

1993 Senate Bill 213

Date of enactment: **March 11, 1994**  
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## 1993 WISCONSIN ACT 144

AN ACT to amend 20.923 (16), 62.13 (7n), 66.526 and 97.42 (4) (f); and to create 103.025, 104.01 (2) (b) 3, 104.01 (2) (b) 4 and 109.03 (1) (d) of the statutes, relating to: exempting from the minimum wage laws certain persons who perform services for the state or for a local unit of government and authorizing the state and local units of government to provide compensatory time in lieu of overtime pay.

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

**SECTION 1.** 20.923 (16) of the statutes is amended to read:

20.923 (16) (title) OVERTIME AND COMPENSATORY TIME EXCLUSION. The salary paid to any person whose position is included under subs. (2), (4), (4m), (5) and (8) to (12) is deemed to compensate that person for all work hours. No overtime compensation may be paid, and no compensatory time under s. 103.025 may be provided, to any such person for hours worked in any workweek in excess of the standard basis of employment as specified in s. 230.35 (5) (a).

**SECTION 2.** 62.13 (7n) of the statutes is amended to read:

62.13 (7n) HOURS OF LABOR. Except ~~where~~ when a labor agreement under subch. IV of ch. 111 that governs hours of employment exists, the council of every 2nd, 3rd or 4th class city shall provide for a working day of not more than 8 hours in each 24 except in cases of positive necessity by some sudden and serious emergency, which, in the judgment of the chief of police, demands that such workday shall be extended beyond the 8-hour period at such time; and, when such emergency ceases to exist, all overtime given during such emergency shall be placed to the credit of such police officer, and ~~additional days of rest~~ compensatory time under s. 103.025 given therefor.

**SECTION 3.** 66.526 of the statutes is amended to read:

**66.526 Uniform salaries in first class cities.** The common council of any city of the first class, however incorporated, may at any regular or special meeting, at any time during the calendar year, adopt a uniform and comprehensive salary or wage ordinance, or both, based on a classification of officers, employments and positions in the city service and of and including any and all offices and positions whatsoever in the employment of such city, whether previously so classified or not, provided provision has been made in the budget of the current year for the total sum of money required for the payment of salaries and wages for such employment and a tax levied to include the same, with the following exception: That wages may be fixed at any such time by resolution alone and that the common council may, at any time during the calendar year, at any such meeting determine a cost-of-living increment or deduction, to be paid in addition to such wages or salaries, based on a proper finding of the United States bureau of labor statistics. Any such common council may, at any such meeting, provide for overtime pay ~~of~~ and compensatory time under s. 103.025 for employes ~~worked~~ who work in excess of 40 hours per week.

**SECTION 4.** 97.42 (4) (f) of the statutes is amended to read:

97.42 (4) (f) Overtime agreements with the department whereby the operator of any establishment subject to a license under sub. (2), agrees to pay the cost for salaries, at overtime rates, and other expenses of department

inspectors whenever slaughtering, carcass preparation, or the processing of meat or poultry products or meat food products is conducted beyond hours or days limited under par. (e), or on Saturdays, Sundays or holidays for state employees under s. 230.35 (4), or before 6 a.m. or after 6 p.m., or in excess of 40 hours in any week. Overtime charges for periodic inspections under sub. (3) (e) shall, insofar as possible, be limited to the minimum number of hours reasonably required for the conduct of such inspections. The department may assess overtime charges under this paragraph even though the department provides compensatory time in lieu of overtime compensation under s. 103.025.

**SECTION 5.** 103.025 of the statutes is created to read:

**103.025 Hours of labor; compensatory time. (1)** In this section:

(a) "Compensatory time" means hours during which an employe is not working, which are not counted as hours worked during the workweek or other work period classified by the department by rule promulgated under s. 103.02 for purposes of calculating overtime compensation, and for which the employe is compensated at the employe's regular rate of pay.

(b) "Employe" has the meaning given in s. 104.01 (2).

(c) "Overtime compensation" means the compensation required to be paid for hours worked during periods that the department has classified, by rule promulgated under s. 103.02, as periods to be paid for at the rate of at least 1.5 times an employe's regular rate of pay.

(2) An employer described in s. 103.01 (1) (b) may provide an employe, in lieu of overtime compensation, compensatory time off as permitted under 29 USC 207 (o), as amended to April 15, 1986.

**SECTION 6.** 104.01 (2) (b) 3. of the statutes is created to read:

104.01 (2) (b) 3. Any individual engaged in performing services for an employer described in sub. (3) (b) if

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

**SECTION 6d.** 104.01 (2) (b) 4. of the statutes is created to read:

104.01 (2) (b) 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.

**SECTION 7.** 109.03 (1) (d) of the statutes is created to read:

109.03 (1) (d) Employes who receive compensatory time off under s. 103.025 in lieu of overtime compensation.

**SECTION 8. Initial applicability.** (1) COMPENSATORY TIME. The treatment of sections 20.923 (16), 62.13 (7n), 66.526, 97.42 (4) (f), 103.025 and 109.03 (1) (d) of the statutes first applies to hours worked on the effective date of this subsection, except that in the case of an employe who on the effective date of this subsection is covered by a collective bargaining agreement or other agreement containing provisions that are inconsistent with this act, the treatment of those sections first applies to hours worked on the day that the collective bargaining agreement or other agreement expires or is extended, renewed or modified.

(2) MINIMUM WAGE. The treatment of section 104.01 (2) (b) 3. and 4 of the statutes first applies to services performed for an employer described in section 104.01 (3) (b) of the statutes on the effective date of this subsection.