

**2013 DRAFTING REQUEST**

**Bill**

Received: **1/3/2013** Received By: **gmalaise**  
Wanted: **As time permits** Same as LRB:  
For: **Glenn Grothman (608) 266-7513** By/Representing: **Rachel VerVelde**  
May Contact: Drafter: **gmalaise**  
Subject: **Employ Priv - miscellaneous** Addl. Drafters:  
Extra Copies:

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

**Pre Topic:**

No specific pre topic given

**Topic:**

Overtime pay; exemption for; home care workers

**Instructions:**

Exempt home care workers from overtime pay requirements

**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 2/8/2013	scalvin 2/25/2013	jmurphy 2/25/2013	_____			
/1	gmalaise 3/4/2013			_____	mbarman 2/25/2013		
/2		scalvin 3/6/2013	rschluet 3/6/2013	_____	sbasford 3/6/2013	lparisi 2/27/2014	

FE Sent For:

→ Not Needed <END>

**2013 DRAFTING REQUEST**

**Bill**

Received: 1/3/2013 Received By: gmalaise  
Wanted: As time permits Same as LRB:  
For: Glenn Grothman (608) 266-7513 By/Representing: Rachel VerVelde  
May Contact: Drafter: gmalaise  
Subject: Employ Priv - miscellaneous Addl. Drafters:  
Extra Copies:

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

---

**Pre Topic:**

No specific pre topic given

---

**Topic:**

Overtime pay; exemption for; home care workers

---

**Instructions:**

Exempt home care workers from overtime pay requirements

---

**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 2/8/2013	scalvin 2/25/2013	jmurphy 2/25/2013	_____			
/1	gmalaise 3/4/2013			_____	mbarman 2/25/2013		
/2		scalvin 3/6/2013	rschluet 3/6/2013	_____	sbasford 3/6/2013		

FE Sent For:

<END>

**2013 DRAFTING REQUEST**

**Bill**

Received: 1/3/2013 Received By: gmalaise  
Wanted: As time permits Same as LRB:  
For: Glenn Grothman (608) 266-7513 By/Representing: Rachel VerVelde  
May Contact: Drafter: gmalaise  
Subject: Employ Priv - miscellaneous Addl. Drafters:  
Extra Copies:

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

**Pre Topic:**

No specific pre topic given


**Topic:**

Overtime pay; exemption for; home care workers

**Instructions:**

Exempt home care workers from overtime pay requirements

**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 2/8/2013	scalvin 2/25/2013	jmurphy 2/25/2013	_____			
/1		12 sac 03/06/2013	 3/6/13 JF	_____	mbarman 2/25/2013		

FE Sent For:

<END>

2013 DRAFTING REQUEST

Bill

Received: 1/3/2013 Received By: gmalaise  
 Wanted: As time permits Same as LRB:  
 For: Glenn Grothman (608) 266-7513 By/Representing: Rachel VerVelde  
 May Contact: Drafter: gmalaise  
 Subject: Employ Priv - miscellaneous Addl. Drafters:  
 Extra Copies:

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

Pre Topic:

No specific pre topic given

Topic:

Overtime pay; exemption for; home care workers

Instructions:

Exempt home care workers from overtime pay requirements

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		Jim 2/22	Self			

FE Sent For:

<END>

(A) if such employee is employed by an employer who did not, during any calendar quarter during the preceding calendar year, use more than five hundred man-days of agricultural labor,

(B) if such employee is the parent, spouse, child, or other member of his employer's immediate family,

(C) if such employee

(i) is employed as a hand harvest laborer and is paid on a piece rate basis in an operation which has been, and is customarily and generally recognized as having been, paid on a piece rate basis in the region of employment,

(ii) commutes daily from his permanent residence to the farm on which he is so employed, and

(iii) has been employed in agriculture less than thirteen weeks during the preceding calendar year,

(D) if such employee (other than an employee described in clause (C) of this subsection)

(i) is sixteen years of age or under and is employed as a hand harvest laborer, is paid on a piece rate basis in an operation which has been, and is customarily and generally recognized as having been, paid on a piece rate basis in the region of employment,

(ii) is employed on the same farm as his parent or person standing in the place of his parent, and

(iii) is paid at the same piece rate as employees over age sixteen are paid on the same farm, or

(E) if such employee is principally engaged in the range production of livestock; or

(7) any employee to the extent that such employee is exempted by regulations, order, or certificate of the Secretary issued under section 214 of this title; or

(8) any employee employed in connection with the publication of any weekly, semiweekly, or daily newspaper with a circulation of less than four thousand the major part of which circulation is within the county where published or counties contiguous thereto; or

(9) Repealed. Pub. L. 93-259, § 23(a)(1), Apr. 8, 1974, 88 Stat. 69.

(10) any switchboard operator employed by an independently owned public telephone company which has not more than seven hundred and fifty stations; or

(11) Repealed. Pub. L. 93-259, § 10(a), Apr. 8, 1974, 88 Stat. 63.

(12) any employee employed as a seaman on a vessel other than an American vessel; or

(13), (14) Repealed. Pub. L. 93-259, §§ 9(b)(1), 23(b)(1), Apr. 8, 1974, 88 Stat. 63, 69.

(15) any employee employed on a casual basis in domestic service employment to provide babysitting services or any employee employed in domestic service employment to provide companionship services for individuals who (because of age or infirmity) are unable to care for themselves (as such terms are defined and delimited by regulations of the Secretary); or

(16) a criminal investigator who is paid availability pay under section 5545a of title 5; or

(17) any employee who is a computer systems analyst, computer programmer, software engineer, or other similarly skilled worker, whose primary duty is—

(A) the application of systems analysis techniques and procedures, including consulting with users, to determine hardware, software, or system functional specifications;

(B) the design, development, documentation, analysis, creation, testing, or modification of computer systems or programs, including prototypes, based on and related to user or system design specifications;



**Kristen Elizabeth Lehker**

Appeals & Appellate, Bankruptcy, Divor...  
Madison, WI



**Gregory J. Fumelle**

Appeals & Appellate, Bankruptcy, Divor...  
Madison, WI



[See More Lawyers](#)

[All lawyers](#)

GET INVOLVED

[LII Announce Blog](#)

[LII Supreme Court Bulletin](#)

[MAKE A DONATION](#)

[CONTRIBUTE CONTENT](#)

[BECOME A SPONSOR](#)

[GIVE FEEDBACK](#)





Search Cornell

Legal Information Institute [LII]  
OPEN ACCESS TO LAW SINCE 1992



SUPPORT LII  
GIVE NOW



Search all of LII... [Go]

ABOUT LII / GET THE LAW / FIND A LAWYER / LEGAL ENCYCLOPEDIA / HELP OUT

Follow 8,401 followers Like 10k

CFR > Title 29 > Subtitle B > Chapter V > Subchapter A > [PREV](#) [INEXT](#)  
Part 552 > Subpart A > Section 552.6

CFR TOOLBOX

SEARCH CFR: [Go]

Wex: [Labor Law Overview](#)

[View eCFR \(GPOAccess\)](#)

[Table of Popular Names](#)

[Parallel Table of Authorities](#)

0

[Donations](#) cover only 20% of our costs

### Government Assisted Phone

[www.assurancewireless.com](http://www.assurancewireless.com)

Get a Free Phone & Monthly Plan. See if You Qualify for One Today!



AdChoices ID

## 29 CFR 552.6 - Companionship services for the aged or infirm.

CFR Updates Authorities (U.S. Code)

[prev](#) | [next](#)

### § 552.6

Companionship services for the aged or infirm.

As used in section 13(a)(15) of the Act, the term *companionship services* shall mean those services which provide fellowship, care, and protection for a person who, because of advanced age or physical or mental infirmity, cannot care for his or her own needs. Such services may include household work related to the care of the aged or infirm person such as meal preparation, bed making, washing of clothes, and other similar services. They may also include the performance of general household work: *Provided, however, That such work is incidental, i.e., does not exceed 20 percent of the Total weekly hours worked.* The term "companionship services" does not include services relating to the care and protection of the aged or infirm which require and are performed by trained personnel, such as a registered or practical nurse. While such trained personnel do not qualify as companions, this fact does not remove them from the category of covered domestic service employees when employed in or about a private household.

Title 29 published on 2012-07-01

no entries appear in the Federal Register after this date.

This is a list of [United States Code](#) sections, Statutes at Large, Public Laws, and Presidential Documents, which provide rulemaking authority for this CFR Part.

This list is taken from the [Parallel Table of Authorities and Rules](#) provided by [GPO](#) [[Government Printing Office](#)].

It is not guaranteed to be accurate or up-to-date, though we do refresh the database weekly. More limitations on accuracy are described at the [GPO](#) site.

#### [United States Code](#)

[USC : Title 29 - LABOR](#)

[§ 213 - Exemptions](#)

#### [Statutes at Large](#)

[88 Stat. 76](#)

#### LAW ABOUT... ARTICLES FROM WEX

- [Medicaid](#)
- [Ward](#)
- [Food Stamps](#)
- [Medicare](#)
- [Single payer](#)

HELLO, SEARCHER! MORE RESULTS...

#### GET INVOLVED

[LII Announce Blog](#)

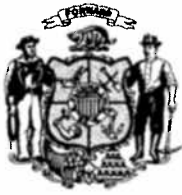
[LII Supreme Court Bulletin](#)

[MAKE A DONATION](#)

[CONTRIBUTE CONTENT](#)

[BECOME A SPONSOR](#)

[GIVE FEEDBACK](#)



State of Wisconsin  
2013 - 2014 LEGISLATURE



LRB-098377

GMM

sec

IN 218

Tues  
(comb)

1 AN ACT *gen act*; relating to: the exemption of companionship services providers from  
2 the minimum wage and overtime pay requirements of the wage and hours laws  
3 and requiring the exercise of rule-making authority.

***Analysis by the Legislative Reference Bureau***

Under current administrative rules promulgated by the Department of Workforce Development (DWD), employers are generally required to pay employees the applicable minimum wage, plus 1.5 times their regular rates of pay for all hours worked in excess of 40 hours per week (overtime pay). Those rules, however, exempt from the minimum wage requirement employees who reside in the employer's household for the purpose of providing fellowship, care, and protection for a person who, because of advanced age or physical or mental infirmity, cannot care for his or her own needs (companionship services) and who spend less than 15 hours per week on general household work (general household work threshold).

Federal regulations promulgated by the federal Department of Labor similarly exempt companionship services providers from the minimum wage and overtime pay requirements of the federal Fair Labor Standards Act, but do not require a companionship services provider to reside in the employer's home in order to be exempt. In addition, those regulations set the general household work threshold at 20 percent of the total weekly hours worked rather than at 15 hours per week,

This bill requires DWD to promulgate rules exempting from state minimum wage and overtime pay requirements companionship services providers who spend





1           103.02 (3) The employment of any person in any employment or place of  
2 employment at any time other than the permissible hours of labor under this section  
3 shall be prima facie evidence of a violation of this section.

4           **SECTION 3.** 103.03<sup>✓</sup> of the statutes is amended to read:

5           **103.03 Violations; penalty.** ~~The employment of any person in any~~  
6 ~~employment or place of employment at any time other than the permissible hours of~~  
7 ~~labor shall be prima facie evidence of a violation of this section.~~ Any employer that  
8 violates s. 103.02 or 103.023 is subject to the penalties under s. 103.005 (12). Every  
9 day for each person employed, and every week for each person employed, during  
10 which any employer fails to observe or to comply with any order of the department,  
11 or to perform any duty enjoined by ~~ss. 103.01 to 103.03~~ required by s. 103.02 or  
12 103.023, shall constitute a separate offense. Section 111.322 (2m) applies to  
13 discharge or other discriminatory acts arising in connection with any proceeding  
14 under s. 103.02 or 103.023.

more  
to pg 4

LPS: 103.023

15           **SECTION 4.** 103.23 of the statutes is created to read:

16           **103.23 Hours of labor; companionship providers.** (1) DEFINITIONS. In this  
17 section:

18           (a) "Companionship services" mean those services, including household work,  
19 that provide fellowship, care, and protection for a person who, because of advanced  
20 age or physical or mental infirmity, cannot care for his or her own needs.  
21 "Companionship services" do not include services that are performed by trained  
22 personnel, such as a registered nurse or a licensed practical nurse.

23           (b) "Household work" includes all of the following:

1 1. Household work related to the care of a person who, because of advanced age  
2 or physical or mental infirmity, cannot care for his or her own needs, including meal  
3 preparation, bed making, clothes washing and the provision of other similar services.

4 2. General household work not described in subd. 1.

5 (2) EXEMPTION. In promulgating rules under s. 103.02 (2) classifying periods  
6 of time into periods to be paid for at regular rates and periods to be paid for at a rate  
7 of at least 1.5 times the regular rates, the department shall exempt from the  
8 application of those rules employees who are employed to provide companionship  
9 services and who spend less than 20 percent of their total weekly hours worked on  
10 general household work.

*Move from  
Pg. 7*

11 SECTION 5. 104.02 of the statutes is amended to read:

12 **104.02 Living wage prescribed.** Every wage paid or agreed to be paid by any  
13 employer to any employee, except as otherwise provided in s. ss. 104.07 and 104.075,  
14 shall be not less than a living wage.

History: 1975 c. 94; 2005 a. 12.

15 SECTION 6. 104.075 of the statutes is created to read:

16 **104.075 Rules; companionship providers.** (1) DEFINITIONS. In this section:

17 (a) "Companionship services" has the meaning given in s. 103.023 (1) (a).

18 (b) "Household work" has the meaning given in s. 103.023 (1) (b).

19 (2) EXEMPTION. In promulgating rules under s. 104.04 determining the living  
20 wage, the department shall exempt from the application of those rules employees  
21 who are employed to provide companionship services and who spend less than 20  
22 percent of their total weekly hours worked on general household work.

23 SECTION 7. Initial applicability.



**DRAFTER'S NOTE  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRB-0983/1dn  
GMM.....

Senator Grothman:

It does not do any good simply to exempt home care workers from the state wage and hours law because those employees would still be covered under the federal Fair Labor Standards Act. Accordingly, instead of exempting those workers outright, this draft requires DWD to redraft its rules so that those rules conform to 29 USC 213 (a) (15) and 29 CFR 552.6.

Gordon M. Malaise  
Senior Legislative Attorney  
Phone: (608) 266-9738  
E-mail: [gordon.malaise@legis.wisconsin.gov](mailto:gordon.malaise@legis.wisconsin.gov)

**DRAFTER'S NOTE  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRB-0983/1dn  
GMM:sac:jm

February 25, 2013

Senator Grothman:

It does not do any good simply to exempt home care workers from the state wage and hours law because those employees would still be covered under the federal Fair Labor Standards Act. Accordingly, instead of exempting those workers outright, this draft requires DWD to redraft its rules so that those rules conform to 29 USC 213 (a) (15) and 29 CFR 552.6.

Gordon M. Malaise  
Senior Legislative Attorney  
Phone: (608) 266-9738  
E-mail: [gordon.malaise@legis.wisconsin.gov](mailto:gordon.malaise@legis.wisconsin.gov)

~~MPW 545~~

~~8/15~~

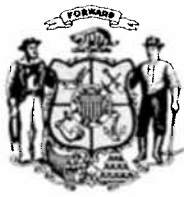
3/4/13

Rachel

Only exempt companionship care workers

from overtime pay requirement

Do not exempt them from minimum wage requirement



IN 3/4  
Soon

(2)  
RMR

### 2013 BILL

Similarly, the federal Fair Labor Standards Act (FLSA) requires employers to pay employees overtime pay, but regulations promulgated under the FLSA exempt from the overtime pay

gen act

1 AN ACT to renumber and amend 103.02; to amend 103.03 and 104.02; and to  
2 create 103.02 (3), 103.23 and 104.075 of the statutes; relating to: the  
3 exemption of companionship services providers from the ~~minimum wage and~~  
4 overtime pay requirements of the wage and hours laws and requiring the  
5 exercise of rule-making authority.

Current law requires

to promulgate rules requiring employers

#### Analysis by the Legislative Reference Bureau

~~Under current administrative rules promulgated by the Department of Workforce Development (DWD), employers are generally required to pay employees the applicable minimum wage, plus 1.5 times their regular rates of pay for all hours worked in excess of 40 hours per week (overtime pay). These rules, however, exempt from the minimum wage requirement employees who reside in the employer's household for the purpose of providing fellowship, care, and protection for a person who, because of advanced age or physical or mental infirmity, cannot care for his or her own needs (companionship services) and who spend less than 15 hours per week on general household work (general household work threshold).~~

are employed to provide

Federal regulations promulgated by the federal Department of Labor similarly exempt companionship services providers from the minimum wage and overtime pay requirements of the federal Fair Labor Standards Act, but do not require a companionship services provider to reside in the employer's home in order to be exempt. In addition, those regulations set the general household work threshold at 20 percent of the total weekly hours worked rather than at 15 hours per week,

20 percent of their total weekly hours worked

(companionship services providers)

**BILL**

companionship services providers

This bill requires DWD to promulgate rules exempting from state ~~minimum wage and overtime pay requirements~~ companionship services providers who spend less than 20 percent of their total weekly hours worked on general household work, without regard to whether those employees reside with their employers.

In the same manner as those providers are exempt from these requirements under the FLSA

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

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

3           103.02 (1) No person may be employed or be permitted to work in any place of  
4 employment or at any employment for such any period of time during any day, night,  
5 or week, as that is dangerous or prejudicial to the person's life, health, safety, or  
6 welfare.

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

20           **SECTION 2.** 103.02 (3) of the statutes is created to read:



**BILL**

1           103.02 (3) The employment of any person in any employment or place of  
2 employment at any time other than the permissible hours of labor under this section  
3 shall be prima facie evidence of a violation of this section.

4           **SECTION 3.** 103.023 of the statutes is created to read:

5           **103.023 Hours of labor; companionship providers.** (1) DEFINITIONS. In  
6 this section:

7           (a) "Companionship services" mean those services, including household work,  
8 that provide fellowship, care, and protection for a person who, because of advanced  
9 age or physical or mental infirmity, cannot care for his or her own needs.  
10 "Companionship services" do not include services that are performed by trained  
11 personnel, such as a registered nurse or a licensed practical nurse.

12           (b) "Household work" includes all of the following:

13           1. Household work related to the care of a person who, because of advanced age  
14 or physical or mental infirmity, cannot care for his or her own needs, including meal  
15 preparation, bed making, clothes washing and the provision of other similar services.

16           2. General household work not described in subd. 1.

17           (2) EXEMPTION. In promulgating rules under s. 103.02 (2) classifying periods  
18 of time into periods to be paid for at regular rates and periods to be paid for at a rate  
19 of at least 1.5 times the regular rates, the department shall exempt from the  
20 application of those rules employees who are employed to provide companionship  
21 services and who spend less than 20 percent of their total weekly hours worked on  
22 general household work.

23           **SECTION 4.** 103.03 of the statutes is amended to read:

24           **103.03 Violations; penalty.** ~~The employment of any person in any~~  
25 ~~employment or place of employment at any time other than the permissible hours of~~

**BILL**

1 labor shall be ~~prima facie evidence of a violation of this section.~~ Any employer that  
2 violates s. 103.02 or 103.023 is subject to the penalties under s. 103.005 (12). Every  
3 day for each person employed, and every week for each person employed, during  
4 which any employer fails to observe or to comply with any order of the department,  
5 or to perform any duty ~~enjoined by ss. 103.01 to 103.03~~ required by s. 103.02 or  
6 103.023, shall constitute a separate offense. Section 111.322 (2m) applies to  
7 discharge or other discriminatory acts arising in connection with any proceeding  
8 under s. 103.02 or 103.023.

9 ~~SECTION 5. 104.02 of the statutes is amended to read:~~

10 ~~104.02 Living wage prescribed. Every wage paid or agreed to be paid by any~~  
11 ~~employer to any employee, except as otherwise provided in ~~s.~~ ss. 104.07 and 104.075,~~  
12 ~~shall be not less than a living wage.~~

13 ~~SECTION 6. 104.075 of the statutes is created to read:~~

14 ~~104.075 Rules; companionship providers. (1) DEFINITIONS. In this section:~~

15 ~~(a) "Companionship services" has the meaning given in s. 103.023 (1) (a).~~

16 ~~(b) "Household work" has the meaning given in s. 103.023 (1) (b).~~

17 ~~(2) EXEMPTION. In promulgating rules under s. 104.04 determining the living~~  
18 ~~wage, the department shall exempt from the application of those rules employees~~  
19 ~~who are employed to provide companionship services and who spend less than 20~~  
20 ~~percent of their total weekly hours worked on general household work.~~

21 **SECTION 7. Initial applicability.**

22 (1) COMPANIONSHIP SERVICES PROVIDERS. This act first applies to an employee  
23 who is affected by a collective bargaining agreement that contains provisions

**BILL**

1 inconsistent with this act on the day on which the collective bargaining agreement  
2 expires or is extended, modified, or renewed, whichever occurs first.

3 (END)

**Parisi, Lori**

---

**From:** Sen.Grothman  
**Sent:** Thursday, February 27, 2014 9:15 AM  
**To:** LRB.Legal  
**Subject:** Draft Review: LRB -0983/2 Topic: Overtime pay; exemption for; home care workers

Please Jacket LRB -0983/2 for the SENATE.