



## 1995 SENATE BILL 495

January 23, 1996 - Introduced by Senators CHVALA, ANDREA, MOEN, RISSER, DECKER, CLAUSING and BURKE, cosponsored by Representatives COGGS, BALDWIN, NOTESTEIN, R. YOUNG, KRUG, BOCK, RILEY, PLOMBON, L. YOUNG, BLACK, PLACHE, BELL, TURNER, BALDUS, BOYLE, WILLIAMS, RYBA, HASENOHRL, KREUSER, GRONEMUS and ROBSON. Referred to Committee on Human Resources, Labor, Tourism, Veterans and Military Affairs.

1     **AN ACT** *to renumber* 104.08 (3); *to renumber and amend* 104.045, 104.08 (1)  
2             and 104.08 (2); *to amend* 104.01 (intro.), 104.01 (5), 104.01 (8), 104.02, 104.03,  
3             104.04, 104.05, 104.06, 104.07 (1) and (2), 104.10, 104.11, 104.12, 800.09 (1) (b)  
4             and 800.095 (4) (b) 3.; and *to create* 103.027, 104.01 (7m), 104.035, 104.045 (2)  
5             and (3) and 104.08 (1) (b) of the statutes; **relating to:** a state minimum wage,  
6             overtime pay for executive, administrative and professional employees, granting  
7             rule-making authority and providing a penalty.

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### *Analysis by the Legislative Reference Bureau*

Currently, the state minimum wage laws require that employers pay a living wage to their employes. Under those laws, the department of industry, labor and human relations (DILHR) has established, by rule, minimum wages for various classes of employment as follows:

	<u>Probation</u>	<u>After Probation</u>
<u>Nonagricultural, Nontipped Employes</u>		
Adults 18 years of age and older	\$3.95	\$4.25
Minors under 18 years of age	\$3.60	\$3.90
<u>Tipped Employes</u>		
Adults 18 years of age and older	\$2.20	\$2.33
Minors under 18 years of age	\$2	\$2.13

### Agricultural Employes

Minimum Wage

Adults 18 years of age and older	\$4.05
Minors under 18 years of age	\$3.75

Also under current law, DILHR has established, by rule, separate minimum wage rates for counselors at seasonal recreational or educational camps for minors, for employes who perform less than 15 hours a week of casual employment in and around an employer's home, for employes hired as personal companions for disabled individuals, for golf caddies and for individuals who because of a handicap are unable to earn the standard minimum wage.

Under this bill, DILHR will continue to establish, by rule, separate minimum wage rates for camp counselors, persons in casual employment, personal companions, golf caddies and those who are unable to earn the standard minimum wage. For other employes, however, including agricultural employes, employes under 18 years of age and employes who receive tips, the bill sets a new minimum wage by statute.

Under the bill, the minimum wage, beginning on May 1, 1996, or on the first day of the first month beginning after publication of the bill, whichever is later, for an employe, including an agricultural employe and an employe under 18 years of age, who is not a tipped employe (and who is neither a camp counselor, a casual employe, a personal companion, a caddy nor an employe unable to earn the standard minimum wage) is \$4.75 per hour or the federal minimum hourly wage, whichever is greater. In 1997 the minimum wage is \$5.25 per hour or the federal minimum hourly wage, whichever is greater. After December 31, 1997, the minimum wage is 50% of the national average hourly wage earned by nonsupervisory employes employed by private, nonagricultural employers, as determined by the bureau of labor statistics of the federal department of labor for November of the previous year, rounded to the nearest multiple of 5 cents or the federal minimum hourly wage, whichever is greater.

Under the bill, the minimum wage, beginning on May 1, 1996, or on the first day of the first month beginning after publication of the bill, whichever is later, for a tipped employe, including a tipped employe under 18 years of age, is \$2.40 per hour or the federal minimum hourly wage, if any, for a tipped employe, whichever is greater. In 1997 the minimum wage for a tipped employe is \$2.65 per hour or the federal minimum hourly wage, if any, for a tipped employe, whichever is greater. After December 31, 1997, the minimum wage for a tipped employe is 50% of the minimum wage for a nontipped employe, as determined under the bill, or the federal minimum hourly wage, if any, for a tipped employe, whichever is greater. The bill provides, however, that an employer may pay the minimum wage for tipped employes only if the employer establishes by his or her payroll records that, when adding the tips received by an employe to the minimum wage for tipped employes, the employe receives not less than the minimum wage for employes generally.

The bill authorizes DILHR to raise the minimum wages specified in this bill. Also, the bill requires DILHR to promulgate rules concerning the counting of tips toward the minimum wage, the deduction from the minimum wage of meals and lodg-

ing provided by the employer and the determination of hours worked during which the employe is entitled to the minimum wage.

Finally, the bill authorizes DILHR to classify, by rule, certain employes as executive, administrative or professional employes and to exempt employers of those employes from the administrative rules that require overtime pay. The bill provides, however, that if DILHR does so classify and exempt those employes, it may not classify an employe as an executive or administrative employe unless that employe earns, on a salary basis, not less than \$1,000 per month, beginning on May 1, 1996, or on the first day of the first month beginning after publication of the bill, whichever is later; and it may not classify an employe as a professional employe unless that employe earns, in salary or fees, not less than \$1,075 per month, beginning on May 1, 1996, or on the first day of the first month beginning after publication of the bill, whichever is later. After December 31, 1996, an employe must earn not less than \$1,125 per month to be classified as an executive or administrative employe and not less than \$1,200 per month to be classified as a professional employe.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

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

1           **SECTION 1.** 103.027 of the statutes is created to read:

2           **103.027 Hours of labor; executive, administrative and professional em-**  
3 **ployes.** (1) Subject to sub. (2), the department may, by rule, classify employes as  
4 executive, administrative or professional employes and exempt employers of those  
5 employes from the rules promulgated under s. 103.02 that require certain periods of  
6 work to be paid for at the rate of at least 1.5 times the employe's regular rate of pay.

7           (2) If the department promulgates rules under sub. (1), the department may  
8 not classify an employe as an executive or administrative employe unless that em-  
9 ploye is compensated for his or her services on a salary basis at a rate of not less than  
10 \$1,000 per month, after the day before the effective date of this subsection .... [revisor  
11 inserts date], and before January 1, 1997, and not less than \$1,125 per month after  
12 December 31, 1996. If the department promulgates rules under sub. (1), the depart-  
13 ment may not classify an employe as a professional employe unless that employe is

1 compensated for his or her services on a salary or fee basis at a rate of not less than  
2 \$1,075 per month, after the day before the effective date of this subsection .... [revisor  
3 inserts date], and before January 1, 1997, and not less than \$1,200 per month after  
4 December 31, 1996.

5 **SECTION 2.** 104.01 (intro.) of the statutes is amended to read:

6 **104.01 Definitions.** (intro.) ~~The following terms as used in ss. 104.01 to~~  
7 ~~104.12 shall be construed as follows~~ In this chapter:

8 **SECTION 3.** 104.01 (5) of the statutes is amended to read:

9 104.01 (5) ~~The term “living-wage” shall mean~~ “Living wage” means compensa-  
10 tion for labor paid, whether by time, piecework or otherwise, sufficient to enable the  
11 employe receiving it to maintain himself or herself under conditions consistent with  
12 his or her welfare.

13 **SECTION 4.** 104.01 (7m) of the statutes is created to read:

14 104.01 (7m) “Tipped employe” means an employe who in the course of employ-  
15 ment customarily and regularly receives money or other gratuities from persons oth-  
16 er than the employe’s employer.

17 **SECTION 5.** 104.01 (8) of the statutes is amended to read:

18 104.01 (8) ~~The term “wage” and the term “wages” shall each mean~~ “Wage”  
19 means any compensation for labor measured by time, piece or otherwise.

20 **SECTION 6.** 104.02 of the statutes is amended to read:

21 **104.02** (title) ~~Living-wage prescribed~~ Living wage required. Every wage  
22 paid or agreed to be paid by any employer to any employe, except as otherwise pro-  
23 vided in s. 104.07, shall be not less than a ~~living-wage~~ living wage.

24 **SECTION 7.** 104.03 of the statutes is amended to read:

1           **104.03 Unlawful wages.** Any employer paying, offering to pay, or agreeing  
2 to pay any employe a wage lower or less in value than a ~~living-wage~~ living wage is  
3 guilty of a violation of ~~ss. 104.01 to 104.12~~ this chapter.

4           **SECTION 8.** 104.035 of the statutes is created to read:

5           **104.035 Minimum wage. (1) EMPLOYES GENERALLY.** Except as provided in  
6 subs. (2) and (3) and s. 104.07, and subject to sub. (4), the minimum wage is whichev-  
7 er of the following applies:

8           (a) For wages earned beginning on the effective date of this paragraph .... [revi-  
9 sor inserts date], \$4.75 per hour or the federal minimum hourly wage, whichever is  
10 greater.

11           (b) For wages earned in 1997, \$5.25 per hour or the federal minimum hourly  
12 wage, whichever is greater.

13           (c) For wages earned after December 31, 1997, 50% of the national average  
14 hourly wage earned by nonsupervisory employes employed by private, nonagricul-  
15 tural employers, as determined by the bureau of labor statistics in the federal depart-  
16 ment of labor for November of the previous year, rounded to the nearest multiple of  
17 5 cents or the federal minimum hourly wage, whichever is greater.

18           **(2) TIPPED EMPLOYES.** Except as provided in sub. (3) and s. 104.07, and subject  
19 to this subsection and sub. (4), for wages earned beginning on the effective date of  
20 this subsection .... [revisor inserts date], the minimum wage for a tipped employe is  
21 \$2.40 per hour or the federal minimum hourly wage, if any, for a tipped employe,  
22 whichever is greater; for wages earned in 1997 the minimum wage for a tipped em-  
23 ploye is \$2.65 per hour or the federal minimum hourly wage, if any, for a tipped em-  
24 ploye, whichever is greater; and for wages earned after December 31, 1997, the mini-  
25 mum wage for a tipped employe is 50% of the minimum wage determined under sub.

1 (1) (c) rounded to the nearest multiple of 5 cents or the federal minimum hourly wage,  
2 if any, for a tipped employe, whichever is greater. An employer may pay the mini-  
3 mum wage specified in this subsection only if the employer establishes by his or her  
4 payroll records that, when adding the tips received by an employe to the wages under  
5 this subsection paid to that employe, the employe receives not less than the applica-  
6 ble minimum wage specified in sub. (1).

7 (3) MINIMUM WAGE ESTABLISHED BY DEPARTMENT. The department shall promul-  
8 gate rules establishing the minimum wage for all of the following:

9 (a) A counselor employed at a seasonal recreational or educational camp, in-  
10 cluding a day camp, for campers under the age of 18.

11 (b) A person engaged in casual employment in and around an employer's home  
12 on an irregular or intermittent basis for not more than 15 hours per week.

13 (c) A person who lives with someone who has a physical or mental disability and  
14 who provides companionship, general household work and care, not including practi-  
15 cal or professional nursing as defined in s. 441.11 (3) and (4), for that disabled person.

16 (d) A caddy on a golf course.

17 (e) An employe or handicapped worker covered under a license under s. 104.07.

18 (4) DEPARTMENT MAY REVISE. The department may promulgate rules to increase  
19 a minimum wage established under sub. (1) or (2).

20 SECTION 9. 104.04 of the statutes is amended to read:

21 **104.04 Classifications; department's authority.** The department shall in-  
22 vestigate, ascertain, determine and fix such reasonable classifications, and shall im-  
23 pose general or special orders, determining the ~~living-wage~~ living wage, and shall  
24 carry out the purposes of ~~ss. 104.01 to 104.12~~ this chapter. Such investigations, clas-  
25 sifications and orders shall be made pursuant to the proceeding in ss. 101.01 to

1 101.25, which are hereby made a part hereof, so far as not inconsistent with ss.  
2 104.01 to ~~104.12~~ this chapter; and every order of the department shall have the same  
3 force and effect as the orders issued pursuant to said ss. 101.01 to 101.25, and the  
4 penalties therein shall apply to and be imposed for any violation of ss. ~~104.01 to~~  
5 ~~104.12~~ this chapter. The department may not establish a different minimum wage  
6 for men and women. Said orders shall be subject to review in the manner provided  
7 in ch. 227.

8 **SECTION 10.** 104.045 of the statutes is renumbered 104.045 (intro.) and  
9 amended to read:

10 **104.045** (title) **Tipped employes Tips, meals and lodging, and hours**  
11 **worked.** (intro.) The department shall ~~by rule determine what amount of promul-~~  
12 ~~gate rules governing all of the following:~~

13 (1) ~~The counting of tips or similar gratuities may be counted toward fulfillment~~  
14 ~~of the employer's obligation under this chapter.~~

15 **SECTION 11.** 104.045 (2) and (3) of the statutes are created to read:

16 104.045 (2) The deduction of meals or lodging provided by an employer to an  
17 employe from the employer's obligations under this chapter.

18 (3) The determination of hours worked by an employe during which the em-  
19 ploye is entitled to a living wage under this chapter.

20 **SECTION 12.** 104.05 of the statutes is amended to read:

21 **104.05 Complaints; investigation.** The department shall, within 20 days  
22 after the filing of a verified complaint of any person ~~setting forth~~ alleging that the  
23 wages paid to any employe ~~in any occupation~~ are not sufficient to enable the employe  
24 to maintain himself or herself under conditions consistent with his or her welfare,

1 investigate and determine whether there is reasonable cause to believe that the wage  
2 paid to any ~~the~~ employe is not a ~~living-wage~~ living wage.

3 **SECTION 13.** 104.06 of the statutes is amended to read:

4 **104.06 Wage council; determination.** If, upon investigation, the depart-  
5 ment finds that there is reasonable cause to believe that the wages paid to any em-  
6 ploye are not a ~~living-wage~~ living wage, it shall appoint a wage council, selected so  
7 as fairly to represent employers, employes and the public, to assist in its investiga-  
8 tions and determinations. ~~The living-wage~~ department may use the results of an  
9 investigation under this section to establish a living wage. A living wage so deter-  
10 mined upon shall be the ~~living-wage~~ living wage for all employes within the same  
11 class as established by the ~~classification of the department~~ under s. 104.04.

12 **SECTION 14.** 104.07 (1) and (2) of the statutes are amended to read:

13 104.07 (1) The department shall ~~make~~ promulgate rules and grant licenses, to  
14 any employer who employs any employe who is unable to earn the ~~living-wage there-~~  
15 ~~tofore determined upon, permitting such person to~~ a living wage so that the employe  
16 may work for a wage which shall be that is commensurate with the employe's ability,  
17 and each license so granted shall establish a wage for the licensee employe.

18 (2) The department shall ~~make~~ promulgate rules and grant licenses to any  
19 ~~sheltered workshops to permit the employment of~~ workshop that employs any handi-  
20 capped ~~workers~~ worker who is unable to earn the ~~living-wage theretofore deter-~~  
21 ~~mined upon permitting such persons to~~ a living wage so that the handicapped worker  
22 may work for a wage which shall be that is commensurate with his or her ability and  
23 productivity. A license granted to a sheltered workshop, under this section, may be  
24 issued for the entire workshop or a department thereof.

1           **SECTION 15.** 104.08 (1) of the statutes is renumbered 104.08 (2) and amended  
2 to read:

3           104.08 (2) ~~All persons~~ Any person working in an ~~occupation~~ trade industry  
4 for which a ~~living-wage~~ living wage has been established for minors, and who ~~shall~~  
5 ~~have~~ has no trade, ~~shall, if employed in an occupation which is a trade industry,~~ be  
6 indentured under ~~the provisions of~~ s. 106.01.

7           **SECTION 16.** 104.08 (1) (b) of the statutes is created to read:

8           104.08 (1) (b) "Trade industry" means an industry involving physical labor and  
9 characterized by mechanical skill and training such as render a period of instruction  
10 reasonably necessary.

11           **SECTION 17.** 104.08 (2) of the statutes is renumbered 104.08 (1) (intro.) and  
12 amended to read:

13           104.08 (1) (intro.) ~~A "trade" or a "trade industry" within the meaning of ss.~~  
14 ~~104.01 to 104.12 shall be a trade or~~ In this section:

15           (a) "Trade" means an industry occupation involving physical labor and charac-  
16 terized by mechanical skill and training such as render a period of instruction rea-  
17 sonably necessary.

18           (3) (a) The department shall investigate, determine and declare what occupa-  
19 tions and industries are included within ~~the phrase~~ a "trade" or a "trade industry".

20           **SECTION 18.** 104.08 (3) of the statutes is renumbered 104.08 (3) (b).

21           **SECTION 19.** 104.10 of the statutes is amended to read:

22           **104.10 Penalty for intimidating witness.** Any employer who discharges or  
23 threatens to discharge, or in any way discriminates, or threatens to discriminate  
24 against any employe because the employe has testified or is about to testify, or be-  
25 cause the employer believes that the employe may testify, in any investigation or pro-

1 ceeding relative to the enforcement of ss. 104.01 to 104.12 this chapter, is guilty of  
2 a misdemeanor, and upon conviction thereof shall be punished by a fine of ~~\$25~~ \$500  
3 for each offense.

4 **SECTION 20.** 104.11 of the statutes is amended to read:

5 **104.11 Definition of violation.** Each day during which any an employer  
6 ~~shall employ~~ employs a person for whom a ~~living-wage~~ living wage has been fixed  
7 ~~established~~ at a wage less than the ~~living-wage fixed~~ established living wage shall  
8 constitute a separate and distinct violation of ss. 104.01 to 104.12 this chapter.

9 **SECTION 21.** 104.12 of the statutes is amended to read:

10 **104.12 Complaints.** Any person may register with the department a com-  
11 plaint that the wages paid to employes for whom a ~~living-wage~~ living wage has been  
12 established are less than that rate, and the department shall investigate the matter  
13 and take all proceedings necessary to enforce the payment of a wage not less than  
14 ~~the living-wage~~ a living wage. Section 111.322 (2m) applies to discharge and other  
15 discriminatory acts arising in connection with any proceeding under this section.

16 **SECTION 22.** 800.09 (1) (b) of the statutes is amended to read:

17 800.09 (1) (b) If the defendant agrees to perform community service work in  
18 lieu of making restitution or paying the forfeiture, assessments and costs, or both,  
19 the court may order that the defendant perform community service work for a public  
20 agency or a nonprofit charitable organization that is designated by the court. Com-  
21 munity service work may be in lieu of restitution only if also agreed to by the public  
22 agency or nonprofit charitable organization and by the person to whom restitution  
23 is owed. The court may utilize any available resources, including any community  
24 service work program, in ordering the defendant to perform community service work.  
25 The number of hours of community service work required may not exceed the number

1 determined by dividing the amount owed on the forfeiture by the minimum wage es-  
2 tablished under ~~ch. 104 for adults in nonagriculture, nontipped employment s.~~  
3 104.035 (1). The court shall ensure that the defendant is provided a written state-  
4 ment of the terms of the community service order and that the community service  
5 order is monitored.

6 **SECTION 23.** 800.095 (4) (b) 3. of the statutes is amended to read:

7 800.095 (4) (b) 3. That the defendant perform community service work for a  
8 public agency or a nonprofit charitable organization designated by the court, except  
9 that the court may not order the defendant to perform community service work un-  
10 less the defendant agrees to perform community service work and, if the community  
11 service work is in lieu of restitution, unless the person to whom the restitution is  
12 owed agrees. The court may utilize any available resources, including any communi-  
13 ty service work program, in ordering the defendant to perform community service  
14 work. The number of hours of community service work required may not exceed the  
15 number determined by dividing the amount owed on the forfeiture or restitution, or  
16 both, by the minimum wage established under ~~ch. 104 for adults in nonagriculture,~~  
17 ~~nontipped employment s. 104.035 (1)~~. The court shall ensure that the defendant is  
18 provided a written statement of the terms of the community service order and that  
19 the community service order is monitored.

20 **SECTION 24. Effective date.**

21 (1) This act takes effect on May 1, 1996, or on the first day of the first month  
22 beginning after publication, whichever is later.

23 (END)