

2003 DRAFTING REQUEST

Assembly Substitute Amendment (ASA-AB903)

Received: 03/05/2004

Received By: gmalaise

Wanted: Today

Identical to LRB:

For: Karl Van Roy (608) 266-0616

By/Representing: Tanya Hein

This file may be shown to any legislator: NO

Drafter: gmalaise

May Contact:

Addl. Drafters:

Subject: Employ Priv - minimum wage

Extra Copies:

Submit via email: YES

Requester's email: Rep.VanRoy@legis.state.wi.us

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Overtime pay exemption for caompanionship services providers

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	gmalaise 03/05/2004	kfollett 03/05/2004					
/1			jfrantze 03/08/2004		sbasford 03/08/2004	sbasford 03/08/2004	

FE Sent For:

**<END>**

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1?	gmalaise	1 1/5/04 3/5	2/3/04	2/3/04 3/2			

FE Sent For:

<END>

**Malaise, Gordon**

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**From:** Hein, Tanya  
**Sent:** Friday, March 05, 2004 1:55 PM  
**To:** Malaise, Gordon  
**Subject:** FW: Proposed Changes to AB 903  
**Importance:** High

Gordon,

We are working on some talking points on this bill and need some clarification of the law:

- 1) Is it true that federal law exempts companionship services from overtime laws AND minimum wage laws?
- 2) Is it true that the current, existing state law/code exempts companionship services from overtime laws AND minimum wage laws -- if you are a private householder?
- 3) DWD testified on Tuesday that the state law/code exemption also applied to non-profit agencies. Again, does this exemption apply to minimum wage laws as well?

Also, please find the attached memo from DWD. It is my understanding that this proposed language will make no substantive change to the bill as we previously asked you to amend it. Assuming that is true, we are willing to go with the language in their proposal which is attached.

We -- Cowles/Van Roy --- would like this amendment as soon as possible. Would you please give us an estimate when this might get to us? Senator Roessler wanted to send out today a paper ballot for executive session that includes this amendment. If you don't think this is possible, I would like to know so I can ask them to wait until Monday.

Please call or email if you have any questions. Thanks Gordon. Sorry you had to do this twice. Micabil told us, this morning, that he wouldn't give us any language until we introduced our amendment. So that's what we had to do.

Tanya

# InterOffice Memo

Department of Workforce Development

Date: March 4, 2004

File Ref: proposed amendment to ab 903

To: Jo Anna Richard

From: Micabil Diaz, ERD Administrator

Subject: **Proposed Amendment to AB 903**

Pursuant to our discussion the purpose of this memo is to address the concerns of DWD but also to clearly state in the bill that persons employed to provide companionship services that meet certain criteria are exempt from state overtime pay requirements.

Here is the proposal based upon the original wording of AB 903 (copy enclosed):

- ✓ Page 1, line 2            delete the word "minimum"
- ✓ Page 1, line 3:        delete line and substitute with "an overtime pay exemption for providers of companionship services".
- ✓ Page 3, line 6 to line 7:            delete the sentence "Employment does not include companionship services."
- ✓ Page 3, line 12:       delete Section 5 altogether (lines 12 through 14).
- (No) Page 3, line 23       delete the sentence "This Act takes effect retroactively to January 1, 2001" and replace sentence with "This Act takes effect on the date following publication in the official state newspaper."  
*default  
∴ no law  
eff date  
language*
- (No) **Renumber 103.02, Wis. Stats., as 103.02(1).**

*AM 103.02*  
✓ **Create section 103.02(2), Wis. Stats. to read as follows:**

**No employer may be required to pay persons employed to perform companionship services at the rate of at least one and one half times their regular rates for overtime hours worked.**

2003

Date (time) needed

~~Today 3/15 or~~  
Mon 3/18 8:00 AM

LRBs 0436 1)

DN of E

GMM: [Signature]

**SUBSTITUTE AMENDMENT  
[TO A BILL]**

Use the appropriate components and routines developed for substitute amendments.

§ **A** (SUBSTITUTE AMENDMENT)

TO 2003 ~~SB~~ **AB** 903 (LRB- )

AN ACT . . . [generate catalog] *to repeal . . . ; to renumber . . . ; to consolidate and renumber . . . ; to renumber and amend . . . ; to consolidate, renumber and amend . . . ; to amend . . . ; to repeal and recreate . . . ; and to create . . .* of the statutes; relating to:

.....  
.....  
.....  
.....  
.....

Companion bills

[NOTE: See section 4.02 (2) (br), Drafting Manual, for specific order of standard phrases.]

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

SECTION #.

S0436/1  
LRB-4036/2  
GMM:kjf:ls

Today 5/28/04 Mon 5/8 6:00 AM

**2003 ASSEMBLY BILL 903**

February 25, 2004 - Introduced by Representatives VAN ROY, KRAWCZYK, GROTHMAN, GUNDERSON, HINES, GRONEMUS, MONTGOMERY, McCORMICK, WEBER, GIELOW, HAHN, WIECKERT, VUKMIR, SERAFI, M. WILLIAMS, LADWIG, JESKEWITZ, OTT, SUDER and NISCHKE, cosponsored by Senators COWLES, ELLIS, A. LASEE, ROESSLER, DARLING and LAZICH. Referred to Committee on Labor.

Regen

Regenerte

1 AN ACT to renumber 103.01 (1); to amend 103.01 (2) and 103.025 (2); and to  
2 create 103.01 (1g) and 104.01 (2) (b) 5. of the statutes; relating to: minimum  
3 wage and overtime pay exemptions for providers of companionship services.

**Analysis by the Legislative Reference Bureau**

Current law requires the Department of Workforce Development (DWD) to fix reasonable classifications and to impose general or special orders determining a living wage that employers are required to pay to their employees. Under that requirement, DWD has provided, by rule, minimum hourly wages for various classes of employees, but has exempted from the minimum wage rules an employee who resides in his or her employer's household for the purpose of providing companionship services for a person who, because of advanced age or physical or mental infirmity, cannot care for his or her own needs and who spends less than 15 hours per week on general household work.

Current law also requires DWD to classify, by rule, hours worked by an employee into periods of time to be paid at the employee's regular rate of pay and periods of time to be paid at a rate that is at least 1.5 times the employee's regular rate of pay. Under that requirement, DWD has promulgated rules requiring an employer to pay an employee 1.5 times the employee's regular rate of pay for all hours worked in excess of 40 hours per week (overtime pay), but has exempted from the overtime pay rules an employee employed by a household to provide domestic service in the household.

Current federal law also requires employees to be paid a minimum wage and to be paid overtime pay, but exempts from those requirements employees employed

that requirement

**ASSEMBLY BILL 903**

in domestic service employment to provide companionship services for individuals who, because of age or infirmity, are unable to care for themselves. Federal regulations define "companionship services" as services that provide fellowship, care, and protection for a person who, because of advanced age or physical or mental infirmity, cannot care for his or her own needs and include among those services household work relating to the care of an aged or infirm person such as meal preparation, bed making, clothes washing, and other similar services and general household work that does not exceed 20 percent of the total weekly hours worked. Federal regulations, however, exclude from that definition services relating to the care and protection of the aged or infirm that require and are performed by a trained professional such as a registered nurse or a practical nurse.

~~This bill adopts the federal definition of "companionship services," thereby exempting persons who provide companionship services from the state minimum wage and overtime pay laws in the same manner as those persons who are exempt from the federal minimum wage and overtime pay laws. As such, under the bill, a person who provides companionship services is exempt from the state minimum wage and overtime pay laws regardless of whether the person resides in the employer's household and regardless of whether the person is employed by the household or by a third-party employer. Under the bill, that exemption applies retroactively to January 1, 2001.~~

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

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

1           SECTION 1. 103.01 (1) of the statutes is renumbered 103.01 (1r).

2           SECTION 2. 103.01 (1g) of the statutes is created to read:

3           103.01 (1g) "Companionship services" mean services that provide fellowship,  
4 care, and protection for a person who, because of advanced age or physical or mental  
5 infirmity, cannot care for his or her own needs, including household work relating to  
6 the care of that person such as meal preparation, bed making, clothes washing, and  
7 other similar services and including general household work that does not exceed 20  
8 percent of the total weekly hours worked. "Companionship services" do not include  
9 services relating to the care and protection of a person who, because of age or physical  
10 or mental infirmity, cannot care for his or her own needs that require and are

ASSEMBLY BILL 903

1 performed by a trained professional such as a registered nurse or a licensed practical  
2 nurse.

3 ~~SECTION 3. 103.01 (2) of the statutes is amended to read:~~

4 ~~103.01 (2) "Employment" means any trade, occupation or process of  
5 manufacture, or any method of carrying on such trade or occupation in which any  
6 person may be engaged, or for any place of employment. "Employment" does not  
7 include companionship services.~~

Insert  
3-7

8 SECTION 4. 103.025 (2) of the statutes is amended to read:

9 103.025 (2) An employer described in s. 103.01 (1) (1r) (b) may provide an  
10 employee, in lieu of overtime compensation, compensatory time off as permitted  
11 under 29 USC 207 (o), as amended to April 15, 1986.

12 ~~SECTION 5. 104.01 (2) (b) 5. of the statutes is created to read:~~

13 ~~104.01 (2) (b) 5. Any individual engaged in companionship services, as defined  
14 in s. 103.01 (1g).~~

15 SECTION 6. Initial applicability.

16 (1) ~~MINIMUM WAGE AND OVERTIME PAY EXEMPTION FOR COMPANIONSHIP SERVICES~~  
17 PROVIDERS. This act first applies to an employee who is affected by a collective  
18 bargaining agreement that contains provisions that are inconsistent with this act on  
19 the day on which the agreement expires or is extended, modified, or renewed,  
20 whichever occurs first.

21 SECTION 7. Effective date.

22 (1) ~~MINIMUM WAGE AND OVERTIME PAY EXEMPTION FOR COMPANIONSHIP SERVICES~~  
23 PROVIDERS. This act takes effect retroactively to January 1, 2001.

24 (END)

2003-2004 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU

LRBs0436/1ins  
GMM.....

(INSERT 3-7)

SECTION ~~11~~ 103.02 of the statutes is amended to read:

**103.02 Hours of labor.** No person may be employed or be permitted to work in any place of employment or at any employment for ~~such~~ any period of time during any day, night, or week, ~~as that~~ is dangerous or prejudicial to the person's life, health, safety, or welfare. The department shall investigate, ascertain, determine, and fix ~~such~~ reasonable ~~classification~~ classifications, and promulgate rules fixing a period of time, or hours of beginning and ending work during any day, night, or week, ~~which shall be as are~~ necessary to protect the life, health, safety, or welfare of any person, or to carry out the purposes of ss. 103.01 to 103.03. The department shall, by rule, classify ~~such~~ those periods of time into periods to be paid for at regular rates and periods to be paid for at the rate of at least ~~one and one-half~~ 1.5 times the regular rates. ~~Such~~ Such, except that no employer of a person employed to perform companionship services may be required to pay that person at the rate of at least 1.5 times the person's regular rate for any overtime hours worked. Those investigations, classifications, and orders shall be made as provided in s. 103.005, and the penalties under s. 103.005 (12) shall apply to and be imposed for any violation of ss. 103.01 to 103.03. ~~Such~~ Those orders shall be subject to review in the manner provided in ch. 227. Section 111.322 (2m) applies to discharge or other discriminatory acts arising in connection with any proceeding under this section.

History: 1971 c. 228 s. 43; 1975 c. 94; 1989 a. 228; 1995 a. 27.

(END OF INSERT)

(INSERT A)

This substitute amendment exempts employers of persons employed to perform companionship services from the requirement that those persons be paid overtime

pay. The substitute amendment defines "companionship services" in the same manner as that term is defined under federal law.

**(END OF INSERT)**

DRAFTER'S NOTE  
FROM THE  
LEGISLATIVE REFERENCE BUREAU

LRBaz2504/2dn  
GMM:wlj&cmk:jf

50436/1dn

KJF

March 5, 2004

3. Incorporates the language recommended by DWD to state more clearly and precisely that companionship services providers are exempt from the overtime pay law.

Representative Van Roy:

This <sup>substitute</sup> amendment does all of the following:

1. Removes <sup>only</sup> the exemption of providers of companionship services from the minimum wage law. As such, the ~~bill, as affected by the~~ amendment, will exempt <sup>substitute</sup> ~~only~~ those providers from the overtime pay law.
2. Removes the retroactive effective date of the bill. As such, an employer will be liable for overtime pay for work performed before the date of publication of the bill.

At the meeting <sup>earlier this week</sup> ~~this morning~~, a concern was raised that the bill might impair collective bargaining agreements that provide for overtime pay, and so we discussed removing from the bill the initial applicability provision, which states that the bill first applies to a collective bargaining agreement that contains provisions that are inconsistent with the bill when the agreement expires or is extended, modified, or renewed. On further review, however, it is precisely this language that protects existing collective bargaining agreements from impairment by the bill. Accordingly, this <sup>substitute</sup> amendment does not remove the initial applicability provision from the bill.

As for future collective bargaining agreements, the ~~bill~~ <sup>OK substitute amendment</sup> does not prevent an employer from voluntarily agreeing to provide overtime pay; rather, the bill merely removes the mandate that an employer provide that pay. A good analogy is the minimum wage law, which sets the floor below which an employee may not be paid, but which does not prevent an employer from agreeing to pay an employee more than the minimum wage.

If you have any questions about the <sup>substitute</sup> amendment or this drafter's note, please do not hesitate to contact me directly at the phone number or e-mail address listed below.

Gordon M. Malaise  
Senior Legislative Attorney  
Phone: (608) 266-9738  
E-mail: gordon.malaise@legis.state.wi.us

**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRBs0436/1dn  
GMM:wlj&kjf:jf

March 8, 2004

Representative Van Roy:

This substitute amendment does all of the following:

1. Removes the exemption of providers of companionship services from the minimum wage law. As such, the substitute amendment will exempt those providers only from the overtime pay law.
2. Removes the retroactive effective date of the bill. As such, an employer will be liable for overtime pay for work performed before the date of publication of the bill.
3. Incorporates the language recommended by DWD to state more clearly and precisely that companionship services providers are exempt from the overtime pay law.

At the meeting earlier this week, a concern was raised that the bill might impair collective bargaining agreements that provide for overtime pay, and so we discussed removing from the bill the initial applicability provision, which states that the bill first applies to a collective bargaining agreement that contains provisions that are inconsistent with the bill when the agreement expires or is extended, modified, or renewed. On further review, however, it is precisely this language that protects existing collective bargaining agreements from impairment by the bill. Accordingly, this substitute amendment does not remove the initial applicability provision from the bill.

As for future collective bargaining agreements, the bill does not prevent an employer from voluntarily agreeing to provide overtime pay; rather, the bill merely removes the mandate that an employer provide that pay. A good analogy is the minimum wage law, which sets the floor below which an employee may not be paid, but which does not prevent an employer from agreeing to pay an employee more than the minimum wage.

If you have any questions about the substitute amendment or this drafter's note, please do not hesitate to contact me directly at the phone number or e-mail address listed below.

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Senior Legislative Attorney  
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E-mail: [gordon.malaise@legis.state.wi.us](mailto:gordon.malaise@legis.state.wi.us)