



State of Wisconsin
2015 - 2016 LEGISLATURE

LRB-2068/1
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2015 ASSEMBLY BILL 264

June 10, 2015 - Introduced by Representatives SARGENT, SUBECK, HESSELBEIN, JOHNSON, BOWEN, BERCEAU, GOYKE, STUCK, BROSTOFF, OHNSTAD, POPE, BARNES, KESSLER, YOUNG, SINICKI, C. TAYLOR and RIEMER, cosponsored by Senators WIRCH, C. LARSON, MILLER, RISSER, HARRIS DODD and RINGHAND. Referred to Committee on Small Business Development.

1 **AN ACT** *to repeal* 104.001, 104.01 (5), 104.04 (title), 104.05, 104.06 and 104.11;
2 *to renumber* 104.01 (1); *to renumber and amend* 104.04 and 104.045; *to*
3 *consolidate, renumber and amend* 104.02 and 104.03; *to amend* 49.141 (1)
4 (g), 103.06 (1) (b) 5., 103.06 (1) (c) 5., 103.06 (3) (a) 4., 103.06 (4) (a) 1., 103.67
5 (2) (fm) 3., 103.70 (2) (b) 3., 104.01 (intro.), 104.01 (8), 104.07 (1) and (2), 104.08
6 (2m), 104.10, 104.12, 234.94 (5), 234.94 (8), 800.09 (1j), 800.095 (1) (d) and
7 895.035 (2m) (c); and *to create* 104.01 (1d), 104.01 (1g), 104.01 (5m), 104.035
8 and 104.045 (1) and (2) of the statutes; **relating to:** a state minimum wage,
9 permitting the enactment of local living wage ordinances, extending the time
10 limit for emergency rule procedures, providing an exemption from emergency
11 rule procedures, providing an exemption from rule-making procedures, and
12 requiring the exercise of 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

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(DWD) has provided, by rule, minimum wages for various types of employees, including employees, generally; minor employees; opportunity employees, who 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 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.

This bill repeals references to and provisions for a living wage and replaces them with provisions requiring a minimum wage, described as follows. Under this bill, DWD must continue to provide the exemptions listed above as well as separate minimum wages for opportunity 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 wages because of a disability. For employees generally, however, including tipped employees, the bill sets the minimum wage as follows:

Employees generally

Current minimum wage	\$7.25 per hour
Minimum wage on effective date	\$8.50 per hour
Minimum wage one year after effective date	\$10 per hour
Minimum wage two years after effective date	\$11.50 per hour
Minimum wage three years after effective date	\$13 per hour
Minimum wage four years after effective date	\$14 per hour
Minimum wage five years after effective date	\$15 per hour

Beginning six years after the bill's effective date, the bill requires DWD annually to promulgate rules revising the minimum wages established under the bill by determining the percentage difference between the consumer price index for the preceding 12-month period (year) and the consumer price index for the year before the preceding year, adjusting the minimum wages then in effect by that percentage difference, and rounding that result to the nearest multiple of five cents. DWD, however, is not required to revise the general minimum wage if the consumer price

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index for the preceding year has not increased over the consumer price index for the year before the preceding year.

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:

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)
4 (1), whichever is applicable.

5 **SECTION 2.** 103.06 (1) (b) 5. of the statutes is amended to read:

6 103.06 (1) (b) 5. For purposes of maintaining records under sub. (3) (a) 4. as
7 required under rules promulgated under s. ~~104.04~~ 104.035, an employee, as defined
8 in s. 104.01 (2).

9 **SECTION 3.** 103.06 (1) (c) 5. of the statutes is amended to read:

10 103.06 (1) (c) 5. For purposes of maintaining records under sub. (3) (a) 4. as
11 required under rules promulgated under s. ~~104.04~~ 104.035, an employer, as defined
12 in s. 104.01 (3).

13 **SECTION 4.** 103.06 (3) (a) 4. of the statutes is amended to read:

14 103.06 (3) (a) 4. That the employer is maintaining records of the hours worked
15 by its employees, the wages paid to those employees, any deductions from those
16 wages, and any other information that the employer is required to keep under rules
17 promulgated under s. 103.02 or ~~104.04~~ 104.035, and is listing deductions from wages
18 as required under s. 103.457.

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1 **SECTION 5.** 103.06 (4) (a) 1. of the statutes is amended to read:

2 103.06 (4) (a) 1. Enter and inspect any place of business or place of employment
3 and examine and copy any records that the employer is required to keep under rules
4 promulgated under s. 103.02 or ~~104.04~~ 104.035; any books, registers, payroll records,
5 records of wage withholdings, records of work activity and hours of work, and records
6 or indicia of the employment status of persons performing work for the employer; and
7 any other records relating to compliance with the requirements specified in sub. (3)
8 (a).

9 **SECTION 6.** 103.67 (2) (fm) 3. of the statutes is amended to read:

10 103.67 (2) (fm) 3. The minor is paid the applicable minimum wage under ~~ch.~~
11 ~~104-~~ s. 104.035 or under federal law, whichever is greater, for the work.

12 **SECTION 7.** 103.70 (2) (b) 3. of the statutes is amended to read:

13 103.70 (2) (b) 3. The minor is paid the applicable minimum wage under ~~ch. 104~~
14 s. 104.035 or under federal law, whichever is greater, for the work.

15 **SECTION 8.** 104.001 of the statutes is repealed.

16 **SECTION 9.** 104.01 (intro.) of the statutes is amended to read:

17 **104.01 Definitions.** (intro.) ~~The following terms as used in~~ In this chapter
18 ~~shall be construed as follows:~~

19 **SECTION 10.** 104.01 (1) of the statutes is renumbered 104.01 (1m).

20 **SECTION 11.** 104.01 (1d) of the statutes is created to read:

21 104.01 (1d) “Agricultural employee” means an employee who is employed in
22 the operation of farm premises, as described in s. 102.04 (3).

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

24 104.01 (1g) “Consumer price index” means the average of the consumer price
25 index over each 12-month period for all urban consumers, U.S. city average, all

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1 items, not seasonally adjusted, as determined by the bureau of labor statistics of the
2 U.S. department of labor.

3 **SECTION 13.** 104.01 (5) of the statutes is repealed.

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

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

7 **SECTION 15.** 104.01 (8) of the statutes is amended to read:

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

10 **SECTION 16.** 104.02 and 104.03 of the statutes are consolidated, renumbered
11 104.02 and amended to read:

12 **104.02 Living Minimum wage prescribed; requirement to pay.** Every
13 wage paid or agreed to be paid by any employer to any employee, except as otherwise
14 provided in s. 104.07, shall be not less than ~~a living~~ the applicable minimum wage
15 established under s. 104.035. ~~104.03 Unlawful wages.~~ Any employer paying,
16 offering to pay, or agreeing to pay any employee a wage lower or less in value than
17 ~~a living~~ the applicable minimum wage established under s. 104.035 is guilty of a
18 violation of this chapter.

19 **SECTION 17.** 104.035 of the statutes is created to read:

20 **104.035 Minimum wage; established.** (1) EMPLOYEES GENERALLY. Except
21 as provided in subs. (2) and (3), the minimum wage is as follows:

22 (a) For wages earned before the first day of the 15th month beginning after
23 publication [LRB inserts date], \$8.50 per hour.

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1 (b) For wages earned beginning on the first day of the 15th month beginning
2 after publication [LRB inserts date], and ending on the last day of the 26th month
3 beginning after publication [LRB inserts date], \$10 per hour.

4 (c) For wages earned beginning on the first day of the 27th month beginning
5 after publication [LRB inserts date], and ending on the last day of the 38th month
6 beginning after publication [LRB inserts date], \$11.50 per hour.

7 (d) For wages earned beginning on the first day of the 39th month beginning
8 after publication [LRB inserts date], and ending on the last day of the 50th month
9 beginning after publication [LRB inserts date], \$13 per hour.

10 (e) For wages earned beginning on the first day of the 51st month beginning
11 after publication [LRB inserts date], and ending on the last day of the 62nd month
12 beginning after publication [LRB inserts date], \$14 per hour.

13 (f) For wages earned beginning on the first day of the 63rd month beginning
14 after publication [LRB inserts date], and ending on the last day of the 74th month
15 beginning after publication [LRB inserts date], \$15 per hour.

16 (g) For wages earned beginning on the first day of the 75th month beginning
17 after publication [LRB inserts date], the amount determined by the department
18 by rule promulgated under sub. (4).

19 **(2) MINIMUM WAGE ESTABLISHED BY DEPARTMENT.** The department shall
20 promulgate rules providing the minimum wage for all of the following:

21 (a) Opportunity employees.

22 (b) Agricultural employees.

23 (c) Camp counselors.

24 (d) Golf caddies.

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1 (e) An employee or worker with a disability covered under a license under s.
2 104.07.

3 (f) A student learner.

4 (g) A student employed by an independent college or university for less than
5 20 hours per week.

6 **(3) EMPLOYMENT EXEMPTED BY DEPARTMENT.** The department shall promulgate
7 rules exempting from the minimum wage requirement under subs. (1) and (2) all of
8 the following:

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

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

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

17 **(4) DEPARTMENT TO REVISE.** (a) 1. Subject to par. (b), by the date specified in sub.
18 (1) (g) and annually thereafter, the department shall promulgate rules to revise the
19 minimum wages established under sub. (1). Subject to subd. 2., the department shall
20 determine the revised minimum wages by calculating the percentage difference
21 between the consumer price index for the 12-month period ending on the last day of
22 the last month for which that information is available and the consumer price index
23 for the 12-month period ending on the last day of the month 12 months prior to that
24 month, adjusting the minimum wage then in effect by that percentage difference,
25 and rounding that result to the nearest multiple of 5 cents.

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1 2. The department may use the emergency rule procedures under s. 227.24 to
2 promulgate the rules required under subd. 1. Notwithstanding s. 227.24 (1) (a) and
3 (3), the department may promulgate those rules as emergency rules without
4 providing evidence that promulgating those rules as emergency rules is necessary
5 to preserve the public peace, health, safety, or welfare and without a finding of
6 emergency. Notwithstanding s. 227.24 (1) (e) 1d. and 1g., the department is not
7 required to prepare a statement of the scope of those rules or to submit those rules
8 in final draft form to the governor for approval. A revised minimum wage
9 determined under subd. 1. shall first apply to wages earned on the first day of the
10 3rd month beginning after the month of publication [LRB inserts date], of the year
11 in which the wage is revised and, notwithstanding s. 227.24 (1) (c) and (2), shall
12 remain in effect until that same date the following year.

13 (b) Paragraph (a) 1. does not apply if the consumer price index for the 12-month
14 period ending on the last day of the last month for which that information is available
15 has not increased over the consumer price index for the 12-month period ending on
16 the last day of the month 12 months prior to that month.

17 **(5) GENDER-SPECIFIC MINIMUM WAGE PROHIBITED.**

18 **SECTION 18.** 104.04 (title) of the statutes is repealed.

19 **SECTION 19.** 104.04 of the statutes is renumbered 104.035 (5) and amended to
20 read:

21 104.035 ~~(5) The department shall investigate, ascertain, determine, and fix~~
22 ~~such reasonable classifications, and shall impose general or special orders,~~
23 ~~determining the living wage, and shall carry out the purposes of this chapter. Such~~
24 ~~investigations, classifications, and orders shall be made as provided under s.~~
25 ~~103.005, and the penalties specified in s. 103.005 (12) shall apply to and be imposed~~

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1 for any violation of this chapter. In determining the living wage, the department may
2 consider the effect that an increase in the living wage might have on the economy of
3 the state, including the effect of a living wage increase on job creation, retention, and
4 expansion, on the availability of entry-level jobs, and on regional economic
5 conditions within the state. The department may not establish a different minimum
6 wage for men and women. Said orders shall be subject to review in the manner
7 provided in ch. 227.

8 **SECTION 20.** 104.045 of the statutes is renumbered 104.045 (intro.) and
9 amended to read:

10 **104.045 Tipped employees Meals, lodging, and hours worked.** (intro.)
11 The department shall by rule determine what amount of tips or similar gratuities
12 may be counted toward fulfillment of the employer's obligation under this chapter.
13 promulgate rules governing all of the following:

14 **SECTION 21.** 104.045 (1) and (2) of the statutes are created to read:

15 104.045 (1) The deduction of meals or lodging provided by an employer to an
16 employee from the employer's obligation under this chapter.

17 (2) The determination of hours worked by an employee during which the
18 employee is entitled to the minimum wage established under s. 104.035.

19 **SECTION 22.** 104.05 of the statutes is repealed.

20 **SECTION 23.** 104.06 of the statutes is repealed.

21 **SECTION 24.** 104.07 (1) and (2) of the statutes are amended to read:

22 104.07 (1) The department shall ~~make~~ promulgate rules, and, except as
23 provided under subs. (5), (6), and (7), grant ~~licenses~~ a license to any employer who
24 employs any employee who is unable to earn the living wage determined by the
25 department, ~~permitting the employee to work for a wage that~~ for whom the minimum

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1 wage established under s. 104.035 is not commensurate with the employee's ability.
2 Each license so granted shall establish a wage for ~~the licensee~~ any such employees
3 of the licensee.

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

10 **SECTION 25.** 104.08 (2m) of the statutes is amended to read:

11 104.08 (2m) Any person working in a trade industry for which a living
12 minimum wage has been established for minors, and who has no trade, shall be
13 employed under an apprentice contract under s. 106.01.

14 **SECTION 26.** 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 27.** 104.11 of the statutes is repealed.

23 **SECTION 28.** 104.12 of the statutes is amended to read:

24 **104.12 Complaints.** Any person may register with the department a
25 complaint that the wages paid to an employee for whom a living minimum wage has

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1 been established under s. 104.035 are less than that living minimum wage, and the
2 department shall investigate the matter and take all proceedings necessary to
3 enforce the payment of ~~a that minimum wage that is not less than the living wage.~~
4 Section 111.322 (2m) applies to discharge and other discriminatory acts arising in
5 connection with any proceeding under this section.

6 **SECTION 29.** 234.94 (5) of the statutes is amended to read:

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

11 **SECTION 30.** 234.94 (8) of the statutes is amended to read:

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

18 **SECTION 31.** 800.09 (1j) of the statutes is amended to read:

19 800.09 (1j) If the court orders the defendant to perform community service
20 work in lieu of making restitution or of paying the forfeiture, surcharges, fees and
21 costs, or both, the court may order that the defendant perform community service
22 work for a public agency or a nonprofit charitable organization that is approved by
23 the court and agreed to by the public agency or nonprofit charitable organization.
24 Community service work may be in lieu of restitution only if also agreed to by the
25 person to whom restitution is owed. The number of hours of community service work

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1 required may not exceed the number determined by dividing the amount owed on the
2 forfeiture by the minimum wage established under ~~ch. 104 for adults in~~
3 ~~nonagriculture, nontipped employment~~ s. 104.035 (1). The court shall ensure that
4 the defendant is provided a written statement of the terms of the community service
5 order and that the community service order is monitored.

6 **SECTION 32.** 800.095 (1) (d) of the statutes is amended to read:

7 800.095 (1) (d) That the defendant perform community service work for a
8 public agency or nonprofit charitable organization approved by the court and agreed
9 to by the agency or nonprofit charitable organization. If the community service work
10 is in lieu of restitution, then the person to whom restitution is owed must agree; the
11 defendant shall be given credit at the rate of not less than the minimum wage
12 established under ~~ch. 104 for adults in nonagriculture, nontipped employment~~ s.
13 104.035 (1) for each one hour of community service completed. The defendant shall
14 be given a written statement of the community service order. Nothing in this
15 paragraph makes the defendant an employee or agent of the court or the
16 municipality. The defendant shall be responsible for providing the court with proof
17 that the community service hours have been completed.

18 **SECTION 33.** 895.035 (2m) (c) of the statutes is amended to read:

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

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

12 **SECTION 34. Effective date.**

13 (1) MINIMUM WAGE. This act takes effect on the first day of the 3rd month
14 beginning after publication.

15 (END)