considered guilty of a misdemeanor and shall be punished by a fine of not less than ten dollars nor more than thirty dollars for each and every offense.

**103.17 Mutual forfeit.** Any person or corporation engaged in manufacturing, which requires from persons in his or its employ, under penalty of forfeiture of a part of the wages earned by them, a notice of intention to leave such employ, shall be liable to the payment of a like forfeiture if he or it discharges, without similar notice, a person in such employ except for incapacity or misconduct, unless in case of a general suspension of labor in his or its shop or factory or in the department thereof wherein such employe is engaged.

**103.18 Threat or promise, to influence vote.** No person shall, by threatening to discharge a person from his employment or

threatening to reduce the wages of a person or by promising to give employment at higher wages to a person, attempt to influence a qualified voter to give or withhold his vote at an election.

**103.19 Children in shows.** No license shall be granted for a theatrical exhibition or public show in which children under fifteen years of age are employed as acrobats, contortionists or in any feats of gymnastics or equestrianism, when in the opinion of the board of officers authorized to grant licenses such children are employed in such manner as to corrupt their morals or impair their physical health.

**103.20 Penalty.** Any person who shall violate any of the provisions of sections 103.17, 103.18 and 103.19 shall, upon conviction, be fined in a sum not exceeding one hundred dollars.

**103.21 Street trades; definitions.** As used in ss. 103.21 to 103.31:

(1) "Street trade" means the selling, offering for sale, soliciting for, collecting for, displaying or distributing any articles, goods, merchandise, commercial service, posters, circulars, newspapers or magazines, or the blacking of boots, on any street or other public place or from house to house.

(2) Every minor selling or distributing newspapers or magazines on the streets or other public place, or from house to house, is in an "employment" and an "employe," and each independent news agency or (in the absence of all such agencies) each selling agency of a publisher or (in the absence of all such agencies) each publisher, whose newspapers or magazines he sells or distributes, is an "employer" of the minor. Every minor engaged in any other street trade is in an "employment" and an "employe," and each person furnishing him articles for sale or distribution or regularly furnishing him material for blacking boots is his "employer."

(3) "Permit officer" means any person designated by the department to issue street trade permits.

History: 1971 c 271

**103.22 General standards and powers of the department.** The general standards for the employment of minors set forth in s. 103.65 apply to the employment of minors in street trades, and in relation to that employment the department has the powers and duties specified in s. 103.66. Except as the department exercises those powers, the employment of minors in street trades shall be in accordance with ss. 103.23 to 103.31.

History: 1971 c 271.

**103.23 Age minimum.** A minor under 12 years of age shall not be employed or permitted to work at any time in any street trade.

History: 1971 c. 271; 1973 c. 183.

**103.24 Hours of work.** The department shall determine and fix reasonable hours of employment for minors in street trades.

History: 1971 c. 271.

**103.25 Permits and identification cards.**

(1) A minor under 18 years of age shall not be employed or permitted to work at any street trade unless his employer first obtains from the department or a designated permit officer a street trade permit and the minor first obtains an identification card, both issued in accordance with this section.

(2) If upon investigation, the department determines that there are practical difficulties or unnecessary hardships in carrying out sub (1), the department may by general or special order make reasonable exceptions or modifications with due regard for the life, health, safety and welfare of minors employed in street trades. The investigation and orders shall be made pursuant to ss. 101.01 to 101.25, and have the same force and effect as orders issued pursuant to those sections. These orders are subject to review as provided in ch. 227.

(3) The form and requisites of street trade permits shall be the same as those specified for child labor permits in s. 103.73, except that the permits may be issued on special street trade permit blanks of a form determined by the department. Each minor for whom a street trade permit is issued shall be provided by the department or the permit officer issuing the permit with a street trade identification card of a form determined by the department. He shall carry the identification card while engaged in street trade employment and shall not transfer it to any other person.

(4) In relation to employment in street trades a permit issued under this section has the same force and effect as a permit issued under ss. 103.64 to 103.82; and the failure to obtain a permit when required under this section subjects the employer to the same penalties and liabilities as failure to obtain a permit when required under ss. 103.64 to 103.82.

History: 1971 c. 228 s. 43; 1971 c. 271, 307; 1973 c. 183.

**103.26 Refusal or revocation of permits and identification cards.** (1) The department or permit officer may refuse to grant a street trade permit and identification card to a minor who seems physically unable to perform the work or whose school record indicates that he should not undertake such employment in

addition to school, or whenever in the judgment of the department or permit officer the best interests of the minor would be served by such refusal.

(2) The department may revoke a street trade permit and identification card if the minor for whom such permit was issued is found by the department to have worked when prohibited under s. 103.24, if it appears to the department that such permit was improperly or illegally issued or if in their judgment the best interests of the minor would be served by such revocation. The department shall by registered mail notify such minor and his employer of such revocation. On receipt of such notice the employer shall immediately return the revoked permit and discontinue the employment of such minor, and the minor shall immediately return the revoked identification card to the permit officer.

History: 1973 c. 183.

**103.27 Duties of employers of minors in street trades.**

(1) Every employer of minors in street trades shall keep a record for each minor of his name, address and date of birth.

(2) Every employer shall receive and file a street trade permit authorizing employment of each minor by him before the minor is permitted to work; and shall keep the permit on file and allow inspection of the permit at any time by the department or any police or truant officer.

History: 1971 c. 271; 1973 c. 183.

**103.28 Enforcement.** (1) Sections 103.21 to 103.31 shall be enforced by the department. Police and truant officers of cities, towns and villages shall assist the department in enforcement by questioning minors seen on the streets engaged in street trades and reporting to the department all cases of minors apparently engaged in street trades in violation of ss. 103.21 to 103.31.

(2) The failure of an employer to produce for inspection by the department or any truant or police officer a permit required for a minor employed in street trades is prima facie evidence of unlawful employment of the minor.

History: 1971 c. 271; 1973 c. 183.

**103.29 Penalties.** (1) (a) Any employer who employs or permits the employment of any minor in street trades in violation of ss. 103.21 to 103.31 or of any order issued thereunder or who hinders or delays the department or any truant or police officer in the performance of their duties under these sections may be fined not less than \$10 nor more than \$100 for each offense, or imprisoned not more than 30 days. Every day during which the violation continues constitutes a separate offense.

(b) In addition to the penalties under par. (a), any employer who employs any minor in violation of s. 103.24 or rules of the department shall be liable, in addition to the wages paid, to pay to each minor affected, an amount equal to twice the regular rate of pay as liquidated damages for all hours worked in violation per day or per week, whichever is greater.

(2) The state may enforce the penalties specified in sub. (1) in a criminal prosecution or, in its discretion, it may recover a forfeiture of not less than \$10 nor more than \$100 for each offense. The forfeiture shall be recovered in an action of debt in any court of competent jurisdiction.

History: 1971 c. 274

**103.30 Penalty on newspapers for allowing minors to loiter around premises.**

A newspaper publisher or printer or person having for sale newspapers or magazines shall not permit any minor under 18 years of age to loiter or remain around any premises where the newspapers or magazines are printed, assembled, prepared for sale or sold when the minor is required under s. 118.15 to attend school. Any person violating this section is guilty of a misdemeanor, and subject to the penalties specified in s. 103.29.

History: 1971 c. 271; 1973 c. 183

**103.31 Penalty on parent or guardian.** Any parent or guardian who suffers or permits a minor to be employed in violation of ss. 103.21 to 103.31 or of any order of the department issued thereunder may be fined not less than \$5 nor more than \$25 for each offense, or imprisoned not more than 30 days.

History: 1971 c. 271

**103.32 Recovery of arrears of wages.** The department, on behalf of the minor, may sue the employer under s. 101.21 for the recovery of any arrears of wages to which the minor is entitled under this chapter.

History: 1971 c. 271, 307

**103.37 Certain requirements to obtaining employment prohibited.** (1) It shall be unlawful for any employer, as defined in subsection (2) to require any employe or applicant for employment to pay the cost of a medical examination required by the employer as a condition of employment.

(2) The term "employer" as used in this section shall mean and include an individual, a partnership, an association, a corporation, a legal representative, trustee, receiver, trustee in bankruptcy, and any common carrier by rail,

motor, water, air or express company doing business in or operating within the state.

(3) The term "employe" shall mean and include every person who may be permitted, required or directed by any employer, as defined in subsection (2) in consideration of direct or indirect gain or profit, to engage in any employment.

(4) Any employer who violates this section shall be liable to a fine of not more than \$100 for each and every violation. It shall be the duty of the public service commission and the department of industry, labor and human relations to enforce this section.

**103.38 Eight hours a day's work, when.** In all engagements to labor in any manufacturing or mechanical business, where there is no express contract to the contrary, a day's work shall consist of eight hours and all engagements or contracts for labor in such cases shall be so construed; but this shall not apply to any contract for labor by the week, month or year.

**103.39 When wages payable; pay orders.**

(1) Every person engaged in any enterprise or business for pecuniary profit within the state shall as often as on the 15th and on the last day of each month pay to every employe engaged in its business, except those employes engaged in logging operations, farm labor, domestic service or employes employed on a salary basis equal to at least \$500 per month, all wages or salaries earned by such employe to a day not more than 16 days prior to the date of such payment. Any such employe who is absent at the time fixed for payment or who for any other reason is not paid at that time shall be paid thereafter at any time upon 6 days' demand. Any such employe, except sales agents employed on a commission basis, not having a written contract for a definite period who quits his employment shall be paid in full upon 3 days' demand, and any employe who is discharged shall be paid in full within 3 days. No person coming within the meaning of this section shall by special contract with employes or by any other means secure exemption from this section and each employe coming within the meaning of this section shall have a right of action against any such person for the full amount of his wages due on each regular pay day as herein provided, in any court of competent jurisdiction. Whenever such regular payments cover wages earned to a date more than 8 days prior to the day of payment if the day fixed for the semimonthly payment falls on Sunday or a holiday payment shall be made on the previous business day.

(2) In case of the death of an employe to whom wages or salary are due, the full amount of the wages or salary due shall upon demand be

paid by the employer to the wife, children, husband or other dependent living with such employe at the time of his death. In the case of an employe of the state, the amount of the wage or salary due shall include all unused vacation allowance. Any county or municipality may include unused vacation allowances for any employe who died after January 1, 1961. Any employer may not less than 5 days after the death of an employe and before the filing of a petition for letters testamentary or of administration in the matter of the decedent's estate, make payment of the wage or salary due the deceased employe to the wife, children, father or mother, brother or sister of the decedent, giving preference in the foregoing order; or, if no such relatives survive, the employer may apply such payment or so much thereof as may be necessary to paying creditors of the decedent in the order of preference prescribed in s. 859.25 for satisfaction of debts by executors and administrators. The making of payment in such manner shall be a discharge and release of the employer to the amount of such payment. As used in this subsection "employer" includes the state and any of its subdivisions and any employer defined under sub. (1).

(3) In an action by an employe against his employer on a wage claim, no security for payment of costs shall be required. In any such proceeding the court may allow the prevailing party, in addition to all other costs, a reasonable sum not exceeding \$10 for expenses. No assignee of a wage claim shall be benefited or affected by this subsection except as expressly provided by s. 101.21.

(4) Any person violating this section who, having the ability to pay, fails to pay the wages or salary due and payable as herein provided or falsely denies the amount or validity thereof or that the same is due, with intent to secure any discount upon such indebtedness or with intent to annoy, harass, oppress, hinder or defraud the person to whom such wages or salaries are due, may be fined not less than \$25 nor more than \$100, imprisoned for not less than 10 days nor more than 90 days or both. Each failure or refusal to pay each employe the amount of wages or salaries due him at the time, or under the conditions required in this section, constitutes a separate offense. In addition to the criminal penalty herein provided, every person violating this section shall be liable for the payment of the following increased wages or salaries: 10% if the delay does not exceed 3 days; 20% if the delay is more than 3 days, but does not exceed 10 days; 30% if the delay is more than 10 days, but does not exceed 20 days; 40% if the delay is more than 20 days, but does not exceed 30 days; 50% if the

delay is more than 30 days; but in no event shall such increased wages or salaries exceed \$100.

History: 1971 c. 185 s. 7; 1971 c. 237

### 103.43 Fraudulent advertising for labor.

(1) It shall be unlawful to influence, induce, persuade or attempt to influence, induce, persuade or engage workmen to change from one place of employment to another in this state or to accept employment in this state or to bring workmen of any class or calling into this state to work in any department of labor in this state, through or by means of any false or deceptive representations, false advertising or false pretenses concerning the kind and character of the work to be done, or amount and character of the compensation to be paid for such work, or the sanitary or other conditions of the employment, or failure to state in any advertisement, proposal or contract for the employment that there is a strike or lockout at the place of the proposed employment, when in fact such strike or lockout then actually exists in such employment at such place. Any of such unlawful acts shall be deemed a false advertisement, or misrepresentation for the purposes of this section.

(1a) A strike or lockout shall be deemed to exist as long as the usual concomitants of a strike or lockout exist; or unemployment on the part of workers affected continues; or any payments of strike benefits is being made; or any picketing is maintained; or publication is being made of the existence of such strike or lockout.

(2) Any person, who, by himself, his servant or agent, or as the servant or agent of any other person, or as an officer, director, servant or agent of any firm, corporation, association or organization of any kind, shall violate any of the provisions of subsection (1) of this section shall upon conviction thereof be punished by a fine of not more than two thousand dollars or by imprisonment in the county jail not more than one year or by both such fine and imprisonment.

(3) Any person who shall be influenced, induced or persuaded to engage with any persons mentioned in subsection (1) of this section, through or by means of any of the things therein prohibited, shall have a right of action for recovery of all damages that he shall have sustained in consequence of the false or deceptive representation, false advertising or false pretenses used to induce him to change his place of employment or to accept such employment, against any person or persons, corporations or companies or associations, directly or indirectly, causing such damage; and in addition to all such actual damages such workman may have sustained, shall be entitled to recover such reasonable attorney fees as the court shall fix, to be taxed as costs in any judgment recovered.

**103.45 Time checks; penalty.** All persons paying wages in time checks or other paper than legal money shall make such time checks or paper payable in some designated place of business in the county in which the work was performed or at the office of the person if within this state, or at any bank within this state. Any person failing to comply with this section shall be fined not to exceed \$100 nor less than \$10.

**103.455 Deductions for faulty workmanship, loss, theft or damage.** No employer shall make any deduction from the wages due or earned by any employe, who is not an independent contractor, for defective or faulty workmanship, lost or stolen property or damage to property, unless the employe authorizes the employer in writing to make such deduction or unless the employer and a representative designated by the employe shall determine that such defective or faulty work, loss or theft, or damage is due to worker's negligence, carelessness, or wilful and intentional conduct on the part of such employe, or unless the employe is found guilty or held liable in a court of competent jurisdiction by reason thereof. If any such deduction is made or credit taken by any employer, that is not in accordance with this section, the employer shall be liable for twice the amount of the deduction or credit taken in a civil action brought by said employe. Any agreement entered into between employer and employe contrary to this section shall be void and of no force and effect. In case of a disagreement between the two parties, the department shall be the third determining party subject to any appeal to the court.

**103.457 Listing deductions from wages.** An employer shall state clearly on the employe's pay check, pay envelope, or paper accompanying the wage payment the amount of and reason for each deduction from the wages due or earned by the employe, except such miscellaneous deductions as may have been authorized by request of the individual employe for reasons personal to himself. A reasonable coding system may be used by the employer.

**103.46 Contracts; promises to withdraw from or not to join labor, employers' or co-operative organizations are void.** Every undertaking or promise hereafter made, whether written or oral, express or implied, constituting or contained in either:

(1) A contract or agreement of hiring or employment between any employer and any employe or prospective employe, whereby (a) either party to such contract or agreement undertakes or promises not to join, become or

remain, a member of any labor organization or of any organization of employers, or (b) either party to such contract or agreement undertakes or promises that he will withdraw from the employment relation in the event that he joins, becomes or remains, a member of any labor organization or of any organization of employers; or

(2) In a contract or agreement for the sale of agricultural, horticultural or dairy products between a producer of such products and a distributor or purchaser thereof, whereby either party to such contract or agreement undertakes or promises not to join, become or remain a member of any co-operative association organized under ch. 185 or of any trade association of the producers, distributors or purchasers of such products, is hereby declared to be contrary to public policy and wholly void and shall not afford any basis for the granting of legal or equitable relief by any court.

**103.465 Restrictive covenants in employment contracts.** A covenant by an assistant, servant or agent not to compete with his employer or principal during the term of the employment or agency, or thereafter, within a specified territory and during a specified time is lawful and enforceable only if the restrictions imposed are reasonably necessary for the protection of the employer or principal. Any such restrictive covenant imposing an unreasonable restraint is illegal, void and unenforceable even as to so much of the covenant or performance as would be a reasonable restraint.

A provision in an employer's profit sharing and retirement plan that calls for forfeiture of benefits by employes who engage in competitive enterprises is valid and enforceable only if it meets the requirements of this section. *Holsen v. Marshall & Ilsley Bank*, 52 W (2d) 281, 190 NW (2d) 189.

A provision of a pension plan denying benefits if the retired employe accepts any employment in the same industry without limit as to time or area is void. *Estate of Schroeder*, 53 W (2d) 59, 191 NW (2d) 860.

Drafting and enforcing restrictive covenants not to compete *Richards*, 55 MLR 241.

**103.49 Wage rate on state work.** (1) Any contract hereafter made for the erection, construction, remodeling or repairing of any public building or for any other project of public works, except contracts for the construction or maintenance of public highways and bridges, to which the state, any department thereof or any public building corporation is a party shall contain a stipulation that no laborer, workman or mechanic employed directly upon the site of the work by the contractor or by any subcontractor, agent or other person, doing or contracting to do all or a part of the work, shall be permitted to work a greater number of hours per day or per calendar week than the prevailing

hours of labor determined pursuant to this section, except that any such laborer, workman or mechanic may be permitted or required to work more than such prevailing number of hours per day and per calendar week if he is paid for all hours in excess of the prevailing hours at a rate of at least 1-1/2 times his hourly basic rate of pay; nor shall he be paid less than the prevailing wage rate in the same or most similar trade or occupation in the area wherein such public building or project of public works is situated; nor shall this section apply to wage rates and hours of employment of laborers, workmen or mechanics engaged in the processing or manufacture of materials or products or to the delivery thereof by or for commercial establishments which have a fixed place of business from which they regularly supply such processed or manufactured materials or products; except that this section shall apply to laborers, workmen or mechanics who deliver mineral aggregate such as sand, gravel or stone which is incorporated into the work under the contract by depositing the material substantially in place, directly or through spreaders, from the transporting vehicle. The prevailing wage rates, prevailing hours of labor, and hourly basic rates of pay determined pursuant to this section shall be set forth specifically in the contract.

(2) The prevailing wage rate in any trade or occupation in any area shall be the hourly basic rate paid plus the hourly contribution for health and welfare benefits, vacation benefits, pension benefits and any other economic benefit, whether paid directly or indirectly, to a majority of all persons employed in such trade or occupation in such area, or if there is no rate at which a majority are employed then the prevailing wage rate shall be the rate which is paid to a larger number of employes than any other rate paid in such area for work in such trade or occupation. The prevailing hours of labor in any trade or occupation in any area shall be the hours of labor per day and per week worked within the area by a larger number of workmen than are employed in such trade or occupation for any other number of hours per day or week. In no event shall the prevailing hours of labor be deemed to be more than 8 hours per day nor more than 40 hours per week. "Hourly basic rate" means the hourly wage paid to any employe, excluding any contributions or payments for health and welfare benefits, vacation benefits, pension benefits and any other economic benefits, whether paid directly or indirectly. "Area" means the county or other locality from which labor for any project would normally be secured.

(3) Before bids are asked for any work to which this section applies, the department or

officer having the authority to prescribe the specifications shall request the department to ascertain the prevailing wage rates, prevailing hours of labor and hourly basic rates of pay for all trades and occupations required in the work under contemplation in the area in which the work is to be done. The department shall make such investigations as may be necessary to enable it to ascertain the prevailing wage rate, prevailing hours of labor and hourly basic rate of pay for each such trade or occupation. It shall make its determination within 30 days after receipt of the request and shall file the same with the department or officer applying therefor. The prevailing hours of labor, the prevailing wage rates, the hourly basic rates of pay and trades or occupations for all labor involved in each project to which this section is applicable shall, together with the provisions of subs. (1) and (4), be kept posted on the project by the employer in at least one conspicuous place for the information of the employes working on the project.

(4) Any officer or employe of the state who publishes any specifications or executes any contract for the erection, construction, remodeling or repairing of any public building or of any other project of public works as defined in sub. (1), to which the state, any department thereof or any public building corporation is a party without complying with this section and any contractor, subcontractor or agent thereof who, after executing a contract in compliance with this section, pays to any laborer, workman or mechanic employed directly upon the site of the work in his or their employ a lesser wage for work done under such contract than the prevailing wage rate as set forth in the contract shall be fined not more than \$200, or imprisoned for not more than 6 months, or both. Such agent or subcontractor shall furnish to the contractor evidence of compliance with this section. Each day any violation of this subsection continues shall be deemed a separate offense.

(5) It shall be the duty of the department to enforce this section. To this end it may demand, and it shall be the duty of every contractor and subcontractor to furnish to the department, copies of any or all payrolls and may examine all records relating to the wages paid laborers, workmen, or mechanics on work to which this section is applicable.

(6) This section shall not apply to a contract, or to work under a contract, described or referred to in sub. (1) under which: (a) the estimated total cost of completing the project is less than \$2,500 and only one trade or occupation is required to complete it, or (b) the estimated total cost of completing the project is less than \$25,000 and more than one trade or occupation is required to complete it.



**103.50 EMPLOYMENT**

2124

**103.50 Highway contracts.** (1) **HOURS OF LABOR.** No laborer or mechanic in the employ of the contractor or of any subcontractor, agent or other person doing or contracting to do all or a part of the work under a contract based on bids as provided in s. 84.06 (2) to which the state is a party for the construction or improvement of any highway shall be permitted to work a longer number of hours per day or per calendar week than the prevailing hours of labor determined pursuant to this section; nor shall he be paid a lesser rate of wages than the prevailing rate of wages thus determined, for the area in which the work is to be done; except that any such laborer or mechanic may be permitted or required to work more than such prevailing number of hours per day and per calendar week if he is paid for all hours in excess of the prevailing hours at a rate of at least 1-1/2 times his hourly basic rate of pay. This section shall not apply to wage rates and hours of employment of laborers or mechanics engaged in the processing or manufacture of materials or products or to the delivery thereof by or for commercial establishments which have a fixed place of business from which they regularly supply such processed or manufactured materials or products; except that this section shall apply to laborers or mechanics who deliver mineral aggregate such as sand, gravel or stone which is incorporated into the work under the contract by depositing the material substantially in place, directly or through spreaders, from the transporting vehicle.

(2) **DEFINITIONS.** "Prevailing hours of labor" means the hours of labor per day and per week worked within the area by a larger number of workmen of the same class than are employed within the area for any other number of hours per day and per week. In no event shall the prevailing hours of labor be deemed to be more than 8 hours per day nor more than 40 hours per week. "Prevailing wage rate" means the hourly basic rate plus the contribution for health and welfare benefits, vacation benefits, pension benefits and any other economic benefit, whether paid directly or indirectly, paid to the largest number of workmen engaged in the same class of labor within such area, including rental rates for truck hire paid to those who own and operate the truck. In no event shall the prevailing wage rate for any class of labor be deemed to be less than a reasonable and living wage, nor shall truck rental rates established pursuant to this provision be subject to the provisions of sub. (1) relating to hours worked in excess of the prevailing hours when operated in excess of 8 hours in any one day or 40 hours in any one week. "Hourly basic rate" means the hourly wage paid to any employe, excluding any contributions or payments for health and welfare benefits, vacation benefits,

pension benefits and any other economic benefits, whether paid directly or indirectly. "Area" means the locality from which labor for any project within such area would normally be secured.

(3) **INVESTIGATIONS; DETERMINATIONS.** (a) The department shall conduct investigations and hold public hearings necessary to define classes of laborers and mechanics and to inform itself as to the hours of labor and wage rates prevailing in all areas of the state for all classes of labor and mechanics commonly employed in highway construction work, with a view to ascertaining and determining prevailing hours of labor, prevailing wage rates and hourly basic rates of pay accordingly.

(b) The department shall inform itself of the nature of the equipment furnished by truck drivers who own and operate trucks on such contract work, with a view to ascertaining and determining minimum rates for the equipment. In order to protect the prevailing wage rates established by the department from evasion through unrealistic rates paid truck drivers for equipment owned and operated by them, the department shall establish minimum rates for the equipment owned and operated by them. It is the intent of this provision to prevent a truck driver who owns the equipment he operates from being required to accept less than the actual cost of operating his equipment, thereby reducing the prevailing wage rates established by the department.

(4) **CERTIFICATION OF PREVAILING HOURS AND WAGES.** The department shall prior to May 1 of the current calendar year certify to the highway commission the prevailing hours of labor, the prevailing wage rate and the hourly basic rate of pay for all such classes of laborers and mechanics in each area. The certification shall in addition to the current prevailing hours of labor, the prevailing wage rates and the hourly basic rates of pay include future hours and rates when such hours and rates can be determined for any such classes of laborers and mechanics in any area and shall specifically set forth the effective dates thereof when future hours and rates are certified. If a construction project extends into more than one area there shall be but one standard of hours of labor and wage rates for the entire project.

(5) **APPEALS TO GOVERNOR.** If the highway commission deems any determination of the department as to the prevailing hours of labor, prevailing wage rates and the hourly basic rates of pay in an area to have been incorrect, it may appeal to the governor, whose determination shall be final.

(6) **CONTENTS OF CONTRACTS.** The prevailing hours of labor, the prevailing wage rates and

the hourly basic rates of pay and classifications for all labor as certified by the department shall be specifically set forth in the proposals and contracts for each highway construction contract to which the state is a party, and shall, together with the provisions of sub. (7), be kept posted on the project by the employer in at least one conspicuous place for the information of employees working on the project.

(7) **PENALTIES.** (a) Any contractor, subcontractor or agent thereof who violates this section may be fined not less than \$50 nor more than \$200 or imprisoned not more than 18 months or both. Each day that any such violation continues shall be deemed a separate offense.

(b) Whoever induces any individual who seeks to be or is employed on any project subject to this section to give up or forego any part of the wages to which he is entitled under the contract governing such project by threat not to employ, by threat of dismissal from such employment or by any other means may be fined not exceeding \$1,000 or imprisoned not more than one year or both.

(c) Any person employed on a project under a contract subject to this section who knowingly permits the contractor or subcontractor to pay him less than the prevailing wage rate set forth in such contract, or who gives up any part of the compensation to which he is entitled thereunder, may be fined not exceeding \$20 or imprisoned not more than 30 days or both. Each day any violation of this paragraph continues shall be deemed a separate offense.

(8) **ENFORCEMENT AND PROSECUTION.** The highway commission shall require adherence to subs. (1) and (6). The highway commission may demand, and every contractor and subcontractor shall furnish, copies of payrolls and it may examine all records relating to hours of work and the wages paid laborers and mechanics on the work to which this section is applicable. Upon request of the highway commission or upon complaint of alleged violation, the district attorney of the county in which the work is located shall make such investigation as necessary and prosecute violations in a court of competent jurisdiction.

**Cross reference:** See 227.01 (5) (1) for provision that determinations of hours, wages and truck rentals need not be filed as rules but are subject to review under Chapter 227.

The WERC has no jurisdiction to enforce wage rates on a highway project as an unfair labor practice if the rates are violated, where the complaining union had no members among the employees affected and was not seeking to represent them. *Chauffeurs, Teamsters & Helpers v WERC*, 51 W (2d) 391; 187 NW (2d) 364.

The department may not make more than one annual certification of the prevailing hours of labor or prevailing wage rates to apply to state highway project contracts. 59 Atty Gen 23.

**103.51 Public policy as to collective bargaining.** In the interpretation and application of ss. 103.51 to 103.62 the public policy of this state is declared as follows:

Negotiation of terms and conditions of labor should result from voluntary agreement between employer and employees. Governmental authority has permitted and encouraged employers to organize in the corporate and other forms of capital control. In dealing with such employers, the individual unorganized worker is helpless to exercise actual liberty of contract and to protect his freedom of labor, and thereby to obtain acceptable terms and conditions of employment. Therefore it is necessary that the individual workman have full freedom of association, self-organization, and the designation of representatives of his own choosing, to negotiate the terms and conditions of his employment, and that he shall be free from the interference, restraint or coercion of employers of labor, or their agents, in the designation of such representatives or in self-organization or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection.

**103.52 "Yellow-dog" contracts.** Every undertaking or promise made after July 1, 1931, whether written or oral, express or implied, between any employe or prospective employe and his employer, prospective employer or any other individual, firm, company, association, or corporation, whereby:

(1) Either party thereto undertakes or promises to join or to remain a member of some specific labor organization or organizations or to join or remain a member of some specific employer organization or any employer organization or organizations; or

(2) Either party thereto undertakes or promises not to join or not to remain a member of some specific labor organization or any labor organization or organizations, or of some specific employer organization or any employer organization or organizations; or

(3) Either party thereto undertakes or promises that he will withdraw from an employment relation in the event that he joins or remains a member of some specific labor organization or any labor organization or organizations, or of some specific employer organization or any employer organization or organizations;

Is hereby declared to be contrary to public policy and shall not afford any basis for the granting of legal or equitable relief by any court against a party to such undertaking or promise, or against any other persons who may advise, urge or induce, without fraud, violence, or threat thereof, either party thereto to act in disregard of

**103.52 EMPLOYMENT**

such undertaking or promise. This section in its entirety is supplemental to and of subsection (1) of section 103.46 of the statutes.

**103.53 Lawful conduct in labor disputes.**

(1) The following acts, whether performed singly or in concert, shall be legal:

(a) Ceasing or refusing to perform any work or to remain in any relation of employment regardless of any promise, undertaking, contract or agreement in violation of the public policy declared in section 103.52;

(b) Becoming or remaining a member of any labor organization or of any employer organization, regardless of any such undertaking or promise as is described in section 103.52;

(c) Paying or giving to, any person any strike or unemployment benefits or insurance or other moneys or things of value;

(d) By all lawful means aiding any person who is being proceeded against in, or is prosecuting any action or suit in any court of the United States or of any state;

(e) Giving publicity to and obtaining or communicating information regarding the existence of, or the facts involved in, any dispute, whether by advertising, speaking, patrolling any public street or any place where any person or persons may lawfully be, without intimidation or coercion, or by any other method not involving fraud, violence, breach of the peace, or threat thereof;

(f) Ceasing to patronize or to employ any person or persons, but nothing herein shall be construed to legalize a secondary boycott;

(g) Assembling peaceably to do or to organize to do any of the acts heretofore specified or to promote lawful interests;

(h) Advising or notifying any person or persons of an intention to do any of the acts heretofore specified;

(i) Agreeing with other persons to do or not to do any of the acts heretofore specified;

(j) Advising, urging, or inducing without fraud, violence, or threat thereof, others to do the acts heretofore specified, regardless of any such undertaking or promise as is described in section 103.52; and

(k) Doing in concert any or all of the acts heretofore specified shall not constitute an unlawful combination or conspiracy;

(1) Peaceful picketing or patrolling, whether engaged in singly or in numbers, shall be legal.

(2) No court, nor any judge or judges thereof, shall have jurisdiction to issue any restraining order or temporary or permanent injunction which, in specific or general terms, prohibits any person or persons from doing, whether singly or in concert, any of the foregoing acts.

**103.535 Unlawful conduct in labor controversies.** It shall be unlawful for anyone to picket, or induce others to picket, the establishment, employes, supply or delivery vehicles, or customers of anyone engaged in business, or to interfere with his business, or interfere with any person or persons desiring to transact or transacting business with him, when no labor dispute, as defined in subsection (3) of section 103.62, exists between such employer and his employes or their representatives.

**103.54 Responsibility for unlawful acts.**

No officer or member of any association or organization, and no association or organization participating or interested in a labor dispute (as these terms are defined in section 103.62) shall be held responsible or liable in any civil action at law or suit in equity, or in any criminal prosecution, for the unlawful acts of individual officers, members, or agents, except upon proof by a preponderance of the evidence and without the aid of any presumptions of law or fact, both of (a) the doing of such acts by persons who are officers, members or agents of any such association or organization, and (b) actual participation in, or actual authorization of, such acts, or ratification of such acts after actual knowledge thereof by such association or organization.

**103.55 Public policy as to labor litigation.**

In the interpretation and application of sections 103.56 to 103.59, the public policy of this state is declared to be:

Equity procedure that permits a complaining party to obtain sweeping injunctive relief that is not preceded by or conditioned upon notice to and hearing of the responding party or parties, or that issues after hearing based upon written affidavits alone and not wholly or in part upon examination, confrontation and cross-examination of witnesses in open court, is peculiarly subject to an abuse in labor litigation for the reasons that:

(1) The status quo cannot be maintained but is necessarily altered by the injunction;

(2) Determination of issues of veracity and of probability of fact from affidavits of the opposing parties that are contradictory and, under the circumstances, untrustworthy rather than from oral examination in open court is subject to grave error;

(3) Error in issuing the injunctive relief is usually irreparable to the opposing party; and

(4) Delay incident to the normal course of appellate practice frequently makes ultimate correction of error in law or in fact unavailing in the particular case.

**103.56 Injunctions: conditions of issuance; restraining orders.** (1) No court nor any judge or judges thereof shall have jurisdiction to issue a temporary or permanent injunction in any case involving or growing out of a labor dispute, as defined in section 103.62, except after hearing the testimony of witnesses in open court (with opportunity for cross-examination) in support of the allegations of a complaint made under oath, and testimony in opposition thereto, if offered, and except after findings of all the following facts by the court or judge or judges thereof:

(a) That unlawful acts have been threatened or committed and will be executed or continued unless restrained;

(b) That substantial and irreparable injury to complainant's property will follow unless the relief requested is granted;

(c) That as to each item of relief granted greater injury will be inflicted upon complainant by the denial thereof than will be inflicted upon defendants by the granting thereof;

(d) That the relief to be granted does not violate the provisions of section 103.53;

(e) That complainant has no adequate remedy at law; and

(f) That the public officers charged with the duty to protect complainant's property have failed or are unable to furnish adequate protection

(2) Such hearing shall be held after due and personal notice thereof has been given, in such manner as the court shall direct, to all known persons against whom relief is sought, and also to those public officers charged with the duty to protect complainant's property. Provided, however, that if a complainant shall also allege that unless a temporary restraining order shall be issued before such hearing may be had, a substantial and irreparable injury to complainant's property will be unavoidable, such a temporary restraining order may be granted upon the expiration of such reasonable notice of application therefor as the court may direct by order to show cause, but in no case less than forty-eight hours.

(3) Such order to show cause shall be served upon such party or parties as are sought to be restrained and as shall be specified in said order, and then only upon testimony under oath, or in the discretion of the court, upon affidavits, sufficient, if sustained, to justify the court in issuing a temporary injunction upon a hearing as herein provided for.

(4) Such a temporary restraining order shall be effective for no longer than five days, and at the expiration of said five days shall become void and not subject to renewal or extension, provided, however, that if the hearing for a

temporary injunction shall have been begun before the expiration of the said five days the restraining order may in the court's discretion be continued until a decision is reached upon the issuance of the temporary injunction.

(5) No temporary restraining order or temporary injunction shall be issued except on condition that complainant shall first file an undertaking with adequate security sufficient to recompense those enjoined for any loss, expense, or damage caused by the improvident or erroneous issuance of such order or injunction, including all reasonable costs (together with a reasonable attorney's fee) and expense against the order or against the granting of any injunctive relief sought in the same proceeding and subsequently denied by the court.

(6) The undertaking herein mentioned shall be understood to signify an agreement entered into by the complainant and the surety upon which a decree may be rendered in the same suit or proceeding against said complainant and surety, the said complainant and surety submitting themselves to the jurisdiction of the court for that purpose. But nothing herein contained shall deprive any party having a claim or cause of action under or upon such undertaking from electing to pursue his ordinary remedy by suit at law or in equity.

**103.57 Clean hands doctrine.** No restraining order or injunctive relief shall be granted to any complainant who has failed to comply with any legal obligation which is involved in the labor dispute in question, or who has failed to make every reasonable effort to settle such dispute either by negotiation or with the aid of any available machinery of governmental mediation or voluntary arbitration, but nothing herein contained shall be deemed to require the court to await the action of any such tribunal if irreparable injury is threatened.

**103.58 Injunctions: contents.** Except as provided in section 103.56, no restraining order or temporary or permanent injunction shall be granted in a case involving or growing out of a labor dispute, except on the basis of findings of fact made and filed by the court in the record of the case prior to the issuance of such restraining order or injunction; and every restraining order or injunction granted in a case involving or growing out of a labor dispute shall include only a prohibition of such specific act or acts as may be expressly complained of in the bill of complaint or petition filed in such case and expressly included in said findings of fact made and filed by the court as provided herein; and shall be binding only upon the parties to the suit, their agents, servants, employes and attorneys,

or those in active concert and participation with them, and who shall by personal service or otherwise have received actual notice of the same.

**103.59 Injunctions: appeals.** Whenever any court or judge or judges thereof shall issue or deny any temporary injunction in a case involving or growing out of a labor dispute, the court shall, upon the request of any party to the proceedings, and on his filing the usual bond for costs, forthwith certify the entire record of the case, including a transcript of the evidence taken, to the appropriate appellate court for its review. Upon the filing of such record in the appropriate appellate court the appeal shall be heard with the greatest possible expedition, giving the proceeding precedence over all other matters except older matters of the same character.

**103.60 Contempt cases.** In all cases where a person shall be charged with civil or criminal contempt for violation of a restraining order or injunction issued by a court or judge or judges thereof, the accused shall enjoy:

(1) The rights as to admission to bail that are accorded to persons accused of crime.

(2) The right to be notified of the accusation and a reasonable time to make a defense, provided the alleged contempt is not committed in the immediate view or presence of the court.

(3) Upon demand, the right to a speedy and public trial by an impartial jury of the county wherein the contempt shall have been committed, provided that this requirement shall not be construed to apply to contempts committed in the presence of the court or so near thereto as to interfere directly with the administration of justice or to apply to the misbehavior, misconduct, or disobedience of any officer of the court in respect to the writs, orders, or process of the court. All contempt proceedings, whether civil or criminal, brought for the alleged violation of any such restraining order or injunction, are, and hereby are declared to be independent, original, special proceedings, and shall require a unanimous finding of the jury.

(4) The right to file with the court a demand for the retirement of the judge sitting in the proceeding, upon an affidavit of prejudice being filed as is now provided by law in other cases. Upon the filing of any such affidavit, the judge shall thereupon proceed no further, but another judge shall be designated as is now provided for in other cases. The affidavit shall be filed prior to the hearing in the contempt proceeding.

**103.61 Punishment for contempt.** Punishment for a contempt, specified in section 103.60,

may be by fine, not exceeding twenty-five dollars, or by imprisonment not exceeding ten days, in the jail of the county where the court is sitting, or both, in the discretion of the court. Where a person is committed to jail, for the nonpayment of such a fine, he must be discharged at the expiration of fifteen days; but where he is also committed for a definite time, the fifteen days must be computed from the expiration of the definite time.

**103.62 Definitions.** When used in ss. 103.51 to 103.62, and for the purposes of these sections:

(1) A case shall be held to involve or to grow out of a labor dispute when the case involves persons who are engaged in a single industry, trade, craft, or occupation; or who are employes of one employer; or who are members of the same or an affiliated organization of employers or employes; whether such dispute is (a) between one or more employers or associations of employers and one or more employes or associations of employes; (b) between one or more employers or associations of employers and one or more employers or associations of employes; or (c) between one or more employes or associations of employes and one or more employes or associations of employes; or when the case involves any conflicting or competing interests in a "labor dispute" (as defined in sub. (3)) of "persons participating or interested" therein (as defined in sub. (2)).

(2) A person or association shall be held to be a person participating or interested in a labor dispute if relief is sought against him or it and if he or it is engaged in the industry, trade, craft, or occupation in which such dispute occurs, or is a member, officer, or agent of any association of employers or employes engaged in such industry, trade, craft, or occupation.

(3) The term "labor dispute" means any controversy between an employer and the majority of his employes in a collective bargaining unit concerning the right or process or details of collective bargaining or the designation of representatives. Any organization with which either the employer or such majority is affiliated may be considered a party to the labor dispute. The provisions of this subsection shall supersede any provision of the statutes in conflict therewith.

**103.64 Employment of minors; definitions.** (1) The terms "place of employment", "employment", "employer", "employee", "frequenter", "deputy", "order", "local order", "general order", "special order", "welfare", "safe", and "safety", as used in ss. 103.64 to 103.82, shall be construed as defined in s. 101.01.

(2) "Permit officer" shall mean any person designated by the department to issue child labor permits.

History: 1971 c. 228 s. 44; 1971 c. 271

**103.65 General standards for employment of minors.** (1) A minor shall not be employed or permitted to work at any employment or in any place of employment dangerous or prejudicial to the life, health, safety, or welfare of the minor or where the employment of the minor may be dangerous or prejudicial to the life, health, safety or welfare of other employes or frequenters.

(2) No minor shall be employed or permitted to work at any employment for such hours of the day or week, or such days of the week, or at such periods of the day as shall be dangerous or prejudicial to the life, health, safety or welfare of such minor.

History: 1971 c. 271

**103.66 Powers and duties of the department.** (1) The department may investigate, determine and fix reasonable classifications of employments, places of employment and minimum ages for hazardous employment for minors, and may issue general or special orders prohibiting the employment of minors in employments or places of employment prejudicial to the life, health, safety or welfare of minors, and may carry out the purposes of ss. 103.64 to 103.82.

(2) The department may investigate and fix reasonable classifications of employments and hours of employment for minors and may issue general or special orders fixing maximum hours of employment for minors per day and per week, maximum days of employment per week, hours at which employment shall begin and end and the duration of lunch and other rest periods as are necessary to protect the life, health, safety, and welfare of minors.

(3) The investigations, classifications and orders provided for in subs. (1) and (2) shall be made pursuant to the procedure specified in ss. 101.01 to 101.25. Every order of the department has the same force and effect as the orders issued pursuant to ss. 101.01 to 101.25. These orders are subject to review as provided in ch. 227.

History: 1971 c. 185 s. 6; 1971 c. 271, 307

**103.67 Minimum ages in various employments.** (1) A minor 14 to 18 years of age shall not be employed or permitted to work in any gainful occupation during the hours he is required to attend school under s. 118.15 unless he has completed high school, except that minors under 18 may be employed in public exhibitions as provided in s. 103.78.

(2) A minor under 14 years of age shall not be employed or permitted to work in any gainful occupation at any time, except that:

(a) Minors 12 and over may be employed in school lunch programs of the school which they attend.

(b) Minors under 14 may be employed in public exhibitions as provided in s. 103.78.

(c) Minors 12 and over may be employed in street trades, as provided in ss. 103.21 to 103.31.

(d) Minors 12 and 13 may be employed as caddies on golf courses, if they use caddy carts.

(e) Minors 12 and over may be employed in agricultural pursuits.

(f) Minors 12 and over may be employed in and around a home in work usual to the home of the employer, if such work is not in connection with or a part of the business, trade or profession of the employer and the type of employment is not specifically prohibited by ss. 103.64 to 103.82 or by any order of the department.

(3) Sections 103.64 to 103.82 do not apply to the employment of a minor engaged in domestic or farm work performed outside school hours in connection with the minor's own home and directly for his parent or guardian.

History: 1971 c. 271, 307; 1973 c. 183.

**103.68 Hours of labor.** Except as the department may from time to time issue orders as provided under s. 103.66 (2) regulating the hours of employment of minors, the following schedule of hours shall be deemed to be necessary to protect minors from employment dangerous or prejudicial to their life, health, safety, or welfare and shall apply to minors of the ages specified therein:

(1) No minor under 18 shall be employed or permitted to work at any gainful occupation other than domestic service or farm labor for more than 8 hours in any one day nor more than 40 hours nor more than 6 days in any one week, nor during such hours as he is required under s. 118.15 (2) to attend school.

(2) No minor under sixteen shall be employed or permitted to work in any gainful occupation other than domestic service or farm labor more than twenty-four hours in any one week, nor, except in domestic service, farm labor, or in public exhibitions as defined in section 103.78, or in street trades as defined in section 103.21, before seven A. M. nor after six P. M.

(3) At least 30 minutes shall be allowed for each meal period which shall commence reasonably close to 6 a. m., 12 m., 6 p. m. or 12 p. m. or approximately midway of any work period or at such other times as deemed reasonable by the department. No minor under age 18 shall be employed or permitted to work

more than 6 consecutive hours without a meal period.

**103.69 Council on child labor.** The council on child labor shall review biennially the hours of employment for minors and the minimum ages for hazardous employment determined by the department under s. 103.66 and make recommendations to the department it deems necessary to protect the life, health, safety and welfare of minors. The department may, by orders issued under s. 103.66, give effect to the recommendations of the council.

History: 1971 c. 271

**103.70 Permits necessary for minors; exceptions.** (1) Except as otherwise provided in sub. (2) and in ss. 103.21 to 103.31, and as may be provided under s. 103.79, a minor, unless indentured as an apprentice in accordance with s. 106.01, or unless 12 years and over and engaged in agricultural pursuits, shall not be employed or permitted to work at any gainful occupation or employment unless there is first obtained from the department, or from a person designated by the department, a written permit authorizing the employment of the minor within those periods of time stated therein, which shall not exceed the maximum hours prescribed by law.

(2) Minors may be employed without permits in any employment limited to work in or around a home in work usual to the home of the employer, if the employment is not in connection with or a part of the business, trade or profession of the employer, is in accordance with the minimum age stated in s. 103.67 (2) (d) and is not specifically prohibited by ss. 103.64 to 103.82 or by any order of the department.

History: 1971 c. 271; 1973 c. 59

**103.71 Conditions for issuance of permits.** (1) Except as provided in s. 103.78, a permit shall not be issued authorizing any minor 14 to 18 years of age to be employed during the hours he is required to attend school under s. 118.15, unless he has completed high school. The department and its designated permit officers shall accept as evidence of the minor's completion of high school either:

(a) A diploma or certificate to this effect issued by the superintendent of public schools or by the principal of the public school last attended by such minor, or in the absence of both the aforementioned persons by the clerk of the proper school board; or

(b) A diploma or certificate to this effect issued by the superintendent of the parochial school system or by the principal of the parochial or private school last attended by such minor.

Such superintendent, principal or clerk shall issue such diploma or certificate upon receipt of any application in behalf of any minor entitled thereto. As used in this paragraph the term "school district" shall apply to all regularly constituted school districts, including union free high school districts.

(2) A permit shall not be issued authorizing the employment of any minor under 14 years of age at any time, except minors under 14 as provided in s. 103.78, minors 12 and over in school lunch programs, minors 12 years and over engaged in agricultural pursuits, minors 12 and over in street trades as provided in ss. 103.21 to 103.31, and boys 12 and over as caddies on golf courses.

History: 1971 c. 271; 1973 c. 59, 183, 336

**103.72 Refusal and revocation of permits.**

(1) The department or permit officer may refuse to grant permits in the case of minors who seem physically unable to perform the labor at which they are to be employed. They may also refuse to grant a permit if in their judgment the best interests of the minor would be served by such refusal.

(2) Whenever it shall appear to the department that any permit has been improperly or illegally issued, or that the physical or moral welfare of the minor would be best served by the revocation of the permit, the department may forthwith, without notice, revoke the same, and shall by registered mail notify the person employing such minor and the minor holding such permit of such revocation. Upon receipt of such notice, the employer employing such minor shall forthwith return the revoked permit to the department and discontinue the employment of the minor.

**103.73 Form and requisites of permit; as evidence.** (1) The permit provided under s. 103.70 shall state the name and the date and place of birth of the minor and that the following evidence, records and papers have been examined, approved and filed:

(a) Such evidence as is required by the department showing the age of the minor. The department shall formulate and publish rules and regulations governing the proof of age of minors who apply for labor permits, and such rules and regulations shall bind all persons authorized by law to issue such permits.

(b) A letter written on the regular letterhead or other business paper used by the person who desires to employ the minor, stating the intention of such person to employ such minor and signed by such person or someone duly authorized by him.

(2) The permits provided under s. 103.70 shall be issued upon blanks furnished by the department.

(3) A child labor permit duly issued shall be conclusive evidence of the age of the minor for whom it was issued in any proceeding under any of the labor laws and under the workmen's compensation act of this state, as to any act or thing occurring subsequent to the date such permit was issued.

History: 1971 c. 271

#### 103.74 Duties of employers of minors.

Every employer employing a minor under 18 for whom a permit is required, except in street trades, shall:

(1) Receive and file a child labor permit authorizing employment of the minor by him before the minor is permitted to do any work, and shall keep the permit on file and allow inspection of the permit at any time by the department or any truant officer. A permit shall be valid only for the employer for whom issued.

(2) Keep a record for each minor employed of his name, address, date of birth, the time of beginning and ending work and the time for meals each day and the total hours worked each day and each week.

History: 1971 c. 271

#### 103.75 Certificates of age. (1) The

department or persons designated by it may issue certificates of age for minors under rules the department deems necessary. The certificate is conclusive evidence of the age of the minor to whom issued in any proceeding under any of the labor laws and under the workmen's compensation act of this state as to any act or thing occurring subsequent to the date the certificate was issued.

(2) Any person who knowingly offers or assists in offering false evidence of age for the purpose of obtaining an age certificate or who alters, forges, fraudulently obtains, uses, or refuses to surrender upon demand of the department a certificate of age may be fined not more than \$100 or imprisoned not to exceed 3 months.

History: 1971 c. 271

**103.76 Proof of age in court.** Whenever in any proceeding in any court under any of the labor laws or under the workmen's compensation act of this state there is any doubt of the age of a minor a duly issued child labor permit or age certificate shall be conclusive evidence. In the absence of such permit or certificate a duly attested birth certificate or a verified baptismal certificate shall be produced and filed with the court. Upon proof that such birth or baptismal

certificate cannot be secured, the record of age stated in the first school enrollment of such child shall be admissible as evidence thereof.

#### 103.78 Minors in public exhibitions, radio and television broadcasts, modeling. (1)

Nothing contained in sections 103.64 to 103.82 shall be construed as forbidding any minor under 18 years of age to appear for the purpose of singing, playing or performing in any studio, circus, theatrical or musical exhibition, concert or festival, in radio and television broadcasts, or as a live or photographic model. Labor permits shall not be required for such employment or appearances but no minor under 18 years of age shall be so employed except under the following conditions:

(a) The activities enumerated shall not be detrimental to the life, health, safety or welfare of the minor.

(b) The activities enumerated shall not interfere with the schooling of the minor and provision for education equivalent to full-time school attendance in the public schools for minors under 16 years of age and part-time attendance for minors 16 to 18 years of age shall be made for those minors who are not high school graduates.

(c) A parent or guardian shall accompany each minor under 16 years of age at all rehearsals, appearances and performances.

(d) The employment or appearance shall at no time be in a roadhouse, cabaret, dance hall, night club, tavern or other similar place. This prohibition does not apply to minors presenting musical entertainment at dances held in any hall on Friday, Saturday or on any other day not followed by a school day or before midnight on Sunday, if the hall was rented for the purpose of celebrating a special event, including but not limited to a wedding, holiday, birthday or anniversary; nor does it apply to dances held solely for minors conducted by private clubs or civic organizations where admission is limited to the membership of the club or by their invitation and the general public is excluded.

(2) The penalties in s. 103.82 (1) and (2) apply to any employer who violates this section.

(3) The penalties in s. 103.82 (3) apply to any parent or guardian who suffers or permits a minor to engage in activities in violation of this section.

(4) Treble the amount of compensation otherwise recoverable as provided in s. 102.60 (4) and wage loss as provided in s. 102.60 (6) are payable to a minor under 18 years of age injured during the course of his employment or appearance in violation of this section.

History: 1971 c. 271



**103.79 Minor golf caddies.** (1) Any minor on a golf course for the purpose of caddying for or while caddying for a person permitted to play golf on such course shall be deemed an employe of the golf club or other person, partnership, association or corporation, including the state and any municipal corporation or other political subdivision thereof, operating such golf course.

(2) The department may investigate and fix by general or special order reasonable regulations relative to the employment of boys under 18 years of age as caddies on golf courses. The regulations may include a waiver or modification of permit requirements for caddies. The investigations and orders shall be made pursuant to ss. 101.01 to 101.25, and every such order has the same force and effect as orders issued pursuant to ss. 101.01 to 101.25. The orders are subject to review as provided in ch. 227.

History: 1971 c 228 s 43; 1971 c 271, 307

**103.80 Inspection.** (1) The department and truant officers shall visit and inspect at all reasonable times, and as often as possible, all places covered by ss. 103.64 to 103.82.

(2) The failure of any employer to produce for inspection to the department, or truant officers, the permit provided for in s. 103.70 shall be prima facie evidence of unlawful employment of the minor. The presence of any minor in any factory, workshop or other place of employment, shall be prima facie evidence of the employment of such minor.

**103.805 Fees; permits and certificates of age.**

(1) The department shall fix and collect a reasonable fee based on the cost of issuance of permits under ss. 103.25 and 103.71 and certificates of age under s. 103.75. The department may authorize the retention of the fees by the person designated to issue permits and certificates of age as compensation for his services if the person is not on the payroll of the division administering this chapter. The permit officer shall account for all fees collected as the department prescribes.

(2) The fee for issuance of permits and certificates of age shall be paid by the employer, but when the minor advances the fee to the permit officer he shall be reimbursed by his employer not later than at the end of his first pay period.

History: 1971 c 271.

**103.81 Advertising; penalty.** (1) During the term that the public schools are in session, a person shall not advertise or cause or permit any advertisement to be published in any newspaper for the labor or services of any minor during school hours in any employment for which a

child labor permit is required under s. 103.70 which does not specifically state the minimum age of the minor whose services are desired, which age must be 18 years or over.

(2) A person shall not solicit in the schools or homes of this state, minors of permit age to leave school and enter their employment, if a child labor permit is required for that employment by s. 103.70.

(3) Any person who violates this section shall forfeit and pay into the state treasury not less than \$10 nor more than \$100 for each such offense. Every day during which any person violates this section shall constitute a separate and distinct offense.

History: 1971 c 271

**103.82 Penalties.** (1) (a) Any employer who employs or permits any minor to work in any employment in violation of ss. 103.64 to 103.82, or of any order of the department issued under those sections, or who hinders or delays the department or truant officers in the performance of their duties, or who refuses to admit or locks out the officer from any place required to be inspected under ss. 103.64 to 103.82 may be fined not less than \$10 nor more than \$100 for each offense, or imprisoned not more than 30 days. Every day during which the violation continues constitutes a separate offense.

(b) In addition to the penalties provided in par. (a), any employer who employs any minor in violation of s. 103.68, or rules of the department shall be liable, in addition to the wages paid, to pay to each minor affected, an amount equal to twice the regular rate of pay as liquidated damages, for all hours worked in violation per day or per week, whichever is greater.

(2) The state may enforce the penalties specified in sub. (1) in a criminal prosecution or, in its discretion, it may recover a forfeiture of not less than \$10 nor more than \$100 for each offense. The forfeiture shall be recovered in an action of debt in any court of competent jurisdiction.

(3) Any parent or guardian who permits a minor to be employed or to work in violation of ss. 103.64 to 103.82, or of any order of the department issued under those sections, may be fined not less than \$5 nor more than \$25 for each offense, or imprisoned not more than 30 days.

History: 1971 c 271

**103.85 One day of rest in seven.** (1) Every employer of labor, whether a person, partnership or corporation, who owns or operates any factory or mercantile establishment in this state, shall allow every person, except those specified in sub. (2), employed in such factory or mercantile

establishment, at least 24 consecutive hours of rest in every 7 consecutive days and shall not permit any such person to work for such employer during such 24 consecutive hour period, except in case of breakdown of machinery or equipment, or other emergency, requiring the immediate services of experienced and competent labor to prevent serious injury to person, damage to property, or suspension of necessary operations, when such experienced and competent labor is not otherwise immediately available. This shall not authorize any work on Sunday not now authorized by law.

(2) This section does not apply to: (a) janitors; (b) watchmen; (c) persons employed in the manufacture of butter, cheese or other dairy products or in the distribution of milk or cream, or in canneries and freezers; (d) persons employed in bakeries, flour and feed mills, hotels, and restaurants; (e) employes whose duties include no work on Sunday other than 1. caring for live animals, 2. maintaining fires; (f) any labor called for by an emergency that could not reasonably have been anticipated.

(3) Every employer shall keep a time book showing the names and addresses of all employes and the hours worked by each of them in each day, and such time book shall be open to inspection by the department.

(4) If upon investigation, the department shall ascertain and determine that there be practical difficulties or unnecessary hardships in carrying out the provisions of this section, or

upon a joint request of labor and management, the department may by general or special order make reasonable exceptions therefrom or modifications thereof provided that the life, health, safety and welfare of employes shall not be sacrificed or endangered thereby. Such investigation and orders shall be made pursuant to the proceedings in ss. 101.01 to 101.25; and every order of the department under this section shall have the same effect as orders issued pursuant to said sections. Such orders shall be subject to review under ch. 227.

(5) Every employer who violates this section shall be punished as provided in s. 101.02 (13).

History: 1971 c. 185 s. 7; 1971 c. 228 s. 43.

**103.86 Employe welfare funds: default in payments.** (1) Any employer who promises in writing to make payments to an employe welfare fund, either by contract with an individual employe, by a collective bargaining agreement or by agreement with such employe welfare fund, and who fails to make such payments within 6 weeks after they become due and payable, and after having been notified in writing of his failure to make the required payments, shall be fined not more than \$200.

(2) This section shall not apply where the failure to make payments is prevented by act of God, proceedings in bankruptcy, orders or process of any court of competent jurisdiction, or circumstances over which the employer has no control.