



State of Wisconsin
2009 - 2010 LEGISLATURE

LRBs0348/2
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ASSEMBLY SUBSTITUTE AMENDMENT 1,
TO 2009 ASSEMBLY BILL 41

March 23, 2010 – Offered by Representatives MASON and GRIGSBY.

1 **AN ACT** *to repeal* 104.001; *to renumber* 104.01 (1); *to renumber and amend*
2 104.045; *to amend* 49.141 (1) (g), 104.01 (intro.), 104.01 (8), 104.05, 104.07 (1),
3 104.07 (2), 104.10, 104.11, 234.94 (5), 234.94 (8), 800.09 (1) (b), 800.095 (4) (b)
4 3. and 895.035 (2m) (c); and *to create* 104.01 (1d), 104.01 (1g), 104.01 (5g),
5 104.01 (5m), 104.01 (7m), 104.035 and 104.045 (2) and (3) of the statutes;
6 **relating to:** a state minimum wage, permitting the enactment of local living
7 wage ordinances, extending the time limit for emergency rule procedures,
8 providing an exemption from emergency rule procedures, providing an
9 exemption from rule-making procedures, and requiring the exercise of
10 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 (DWD) has provided, by rule, minimum wages for various types of employees,

including employees, generally; minor employees; opportunity employees, which 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.

Under this substitute amendment, DWD will continue to provide the exemptions listed above and separate minimum wages for 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 other employees, however, the substitute amendment sets the minimum wages, effective on September 5, 2011, or on the day after publication of the substitute amendment, whichever is later, as follows:

Employees generally

Current minimum wage	\$7.25 per hour
Minimum wage on effective date	\$7.60 per hour

Minor employees

Current minimum wage	\$7.25 per hour
Minimum wage on effective date	\$7.25 per hour

Opportunity employees

Current minimum wage	\$5.90 per hour
Minimum wage on effective date	\$6.90 per hour

Tipped employees

Current minimum wage	\$2.33 per hour for nonopportunity employees \$2.13 per hour for opportunity employees
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Minimum wage on effective date	\$2.75 per hour for nonopportunity employees \$2.50 per hour for opportunity employees
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Agricultural employees

Current minimum wage	\$7.25 per hour
Minimum wage on effective date	\$7.25 per hour

Camp counselors

Current minimum wage	\$350 per week if meals and lodging not furnished \$265 per week if meals, but not lodging, furnished \$210 per week if meals and lodging furnished
Minimum wage on effective date	\$350 per week if meals and lodging not furnished \$265 per week if meals, but not lodging, furnished \$210 per week if meals and lodging furnished

Golf caddies

Current minimum wage	\$10.50 for 18 holes \$5.90 for 9 holes
Minimum wage on effective date	\$12.30 for 18 holes \$6.90 for 9 holes

The substitute amendment also increases the allowance against the minimum wage that an employer who provides room and board for an employee may take, as follows:

Employees generally

Lodging

Current allowance \$58 per week or \$8.30 per day

Allowance on effective date \$61 per week or \$8.65 per day

Meals

Current allowance \$87 per week or \$4.15 per meal

Allowance on effective date \$91 per week or \$4.35 per meal

Minor employees

Lodging

Current allowance \$58 per week or \$8.30 per day

Allowance on effective date \$58 per week or \$8.30 per day

Meals

Current allowance \$87 per week or \$4.15 per meal

Allowance on effective date \$87 per week or \$4.15 per meal

Opportunity employees

Lodging

Current allowance \$47.20 per week or \$6.75 per day

Allowance on effective date \$55.20 per week or \$7.90 per day

Meals

Current allowance \$70.80 per week or \$3.35 per meal

Allowance on effective date	\$82.85 per week or \$3.90 per meal
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Agricultural employees

Lodging

Current allowance	\$58 per week or \$8.30 per day
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Allowance on effective date	\$58 per week or \$8.30 per day
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Meals

Current allowance	\$87 per week or \$4.15 per meal
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Allowance on effective date	\$87 per week or \$4.15 per meal
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Beginning on September 5, 2012, the substitute amendment requires DWD annually to promulgate rules revising the minimum wages and allowances for meals and lodging established under the substitute amendment by determining the percentage difference between the consumer price index for the preceding year and the consumer price index for the current year, adjusting the minimum wages and allowances in effect on September 4 of the current year by that percentage difference, and rounding that result to the nearest multiple of five cents or, in the case of a camp counselor, the nearest dollar. This requirement does not apply, however, if the consumer price index for the current year has not increased over the consumer price index for the preceding year.

Finally, current law prohibits a city, village, town, or county from enacting and administering an ordinance establishing a living wage. This substitute amendment eliminates that prohibition.

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) (1),
4 whichever is applicable.

1 **SECTION 2.** 104.001 of the statutes, as affected by 2009 Wisconsin Act 28, is
2 repealed.

3 **SECTION 3.** 104.01 (intro.) of the statutes is amended to read:

4 **104.01 Definitions.** (intro.) ~~The following terms as used in~~ In this chapter
5 ~~shall be construed as follows:~~

6 **SECTION 4.** 104.01 (1) of the statutes is renumbered 104.01 (1m).

7 **SECTION 5.** 104.01 (1d) of the statutes is created to read:

8 **104.01 (1d)** “Agricultural employee” means an employee who is employed in
9 farming, as defined in s. 102.04 (3).

10 **SECTION 6.** 104.01 (1g) of the statutes is created to read:

11 **104.01 (1g)** “Consumer price index” means the average of the consumer price
12 index over each 12-month period for all urban consumers, U.S. city average, as
13 determined by the bureau of labor statistics of the U.S. department of labor.

14 **SECTION 7.** 104.01 (5g) of the statutes is created to read:

15 **104.01 (5g)** “Minor employee” means a minor who is paid at the applicable
16 minimum wage rate for minors.

17 **SECTION 8.** 104.01 (5m) of the statutes is created to read:

18 **104.01 (5m)** “Opportunity employee” means a person under 20 years of age who
19 is in the first 90 consecutive days of employment with his or her employer.

20 **SECTION 9.** 104.01 (7m) of the statutes is created to read:

21 **104.01 (7m)** “Tipped employee” means an employee who in the course of
22 employment customarily and regularly receives money or other gratuities from
23 persons other than the employee’s employer.

24 **SECTION 10.** 104.01 (8) of the statutes is amended to read:

1 104.01 (8) The term “wage” and the term “wages” shall each mean “Wage”
2 means any compensation for labor measured by time, piece, or otherwise.

3 **SECTION 11.** 104.035 of the statutes is created to read:

4 **104.035 Minimum wage. (1) EMPLOYEES GENERALLY. (a) *Minimum rates.***

5 Except as provided in subs. (2) to (8), the minimum wage is as follows:

6 1. For wages earned before September 5, 2012, \$7.60 per hour.

7 2. For wages earned beginning on September 5, 2012, the amount determined
8 by the department by rule promulgated under sub. (9).

9 (b) *Allowances for meals and lodging.* Except as provided in subs. (2) (b) and
10 (4) (b), if an employer furnishes an employee with meals or lodging in accordance
11 with rules promulgated by the department under s. 104.045 (2), the employer may
12 deduct the following amounts from the wages of the employee:

13 1. For lodging furnished before September 5, 2012, \$61 per week or \$8.65 per
14 day and for meals furnished before September 5, 2012, \$91 per week or \$4.35 per
15 meal.

16 2. For meals and lodging furnished beginning on September 5, 2012, the
17 amounts determined by the department by rule promulgated under sub. (9).

18 **(2) MINOR EMPLOYEES. (a) *Minimum rates.*** Except as provided in subs. (2m)
19 to (8), the minimum wage for a minor employee is as follows:

20 1. For wages earned before September 5, 2012, \$7.25 per hour.

21 2. For wages earned beginning on September 5, 2012, the amount determined
22 by the department by rule promulgated under sub. (9).

23 (b) *Allowances for meals and lodging.* Except as provided in sub. (4) (b), if an
24 employer furnishes a minor employee or an opportunity employee with meals or

1 lodging in accordance with rules promulgated by the department under s. 104.045
2 (2), the employer may deduct the following amounts from the wages of the employee:

3 1. For lodging furnished before September 5, 2012, \$58 per week or \$8.30 per
4 day and for meals furnished before September 5, 2012, \$87 per week or \$4.15 per
5 meal.

6 2. For meals and lodging furnished beginning on September 5, 2012, the
7 amounts determined by the department by rule promulgated under sub. (9).

8 **(2m)** OPPORTUNITY EMPLOYEES. (a) *Minimum rates.* Except as provided in subs.
9 (3) to (8), the minimum wage for an opportunity employee is as follows:

10 1. For wages earned before September 5, 2012, \$6.90 per hour.

11 2. For wages earned beginning on September 5, 2012, the amount determined
12 by the department by rule promulgated under sub. (9).

13 (b) *Allowances for meals and lodging.* Except as provided in sub. (4) (b), if an
14 employer furnishes an opportunity employee with meals or lodging in accordance
15 with rules promulgated by the department under s. 104.045 (2), the employer may
16 deduct the following amounts from the wages of the employee:

17 1. For lodging furnished before September 5, 2012, \$55.20 per week or \$7.90
18 per day and for meals furnished before September 5, 2012, \$82.85 per week or \$3.90
19 per meal.

20 2. For meals and lodging furnished beginning on September 5, 2012, the
21 amounts determined by the department by rule promulgated under sub. (9).

22 **(3)** TIPPED EMPLOYEES. (a) *Minimum rates.* Except as provided in subs. (4) to
23 (8), if an employer of a tipped employee establishes by the employer's payroll records
24 that, when adding the tips received by the tipped employee in a week to the wages
25 paid to the tipped employee in that week, the tipped employee receives not less than

1 the applicable minimum wage specified in sub. (1) or (2), the minimum wage for the
2 tipped employee is as follows:

3 1. For wages earned before September 5, 2012, by a tipped employee who is not
4 an opportunity employee, \$2.75 per hour.

5 2. For wages earned before September 5, 2012, by a tipped employee who is an
6 opportunity employee, \$2.50 per hour.

7 3. For wages earned beginning on September 5, 2012, the amounts determined
8 by the department by rule promulgated under sub. (9).

9 (b) *Allowances for meals and lodging.* If an employer furnishes a tipped
10 employee with meals or lodging in accordance with rules promulgated by the
11 department under s. 104.045 (2), the employer may deduct the applicable amounts
12 specified in sub. (1) (b) or (2) (b) from the wages of the tipped employee.

13 (4) AGRICULTURAL EMPLOYEES. (a) *Minimum rates.* Except as provided in subs.
14 (7) and (8), the minimum wage for an agricultural employee is as follows:

15 1. For wages earned before September 5, 2012, \$7.25 per hour.

16 2. For wages earned beginning on September 5, 2012, the amounts determined
17 by the department by rule promulgated under sub. (9).

18 (b) *Allowances for meals and lodging.* If an employer furnishes an agricultural
19 employee with meals or lodging in accordance with rules promulgated by the
20 department under s. 104.045 (2), the employer may deduct the following amounts
21 from the wages of the employee:

22 1. For lodging furnished before September 5, 2012, \$58 per week or \$8.30 per
23 day and for meals furnished before September 5, 2012, \$87 per week or \$4.15 per
24 meal.

1 2. For meals and lodging furnished beginning on September 5, 2012, the
2 amounts determined by the department by rule promulgated under sub. (9).

3 **(5) CAMP COUNSELORS.** The minimum wage for a counselor at a seasonal
4 recreational or educational camp, including a day camp, is as follows:

5 (a) For wages earned before September 5, 2012, \$350 per week if meals and
6 lodging are not furnished, \$265 per week if only meals are furnished, and \$210 per
7 week if both meals and lodging are furnished.

8 (b) For wages earned beginning on September 5, 2012, the amounts determined
9 by the department by rule promulgated under sub. (9).

10 **(6) GOLF CADDIES.** The minimum wage for a golf caddy is as follows:

11 (a) For wages earned before September 5, 2012, \$12.30 for caddying 18 holes.

12 (b) For wages earned before September 5, 2012, \$6.90 for caddying 9 holes.

13 (c) For wages earned beginning on September 5, 2012, the amounts determined
14 by the department by rule promulgated under sub. (9).

15 **(7) MINIMUM WAGE ESTABLISHED BY DEPARTMENT.** The department shall
16 promulgate rules providing the minimum wage for all of the following:

17 (a) An employee or worker with a disability covered under a license under s.
18 104.07.

19 (b) A student learner.

20 (c) A student employed by an independent college or university for less than
21 20 hours per week.

22 **(8) EMPLOYMENT EXEMPTED BY DEPARTMENT.** The department shall promulgate
23 rules exempting from the minimum wage requirements under subs. (1) to (7) all of
24 the following:

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

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

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

9 **(9) DEPARTMENT TO REVISE.** (a) Subject to pars. (b) and (c), by September 5 of
10 each year, the department, using the procedures under s. 227.24, shall promulgate
11 rules to revise the minimum wages and allowances for meals and lodging established
12 under subs. (1) to (7). The department shall determine those revised minimum
13 wages and allowances by calculating the percentage difference between the
14 consumer price index for the 12-month period ending on May 31 of the preceding
15 year and the consumer price index for the 12-month period ending on May 31 of the
16 current year, adjusting the minimum wages and allowances in effect on September
17 4 of the current year by that percentage difference, and rounding that result to the
18 nearest multiple of 5 cents, except that for a minimum wage under sub. (5), the
19 department shall round the result to the nearest dollar. Notwithstanding s. 227.24
20 (1) (a), (2) (b), and (3), the department may promulgate an emergency rule under s.
21 227.24 revising the minimum wages and allowances established under subs. (1) to
22 (7) without providing evidence that the emergency rule is necessary to preserve the
23 public peace, health, safety, or welfare and without a finding of emergency. A revised
24 minimum wage or allowance determined under this paragraph shall first apply to

1 wages earned or meals or lodging furnished on September 5 of the year in which the
2 wage or allowance is revised.

3 (b) Paragraph (a) does not apply if the consumer price index for the 12-month
4 period ending on May 31 of the current year has not increased over the consumer
5 price index for the 12-month period ending on May 31 of the preceding year.

6 (c) Paragraph (a) does not preclude the department from promulgating rules
7 to increase a minimum wage provided under subs. (1) to (7).

8 **SECTION 12.** 104.045 of the statutes is renumbered 104.045 (intro.) and
9 amended to read:

10 **104.045 ~~Tipped employees~~ Tips, meals, lodging, and hours worked.**
11 (intro.) The department shall ~~by rule determine what amount of~~ promulgate rules
12 governing all of the following:

13 (1) The counting of tips or similar gratuities ~~may be counted~~ toward fulfillment
14 of the employer's obligation under this chapter.

15 **SECTION 13.** 104.045 (2) and (3) of the statutes are created to read:

16 104.045 (2) The deduction of meals or lodging provided by an employer to an
17 employee from the employer's obligation under this chapter.

18 (3) The determination of hours worked by an employee during which the
19 employee is entitled to a living wage under this chapter.

20 **SECTION 14.** 104.05 of the statutes is amended to read:

21 **104.05 Complaints; investigation.** The department shall, ~~within~~ Within 20
22 days after the filing of a verified complaint of any person ~~setting forth~~ alleging that
23 the wages paid to any employee in any occupation are not sufficient to enable the
24 employee to maintain himself or herself under conditions consistent with his or her

1 welfare, the department shall investigate and determine whether there is
2 reasonable cause to believe that the wage paid to any employee is not a living wage.

3 **SECTION 15.** 104.07 (1) of the statutes is amended to read:

4 104.07 (1) The department shall ~~make~~ promulgate rules, and, except as
5 provided under subs. (5) and (6), grant licenses to any employer who employs any
6 employee who is unable to earn the living wage determined by the department,
7 permitting the employee to work for a wage that is commensurate with the
8 employee's ability. Each license so granted shall establish a wage for the licensee
9 employees of the licensee who are unable to earn a living wage.

10 **SECTION 16.** 104.07 (2) of the statutes is amended to read:

11 104.07 (2) The department shall ~~make~~ promulgate rules, and, except as
12 provided under subs. (5) and (6), grant licenses to sheltered workshops, to permit the
13 employment of workers with disabilities who are unable to earn the living wage at
14 a wage that is commensurate with their ability and productivity. A license granted
15 to a sheltered workshop under this subsection may be issued for the entire workshop
16 or a department of the workshop.

17 **SECTION 17.** 104.10 of the statutes is amended to read:

18 **104.10 Penalty for intimidating witness.** Any employer who discharges or
19 threatens to discharge, or who in any way discriminates, or threatens to discriminate
20 against, any employee because the employee has testified or is about to testify, or
21 because the employer believes that the employee may testify, in any investigation or
22 proceeding relative to the enforcement of this chapter, ~~is guilty of a misdemeanor,~~
23 ~~and upon conviction thereof shall be punished by a fine of~~ may be fined \$25 for each
24 offense.

25 **SECTION 18.** 104.11 of the statutes is amended to read:

1 **104.11 Definition of violation.** Each day during which any employer shall
2 employ employs a person for whom a living wage has been fixed at a wage that is less
3 than the living wage fixed shall constitute a separate and distinct violation of this
4 chapter.

5 **SECTION 19.** 234.94 (5) of the statutes is amended to read:

6 234.94 (5) “Primary employment” means work ~~which~~ that pays at least the
7 minimum wage as established under ~~ch. 104 s. 104.035 (1)~~ or under federal law,
8 whichever is greater, offers adequate fringe benefits, including health insurance,
9 and is not seasonal or part time.

10 **SECTION 20.** 234.94 (8) of the statutes is amended to read:

11 234.94 (8) “Target group” means a population group for which the
12 unemployment level is at least 25% higher than the statewide unemployment level,
13 or a population group for which the average wage received is less than 1.2 times the
14 minimum wage as established under ~~ch. 104 s. 104.035 (1)~~ or under federal law,
15 whichever is greater. No population group is required to be located within a
16 contiguous geographic area to be considered a target group.

17 **SECTION 21.** 800.09 (1) (b) of the statutes is amended to read:

18 800.09 (1) (b) If the defendant agrees to perform community service work in
19 lieu of making restitution or paying the forfeiture, assessments, and costs, or both,
20 the court may order that the defendant perform community service work for a public
21 agency or a nonprofit charitable organization that is designated by the court.
22 Community service work may be in lieu of restitution only if also agreed to by the
23 public agency or nonprofit charitable organization and by the person to whom
24 restitution is owed. The court may utilize any available resources, including any
25 community service work program, in ordering the defendant to perform community

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

7 **SECTION 22.** 800.095 (4) (b) 3. of the statutes is amended to read:

8 800.095 (4) (b) 3. That the defendant perform community service work for a
9 public agency or a nonprofit charitable organization designated by the court, except
10 that the court may not order the defendant to perform community service work
11 unless the defendant agrees to perform community service work and, if the
12 community service work is in lieu of restitution, unless the person to whom the
13 restitution is owed agrees. The court may utilize any available resources, including
14 any community service work program, in ordering the defendant to perform
15 community service work. The number of hours of community service work required
16 may not exceed the number determined by dividing the amount owed on the
17 forfeiture, or restitution, or both, by the minimum wage established under ~~ch. 104~~
18 ~~for adults in nonagriculture, nontipped employment~~ s. 104.035 (1). The court shall
19 ensure that the defendant is provided a written statement of the terms of the
20 community service order and that the community service order is monitored.

21 **SECTION 23.** 895.035 (2m) (c) of the statutes is amended to read:

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

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

14 **SECTION 24. Effective date.**

15 (1) MINIMUM WAGE. This act takes effect on September 5, 2011, or on the day
16 after publication, whichever is later.

17 (END)