

2005 Assembly Bill 49

Date of enactment: **June 1, 2005**  
Date of publication\*: **June 15, 2005**

## 2005 WISCONSIN ACT 12

AN ACT *to renumber and amend* 104.08 (1), 104.08 (2) and 104.08 (3); *to amend* 104.01 (intro.), 104.01 (5), 104.02, 104.03, 104.04, 104.05, 104.06, 104.07 (1), 104.07 (2), 104.10, 104.11 and 104.12; and *to create* 104.001 and 104.08 (1m) (b) of the statutes; **relating to:** preemption of city, village, town, or county living wage ordinances.

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

**SECTION 1.** 104.001 of the statutes is created to read:

**104.001 Statewide concern; uniformity.** (1) The legislature finds that the provision of a living wage that is uniform throughout the state is a matter of statewide concern and that the enactment of a living wage ordinance by a city, village, town, or county would be logically inconsistent with, would defeat the purpose of, and would go against the spirit of this chapter. Therefore, this chapter shall be construed as an enactment of statewide concern for the purpose of providing a living wage that is uniform throughout the state.

(2) A city, village, town, or county may not enact and administer an ordinance establishing a living wage. Any city, village, town, or county living wage ordinance that is in effect on the effective date of this subsection .... [revisor inserts date], is void.

(3) This section does not affect any of the following:

(a) The requirement that employees employed on a public works project contracted for by a city, village, town, or county be paid at the prevailing wage rate, as defined in s. 66.0903 (1) (g), as required under s. 66.0903.

(b) An ordinance that requires an employee of a county, city, village, or town, an employee who performs

work under a contract for the provision of services to a county, city, village, or town, or an employee who performs work that is funded by financial assistance from a county, city, village, or town, to be paid at a minimum wage rate specified in the ordinance.

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

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

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

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

**SECTION 4.** 104.02 of the statutes is amended to read:

**104.02 Living wage 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~~ living wage.

**SECTION 5.** 104.03 of the statutes is amended to read:

**104.03 Unlawful wages.** Any employer paying,

offering to pay, or agreeing to pay any employee a wage

\* Section 991.11, WISCONSIN STATUTES 2003-04 : Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication as designated" by the secretary of state [the date of publication may not be more than 10 working days after the date of enactment].

lower or less in value than a ~~living-wage~~ living wage is guilty of a violation of ~~ss. 104.01 to 104.12~~ this chapter.

**SECTION 6.** 104.04 of the statutes is amended to read:

**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~~ living wage, and shall carry out the purposes of ~~ss. 104.01 to 104.12~~ this chapter. 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~~ this chapter. In determining the ~~living-wage~~ living wage, the department may consider the effect that an increase in the ~~living-wage~~ living wage might have on the economy of the state, including the effect of a ~~living-wage~~ 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.

**SECTION 7.** 104.05 of the statutes is amended to read:

**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~~ living wage.

**SECTION 8.** 104.06 of the statutes is amended to read:

**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 living wage, the department 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~~ living wage so determined upon shall be the ~~living-wage~~ living wage for all employees within the same class as established by the classification of the department.

**SECTION 9.** 104.07 (1) of the statutes is amended to read:

104.07 (1) The department shall make rules, and, except as provided under subs. (5) and (6), grant licenses, to any employer who employs any employee who is unable to earn the ~~living-wage~~ living wage ~~theretofore determined upon~~ living wage determined by the department, permitting ~~such person~~ the employee to work for a wage which shall be that is commensurate with the employee's ability and each. Each license so granted shall establish a wage for the licensee.

**SECTION 10.** 104.07 (2) of the statutes is amended to read:

104.07 (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~~ living wage at a wage that is commensurate with their ability and productivity. A license granted to a sheltered workshop under this ~~section~~ subsection may be issued for the entire workshop or a department of the workshop.

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

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

**SECTION 12.** 104.08 (1m) (b) of the statutes is created to read:

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

**SECTION 13.** 104.08 (2) of the statutes is renumbered 104.08 (1m) (intro.) and amended to read:

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

(a) "Trade" means an industry occupation involving physical labor and characterized by mechanical skill and training such as render a period of instruction reasonably necessary.

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

**SECTION 14.** 104.08 (3) of the statutes is renumbered 104.08 (3) (b) and amended to read:

104.08 (3) (b) The department may make exceptions to the operation of subs. (1) and (2) ~~where sub. (2m) when~~ conditions make ~~their~~ its application unreasonable.

**SECTION 15.** 104.10 of the statutes is amended to read:

**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~~ this chapter, is guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of \$25 for each offense.

**SECTION 16.** 104.11 of the statutes is amended to read:

**104.11 Definition of violation.** Each day during which any employer shall employ a person for whom a

~~living-wage living wage~~ has been fixed at a wage less than the ~~living-wage living wage~~ fixed shall constitute a separate and distinct violation of ss. 104.01 to 104.12 ~~this chapter~~.

SECTION 17. 104.12 of the statutes is amended to read:

**104.12 Complaints.** Any person may register with the department a complaint that the wages paid to ~~employees an employee~~ for whom a ~~living-wage living wage~~ has been established are less than that ~~rate living wage~~, and the department shall investigate the matter and take all proceedings necessary to enforce the payment of

a wage ~~that is~~ not less than the ~~living-wage living wage~~. Section 111.322 (2m) applies to discharge and other discriminatory acts arising in connection with any proceeding under this section.

**SECTION 18. Initial applicability.**

(1) This act first applies to an employee who is affected by a collective bargaining agreement that contains provisions that are inconsistent with section 104.001 of the statutes, as created by this act, on the day on which the collective bargaining agreement expires or is extended, modified, or renewed, whichever occurs first.

---