



MARK BORN

STATE REPRESENTATIVE • 39TH ASSEMBLY DISTRICT

Testimony on Assembly Bill 667

Committee on Labor

February 12, 2014

Mr. Chairman and committee members,

Thank you for giving me the opportunity to speak in favor of Assembly Bill 667, which would allow factory and mercantile employees to voluntarily choose to work without one day of rest in seven.

Wisconsin employment law currently requires certain employers to provide an employee with at least 24 consecutive hours of rest in every seven consecutive days. This “one day of rest in seven” provision differs from the policies of the vast majority of other states, which do not place limits on the number of days an employee may work. Wisconsin’s provision also differs from federal requirements which say that as long as minimum wage and overtime requirements are met, there is no limitation on the number of consecutive days an employee can work. AB 667 would give factory and mercantile workers the ability to choose to work seven consecutive days without a day of rest. Under the bill, the one day of rest provision still applies to these workers but they would now have the expressed ability to volunteer to work more if they choose to.

Employees are *already* able to voluntarily coordinate with their employer in order to waive their day of rest. However, the process is time consuming and detrimental to both employees and employers since both parties have to wait for a permission waiver to travel to and from the Department of Workforce Development (DWD) in Madison for approval. Last year, DWD approved all of the requests of this type, which raises the following question: *If an employee wants to work seven consecutive days, and their employer obliges, why should they have to wait for the state to have the final say on the matter, especially when the request will almost certainly be approved?*

By codifying that certain workers can volunteer to continue working without their day of rest, AB 667 removes the permission waiver process from the equation. Taking out this extra step will allow employees to be more responsive to schedule changes which could in turn help employers respond better to fluctuations in production.

During an interview a few weeks ago, a reporter asked me if I was surprised by the considerable amount of attention this bill has garnered both in Wisconsin and across the country. I told him I was indeed surprised because the federal government and nearly forty other states do not even have a one day of rest rule, and AB 667 does nothing to eliminate this unique provision here in Wisconsin.

Some have hastily jumped to their own conclusions about a bill that simply eliminates a step of paperwork. The safeguards we have in place to prevent forced overtime remain intact under AB 667. As is the case under current law, this bill requires an employee who chooses to work overtime to do so voluntarily. Under my bill, this process would now take place solely between a worker and their employer without taking an unnecessary detour through Madison. Keeping detailed records of this worker-employer relationship would be in the best interest of both parties.

An employee cannot be forced to violate the law. If a worker fears discrimination for not volunteering to work overtime, they can still file a complaint with the Equal Rights Division at DWD. Since this bill makes a minor change to an option that already exists, we have the ability to look back and see if the practice has been abused. Last year, the Equal Rights Division received only one valid complaint of forced overtime.

Thank you again for the opportunity to speak in favor of this bill.

February 12, 2014

To: Members of the Assembly Committee on Labor
From: Senator Glenn Grothman
Re: Assembly Bill 667

Wisconsin employment law currently requires certain employers to provide an employee at least twenty-four consecutive hours of rest in every seven consecutive days. We call this the “one day of rest in seven” provision.

Wisconsin law differs from the federal requirements. There is no federal “one day of rest” provision. The federal government says that as long as minimum wage and overtime requirements are met, there is no limitation on the number of consecutive days an employee may work. Also, only a handful of other states have this law on their books. This legislation brings us in line with federal law and most other states.

Wisconsin law does allow employers to apply for a waiver from DWD in certain circumstances, but the process takes time for both the employer and the Department of Workforce Development.

Recently, we have heard from businesses that have employees who want to work the additional time. We have also heard from employees that want to receive the additional wages and overtime that is provided when taking on extra hours. This bill allows an employee to voluntarily, in writing, choose to work without one day of rest in seven.

Employees are in a wide array of situations. Some individuals want to work as many hours as possible to save up for a trip, a new car, their children’s education or many other things. In order to do this currently they may have to work two or three jobs, with the additional jobs being minimum wage jobs. This bill gives workers flexibility and opportunity. They will be able to work more hours at one job, which will allow them to make more money with overtime than they would have made at the multiple jobs.

Please consider joining me in giving employees more say in their overtime work opportunities. This bill will give workers the freedom to make the decision that is best for their individual situations.



WISCONSIN MANUFACTURERS & COMMERCE

To: Members of the Assembly Committee on Labor
From: Chris Reader, WMC Director of Health and Human Resources Policy
Date: February 12, 2014
Regarding: **Support Assembly Bill 667, 1 Day of Rest in 7 Waiver**

Wisconsin Manufacturers & Commerce (WMC) supports Assembly Bill (SB) 667, which changes how some workers are able to exempt themselves from the state requirement that they have a day off per week. At its core this is a simple bill that is more of a paperwork reduction act than it is an actual change in policy.

Currently, Wisconsin Statute §103.85 mandates that factories and mercantile establishments allow most workers 1 day off during a 7 day period. The statute further specifies many jobs within factories and mercantile establishments the current law does not apply to, and it allows for the day-off to be waived with Department of Workforce Development (DWD) approval. DWD 275 lists additional specific jobs to which the §103.85 day-off requirement does not apply.

Employees in industries other than factories and mercantile establishments are not covered under §103.85. Rather than a day-off obligation, all industries not specified under §103.85 must follow the usual Fair Labor Standards Act (FLSA) overtime requirements. Under federal law and in the vast majority of states, FLSA is the governing overtime law for all industries, including factories and mercantile establishments.

As previously mentioned, §103.85 currently provides for DWD to waive the day-off requirement in response to a petition from the employer and employee. That routinely happens today.

In 2013, 169 waiver requests were made of DWD, and all 169 of the requests were granted.

Importantly, the waivers are always granted by DWD with the condition that the 7th day of work must be voluntary for each individual worker, and the evidence shows us that volunteer overtime is indeed what occurs. Complaints of forced overtime are virtually nonexistent. In 2013, DWD received a grand total of 8 complaints, only 1 of which was found to be an inadvertent infraction.

AB 667 simply eliminates the need for workers and employers to seek state permission every time there's a possibility for working seven straight days. In reality, what this means is if a company has a surge in sales and has a need for extra production hours, willing employees will be able to volunteer to work overtime without first asking the state for permission.

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Founded in 1911, Wisconsin Manufacturers & Commerce is the state's chamber of commerce and largest business trade association representing more than 3,500 employers of every size and from every sector of the economy.



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Questions and Answers

What industries will AB 667 impact?

Only factories and mercantile facilities are required to follow the current day-off requirement. Even within those, the current law does not apply to the following employees: janitors; watchmen; persons employed in the manufacture of butter, cheese or other dairy products or in the distribution of milk or cream; or in canneries and freezers; persons employed in bakeries, flour and feed mills, hotels, and restaurants; employees whose duties include no work on Sunday other than caring for live animals or maintaining fires, and any labor called for by emergency that could not reasonably have been anticipated.

Per DWD 275, in paper and pulp mills, the day-off requirement does not apply to superintendents or department heads whose work is supervisory and not manual. It does apply to machine operators in paper and pulp mills, but in those mills it does not apply to millwrights, electricians, pipe fitters, and other employees whose duties include not more than five hours of essential work on Sunday, making necessary repairs to boilers, piping, wiring or machinery.

Does the federal government have a similar law?

No, the federal government does not have a day-off requirement. The Fair Labor Standards Act (FLSA) requires overtime pay of time and one-half for more than 40 hours of work per week. There is no limit on the total number of hours or days worked.

What do other states say about this law?

The vast majority of states have no overtime requirements other than what is provided for in the FLSA. Only a handful of states have a provision similar to requiring a day off for certain employees. Of our neighbors, only Illinois has a similar law.

Won't this lead to forced overtime?

No. The overtime must be voluntary, just like current law. There were only eight instances in 2013 of alleged violations. Only one of those complaints was found to be valid.

Employers strive to have strong community ties and favorable public images. If a company was continually forcing employees to work seven straight days and miss time with their families, those workers would find different jobs and the reputation of the employer would quickly deteriorate. That's clearly not in the best interest of the employer.

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Why doesn't a company simply open a new production line or hire additional workers?

That's a business decision that every company with increased sales faces. Sometimes it makes sense to install a new production line or hire additional workers. Other times, such as when it is unknown if a sales increase will sustain into the future, or when the increase is due to a contract with a known end date, it doesn't make financial sense to invest capital in new equipment, workers, and training, especially if the current workforce is willing to take on the added workload.

Why is AB 667 necessary if the waivers are already granted?

Like so many areas of employment law, Wisconsin is out of step with the rest of the country. It makes sense to bring our state in line with most other states and the federal government in this area.

There's no reason the state needs to approve when a worker can and cannot volunteer to work overtime. Eliminating the waiver requirement will save time and money for human resources departments and the Department of Workforce Development.

How will the volunteer form work?

It would be up to each employer to determine how to execute the form. Some employers might decide to have a form that employees would sign specific to each occurrence of overtime on a seventh day, others might have a form that covers a period of time, such as a quarter or a year. In either case, the form must be voluntarily signed by the employee, and each instance of working on the 7th day would be voluntary, as it is now.

What recourse will workers have if they feel like they are being discriminated against for not volunteering to work overtime?

As they can under current law, they will be able to contact the Department of Workforce Development and file a complaint. Employees cannot be compelled to violate the law and their legal protections do not change under AB 667.

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