

2009 ASSEMBLY BILL 41

February 12, 2009 – Introduced by Representatives MASON, SINICKI, GRIGSBY, BLACK, ZEPNICK, POPE-ROBERTS, A. WILLIAMS, TURNER, MILROY, POCAN, KESSLER, BERCEAU, HILGENBERG, COLON, SOLETSKI, SHERMAN, SHILLING, BENEDICT, TOLES, GARTHWAITE, KRUSICK, YOUNG and PASCH, cosponsored by Senators DECKER, HANSEN, WIRCH, KREITLOW, TAYLOR, CARPENTER, COGGS, LEHMAN, PLALE, MILLER, ERPENBACH, SULLIVAN and VINEHOUT. Referred to Committee on Labor.

1 **AN ACT** *to repeal* 104.001; *to renumber* 104.01 (1); *to renumber and amend*
2 104.045; *to amend* 49.141 (1) (g), 104.01 (intro.), 104.01 (8), 104.05, 104.07 (1),
3 104.07 (2), 104.10, 104.11, 234.94 (5), 234.94 (8), 800.09 (1) (b), 800.095 (4) (b)
4 3. and 895.035 (2m) (c); and *to create* 104.01 (1d), 104.01 (1g), 104.01 (5g),
5 104.01 (5m), 104.01 (7m), 104.035 and 104.045 (2) and (3) of the statutes;
6 **relating to:** a state minimum wage, permitting the enactment of local living
7 wage ordinances, 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

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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 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 June 1, 2009, 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	\$7.60 per hour

Minor and opportunity employees

Current minimum wage	\$5.90 per hour
Minimum wage on effective date	\$6.90 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	\$2.75 per hour for nonopportunity employees \$2.50 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	\$6.05 per hour for adults \$4.95 per hour for minors

ASSEMBLY BILL 41Adult camp counselors

Current minimum wage	\$315 per week if meals and lodging not furnished \$240 per week if meals, but not lodging, furnished \$189 per week if meals and lodging furnished
Minimum wage on effective date	\$369 per week if meals and lodging not furnished \$281 per week if meals, but not lodging, furnished \$221 per week if meals and lodging furnished

Minor camp counselors

Current minimum wage	\$275 per week if meals and lodging not furnished \$209 per week if meals, but not lodging, furnished \$165 per week if meals and lodging furnished
Minimum wage on effective date	\$322 per week if meals and lodging not furnished \$245 per week if meals, but not lodging, furnished \$193 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	\$12.30 for 18 holes \$6.90 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 41*Employees generally***Lodging**

Current allowance	\$52 per week or \$7.40 per day
Allowance on effective date	\$61 per week or \$8.65 per day

Meals

Current allowance	\$78 per week or \$3.70 per meal
Allowance on effective date	\$91 per week or \$4.35 per meal

*Minor and opportunity employees***Lodging**

Current allowance	\$47.20 per week or \$6.75 per day
Allowance on effective date	\$55.20 per week or \$7.90 per day

Meals

Current allowance	\$70.80 per week or \$3.35 per meal
Allowance on effective date	\$82.85 per week or \$3.90 per meal

*Adult agricultural employees***Lodging**

Current allowance	\$41.20 per week or \$5.90 per day
Allowance on effective date	\$48.20 per week or \$6.90 per day

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Meals

Current allowance	\$61.80 per week or \$2.95 per meal
Allowance on effective date	\$72.30 per week or \$3.45 per meal

Minor agricultural employees

Lodging

Current allowance	\$34 per week or \$4.85 per day
Allowance on effective date	\$39.80 per week or \$5.65 per day

Meals

Current allowance	\$51 per week or \$2.40 per meal
Allowance on effective date	\$59.65 per week or \$2.80 per meal

Beginning on June 1, 2010, 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 May 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.

Finally, current law prohibits a city, village, town, or county from enacting and administering an ordinance establishing a living wage. This bill eliminates that prohibition.

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:

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

4 **SECTION 2.** 104.001 of the statutes is repealed.

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

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

8 **SECTION 4.** 104.01 (1) of the statutes is renumbered 104.01 (1m).

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

10 104.01 (1d) “Agricultural employee” means an employee who is employed in
11 farming, as defined in s. 102.04 (3).

12 **SECTION 6.** 104.01 (1g) of the statutes is created to read:

13 104.01 (1g) “Consumer price index” means the average of the consumer price
14 index over each 12-month period for all urban consumers, U.S. city average, as
15 determined by the bureau of labor statistics of the U.S. department of labor.

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

17 104.01 (5g) “Minor employee” means a minor who is paid at the applicable
18 minimum wage rate for minors.

19 **SECTION 8.** 104.01 (5m) of the statutes is created to read:

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

22 **SECTION 9.** 104.01 (7m) of the statutes is created to read:

23 104.01 (7m) “Tipped employee” means an employee who in the course of
24 employment customarily and regularly receives money or other gratuities from
25 persons other than the employee’s employer.

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1 **SECTION 10.** 104.01 (8) of the statutes is amended to read:

2 104.01 **(8)** ~~The term “wage” and the term “wages” shall each mean “Wage”~~
3 means any compensation for labor measured by time, piece, or otherwise.

4 **SECTION 11.** 104.035 of the statutes is created to read:

5 **104.035 Minimum wage. (1) EMPLOYEES GENERALLY.** (a) *Minimum rates.*

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

7 1. For wages earned before June 1, 2010, \$7.60 per hour.

8 2. For wages earned beginning on June 1, 2010, the amount determined by the
9 department by rule promulgated under sub. (9).

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

14 1. For lodging furnished before June 1, 2010, \$61 per week or \$8.65 per day and
15 for meals furnished before June 1, 2010, \$95 per week or \$4.35 per meal.

16 2. For meals and lodging furnished beginning on June 1, 2010, the amounts
17 determined by the department by rule promulgated under sub. (9).

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

21 1. For wages earned before June 1, 2010, \$6.90 per hour.

22 2. For wages earned beginning on June 1, 2010, the amount determined by the
23 department by rule promulgated under sub. (9).

24 (b) *Allowances for meals and lodging.* Except as provided in sub. (4) (b), if an
25 employer furnishes a minor employee or an opportunity employee with meals or

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1 lodging in accordance with rules promulgated by the department under s. 104.045

2 (2), the employer may deduct the following amounts from the wages of the employee:

3 1. For lodging furnished before June 1, 2010, \$55.20 per week or \$7.90 per day
4 and for meals furnished before June 1, 2010, \$82.85 per week or \$3.90 per meal.

5 2. For meals and lodging furnished beginning on June 1, 2010, the amounts
6 determined by the department by rule promulgated under sub. (9).

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

13 1. For wages earned before June 1, 2010, by a tipped employee who is not an
14 opportunity employee, \$2.75 per hour.

15 2. For wages earned before June 1, 2010, by a tipped employee who is an
16 opportunity employee, \$2.50 per hour.

17 3. For wages earned beginning on June 1, 2010, the amounts determined by the
18 department by rule promulgated under sub. (9).

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

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

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1 1. For wages earned before June 1, 2010, by an adult agricultural employee,
2 \$6.05 per hour.

3 2. For wages earned before June 1, 2010, by a minor agricultural employee,
4 \$4.95.

5 3. For wages earned beginning on June 1, 2010, the amounts determined by the
6 department by rule promulgated under sub. (9).

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

11 1. For lodging furnished to an adult agricultural employee, before June 1, 2010,
12 \$48.20 per week or \$6.90 per day and for meals furnished to an adult agricultural
13 employee, before June 1, 2010, \$72.30 per week or \$3.45 per meal.

14 2. For lodging furnished to a minor agricultural employee before June 1, 2010,
15 \$39.80 per week or \$5.65 per day and for meals furnished to a minor agricultural
16 employee before June 1, 2010, \$59.65 per week or \$2.80 per meal.

17 3. For meals and lodging furnished beginning on June 1, 2010, the amounts
18 determined by the department by rule promulgated under sub. (9).

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

22 1. For wages earned before June 1, 2010, \$369 per week if meals and lodging
23 are not furnished, \$281 per week if only meals are furnished, and \$221 per week if
24 both meals and lodging are furnished.

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1 2. For wages earned beginning on June 1, 2010, the amounts determined by the
2 department by rule promulgated under sub. (9).

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

6 1. For wages earned before June 1, 2010, \$322 per week if meals and lodging
7 are not furnished, \$245 per week if only meals are furnished, and \$193 per week if
8 both meals and lodging are furnished.

9 2. For wages earned beginning on June 1, 2010, the amounts determined by the
10 department by rule promulgated under sub. (9).

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

12 (a) For wages earned before June 1, 2010, \$12.30 for caddying 18 holes.

13 (b) For wages earned before June 1, 2010, \$6.90 for caddying 9 holes.

14 (c) For wages earned beginning on June 1, 2010, the amounts determined by
15 the department by rule promulgated under sub. (9).

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

18 (a) An employee or worker with a disability covered under a license under s.
19 104.07.

20 (b) A student learner.

21 (c) A student employed by an independent college or university for less than
22 20 hours per week.

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

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

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

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

9 **(9) DEPARTMENT TO REVISE.** (a) Subject to par. (b), by June 1 of each year, the
10 department, using the procedures under s. 227.24, shall promulgate rules to revise
11 the minimum wages and allowances for meals and lodging established under subs.
12 (1) to (7). The department shall determine those revised minimum wages and
13 allowances by calculating the percentage difference between the consumer price
14 index for the 12-month period ending on February 28 of the preceding year and the
15 consumer price index for the 12-month period ending on February 28 of the current
16 year, adjusting the minimum wages and allowances in effect on May 31 of the current
17 year by that percentage difference, and rounding that result to the nearest multiple
18 of 5 cents, except that for a minimum wage under sub. (5), the department shall
19 round the result to the nearest dollar. Notwithstanding s. 227.24 (1) (a), (2) (b), and
20 (3), the department may promulgate an emergency rule under s. 227.24 revising the
21 minimum wages and allowances established under subs. (1) to (7) without providing
22 evidence that the emergency rule is necessary to preserve the public peace, health,
23 safety, or welfare and without a finding of emergency. A revised minimum wage or
24 allowance determined under this paragraph shall first apply to wages earned or

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1 meals or lodging furnished on June 1 of the year in which the wage or allowance is
2 revised.

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

5 **SECTION 12.** 104.045 of the statutes is renumbered 104.045 (intro.) and
6 amended to read:

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

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

12 **SECTION 13.** 104.045 (2) and (3) of the statutes are created to read:

13 104.045 **(2)** The deduction of meals or lodging provided by an employer to an
14 employee from the employer's obligation under this chapter.

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

17 **SECTION 14.** 104.05 of the statutes is amended to read:

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

24 **SECTION 15.** 104.07 (1) of the statutes is amended to read:

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1 104.07 (1) The department shall ~~make~~ promulgate rules, and, except as
2 provided under subs. (5) and (6), grant licenses to any employer who employs any
3 employee who is unable to earn the living wage determined by the department,
4 permitting the employee to work for a wage that is commensurate with the
5 employee's ability. Each license so granted shall establish a wage for the licensee
6 employees of the licensee who are unable to earn a living wage.

7 **SECTION 16.** 104.07 (2) of the statutes is amended to read:

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

14 **SECTION 17.** 104.10 of the statutes is amended to read:

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

22 **SECTION 18.** 104.11 of the statutes is amended to read:

23 **104.11 Definition of violation.** Each day during which any employer shall
24 employ employs a person for whom a living wage has been fixed at a wage that is less

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1 than the living wage fixed shall constitute a separate and distinct violation of this
2 chapter.

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

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

8 **SECTION 20.** 234.94 (8) of the statutes is amended to read:

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

15 **SECTION 21.** 800.09 (1) (b) of the statutes is amended to read:

16 800.09 (1) (b) If the defendant agrees to perform community service work in
17 lieu of making restitution or paying the forfeiture, assessments, and costs, or both,
18 the court may order that the defendant perform community service work for a public
19 agency or a nonprofit charitable organization that is designated by the court.
20 Community service work may be in lieu of restitution only if also agreed to by the
21 public agency or nonprofit charitable organization and by the person to whom
22 restitution is owed. The court may utilize any available resources, including any
23 community service work program, in ordering the defendant to perform community
24 service work. The number of hours of community service work required may not
25 exceed the number determined by dividing the amount owed on the forfeiture by the

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1 minimum wage established under ~~ch. 104 for adults in nonagriculture, nontipped~~
2 ~~employment s. 104.035 (1)~~. The court shall ensure that the defendant is provided a
3 written statement of the terms of the community service order and that the
4 community service order is monitored.

5 **SECTION 22.** 800.095 (4) (b) 3. of the statutes is amended to read:

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

19 **SECTION 23.** 895.035 (2m) (c) of the statutes is amended to read:

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

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

12 **SECTION 24. Effective date.**

13 (1) MINIMUM WAGE. This act takes effect on June 1, 2009, or on the day after
14 publication, whichever is later.

15 (END)