

2007 ASSEMBLY BILL 274

April 23, 2007 – Introduced by Representatives MASON, ZEPNICK, TURNER, BLACK, POCAN, YOUNG, BOYLE, SINICKI, SHERIDAN, SHERMAN, POPE-ROBERTS, KREUSER, TRAVIS, VAN AKKEREN, KESSLER, BERCEAU and A. WILLIAMS, cosponsored by Senators DECKER, HANSEN, CARPENTER, MILLER, JAUCH, LEHMAN, RISSER, SULLIVAN, ERPENBACH and BRESKE. Referred to Committee on Jobs and The Economy.

1 **AN ACT** *to renumber* 104.01 (1); *to renumber and amend* 104.045; *to amend*
2 49.141 (1) (g), 104.01 (intro.), 104.01 (8), 104.05, 104.07 (1), 104.07 (2), 104.10,
3 104.11, 234.94 (5), 234.94 (8), 800.09 (1) (b), 800.095 (4) (b) 3. and 895.035 (2m)
4 (c); and *to create* 104.01 (1d), 104.01 (1g), 104.01 (5g), 104.01 (5m), 104.01 (7m),
5 104.035 and 104.045 (2) and (3) of the statutes; **relating to:** a state minimum
6 wage and granting rule-making authority.

Analysis by the Legislative Reference Bureau

Currently, the state minimum wage law requires that employers pay a living wage to their employees. Under that law, the Department of Workforce Development (DWD) has provided, by rule, minimum wages for various types of employees, including employees, generally; minor employees; opportunity employees, which are defined as employees under 20 years of age in their first 90 days of employment with a particular employer; tipped employees; agricultural employees; camp counselors; golf caddies; students employed at independent colleges and universities for less than 20 hours per week; student learners employed in bona fide school training programs; and individuals who are unable to earn the standard minimum wage because of a disability. DWD has exempted, by rule, from the minimum wage law employees who perform less than 15 hours per week of casual employment, such as baby-sitting or lawn mowing, in and around an employer's home; employees who provide companionship services to elderly or infirm individuals; and elementary and

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secondary school students performing work–like activities in their schools. DWD has also promulgated rules providing allowances against the minimum wage for employers that provide meals or lodging for their employees.

Under this bill, DWD will continue to provide the exemptions listed above and separate minimum wages for students employed at independent colleges and universities for less than 20 hours per week, student learners employed in bona fide school training programs, and individuals who are unable to earn the standard minimum wages because of a disability. For other employees, however, the bill sets the minimum wages, effective on September 1, 2007, or on the day after publication of the bill, whichever is later, as follows:

Employees generally

Current minimum wage	\$6.50 per hour
Minimum wage on effective date	\$7.25 per hour

Minor and opportunity employees

Current minimum wage	\$5.90 per hour
Minimum wage on effective date	\$6.60 per hour

Tipped employees

Current minimum wage	\$2.33 per hour for nonopportunity employees \$2.13 per hour for opportunity employees
Minimum wage on effective date	\$2.60 per hour for nonopportunity employees \$2.40 per hour for opportunity employees

Agricultural employees

Current minimum wage	\$5.15 per hour for adults \$4.25 per hour for minors
Minimum wage on effective date	\$5.75 per hour for adults \$4.75 per hour for minors

ASSEMBLY BILL 274Adult camp counselors

Current minimum wage	\$270 per week if meals and lodging not furnished \$217 per week if meals, but not lodging, furnished \$171 per week if meals and lodging furnished
Minimum wage on effective date	\$301 per week if meals and lodging not furnished \$242 per week if meals, but not lodging, furnished \$191 per week if meals and lodging furnished

Minor camp counselors

Current minimum wage	\$225 per week if meals and lodging not furnished \$171 per week if meals, but not lodging, furnished \$135 per week if meals and lodging furnished
Minimum wage on effective date	\$251 per week if meals and lodging not furnished \$191 per week if meals, but not lodging, furnished \$151 per week if meals and lodging furnished

Golf caddies

Current minimum wage	\$10.50 for 18 holes \$5.90 for 9 holes
Minimum wage on effective date	\$11.70 for 18 holes \$6.60 for 9 holes

The bill also increases the allowance against the minimum wage that an employer who provides room and board for an employee may take, as follows:

ASSEMBLY BILL 274Employees generally

Lodging

Current allowance \$52 per week or \$7.40 per day

Allowance on effective date \$58 per week or \$8.25 per day

Meals

Current allowance \$78 per week or \$3.70 per meal

Allowance on effective date \$87 per week or \$4.15 per meal

Minor and opportunity employees

Lodging

Current allowance \$47.20 per week or \$6.75 per day

Allowance on effective date \$52.65 per week or \$7.55 per day

Meals

Current allowance \$70.80 per week or \$3.35 per meal

Allowance on effective date \$78.95 per week or \$3.75 per meal

Adult agricultural employees

Lodging

Current allowance \$41.20 per week or \$5.90 per day

Allowance on effective date \$45.95 per week or \$6.60 per day

Meals

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Current allowance	\$61.80 per week or \$2.95 per meal
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Allowance on effective date	\$68.90 per week or \$3.30 per meal
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*Minor agricultural employees***Lodging**

Current allowance	\$34 per week or \$4.85 per day
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Allowance on effective date	\$37.90 per week or \$5.40 per day
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Meals

Current allowance	\$51 per week or \$2.40 per meal
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Allowance on effective date	\$56.85 per week or \$2.70 per meal
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Beginning on September 1, 2008, the bill requires DWD annually to promulgate rules revising the minimum wages and allowances for meals and lodging established under the bill by determining the percentage difference between the consumer price index for the preceding year and the consumer price index for the current year, adjusting the minimum wages and allowances in effect on August 31 of the current year by that percentage difference, and rounding that result to the nearest multiple of five cents or, in the case of a camp counselor, the nearest dollar.

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.** 49.141 (1) (g) of the statutes is amended to read:

2 49.141 (1) (g) “Minimum wage” means the state minimum hourly wage under
3 ~~ch. 104 s. 104.035 (1)~~ or the federal minimum hourly wage under 29 USC 206 (a) (1),
4 whichever is applicable.

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

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1 **104.01 Definitions.** (intro.) ~~The following terms as used in In~~ this chapter
2 shall be construed as follows:

3 **SECTION 3.** 104.01 (1) of the statutes is renumbered 104.01 (1m).

4 **SECTION 4.** 104.01 (1d) of the statutes is created to read:

5 104.01 **(1d)** “Agricultural employee” means an employee who is employed in
6 farming, as defined in s. 102.04 (3).

7 **SECTION 5.** 104.01 (1g) of the statutes is created to read:

8 104.01 **(1g)** “Consumer price index” means the average of the consumer price
9 index over each 12-month period for all urban consumers, U.S. city average, as
10 determined by the bureau of labor statistics of the U.S. department of labor.

11 **SECTION 6.** 104.01 (5g) of the statutes is created to read:

12 104.01 **(5g)** “Minor employee” means a minor who is paid at the applicable
13 minimum wage rate for minors.

14 **SECTION 7.** 104.01 (5m) of the statutes is created to read:

15 104.01 **(5m)** “Opportunity employee” means a person under 20 years of age who
16 is in the first 90 consecutive days of employment with his or her employer.

17 **SECTION 8.** 104.01 (7m) of the statutes is created to read:

18 104.01 **(7m)** “Tipped employee” means an employee who in the course of
19 employment customarily and regularly receives money or other gratuities from
20 persons other than the employee’s employer.

21 **SECTION 9.** 104.01 (8) of the statutes is amended to read:

22 104.01 **(8)** ~~The term “wage” and the term “wages” shall each mean~~ “Wage”
23 means any compensation for labor measured by time, piece, or otherwise.

24 **SECTION 10.** 104.035 of the statutes is created to read:

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1 **104.035 Minimum wage. (1) EMPLOYEES GENERALLY. (a) *Minimum rates.***

2 Except as provided in subs. (2) to (8), the minimum wage is as follows:

3 1. For wages earned before September 1, 2008, \$7.25 per hour.

4 2. For wages earned beginning on September 1, 2008, the amount determined
5 by the department by rule promulgated under sub. (9).

6 (b) *Allowances for meals and lodging.* Except as provided in subs. (2) (b) and
7 (4) (b), if an employer furnishes an employee with meals or lodging in accordance
8 with rules promulgated by the department under s. 104.045 (2), the employer may
9 deduct the following amounts from the wages of the employee:

10 1. For lodging furnished before September 1, 2008, \$58 per week or \$8.25 per
11 day and for meals furnished before September 1, 2008, \$87 per week or \$4.15 per
12 meal.

13 2. For meals and lodging furnished beginning on September 1, 2008, the
14 amounts determined by the department by rule promulgated under sub. (9).

15 **(2) MINOR AND OPPORTUNITY EMPLOYEES. (a) *Minimum rates.*** Except as provided
16 in subs. (3) to (8), the minimum wage for a minor employee or an opportunity
17 employee is as follows:

18 1. For wages earned before September 1, 2008, \$6.60 per hour.

19 2. For wages earned beginning on September 1, 2008, the amount determined
20 by the department by rule promulgated under sub. (9).

21 (b) *Allowances for meals and lodging.* Except as provided in sub. (4) (b), if an
22 employer furnishes a minor employee or an opportunity employee with meals or
23 lodging in accordance with rules promulgated by the department under s. 104.045
24 (2), the employer may deduct the following amounts from the wages of the employee:

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1 1. For lodging furnished before September 1, 2008, \$52.65 per week or \$7.55
2 per day and for meals furnished before September 1, 2008, \$78.95 per week or \$3.75
3 per meal.

4 2. For meals and lodging furnished beginning on September 1, 2008, the
5 amounts determined by the department by rule promulgated under sub. (9).

6 **(3) TIPPED EMPLOYEES.** (a) *Minimum rates.* Except as provided in subs. (4) to
7 (8), if an employer of a tipped employee establishes by the employer's payroll records
8 that, when adding the tips received by the tipped employee in a week to the wages
9 paid to the tipped employee in that week, the tipped employee receives not less than
10 the applicable minimum wage specified in sub. (1) or (2), the minimum wage for the
11 tipped employee is as follows:

12 1. For wages earned before September 1, 2008, by a tipped employee who is not
13 an opportunity employee, \$2.60 per hour.

14 2. For wages earned before September 1, 2008, by a tipped employee who is an
15 opportunity employee, \$2.40 per hour.

16 3. For wages earned beginning on September 1, 2008, the amounts determined
17 by the department by rule promulgated under sub. (9).

18 (b) *Allowances for meals and lodging.* If an employer furnishes a tipped
19 employee with meals or lodging in accordance with rules promulgated by the
20 department under s. 104.045 (2), the employer may deduct the applicable amounts
21 specified in subs. (1) (b) or (2) (b) from the wages of the tipped employee.

22 **(4) AGRICULTURAL EMPLOYEES.** (a) *Minimum rates.* Except as provided in subs.
23 (7) and (8), the minimum wage for an agricultural employee is as follows:

24 1. For wages earned before September 1, 2008, by an adult agricultural
25 employee, \$5.75 per hour.

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1 2. For wages earned before September 1, 2008, by a minor agricultural
2 employee, \$4.75.

3 3. For wages earned beginning on September 1, 2008, the amounts determined
4 by the department by rule promulgated under sub. (9).

5 (b) *Allowances for meals and lodging.* If an employer furnishes an agricultural
6 employee with meals or lodging in accordance with rules promulgated by the
7 department under s. 104.045 (2), the employer may deduct the following amounts
8 from the wages of the employee:

9 1. For lodging furnished to an adult agricultural employee, before September
10 1, 2008, \$45.95 per week or \$6.60 per day and for meals furnished to an adult
11 agricultural employee, before September 1, 2008, \$68.90 per week or \$3.30 per meal.

12 2. For lodging furnished to a minor agricultural employee before September 1,
13 2008, \$37.90 per week or \$5.40 per day and for meals furnished to a minor
14 agricultural employee before September 1, 2008, \$56.85 per week or \$2.70 per meal.

15 3. For meals and lodging furnished beginning on September 1, 2008, the
16 amounts determined by the department by rule promulgated under sub. (9).

17 **(5) CAMP COUNSELORS.** (a) *Minimum rates for adult counselors.* The minimum
18 wage for a counselor at a seasonal recreational or educational camp, including a day
19 camp, who is an adult is as follows:

20 1. For wages earned before September 1, 2008, \$301 per week if meals and
21 lodging are not furnished, \$242 per week if only meals are furnished, and \$191 per
22 week if both meals and lodging are furnished.

23 2. For wages earned beginning on September 1, 2008, the amounts determined
24 by the department by rule promulgated under sub. (9).

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1 (b) *Minimum rates for minor counselors.* The minimum wage for a counselor
2 at a seasonal recreational or educational camp, including a day camp, who is a minor
3 is as follows:

4 1. For wages earned before September 1, 2008, \$251 per week if meals and
5 lodging are not furnished, \$191 per week if only meals are furnished, and \$151 per
6 week if both meals and lodging are furnished.

7 2. For wages earned beginning on September 1, 2008, the amounts determined
8 by the department by rule promulgated under sub. (9).

9 **(6) GOLF CADDIES.** The minimum wage for a golf caddy is as follows:

10 (a) For wages earned before September 1, 2008, \$11.70 for caddying 18 holes.

11 (b) For wages earned before September 1, 2008, \$6.60 for caddying 9 holes.

12 (c) For wages earned beginning on September 1, 2008, the amounts determined
13 by the department by rule promulgated under sub. (9).

14 **(7) MINIMUM WAGE ESTABLISHED BY DEPARTMENT.** The department shall
15 promulgate rules providing the minimum wage for all of the following:

16 (a) An employee or worker with a disability covered under a license under s.
17 104.07.

18 (b) A student learner.

19 (c) A student employed by an independent college or university for less than
20 20 hours per week.

21 **(8) EMPLOYMENT EXEMPTED BY DEPARTMENT.** The department shall promulgate
22 rules exempting from the minimum wage requirements under subs. (1) to (7) all of
23 the following:

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

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1 (b) A person who resides in the home of an employer who, due to advanced age
2 or physical or mental disability, cannot care for his or her own needs, for the purpose
3 of companionship and who spends not more than 15 hours per week of general
4 household work for the employer.

5 (c) An elementary or secondary school student performing student work-like
6 activities in the student's school.

7 **(9) DEPARTMENT TO REVISE.** (a) Subject to par. (b), by September 1 of each year,
8 the department, using the procedures under s. 227.24, shall promulgate rules to
9 revise the minimum wages and allowances for meals and lodging established under
10 subs. (1) to (7). The department shall determine those revised minimum wages and
11 allowances by calculating the percentage difference between the consumer price
12 index for the 12-month period ending on May 31 of the preceding year and the
13 consumer price index for the 12-month period ending on May 31 of the current year,
14 adjusting the minimum wages and allowances in effect on August 31 of the current
15 year by that percentage difference, and rounding that result to the nearest multiple
16 of 5 cents, except that for a minimum wage under sub. (5), the department shall
17 round the result to the nearest dollar. Notwithstanding s. 227.24 (1) (a), (2) (b), and
18 (3), the department may promulgate an emergency rule under s. 227.24 revising the
19 minimum wages and allowances established under subs. (1) to (7) without providing
20 evidence that the emergency rule is necessary to preserve the public peace, health,
21 safety, or welfare and without a finding of emergency. A revised minimum wage or
22 allowance determined under this paragraph shall first apply to wages earned or
23 meals or lodging furnished on September 1 of the year in which the wage or allowance
24 is revised.

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1 (b) Paragraph (a) does not preclude the department from promulgating rules
2 to increase a minimum wage provided under subs. (1) to (7).

3 **SECTION 11.** 104.045 of the statutes is renumbered 104.045 (intro.) and
4 amended to read:

5 **104.045 ~~Tipped employees~~ Tips, meals, lodging, and hours worked.**
6 (intro.) The department shall ~~by rule determine what amount of~~ promulgate rules
7 governing all of the following:

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

10 **SECTION 12.** 104.045 (2) and (3) of the statutes are created to read:

11 104.045 **(2)** The deduction of meals or lodging provided by an employer to an
12 employee from the employer's obligation under this chapter.

13 **(3)** The determination of hours worked by an employee during which the
14 employee is entitled to a living wage under this chapter.

15 **SECTION 13.** 104.05 of the statutes is amended to read:

16 **104.05 Complaints; investigation.** ~~The department shall, within~~ Within 20
17 days after the filing of a verified complaint of any person ~~setting forth~~ alleging that
18 the wages paid to any employee in any occupation are not sufficient to enable the
19 employee to maintain himself or herself under conditions consistent with his or her
20 welfare, the department shall investigate and determine whether there is
21 reasonable cause to believe that the wage paid to any employee is not a living wage.

22 **SECTION 14.** 104.07 (1) of the statutes is amended to read:

23 104.07 **(1)** The department shall ~~make~~ promulgate rules, and, except as
24 provided under subs. (5) and (6), grant licenses to any employer who employs any
25 employee who is unable to earn the living wage determined by the department,

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1 permitting the employee to work for a wage that is commensurate with the
2 employee's ability. Each license so granted shall establish a wage for the licensee
3 employees of the licensee who are unable to earn a living wage.

4 **SECTION 15.** 104.07 (2) of the statutes is amended to read:

5 104.07 (2) The department shall ~~make~~ promulgate rules, and, except as
6 provided under subs. (5) and (6), grant licenses to sheltered workshops, to permit the
7 employment of workers with disabilities who are unable to earn the living wage at
8 a wage that is commensurate with their ability and productivity. A license granted
9 to a sheltered workshop under this subsection may be issued for the entire workshop
10 or a department of the workshop.

11 **SECTION 16.** 104.10 of the statutes is amended to read:

12 **104.10 Penalty for intimidating witness.** Any employer who discharges or
13 threatens to discharge, or who in any way discriminates, or threatens to discriminate
14 against, any employee because the employee has testified or is about to testify, or
15 because the employer believes that the employee may testify, in any investigation or
16 proceeding relative to the enforcement of this chapter, ~~is guilty of a misdemeanor,~~
17 ~~and upon conviction thereof shall be punished by a fine of~~ may be fined \$25 for each
18 offense.

19 **SECTION 17.** 104.11 of the statutes is amended to read:

20 **104.11 Definition of violation.** Each day during which any employer shall
21 employ employs a person for whom a living wage has been fixed at a wage that is less
22 than the living wage fixed shall constitute a separate and distinct violation of this
23 chapter.

24 **SECTION 18.** 234.94 (5) of the statutes is amended to read:

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1 234.94 (5) “Primary employment” means work which ~~which~~ that pays at least the
2 minimum wage as established under ~~ch. 104 s. 104.035 (1)~~ or under federal law,
3 whichever is greater, offers adequate fringe benefits, including health insurance,
4 and is not seasonal or part time.

5 **SECTION 19.** 234.94 (8) of the statutes is amended to read:

6 234.94 (8) “Target group” means a population group for which the
7 unemployment level is at least 25% higher than the statewide unemployment level,
8 or a population group for which the average wage received is less than 1.2 times the
9 minimum wage as established under ~~ch. 104 s. 104.035 (1)~~ or under federal law,
10 whichever is greater. No population group is required to be located within a
11 contiguous geographic area to be considered a target group.

12 **SECTION 20.** 800.09 (1) (b) of the statutes is amended to read:

13 800.09 (1) (b) If the defendant agrees to perform community service work in
14 lieu of making restitution or paying the forfeiture, assessments, and costs, or both,
15 the court may order that the defendant perform community service work for a public
16 agency or a nonprofit charitable organization that is designated by the court.
17 Community service work may be in lieu of restitution only if also agreed to by the
18 public agency or nonprofit charitable organization and by the person to whom
19 restitution is owed. The court may utilize any available resources, including any
20 community service work program, in ordering the defendant to perform community
21 service work. The number of hours of community service work required may not
22 exceed the number determined by dividing the amount owed on the forfeiture by the
23 minimum wage established under ~~ch. 104 for adults in nonagriculture, nontipped~~
24 ~~employment~~ s. 104.035 (1). The court shall ensure that the defendant is provided a

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1 written statement of the terms of the community service order and that the
2 community service order is monitored.

3 **SECTION 21.** 800.095 (4) (b) 3. of the statutes is amended to read:

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

17 **SECTION 22.** 895.035 (2m) (c) of the statutes is amended to read:

18 895.035 (2m) (c) The court assigned to exercise jurisdiction under chs. 48 and
19 938 may order that the juvenile perform community service work for a public agency
20 or nonprofit charitable organization that is designated by the court in lieu of making
21 restitution or paying the forfeiture or surcharge. If the parent agrees to perform
22 community service work in lieu of making restitution or paying the forfeiture or
23 surcharge, the court may order that the parent perform community service work for
24 a public agency or a nonprofit charitable organization that is designated by the court.
25 Community service work may be in lieu of restitution only if also agreed to by the

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1 public agency or nonprofit charitable organization and by the person to whom
2 restitution is owed. The court may utilize any available resources, including any
3 community service work program, in ordering the juvenile or parent to perform
4 community service work. The number of hours of community service work required
5 may not exceed the number determined by dividing the amount owed on the
6 restitution, forfeiture, or surcharge by the minimum wage established under ~~ch. 104~~
7 ~~for adults in nonagriculture, nontipped employment s. 104.035 (1)~~. The court shall
8 ensure that the juvenile or parent is provided with a written statement of the terms
9 of the community service order and that the community service order is monitored.

SECTION 23. Effective date.

11 (1) MINIMUM WAGE. This act takes effect on September 1, 2007, or on the day
12 after publication, whichever is later.

13 (END)