



**SENATE SUBSTITUTE AMENDMENT 1,
TO 2009 SENATE BILL 1**

January 23, 2009 – Offered by Senator DECKER.

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, and granting 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 June 1, 2009, or on the day after publication of the substitute amendment, whichever is later, as follows:

Employees generally

Current minimum wage	\$6.50 per hour
Minimum wage on effective date	\$7.60 per hour

Minor employees

Current minimum wage	\$5.90 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
Minimum wage on effective date	\$2.75 per hour for nonopportunity employees \$2.50 per hour for opportunity employees

Agricultural employees

Current minimum wage	\$5.15 per hour for adults \$4.25 per hour for minors
Minimum wage on effective date	\$7.25 per hour for adults \$7.25 per hour for minors

Adult camp counselors

Current minimum wage	\$315 per week if meals and lodging not furnished \$240 per week if meals, but not lodging, furnished \$189 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

Minor camp counselors

Current minimum wage	\$275 per week if meals and lodging not furnished \$209 per week if meals, but not lodging, furnished \$165 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	\$52 per week or \$7.40 per day
Allowance on effective date	\$61 per week or \$8.65 per day

Meals

Current allowance	\$78 per week or \$3.70 per meal
Allowance on effective date	\$91 per week or \$4.35 per meal

Minor employees

Lodging

Current allowance	\$47.20 per week or \$6.75 per day
Allowance on effective date	\$58 per week or \$8.30 per day

Meals

Current allowance	\$70.80 per week or \$3.35 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

Adult agricultural employees

Lodging

Current allowance \$41.20 per week or \$5.90 per day

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

Meals

Current allowance \$61.80 per week or \$2.95 per meal

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

Minor agricultural employees

Lodging

Current allowance \$34 per week or \$4.85 per day

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

Meals

Current allowance	\$51 per week or \$2.40 per meal
Allowance on effective date	\$87 per week or \$4.15 per meal

Beginning on June 1, 2010, 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 May 31 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.

5 **SECTION 2.** 104.001 of the statutes is repealed.

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

7 **104.01 Definitions.** (intro.) ~~The following terms as used in In~~ this chapter
8 ~~shall be construed as follows:~~

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

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

11 104.01 (1d) “Agricultural employee” means an employee who is employed in
12 farming, as defined in s. 102.04 (3).

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

2 104.01 **(1g)** “Consumer price index” means the average of the consumer price
3 index over each 12-month period for all urban consumers, U.S. city average, as
4 determined by the bureau of labor statistics of the U.S. department of labor.

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

6 104.01 **(5g)** “Minor employee” means a minor who is paid at the applicable
7 minimum wage rate for minors.

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

9 104.01 **(5m)** “Opportunity employee” means a person under 20 years of age who
10 is in the first 90 consecutive days of employment with his or her employer.

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

12 104.01 **(7m)** “Tipped employee” means an employee who in the course of
13 employment customarily and regularly receives money or other gratuities from
14 persons other than the employee’s employer.

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

16 104.01 **(8)** ~~The term “wage” and the term “wages” shall each mean~~ “Wage”
17 means any compensation for labor measured by time, piece, or otherwise.

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

19 **104.035 Minimum wage. (1) EMPLOYEES GENERALLY. (a) Minimum rates.**

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

21 1. For wages earned before June 1, 2010, \$7.60 per hour.

22 2. For wages earned beginning on June 1, 2010, the amount determined by the
23 department by rule promulgated under sub. (9).

24 (b) *Allowances for meals and lodging.* Except as provided in subs. (2) (b) and
25 (4) (b), if an employer furnishes an employee with meals or lodging in accordance

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

3 1. For lodging furnished before June 1, 2010, \$61 per week or \$8.65 per day and
4 for meals furnished before June 1, 2010, \$91 per week or \$4.35 per meal.

5 2. For meals and lodging furnished beginning on June 1, 2010, the amounts
6 determined by the department by rule promulgated under sub. (9).

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

9 1. For wages earned before June 1, 2010, \$7.25 per hour.

10 2. For wages earned beginning on June 1, 2010, the amount determined by the
11 department by rule promulgated under sub. (9).

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

16 1. For lodging furnished before June 1, 2010, \$58 per week or \$8.30 per day and
17 for meals furnished before June 1, 2010, \$87 per week or \$4.15 per meal.

18 2. For meals and lodging furnished beginning on June 1, 2010, the amounts
19 determined by the department by rule promulgated under sub. (9).

20 **(2m) OPPORTUNITY EMPLOYEES.** (a) *Minimum rates.* Except as provided in subs.
21 (3) to (8), the minimum wage for an opportunity employee is as follows:

22 1. For wages earned before June 1, 2010, \$6.90 per hour.

23 2. For wages earned beginning on June 1, 2010, the amount determined by the
24 department by rule promulgated under sub. (9).

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

5 1. For lodging furnished before June 1, 2010, \$55.20 per week or \$7.90 per day
6 and for meals furnished before June 1, 2010, \$82.85 per week or \$3.90 per meal.

7 2. For meals and lodging furnished beginning on June 1, 2010, the amounts
8 determined by the department by rule promulgated under sub. (9).

9 **(3) TIPPED EMPLOYEES.** (a) *Minimum rates.* Except as provided in subs. (4) to
10 (8), if an employer of a tipped employee establishes by the employer's payroll records
11 that, when adding the tips received by the tipped employee in a week to the wages
12 paid to the tipped employee in that week, the tipped employee receives not less than
13 the applicable minimum wage specified in sub. (1) or (2), the minimum wage for the
14 tipped employee is as follows:

15 1. For wages earned before June 1, 2010, by a tipped employee who is not an
16 opportunity employee, \$2.75 per hour.

17 2. For wages earned before June 1, 2010, by a tipped employee who is an
18 opportunity employee, \$2.50 per hour.

19 3. For wages earned beginning on June 1, 2010, the amounts determined by the
20 department by rule promulgated under sub. (9).

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

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

3 1. For wages earned before June 1, 2010, \$7.25 per hour.

4 2. For wages earned beginning on June 1, 2010, the amounts determined by the
5 department by rule promulgated under sub. (9).

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

10 1. For lodging furnished before June 1, 2010, \$58 per week or \$8.30 per day and
11 for meals furnished before June 1, 2010, \$87 per week or \$4.15 per meal.

12 2. For meals and lodging furnished beginning on June 1, 2010, the amounts
13 determined by the department by rule promulgated under sub. (9).

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

16 (a) For wages earned before June 1, 2010, \$350 per week if meals and lodging
17 are not furnished, \$265 per week if only meals are furnished, and \$210 per week if
18 both meals and lodging are furnished.

19 (b) For wages earned beginning on June 1, 2010, the amounts determined by
20 the department by rule promulgated under sub. (9).

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

22 (a) For wages earned before June 1, 2010, \$12.30 for caddying 18 holes.

23 (b) For wages earned before June 1, 2010, \$6.90 for caddying 9 holes.

24 (c) For wages earned beginning on June 1, 2010, the amounts determined by
25 the department by rule promulgated under sub. (9).

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

3 (a) An employee or worker with a disability covered under a license under s.
4 104.07.

5 (b) A student learner.

6 (c) A student employed by an independent college or university for less than
7 20 hours per week.

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

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

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

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

19 **(9) DEPARTMENT TO REVISE.** (a) Subject to pars. (b) and (c), by June 1 of each year,
20 the department, using the procedures under s. 227.24, shall promulgate rules to
21 revise the minimum wages and allowances for meals and lodging established under
22 subs. (1) to (7). The department shall determine those revised minimum wages and
23 allowances by calculating the percentage difference between the consumer price
24 index for the 12-month period ending on the last day of February of the preceding
25 year and the consumer price index for the 12-month period ending on the last day

1 of February of the current year, adjusting the minimum wages and allowances in
2 effect on May 31 of the current year by that percentage difference, and rounding that
3 result to the nearest multiple of 5 cents, except that for a minimum wage under sub.
4 (5), the department shall round the result to the nearest dollar. Notwithstanding s.
5 227.24 (1) (a), (2) (b), and (3), the department may promulgate an emergency rule
6 under s. 227.24 revising the minimum wages and allowances established under subs.
7 (1) to (7) without providing evidence that the emergency rule is necessary to preserve
8 the public peace, health, safety, or welfare and without a finding of emergency. A
9 revised minimum wage or allowance determined under this paragraph shall first
10 apply to wages earned or meals or lodging furnished on June 1 of the year in which
11 the wage or allowance is revised.

12 (b) Paragraph (a) does not apply if the consumer price index for the 12-month
13 period ending on the last day of February of the current year has not increased over
14 the consumer price index for the 12-month period ending on the last day of February
15 of the preceding year.

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

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

20 **104.045 ~~Tipped employees~~ Tips, meals, lodging, and hours worked.**
21 (intro.) The department shall by rule determine what amount of promulgate rules
22 governing all of the following:

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

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

1 104.045 (2) The deduction of meals or lodging provided by an employer to an
2 employee from the employer's obligation under this chapter.

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

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

6 **104.05 Complaints; investigation.** ~~The department shall, within~~ Within 20
7 days after the filing of a verified complaint of any person ~~setting forth~~ alleging that
8 the wages paid to any employee in any occupation are not sufficient to enable the
9 employee to maintain himself or herself under conditions consistent with his or her
10 welfare, the department shall investigate and determine whether there is
11 reasonable cause to believe that the wage paid to any employee is not a living wage.

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

13 104.07 (1) The department shall ~~make~~ promulgate rules, and, except as
14 provided under subs. (5) and (6), grant licenses to any employer who employs any
15 employee who is unable to earn the living wage determined by the department,
16 permitting the employee to work for a wage that is commensurate with the
17 employee's ability. Each license so granted shall establish a wage for the licensee
18 employees of the licensee who are unable to earn a living wage.

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

20 104.07 (2) The department shall ~~make~~ promulgate rules, and, except as
21 provided under subs. (5) and (6), grant licenses to sheltered workshops, to permit the
22 employment of workers with disabilities who are unable to earn the living wage at
23 a wage that is commensurate with their ability and productivity. A license granted
24 to a sheltered workshop under this subsection may be issued for the entire workshop
25 or a department of the workshop.

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

2 **104.10 Penalty for intimidating witness.** Any employer who discharges or
3 threatens to discharge, or who in any way discriminates, or threatens to discriminate
4 against, any employee because the employee has testified or is about to testify, or
5 because the employer believes that the employee may testify, in any investigation or
6 proceeding relative to the enforcement of this chapter, ~~is guilty of a misdemeanor,~~
7 ~~and upon conviction thereof shall be punished by a fine of~~ may be fined \$25 for each
8 offense.

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

10 **104.11 Definition of violation.** Each day during which any employer shall
11 ~~employ~~ employs a person for whom a living wage has been fixed at a wage that is less
12 than the living wage fixed shall constitute a separate and distinct violation of this
13 chapter.

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

15 234.94 (5) “Primary employment” means work which that pays at least the
16 minimum wage as established under ~~ch. 104 s. 104.035 (1)~~ or under federal law,
17 whichever is greater, offers adequate fringe benefits, including health insurance,
18 and is not seasonal or part time.

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

20 234.94 (8) “Target group” means a population group for which the
21 unemployment level is at least 25% higher than the statewide unemployment level,
22 or a population group for which the average wage received is less than 1.2 times the
23 minimum wage as established under ~~ch. 104 s. 104.035 (1)~~ or under federal law,
24 whichever is greater. No population group is required to be located within a
25 contiguous geographic area to be considered a target group.

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

2 800.09 (1) (b) If the defendant agrees to perform community service work in
3 lieu of making restitution or paying the forfeiture, assessments, and costs, or both,
4 the court may order that the defendant perform community service work for a public
5 agency or a nonprofit charitable organization that is designated by the court.
6 Community service work may be in lieu of restitution only if also agreed to by the
7 public agency or nonprofit charitable organization and by the person to whom
8 restitution is owed. The court may utilize any available resources, including any
9 community service work program, in ordering the defendant to perform community
10 service work. The number of hours of community service work required may not
11 exceed the number determined by dividing the amount owed on the forfeiture by the
12 minimum wage established under ~~ch. 104 for adults in nonagriculture, nontipped~~
13 ~~employment~~ s. 104.035 (1). The court shall ensure that the defendant is provided a
14 written statement of the terms of the community service order and that the
15 community service order is monitored.

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

17 800.095 (4) (b) 3. That the defendant perform community service work for a
18 public agency or a nonprofit charitable organization designated by the court, except
19 that the court may not order the defendant to perform community service work
20 unless the defendant agrees to perform community service work and, if the
21 community service work is in lieu of restitution, unless the person to whom the
22 restitution is owed agrees. The court may utilize any available resources, including
23 any community service work program, in ordering the defendant to perform
24 community service work. The number of hours of community service work required
25 may not exceed the number determined by dividing the amount owed on the

1 forfeiture, or restitution, or both, by the minimum wage established under ~~ch. 104~~
2 ~~for adults in nonagriculture, nontipped employment s. 104.035 (1)~~. The court shall
3 ensure that the defendant is provided a written statement of the terms of the
4 community service order and that the community service order is monitored.

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

6 895.035 (2m) (c) The court assigned to exercise jurisdiction under chs. 48 and
7 938 may order that the juvenile perform community service work for a public agency
8 or nonprofit charitable organization that is designated by the court in lieu of making
9 restitution or paying the forfeiture or surcharge. If the parent agrees to perform
10 community service work in lieu of making restitution or paying the forfeiture or
11 surcharge, the court may order that the parent perform community service work for
12 a public agency or a nonprofit charitable organization that is designated by the court.
13 Community service work may be in lieu of restitution only if also agreed to by the
14 public agency or nonprofit charitable organization and by the person to whom
15 restitution is owed. The court may utilize any available resources, including any
16 community service work program, in ordering the juvenile or parent to perform
17 community service work. The number of hours of community service work required
18 may not exceed the number determined by dividing the amount owed on the
19 restitution, forfeiture, or surcharge by the minimum wage established under ~~ch. 104~~
20 ~~for adults in nonagriculture, nontipped employment s. 104.035 (1)~~. The court shall
21 ensure that the juvenile or parent is provided with a written statement of the terms
22 of the community service order and that the community service order is monitored.

23 **SECTION 24. Effective date.**

