

Chapter Ind 72

MINIMUM WAGES

Ind 72.001 Declaration of policy (p. 33)	Ind 72.085 Independent colleges and universities (p. 41)
Ind 72.01 Definitions (p. 33)	Ind 72.09 Subminimum wage licenses for the employment of workers with disabilities and student learners (p. 41)
Ind 72.02 Applicability of orders (p. 35)	Ind 72.10 Listing deductions from wages (p. 48-3)
Ind 72.025 Statement of intent (p. 36)	Ind 72.11 Permanent records to be kept by the employer (p. 48-4)
Ind 72.03 Minimum rates (p. 36)	Ind 72.12 Interpretation of hours worked (p. 48-4)
Ind 72.04 Deductions for meals and lodging (p. 39)	Ind 72.13 Forms (p. 54)
Ind 72.05 Agriculture (p. 40)	
Ind 72.06 Casual employment, live-in workers and companions in private homes (p. 40)	
Ind 72.07 Seasonal, recreational or educational camps (p. 40-1)	
Ind 72.08 Caddies (p. 41)	

Note: Chapter Ind 72 as it existed on July 31, 1978 was repealed and a new chapter Ind 72 was created effective August 1, 1978.

Ind 72.001 Declaration of policy. (1) The department, in fulfilling its statutory mandate, has caused extensive studies to be made relative to the consideration of a "living wage" and how the wage should be computed. The concept of "cost of living" and "living wage" is very complex because of the many variables. Any single concept is difficult to apply because of different assumptions, techniques and local conditions.

(2) It is the determination of the department that the consumer's price index prepared by the U. S. department of labor, in spite of its limitations, is the best index available for keeping a "living wage rate" reasonably up to date.

(3) The rates adopted in this chapter reflect compensation that has been determined to be adequate to permit any employe to maintain herself or himself in minimum comfort, decency, physical and moral well-being.

(4) The minimum hourly rate for employes in agriculture 18 years of age and over shall be computed on the basis of 20 cents per hour less than the rates for employes 18 years of age and over in nonagriculture as provided in s. Ind 72.03 (1).

(5) Minors 17 years of age and under:

Except as provided in s. Ind 72.03 (1) (b), the minimum hourly rate for minors 17 years of age and under in both agriculture and nonagriculture shall be computed on the basis of 35 cents per hour less than the minimum rates for employes 18 years of age and over.

(6) Room allowances shall be computed on the basis of 20% of the prescribed minimum rate for employes based on a 40 hour week, rounded off to the nearest 5 cents.

(7) Meal allowance shall be computed on the basis of 30% of the prescribed minimum rate for employes based on a 40 hour week, rounded off to the nearest 5 cents.

History: Cr. Register, July, 1978, No. 271, eff. 8-1-78; am (5) (a), Register, March, 1990, No. 411, eff. 4-1-90.

Ind 72.01 Definitions. As used in this chapter:

Register, January, 1991, No. 421

(1) "Agriculture" will mean the same as "farm premises" as defined in s. 102.04 (3), Stats., of the worker's compensation act.

(2) "Bona fide school training program" means a program sponsored by an accredited school and authorized and approved by the state department of public instruction or the board of vocational, technical and adult education or other recognized educational body and provides for part-time employment training which may be scheduled for a part of the workday or workweek, supplemented by and integrated with a definitely organized plan of instruction and where proper scholastic credit is given by the school.

(3) A "bona fide vocational training program" is one authorized and approved by the state board of vocational, technical and adult education or other recognized educational body and provides for part-time employment training which may be scheduled for a part of the workday or workweek, for alternating weeks or for other limited periods during the year, supplemented by and integrated with a definitely organized plan of instruction designed to teach technical knowledge and related to industrial information given as a regular part of a student learner's course by an accredited school, college or university.

(4) "Department" means the department of industry, labor and human relations.

(5) "Employer." (a) The term "employer" shall mean and include every person, firm or corporation, agent, manager, representative, contractor, subcontractor or principal, or other person having control or direction of any person employed at any labor or responsible directly or indirectly for the wages of another.

(b) The term "employer" shall also include any person, partnership, or corporation engaged in the processing of cucumbers into pickles, who is responsible directly or indirectly for the wages paid for the services of "workers" engaged in the harvesting of cucumbers providing:

1. That the processor or the processor's agent directly or indirectly pays each "worker" performing services in the harvesting of cucumbers or,

2. That the processor or the processor's agent has the right (whether exercised or not) to terminate the services of the "worker" or to transfer a worker's services from one grower to another.

(6) "Evaluation program" means a program of not more than 6 months duration, except that longer periods may be approved in unusual circumstances, using the medium of work to determine a client's potential, and which meets the department of health and social services, division of vocational rehabilitation or equivalent standards.

(7) "Handicapped worker" means an individual whose earning capacity is impaired by age, or physical, mental, or social disability.

(8) "Industry" means a trade, business, industry, or branch thereof, or group of industries in which individuals are gainfully employed.

(9) A "minor" shall mean any person under 18 years of age.

(10) "Month" means 30 days.

(11) "Probationary employe" means a person who has been in employment status for a cumulative total of 2 months or less within a three-year period.

Note: If employe is in employment status 40 calendar days (even if the employe works and is paid for less than 40 calendar days) in one employment period and then returns to any employer within 3 years for another employment period, the employe would not have to start over to reach 60 calendar days, but would only have to be in employment status for 20 additional calendar days to reach the non-probationary rate.

Note: Subsection (11) [(16)] was partially suspended by the joint committee for review of administrative rules on July 1, 1989. The result of the suspension was a 3 day non-repeating probationary wage period.

(12) "Sheltered workshop" means a charitable organization or institution conducted not for profit, but for the purpose of carrying out a recognized program of rehabilitation for handicapped workers providing such individuals with remunerative employment or other occupational rehabilitating activity of an educational or therapeutic nature.

(13) "Sheltered workshop training program" means a program of not more than 12 months duration designed to

(a) Develop the patterns of behavior which will help a client adjust to a work environment, or

(b) Teach the skills and knowledge related to a specific occupational objective of a job family, and which meets the department of health and social services, division of vocational rehabilitation or equivalent standards.

(14) "Sponsoring agency" means a sheltered workshop, governmental agency or a nonprofit charitable organization or institution carrying out an occupational rehabilitating activity of an educational or therapeutic nature.

(15) "Student learner" means a student who is receiving instruction in an accredited school, college or university and who is employed on a part-time basis, pursuant to a bona fide vocational training program.

(16) "Tipped employe" means any employe engaged in an occupation in which they customarily and regularly receive tips or gratuities from patrons or others.

(17) "Work activity center" means a workshop or a physically separated department of a workshop having an identifiable program, separate supervision and records, planned and designed exclusively to provide therapeutic activities for handicapped workers whose physical or mental impairment is so severe as to make their productive capacity inconsequential.

History: Cr. Register, July, 1978, No. 271, eff. 8-1-78; cr. (15), Register, August, 1987, No. 380, eff. 9-1-87; cr. (16), Register, June, 1989, No. 402, eff. 7-1-89; renum. (3) to (16) to be (4) to (9), (12), (15), (13), (17), (3), (16), (14) and (11) and am. (11), cr. (10), Register March, 1990, No. 411, eff. 4-1-90.

Ind 72.02 Applicability of orders. The rates prescribed in this chapter shall apply to all employes, including indentured apprentices, employed at private employments including nonprofit organizations, whether paid on a time, piece rate, commission, or other basis.

History: Cr. Register, July, 1978, No. 271, eff. 8-1-78.

Register, January, 1991, No. 421

Ind 72.025 Statement of intent. Nothing contained in s. Ind 72.03 prohibits an employer from paying more than the minimum rates listed in this chapter or from treating an employe as a probationary employe for less than the number of days specified in this chapter.

History: Cr. Register, June, 1989, No. 402, eff. 7-1-89.

Ind 72.03 Minimum rates. (1) **MINIMUM RATES.** Except as provided in ss. Ind 72.05 to 72.09, no employer shall employ any employe in any occupation, trade, or industry at a lesser hourly rate than is indicated below:

	EFFECTIVE 4-1-90 PROBATIONARY EMPLOYEES	EFFECTIVE 4-1-90 NON-PROBATIONARY EMPLOYEES
(a) Adult employes 18 years of age and over:	\$3.50 per hr.	\$0.30 per hr. more than the rate applicable to probationary employes
(b) Minors 17 years of age and under:	\$3.25 per hr.	\$0.20 per hr. more than the rate applicable to probationary employes

(2) **TIPS.** Where tips or gratuities are received by the employe from patrons or others, the employer may pay the minimum wage rate established by this subsection, providing the employer can establish by its payroll records that for each week where credit is taken, when adding the tips received to the wages paid, no less than the minimum rate prescribed in sub. (1), was received by the employe. The minimum rate shall be either 55% of the rate prescribed in sub. (1) or the rate established in par. (a), whichever is higher.

(a) *Minimum rates for tipped employes:*

	EFFECTIVE 7-1-89 PROBATIONARY EMPLOYEES	EFFECTIVE 7-1-89 NON-PROBATIONARY EMPLOYEES
1. Adult employes 18 years of age and over:	\$2.07 per hr.	\$0.12 per hr. more than the rate applicable to probationary employes
2. Minors 17 years of age and under:	\$1.86 per hr.	\$0.12 per hr. more than the rate applicable to probationary employes

(b) *Burden of proof.* 1. When the employer elects to take tip credit the employer must have a tip declaration signed by the tipped employe each pay period and show on the payroll records that any required social security or taxes have been withheld each pay period to show that when adding the tips received to the wages paid by the employer, no less than the minimum rate was received by the employe. When the employer's time and payroll records do not contain these requirements, no tip credit shall be allowed.

2. The department may refuse to take action to collect minimum wage deficiencies for a tipped employe who has refused or failed to file an accurate signed tip declaration for the employer each pay period.

(c) *General characteristics of "tips."* 1. Tip means a sum presented by a customer as a gift or gratuity in recognition of some service performed for them. It is to be distinguished from payment of a charge, if any, made for the service. Whether a tip is to be given, and its amount, are matters determined solely by the customer, and generally they have the right to determine who shall be the recipient of their gratuity. In the absence of

(b) Counselors 17 years of age and under:

	EFFECTIVE 8-1-80 PER WEEK	EFFECTIVE 1-1-81 PER WEEK
1. If board and lodging are not furnished	\$100.00	\$110.00
2. If board only is furnished	\$73.00	\$82.00
3. If board and lodging are furnished	\$56.00	\$66.00

(4) RECORDS. Seasonal recreational or educational camps and day camps will not have to keep the daily and weekly time records required by s. Ind 72.11 (1) (d), (e), and (f), for counselors employed and paid on a weekly basis.

(5) DEFINITIONS. For the purpose of this section:

(a) A "seasonal recreational or educational camp" means a camp operated under trained leadership for the purpose of providing group experience for and contributing to the physical, mental, spiritual and social growth of campers who are less than 18 years of age and who make such camp their residence during the camping period.

(b) A "seasonal recreational or educational day camp" means a camp operated under trained leadership for the purpose of providing group experience and contributing to the physical, mental, spiritual and social growth of campers who participate in such camping program during day-time periods, but not overnight.

(c) A "camp counselor" means a person employed by a "seasonal recreational or educational camp" or "seasonal recreational or educational day camp" who leads, directs and instructs campers in such camps in their camping program and activities and shares responsibility for the total care and well-being of campers.

History: Cr. Register, July, 1978, No. 271, eff. 8-1-78; r. and recr. (3) (a) and (b), Register, February, 1980, No. 290, eff. 3-1-80.

Ind 72.08 Caddies. (1) The minimum wage of employees employed as caddies shall be:

EFFECTIVE
3-1-80
\$3.00 9 holes
\$5.30 18 holes

History: Cr. Register, July, 1978, No. 271, eff. 8-1-78; r. and recr. Register, February, 1980, No. 290, eff. 3-1-80.

Ind 72.085 Independent colleges and universities. (1) Independent colleges and universities may employ full-time students 18 years of age and over 20 hours per week at the established Federal Fair Labor Standards Act rates.

(2) All hours worked over 20 hours per week must be paid for at the rates established under s. Ind 72.03.

History: Cr. Register, July, 1978, No. 271, eff. 8-1-78.

Ind. 72.09 Subminimum wage licenses for the employment of workers with disabilities and student learners (1) DEFINITIONS. For the purposes of this section:

(a) "Commensurate wage" means a special minimum wage paid to a worker with a disability.

(b) "Employ" means to permit work.

(c) "Employment relationship" means the relationship that exists whenever an individual, including an individual with a disability, is permitted to work.

(d) "Experienced worker" means a worker who has learned the basic elements or requirements of the work to be performed, ordinarily by completion of a probationary or training period.

(e) "Institution" means an entity which may be either a public or private entity and either a nonprofit or a for profit entity that receives more than 50% of its income from providing residential care for sick, aged, mentally ill or retarded persons. "Institution" includes hospitals, nursing homes, intermediate care facilities, rest homes, convalescent homes, homes for the elderly and infirm, halfway houses, and residential centers for the treatment of drug addiction or alcoholism, whether licensed under s. 50.01, Stats., or not licensed.

(f) "Patient worker" means a worker with a disability employed by a hospital or institution providing residential care where the worker receives treatment or care without regard to whether the worker is a resident of the establishment. In determining whether a patient worker is "employed", the department shall consider whether the work performed is of any consequential economic benefit to the institution. Work is considered to be of consequential economic benefit if it is of the type that workers without disabilities normally perform. A patient does not become an employe if the patient merely performs personal housekeeping chores and receives token remuneration in connection with this activity. It may also be possible for patients in group homes of other family like settings to rotate or share household tasks or chores without becoming employes.

(g) "Special minimum wage" means a wage authorized under a license issued to an employer that is less than the statutory minimum wage.

(h) "Vicinity" or "locality" means the geographic area from which the labor force of the community is drawn.

(i) "Worker with a disability" means an individual whose earnings or productive capacity is impaired by a physical or mental disability, including those relating to age or injury, for the work to be performed. Disabilities which may affect earning or productive capacity include blindness, mental illness, mental retardation, cerebral palsy, alcoholism and drug addiction. The following, taken by themselves, are not considered disabilities for the purposes of this section; vocational, social, cultural, or educational disabilities; chronic unemployment; receipt of welfare benefits; nonattendance at school; juvenile delinquency; and correctional parole or probation. Further, a disability which may affect earning or productive capacity for one type of work may not have this effect for another type of work.

(2) WAGE PAYMENTS. (a) An individual whose earning or productive capacity is not impaired for the work being performed cannot be employed under a license and shall be paid at least the applicable minimum wage. An individual whose earning or productive capacity is impaired to

the extent that the individual is unable to earn at least the applicable minimum wage may be paid a commensurate wage, but only after the employer has obtained a license authorizing the payment of a special minimum wage from the department.

(b) The employer may not deduct from the commensurate wages of patient workers employed in institutions to cover the cost of room, board or other services provided by the facility. A patient worker shall receive wages with no deductions except for amounts deducted for taxes and any voluntary wage assignments. These rules do not preclude the institution from assessing or collecting charges for room, board and other services actually provided to an individual to the extent permitted by federal or state law and on the same basis as it assesses and collects from nonworking patients.

(c) Under this chapter, an employment relationship arises whenever an individual is permitted to work. The determination as to the existence of an employment relationship does not depend upon the level of performance or whether the work is of some therapeutic benefit. It does not include such activities as making craft products when the individual voluntarily participates in such activities and the products become the property of the individual making them, or all the funds resulting from the sale of the products are divided among the participants in the activity or are used in purchasing additional materials to make craft products.

(3) **COMPENSABLE TIME.** The employer shall compensate employes for all hours worked. Compensable time includes not only those hours during which the individual is actually performing productive work but also includes those hours when no work is performed but the individual is required by the employer to remain available for the next assignment. If the individual is completely relieved from duty and is not required to remain available for the next assignment, the time will not be considered compensable time. The burden of establishing that any hours are not compensable rests with the facility and the hours must be clearly distinguishable from compensable hours.

Note: As an example, a person employed by a rehabilitation facility would not be engaged in a compensable activity if the person is completely relieved from duty but is provided therapy or the opportunity to participate in an alternative program or activity in the facility that does not involve work and is not directly related to the person's job (examples are self-help skills training, recreation, job seeking skills training, independent living skills, or adult basic education).

(4) **SPECIAL PROVISIONS FOR TEMPORARY AUTHORITY.** (a) The department may grant temporary authority to an employer to permit the employment of workers with disabilities pursuant to a vocational rehabilitation program of the U.S. department of veterans affairs for veterans with a service-incurred disability or a vocational rehabilitation program administered by a state agency.

(b) Temporary authority under this subsection is effective for 90 days from the date that the designated section of the application form is completed and signed by the representative of the state agency or the U.S. department of veterans affairs, if the application form is sent to the department within 10 days of the signing. Temporary authority under this subsection may not be renewed or extended by the department.

(c) The signed application form constitutes the temporary authority to employ workers with disabilities at special minimum wage rates. The department shall review all applications under this subsection upon re-

ceipt and shall issue a license when the criteria for licensing are met. The department shall promptly notify the applicant if additional information is required or if the license is denied.

(5) **CRITERIA FOR EMPLOYMENT UNDER A SPECIAL MINIMUM WAGE RATE LICENSE.** (a) To determine whether the approval of special minimum wage rates is necessary in order to prevent the curtailment of opportunities for employment and to determine whether a particular employe will receive a commensurate wage, the department shall consider the following criteria:

1. The nature and extent of the disabilities of the employe as these disabilities relate to the employe's productivity.

2. The prevailing wages of experienced employes not disabled for the job that are employed in the vicinity in industry engaged in work comparable to the work under consideration.

3. The productivity of a worker with a disability compared to the norm established for nondisabled employes through the use of a verifiable work measurement method, or the productivity of experienced nondisabled employes employed in the vicinity on comparable work.

4. The wage rates to be paid to a worker with a disability for work comparable to that performed by experienced nondisabled employes.

(b) Before the license authorizing special minimum wage rates for workers with disabilities is issued, the employer shall provide the following written assurances concerning the employment:

1. In the case of employes paid at hourly rates, the special minimum wage rates shall be reviewed by the employer at periodic intervals with a minimum interval of once every 6 months.

2. Wages for all employes shall be adjusted by the employer at periodic intervals with a minimum interval of once each year to reflect changes in the prevailing wages paid to experienced nondisabled employes employed in the locality for essentially the same type of work.

(6) **PREVAILING WAGE RATES.** (a) A prevailing wage rate is a wage rate that is paid to an experienced employe not disabled for the work to be performed. There may be more than one prevailing wage rate for a specific type of work in the given area. The department shall require an employer applying for a special minimum wage rate license to demonstrate that the wage rate used as prevailing for determining a commensurate wage was objectively determined according to the requirements of this subsection.

(b) An employer whose work force consists primarily of nondisabled employes or who employs more than a token number of nondisabled employes doing similar work shall use as the prevailing wage the wage rate paid to that employer's experienced nondisabled employes performing similar work. This requirement also applies to the determination of the prevailing wage rate when a sponsoring agency places a disabled employe on the premises of an employer covered by this paragraph.

(c) An employer whose work force primarily consists of employes disabled for the work to be performed may determine the prevailing wage by ascertaining the wage rates paid to the experienced nondisabled employes of other employers in the vicinity. This information may be ob-

Register, January, 1991, No. 421

tained by conducting a survey of comparable businesses in the area that employ primarily nondisabled employees doing similar work. The businesses that are surveyed should be representative of the area in terms of wages paid to experienced employees doing similar work. The appropriate size of the sample will depend on the number of firms doing similar work but should include no less than 3 businesses unless there are fewer businesses doing similar work in the area. A comparable firm is one which is of similar size in terms of employees or which competes for or bids on contracts of a similar size or nature.

(d) If a survey is not practical, an employer may contact other sources such as the federal bureau of labor statistics or private or state employment services. If similar businesses cannot be found in the area defined by the geographic labor market, the closest comparable community may be used.

(e) The prevailing wage rate shall be based upon the wage rate paid to experienced nondisabled employees. Employment services which only provide entry level wage data are not acceptable as sources for prevailing wage information.

(f) The prevailing wage survey shall be based upon work utilizing similar methods and equipment. The employer shall employ a consistent methodology for tabulating the results of the survey.

(g) The employer shall record the following information in documenting the determination of prevailing wage rates:

1. Date of contact with a firm or other source.
2. Name, address and phone number of firm or other source contact.
3. Title and name of the individual contacted within the firm or source.
4. Wage rate information provided.
5. Brief description of work for which wage information is provided.
6. Basis for the conclusion that the wage rate is not based upon an entry level position.

(h) A prevailing wage may not be less than the minimum wage specified in this chapter.

Note: If the employer is unable to obtain the prevailing wage for a specific job to be performed on the premises (for example, collating documents), it is acceptable to use as the prevailing wage the wage paid to experienced individuals employed in similar jobs requiring the same general skill levels (for example, file clerk or general office clerk).

(7) **ISSUANCE OF LICENSES.** (a) After considering the criteria given in sub. (5), the department may issue a special license.

(b) If the department issues a special minimum wage license, it shall send a copy to the employer. If the department denies a license, it shall notify the employer in writing and provide the reasons for the denial.

(8) **TERMS AND CONDITIONS OF SPECIAL MINIMUM WAGE LICENSES.** (a) The department shall specify the terms and conditions under which a special minimum wage license is granted.

(b) The department shall provide that a special minimum wage license applies to each worker employed by the employer receiving the license,

provided that the worker is in fact disabled for the work that he or she is to perform.

(c) The department shall designate the period for which a special minimum wage license shall be effective. The employer may pay a wage lower than the minimum wage to a worker with a disability only during the effective period of a license which applies to that worker.

(d) No special minimum wage license shall authorize workers with disabilities to be paid wages that are less than commensurate with those paid to experienced nondisabled workers employed in the vicinity for essentially the same type, quality and quantity of work.

(e) Any special minimum wage license issued by the department shall require that workers with disabilities be paid not less than one and one half times the regular rate of pay for all hours worked in excess of 40 hours per week.

(f) The special minimum wage license shall require that the wage of each worker covered by the license be adjusted by the employer at periodic intervals of at least once per year to reflect changes in the prevailing wages paid to experienced persons who are not disabled and who are employed in the vicinity for essentially the same type of work.

(g) Each worker with a disability and, when appropriate, a parent or guardian of the worker, shall be informed, verbally and in writing, of the terms of the license under which the worker is employed. This requirement may be satisfied by making copies of the license available. If a worker with a disability displays an understanding of the terms of the license and requests that other parties not be informed, it is not necessary to inform a parent or guardian.

(h) The department shall use the criteria in this paragraph to establish piece rates for workers with disabilities.

1. The employer may establish standard production rates for workers not disabled for the work to be performed by using industrial work measurement methods, including but not limited to stop watch time studies, predetermined time systems, or standard data. The department may require the employer to demonstrate that a particular method is generally accepted by industrial engineers and has been properly executed. The employer may not require specific training or certification. An employer shall not be required to repeat the application of work measurement methods that have already been applied by another employer or source and that can be properly documented.

a. The piece rate paid to a worker with a disability shall be based on the standard production rate. The standard production rate is the number of units that an experienced worker who is not disabled for the work is expected to produce in one hour. The piece rate paid to a worker with a disability shall also be based on the prevailing industry wage rate paid to an experienced nondisabled worker in the vicinity for essentially the same type and quality of work or for work requiring similar skill. The piece rate is determined by dividing the prevailing industry wage rate by the standard number of units per hour.

b. The piece rate for a worker with a disability shall not be less than the actual prevailing piece rate paid to any experienced worker not disabled for the work who is doing the same or similar work in the vicinity.

2. Work measurement methods used to establish piece rates shall meet the following criteria:

a. If a stop watch time study is made, it shall be made with a person whose productivity represents normal performance. If this is not possible, an appropriate adjustment shall be made. An adjustment of this type, which may be referred to as a "performance rating" or "leveling", may be made only by a person knowledgeable in this technique, as evidenced by successful completion of training. The person observed in the stop watch time study shall be given time to practice the work to be performed in order to provide the person with an opportunity to overcome the initial learning curve. In addition, the person observed shall be trained to use the specific work method and tools which are available to the disabled workers for whom rates are to be established.

b. Work measurement methods shall allow appropriate time for personal time, fatigue, and unavoidable delays. In general, this should amount to an allowance of at least 15%, or nine to ten minutes per hour.

c. A work measurement study shall be conducted using the same work method that will be utilized by the workers with disabilities. If a modification such as a jig or a fixture must be made to a production method to accommodate the special needs of an individual worker with a disability, an additional work measurement study need not be conducted as long as the modification enables the disabled worker to perform the work or to increase productivity but would impede the worker without disabilities. If, in a particular case, it is not possible to accommodate a worker with a disability, as for example where an adequate number of machines are not available, a second work measurement study may be required.

(i) The employer shall pay full earnings to each worker with a disability who is employed on a piece rate basis. Employers may "pool" earnings only where piece rates cannot be established for each individual worker.

Note: An example of this situation is a team production operation where each worker's individual contribution to the finished product cannot be determined separately. However, the employer should still make every effort to objectively divide the earnings according to the productivity level of each individual worker.

(j) The requirements of this paragraph apply to the payment of a worker with a disability who is employed at hourly rates.

1. The employer shall base hourly rates upon the prevailing hourly wage rate paid to an experienced worker not disabled for the job who is doing essentially the same type of work and using similar methods or equipment in the vicinity.

2. The employer shall make an initial evaluation of the worker's productivity within the first month after employment begins in order to determine the worker's commensurate wage rate. The employer shall record the results of the evaluation and the employer shall adjust the worker's wages accordingly no later than the first complete pay period following the initial evaluation. The employer shall pay commensurate wages to each worker for all hours worked. If the initial evaluation shows that the wages paid to the worker during pay periods prior to the evaluation were less than the commensurate wage, the employer shall compensate the worker for the difference in pay.

3. Upon the completion of not more than 6 months of employment, the employer shall review the quantity and quality of the work of each hourly wage rate worker with a disability as compared to a nondisabled worker engaged in similar work. The review shall be in writing and shall be recorded. The employer shall conduct and record a similar productivity review at least every 6 months thereafter. The employer shall also conduct and record a productivity review after a worker changes to a new job. After any review, the employer shall adjust the worker's wages appropriately no later than the first complete pay period following the review. Because the purpose of such reviews is to ensure that a worker with a disability receives commensurate wages for all hours worked, conducting reviews at 6-month intervals is a minimum requirement. The employer shall conduct reviews in the manner and frequency necessary to ensure the payment of commensurate wages.

Note: For example, evaluations shall not be conducted before a worker has had an opportunity to become familiar with the job, or at a time when the worker is fatigued or subject to conditions that result in less than normal productivity.

4. Any employer conducting a review covered by this paragraph must include for each review the name of the individual worker, the date and time of the review, and the name and position of the person conducting the review.

(9) RENEWAL OF SPECIAL MINIMUM WAGE LICENSES. (a) An employer with a special minimum wage license may file a written application for renewal with the department.

(b) When an application for renewal of a special minimum wage license has been properly and timely filed with the department, the existing special minimum wage license shall remain in effect until the application for renewal has been granted or denied.

(c) If an application for renewal is denied, the employer may not continue to pay the special minimum wage rates previously authorized by the license.

(d) Before any application for renewal is denied, the department shall notify the employer in writing of the facts or conduct which may warrant denial and provide the employer an opportunity to demonstrate or achieve compliance with all legal requirements before a final decision on denial or approval of the application is made.

(10) POSTER. An employer that is operating under a special minimum wage license shall at all times display and make available to employees a poster as prescribed by the department. The poster shall explain, in general terms, the conditions under which special minimum wages may be paid. The employer shall post the poster in a conspicuous place on the employer's premises where it may be readily observed by workers with disabilities, the parents and guardians of workers, and other employees. As a substitute for posting, the employer may provide a copy of the poster directly to each employee subject to its terms.

(11) RECORDS TO BE KEPT BY EMPLOYERS. Every employer of workers under a special minimum wage license, or the referring agency or facility in the case of records verifying a worker's disabilities, shall maintain and have available for inspection the records specified in this subsection.

(a) Verification of the worker's disability.

(b) Evidence of the productivity of each worker with a disability which has been gathered on a continuing basis or at periodic intervals which do not exceed six months in the case of employes paid hourly wage rates.

(c) The prevailing wage paid to a worker who is not disabled for the job performed and who is employed in industry in the vicinity for the same type of work using similar methods and equipment as that used by the worker with a disability employed under the special minimum wage license.

(d) The production standards and supporting documentation for nondisabled workers for each job being performed by a worker with disabilities employed under the special license.

(e) In the case of workers with disabilities who are employed by a recognized non-profit rehabilitation facility and who are working in or about a home, apartment, or room in the residential establishment, the records required under s. Ind 72.11.

(f) The employer shall maintain and preserve the records required by this section for 3 years.

(12) **RELATION TO OTHER LAWS.** No provision of these rules, or of any special minimum wage license issued under this section, shall excuse non-compliance with any federal law or municipal ordinance which establishes higher standards.

(13) **WORK ACTIVITY CENTERS.** This section does not prevent an employer from maintaining or establishing a work activity center to provide therapeutic activities for workers with disabilities as long as the employer complies with the requirements of this section.

(14) **LICENSING UNDER A SPECIAL LICENSE REQUESTED BY A SPONSORING AGENCY.** A sponsoring agency may request a special minimum wage license on behalf of a worker with a disability. The department may issue a license to a worker with a disability which will authorize an employer to pay the rate of pay stated on the license. An employer that hires a licensed worker with a disability shall retain a photocopy of the license for the employer's records. A license issued under this subsection is effective for not more than one year.

Note: The intent of issuing this type of license to a worker with a disability instead of to the employer is to permit the sponsoring agency to make short term placements which enable the worker to gain a variety of experiences without putting the burden on each employer to obtain a license. However, this does not relieve an employer from complying with the Federal Labor Standards Act which requires that an individual subminimum wage license be issued to any federally covered employer.

(15) **STUDENT LEARNERS.** A license may be issued for a student who is enrolled in a bona fide school training program.

(a) *Application for a student learner license.* 1. Applications shall be filed with the department by the school on behalf of the employer.

2. The application must be made on a form provided by the department, and accompanied by a copy of the training agreement, or, in the absence of such agreement, a copy of the program or curriculum may be submitted. The application must be signed by the employer, the appropriate school official, the student, and the student's parent or guardian.

(b) *Conditions for issuing a license for a student.* 1. Each program must be a bona fide school training program.

2. The employment at subminimum rates is necessary to provide employment opportunities under the program.

3. The student must be at least 14 years of age and obtain a work permit if under 18 years of age.

4. The occupation for which the student is receiving preparatory training must require a sufficient degree of skill to necessitate a learning period.

5. The training must not be for the specific purpose of acquiring manual dexterity and high production speed in repetitive operation. In case of a training program which does not qualify as a bona fide training program within the meaning of s. 104.01 (6), Stats., the employer must pay the trainee the minimum wage for all time spent on the training program whether such time is instructional or work in nature.

6. The employment must not have the effect of displacing a worker employed in the establishment. A student learner must be paid minimum wage for time spent doing work which would be normally done by a regular paid employe if the student learner performed the work.

7. The employment must not tend to impair or depress the wage rates or working standards established for experienced workers for work of a like or comparable character.

8. The issuance of such license must not tend to prevent the development of apprenticeship nor impair established apprenticeship standards in the occupation or industry involved.

(c) *Terms and conditions of license.* 1. The license shall specify, among other things:

a. The name and address of the student.

b. The name and address of the employer.

c. The name and address of the school which provides the related school instructions.

d. The effective and expiration dates of the license.

2. The rate shall not be less than 75% of the applicable rates in s. Ind 72.03.

3. The license shall be effective for the period designated thereon, and no license shall be issued retroactively.

4. A student may work a number of hours in addition to the daily and weekly hours of employment training authorized by the license provided the total hours of work shall not exceed the limits set forth in s. Ind 70.05, and that the pay for such hours is not less than that prescribed in s. Ind 72.03.

5. Students under 18 years of age may not serve at any job prohibited by statute, or orders of the department. (See s. Ind 70.03.)

6. A training agreement shall set down the scheduled duties and responsibilities of the local school, the employer, the student, and the stu-

dent's parent or guardian. The training agreement shall be signed by an appropriate school official, the employer, the student, and the student's parent or guardian.

7. The department may set a rate of less than 75% of the rates in s. Ind 72.03 for handicapped student learners if justified by extraordinary circumstances. The rates granted shall be commensurate with the student's ability.

(d) *Employment records to be kept.* In addition to the records required in s. Ind 72.11 the employer shall keep the following for each student employed at a subminimum wage rate.

1. The student shall be identified on the payroll records, showing his occupation and rate of pay.

2. The employer's copy of the license and training agreement must be available at all times for inspection for a period of 3 years.

(16) DENIAL AND REVOCATION OF LICENSES. (a) The department may deny or revoke a special minimum wage or student learner license for cause at any time. The department may amend or modify a special minimum wage or student learner license if conditions or extraordinary circumstances warrant the action. The grounds for revocation or denial include but are not limited to the facts specified in this subsection.

1. A license may be revoked or denied if misrepresentations or false statements have been made to obtain the license or to permit a worker with a disability to be employed under the license.

2. A license may be revoked or denied if any provision of the Wisconsin labor standards law or any of the terms of the license has been violated.

3. A license may be revoked or denied if the license is no longer necessary in order to prevent a curtailment of opportunities for employment.

(b) Unless the public interest requires otherwise, the department shall notify the employer of facts or conduct which may warrant revocation before beginning revocation proceedings and shall provide the employer an opportunity to demonstrate or achieve compliance with all legal requirements.

Note: The legal procedure for license revocations is established by ch. 227, Stats.

(17) REVIEW. Any person that is aggrieved by an action of the department taken under this section may, within 60 days after learning of the action or within any additional time that the department might allow, file with the department a request for reconsideration or review. The department shall determine if a review shall be granted. If a review is conducted, it shall be conducted by the department. The department may provide other interested persons an opportunity to present data and views.

History: Cr. Register, July, 1978, No. 271, eff. 8-1-78; r. and recr. (2) (a) 1. and am. (2) (a) intro. and 2., Register, August, 1987, No. 380, eff. 9-1-87; r. (1), (2) and (4), renum. (3) to be (15), cr. (1) to (14), (16) and (17), Register, January, 1991, No. 421, eff. 2-1-91.

Ind 72.10 Listing deductions from wages. An employer shall state clearly on the employe's paycheck, pay envelope, or paper accompanying the wage payment the number of hours worked, the rate of pay and the amount of and reason for each deduction from the wages due or

Register, January, 1991, No. 421

earned by the employe, except such miscellaneous deductions as may have been authorized by request of individual employes for reasons personal to themselves. A reasonable coding system may be used by the employers.

History: Cr. Register, July, 1978, No. 271, eff. 8-1-78.

Ind 72.11 Permanent records to be kept by the employer. (1) Every employer shall make and keep for at least 3 years payroll or other records for each of their employes which contain:

- (a) Name and address.
 - (b) Date of birth.
 - (c) Date of entering and leaving employment.
 - (d) Time of beginning and ending of work each day.
 - (e) Time of beginning and ending of meal periods:
 1. When employe's meal periods are required or when such meal periods are to be deducted from work time.
 2. This requirement shall not apply when work is of such a nature that production or business activity ceases on a regularly scheduled basis.
 - (f) Total number of hours worked per day and per week.
 - (g) Rate of pay and wages paid each payroll period.
 - (h) The amount of and reason for each deduction from the wages earned.
 - (i) Output of employe, if paid on other than time basis.
- (2) The required records or a duplicate copy thereof shall be kept safe and accessible at the place of employment or business at which the employe is employed, or at one or more established central record keeping offices in the state of Wisconsin.
- (3) The required records shall be made available for inspection and transcription by a duly authorized deputy of the department during the business hours generally observed by the office at which they are kept or in the community generally.

History: Cr. Register, July, 1978, No. 271, eff. 8-1-78.

Ind 72.12 Interpretation of hours worked. (1) **PRINCIPLES FOR DETERMINATION OF HOURS WORKED.** (a) *General requirements of sections.* 1. Employes subject to the statutes must be paid for all time spent in "physical or mental exertion (whether burdensome or not) controlled or required by the employer and pursued necessarily and primarily for the benefit of the employer's business." The workweek ordinarily includes "all time during which an employe is necessarily required to be on the employer's premises, on duty or at a prescribed work place."

2. "Workday," in general, means the period between "the time on any particular workday at which such employe commences their principal activity or activities" and "the time on any particular workday at which they cease such principal activity or activities." The "workday" may thus be longer than the employe's scheduled shift, hours, tour of duty, or time on the production line. Also, its duration may vary from day to day

Register, January, 1991, No. 421

depending upon when the employe commences or ceases their "principal" activities.

(2) APPLICATION OF PRINCIPLES. (a) *Employes "suffered or permitted" to work.* 1. General. Work not requested but suffered or permitted is work time. For example, an employe may voluntarily continue to work at the end of the shift. They may be a pieceworker, they may desire to finish an assigned task or they may wish to correct errors, past work tickets, prepare time reports or other records. The reason is immaterial. The employer knows or has reason to believe that they are continuing to work and the time is working time.

2. Work performed away from the premises or job site. The rule is also applicable to work performed away from the premises or the job site, or even at home. If the employer knows or has reason to believe that the work is being performed, they must count the time as hours worked.

3. Duty of management. In all such cases it is the duty of the management to exercise its control and see that the work is not performed if it does not want it to be performed. It cannot sit back and accept the benefits without compensating for them. The mere promulgation of a rule against such work is not enough. Management has the power to enforce the rule and must make every effort to do so.

(b) *Waiting time.* 1. General. Whether waiting time is time worked depends upon particular circumstances. The determination involves "scrutiny and construction of the agreements between particular parties, appraisal of their practical construction of the working agreement by conduct, consideration of the nature of the service, and its relation to the waiting time, and all of the circumstances. Facts may show that the em-

Next page is numbered 49