

2013 DRAFTING REQUEST

Bill

Received: 7/9/2013 Received By: gmalaise
 Wanted: As time permits Same as LRB:
 For: Scott Fitzgerald (608) 266-5660 By/Representing: Rob Richard
 May Contact: Drafter: gmalaise
 Subject: Employ Priv - minimum wage Addl. Drafters:
 Extra Copies:

Submit via email: YES
 Requester's email: Sen.Fitzgerald@legis.wisconsin.gov
 Carbon copy (CC) to:

Pre Topic:

No specific pre topic given

Topic:

Minimum wage; exemption for outside salespersons

Instructions:

See attached--exempt outside salespersons from the minimum wage law

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 7/9/2013	kfollett 7/18/2013	rschluet 7/18/2013	_____			
/1				_____	lparisi 7/18/2013	mbarman 9/4/2013	

FE Sent For:

Not Needed

<END>

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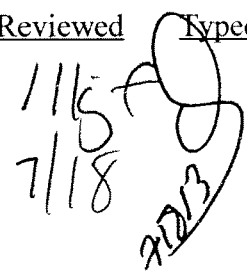
Minimum wage; exemption for outside salespersons

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FE Sent For:

<END>

Malaise, Gordon

From: Richard, Rob
Sent: Tuesday, July 09, 2013 11:01 AM
To: Malaise, Gordon
Subject: Bill draft request

Gordon –

I'm assuming that you are responsible for this topic, but if not please let me know. Sen. Fitzgerald would like to draft a bill that exempts "outside salespersons" from Wisconsin's minimum wage requirements. Unless I'm mistaken, it appears we'd need to create a new exemption under 104.01(2)(b).

Thanks,

Rob Richard
Deputy Chief of Staff
Office of Senator Scott Fitzgerald
Senate Majority Leader
608-266-5660

Fact Sheet #17F: Exemption for Outside Sales Employees Under the Fair Labor Standards Act (FLSA)

This fact sheet provides general information on the exemption from minimum wage and overtime pay provided by Section 13(a)(1) of the Fair Labor Standards Act as defined by Regulations, 29 CFR Part 541.

The FLSA requires that most employees in the United States be paid at least the federal minimum wage for all hours worked and overtime pay at time and one-half the regular rate of pay for all hours worked over 40 hours in a workweek.

However, Section 13(a)(1) of the FLSA provides an exemption from both minimum wage and overtime pay for employees employed as bona fide executive, administrative, professional and outside sales employees. Section 13(a)(1) and Section 13(a)(17) also exempt certain computer employees. To qualify for exemption, employees generally must meet certain tests regarding their job duties and be paid on a salary basis at not less than \$455 per week. Job titles do not determine exempt status. In order for an exemption to apply, an employee's specific job duties and salary must meet all the requirements of the Department's regulations.

See other fact sheets in this series for more information on the exemptions for executive, administrative, professional, and computer employees, and for more information on the salary basis requirement.

Outside Sales Exemption

To qualify for the outside sales employee exemption, all of the following tests must be met:

- The employee's primary duty must be making sales (as defined in the FLSA), or obtaining orders or contracts for services or for the use of facilities for which a consideration will be paid by the client or customer; and
- The employee must be customarily and regularly engaged away from the employer's place or places of business.

The salary requirements of the regulation do not apply to the outside sales exemption. An employee who does not satisfy the requirements of the outside sales exemption may still qualify as an exempt employee under one of the other exemptions allowed by Section 13(a)(1) of the FLSA and the Part 541 regulations if all the criteria for the exemption is met.

Primary Duty

"Primary duty" means the principal, main, major or most important duty that the employee performs. Determination of an employee's primary duty must be based on all the facts in a particular case, with the major emphasis on the character of the employee's job as a whole.

Making Sales

"Sales" includes any sale, exchange, contract to sell, consignment for sales, shipment for sale, or other disposition. It includes the transfer of title to tangible property, and in certain cases, of tangible and valuable evidences of intangible property.

Obtaining Orders or Contracts for Services or for the Use of Facilities

Obtaining orders for “the use of facilities” includes the selling of time on radio or television, the solicitation of advertising for newspapers and other periodicals, and the solicitation of freight for railroads and other transportation agencies. The word “services” extends the exemption to employees who sell or take orders for a service, which may be performed for the customer by someone other than the person taking the order.

Customarily and Regularly

The phrase “customarily and regularly” means greater than occasional but less than constant; it includes work normally done every workweek, but does not include isolated or one-time tasks.

Away from Employer’s Place of Business

An outside sales employee makes sales at the customer’s place of business, or, if selling door-to-door, at the customer’s home. Outside sales does not include sales made by mail, telephone or the Internet unless such contact is used merely as an adjunct to personal calls. Any fixed site, whether home or office, used by a salesperson as a headquarters or for telephonic solicitation of sales is considered one of the employer’s places of business, even though the employer is not in any formal sense the owner or tenant of the property.

Promotion Work

Promotion work may or may not be exempt outside sales work, depending upon the circumstances under which it is performed. Promotional work that is actually performed incidental to and in conjunction with an employee’s own outside sales or solicitations is exempt work. However, promotion work that is incidental to sales made, or to be made, by someone else is not exempt outside sales work.

Drivers Who Sell

Drivers who deliver products and also sell such products may qualify as exempt outside sales employees only if the employee has a primary duty of making sales. Several factors should be considered in determining whether a driver has a primary duty of making sales, including a comparison of the driver’s duties with those of other employees engaged as drivers and as salespersons, the presence or absence of customary or contractual arrangements concerning amounts of products to be delivered, whether or not the driver has a selling or solicitor’s license when required by law, the description of the employee’s occupation in collective bargaining agreements, and other factors set forth in the regulation.

Where to Obtain Additional Information

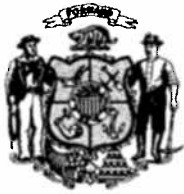
For additional information, visit our Wage and Hour Division Website: <http://www.wagehour.dol.gov> and/or call our toll-free information and helpline, available 8 a.m. to 5 p.m. in your time zone, 1-866-4USWAGE (1-866-487-9243).

When the state laws differ from the federal FLSA, an employer must comply with the standard most protective to employees. Links to your state labor department can be found at www.dol.gov/whd/contacts/state_of.htm.

This publication is for general information and is not to be considered in the same light as official statements of position contained in the regulations.

U.S. Department of Labor
Frances Perkins Building
200 Constitution Avenue, NW
Washington, DC 20210

1-866-4-USWAGE
TTY: 1-866-487-9243
Contact Us



State of Wisconsin
2013 - 2014 LEGISLATURE

IN 719



LRB-2641/7
GMM...

1
JF

Gen

1 AN ACT ...; relating to: exemption of outside salespersons from the minimum
2 wage law.

Analysis by the Legislative Reference Bureau

Current state and federal law generally require employees to be paid a minimum wage. Current federal law, however, exempts from that requirement employees employed in the capacity of outside salesman, which federal regulations define as an employee whose primary duty is making sales or obtaining orders or contracts for services or for the use of facilities for which a consideration will be paid by the client or customer and who is customarily and regularly engaged away from the employer's place of business in performing that primary duty (outside salesperson). Outside salespersons are not similarly exempt from the state minimum wage law. This bill exempts outside salespersons from the state minimum wage law.

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

3 SECTION 1. 104.01 (2) (b) 5. of the statutes is created to read:

4 104.01 (2) (b) 5. Any individual whose primary duty is making sales, as defined
5 in 29 USC 203 (k), or obtaining orders or contracts for services or for the use of
6 facilities for which a consideration will be paid by the client or customer and who is

1 customarily and regularly engaged away from the employer's place of business in
2 performing that primary duty.

3 **SECTION 2. Initial applicability.**

4 (1) EXEMPTION OF OUTSIDE SALESPERSONS FROM MINIMUM WAGE LAW. This act first
5 applies to work performed on the effective date of this subsection, except that in the
6 case of an employee who is affected by a collective bargaining agreement that
7 contains provisions inconsistent with this act, this bill first applies to work
8 performed on the date on which the collective bargaining agreement expires or is
9 extended, modified, or renewed.

10 (END)

Barman, Mike

From: Richard, Rob
Sent: Wednesday, September 04, 2013 1:32 PM
To: LRB.Legal
Subject: Draft Review: LRB -2641/1 Topic: Minimum wage; exemption for outside salespersons

Please Jacket LRB -2641/1 for the SENATE.