



2003 SENATE BILL 178

May 23, 2003 - Introduced by Senators CHVALA, WIRCH, RISSER and HANSEN, cosponsored by Representatives MILLER, BERCEAU, J. LEHMAN, MUSSER, POCAN, TAYLOR and MORRIS. Referred to Committee on Labor, Small Business Development and Consumer Affairs.

1 **AN ACT to repeal** 103.01 (title), 103.03 (title), 103.68 (3) and 103.935 (2) and (3);
2 **to renumber** 103.01 (1), 103.01 (2), 103.01 (3), 103.935 (1) (intro.), 103.935 (1)
3 (a) and 103.935 (1) (b); **to renumber and amend** 103.01 (intro.), 103.02, 103.03
4 and 103.935 (1) (c); **to amend** 103.025 (1) (a), 103.025 (1) (c), 103.025 (2), 103.66
5 (2), 103.74 (2), 103.82 (1) (b), 109.09 (1), 111.322 (2m) (a) and 111.322 (2m) (b);
6 and **to create** 103.02 (4), 103.021, 103.024 (1), 103.024 (3), 103.685 and 103.937
7 of the statutes; **relating to:** rest and meal periods for employees and providing
8 a penalty.

Analysis by the Legislative Reference Bureau

Under current law, employees engaged in certain types of employment (generally at factories or mercantile establishments) may not work or be permitted to work for periods that are dangerous to their health. Current law also specifically requires that an employee under the age of 18 receive a meal break if the employee works for six or more consecutive hours. Further, a migrant worker may not be required to work for more than six consecutive hours without a meal break under current law, unless the work will be completed in less than seven hours. Migrant workers who are not engaged exclusively in agricultural labor are also entitled to a paid ten-minute rest period for each five hours of employment.

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This bill requires all employers, including the state, to provide their employees, including migrant workers and minors, with a paid rest period of not less than 15 minutes for each four hours worked in an eight-hour period and an unpaid meal period of not less than 30 minutes for six or more consecutive hours of work, unless any of the following applies:

1. The employee is covered by a collective bargaining agreement that addresses the issues of rest periods and meal periods.

2. The employee, with the permission of his or her employer, works a shorter workday in lieu of taking a rest period or a meal period required under the bill.

3. The employee provides health care services, maintenance services, or personal care services for an ambulance service provider or a health care facility and is required to work during an emergency.

4. The Department of Workforce Development grants the employer a waiver of the rest period and meal period requirement based on a determination that providing a classification of employees a rest period or a meal period as required by the bill would cause a demonstrable decrease in the efficiency of employer's operations.

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 (title) of the statutes is repealed.

2 **SECTION 2.** 103.01 (intro.) of the statutes is renumbered 103.02 (1) (intro.) and
3 amended to read:

4 103.02 (1) (intro.) In ~~ss. 103.01 to 103.03~~ this section:

5 **SECTION 3.** 103.01 (1) of the statutes is renumbered 103.02 (1) (a).

6 **SECTION 4.** 103.01 (2) of the statutes is renumbered 103.02 (1) (b).

7 **SECTION 5.** 103.01 (3) of the statutes is renumbered 103.02 (1) (c).

8 **SECTION 6.** 103.02 of the statutes is renumbered 103.02 (2) and amended to
9 read:

10 103.02 (2) No person may be employed or be permitted to work in any place of
11 employment or at any employment for such period of time during any day, night, or
12 week, as is dangerous or prejudicial to the person's life, health, safety, or welfare. ~~The~~

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1 **(3)** Subject to s. 103.021, the department shall investigate, ascertain,
2 determine, and fix such reasonable ~~classification~~ classifications, and promulgate
3 rules fixing a period of time, or hours of beginning and ending work during any day,
4 night, or week, which shall be necessary to protect the life, health, safety, or welfare
5 of any person, or to carry out the purposes of ~~ss. 103.01 to 103.03~~ this section. The
6 department shall, by rule, classify such periods of time into periods to be paid for at
7 regular rates and periods to be paid for at the rate of at least ~~one and one-half~~ 1.5
8 times the regular rates. Such investigations, classifications, and orders shall be
9 made as provided in s. 103.005 and the penalties under s. 103.005 (12) shall apply
10 to and be imposed for any violation of ~~ss. 103.01 to 103.03~~. Such orders shall be
11 subject to review in the manner provided in ch. 227. ~~Section 111.322 (2m) applies to~~
12 ~~discharge or other discriminatory acts arising in connection with any proceeding~~
13 ~~under this section.~~

14 **SECTION 7.** 103.02 (4) of the statutes is created to read:

15 103.02 (4) The employment of any person in any employment or place of
16 employment at any time other than the permissible hours of labor under this section
17 is prima facie evidence of a violation of this section.

18 **SECTION 8.** 103.021 of the statutes is created to read:

19 **103.021 Rest and meal periods. (1)** In this section:

20 (a) "Employer" means a person engaging in any activity, enterprise, or business
21 in this state employing at least one individual. "Employer" includes the state and
22 any office, department, independent agency, authority, institution, association,
23 society, or other body in state or local government created or authorized to be created
24 by the constitution or any law, including the legislature and the courts.

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1 (b) “Health care facility” means a facility, as defined in s. 647.01 (4), or any
2 hospital, nursing home, community-based residential facility, county home, county
3 infirmary, county hospital, county mental health complex, assisted living facility,
4 residential care apartment complex, rural medical center, hospice, treatment
5 facility, or other place licensed, certified, or approved by the department of health
6 and family services under s. 49.70, 49.71, 49.72, 50.02, 50.03, 50.034, 50.35, 50.52,
7 50.90, 51.04, 51.08, or 51.09, an adult family home licensed or certified by the
8 department of health and family services or a county department of human services
9 or social services under s. 50.032 or 50.033, or a facility under s. 45.365, 51.05, 51.06,
10 or 252.10 or under ch. 233.

11 (2) Except as provided in sub. (5), an employer shall provide its employees with
12 all of the following:

13 (a) A rest period of not less than 15 minutes for each 4 hours of work, not
14 including meal periods under par. (b), within an 8-hour period.

15 (b) A meal period of not less than 30 minutes, in addition to any rest period
16 under par. (a), for each 6 or more consecutive hours of work, including rest periods.

17 (3) An employer shall provide compensation to an employee who is on a rest
18 period under sub. (2) (a) at the applicable rate of pay for the employee when the rest
19 period occurs.

20 (4) The department shall determine whether the rest periods and meal periods
21 required under sub. (2) are counted as hours worked for purposes of ss. 66.0903,
22 103.49, and 103.50.

23 (5) Subsections (2) and (3) do not apply to any of the following:

24 (a) An employee who is covered under a collective bargaining agreement that
25 addresses the issues of rest periods and meal periods.

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1 (b) A minor employee whose rest periods or meal periods are regulated under
2 s. 103.685.

3 (c) A migrant worker whose rest periods or meal periods are regulated under
4 s. 103.937.

5 (d) An employee who, upon request of the employee or the collective bargaining
6 representative of the employee, is permitted by his or her employer to work a shorter
7 workday in lieu of taking a rest period required under sub. (2) (a) or a meal period
8 required under sub. (2) (b).

9 (e) An employee who is in a job classification for which the department has
10 granted a waiver under sub. (6).

11 (f) An employee of an ambulance service provider, as defined in s. 146.50 (1) (c),
12 or of a health care facility who provides health care, as defined in s. 155.01 (3),
13 services, maintenance services, as defined in s. 647.01 (5), or personal care services,
14 as defined in s. 647.01 (8), and who is required to work during an emergency. In this
15 paragraph, "emergency" means a sudden and unexpected situation that could not
16 reasonably have been anticipated or prevented in which a person is in imminent
17 danger of death or serious physical or mental injury unless immediate action is
18 taken.

19 **(6)** The department may grant an employer a waiver exempting employees in
20 a job classification from the requirements under subs. (2) and (3) if the department
21 determines that providing a rest period or a meal period to employees in that
22 classification would cause a demonstrable decrease in the efficiency of the employer's
23 operations. The determination of the department shall be subject to review in the
24 manner provided in ch. 227.

25 **SECTION 9.** 103.024 (1) of the statutes is created to read:

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1 103.024 (1) An employer that violates s. 103.02 or 103.021 is subject to the
2 penalties imposed under s. 103.005 (12).

3 **SECTION 10.** 103.024 (3) of the statutes is created to read:

4 103.024 (3) Section 111.322 (2m) applies to discharge or other discriminatory
5 acts arising in connection with any proceedings under s. 103.02 or 103.021.

6 **SECTION 11.** 103.025 (1) (a) of the statutes is amended to read:

7 103.025 (1) (a) “Compensatory time” means hours during which an employee
8 is not working, which are not counted as hours worked during the workweek or other
9 work period classified by the department by rule promulgated under s. 103.02 (3) for
10 purposes of calculating overtime compensation, and for which the employee is
11 compensated at the employee’s regular rate of pay.

12 **SECTION 12.** 103.025 (1) (c) of the statutes is amended to read:

13 103.025 (1) (c) “Overtime compensation” means the compensation required to
14 be paid for hours worked during periods that the department has classified, by rule
15 promulgated under s. 103.02 (3), as periods to be paid for at the rate of at least 1.5
16 times an employee’s regular rate of pay.

17 **SECTION 13.** 103.025 (2) of the statutes is amended to read:

18 103.025 (2) An employer described in s. 103.01 (1) (b) 103.02 (1) (a) 2. may
19 provide an employee, in lieu of overtime compensation, compensatory time off as
20 permitted under 29 USC 207 (o), as amended to April 15, 1986.

21 **SECTION 14.** 103.03 (title) of the statutes is repealed.

22 **SECTION 15.** 103.03 of the statutes is renumbered 103.024 (2) and amended to
23 read:

24 103.024 (2) ~~The employment of any person in any employment or place of~~
25 ~~employment at any time other than the permissible hours of labor shall be prima~~

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1 ~~facie evidence of a violation of this section.~~ Every day for each person employed, and
2 every week for each person employed, during which any employer fails to observe or
3 to comply with any order of the department, or to perform any duty enjoined by ss.
4 ~~103.01 to 103.03~~ required under s. 103.02 or 103.021, shall constitute a separate
5 offense.

6 **SECTION 16.** 103.66 (2) of the statutes is amended to read:

7 103.66 (2) ~~The~~ Subject to s. 103.685, the department may investigate and fix
8 reasonable classifications of employments and hours of employment for minors and
9 may issue general or special orders fixing maximum hours of employment for minors
10 per day and per week, maximum days of employment per week, hours at which
11 employment shall begin and end, and the duration of ~~lunch and other~~ rest periods
12 and meal periods as are necessary to protect the life, health, safety, and welfare of
13 minors.

14 **SECTION 17.** 103.68 (3) of the statutes is repealed.

15 **SECTION 18.** 103.685 of the statutes is created to read:

16 **103.685 Rest and meal periods; minors.** (1) An employer of a minor shall
17 provide the minor with all of the following:

18 (a) A rest period of not less than 15 minutes for each 4 hours of work, not
19 including meal periods under par. (b), within an 8-hour period.

20 (b) A meal period of not less than 30 minutes, in addition to any rest period
21 under par. (a), for each 6 or more consecutive hours of work, including rest periods.

22 (2) An employer shall provide compensation to a minor employee who is on a
23 rest period under sub. (1) (a) at the applicable rate of pay for the minor employee
24 when the rest period occurs.

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1 **(3)** A meal period under sub. (1) (b) shall commence reasonably close to 6 a.m.,
2 12 noon, 6 p.m., or 12 midnight or approximately midway of any work period or at
3 such other times as may be considered reasonable by the department.

4 **(4)** Subsections (1) to (3) do not apply to a minor employee who is covered by
5 a collective bargaining agreement that addresses the issues of rest periods and meal
6 periods.

7 **SECTION 19.** 103.74 (2) of the statutes is amended to read:

8 103.74 **(2)** Keep a record for each employed minor of the minor's name, address,
9 date of birth, ~~the time of beginning and ending work and the~~ each day, time for meals
10 and rest periods each day, and ~~the~~ total hours worked each day and each week.

11 **SECTION 20.** 103.82 (1) (b) of the statutes is amended to read:

12 103.82 **(1)** (b) In addition to the penalties provided in par. (a), any employer who
13 employs any minor in violation of s. 103.68 or 103.685, or rules of the department
14 shall be liable, in addition to the wages paid, to pay to each minor affected, an amount
15 equal to twice the regular rate of pay as liquidated damages, for all hours worked in
16 violation per day or per week, whichever is greater.

17 **SECTION 21.** 103.935 (1) (intro.) of the statutes is renumbered 103.935 (intro.).

18 **SECTION 22.** 103.935 (1) (a) of the statutes is renumbered 103.935 (1m).

19 **SECTION 23.** 103.935 (1) (b) of the statutes is renumbered 103.935 (2m).

20 **SECTION 24.** 103.935 (1) (c) of the statutes is renumbered 103.935 (3m) and
21 amended to read:

22 103.935 **(3m)** Nothing in this section shall prohibit a migrant worker from
23 voluntarily exceeding the limits prescribed by ~~pars. (a) and (b)~~ subs. (1m) and (2m).

24 **SECTION 25.** 103.935 (2) and (3) of the statutes are repealed.

25 **SECTION 26.** 103.937 of the statutes is created to read:

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1 **103.937 Rest and meal periods; migrant workers. (1)** An employer of a
2 migrant worker shall provide the migrant worker with all of the following:

3 (a) A rest period of not less than 15 minutes for each 4 hours of work, not
4 including meal periods under par. (b), within an 8-hour period.

5 (b) A meal period of not less than 30 minutes, in addition to any rest period
6 under par. (a), for each 6 or more consecutive hours of work, including rest periods.

7 **(2)** An employer shall provide compensation to a migrant worker who is on a
8 rest period under sub. (1) (a) at the applicable rate of pay for the migrant worker
9 when the rest period occurs.

10 **(3)** Subsections (1) and (2) do not apply to any of the following:

11 (a) A migrant worker who is covered under a collective bargaining agreement
12 that addresses the issues of rest periods and meal periods.

13 (b) A minor migrant worker whose rest periods or meal periods are regulated
14 under s. 103.685.

15 (c) A migrant worker who, upon request of the migrant worker or the collective
16 bargaining representative of the migrant worker, is permitted by his or her employer
17 to work a shorter workday in lieu of taking a rest period required under sub. (1) (a)
18 or a meal period required under sub. (1) (b).

19 (d) A migrant worker who is in a job classification for which the department has
20 granted a waiver under sub. (4).

21 **(4)** The department may grant a waiver exempting migrant workers in a job
22 classification from the requirements under subs. (1) and (2) if the department
23 determines that providing a rest period or a meal period to migrant workers in that
24 classification would cause a demonstrable decrease in the efficiency of the employer's

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1 operations. The determination of the department shall be subject to review in the
2 manner provided in ch. 227.

3 **SECTION 27.** 109.09 (1) of the statutes is amended to read:

4 109.09 (1) The department shall investigate and attempt equitably to adjust
5 controversies between employers and employees as to alleged wage claims. The
6 department may receive and investigate any wage claim which is filed with the
7 department, or received by the department under s. 109.10 (4), no later than 2 years
8 after the date the wages are due. The department may, after receiving a wage claim,
9 investigate any wages due from the employer against whom the claim is filed to any
10 employee during the period commencing 2 years before the date the claim is filed.
11 The department shall enforce this chapter and ss. 66.0903, 103.02, 103.021, 103.49,
12 103.82, 104.12, and 229.8275. In pursuance of this duty, the department may sue the
13 employer on behalf of the employee to collect any wage claim or wage deficiency and
14 ss. 109.03 (6) and 109.11 (2) and (3) shall apply to such actions. Except for actions
15 under s. 109.10, the department may refer such an action to the district attorney of
16 the county in which the violation occurs for prosecution and collection and the
17 district attorney shall commence an action in the circuit court having appropriate
18 jurisdiction. Any number of wage claims or wage deficiencies against the same
19 employer may be joined in a single proceeding, but the court may order separate
20 trials or hearings. In actions that are referred to a district attorney under this
21 subsection, any taxable costs recovered by the district attorney shall be paid into the
22 general fund of the county in which the violation occurs and used by that county to
23 meet its financial responsibility under s. 978.13 (2) for the operation of the office of
24 the district attorney who prosecuted the action.

25 **SECTION 28.** 111.322 (2m) (a) of the statutes is amended to read:

