

## Chapter Ind 74

## HOURS OF WORK AND OVERTIME

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**History:** Chapter Ind 74 as it existed on March 31, 1977 was repealed and a new chapter Ind 74 was created effective April 1, 1977.

**Note:** Chapter Ind 74 applies to manufactories, mechanical or mercantile establishments, beauty parlors, laundries, restaurants, confectionery stores, telegraph or telephone offices or exchanges or express or transportation establishments and hotels.

**Ind 74.01 Definitions.** (1) "Day" means a calendar day or a period of 24 consecutive hours.

(2) "Week" means a calendar week or a regular reoccurring period of 168 hours in the form of 7 consecutive 24 hour periods.

(3) "Regular" time means 40 hours of work per week. Except in restaurants as provided in Ind 74.03.

(4) "Overtime" means hours in excess of 40 hours of work per week. Except in restaurants as provided in Ind 74.03.

(5) "Mercantile" means "pertaining to merchants or trade," and is synonymous with the word commercial. Commercial is viewed with regard to profit or designed for profit; designed for mass appeal, emphasizing skill and subjects useful in business. "Trade" means the business or work in which one engages regularly, an occupation requiring manual or mechanical skill; the persons engaged in an occupation, business, or industry, dealings between persons or groups; the business of buying and selling or bartering commodities or services; to do business with, to have dealings, to give one thing in exchange for another.

**History:** Cr. Register, March, 1977, No. 255, eff. 4-1-77; am. (1) to (4) and cr. (5), Register, December, 1980, No. 300, eff. 1-1-81.

**Ind 74.015 Applicability of chapter.** Pursuant to s. 103.01 (1), Stats., employes employed in manufactories, mechanical or mercantile establishments, beauty parlors, laundries, restaurants, confectionary stores, telegraph or telephone offices or exchanges or express or transportation establishments and hotels are covered by this chapter. Employes employed in farming, as defined in s. 102.04 (3), Stats., or in domestic service in household are not subject to this chapter.

**History:** Cr. Register, December, 1980, No. 300, eff. 1-1-81.

**Ind 74.02 Hours of work.** (1) No person shall be employed or be permitted to work in any place of employment or at any employment for such period or periods of time during any day, night or week as shall be dangerous or prejudicial to the life, health, safety or welfare of such person.

(2) It is recommended that each employer allow each employe, 18 years of age or over, at least 30 minutes for each meal period reasonably

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close to the usual meal period time (6:00 a.m., 12:00 noon, 6:00 p.m. or 12:00 midnight) or near the middle of a shift. Shifts of more than 6 consecutive hours without a meal period should be avoided.

**Note:** The above meal period requirements are mandatory for minors under 18 years of age.

**History:** Cr. Register, March, 1977, No. 255, eff. 4-1-77.

**Ind 74.03 Overtime pay.** Each employer subject to ch. Ind 74 shall pay to each employe time and one-half the regular rate of pay for all hours worked in excess of 40 hours per week. Except in restaurants time and one-half the regular rate of pay shall be paid for all hours worked in excess of 44 hours per week. Effective January 1, 1982 in excess of 42 hours per week. Effective January 1, 1983 in excess of 40 hours per week.

**History:** Cr. Register, March, 1977, No. 255, eff. 4-1-77; reprinted to correct printing error, Register, April, 1977, No. 256; am. Register, December, 1980, No. 300, eff. 1-1-81.

**Ind 74.04 Exemptions.** Each employer subject to ch. Ind 74 shall be exempt from the overtime pay requirements in s. Ind 74.03 and these exemptions shall be interpreted in such manner as to be consistent with any comparable federal statute or regulation in respect to the following employes:

(1) Persons whose primary duty consists of administrative, executive or professional work.

(a) "Executive" means an employe employed in a bona fide executive capacity who meets the following criteria:

1. Whose primary duty consists of the management of the enterprise in which they are employed or of a customarily recognized department of subdivision thereof; and

2. Who customarily and regularly directs the work of 2 or more other employes therein; and

3. Who has the authority to hire or fire other employes or whose suggestions and recommendations as to the hiring or firing and as to the advancement and promotion or any other change of status of other employes will be given particular weight; and

4. Who customarily and regularly exercises discretionary powers; and

5. Who does not devote more than 20%, or in the case of an employe of a retail or service establishment who does not devote as much as 40%, of their hours of work in the workweek of activities which are not directly and closely related to the performance of the work described in subdivision 1 through 4 of this section: PROVIDED, that this paragraph shall not apply in the case of an employe who is in sole charge of an independent establishment or a physically separated branch establishment, or who owns at least a 20% interest in the enterprise in which he is employed; and

6. Who is compensated for their services on a salary basis at a rate of not less than \$700 per month.

(b) "Administrative" means an employe employed in a bona fide administrative capacity who meets the following criteria:

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1. Whose primary duty consists of the performance of office or non-manual work directly related to management policies or general business operations of their employer or their employer's customers, or

2. Who customarily and regularly exercises discretion and independent judgment; and

3. a. Who regularly and directly assists a proprietor, or an employe employed in a bona fide executive or administrative capacity; or

b. Who performs under only general supervision work along specialized or technical lines requiring special training, experience, or knowledge, or

c. Who executes under only general supervision special assignments and tasks; and

4. Who does not devote more than 20%, or in the case of an employe of a retail or service establishment who does not devote as much as 40%, of their hours worked in the workweek to activities which are not directly and closely related to the performance of the work described in subdivisions 1 through 3 of this section; and

5. Who is compensated for their services on a salary or fee basis at a rate of not less than \$700 per month.

(c) "Professional" means an employe employed in a bona fide professional capacity who meets the following criteria:

1. Whose primary duty consists of the performance of:

a. Work requiring knowledge of an advance type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study, as distinguished from a general academic education and from an apprenticeship, and from training in the performance of routine mental, manual, or physical processes, or

b. Work that is original and creative in character in a recognized field of artistic endeavor (as opposed to work which can be produced by a person endowed with general manual or intellectual ability and training), and the result of which depends primarily on the invention, imagination, or talent of the employe, or

2. Whose work requires the consistent exercise of discretion and judgment in its performance; and

3. Whose work is predominantly intellectual and varied in character (as opposed to routine mental, manual, mechanical or physical work) and is of such character that the output produced or the result accomplished cannot be standardized in relation to a given period of time; and

4. Who does not devote more than 20% of their hours worked in the workweek to activities which are not an essential part of and necessarily incidental to the work described in subs. (1) through (3) of this section; and

5. Who is compensated for services on a salary or fee basis at a rate of not less than \$750 per month.

(2) Outside salespersons who spend 80% of their time away from the employer's place of business.

(3) Higher paid commission employes of retail and service establishments if (a) 50% of earnings is from commission, and (b) time and one-half of minimum wage is received for all hours worked.

(4) Drivers, driver's helpers, loaders or mechanics of a motor carrier or a private or contract carrier who are covered under the provisions of Section 204 of the Motor Carrier Act 1935 as amended. Any employe of an employer engaged in the operation of a common carrier by rail and subject to the provision of Part I of the Interstate Commerce Act as amended and any employe of a carrier by air subject to the provision of the Railway Labor Act as amended.

(5) Drivers of taxi cabs.

(6) Time spent in related classroom instruction by indentured apprentices need not be counted as work time for the purpose of computing overtime.

(7) Parts persons, salespersons, service managers, service writers, or mechanics selling or servicing automobiles, trucks, farm implements, trailers, boats, motorcycles, snowmobiles, other recreational vehicles or aircraft, when employed by a nonmanufacturing establishment primarily engaged in selling such vehicles to ultimate purchasers.

(8) Any employe employed by an establishment which is an amusement or recreational establishment, if (a) it does not operate for more than 7 months in any calendar year, or (b) if during the preceding calendar year, its average receipts for any 6 months of such year were not more than 33⅓% of its average receipts for the other 6 months of such year. This rule shall be construed in such manner as to be in conformity with any comparable federal statute or regulation.

(9) Employes of independent contractors such as those employes who erect silos and other farm buildings or equipment, build terraces, dig wells or build dams for ponds; employes engaged in inspecting and culling flocks of poultry and pilots and flagpersons engaged in the aerial dusting and spraying of crops.

(10) Employes employed in any motion picture theater.

(11) Employes of a hospital or other institutions primarily engaged in the care of the sick, the aged, the mentally ill or persons with developmental disabilities who reside on the premises may have an agreement between the employer and the employe before performance of the work for the purpose of overtime computation. A work period of 14 consecutive days is accepted in lieu of the workweek of seven consecutive days for purposes of overtime computation if time and one-half the regular rate of pay is paid for all hours worked in excess of eight hours per day and 80 hours within the 14 day period.

(12) Employes employed as a driver or driver's helper making local deliveries, who are compensated for such employment on the basis of trip rates or other delivery payment plan, if each plan has the general purpose and effect of reducing hours worked by such employes to, or below, the maximum workweek applicable to them.

(13) Employees employed in any funeral establishment.

**History:** Cr. Register, March, 1977, No. 255, eff. 4-1-77; cr. (9), Register, February, 1980, No. 290, eff. 3-1-80; am. (intro.), r. (7), renum. (8) and (9) to be (7) and (8) and am. (7), cr. (9) to (13), Register, December, 1980, No. 300, eff. 1-1-81.

**Ind 74.05 Waiver or modification.** Upon the written application of labor and management for a waiver or modification to the requirements of ch. Ind 74, based upon practical difficulties or unnecessary hardship in complying therewith, the department determines that in the circumstances existing compliance with ch. Ind 74 is unjust or unreasonable and that granting such waiver or modification will not be dangerous or prejudicial to the life, health, safety or welfare of the employees, the department may grant such waiver or modification as may be appropriate to the case.

**History:** Cr. Register, March, 1977, No. 255, eff. 4-1-77.

**Ind 74.06 Records.** Each employer shall keep permanent records for at least 3 years, available for inspection and transcription by a duly authorized deputy of the department, showing the name and address of each employe, the hours of employment and wages of each and such other records as the department may require.

**History:** Cr. Register, March, 1977, No. 255, eff. 4-1-77.

**Ind 74.07 Penalties.** Any employer who violates order Ind 74.02, Ind 74.03, or Ind 74.06 shall be subject to the penalties provided in ss. 101.02 and 109.11, Stats. Each day of violation shall constitute a separate and distinct offense.

**History:** Cr. Register, March, 1977, No. 255, eff. 4-1-77.