

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.

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

(1) “Department” means the department of 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. Any individual engaged in performing services for a person as a real estate agent or as a real estate salesperson, if all of those services are performed for remuneration solely by commission.

3. Any individual engaged in performing services for an employer described in sub. (3) (b) if that individual is not considered under 29 USC 203 (e) (4), as amended to April 15, 1986, to be an 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.

(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.

(5) The term “living–wage” shall mean compensation for labor paid, whether by time, piecework or otherwise, sufficient to enable the employee receiving it to maintain himself or herself under conditions consistent with his or her welfare.

(6) “Sheltered workshop” means a charitable organization or institution conducted not for profit, but for the purpose of carrying out a recognized program of rehabilitation for 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.

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

(9) The term “welfare” shall mean and include reasonable comfort, reasonable physical well–being, decency, and moral well–being.

(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.

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

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

History: 1975 c. 94.

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

History: 1975 c. 94.

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

History: 1971 c. 228 s. 43; 1975 c. 94; 1995 a. 27.

Cross Reference: See also ch. DWD 272, Wis. adm. code.

104.045 Tipped employees. The department shall by rule determine what amount of tips or similar gratuities may be counted toward fulfillment of the employer's obligation under this chapter.

History: 1977 c. 179.

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

History: 1975 c. 94.

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

History: 1975 c. 94.

104.07 Rules; license to employ; student learners; sheltered workshops. (1) The department shall make rules and, except as provided under subs. (5) and (6), grant licenses, to any employer who employs any employee unable to earn the living-wage theretofore determined upon, permitting such person to work for a wage which shall be commensurate with ability and each license so granted shall establish a wage for the licensee.

(2) The department shall make rules and, except as provided under subs. (5) and (6), grant licenses to sheltered workshops to permit the employment of workers with disabilities who are unable to earn the living-wage at a wage that is commensurate with their ability and productivity. A license granted to a sheltered workshop under this section 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) 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 subunit of the department that obtains a social security number or a federal employer identification number under par. (a) may not disclose the social security number or the federal employer identification number to any person except to the department of revenue for the sole purpose of requesting certifications under s. 73.0301 or on the request of the subunit of the

department that administers the child and spousal support program under s. 49.22 (2m).

(5) The department 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 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.

History: 1977 c. 29 s. 1651; 1977 c. 273; 1997 a. 112, 191, 237; 1999 a. 9, 32.
Cross Reference: See also s. DWD 272.09, Wis. adm. code.

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

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

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

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

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

104.10 Penalty for intimidating witness. Any employer who discharges or threatens to discharge, or in any way discriminates, or threatens to discriminate against any 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 ss. 104.01 to 104.12, is guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of \$25 for each offense.

104.11 Definition of violation. Each day during which any employer shall employ a person for whom a living-wage has been fixed at a wage less than the living-wage fixed shall constitute a separate and distinct violation of ss. 104.01 to 104.12.

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

History: 1989 a. 228.