

## CHAPTER 103

### EMPLOYMENT REGULATIONS

103.001	Definitions.	103.545	Recruitment of strikebreakers.
103.005	Powers, duties and jurisdiction of department.	103.55	Public policy as to labor litigation.
103.01	Hours of labor; definitions.	103.56	Injunctions: conditions of issuance; restraining orders.
103.02	Hours of labor.	103.57	Clean hands doctrine.
103.025	Hours of labor; compensatory time.	103.58	Injunctions: contents.
103.03	Violations; penalty.	103.59	Injunctions: appeals.
103.04	Labor and industry review commission.	103.60	Contempt cases.
103.05	Hiring reporting system; state directory of new hires.	103.61	Punishment for contempt.
103.10	Family or medical leave.	103.64	Employment of minors; definitions.
103.13	Records open to employee.	103.65	General standards for employment of minors.
103.14	Grooming requirement; notification.	103.66	Powers and duties of the department relating to employment of minors.
103.15	Restrictions on use of a test for HIV.	103.67	Minimum ages in various employments.
103.16	Seats for employees; penalty.	103.68	Hours of labor.
103.17	Mutual forfeit.	103.695	Designation of a permit officer.
103.18	Threat or promise to influence vote.	103.70	Permits necessary for minors; exceptions.
103.19	Children in shows.	103.71	Conditions for issuance of permits.
103.20	Penalty.	103.72	Refusal and revocation of permits.
103.21	Street trades; definitions.	103.73	Form and requisites of permit; as evidence.
103.22	General standards and powers of the department.	103.74	Duties of employers of minors.
103.23	Age minimum.	103.75	Certificates of age.
103.24	Hours of work.	103.76	Proof of age in court.
103.245	Designation of a permit officer.	103.78	Minors in public exhibitions, radio and television broadcasts, modeling.
103.25	Permits and identification cards.	103.79	Minor golf caddies.
103.26	Refusal or revocation of permits and identification cards.	103.80	Inspection.
103.27	Duties of employers of minors in street trades.	103.805	Fees; permits and certificates of age.
103.275	Duties of employers in house-to-house street trades.	103.81	Advertising; penalty.
103.28	Enforcement.	103.82	Penalties.
103.29	Penalties.	103.83	Discriminatory acts; employment of minors.
103.30	Penalty on newspapers for allowing minors to loiter around premises.	103.85	One day of rest in seven.
103.31	Penalty on parent or guardian.	103.86	Employee welfare funds; default in payments.
103.32	Recovery of arrears of wages.	103.87	Employee not to be disciplined for testifying.
103.33	Discriminatory acts; street trades.	103.90	Definitions.
103.35	Information required for licensure.	103.905	Department's duties.
103.37	Certain requirements to obtaining employment prohibited.	103.91	Migrant labor contractors.
103.38	Eight-hour work day; applicability.	103.915	Migrant work agreements.
103.43	Fraudulent advertising for labor.	103.917	Safe transportation.
103.45	Time checks; penalty.	103.92	Certification of migrant labor camps.
103.455	Deductions for faulty workmanship, loss, theft or damage.	103.925	Access and entry.
103.457	Listing deductions from wages.	103.926	Vacating residence.
103.46	Contracts; promises to withdraw from or not to join labor, employers' or cooperative organizations are void.	103.93	Wages.
103.465	Restrictive covenants in employment contracts.	103.935	Hours of labor.
103.49	Wage rate on state work.	103.94	Civil action by migrant workers.
103.50	Highway contracts.	103.945	Nonwaiver of rights.
103.505	Collective bargaining; definitions.	103.96	Retaliation prohibited.
103.51	Public policy as to collective bargaining.	103.965	Correction period.
103.52	"Yellow-dog" contracts.	103.967	Duties of council on migrant labor.
103.53	Lawful conduct in labor disputes.	103.968	Council review of rules.
103.535	Unlawful conduct in labor controversies.	103.969	New contract compliance.
103.54	Responsibility for unlawful acts.	103.97	Penalties.

**103.001 Definitions.** In chs. 103 to 106, the following words and phrases have the designated meanings unless a different meaning is expressly provided:

(1) "Commission" means the labor and industry review commission.

(2) "Commissioner" means a member of the commission.

(3) "Department" means the department of workforce development.

(4) "Deputy" means any person employed by the department designated as a deputy, who possesses special, technical, scientific, managerial or personal abilities or qualities in matters within the jurisdiction of the department, and who may be engaged in the performance of duties under the direction of the secretary, calling for the exercise of such abilities or qualities.

(5) "Employee" means any person who may be required or directed by any employer, in consideration of direct or indirect gain or profit, to engage in any employment, or to go or work or be at any time in any place of employment.

(6) "Employer" means any person, firm, corporation, state, county, town, city, village, school district, sewer district, drainage

district, family care district and other public or quasi-public corporations as well as any agent, manager, representative or other person having control or custody of any employment, place of employment or of any employee.

(7) "Employment" means any trade, occupation or process of manufacture, or any method of carrying on such trade, occupation or process of manufacture in which any person may be engaged, except in such private domestic service as does not involve the use of mechanical power and in farm labor as used in sub. (12).

(8) "Frequenter" means every person, other than an employee, who may go in or be in a place of employment or public building under circumstances which render such person other than a trespasser. Such term includes a pupil or student when enrolled in or receiving instruction at an educational institution.

(9) "General order" means such order as applies generally throughout the state to all persons, employments, places of employment or public buildings, or all persons, employments or places of employment or public buildings of a class under the jurisdiction of the department. All other orders of the department shall be considered special orders.

(10) “Local order” means any ordinance, order, rule or determination of any common council, board of alderpersons, board of trustees or the village board, of any village or city, a regulation or order of the local board of health, as defined in s. 250.01 (3), or an order or direction of any official of a municipality, upon any matter over which the department has jurisdiction.

(11) “Order” means any decision, rule, regulation, direction, requirement or standard of the department, or any other determination arrived at or decision made by the department.

(12) “Place of employment” includes every place, whether indoors or out or underground and the premises appurtenant thereto where either temporarily or permanently any industry, trade or business is carried on, or where any process or operation, directly or indirectly related to any industry, trade or business, is carried on, and where any person is, directly or indirectly, employed by another for direct or indirect gain or profit, but does not include any place where persons are employed in private domestic service which does not involve the use of mechanical power or in farming. “Farming” includes those activities specified in s. 102.04 (3), and also includes the transportation of farm products, supplies or equipment directly to the farm by the operator of said farm or employees for use thereon, if such activities are directly or indirectly for the purpose of producing commodities for market, or as an accessory to such production.

(13) “Public building” means any structure, including exterior parts of such building, such as a porch, exterior platform or steps providing means of ingress or egress, used in whole or in part as a place of resort, assemblage, lodging, trade, traffic, occupancy, or use by the public or by 3 or more tenants.

(14) “Safe” or “safety”, as applied to an employment or a place of employment or a public building, means such freedom from danger to the life, health, safety or welfare of employees or frequenters, or the public, or tenants, or fire fighters, and such reasonable means of notification, egress and escape in case of fire, and such freedom from danger to adjacent buildings or other property, as the nature of the employment, place of employment, or public building, will reasonably permit.

(15) “Secretary” means the secretary of workforce development.

(16) “Welfare” includes comfort, decency and moral well-being.

**History:** 1995 a. 27 ss. 3612, 3613, 3746, 9130 (4); 1997 a. 3; 1999 a. 9.

**103.005 Powers, duties and jurisdiction of department.** (1) The department shall adopt reasonable and proper rules and regulations relative to the exercise of its powers and authorities and proper rules to govern its proceedings and to regulate the mode and manner of all investigations and hearings.

(3) The department shall employ, promote and remove deputies, clerks and other assistants as needed, to fix their compensation, and to assign to them their duties; and shall appoint advisers who shall, without compensation except reimbursement for actual and necessary expenses, assist the department in the execution of its duties.

(4) The department shall collect, collate and publish statistical and other information relating to the work under its jurisdiction and shall make public reports in its judgment necessary.

(5) (a) The department shall conduct such investigations, hold such public meetings and attend or be represented at such meetings, conferences and conventions inside or outside of the state as may, in its judgment, tend to better the execution of its functions.

(b) For the purpose of making any investigation with regard to any employment, the secretary may appoint, by an order in writing, any deputy who is a citizen of the state, or any other competent person as an agent whose duties shall be prescribed in such order.

(c) In the discharge of his or her duties such agent shall have every power of an inquisitorial nature granted in chs. 103 to 106 to the department, the same powers as a supplemental court com-

missioner with regard to the taking of depositions and all powers granted by law to a supplemental court commissioner relative to depositions.

(d) The department may conduct any number of such investigations contemporaneously through different agents, and may delegate to such agent the taking of all testimony bearing upon any investigation or hearing. The decision of the department shall be based upon its examination of all testimony and records. The recommendations made by such agents shall be advisory only and shall not preclude the taking of further testimony if the department so orders nor preclude further investigation.

(e) The secretary may direct any deputy who is a citizen to act as special prosecutor in any action, proceeding, investigation, hearing or trial relating to the matters within its jurisdiction.

(f) Upon the request of the department, the department of justice or district attorney of the county in which any investigation, hearing or trial had under chs. 103 to 106 is pending, shall aid therein and prosecute under the supervision of the department, all necessary actions or proceedings for the enforcement of those sections and all other laws of this state relating to the regulation of employment, and for the punishment of all violations thereof.

(6) (a) All orders of the department in conformity with law shall be in force, and shall be prima facie lawful; and all such orders shall be valid and in force, and prima facie reasonable and lawful until they are found otherwise upon judicial review thereof pursuant to ch. 227 or until altered or revoked by the department.

(b) All general orders shall take effect as provided in s. 227.22. Special orders shall take effect as directed in the special order.

(c) The department shall, upon application of any employer or owner, grant such time as may be reasonably necessary for compliance with any order.

(d) Any person may petition the department for an extension of time, which the department shall grant if it finds such an extension of time necessary.

(e) Any employer or other person interested either because of ownership in or occupation of any property affected by any such order, or otherwise, may petition for a hearing on the reasonableness of any order of the department in the manner provided in chs. 103 to 106.

(f) Such petition for hearing shall be by verified petition filed with the department, setting out specifically and in full detail the order upon which a hearing is desired and every reason why such order is unreasonable, and every issue to be considered by the department on the hearing. The petitioner shall be deemed to have finally waived all objections to any irregularities and illegalities in the order upon which a hearing is sought other than those set forth in the petition. All hearings of the department shall be open to the public.

(g) Upon receipt of such petition, if the issues raised in such petition have theretofore been adequately considered, the department shall determine the same by confirming without hearing its previous determination, or if such hearing is necessary to determine the issues raised, the department shall order a hearing thereon and consider and determine the matter or matters in question at such times as shall be prescribed. Notice of the time and place of such hearing shall be given to the petitioner and to such other persons as the department may find directly interested in such decision.

(h) Upon such investigation, if the department finds that the order complained of is unjust or unreasonable the department shall substitute for that order such other order as shall be just and reasonable.

(i) Whenever at the time of the final determination upon such hearing it shall be found that further time is reasonably necessary for compliance with the order of the department, the department shall grant such time as may be reasonably necessary for such compliance.

(7) (a) Any person affected by any local order in conflict with an order of the department, may in the manner provided in sub. (6)

(e) to (i), petition the department for a hearing on the ground that such local order is unreasonable and in conflict with the order of the department. The petition for such hearing shall conform to the requirements set forth for a petition in sub. (6) (e) to (i).

(b) Upon receipt of a petition under par. (a) the department shall order a hearing to consider and determine the issues raised by the petition. The hearing shall be held in the village, city or municipality where the local order appealed from was made. Notice of the time and place of such hearing shall be given to the petitioner and such other persons as the department may find directly interested in such decision, including the clerk of the municipality or town from which such appeal comes. If upon such investigation it shall be found that the local order appealed from is unreasonable and in conflict with the order of the department, the department may modify its order and shall substitute for the local order appealed from such order as shall be reasonable and legal in the premises, and thereafter the local order shall, in such particulars, be void and of no effect.

(8) (a) No action, proceeding or suit to set aside, vacate or amend any order of the department or to enjoin the enforcement of an order of the department shall be brought unless the plaintiff has applied to the department for a hearing on the order at the time and as provided in sub. (6) (e) to (i), and has, in the petition for the hearing under sub. (6), raised every issue raised in the action, proceeding or suit to set aside, vacate, amend or enjoin the enforcement of the order of the department.

(b) In a prosecution for the violation of an order of the department, the order of the department shall be conclusively presumed to be just, reasonable and lawful, unless prior to the beginning of the prosecution for the violation a proceeding for judicial review of such order has been instituted as provided in ch. 227.

(9) A substantial compliance with the requirements of chs. 103 to 106 shall be sufficient to give effect to an order of the department, and no order may be declared inoperative, illegal or void for any omission of a technical nature.

(10) Except as provided in ss. 103.275 (2) (bm) and (br), 103.91 (4) (b) and (c), 103.92 (6) and (7), 104.07 (5) and (6) and 105.13 (2) and (3), orders of the department under chs. 103 to 106 shall be subject to review in the manner provided in ch. 227.

(11) Every day during which any person or corporation, or any officer, agent or employee of a person or corporation, fails to observe and comply with any order of the department or fails to perform any duty required under chs. 103 to 106, shall constitute a separate and distinct violation of the order or of the requirement under chs. 103 to 106, whichever is applicable.

(12) (a) If any employer, employee, owner, or other person violates chs. 103 to 106, or fails or refuses to perform any duty required under chs. 103 to 106, within the time prescribed by the department, for which no penalty has been specifically provided, or fails, neglects or refuses to obey any lawful order given or made by the department or any judgment or decree made by any court in connection with chs. 103 to 106, for each such violation, failure or refusal, the employer, employee, owner or other person shall forfeit not less than \$10 nor more than \$100 for each offense. This paragraph does not apply to any person who fails to provide any information to the department to assist the department in determining prevailing wage rates or prevailing hours of labor under s. 103.49 (3) (a) or (am) or 103.50 (3) or (4).

(b) It shall be the duty of all officers of the state, the counties and municipalities, upon request of the department, to enforce in their respective departments or jurisdictions all lawful orders of the department to the extent that the orders are applicable and consistent with the general duties of such officers.

(13) (a) The secretary or any examiner appointed by the secretary may hold hearings and take testimony.

(b) Each witness who appears before the department by its order shall receive for attendance the fees and mileage provided for witnesses in civil cases in courts of record, which shall be audited and paid by the state in the same manner as other expenses

are audited and paid, upon the presentation of properly verified vouchers approved by the secretary, and charged to the proper appropriation for the department. No witness subpoenaed at the instance of an attorney under par. (cm) or at the instance of a party other than the department is entitled to compensation from the state for attendance or travel unless the department certifies that the testimony was material to the matter investigated.

(c) The department or any party may in any investigation cause the depositions of witnesses residing within or without the state to be taken in the manner prescribed by law for similar depositions in civil actions in circuit courts. The expense incurred by the state in the taking of such depositions shall be charged against the proper appropriations for the department.

(cm) A party's attorney of record may issue a subpoena to compel the attendance of a witness or the production of evidence. A subpoena issued by an attorney must be in substantially the same form as provided in s. 805.07 (4) and must be served in the manner provided in s. 805.07 (5). The attorney shall, at the time of issuance, send a copy of the subpoena to the appeal tribunal or other representative of the department responsible for conducting the proceeding.

(d) A full and complete record shall be kept of all proceedings had before the department on any investigation and all testimony shall be taken down by the stenographer appointed by the department.

(14) (a) The department shall administer and enforce, so far as not otherwise provided for in the statutes, the laws relating to child labor, employment, employment offices and all other laws relating to the regulation of employment.

(b) The department shall investigate, ascertain and determine such reasonable classifications of persons and employments as shall be necessary to carry out the purposes of chs. 103 to 106.

(c) Any commissioner, the secretary or any deputy of the department may enter any place of employment or public building for the purpose of collecting facts and statistics and bringing to the attention of every employer or owner any law relating to the regulation of employment or any order of the department and any failure on the part of such employer or owner to comply with that law or order. No employer or owner may refuse to admit any commissioner, the secretary or any deputy of the department to his or her place of employment or public building.

(d) Every employer and every owner shall furnish to the department all information required by the department to administer and enforce chs. 103 to 106, and shall provide specific answers to all questions that the department asks relating to any information the department requires.

(e) Any employer receiving from the department any form requesting information that the department requires to administer and enforce chs. 103 to 106, along with directions to complete the form, shall properly complete the form and answer fully and correctly each question asked in the form. If the employer is unable to answer any question, the employer shall give a good and sufficient reason for his or her inability to answer the question. The employer's answers shall be verified under oath by the employer, or by the president, secretary or other managing officer of the corporation, if the employer is a corporation, and the completed form shall be returned to the department at its office within the period fixed by the department.

(15) The department may establish a schedule of fees for publications and seminars provided by the department for which no fee is otherwise authorized, required or prohibited by statute. Fees established under this subsection for publications and seminars provided by the department may not exceed the actual cost incurred in providing those publications and seminars. If the department receives unanticipated proceeds from a statewide labor and management conference provided by the department that exceed the actual cost of the conference, the department may use those unanticipated proceeds to provide grants for local labor and management conferences, educational activities and other

activities to promote positive relations between labor and management.

(16) Each of the commissioners, the secretary or any deputy secretary may certify to official acts, and take testimony.

(17) The department shall administer those programs of public assistance that are specified in subch. III of ch. 49.

(18) The department shall administer the child support and paternity establishment programs under subch. III of ch. 49, as well as perform other functions related to child support that are specified in ch. 49.

(20) The department shall establish a procedure for the department to provide to the state public defender and the department of administration any information that the department may have concerning an individual's wages to assist the state public defender and the department of administration in collecting payment ordered under s. 48.275 (2), 757.66, 973.06 (1) (e) or 977.076 (1).

**History:** 1995 a. 27 ss. 2030, 3649r, 3747, 9130 (4); 1995 a. 215, 404; 1997 a. 3, 191, 237; 2001 a. 61.

**103.01 Hours of labor; definitions.** In ss. 103.01 to 103.03:

(1) (a) "Employer" means every person having control or custody of any employment or place of employment.

(b) "Employer" includes the state, its political subdivisions and any office, department, independent agency, authority, institution, association, society or other body in state or local government created or authorized to be created by the constitution or any law, including the legislature and the courts.

(2) "Employment" means any trade, occupation or process of manufacture, or any method of carrying on such trade or occupation in which any person may be engaged, or for any place of employment.

(3) "Place of employment" means any manufactory, mechanical or mercantile establishment, beauty parlor, laundry, restaurant, confectionary store, or telegraph or telecommunications office or exchange, any express or transportation establishment or any hotel.

**History:** 1971 c. 228 s. 44; 1975 c. 94; 1983 a. 189; 1985 a. 297 s. 76; 1989 a. 225.

**103.02 Hours of labor.** No person may be employed or be permitted to work in any place of employment or at any employment for such period of time during any day, night or week, as is dangerous or prejudicial to the person's life, health, safety or welfare. The department shall investigate, ascertain, determine and fix such reasonable classification, and promulgate rules fixing a period of time, or hours of beginning and ending work during any day, night or week, which shall be necessary to protect the life, health, safety or welfare of any person, or to carry out the purposes of ss. 103.01 to 103.03. The department shall, by rule, classify such periods of time into periods to be paid for at regular rates and periods to be paid for at the rate of at least one and one-half times the regular rates. Such investigations, classifications and orders shall be made as provided in s. 103.005 and the penalties under s. 103.005 (12) shall apply to and be imposed for any violation of ss. 103.01 to 103.03. Such orders shall be subject to review in the manner provided in ch. 227. Section 111.322 (2m) applies to discharge or other discriminatory acts arising in connection with any proceeding under this section.

**History:** 1971 c. 228 s. 43; 1975 c. 94; 1989 a. 228; 1995 a. 27.

**Cross Reference:** See also ch. DWD 274, Wis. adm. code.

Chapter 103 does not provide the exclusive remedy for enforcement of claims under this section. Claims may be enforced by a private action brought under s. 109.03 (5). *German v. DOT*, 223 Wis. 2d 525, 589 N.W.2d 651 (Ct. App. 1998). Affirmed. 2000 WI 62, 235 Wis. 2d 576, 612 N.W.2d 50.

A violation of the public policy expressed by this section is grounds for a wrongful discharge action. *Wilcox v. Niagra of Wisconsin Paper Corp.* 965 F.2d 355 (1992).

**103.025 Hours of labor; compensatory time.** (1) In this section:

(a) "Compensatory time" means hours during which an employee is not working, which are not counted as hours worked during the workweek or other work period classified by the

department by rule promulgated under s. 103.02 for purposes of calculating overtime compensation, and for which the employee is compensated at the employee's regular rate of pay.

(b) "Employee" has the meaning given in s. 104.01 (2).

(c) "Overtime compensation" means the compensation required to be paid for hours worked during periods that the department has classified, by rule promulgated under s. 103.02, as periods to be paid for at the rate of at least 1.5 times an employee's regular rate of pay.

(2) An employee described in s. 103.01 (1) (b) may provide an employee, in lieu of overtime compensation, compensatory time off as permitted under 29 USC 207 (o), as amended to April 15, 1986.

**History:** 1993 a. 144.

**103.03 Violations; penalty.** The employment of any person in any employment or place of employment at any time other than the permissible hours of labor shall be prima facie evidence of a violation of this section. Every day for each person employed, and every week for each person employed, during which any employer fails to observe or to comply with any order of the department, or to perform any duty enjoined by ss. 103.01 to 103.03, shall constitute a separate offense.

**History:** 1975 c. 94; Stats. s. 103.03.

**103.04 Labor and industry review commission.**

(1) The commission shall issue its decision in any case where a petition for review is filed under ch. 102 or 108 or s. 66.191, 1981 stats., or s. 40.65 (2), 106.52 (4), 106.56 (4), 111.39, 303.07 (7) or 303.21.

(2) Notwithstanding s. 227.11, the commission may not promulgate rules except that it may promulgate its rules of procedure.

(3) The commission may employ professional and other persons to assist in the execution of its duties.

**History:** 1977 c. 29; 1981 c. 278 s. 6; 1981 c. 334 s. 25 (2); 1983 a. 122; 1983 a. 191 s. 6; 1985 a. 182 s. 57; 1987 a. 403 s. 256; 1989 a. 31; 1991 a. 295; 1995 a. 27 s. 3651; Stats. 1995 s. 103.04; 1999 a. 82.

**Cross Reference:** See also LIRC, Wis. adm. code.

**103.05 Hiring reporting system; state directory of new hires.** (1) The department shall establish and operate a hiring reporting system that includes a state directory of new hires. All requirements under the reporting system shall be consistent with federal laws and regulations that relate to the reporting of newly hired employees for support collection purposes, as part of the state location service under s. 49.22 (2), or any other purposes specified in 42 USC 653a (h).

(2) (a) Except as provided in par. (b), every employer that employs individuals in the state shall provide to the department information about each newly hired employee.

(b) Paragraph (a) does not apply to an employer that employs individuals in this state and in at least one other state, if the employer has designated, to the secretary of the federal department of health and human services, a state other than this state for the purpose of providing the information required under par. (a). An employer under this paragraph shall notify the department of its designation of another state to the secretary of the federal department of health and human services.

(3) The department shall specify all of the following:

(a) The information that employers must provide under sub. (2) (a).

(b) A number of different ways in which employers may report the information required under sub. (2) (a), including paper and electronic means.

(c) A timetable for the actions and procedures required under the reporting system, including the reporting required under sub. (2) (a).

(4) (a) Except as provided in par. (b), no person may use or disclose information obtained under this section except in the administration of the program under s. 49.22 or a program specified in 42 USC 653a (h).

(b) The department may, to the extent permitted under federal law, disclose information obtained under this section to the department of revenue for the purposes of locating persons, or the assets of persons, who have failed to file tax returns, who have underreported their taxable income or who are delinquent taxpayers, identifying fraudulent tax returns or providing information for tax-related prosecutions.

(5) (a) Except as provided in par. (b), and subject to par. (c), an employer that violates any provision of this section, or any rule promulgated under this section, may be required to forfeit up to \$25 for each employee concerning whom a violation has occurred.

(b) Subject to par. (c), an employer may be required to forfeit up to \$500 for a failure to supply the information under sub. (2) (a) about an employee, or for supplying false or incomplete information under sub. (2) (a) about an employee, as a result of a conspiracy between the employer and the employee to not supply the information or to supply false or incomplete information.

(c) The department shall provide an employer with notice of any violation for which a penalty may be imposed under par. (a) or (b), and with an opportunity to correct the violation, before imposing any penalty under par. (a) or (b).

(d) The department shall deposit all moneys received under this subsection in the appropriation account under s. 20.445 (1) (gd).

(6) If the department determines that the hiring reporting system established under this section will be operational on or before January 1, 1998, the department shall publish a notice in the Wisconsin Administrative Register before that date that states that the system shall begin operating on January 1, 1998.

**History:** 1997 a. 27, 237.

**Cross Reference:** See also ch. DWD 43, Wis. adm. code.

**103.10 Family or medical leave. (1) DEFINITIONS.** In this section:

(a) “Child” means a natural, adopted, foster or treatment foster child, a stepchild or a legal ward to whom any of the following applies:

1. The individual is less than 18 years of age.
2. The individual is 18 years of age or older and cannot care for himself or herself because of a serious health condition.

(am) “Christian Science practitioner” means a Christian Science practitioner residing in this state who is listed as a practitioner in the Christian Science journal.

(b) “Employee” means an individual employed in this state by an employer, except the employer’s parent, spouse or child.

(c) Except as provided in sub. (14) (b), “employer” means a person engaging in any activity, enterprise or business in this state employing at least 50 individuals on a permanent basis. “Employer” includes the state and any office, department, independent agency, authority, institution, association, society or other body in state government created or authorized to be created by the constitution or any law, including the legislature and the courts.

(d) “Employment benefit” means an insurance, leave or retirement benefit which an employer makes available to an employee.

(e) “Health care provider” means a person described under s. 146.81 (1), but does not include a person described under s. 146.81 (1) (hp).

**NOTE:** Par. (e) is shown as amended eff. 3–1–03 by 2001 Wis. Act 74. Prior to 3–1–03 it reads:

(e) “Health care provider” means a person described under s. 146.81 (1), but does not include a person described under s. 146.81 (1) (hp).

(f) “Parent” means a natural parent, foster parent, treatment foster parent, adoptive parent, stepparent or legal guardian of an employee or an employee’s spouse.

(g) “Serious health condition” means a disabling physical or mental illness, injury, impairment or condition involving any of the following:

1. Inpatient care in a hospital, as defined in s. 50.33 (2), nursing home, as defined in s. 50.01 (3), or hospice.

2. Outpatient care that requires continuing treatment or supervision by a health care provider.

(h) “Spouse” means an employee’s legal husband or wife.

(2) SCOPE. (a) Nothing in this section prohibits an employer from providing employees with rights to family leave or medical leave which are more generous to the employee than the rights provided under this section.

(b) This section does not limit or diminish an employee’s rights or benefits under ch. 102.

(c) This section only applies to an employee who has been employed by the same employer for more than 52 consecutive weeks and who worked for the employer for at least 1,000 hours during the preceding 52–week period.

(3) FAMILY LEAVE. (a) 1. In a 12–month period no employee may take more than 6 weeks of family leave under par. (b) 1. and 2.

2. In a 12–month period no employee may take more than 2 weeks of family leave for the reasons specified under par. (b) 3.

3. In a 12–month period no employee may take more than 8 weeks of family leave for any combination of reasons specified under par. (b).

(b) An employee may take family leave for any of the following reasons:

1. The birth of the employee’s natural child, if the leave begins within 16 weeks of the child’s birth.

2. The placement of a child with the employee for adoption or as a precondition to adoption under s. 48.90 (2), but not both, if the leave begins within 16 weeks of the child’s placement.

3. To care for the employee’s child, spouse or parent, if the child, spouse or parent has a serious health condition.

(c) Except as provided in par. (d), an employee shall schedule family leave after reasonably considering the needs of his or her employer.

(d) An employee may take family leave as partial absence from employment. An employee who does so shall schedule all partial absence so it does not unduly disrupt the employer’s operations.

(4) MEDICAL LEAVE. (a) Subject to pars. (b) and (c), an employee who has a serious health condition which makes the employee unable to perform his or her employment duties may take medical leave for the period during which he or she is unable to perform those duties.

(b) No employee may take more than 2 weeks of medical leave during a 12–month period.

(c) An employee may schedule medical leave as medically necessary.

(5) PAYMENT FOR AND RESTRICTIONS UPON LEAVE. (a) This section does not entitle an employee to receive wages or salary while taking family leave or medical leave.

(b) An employee may substitute, for portions of family leave or medical leave, paid or unpaid leave of any other type provided by the employer.

(6) NOTICE TO EMPLOYER. (a) If an employee intends to take family leave for the reasons in sub. (3) (b) 1. or 2., the employee shall, in a reasonable and practicable manner, give the employer advance notice of the expected birth or placement.

(b) If an employee intends to take family leave because of the planned medical treatment or supervision of a child, spouse or parent or intends to take medical leave because of the planned medical treatment or supervision of the employee, the employee shall do all of the following:

1. Make a reasonable effort to schedule the medical treatment or supervision so that it does not unduly disrupt the employer’s operations, subject to the approval of the health care provider of the child, spouse, parent or employee.

2. Give the employer advance notice of the medical treatment or supervision in a reasonable and practicable manner.

**(7) CERTIFICATION.** (a) If an employee requests family leave for a reason described in sub. (3) (b) 3. or requests medical leave, the employer may require the employee to provide certification, as described in par. (b), issued by the health care provider or Christian Science practitioner of the child, spouse, parent or employee, whichever is appropriate.

(b) No employer may require certification stating more than the following:

1. That the child, spouse, parent or employee has a serious health condition.

2. The date the serious health condition commenced and its probable duration.

3. Within the knowledge of the health care provider or Christian Science practitioner, the medical facts regarding the serious health condition.

4. If the employee requests medical leave, an explanation of the extent to which the employee is unable to perform his or her employment duties.

(c) The employer may require the employee to obtain the opinion of a 2nd health care provider, chosen and paid for by the employer, concerning any information certified under par. (b).

**(8) POSITION UPON RETURN FROM LEAVE.** (a) Subject to par. (c), when an employee returns from family leave or medical leave, his or her employer shall immediately place the employee in an employment position as follows:

1. If the employment position which the employee held immediately before the family leave or medical leave began is vacant when the employee returns, in that position.

2. If the employment position which the employee held immediately before the family leave or medical leave began is not vacant when the employee returns, in an equivalent employment position having equivalent compensation, benefits, working shift, hours of employment and other terms and conditions of employment.

(b) No employer may, because an employee received family leave or medical leave, reduce or deny an employment benefit which accrued to the employee before his or her leave began or, consistent with sub. (9), accrued after his or her leave began.

(c) Notwithstanding par. (a), if an employee on a medical or family leave wishes to return to work before the end of the leave as scheduled, the employer shall place the employee in an employment position of the type described in par. (a) 1. or 2. within a reasonable time not exceeding the duration of the leave as scheduled.

**(9) EMPLOYMENT RIGHT, BENEFIT OR POSITION.** (a) Except as provided in par. (b), nothing in this section entitles a returning employee to a right, employment benefit or employment position to which the employee would not have been entitled had he or she not taken family leave or medical leave or to the accrual of any seniority or employment benefit during a period of family leave or medical leave.

(b) Subject to par. (c), during a period an employee takes family leave or medical leave, his or her employer shall maintain group health insurance coverage under the conditions that applied immediately before the family leave or medical leave began. If the employee continues making any contribution required for participation in the group health insurance plan, the employer shall continue making group health insurance premium contributions as if the employee had not taken the family leave or medical leave.

(c) 1. An employer may require an employee to have in escrow with the employer an amount equal to the entire premium or similar expense for 8 weeks of the employee's group health insurance coverage, if coverage is required under par. (b).

2. An employee may pay the amount required under subd. 1. in equal installments at regular intervals over at least a 12-month period. An employer shall deposit the payments at a financial institution in an interest-bearing account.

3. Subject to subd. 4., an employer shall return to the employee any payments made under subd. 1., plus interest, when the employee ends his or her employment with the employer.

4. If an employee ends his or her employment with an employer during or within 30 days after a period of family leave or medical leave, the employer may deduct from the amount returned to the employee under subd. 3. any premium or similar expense paid by the employer for the employee's group health insurance coverage while the employee was on family leave or medical leave.

(d) If an employee ends his or her employment with an employer during or at the end of a period of family leave or medical leave, the time period for conversion to individual coverage under s. 632.897 (6) shall be calculated as beginning on the day that the employee began the period of family leave or medical leave.

**(10) ALTERNATIVE EMPLOYMENT.** Nothing in this section prohibits an employer and an employee with a serious health condition from mutually agreeing to alternative employment for the employee while the serious health condition lasts. No period of alternative employment, with the same employer, reduces the employee's right to family leave or medical leave.

**(11) PROHIBITED ACTS.** (a) No person may interfere with, restrain or deny the exercise of any right provided under this section.

(b) No person may discharge or in any other manner discriminate against any individual for opposing a practice prohibited under this section.

(c) Section 111.322 (2m) applies to discharge or other discriminatory acts arising in connection with any proceeding under this section.

**(12) ADMINISTRATIVE PROCEEDING.** (a) In this subsection, "department" means:

1. The personnel commission, if the employee is employed by the state or any office, department, independent agency, authority, institution, association, society or other body in state government created or authorized to be created by the constitution or any law, including the legislature and the courts.

2. The department of workforce development, if the employee is employed by an employer other than one described in subd. 1.

(b) An employee who believes his or her employer has violated sub. (11) (a) or (b) may, within 30 days after the violation occurs or the employee should reasonably have known that the violation occurred, whichever is later, file a complaint with the department alleging the violation. Except as provided in s. 230.45 (1m), the department shall investigate the complaint and shall attempt to resolve the complaint by conference, conciliation or persuasion. If the complaint is not resolved and the department finds probable cause to believe a violation has occurred, the department shall proceed with notice and a hearing on the complaint as provided in ch. 227. The hearing shall be held within 60 days after the department receives the complaint.

(c) If 2 or more health care providers disagree about any of the information required to be certified under sub. (7) (b), the department may appoint another health care provider to examine the child, spouse, parent or employee and render an opinion as soon as possible. The department shall promptly notify the employee and the employer of the appointment. The employer and the employee shall each pay 50% of the cost of the examination and opinion.

(d) The department shall issue its decision and order within 30 days after the hearing. If the department finds that an employer violated sub. (11) (a) or (b), it may order the employer to take action to remedy the violation, including providing requested family leave or medical leave, reinstating an employee, providing back pay accrued not more than 2 years before the complaint was filed and paying reasonable actual attorney fees to the complainant.

**(13) CIVIL ACTION.** (a) An employee or the department may bring an action in circuit court against an employer to recover damages caused by a violation of sub. (11) after the completion of an administrative proceeding, including judicial review, concerning the same violation.

(b) An action under par. (a) shall be commenced within the later of the following periods, or be barred:

1. Within 60 days from the completion of an administrative proceeding, including judicial review, concerning the same violation.
2. Twelve months after the violation occurred, or the department or employee should reasonably have known that the violation occurred.

**(14) NOTICE POSTED.** (a) Each employer shall post, in one or more conspicuous places where notices to employees are customarily posted, a notice in a form approved by the department setting forth employees' rights under this section. Any employer who violates this subsection shall forfeit not more than \$100 for each offense.

(b) Any person employing at least 25 individuals shall post, in one or more conspicuous places where notices to employees are customarily posted, a notice describing the person's policy with respect to leave for the reasons described in subs. (3) (b) and (4) (a).

**History:** 1987 a. 287; 1989 a. 228; 1991 a. 39; 1993 a. 446; 1995 a. 27 s. 9130 (4); 1997 a. 3, 156; 2001 a. 74.

**Cross Reference:** See also ch. DWD 225, Wis. adm. code.

"Disabling" in sub. (1) (g) includes incapacitation or inability to pursue an occupation because of physical or mental impairment. "Continuing treatment or supervision by a health care provider" requires direct, continuous contact with a health care provider. MPI Wi. Machining Div. v. DILHR, 159 Wis. 2d 358, 464 N.W.2d 79 (Ct. App. 1990).

Sub. (6) (b) requires no advance notice when a leave is unplanned or unintended. MPI Wisconsin Machining Division v. DILHR, 159 Wis. 2d 358, 464 N.W.2d 79 (Ct. App. 1990).

No formal application or detailed information need be provided to an employer to invoke FMLA's protection; an employer must have reasonable notice. Jicha v. State, 164 Wis. 2d 94, 473 N.W.2d 578 (Ct. App. 1991).

As a symptom of pregnancy, morning sickness may be considered a "serious health condition." Haas v. DILHR, 166 Wis. 2d 288, 479 N.W.2d 229 (Ct. App. 1991).

Sub. (2) (c) does not require an employee to be employed for the 52 consecutive weeks preceding the disputed action, but any consecutive 52 weeks. Butzlaff v. Wisconsin Personnel Commission, 166 Wis. 2d 1028, 480 N.W.2d 559 (Ct. App. 1992).

"Equivalent employment" under sub. (8) (a) requires a return to the former level of job status, responsibility, and authority. Kelley Company, Inc. v. Marquardt, 172 Wis. 2d 234, 493 N.W.2d 68 (1992).

The only prerequisite for reinstatement and backpay is that the employer violated this section; backpay should be reduced by interim earnings and amounts earnable. Kelley Company, Inc. v. Marquardt, 172 Wis. 2d 234, 493 N.W.2d 68 (1992).

A complainant may recover attorney fees for successful representation in circuit court on review of a department order although the complainant could have relied on the justice department's representation of the department. An award of attorney fees is not precluded because the complainant is furnished counsel at no personal expense. Richland School District v. DILHR, 174 Wis. 2d 878, 498 N.W.2d 827 (1993).

Sub. (5) (b) allows an employee to substitute paid leave accumulated under a collective bargaining agreement for unpaid leave under this section when the employee has not met the conditions of leave set forth in the agreement. Richland School District v. DILHR, 174 Wis. 2d 878, 498 N.W.2d 827 (1993).

A request for medical leave need only be reasonably calculated to advise the employer that the employee is requesting medical leave and of the reason for the request. Upon receipt of the request, the employer may approve, disapprove, or request more information under the certification process under sub. (7). Sieger v. Wisconsin Personnel Commission, 181 Wis. 2d 845, 512 N.W.2d 230 (Ct. App. 1994).

Settlement of an employee's worker's compensation claim for a work related injury precluded the assertion of the employee's claim that she was entitled to leave for the injury under this section. Finell v. DILHR, 186 Wis. 2d 187, 519 N.W.2d 731 (Ct. App. 1994).

Each increment of leave under sub. (3) (b) 1. must begin within 16 weeks of the child's birth. Schwedt v. DILHR, 188 Wis. 2d 500, 525 N.W.2d 130 (Ct. App. 1994).

The posting requirements under sub. (14) require readily visible notice in a place where an employee would reasonably expect the notice and with which the employee is familiar through long use or acquaintance. In-Sink-Erator v. DILHR, 200 Wis. 2d 770, 547 N.W.2d 792 (Ct. App. 1996).

The federal Labor Management Relations Act did not preempt an employee's right under sub. (5) (b) to substitute accrued paid sick leave for unpaid leave that was unambiguously granted under a collective bargaining agreement. Miller Brewing Co. v. DILHR, 210 Wis. 2d 44, 563 N.W.2d 460 (1997).

By including the state as an employer under sub. (1) (c), the state has waived its sovereign immunity from suit under this section. Butzalaff v. DHFS, 223 Wis. 2d 673, 590 N.W.2d 9 (Ct. App. 1998).

A party who does not prevail in administrative proceedings under sub. (12) may not file a civil action for damages under sub. (13). Butzalaff v. DHFS, 223 Wis. 2d 673, 590 N.W.2d 9 (Ct. App. 1998).

The federal Employment Retirement Income Security Act (ERISA) does not preempt the operation of this section. Aurora Medical Group v. DWD, 230 Wis. 2d 399, 602 N.W.2d 111 (Ct. App. 1999). Affirmed. 2000 WI 70, 236 Wis. 2d 1, 612 N.W.2d 646.

An employee was not required to take accrued paid sick leave, but could instead use unpaid medical leave under this section. Milwaukee Transport Services, Inc. v. DWD, 2001 WI App 40, 241 Wis. 2d 336, 624 N.W.2d 895.

Leave is "accrued" if it: 1) arises from a contract; 2) is specified and quantifiable; 3) has a "draw-down feature" that reduces the amount available as it is used; and 4) accumulates over time. Sick leave that renews annually and increases with seniority accumulates over time. That an employee must be sick several days before receiving paid sick leave does not render the benefit indefinite or incalculable. Kraft Foods, Inc. v. DWD, 2001 242 Wis. 2d 378, 625 N.W.2d 658.

An employee whose substitution of sick leave, rather than vacation leave, for family leave resulted in the loss of benefits under a collective bargaining agreement was not forced to choose to use vacation leave in violation of this section. Although the effect of the interaction of the bargaining agreement and this section may result in a dilemma for the employee, the contractual consequences are collateral and there is no restraint or denial of rights under this section. Heibler v. DWD, 2002 WI App 21, 250 Wis. 2d 152, 639 N.W.2d 776.

Quagmire or Quantum Leap? The Wisconsin Family and Medical Leave Act. Goeldner and Nelson-Glode. Wis. Law. April 1992.

Family & Medical Leave Acts. Sholl and Krupp-Gordon. Wis. Law. Aug. 1993.

**103.13 Records open to employee. (1) DEFINITION.** In this section, "employee" includes former employees.

**(2) OPEN RECORDS.** Every employer shall, upon the request of an employee, which the employer may require the employee to make in writing, permit the employee to inspect any personnel documents which are used or which have been used in determining that employee's qualifications for employment, promotion, transfer, additional compensation, termination or other disciplinary action, and medical records, except as provided in subs. (5) and (6). An employee may request all or any part of his or her records, except as provided in sub. (6). The employer shall grant at least 2 requests by an employee in a calendar year, unless otherwise provided in a collective bargaining agreement, to inspect the employee's personnel records as provided in this section. The employer shall provide the employee with the opportunity to inspect the employee's personnel records within 7 working days after the employee makes the request for inspection. The inspection shall take place at a location reasonably near the employee's place of employment and during normal working hours. If the inspection during normal working hours would require an employee to take time off from work with that employer, the employer may provide some other reasonable time for the inspection. In any case, the employer may allow the inspection to take place at a time other than working hours or at a place other than where the records are maintained if that time or place would be more convenient for the employee.

**(3) PERSONNEL RECORD INSPECTION BY REPRESENTATIVE.** An employee who is involved in a current grievance against the employer may designate in writing a representative of the employee's union, collective bargaining unit or other designated representative to inspect the employee's personnel records which may have a bearing on the resolution of the grievance, except as provided in sub. (6). The employer shall allow such a designated representative to inspect that employee's personnel records in the same manner as provided under sub. (2).

**(4) PERSONNEL RECORD CORRECTION.** If the employee disagrees with any information contained in the personnel records, a removal or correction of that information may be mutually agreed upon by the employer and the employee. If an agreement cannot be reached, the employee may submit a written statement explaining the employee's position. The employer shall attach the employee's statement to the disputed portion of the personnel record. The employee's statement shall be included whenever that disputed portion of the personnel record is released to a 3rd party as long as the disputed record is a part of the file.

**(5) MEDICAL RECORDS INSPECTION.** The right of the employee or the employee's designated representative under sub. (3) to inspect personnel records under this section includes the right to inspect any personal medical records concerning the employee in the employer's files. If the employer believes that disclosure of an employee's medical records would have a detrimental effect on the employee, the employer may release the medical records to the

employee's physician or through a physician designated by the employee, in which case the physician may release the medical records to the employee or to the employee's immediate family.

**(6) EXCEPTIONS.** The right of the employee or the employee's designated representative under sub. (3) to inspect his or her personnel records does not apply to:

(a) Records relating to the investigation of possible criminal offenses committed by that employee.

(b) Letters of reference for that employee.

(c) Any portion of a test document, except that the employee may see a cumulative total test score for either a section of the test document or for the entire test document.

(d) Materials used by the employer for staff management planning, including judgments or recommendations concerning future salary increases and other wage treatments, management bonus plans, promotions and job assignments or other comments or ratings used for the employer's planning purposes.

(e) Information of a personal nature about a person other than the employee if disclosure of the information would constitute a clearly unwarranted invasion of the other person's privacy.

(f) An employer who does not maintain any personnel records.

(g) Records relevant to any other pending claim between the employer and the employee which may be discovered in a judicial proceeding.

**(7) COPIES.** The right of the employee or the employee's representative to inspect records includes the right to copy or receive a copy of records. The employer may charge a reasonable fee for providing copies of records, which may not exceed the actual cost of reproduction.

**(7m) EMPLOYMENT DISCRIMINATION.** Section 111.322 (2m) applies to discharge and other discriminatory acts in connection with any proceeding under this section.

**(8) PENALTY.** Any employer who violates this section may be fined not less than \$10 nor more than \$100 for each violation. Each day of refusal or failure to comply with a duty under this section is a separate violation.

**History:** 1979 c. 339; 1981 c. 164; 1983 a. 189 ss. 153, 329 (4); 1989 a. 228; 1995 a. 27.

**103.14 Grooming requirement; notification.** Each employer shall, at the time of hiring, notify each employee about any hairstyle, facial hair or clothing requirement.

**History:** 1981 c. 334; 1983 a. 189 s. 329 (4); 1995 a. 27.

**103.15 Restrictions on use of a test for HIV. (1)** In this section:

(a) "Employer" includes the state, its political subdivisions and any office, department, independent agency, authority, institution, association, society or other body in state or local government created or authorized to be created by the constitution or any law, including the legislature and the courts.

(am) "HIV" means any strain of human immunodeficiency virus, which causes acquired immunodeficiency syndrome.

(b) "HIV infection" means the pathological state produced by a human body in response to the presence of HIV.

(c) "State epidemiologist" means the individual designated by the secretary of health and family services as the individual in charge of communicable disease control for this state.

**(2)** Notwithstanding ss. 227.01 (13) and 227.10 (1), unless the state epidemiologist determines and the secretary of health and family services declares under s. 250.04 (1) or (2) (a) that individuals who have HIV infections may, through employment, provide a significant risk of transmitting HIV to other individuals, no employer or agent of an employer may directly or indirectly:

(a) Solicit or require as a condition of employment of any employee or prospective employee a test for the presence of HIV, antigen or nonantigenic products of HIV or an antibody to HIV.

(b) Affect the terms, conditions or privileges of employment or terminate the employment of any employee who obtains a test

for the presence of HIV, antigen or nonantigenic products of HIV or an antibody to HIV.

**(3)** Any agreement by an employer or agent of the employer and an employee or prospective employee offering employment or any pay or benefit to an employee or prospective employee in return for taking a test for the presence of HIV, antigen or nonantigenic products of HIV or an antibody to HIV is prohibited, except as provided under sub. (2) (intro.).

**History:** 1985 a. 29, 73; 1987 a. 70 ss. 1, 36; 1987 a. 403 s. 256; 1989 a. 201 ss. 6, 36; 1989 a. 225; 1993 a. 27; 1995 a. 27 s. 9126 (19).

A police and fire commission is an "employer" under this section and may not test paramedic candidates for the HIV virus. 77 Atty. Gen. 181.

The rights of an AIDS victim in Wisconsin. 70 MLR 55 (1986).

**103.16 Seats for employees; penalty.** Every employer employing employees in any manufacturing, mechanical or mercantile establishment in this state shall provide suitable seats for its employees, and shall permit the use of those seats by its employees when the employees are not necessarily engaged in the active duties for which they are employed. Any employer who violates this section may be fined not less than \$10 nor more than \$30 for each offense.

**History:** 1975 c. 94 s. 91 (17); 1997 a. 253.

**103.17 Mutual forfeit.** Any employer engaged in manufacturing that requires its employees, under penalty of forfeiture of a part of the wages earned by those employees, to provide a notice of intention to leave the employer's employ shall be liable for the payment of a like forfeiture if the employer discharges, without similar notice, an employee, other than for incapacity or misconduct, except in case of a general suspension of labor in the employer's shop or factory or in the department of the employer's shop or factory in which the employee is employed.

**History:** 1993 a. 492; 1997 a. 253.

**103.18 Threat or promise to influence vote.** No person shall, by threatening to discharge a person from his or her employment or threatening to reduce the wages of a person or by promising to give employment at higher wages to a person, attempt to influence a qualified voter to give or withhold the voter's vote at an election.

**History:** 1993 a. 492.

**103.19 Children in shows.** No license may be granted for a theatrical exhibition or public show in which children under 15 years of age are employed as acrobats, as contortionists or in any feats of gymnastics or equestrianism if, in the opinion of the board of officers authorized to grant licenses, those children are employed in a manner that may corrupt their morals or impair their physical health.

**History:** 1997 a. 253.

**103.20 Penalty.** Any person who shall violate ss. 103.15 (2) or (3), 103.17, 103.18 and 103.19 shall, upon conviction, be fined in a sum not exceeding \$100.

**History:** 1985 a. 29; 1985 a. 73 s. 8.

**103.21 Street trades; definitions.** As used in ss. 103.21 to 103.31:

**(1)** Every minor selling or distributing newspapers or magazines on the streets or other public place, or from house to house, is in an "employment" and an "employee," and each independent news agency or (in the absence of all such agencies) each selling agency of a publisher or (in the absence of all such agencies) each publisher, whose newspapers or magazines the minor sells or distributes, is an "employer" of the minor. Every minor engaged in any other street trade is in an "employment" and an "employee," and each person furnishing the minor articles for sale or distribution or regularly furnishing the minor material for blacking boots is the minor's "employer".

**(1g)** "House-to-house employer" means an employer who employs minors, either directly or through an agent who need not be an employee of the employer, to conduct street trades from



house to house through personal contact with prospective customers.

(1r) “Municipality” means a city, village or town.

(2) “Nonprofit organization” means an organization described in section 501 (c) of the internal revenue code.

(3) “Permit officer” means any person designated by the department to issue street trade permits.

(4) “Private school” has the meaning given in s. 115.001 (3r).

(5) “Public school” has the meaning given in s. 115.01 (1).

(6) “Street trade” means the selling, offering for sale, soliciting for, collecting for, displaying or distributing any articles, goods, merchandise, commercial service, posters, circulars, newspapers or magazines, or the blacking of boots, on any street or other public place or from house to house.

**History:** 1971 c. 271; 1983 a. 189; 1985 a. 1; 1989 a. 113; 1993 a. 492.

There can be no employment under sub. (1) between a publisher and a minor distributing newspapers without the publisher having actual or implied knowledge of the minor’s activities. *Beard v. Lee Enterprises, Inc.* 225 Wis. 2d 1, 591 N.W.2d 156 (1999).

**103.22 General standards and powers of the department.** The general standards for the employment of minors set forth in s. 103.65 apply to the employment of minors in street trades, and in relation to that employment the department has the powers and duties specified in s. 103.66. Except as the department exercises those powers, the employment of minors in street trades shall be in accordance with ss. 103.23 to 103.31.

**History:** 1971 c. 271.

**Cross Reference:** See also ch. DWD 271, Wis. adm. code.

**103.23 Age minimum. (1)** Except as provided in sub. (2), a minor under 12 years of age shall not be employed or permitted to work at any time in any street trade.

(2) A minor under 12 years of age may work in a fund-raising sale for a nonprofit organization, a public school or a private school under the following conditions:

(a) Each minor must give the nonprofit organization, public school or private school written approval from the minor’s parent or guardian.

(b) Each minor under 9 years of age or each group containing one or more minors under 9 years of age must be physically accompanied by a parent or a person at least 16 years of age.

**History:** 1971 c. 271; 1973 c. 183; 1985 a. 1.

**103.24 Hours of work.** The department shall determine and fix reasonable hours of employment for minors in street trades.

**History:** 1971 c. 271.

**Cross Reference:** See also ss. DWD 271.03 and 271.04, Wis. adm. code.

**103.245 Designation of a permit officer. (1)** (a) The department shall designate a school board, as defined in s. 115.001 (7), as a permit officer unless the school board refuses the designation.

(b) A school board designated as a permit officer under par. (a) may assign the duties of permit officer to an officer or employee of the school district.

(2) The department may designate persons other than school boards as permit officers, regardless of whether any school board refuses designation as a permit officer under sub. (1) (a).

**History:** 1987 a. 187.

**103.25 Permits and identification cards. (1)** A minor shall not be employed or permitted to work at any street trade unless the minor’s employer first obtains from the department or a permit officer a street trade permit and the minor first obtains an identification card, both issued in accordance with this section.

(2) If upon investigation, the department determines that there are practical difficulties or unnecessary hardships in carrying out sub. (1), the department may by general or special order make reasonable exceptions or modifications with due regard for the life, health, safety and welfare of minors employed in street trades. The investigation and orders shall be made as provided under s.

103.005. These orders are subject to review as provided in ch. 227.

(3) The form and requisites of street trade permits shall be the same as those specified for child labor permits in s. 103.73, except as provided in sub. (3m) and except that the permits may be issued on special street trade permit forms, in a form determined by the department. Each minor for whom a street trade permit is issued shall be provided by the department or the permit officer issuing the permit with a street trade identification card, in a form determined by the department. The minor shall carry the identification card while engaged in street trade employment and shall not transfer it to any other person.

(3m) (a) In addition to the information required for a street trade permit under sub. (3), a street trade permit obtained by a house-to-house employer shall contain the minor’s permanent home address and social security number.

(b) A house-to-house employer shall have a copy of the street trade permit issued for the minor stamped or endorsed by the clerk of any municipality where the minor conducts a street trade from house to house.

(c) This subsection does not apply to employment of a minor by a newspaper publisher or in a fund-raising sale for a nonprofit organization, a public school or a private school.

(4) In relation to employment in street trades a permit issued under this section has the same force and effect as a permit issued under ss. 103.64 to 103.82; and the failure to obtain a permit when required under this section subjects the employer to the same penalties and liabilities as failure to obtain a permit when required under ss. 103.64 to 103.82.

(5) This section does not apply to employment of a minor in a fund-raising sale for a nonprofit organization, a public school or a private school.

**History:** 1971 c. 228 s. 43; 1971 c. 271, 307; 1973 c. 183; 1985 a. 1; 1987 a. 187; 1989 a. 113; 1993 a. 492; 1995 a. 27; 2001 a. 107.

**Cross Reference:** See also ss. DWD 270.02, 271.01, 271.06, and 271.07, Wis. adm. code.

**103.26 Refusal or revocation of permits and identification cards. (1)** The department or permit officer may refuse to grant a street trade permit and identification card to a minor who seems physically unable to perform the work or whose school record indicates that the minor should not undertake such employment in addition to school, or whenever in the judgment of the department or permit officer the best interests of the minor would be served by such refusal.

(2) The department may revoke a street trade permit and identification card if the minor for whom such permit was issued is found by the department to have worked when prohibited under s. 103.24, if it appears to the department that such permit was improperly or illegally issued or if in their judgment the best interests of the minor would be served by such revocation. The department shall by registered mail notify such minor and the minor’s employer of such revocation. On receipt of such notice the employer shall immediately return the revoked permit and discontinue the employment of such minor, and the minor shall immediately return the revoked identification card to the permit officer.

**History:** 1973 c. 183; 1993 a. 492.

**Cross Reference:** See also s. DWD 271.08, Wis. adm. code.

**103.27 Duties of employers of minors in street trades.**

(1) Every employer of minors in street trades shall keep a record for each minor of his or her name, address and date of birth.

(2) Every employer shall receive and file a street trade permit authorizing employment of each minor by him or her before the minor is permitted to work; and shall keep the permit on file and allow inspection of the permit at any time by the department or any police or school attendance officer.

(3) This section does not apply to employment of a minor in a fund-raising sale for a nonprofit organization, a public school or a private school.

**History:** 1971 c. 271; 1973 c. 183; 1979 c. 298; 1985 a. 1; 1993 a. 492.

**103.275 Duties of employers in house-to-house street trades. (1)** CERTIFICATION REQUIRED. No person may do any of the following without obtaining a certificate under sub. (2):

(a) Act as a house-to-house employer.

(b) Recruit or offer employment to a minor to conduct street trades from house to house.

**(2)** APPLICATION AND ISSUANCE OF CERTIFICATE. (a) A person shall apply to the department for a house-to-house employer certificate by submitting an application to the department. The department shall furnish applications upon request and applications shall contain all of the following:

1. The name of the applicant and the address and telephone of its principal place of business.

2. If the applicant is a corporation, the date and place of its incorporation.

2L. If the applicant is a limited liability company, the date and place of its organization.

3. The name and permanent home address of the sole proprietor, managing partner, managers or principal officers of the applicant.

4. The names, permanent home addresses and dates of birth of any of the applicant's employees, agents or representatives who supervise minor employees conducting street trades from house to house.

5. The employer identification numbers assigned to the applicant by the internal revenue service and the department of revenue.

6. Any documents required by the department to prove that the applicant has complied with sub. (3).

7. Any other information that the department considers relevant.

(b) Except as provided under pars. (bm) and (br), upon receipt of a properly completed application, the department shall issue a house-to-house employer certificate if all of the following apply:

1. The department is satisfied that the applicant will comply with ss. 103.21 to 103.31.

2. The applicant has established proof of ability to pay under sub. (3).

3. If the application is for a new certificate after revocation under sub. (7), the revocation occurred at least 12 months before issuance of the new certificate.

(bg) 1. Except as provided in subd. 2m., the department shall require each applicant for a house-to-house employer certificate under this subsection who is an individual to provide the department with the applicant's social security number, and shall require each applicant for a house-to-house employer certificate who is not an individual to provide the department with the applicant's federal employer identification number, when initially applying for or applying to renew the house-to-house employer certificate.

2. If an applicant who is an individual fails to provide the applicant's social security number to the department or if an applicant who is not an individual fails to provide the applicant's federal employer identification number to the department, the department may not issue or renew a house-to-house employer certificate under this subsection to or for the applicant unless the applicant is an individual who does not have a social security number and the applicant submits a statement made or subscribed under oath or affirmation as required under subd. 2m.

2m. If an applicant who is an individual does not have a social security number, the applicant shall submit a statement made or subscribed under oath or affirmation to the department that the applicant does not have a social security number. The form of the statement shall be prescribed by the department. A house-to-house employer certificate issued in reliance upon a false statement submitted under this subdivision is invalid.

3. The subunit of the department that obtains a social security number or a federal employer identification number under subd.

1. may not disclose the social security number or the federal employer identification number to any person except to the department of revenue for the sole purpose of requesting certifications under s. 73.0301 or on the request of the subunit of the department that administers the child and spousal support program under s. 49.22 (2m).

(bm) The department shall deny, suspend, restrict, refuse to renew or otherwise withhold a house-to-house employer certificate for failure of the applicant or house-to-house employer to pay court-ordered payments of child or family support, maintenance, birth expenses, medical expenses or other expenses related to the support of a child or former spouse or for failure of the applicant or house-to-house employer to comply, after appropriate notice, with a subpoena or warrant issued by the department or a county child support agency under s. 59.53 (5) and related to paternity or child support proceedings, as provided in a memorandum of understanding entered into under s. 49.857. Notwithstanding sub. (7) and s. 103.005 (10), an action taken under this paragraph is subject to review only as provided in the memorandum of understanding entered into under s. 49.857 and not as provided in sub. (7) and ch. 227.

(br) The department shall deny an application for the issuance or renewal of a house-to-house employer certificate, or revoke such a certificate already issued, if the department of revenue certifies under s. 73.0301 that the applicant or house-to-house employer is liable for delinquent taxes. Notwithstanding sub. (7) and s. 103.005 (10), an action taken under this paragraph is subject to review only as provided under s. 73.0301 (5) and not as provided in sub. (7) and ch. 227.

(c) A person who receives a house-to-house employer certificate shall notify the department of any changes in the information required in the application submitted under par. (a) within 30 days after the change occurs.

(d) A house-to-house employer certificate is valid for a 12-month period. A house-to-house employer may renew a certificate by submitting an application under par. (a), subject to the conditions under par. (b).

**(3) FINANCIAL RESPONSIBILITY.** (a) A house-to-house employer shall establish proof of its ability to pay any compensation owed to minor employees and any penalties that may be imposed under s. 103.29.

(b) A house-to-house employer shall prove its ability to pay under par. (a) by maintaining one of the following commitments, in an amount of at least \$5,000 and in a form approved by the department:

1. A bond.
2. A certificate of deposit.
3. An established escrow account.
4. An irrevocable letter of credit.

(c) The commitment described in par. (b) shall be established in favor of or made payable to the department, for the benefit of the state and any minor employee who does not receive the compensation earned by the minor employee. The house-to-house employer shall file with the department any agreement, instrument or other document necessary to enforce the commitment against the house-to-house employer or any relevant 3rd party, or both.

**(4) DISCLOSURE TO MINOR EMPLOYEES.** (a) When a minor applies for a job to conduct street trades from house to house, the house-to-house employer shall inform the minor in writing of the terms and conditions of employment including all of the following:

1. Compensation, including commissions, bonuses or contest awards.
2. The time and manner of the payment of compensation.

3. The number of days per week and of hours per day that the minor would be required to conduct street trades from house to house.

4. The nature and frequency of required employment–related meetings and how compensation is paid for attendance at the meetings.

5. Whether and how the house–to–house employer provides transportation.

6. The expenses related to employment that the applicant would be required to pay.

(b) No house–to–house employer may fail to comply with the terms of the written disclosure statement required under par. (a). A house–to–house employer may change the terms of a disclosure statement by a supplemental document in writing, if the change applies only prospectively.

**(5) RECORDS AND INSPECTION.** A door–to–door employer shall do all of the following:

(a) Keep a copy of the street trade permit obtained for an employee under s. 103.25 for at least 3 years after the employee attains the age of 18 or leaves the employment of the employer, whichever occurs first.

(b) Keep a list of the names of all municipalities where minor employees of the house–to–house employer conducted street trades from house to house within the last 3 years.

(c) At the department’s request, do any of the following:

1. Allow the department to inspect the certificate issued under sub. (2) or any street trade permits obtained under s. 103.25.

2. Provide a list of the municipalities where the house–to–house employer intends to employ minors to conduct street trades from house to house within 6 months after the date of the request.

**(6) NOTIFICATION TO POLICE OR SHERIFF.** (a) When a house–to–house employer obtains a stamp from a municipal clerk under s. 103.25 (3m) (b), the house–to–house employer shall provide notice that a minor is or will be conducting a street trade for the house–to–house employer in the municipality to the following:

1. The local police department, if the municipality has a police department and a population of 2,500 or more.

2. To the office of the sheriff of the county where the municipality is located, if the municipality has no police department.

3. To the local police department or the office of the sheriff of the county where the municipality is located, if the municipality has a police department or a population greater than 2,500.

**(7) SUSPENSION OR REVOCATION OF CERTIFICATE.** (a) The department may investigate and hold hearings in connection with certificates issued under sub. (2).

(b) Except as provided in sub. (2) (bm) and (br), after providing at least 10 days’ notice to a house–to–house employer, the department may, on its own or upon a written and signed complaint, suspend the house–to–house employer’s certificate. The department shall serve a copy of the complaint with notice of a suspension of the certificate on the person complained against, and the person shall file an answer to the complaint with the department and the complainant within 10 days after service. After receiving the answer, the department shall set the matter for hearing as promptly as possible and within 30 days after the date of filing the complaint. Either party may appear at the hearing in person or by attorney or agent. The department shall make its findings and determination concerning the suspension within 90 days after the date that the hearing is concluded and send a copy to each interested party.

(c) Except as provided in sub. (2) (bm) and (br), the department may revoke a certificate issued under sub. (2) after holding a public hearing at a place designated by the department. At least 10 days prior to the revocation hearing, the department shall send written notice of the time and place of the revocation hearing to the person holding the certificate and to the person’s attorney or

agent of record by mailing the notice to their last–known address. The testimony presented and proceedings at the revocation hearing shall be recorded and preserved as the records of the department. The department shall, as soon after the hearing as possible, make its findings and determination concerning revocation and send a copy to each interested party.

(d) The department may suspend a certificate under par. (b) only if it has reason to believe, or may revoke a certificate under par. (c) only if it finds, that the house–to–house employer has done any of the following:

1. Submitted false information to the department in an application under sub. (2) (a), if the information caused the department to issue the certificate when it would otherwise not have done so.

2. Failed to notify the department of a change in information under sub. (2) (c).

3. Failed to comply with the terms of a written disclosure statement under sub. (4).

4. Failed to maintain proof of ability to pay under sub. (3).

5. Failed to comply with s. 103.23, 103.24, 103.25 or 103.27 or the rules of the department.

**(8) EXCEPTION.** This section does not apply to the employment of a minor by a newspaper publisher or in a fund–raising sale for a nonprofit organization, a public school or a private school.

**History:** 1989 a. 113, 359; 1993 a. 112; 1997 a. 191, 237; 1999 a. 9.

**103.28 Enforcement.** (1) Sections 103.21 to 103.31 shall be enforced by the department. Police and school attendance officers of cities, towns, villages and school districts shall assist the department in enforcement by questioning minors seen on the streets engaged in street trades and reporting to the department all cases of minors apparently engaged in street trades in violation of ss. 103.21 to 103.31.

(2) The failure of an employer to produce for inspection by the department or any school attendance or police officer a permit required for a minor employed in street trades is prima facie evidence of unlawful employment of the minor.

(3) The department may refer violations of ss. 103.21 to 103.275 for prosecution by the department of justice or the district attorney for the county in which the violation occurred.

**History:** 1971 c. 271; 1973 c. 183; 1979 c. 298; 1989 a. 113.

**103.29 Penalties.** (1) Any employer who employs or permits the employment of any minor in street trades in violation of ss. 103.21 to 103.31 or of any order issued thereunder or who hinders or delays the department or any school attendance or police officer in the performance of their duties under ss. 103.21 to 103.31 may be required to forfeit not less than \$25 nor more than \$1,000 for each day of the first offense and, for the 2nd or subsequent violation of ss. 103.21 to 103.31 within 5 years, as measured from the dates the violations initially occurred, may be fined not less than \$250 nor more than \$5,000 for each day of the 2nd or subsequent offense or imprisoned not more than 30 days or both.

(2) In addition to the penalties under sub. (1), any employer who employs any minor in violation of s. 103.24 or 103.275 (1) or (4) (b) or rules of the department shall be liable, in addition to the wages paid, to pay to each minor affected, an amount equal to twice the regular rate of pay as liquidated damages for all hours worked in violation per day or per week, whichever is greater.

**History:** 1971 c. 271; 1981 c. 390; 1987 a. 332 ss. 8 to 10, 64; 1989 a. 113.

**103.30 Penalty on newspapers for allowing minors to loiter around premises.** A newspaper publisher or printer or person having for sale newspapers or magazines shall not permit any minor under 18 years of age to loiter or remain around any premises where the newspapers or magazines are printed, assembled, prepared for sale or sold when the minor is required

under s. 118.15 to attend school. Any person violating this section is subject to the penalties specified in s. 103.29.

**History:** 1971 c. 271; 1973 c. 183; 1987 a. 332.

**103.31 Penalty on parent or guardian.** Any parent or guardian who permits a minor under his or her control to be employed in violation of ss. 103.21 to 103.31 or of any order of the department issued thereunder may be required to forfeit not less than \$10 nor more than \$250 for each day of the first offense and, for the 2nd or subsequent violation of ss. 103.21 to 103.31 within 5 years, as measured from the dates the violations initially occurred, may be required to forfeit not less than \$25 nor more than \$1,000 for each day of the 2nd or subsequent offense.

**History:** 1971 c. 271; 1987 a. 332.

**103.32 Recovery of arrears of wages.** The department, on behalf of the minor, may sue the employer under s. 109.09 for the recovery of any arrears of wages to which the minor is entitled under this chapter.

**History:** 1971 c. 271, 307; 1975 c. 380 s. 5.

**103.33 Discriminatory acts; street trades.** Section 111.322 (2m) applies to discharge and other discriminatory acts against an employee arising in connection with any proceeding under s. 103.28 or 103.32.

**History:** 1989 a. 228.

**103.35 Information required for licensure.** No state office, department, board, examining board, affiliated credentialing board, commission, council or independent agency in the executive branch, the legislature or the courts may, as a condition for receiving an occupational or professional certificate, license, permit or registration, require the submission of information by the applicant which is not essential for the determination of eligibility for the issuance or renewal of the certificate, license, permit or registration. Information which is not essential to determine eligibility for issuance or renewal may be requested but the applicant shall be notified in a prominent place on or accompanying the request that she or he is not required to provide such information.

**History:** 1979 c. 34; 1993 a. 107.

**103.37 Certain requirements to obtaining employment prohibited. (1m)** In this section:

(a) “Employee” means a person who may be permitted, required or directed by an employer, in consideration of direct or indirect gain or profit, to engage in any employment.

(b) “Employer” means an individual, partnership, association, corporation, limited liability company, legal representative, trustee, receiver, trustee in bankruptcy, or any common carrier by rail, motor, water or air doing business in or operating within the state.

(2m) No employer may require any employee or applicant for employment to pay the cost of a medical examination required by the employer as a condition of employment.

(4) Any employer who violates this section may be fined not more than \$100 for each violation. The department shall enforce this section.

**History:** 1977 c. 29 ss. 1034, 1035, 1654 (9) (a); 1977 c. 418; 1983 a. 189 ss. 155, 329 (4); 1993 a. 112; 1997 a. 253.

The state, its political subdivisions, and the counties are not employers under this section. 69 Atty. Gen. 103.

**103.38 Eight-hour work day; applicability. (1)** Subject to sub. (2), in all engagements to labor in any manufacturing or mechanical business if there is no express contract to the contrary, a day’s work shall consist of 8 hours and all engagements or contracts for labor in a manufacturing or mechanical business shall be so construed.

(2) Subsection (1) does not apply to any contract for labor by the week, month or year.

**History:** 1997 a. 253.

**103.43 Fraudulent advertising for labor. (1)** (a) No person may influence, induce, persuade or attempt to influence, induce, persuade or engage a worker to change from one place of employment to another in this state or to accept employment in this state, and no person may bring a worker of any class or calling into this state to work in any department of labor in this state, through or by means of any false or deceptive representations, false advertising or false pretenses concerning or arising from any of the following:

1. The kind and character of the work to be done.
2. The amount and character of the compensation to be paid for work.
3. The sanitary or other conditions of the employment.
4. The failure to state in any advertisement, proposal or contract for the employment that there is a strike or lockout at the place of the proposed employment, when a strike or lockout then actually exists in the employment at the proposed place of employment.

(b) Any of the acts described in par. (a) shall be considered a false advertisement or misrepresentation for the purposes of this section.

(1m) A strike or lockout is considered to exist as long as any of the following conditions exists:

- (a) The usual concomitants of a strike or lockout.
- (b) Unemployment on the part of workers affected continues.
- (c) Any payments of strike benefits are being made.
- (d) Any picketing is maintained.
- (e) Publication is being made of the existence of a strike or lockout.

(2) Any person who, by himself or herself, or by a servant or agent, or as the servant or agent of any other person, or as an officer, director, servant or agent of any firm, corporation, association or organization of any kind, violates sub. (1) (a) shall be fined not more than \$2,000 or imprisoned in the county jail for not more than one year or both.

(3) Any worker who is influenced, induced or persuaded to engage with any person specified in sub. (1) (a), through or by means of any of the acts prohibited in sub. (1) (a), shall have a right of action for recovery of all damages that the worker sustains in consequence of the false or deceptive representation, false advertising or false pretenses used to induce the worker to change his or her place of employment in this state or to accept employment in this state, against any person, corporation, company or association, directly or indirectly, causing the damage. In addition to all actual damages that the worker may sustain, the worker shall be entitled to recover reasonable attorney fees as determined by the court, to be taxed as costs in any judgment recovered.

**History:** 1993 a. 492; 1995 a. 225; 1997 a. 253.

**103.45 Time checks; penalty.** All persons paying wages in time checks or paper, other than legal money, shall make those time checks or that paper payable in some designated place of business in the county in which the work was performed or at the office of the person paying the wages if within this state, or at any bank within this state. Any person failing to comply with this section shall be fined not less than \$10 nor more than \$100.

**History:** 1997 a. 253.

**103.455 Deductions for faulty workmanship, loss, theft or damage.** No employer may make any deduction from the wages due or earned by any employee, who is not an independent contractor, for defective or faulty workmanship, lost or stolen property or damage to property, unless the employee authorizes the employer in writing to make that deduction or unless the employer and a representative designated by the employee determine that the defective or faulty workmanship, loss, theft or damage is due to the employee’s negligence, carelessness, or willful and intentional conduct, or unless the employee is found guilty or held liable in a court of competent jurisdiction by reason of that

negligence, carelessness, or willful and intentional conduct. If any deduction is made or credit taken by any employer that is not in accordance with this section, the employer shall be liable for twice the amount of the deduction or credit taken in a civil action brought by the employee. Any agreement entered into between an employer and employee that is contrary to this section shall be void. In case of a disagreement between the 2 parties, the department shall be the 3rd determining party, subject to any appeal to the court. Section 111.322 (2m) applies to discharge and other discriminatory acts arising in connection with any proceeding to recover a deduction under this section.

**History:** 1989 a. 228; 1997 a. 253.

The consent of the employee may only serve as a basis for a deduction if it is given in writing after the loss and before the deduction. *Donovan v. Schlesner*, 72 Wis. 2d 74, 240 N.W.2d 135 (1976).

Termination of an employee-at-will may violate the public policy underlying this section. *Wandry v. Bull's Eye Credit*, 129 Wis. 2d 37, 384 N.W.2d 325 (1986).

Commissions earned over and above a salary are wages under this section. The 6-year statute of limitations, under s. 893.43, applicable to claims for commissions applies to the recovery of deductions from commissions under this section. A claimant need not first bring a claim before DILHR if the employer has never given the employee an opportunity to contest the deductions. *Erdman v. Jovoco, Inc.* 181 Wis. 2d 736, 512 N.W.2d 487 (1994).

The exception to the at-will employment doctrine, founded on well-defined public policy found in this section, does not reach every potential deduction by an employer from an employee's wages. *Batteries Plus, LLC v. Mohr*, 2001 WI 80, 244 Wis. 2d 559, 628 N.W.2d 364.

**103.457 Listing deductions from wages.** An employer shall state clearly on the employee's pay check, pay envelope, or paper accompanying the wage payment the amount of and reason for each deduction from the wages due or earned by the employee, except such miscellaneous deductions as may have been authorized by request of the individual employee for reasons personal to the employee. A reasonable coding system may be used by the employer.

**History:** 1993 a. 492.

**103.46 Contracts; promises to withdraw from or not to join labor, employers' or cooperative organizations are void.** Every undertaking or promise, whether written or oral, express or implied, constituting or contained in any of the following is declared to be contrary to public policy and wholly void and shall not afford any basis for the granting of any legal or equitable relief by any court:

(1) A contract or agreement of hiring or employment between any employer and any employee or prospective employee, in which either party to the contract or agreement undertakes or promises not to join, become or remain a member of any labor organization or of any organization of employers, or in which either party to the contract or agreement undertakes or promises to withdraw from the employment relation if the party joins, becomes or remains a member of any labor organization or of any organization of employers.

(2) A contract or agreement for the sale of agricultural, horticultural or dairy products between a producer of those products and a distributor or purchaser of those products, in which either party to the contract or agreement undertakes or promises not to join, become or remain a member of any cooperative association organized under ch. 185 or of any trade association of the producers, distributors or purchasers of those products.

**History:** 1985 a. 30 s. 42; 1993 a. 492; 1997 a. 253.

**103.465 Restrictive covenants in employment contracts.** A covenant by an assistant, servant or agent not to compete with his or her employer or principal during the term of the employment or agency, or after the termination of that employment or agency, within a specified territory and during a specified time is lawful and enforceable only if the restrictions imposed are reasonably necessary for the protection of the employer or principal. Any covenant, described in this subsection, imposing an unreasonable restraint is illegal, void and unenforceable even as to any part of the covenant or performance that would be a reasonable restraint.

**History:** 1995 a. 225; 1997 a. 253.

A provision in an employer's profit sharing and retirement plan that calls for the forfeiture of benefits by employees who engage in competitive enterprises is valid and enforceable only if it meets the requirements of this section. *Holsen v. Marshall & Ilsley Bank*, 52 Wis. 2d 281, 190 N.W.2d 189 (1971).

A provision of a pension plan denying benefits if the retired employee accepts any employment in the same industry without limit as to time or area is void. *Estate of Schroeder*, 53 Wis. 2d 59, 191 N.W.2d 860 (1971).

This section, limiting the enforceability of covenants not to compete to those containing restrictions reasonably necessary for the protection of the employer or principal, incorporates pre-existing common law principals that contracts in restraint of trade are viewed with disfavor. *Behnke v. Hertz Corp.* 70 Wis. 2d 818, 235 N.W.2d 690 (1975).

A profit-sharing plan that provided for forfeiture in the event that a covered employee worked for a "competitive business" was construed to apply only to businesses that seek out and appeal to the same customers and offer substantially identical services. *Zimmerman v. Brennan*, 78 Wis. 2d 510, 254 N.W.2d 719 (1977).

The basic requirements for an enforceable restrictive covenant are that the agreement must: 1) be necessary for the protection of the employer; 2) provide a reasonable time period; 3) cover a reasonable territory; 4) not be unreasonable to the employee; 5) not be unreasonable to the general public. *Chuck Wagon Catering, Inc. v. Raduege*, 88 Wis. 2d 740, 277 N.W.2d 787 (1979).

A covenant prohibiting an executive employee from contacting company clients with whom the employee had had no previous contact was not unreasonable per se. *Hunter of Wisconsin, Inc. v. Hamilton*, 101 Wis. 2d 460, 304 N.W.2d 752 (1981).

A covenant not to compete is not automatically voided by the presence of an unreasonable provision for liquidated damages. Whether specific restraints as to area and time are necessary to protect the employer is a question of law to be resolved on the basis of the facts. *Fields Foundation, Ltd. v. Christensen*, 103 Wis. 2d 465, 309 N.W.2d 125 (Ct. App. 1981).

An agreement requiring agents of an insurance company to forfeit their extended earnings if after termination they engaged in certain competitive practices was unenforceable. *Streff v. American Family Mutual Insurance Co.* 118 Wis. 2d 602, 348 N.W.2d 505 (1984).

Territorial limits in a restrictive covenant need not be expressed in geographical terms. *General Medical Corp. v. Kobs*, 179 Wis. 2d 422, 507 N.W.2d 381 (Ct. App. 1993).

An employer is not entitled to protection against ordinary competition of the type a stranger would give. There must be special facts that render the covenant necessary for the protection of the employer's business. *Wausau Medical Center v. Asplund*, 182 Wis. 2d 274, 514 N.W.2d 34 (Ct. App. 1994).

A valid covenant not to compete requires consideration. Continued employment, absent a requirement that the employment requires executing the agreement, is not consideration. *NBZ, Inc. v. Pilarski*, 185 Wis. 2d 827, 520 N.W.2d 93 (Ct. App. 1994).

This section sets out its own remedy. A violation does not grant an automatic right to pursue a wrongful discharge claim, but voids the covenant. *Tagte v. Chambers and Owens, Inc.* 210 Wis. 2d 51, 565 N.W.2d 150 (Ct. App. 1997).

It would be an exercise in semantics to overlook this section merely because a contract provision is labeled a non-disclosure provision rather than a covenant not to compete. This section does not create an exception to the at-will employment doctrine that would allow an employee to refuse to sign a non-disclosure or non-compete clause that the employee considers to be unreasonable. *Tagte v. Chambers & Owen, Inc.* 219 Wis. 2d 99, 579 N.W.2d 217 (1998).

Any part of an indivisible covenant, even if reasonable on its own, will not be given effect if any other part is unreasonable. A provision that an insurance agent was to have no contact with company clients without geographic restriction was overbroad, as was a provision that the agent not work for a named competitor in any capacity. *Mutual Service Casualty Insurance Co. v. Brass*, 2001 WI App. 92, 242 Wis. 2d 733, 625 N.W.2d 648.

"Specified territory" in this section encompasses customer lists as well as geographic locations. A covenant not to compete based on a customer list limitation is not invalid per se. *Farm Credit Services of North Central Wisconsin v. Wysocki*, 2001 WI 51, 243 Wis. 2d 305, 627 N.W. 2d 444.

A covenant not to compete cannot escape the requirement of territorial reasonableness by not including any geographical parameters. A covenant without any specified territory is void. *Equity Enterprises, Inc. v. Milosch*, 2001 WI App 186, 247 Wis. 2d 172, 633 N.W.2d 662.

A penalty provision in a contract that is invoked if there is a violation of an unreasonable covenant not to compete must be read with, and is intertwined with, the covenant. As such, it is an unreasonable covenant itself. *Equity Enterprises, Inc. v. Milosch*, 2001 WI App 186, 247 Wis. 2d 172, 633 N.W.2d 662.

An agreement between the operator of nursing homes and a company that provided physical therapists to the homes that the nursing owner would not hire any of the therapists without the consent of, and paying a fee to, the company restricted employment opportunities of the therapists without their knowledge or consent and constituted an unreasonable restraint of trade in violation of this section and s. 133.03 (1). *Heyde Companies, Inc. v. Dove Healthcare, LLC*, 2001 WI App 278, 249 Wis. 2d 32, 637 N.W.2d 437.

A restrictive covenant was not overbroad. *Brunswick Corp. v. Jones*, 784 F.2d 271 (1986).

An agreement to accept an education loan funded by certain employers on the condition that the recipient repay it in kind by working for a contributor or repaying it in cash if the recipient accepts employment with a non-contributor was not a covenant subject to s. 103.465. *Milwaukee Apprentice Training Committee v. Howell*, 67 F.3d 1333 (1995).

Drafting and enforcing restrictive covenants not to compete. *Richards*, 55 MLR 241.

Drafting enforceable covenants not to compete. *Nettesheim*. WBB Oct. 1986.  
Can Employers Force Employees to Sign Noncompete Agreements as a Condition of Their Employment? *Cohen & Stuart*. Wis. Law. May 1999.

**103.49 Wage rate on state work. (1) DEFINITIONS.** In this section:

(a) “Area” means the county in which a proposed project that is subject to this section is located or, if the department determines that there is insufficient wage data in that county, “area” means those counties that are contiguous to that county or, if the department determines that there is insufficient wage data in those counties, “area” means those counties that are contiguous to those counties or, if the department determines that there is insufficient wage data in those counties, “area” means the entire state or, if the department is requested to review a determination under sub. (3) (c), “area” means the city, village or town in which a proposed project that is subject to this section is located.

(b) “Hourly basic rate of pay” means the hourly wage paid to any employee, excluding any contributions or payments for health insurance benefits, vacation benefits, pension benefits and any other bona fide economic benefits, whether paid directly or indirectly.

(bg) “Insufficient wage data” means less than 500 hours of work performed in a particular trade or occupation on projects that are similar to a proposed project that is subject to this section.

(bm) “Multiple–trade public works project” means a public works project in which no single trade accounts for 85% or more of the total labor cost of the project.

(c) “Prevailing hours of labor” for any trade or occupation in any area means 10 hours per day and 40 hours per week and may not include any hours worked on a Saturday or Sunday or on any of the following holidays:

1. January 1.
2. The last Monday in May.
3. July 4.
4. The first Monday in September.
5. The 4th Thursday in November.
6. December 25.
7. The day before if January 1, July 4 or December 25 falls on a Saturday.
8. The day following if January 1, July 4 or December 25 falls on a Sunday.

(d) 1. Except as provided in subd. 2., “prevailing wage rate” for any trade or occupation engaged in the erection, construction, remodeling, repairing or demolition of any project of public works in any area means the hourly basic rate of pay, plus the hourly contribution for health insurance benefits, vacation benefits, pension benefits and any other bona fide economic benefit, paid directly or indirectly for a majority of the hours worked in the trade or occupation on projects in the area.

2. If there is no rate at which a majority of the hours worked in the trade or occupation on projects in the area is paid, “prevailing wage rate” for any trade or occupation engaged in the erection, construction, remodeling, repairing or demolition of any project of public works in any area means the average hourly basic rate of pay, weighted by the number of hours worked, plus the average hourly contribution, weighted by the number of hours worked, for health insurance benefits, vacation benefits, pension benefits and any other bona fide economic benefit, paid directly or indirectly for all hours worked at the hourly basic rate of pay of the highest–paid 51% of hours worked in that trade or occupation on projects in that area.

(e) “Single–trade public works project” means a public works project in which a single trade accounts for 85% or more of the total labor cost of the project.

(f) “State agency” means any office, department, independent agency, institution of higher education, association, society or other body in state government created or authorized to be created by the constitution or any law, including the legislature and the courts. “State agency” also includes the University of Wisconsin Hospitals and Clinics Authority and the Fox River Navigational System Authority.

(g) “Truck driver” includes an owner–operator of a truck.

(2) PREVAILING WAGE RATES AND HOURS OF LABOR. Any contract hereafter made for the erection, construction, remodeling, repairing, or demolition of any project of public works, except contracts for the construction or maintenance of public highways, streets, and bridges, to which the state or any state agency is a party shall contain a stipulation that no person performing the work described in sub. (2m) may be permitted to work a greater number of hours per day or per week than the prevailing hours of labor, except that any such person may be permitted or required to work more than such prevailing hours of labor per day and per week if he or she is paid for all hours worked in excess of the prevailing hours of labor at a rate of at least 1.5 times his or her hourly basic rate of pay; nor may he or she be paid less than the prevailing wage rate determined under sub. (3) in the same or most similar trade or occupation in the area wherein such project of public works is situated. A reference to the prevailing wage rates determined under sub. (3) and the prevailing hours of labor shall be published in the notice issued for the purpose of securing bids for the project. If any contract or subcontract for a project that is subject to this section is entered into, the prevailing wage rates determined under sub. (3) and the prevailing hours of labor shall be physically incorporated into and made a part of the contract or subcontract, except that for a minor subcontract, as determined by the department, the department shall prescribe by rule the method of notifying the minor subcontractor of the prevailing wage rates and prevailing hours of labor applicable to the minor subcontract. The prevailing wage rates and prevailing hours of labor applicable to a contract or subcontract may not be changed during the time that the contract or subcontract is in force.

(2m) COVERED EMPLOYEES. (a) Subject to par. (b), all of the following employees shall be paid the prevailing wage rate determined under sub. (3) and may not be permitted to work a greater number of hours per day or per week than the prevailing hours of labor, unless they are paid for all hours worked in excess of the prevailing hours of labor at a rate of at least 1.5 times their hourly basic rate of pay:

1. All laborers, workers, mechanics and truck drivers employed on the site of a project that is subject to this section.

2. All laborers, workers, mechanics and truck drivers employed in the manufacturing or furnishing of materials, articles, supplies or equipment on the site of a project that is subject to this section or from a facility dedicated exclusively, or nearly so, to a project that is subject to this section by a contractor, subcontractor, agent or other person performing any work on the site of the project.

(b) Notwithstanding par. (a) 1., a laborer, worker, mechanic or truck driver who is regularly employed to process, manufacture, pick up or deliver materials or products from a commercial establishment that has a fixed place of business from which the establishment regularly supplies processed or manufactured materials or products is not entitled to receive the prevailing wage rate determined under sub. (3) or to receive at least 1.5 times his or her hourly basic rate of pay for all hours worked in excess of the prevailing hours of labor unless any of the following applies:

1. The laborer, worker, mechanic or truck driver is employed to go to the source of mineral aggregate such as sand, gravel or stone that is to be immediately incorporated into the work, and not stockpiled or further transported by truck, pick up that mineral aggregate and deliver that mineral aggregate to the site of a project that is subject to this section by depositing the material substantially in place, directly or through spreaders from the transporting vehicle.

2. The laborer, worker, mechanic or truck driver is employed to go to the site of a project that is subject to this section, pick up excavated material or spoil from the site of the project and transport that excavated material or spoil away from the site of the project.

(c) A truck driver who is an owner–operator of a truck shall be paid separately for his or her work and for the use of his or her truck.

**(3) INVESTIGATION; DETERMINATION.** (a) Before bids are asked for any work to which this section applies, the state agency having the authority to prescribe the specifications shall apply to the department to determine the prevailing wage rate for each trade or occupation required in the work under contemplation in the area in which the work is to be done. The department shall conduct investigations and hold public hearings as necessary to define the trades or occupations that are commonly employed on projects that are subject to this section and to inform itself as to the prevailing wage rates in all areas of the state for those trades or occupations, in order to determine the prevailing wage rate for each trade or occupation. The department shall issue its determination within 30 days after receiving the request and shall file the determination with the requesting state agency. For the information of the employees working on the project, the prevailing wage rates determined by the department, the prevailing hours of labor and the provisions of subs. (2) and (6m) shall be kept posted by the state agency in at least one conspicuous and easily accessible place on the site of the project.

(am) The department shall, by January 1 of each year, compile the prevailing wage rates for each trade or occupation in each area. The compilation shall, in addition to the current prevailing wage rates, include future prevailing wage rates when those prevailing wage rates can be determined for any trade or occupation in any area and shall specify the effective date of those future prevailing wage rates. If a construction project extends into more than one area there shall be but one standard of prevailing wage rates for the entire project.

(ar) In determining prevailing wage rates under par. (a) or (am), the department may not use data from projects that are subject to this section, s. 66.0903, 103.50 or 229.8275 or 40 USC 276a unless the department determines that there is insufficient wage data in the area to determine those prevailing wage rates, in which case the department may use data from projects that are subject to this section, s. 66.0903, 103.50 or 229.8275 or 40 USC 276a.

(b) Any person may request a recalculation of any portion of an initial determination within 30 days after the initial determination date if the person submits evidence with the request showing that the prevailing wage rate for any given trade or occupation included in the initial determination does not represent the prevailing wage rate for that trade or occupation in the area. The evidence shall include wage rate information reflecting work performed by persons working in the contested trade or occupation in the area during the current survey period. The department shall affirm or modify the initial determination within 15 days after the date on which the department receives the request for recalculation.

(c) In addition to the recalculation under par. (b), the state agency that requested the determination under this subsection may request a review of any portion of a determination within 30 days after the date of issuance of the determination if the state agency submits evidence with the request showing that the prevailing wage rate for any given trade or occupation included in the determination does not represent the prevailing wage rate for that trade or occupation in the city, village or town in which the proposed project is located. That evidence shall include wage rate information for the contested trade or occupation on at least 3 similar projects located in the city, village or town where the proposed project is located on which some work has been performed during the current survey period and which were considered by the department in issuing its most recent compilation under par. (am). The department shall affirm or modify the determination within 15 days after the date on which the department receives the request for review.

**(3g) NONAPPLICABILITY.** This section does not apply to any single–trade public works project for which the estimated project cost of completion is less than \$30,000 or an amount determined

by the department under s. 66.0903 (5) or to any multiple–trade public works project for which the estimated project cost of completion is less than \$150,000 or an amount determined by the department under s. 66.0903 (5).

**(4r) COMPLIANCE.** (a) When the department finds that a state agency has not requested a determination under sub. (3) (a) or that a state agency, contractor or subcontractor has not physically incorporated a determination into a contract or subcontract as required under sub. (2) or has not notified a minor subcontractor of a determination in the manner prescribed by the department by rule promulgated under sub. (2), the department shall notify the state agency, contractor or subcontractor of the noncompliance and shall file the determination with the state agency, contractor or subcontractor within 30 days after such notice.

(b) Upon completion of a project and before receiving final payment for his or her work on the project, each agent or subcontractor shall furnish the contractor with an affidavit stating that the agent or subcontractor has complied fully with the requirements of this section. A contractor may not authorize final payment until the affidavit is filed in proper form and order.

(c) Upon completion of a project and before receiving final payment for his or her work on the project, each contractor shall file with the state agency authorizing the work an affidavit stating that the contractor has complied fully with the requirements of this section and that the contractor has received an affidavit under par. (b) from each of the contractor’s agents and subcontractors. A state agency may not authorize a final payment until the affidavit is filed in proper form and order. If a state agency authorizes a final payment before an affidavit is filed in proper form and order or if the department determines, based on the greater weight of the credible evidence, that any person performing the work specified in sub. (2m) has been or may have been paid less than the prevailing wage rate or less than 1.5 times the hourly basic rate of pay for all hours worked in excess of the prevailing hours of labor and requests that the state agency withhold all or part of the final payment, but the state agency fails to do so, the state agency is liable for all back wages payable up to the amount of the final payment.

**(5) RECORDS; INSPECTION; ENFORCEMENT.** (a) Each contractor, subcontractor or contractor’s or subcontractor’s agent performing work on a project that is subject to this section shall keep full and accurate records clearly indicating the name and trade or occupation of every person performing the work described in sub. (2m) and an accurate record of the number of hours worked by each of those persons and the actual wages paid for the hours worked.

(b) It shall be the duty of the department to enforce this section. To this end it may demand and examine, and every contractor, subcontractor, and contractor’s and subcontractor’s agent shall keep, and furnish upon request by the department, copies of payrolls and other records and information relating to the wages paid to persons performing the work described in sub. (2m) for work to which this section applies. The department may inspect records in the manner provided in this chapter. Every contractor, subcontractor, or agent performing work on a project that is subject to this section is subject to the requirements of this chapter relating to the examination of records. Section 111.322 (2m) applies to discharge and other discriminatory acts arising in connection with any proceeding under this section.

(c) If requested by any person, the department shall inspect the payroll records of any contractor, subcontractor or agent performing work on a project that is subject to this section to ensure compliance with this section. If the contractor, subcontractor or agent subject to the inspection is found to be in compliance and if the person making the request is a person performing the work specified in sub. (2m), the department shall charge the person making the request the actual cost of the inspection. If the contractor, subcontractor or agent subject to the inspection is found to be in compliance and if the person making the request is not a person performing the work specified in sub. (2m), the department shall charge the person making the request \$250 or the actual cost of the inspection, whichever is greater.

**(6m) LIABILITY AND PENALTIES.** (a) Except as provided in pars. (b), (d) and (f), any contractor, subcontractor or contractor's or subcontractor's agent who violates this section may be fined not more than \$200 or imprisoned for not more than 6 months or both. Each day that a violation continues is a separate offense.

(b) Whoever induces any person who seeks to be or is employed on any project that is subject to this section to give up, waive or return any part of the wages to which the person is entitled under the contract governing the project, or who reduces the hourly basic rate of pay normally paid to a person for work on a project that is not subject to this section during a week in which the person works both on a project that is subject to this section and on a project that is not subject to this section, by threat not to employ, by threat of dismissal from employment or by any other means is guilty of an offense under s. 946.15 (1).

(c) Any person employed on a project that is subject to this section who knowingly permits a contractor, subcontractor or contractor's or subcontractor's agent to pay him or her less than the prevailing wage rate set forth in the contract governing the project, who gives up, waives or returns any part of the compensation to which he or she is entitled under the contract, or who gives up, waives or returns any part of the compensation to which he or she is normally entitled for work on a project that is not subject to this section during a week in which the person works both on a project that is subject to this section and on a project that is not subject to this section, is guilty of an offense under s. 946.15 (2).

(d) Whoever induces any person who seeks to be or is employed on any project that is subject to this section to permit any part of the wages to which the person is entitled under the contract governing the project to be deducted from the person's pay is guilty of an offense under s. 946.15 (3), unless the deduction would be permitted under 29 CFR 3.5 or 3.6 from a person who is working on a project that is subject to 40 USC 276c.

(e) Any person employed on a project that is subject to this section who knowingly permits any part of the wages to which he or she is entitled under the contract governing the project to be deducted from his or her pay is guilty of an offense under s. 946.15 (4), unless the deduction would be permitted under 29 CFR 3.5 or 3.6 from a person who is working on a project that is subject to 40 USC 276c.

(f) Paragraph (a) does not apply to any person who fails to provide any information to the department to assist the department in determining prevailing wage rates under sub. (3) (a) or (am).

**(7) DEBARMENT.** (a) Except as provided under pars. (b) and (c), the department shall distribute to all state agencies a list of all persons whom the department has found to have failed to pay the prevailing wage rate determined under sub. (3) or has found to have paid less than 1.5 times the hourly basic rate of pay for all hours worked in excess of the prevailing hours of labor at any time in the preceding 3 years. The department shall include with any name the address of the person and shall specify when the person failed to pay the prevailing wage rate and when the person paid less than 1.5 times the hourly basic rate of pay for all hours worked in excess of the prevailing hours of labor. A state agency may not award any contract to the person unless otherwise recommended by the department or unless 3 years have elapsed from the date the department issued its findings or date of final determination by a court of competent jurisdiction, whichever is later.

(b) The department may not include in a notification under par. (a) the name of any person on the basis of having let work to a person whom the department has found to have failed to pay the prevailing wage rate determined under sub. (3) or has found to have paid less than 1.5 times the hourly basic rate of pay for all hours worked in excess of the prevailing hours of labor.

(c) This subsection does not apply to any contractor, subcontractor or agent who in good faith commits a minor violation of this section, as determined on a case-by-case basis through administrative hearings with all rights to due process afforded to all parties or who has not exhausted or waived all appeals.

(d) Any person submitting a bid on a project that is subject to this section shall, on the date the person submits the bid, identify any construction business in which the person, or a shareholder, officer or partner of the person, if the person is a business, owns, or has owned at least a 25% interest on the date the person submits the bid or at any other time within 3 years preceding the date the person submits the bid, if the business has been found to have failed to pay the prevailing wage rate determined under sub. (3) or to have paid less than 1.5 times the hourly basic rate of pay for all hours worked in excess of the prevailing hours of labor.

(e) The department shall promulgate rules to administer this subsection.

**History:** 1983 a. 27; 1985 a. 159; 1985 a. 332 ss. 141, 142, 253; 1987 a. 403 s. 256; 1989 a. 228; 1993 a. 112; 1995 a. 27, 215, 225; 1997 a. 35; 1999 a. 70; 1999 a. 150 ss. 628, 672; 1999 a. 167; 2001 a. 16, 30.

**Cross Reference:** See also chs. DWD 290 and 294, Wis. adm. code.

**103.50 Highway contracts. (1) DEFINITIONS.** In this section:

(a) "Area" means the county in which a proposed project that is subject to this section is located or, if the department determines that there is insufficient wage data in that county, "area" means those counties that are contiguous to that county or, if the department determines that there is insufficient wage data in those counties, "area" means those counties that are contiguous to those counties or, if the department determines that there is insufficient wage data in those counties, "area" means the entire state.

(b) "Hourly basic rate of pay" has the meaning given in s. 103.49 (1) (b).

(bg) "Insufficient wage data" has the meaning given in s. 103.49 (1) (bg).

(c) "Prevailing hours of labor" has the meaning given in s. 103.49 (1) (c).

(d) 1. Except as provided in subd. 2., "prevailing wage rate" for any trade or occupation in any area means the hourly basic rate of pay, plus the hourly contribution for health insurance benefits, vacation benefits, pension benefits and any other bona fide economic benefit, paid directly or indirectly, for a majority of the hours worked in the trade or occupation in the area.

2. If there is no rate at which a majority of the hours worked in the trade or occupation in the area is paid, "prevailing wage rate" means the average hourly basic rate of pay, weighted by the number of hours worked, plus the average hourly contribution, weighted by the number of hours worked, for health insurance benefits, vacation benefits, pension benefits and any other bona fide economic benefit, paid directly or indirectly for all hours worked at the hourly basic rate of pay of the highest-paid 51% of hours worked in that trade or occupation in that area.

(e) "Truck driver" has the meaning given in s. 103.49 (1) (g).

**(2) PREVAILING WAGE RATES AND HOURS OF LABOR.** No person performing the work described in sub. (2m) in the employ of a contractor, subcontractor, agent or other person performing any work on a project under a contract based on bids as provided in s. 84.06 (2) to which the state is a party for the construction or improvement of any highway may be permitted to work a greater number of hours per day or per week than the prevailing hours of labor; nor may he or she be paid a lesser rate of wages than the prevailing wage rate in the area in which the work is to be done determined under sub. (3); except that any such person may be permitted or required to work more than such prevailing hours of labor per day and per week if he or she is paid for all hours worked in excess of the prevailing hours of labor at a rate of at least 1.5 times his or her hourly basic rate of pay.

**(2m) COVERED EMPLOYEES.** (a) Subject to par. (b), all of the following employees shall be paid the prevailing wage rate determined under sub. (3) and may not be permitted to work a greater number of hours per day or per week than the prevailing hours of labor, unless they are paid for all hours worked in excess of the prevailing hours of labor at a rate of at least 1.5 times their hourly basic rate of pay:



1. All laborers, workers, mechanics and truck drivers employed on the site of a project that is subject to this section.

2. All laborers, workers, mechanics and truck drivers employed in the manufacturing or furnishing of materials, articles, supplies or equipment on the site of a project that is subject to this section or from a facility dedicated exclusively, or nearly so, to a project that is subject to this section by a contractor, subcontractor, agent or other person performing any work on the site of the project.

(b) Notwithstanding par. (a) 1., a laborer, worker, mechanic or truck driver who is regularly employed to process, manufacture, pick up or deliver materials or products from a commercial establishment that has a fixed place of business from which the establishment regularly supplies processed or manufactured materials or products is not entitled to receive the prevailing wage rate determined under sub. (3) or to receive at least 1.5 times his or her hourly basic rate of pay for all hours worked in excess of the prevailing hours of labor unless any of the following applies:

1. The laborer, worker, mechanic or truck driver is employed to go to the source of mineral aggregate such as sand, gravel or stone that is to be immediately incorporated into the work, and not stockpiled or further transported by truck, pick up that mineral aggregate and deliver that mineral aggregate to the site of a project that is subject to this section by depositing the material substantially in place, directly or through spreaders from the transporting vehicle.

2. The laborer, worker, mechanic or truck driver is employed to go to the site of a project that is subject to this section, pick up excavated material or spoil from the site of the project and transport that excavated material or spoil away from the site of the project and return to the site of the project.

(c) A truck driver who is an owner–operator of a truck shall be paid separately for his or her work and for the use of his or her truck.

(3) INVESTIGATIONS; DETERMINATIONS. The department shall conduct investigations and hold public hearings necessary to define the trades or occupations that are commonly employed in the highway construction industry and to inform itself as to the prevailing wage rates in all areas of the state for those trades or occupations, in order to ascertain and determine the prevailing wage rates accordingly.

(4) CERTIFICATION OF PREVAILING WAGE RATES. The department of workforce development shall, by May 1 of each year, certify to the department of transportation the prevailing wage rates in each area for all trades or occupations commonly employed in the highway construction industry. The certification shall, in addition to the current prevailing wage rates, include future prevailing wage rates when such prevailing wage rates can be determined for any such trade or occupation in any area and shall specify the effective date of those future prevailing wage rates. If a construction project extends into more than one area there shall be but one standard of prevailing wage rates for the entire project.

(4m) WAGE RATE DATA. In determining prevailing wage rates for projects that are subject to this section, the department shall use data from projects that are subject to this section, s. 66.0903 or 103.49 or 40 USC 276a.

(5) APPEALS TO GOVERNOR. If the department of transportation considers any determination of the department of workforce development as to the prevailing wage rates in an area to have been incorrect, it may appeal to the governor, whose determination shall be final.

(6) CONTENTS OF CONTRACTS. A reference to the prevailing wage rates determined under sub. (3) and the prevailing hours of labor shall be published in the notice issued for the purpose of securing bids for a project. If any contract or subcontract for a project that is subject to this section is entered into, the prevailing wage rates determined under sub. (3) and the prevailing hours of

labor shall be physically incorporated into and made a part of the contract or subcontract, except that for a minor subcontract, as determined by the department of workforce development, that department shall prescribe by rule the method of notifying the minor subcontractor of the prevailing wage rates and prevailing hours of labor applicable to the minor subcontract. The prevailing wage rates and prevailing hours of labor applicable to a contract or subcontract may not be changed during the time that the contract or subcontract is in force. For the information of the employees working on the project, the prevailing wage rates determined by the department, the prevailing hours of labor and the provisions of subs. (2) and (7) shall be kept posted by the department of transportation in at least one conspicuous and easily accessible place on the site of the project.

(7) PENALTIES. (a) Except as provided in pars. (b), (d) and (f), any contractor, subcontractor or contractor's or subcontractor's agent who violates this section may be fined not more than \$200 or imprisoned for not more than 6 months or both. Each day that a violation continues is a separate offense.

(b) Whoever induces any person who seeks to be or is employed on any project that is subject to this section to give up, waive or return any part of the wages to which the person is entitled under the contract governing the project, or who reduces the hourly basic rate of pay normally paid to a person for work on a project that is not subject to this section during a week in which the person works both on a project that is subject to this section and on a project that is not subject to this section, by threat not to employ, by threat of dismissal from employment or by any other means is guilty of an offense under s. 946.15 (1).

(c) Any person employed on a project that is subject to this section who knowingly permits a contractor, subcontractor or contractor's or subcontractor's agent to pay him or her less than the prevailing wage rate set forth in the contract governing the project, who gives up, waives or returns any part of the compensation to which he or she is entitled under the contract, or who gives up, waives or returns any part of the compensation to which he or she is normally entitled for work on a project that is not subject to this section during a week in which the person works both on a project that is subject to this section and on a project that is not subject to this section, is guilty of an offense under s. 946.15 (2).

(d) Whoever induces any person who seeks to be or is employed on any project that is subject to this section to permit any part of the wages to which the person is entitled under the contract governing the project to be deducted from the person's pay is guilty of an offense under s. 946.15 (3), unless the deduction would be permitted under 29 CFR 3.5 or 3.6 from a person who is working on a project that is subject to 40 USC 276c.

(e) Any person employed on a project that is subject to this section who knowingly permits any part of the wages to which he or she is entitled under the contract governing the project to be deducted from his or her pay is guilty of an offense under s. 946.15 (4), unless the deduction would be permitted under 29 CFR 3.5 or 3.6 from a person who is working on a project that is subject to 40 USC 276c.

(f) Paragraph (a) does not apply to any person who fails to provide any information to the department to assist the department in determining prevailing wage rates under sub. (3) or (4).

(8) ENFORCEMENT AND PROSECUTION. The department of transportation shall require adherence to subs. (2), (2m) and (6). The department of transportation may demand and examine, and every contractor, subcontractor and contractor's or subcontractor's agent shall keep and furnish upon request by the department of transportation, copies of payrolls and other records and information relating to compliance with this section. Upon request of the department of transportation or upon complaint of alleged violation, the district attorney of the county in which the work is located shall investigate as necessary and prosecute violations in

a court of competent jurisdiction. Section 111.322 (2m) applies to discharge and other discriminatory acts arising in connection with any proceeding under this section.

**History:** 1977 c. 29 s. 1654 (8) (c); 1979 c. 269; 1985 a. 332 ss. 143, 144, 253; 1989 a. 228; 1993 a. 492; 1995 a. 215, 225; 1997 a. 3, 35; 1999 a. 70; 1999 a. 150 ss. 629, 672; 2001 a. 30.

**Cross-reference:** See s. 227.01 (13) (t) for provision that determinations of hours, wages and truck rentals need not be filed as rules but are subject to review under Chapter 227.

**Cross Reference:** See also ch. DWD 290, Wis. adm. code.

WERC had no jurisdiction to enforce wage rates on a highway project as an unfair labor practice when the complaining union had no members among the employees affected and was not seeking to represent them. *Chauffeurs, Teamsters & Helpers v. WERC*, 51 Wis. 2d 391, 187 N.W.2d 364 (1971).

The department may not make more than one annual certification of the prevailing hours of labor or prevailing wage rates to apply to state highway project contracts. 59 Atty. Gen. 23.

**103.505 Collective bargaining; definitions.** When used in ss. 103.505 to 103.61, and for the purposes of those sections:

(1) A case shall be held to involve or to grow out of a labor dispute when the case involves persons who are engaged in a single industry, trade, craft, or occupation; or who are employees of one employer; or who are members of the same or an affiliated organization of employers or employees; whether such dispute is any of the following:

(a) Between one or more employers or associations of employers and one or more employees or associations of employees.

(b) Between one or more employers or associations of employers and one or more employees or associations of employees.

(c) Between one or more employees or associations of employees and one or more employers or associations of employees.

(d) Between any conflicting or competing interests in a labor dispute of persons participating or interested in the labor dispute.

(2) A person or association shall be held to be a person participating or interested in a labor dispute if relief is sought against the person or association and if the person or association is engaged in the industry, trade, craft, or occupation in which the labor dispute occurs, or is a member, officer, or agent of any association of employers or employees engaged in that industry, trade, craft, or occupation.

(3) "Labor dispute" means any controversy between an employer and the majority of the employer's employees in a collective bargaining unit concerning the right or process or details of collective bargaining or the designation of representatives. Any organization with which either the employer or the majority of the employer's employees is affiliated may be considered a party to the labor dispute.

**History:** 1993 a. 492; 1995 a. 225; 1997 a. 35; 1997 a. 253 ss. 104, 105; Stats. 1997 s. 103.505.

**103.51 Public policy as to collective bargaining.** In the interpretation and application of ss. 103.505 to 103.61, the public policy of this state is declared as follows:

(1) Negotiation of terms and conditions of labor should result from voluntary agreement between employer and employees. Governmental authority has permitted and encouraged employers to organize in the corporate and other forms of capital control. In dealing with such employers, the individual unorganized worker is helpless to exercise actual liberty of contract and to protect his or her freedom of labor, and thereby to obtain acceptable terms and conditions of employment. Therefore it is necessary that the individual worker have full freedom of association, self-organization, and the designation of representatives of the worker's own choosing, to negotiate the terms and conditions of the worker's employment, and that the worker shall be free from the interference, restraint or coercion of employers of labor, or their agents, in the designation of such representatives or in self-organization or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection.

**History:** 1995 a. 225; 1997 a. 253.

**103.52 "Yellow-dog" contracts. (1)** Every undertaking or promise made after July 1, 1931, whether written or oral, express or implied, between any employee or prospective employee and that person's employer, prospective employer or any other individual, firm, company, association or corporation is declared to be against public policy if either party to the undertaking or promise undertakes or promises any of the following:

(a) To join or to remain a member of some specific labor organization or to join or remain a member of some specific employer organization or any employer organization.

(b) Not to join or not to remain a member of some specific labor organization or any labor organization, or of some specific employer organization or any employer organization.

(c) To withdraw from an employment relation in the event that the party joins or remains a member of some specific labor organization or any labor organization, or of some specific employer organization or any employer organization.

(2) No undertaking or promise described in sub. (1) shall afford any basis for the granting of legal or equitable relief by any court against a party to the undertaking or promise, or against any other person, who may advise, urge or induce, without fraud, violence or threat of fraud or violence either party to the undertaking or promise to act in disregard of the undertaking or promise.

(3) This section in its entirety is supplemental to and of s. 103.46 (1).

**History:** 1993 a. 492; 1997 a. 253.

**103.53 Lawful conduct in labor disputes. (1)** The following acts, whether performed singly or in concert, shall be considered legal:

(a) Ceasing or refusing to perform any work or to remain in any relation of employment regardless of any promise, undertaking, contract or agreement in violation of the public policy declared in s. 103.52.

(b) Becoming or remaining a member of any labor organization or of any employer organization, regardless of any undertaking or promise as is described in s. 103.52.

(c) Paying or giving to any person any strike or unemployment benefits or insurance or other moneys or things of value.

(d) Aiding, by lawful means, any person who is being proceeded against in, or is prosecuting, any action or suit in any court of the United States or of any state.

(e) Giving publicity to and obtaining or communicating information regarding the existence of, or the facts involved in, any dispute, whether by advertising, speaking, patrolling any public street or any place where any person may lawfully be, without intimidation or coercion, or by any other method not involving fraud, violence, breach of the peace, or threat of fraud, violence or breach of the peace.

(f) Ceasing to patronize or to employ any person, except that nothing in this paragraph shall be construed to legalize a secondary boycott.

(g) Assembling peaceably to do or to organize to do any of the acts specified in pars. (a) to (f) or to promote lawful interests.

(h) Advising or notifying any person or persons of an intention to do any of the acts specified in pars. (a) to (g).

(i) Agreeing with other persons to do or not to do any of the acts specified in pars. (a) to (h).

(j) Advising, urging, or inducing without fraud, violence, or threat of fraud or violence, others to do the acts specified in pars. (a) to (i), regardless of any undertaking or promise as described in s. 103.52.

(k) Doing in concert any of the acts specified in pars. (a) to (j).

(L) Peaceful picketing or patrolling.

(2) No court shall have jurisdiction to issue any restraining order or temporary or permanent injunction which, in specific or

general terms, prohibits any person from doing, whether singly or in concert, any of the acts specified in sub. (1).

**History:** 1997 a. 253.

**103.535 Unlawful conduct in labor controversies.** No person may picket, or induce others to picket, the establishment, employees, supply or delivery vehicles, or customers of anyone engaged in business, or interfere with the person's business, or interfere with any person desiring to transact or transacting business with the person, when no labor dispute exists between the employer and the employer's employees or their representatives.

**History:** 1993 a. 492; 1997 a. 253.

**103.54 Responsibility for unlawful acts.** No officer or member of any association or organization, and no association or organization participating or interested in a labor dispute may be held responsible or liable in any civil action at law or suit in equity, or in any criminal prosecution, for the unlawful acts of individual officers, members, or agents, except upon proof by a preponderance of the evidence and without the aid of any presumptions of law or fact of all of the following:

(1) That individual officers, members or agents of the association or organization committed those acts.

(2) That the officer or member, or association or organization, sought to be held liable or responsible actually participated in or authorized those acts or ratified those acts with actual knowledge of those acts.

**History:** 1997 a. 253.

**103.545 Recruitment of strikebreakers.** (1) In this section:

(a) "Employer" has the meaning given under s. 111.02 (7).

(b) "Strikebreaker" means any person who at least twice during the previous 12-month period has accepted employment for the duration of a strike or a lockout in place of employees who are involved in a strike or lockout of a specific employer, but does not include any supervisory or other permanent employee of the employer who is temporarily assigned to perform the duties of an employee involved in a strike or lockout or other permanent or contractual employee whose services are necessary to ensure that the plant or other property of the employer involved in the strike or lockout is properly maintained and protected for the resumption of normal operations at any time.

(2) No employer may knowingly employ or contract with another to employ any strikebreaker to replace employees who are on strike against the employer or locked out by it.

(3) No person who is not directly involved in a strike or lockout may recruit any strikebreaker for employment or secure or offer to secure employment for any strikebreaker when the purpose thereof is to have the strikebreaker replace an employee in an industry or establishment where a strike or lockout exists.

(4) No person, including a licensed employment agent, may transport or arrange to transport to this state any strikebreaker to be engaged in employment for the purpose of replacing employees in an industry or establishment where a strike or lockout exists.

(5) Whoever violates this section or any order of the department issued under this section may be fined not more than \$2,000 or imprisoned in the county jail for not more than one year or both.

(6) Upon complaint of an affected employer, labor organization or employee, the department may investigate violations and issue orders to enforce this section. The investigations and orders shall be made as provided under s. 103.005. Orders are subject to review as provided in ch. 227. The department of justice may, upon request of the commission, prosecute violations of this section in any court of competent jurisdiction.

**History:** 1979 c. 322; 1983 a. 189 s. 329 (4); 1995 a. 27.

**103.55 Public policy as to labor litigation.** In the interpretation and application of ss. 103.56 to 103.59, the public policy of this state is declared to be:

(1) Equity procedure that permits a complaining party to obtain sweeping injunctive relief that is not preceded by or conditioned upon notice to and hearing of the responding party or parties, or that issues after hearing based upon written affidavits alone and not wholly or in part upon examination, confrontation and cross-examination of witnesses in open court, is peculiarly subject to abuse in labor litigation for all of the following reasons:

(a) That the existing state of affairs cannot be maintained but is necessarily altered by the injunction.

(b) That determination of issues of veracity and of probability of fact from affidavits of the opposing parties that are contradictory and, under the circumstances, untrustworthy rather than from oral examination in open court is subject to grave error.

(c) That error in issuing the injunctive relief is usually irreparable to the opposing party.

(d) That delay incident to the normal course of appellate practice frequently makes ultimate correction of error in law or in fact unavailing in the particular case.

**History:** 1979 c. 110 s. 60 (9); 1985 a. 135; 1997 a. 253.

**103.56 Injunctions: conditions of issuance; restraining orders.** (1) No court shall have jurisdiction to issue a temporary or permanent injunction in any case involving or growing out of a labor dispute, except after hearing the testimony of witnesses in open court, with opportunity for cross-examination, in support of the allegations of a complaint made under oath, and testimony in opposition to the allegations of the complaint, if offered, and except after findings of all of the following facts by the court:

(a) That unlawful acts have been threatened or committed and will be executed or continued unless restrained.

(b) That substantial and irreparable injury to complainant's property will follow unless the relief requested is granted.

(c) That as to each item of relief granted greater injury will be inflicted upon the complainant by the denial of that relief than will be inflicted upon the defendants by the granting of that relief.

(d) That the relief to be granted does not violate s. 103.53.

(e) That the complainant has no adequate remedy at law.

(f) That the public officers charged with the duty to protect complainant's property have failed or are unable to furnish adequate protection.

(2) A hearing under sub. (1) shall be held after due and personal notice of the hearing has been given, in the manner that the court shall direct, to all known persons against whom relief is sought, and also to those public officers who are charged with the duty to protect the complainant's property.

(3) If a complainant alleges that a substantial and irreparable injury to the complainant's property will be unavoidable unless a temporary restraining order is issued before a hearing under sub. (1) may be had, a temporary restraining order may be granted on reasonable notice of application for the temporary restraining order as the court may direct by order to show cause, but in no case less than 48 hour's notice. The order to show cause shall be served upon the party or parties that are sought to be restrained and that are specified in the order. The order shall be issued only upon testimony under oath or, in the discretion of the court, upon affidavits, sufficient, if sustained, to justify the court in issuing a temporary injunction upon a hearing as provided for under this section.

(4) A temporary restraining order issued under sub. (3) shall be effective for no longer than 5 days and, at the expiration of the 5-day period, shall become void and not subject to renewal or extension, except that if the hearing for a temporary injunction begins before the expiration of the 5-day period the restraining order may in the court's discretion be continued until a decision is reached on the issuance of the temporary injunction.

(5) No temporary restraining order or temporary injunction may be issued under this section except on condition that the complainant first files an undertaking with adequate security sufficient to compensate those enjoined for any loss, expense, or damage caused by the improvident or erroneous issuance of the order or

injunction, including all reasonable costs, reasonable attorney fees and expenses that will be incurred in opposing the order or the granting of any injunctive relief sought in the same proceeding and subsequently denied by the court.

(6) The undertaking required under sub. (5) shall represent an agreement between the complainant and the surety upon which a decree may be rendered in the same suit or proceeding against the complainant and surety, the complainant and surety submitting themselves to the jurisdiction of the court for that purpose. However, nothing contained in this section deprives any party having a claim or cause of action under or upon an undertaking filed under sub. (5) from electing to pursue an ordinary remedy by suit at law or in equity.

**History:** 1993 a. 492; 1997 a. 253.

Sub. (1) and s. 103.62, relating to limitations upon the jurisdiction of a court to issue injunctions in cases arising from labor disputes, are inapplicable to actions brought by the state or its political subdivisions against public employees. *Joint School v. Wisconsin Rapids Education Association*, 70 Wis. 2d 292, 234 N.W.2d 289 (1975).

**103.57 Clean hands doctrine.** No restraining order or injunctive relief may be granted to any complainant who has failed to comply with any legal obligation which is involved in the labor dispute in question, or who has failed to make every reasonable effort to settle the dispute either by negotiation or with the aid of any available machinery of governmental mediation or voluntary arbitration, but nothing in this section requires a court to await the action of any such tribunal if irreparable injury is threatened.

**History:** 1997 a. 253.

**103.58 Injunctions: contents.** Except as provided in s. 103.56, any restraining order or temporary or permanent injunction granted in a case involving or growing out of a labor dispute is subject to all of the following:

(1) The order or injunction may be granted only on the basis of findings of fact made and filed by the court in the record of the case prior to the issuance of the order or injunction.

(2) The order or injunction shall include only a prohibition of those specific acts that are expressly complained of in the bill of complaint or petition filed in the case and expressly included in findings of fact made and filed by the court as provided under sub. (1).

(3) The order or injunction shall be binding only upon the parties to the suit, their agents, servants, employees and attorneys, or those in active concert and participation with them, who by personal service or otherwise have received actual notice of the order or injunction.

**History:** 1997 a. 253.

**103.59 Injunctions: appeals.** If any court issues or denies any temporary injunction in a case involving or growing out of a labor dispute, the court shall, upon the request of any party to the proceedings, and on filing the usual bond for costs, immediately certify the entire record of the case, including a transcript of the evidence taken, to the appropriate appellate court for its review. Upon the filing of the record in the appropriate appellate court, the appeal shall be given preference.

**History:** 1983 a. 219; 1997 a. 253.

**103.60 Contempt cases.** If a person is charged with contempt under this chapter for violation of a restraining order or injunction issued by a court, the accused shall enjoy all of the following:

(1) The rights to bail that are accorded to persons accused of a crime.

(2) The right to be notified of the accusation and a reasonable time to make a defense, if the alleged contempt is not committed in the immediate view or presence of the court.

(3) Upon demand, the right to a speedy and public trial by an impartial jury of the county in which the contempt was committed, except that this requirement does not apply to contempts committed in the presence of the court or so near to the court as to inter-

fere directly with the administration of justice or to the misbehavior, misconduct or disobedience of any officer of the court in respect to the writs, orders or process of the court. All contempt proceedings brought for the alleged violation of any such restraining order or injunction are independent, original, special proceedings and shall require a unanimous finding of the jury.

(4) A substitution of judge request in this section shall be made under s. 801.58.

**History:** 1977 c. 135; 1979 c. 257; 1997 a. 253.

A jury trial is required in cases of criminal contempt when the penalty imposed is serious, but a striker charged with civil contempt for violation of an order enjoining a teachers' strike was not entitled to a jury trial. *Joint School v. Wisconsin Rapids Education Association*, 70 Wis. 2d 292, 234 N.W.2d 289 (1975).

**103.61 Punishment for contempt.** Punishment for a contempt, specified in s. 103.60, may be by fine, not exceeding \$25, or by imprisonment not exceeding 10 days, in the jail of the county where the court is sitting, or both, in the discretion of the court. If a person is committed to jail for the nonpayment of a fine imposed under this section, the person must be discharged at the expiration of 15 days except that if the person is also committed for a definite time the 15 days must be computed from the expiration of the definite time.

**History:** 1993 a. 492; 1997 a. 253.

**103.64 Employment of minors; definitions.** As used in ss. 103.64 to 103.82:

(1m) "Farming" has the meaning given in s. 102.04 (3).

(2) "Nonprofit organization" means an organization described in section 501 (c) of the internal revenue code.

(3) "Permit officer" shall mean any person designated by the department to issue child labor permits.

(4) "Private school" has the meaning given in s. 115.001 (3r).

(5) "Public school" has the meaning given in s. 115.01 (1).

**History:** 1971 c. 228 s. 44; 1971 c. 271; 1985 a. 1; 1995 a. 27; 2001 a. 16.

**103.65 General standards for employment of minors.**

(1) A minor shall not be employed or permitted to work at any employment or in any place of employment dangerous or prejudicial to the life, health, safety, or welfare of the minor or where the employment of the minor may be dangerous or prejudicial to the life, health, safety or welfare of other employees or frequenters.

(2) No minor shall be employed or permitted to work at any employment for such hours of the day or week, or such days of the week, or at such periods of the day as shall be dangerous or prejudicial to the life, health, safety or welfare of such minor.

**History:** 1971 c. 271.

The plaintiff was in a class protected by a rule promulgated under this section; the court did not err in giving "negligence per se" instruction. *McGarrity v. Welch Plumbing Co.* 104 Wis. 2d 414, 312 N.W.2d 37 (1981).

The trial court erred in failing to hold as matter of law that the employer's violation of child labor laws caused injury and that the defense of the child's contributory negligence was inapplicable to the case. *D. L. v. Huebner*, 110 Wis. 2d 581, 329 N.W.2d 890 (1983).

An employer violating a child labor law is absolutely liable for resulting injuries to the minor, other employees, or frequenters of a place of employment. A driver on a public street may be a frequenter when the employment is in a street trade. *Beard v. Lee Enterprises, Inc.* 225 Wis. 2d 1, 591 N.W.2d 156 (1999).

An occupation must be listed as a prohibited employment in rules adopted by DWD under s. 103.66 for there to be absolute liability. *Perry v. Menomonee Mutual Insurance Co.* 2000 WI App 215, 239 Wis. 2d 26, 619 Wis. 2d 123.

A minor who paid an entry fee to participate in a featured truck race at a raceway was not an employee of the raceway. *Olson v. Auto Sport, Inc.* 2002 WI App 206, \_\_\_ Wis. 2d, \_\_\_ N.W.2d \_\_\_.

**103.66 Powers and duties of the department relating to employment of minors.** (1) The department may investigate, determine and fix reasonable classifications of employments, places of employment and minimum ages for hazardous employment for minors, and may issue general or special orders prohibiting the employment of minors in employments or places of employment prejudicial to the life, health, safety or welfare of minors, and may carry out the purposes of ss. 103.64 to 103.82.

In fixing minimum ages for hazardous employment for minors under this subsection, the department shall permit the employment of a minor 14 years of age or over as a laboratory assistant

for a nonprofit, community-based organization that provides educational opportunities in medically related fields if the minor is under the direct supervision of a mentor and the laboratory at which the minor is employed complies with 10 CFR 20.1207 and 29 CFR 1910.1030.

(2) The department may investigate and fix reasonable classifications of employments and hours of employment for minors and may issue general or special orders fixing maximum hours of employment for minors per day and per week, maximum days of employment per week, hours at which employment shall begin and end and the duration of lunch and other rest periods as are necessary to protect the life, health, safety, and welfare of minors.

(3) The investigations, classifications and orders provided for in subs. (1) and (2) shall be made as provided under s. 103.005. These orders are subject to review as provided in ch. 227.

**History:** 1971 c. 185 s. 6; 1971 c. 271, 307; 1995 a. 27.

**Cross Reference:** See also ch. DWD 270, Wis. adm. code.

An occupation must be listed as a prohibited employment in rules adopted by DWD under s. 103.66 for there to be absolute liability. *Perry v. Menomonee Mutual Insurance Co.* 2000 WI App 215, 239 Wis. 2d 26, 619 Wis. 2d 123.

**103.67 Minimum ages in various employments.** (1) A minor 14 to 18 years of age may not be employed or permitted to work in any gainful occupation during the hours that the minor is required to attend school under s. 118.15 unless the minor has completed high school, except that any minor may be employed in a public exhibition as provided in s. 103.78 and a minor 16 years of age or over may be employed as an election inspector as provided in s. 7.30 (2) (am).

(2) A minor under 14 years of age may not be employed or permitted to work in any gainful occupation at any time, except that a minor under 14 years of age may be employed or permitted to work as follows to the extent permitted under the federal Fair Labor Standards Act, 29 USC 201 to 219:

(a) Minors 12 years of age or older may be employed in school lunch programs of the school which they attend.

(b) Minors under 14 years of age may be employed in public exhibitions as provided in s. 103.78.

(c) Minors 12 years of age or older may be employed in street trades, and any minor may work in fund-raising sales for nonprofit organizations, public schools or private schools, as provided in ss. 103.21 to 103.31.

(d) Minors 12 and 13 years of age may be employed as caddies on golf courses, if they use caddy carts.

(e) Minors 12 years of age or older may be employed in farming.

(f) Minors 12 years of age or older may be employed in and around a home in work usual to the home of the employer, if the work is not in connection with or a part of the business, trade or profession of the employer and the type of employment is not specifically prohibited by ss. 103.64 to 103.82 or by any order of the department.

(g) Unless prohibited under s. 103.65, minors 12 years of age or older may be employed under the direct supervision of the minor's parent or guardian in connection with the parent's or guardian's business, trade or profession.

(h) Minors 12 and 13 years of age may be employed as sideline officials for high school football games.

(hm) Minors 12 and 13 years of age may be employed under direct adult supervision as officials for athletic events sponsored by private, nonprofit organizations in which the minor would be eligible to participate or in which the participants are the same age as or younger than the minor.

(i) Minors 11 to 13 years of age may be employed as ball monitors at high school football games and practices.

(j) Minors under 14 years of age may be employed as participants in a restitution project under s. 938.245 (2) (a) 5., 938.32 (1t) (a), 938.34 (5), or 938.345, in a supervised work program or other community service work under s. 938.245 (2) (a) 6., 938.32 (1t) (b), 938.34 (5g), 938.343 (3), or 938.345, or in the community ser-

vice component of a youth report center program under s. 938.245 (2) (a) 9m., 938.32 (1p), 938.34 (7j), 938.342 (1d) (c) or (1g) (k), 938.343 (3m), 938.344 (2g) (a) 5., 938.345, or 938.355 (6) (d) 5. or (6m) (a) 4.

(3) Sections 103.64 to 103.82 do not apply to the employment of a minor engaged in domestic or farm work performed outside school hours in connection with the minor's own home and directly for the minor's parent or guardian.

**History:** 1971 c. 271, 307; 1973 c. 183; 1979 c. 234; 1985 a. 1; 1989 a. 126; 1993 a. 492; 1995 a. 352; 1999 a. 164; 2001 a. 16, 109.

**Cross Reference:** See also s. DWD 270.04, Wis. adm. code.

An injured minor cannot be charged with contributory negligence when the child's employment is in violation of a child labor law. *Tisdale v. Hasslinger*, 79 Wis. 2d 194, 255 N.W.2d 314 (1977).

**103.68 Hours of labor.** Except as the department may from time to time issue orders as provided under s. 103.66 (2) regulating the hours of employment of minors, the following schedule of hours shall be deemed to be necessary to protect minors from employment dangerous or prejudicial to their life, health, safety, or welfare and shall apply to minors of the ages specified therein:

(1) No minor shall be employed or permitted to work at any gainful occupation other than domestic service, farm labor, or service as an election inspector under s. 7.30 (2) (am) for more than 8 hours in any one day nor more than 40 hours nor more than 6 days in any one week, nor during such hours as the minor is required under s. 118.15 to attend school.

(2) No minor under 16 shall be employed or permitted to work in any gainful occupation other than domestic service or farm labor more than 24 hours in any one week, nor, except in domestic service, farm labor, or in public exhibitions as defined in s. 103.78, or in street trades as defined in s. 103.21, before 7 a.m. nor after 6 p.m.

(3) At least 30 minutes shall be allowed for each meal period which shall commence reasonably close to 6 a.m., 12 noon, 6 p.m. or 12 midnight or approximately midway of any work period or at such other times as deemed reasonable by the department. No minor under age 18 shall be employed or permitted to work more than 6 consecutive hours without a meal period.

**History:** 1993 a. 492; 1995 a. 225; 2001 a. 109.

**Cross Reference:** See also s. DWD 270.05, Wis. adm. code.

**103.695 Designation of a permit officer.** (1) (a) The department shall designate a school board, as defined in s. 115.001 (7), as a permit officer unless the school board refuses the designation.

(b) A school board designated as a permit officer under par. (a) may assign the duties of permit officer to an officer or employee of the school district.

(2) The department may designate persons other than school boards as permit officers, regardless of whether any school board refuses designation as a permit officer under sub. (1) (a).

**History:** 1987 a. 187.

**103.70 Permits necessary for minors; exceptions.**

(1) Except as otherwise provided in sub. (2) and in ss. 103.21 to 103.31, 103.78, 938.245 (2) (a) 5. b., 938.32 (1t) (a) 2. and 938.34 (5) (b) and (5g) (c), and as may be provided under s. 103.79, a minor, unless indentured as an apprentice in accordance with s. 106.01, or unless 12 years and over and engaged in farming, or unless 14 years and over and enrolled in a youth apprenticeship program under s. 106.13, shall not be employed or permitted to work at any gainful occupation or employment unless there is first obtained from the department or a permit officer a written permit authorizing the employment of the minor within those periods of time stated in the permit, which shall not exceed the maximum hours prescribed by law.

(2) Minors may be employed without permits in any employment limited to work in or around a home in work usual to the home of the employer, if the employment is not in connection with or a part of the business, trade, or profession of the employer, is in accordance with the minimum age stated in s. 103.67 (2) (f), and

is not specifically prohibited by ss. 103.64 to 103.82 or by any order of the department. Minors may also be employed without permits as election inspectors as provided in s. 7.30 (2) (am).

**History:** 1971 c. 271; 1973 c. 59; 1979 c. 234; 1987 a. 187; 1993 a. 437; 1995 a. 27, 352; 2001 a. 16, 109.

**Cross Reference:** See also ch. DWD 270, Wis. adm. code.

All enrollees of a federally sponsored and locally administered program were employees and were required to be covered by suitable work permits unless they were exempt because of age or the nature of their activities. The department does not have the authority to waive the permit fee, there being no statutory exemption. 62 Atty. Gen. 256.

**103.71 Conditions for issuance of permits. (1)** Except as provided in s. 103.78, a permit shall not be issued authorizing any minor 14 to 18 years of age to be employed during the hours that the minor is required to attend school under s. 118.15, unless the minor has completed high school. The department and its permit officers shall accept as evidence of the minor's completion of high school either:

(a) A diploma or certificate to this effect issued by the superintendent of public schools or by the principal of the public school last attended by such minor, or in the absence of both the aforementioned persons by the clerk of the proper school board; or

(b) A diploma or certificate to this effect issued by the superintendent of the parochial school system or by the principal of the parochial or private school last attended by such minor. Such superintendent, principal or clerk shall issue such diploma or certificate upon receipt of any application in behalf of any minor entitled thereto. As used in this paragraph the term "school district" shall apply to all regularly constituted school districts, including union free high school districts.

**(2)** No permit may be issued authorizing the employment of any minor under 14 years of age at any time, except that a permit may be issued authorizing the employment of a minor under 14 years of age as follows to the extent permitted under the federal Fair Labor Standards Act, 29 USC 201 to 219:

(a) The employment of minors 11 to 13 years of age as ball monitors at high school football games as provided in s. 103.67 (2) (i).

(b) The employment of minors 12 years of age and over:

1. In school lunch programs under s. 103.67 (2) (a).
2. In street trades as provided in ss. 103.21 to 103.31.
3. As caddies on golf courses as provided in s. 103.67 (2) (d).
4. In the business, trade or profession of the minor's parent or guardian as provided in s. 103.67 (2) (g).
5. As a sideline official at a high school football game as provided in s. 103.67 (2) (h).
6. As officials for athletic events as provided in s. 103.67 (2) (hm).

**(3)** No permit may be issued under sub. (2) (b) 4., unless the department or permit officer is satisfied that employment under s. 103.67 (2) (g) is not injurious or detrimental to the minor's education, health, safety or welfare.

**History:** 1971 c. 271; 1973 c. 59, 183, 336; 1975 c. 94; 1979 c. 234; 1987 a. 187; 1989 a. 126; 1993 a. 492; 1999 a. 164.

**Cross Reference:** See also s. DWD 270.002, Wis. adm. code.

**103.72 Refusal and revocation of permits. (1)** The department or permit officer may refuse to grant permits in the case of minors who seem physically unable to perform the labor at which they are to be employed. They may also refuse to grant a permit if in their judgment the best interests of the minor would be served by that refusal.

**(2)** Whenever it appears to the department that a permit has been improperly or illegally issued, or that the physical or moral welfare or school attendance of the minor would be best served by the revocation of the permit or that the failing school performance of the minor would be remedied by the revocation of the permit, the department may immediately, without notice, revoke the permit. The department shall revoke a permit if ordered to do so

under s. 938.342 (1g) (e). If the department revokes a permit, the department shall, by registered mail, notify the person employing the minor and the minor holding the permit of the revocation. Upon receipt of the notice, the employer employing the minor shall immediately return the revoked permit to the department and discontinue the employment of the minor.

**History:** 1995 a. 77; 1997 a. 239.

**Cross Reference:** See also s. DWD 270.16, Wis. adm. code.

**103.73 Form and requisites of permit; as evidence.**

**(1)** The permit provided under s. 103.70 shall state the name and the date of birth of the minor and that the following evidence, records and papers have been examined, approved and filed:

(a) Such evidence as is required by the department showing the age of the minor. The department shall promulgate rules governing the proof of age of minors who apply for labor permits that shall bind all persons authorized by law to issue such permits. In promulgating those rules, the department shall include a requirement that the department and its permit officers shall accept as evidence of a minor's age a duly attested birth certificate, a verified baptismal certificate, a valid operator's license issued under ch. 343 that contains the photograph of the license holder or an identification card issued under s. 343.50. Those rules shall also require the department and its permit officers to accept as evidence of a minor's age a valid operator's license issued under ch. 343 that contains the photograph of the license holder or an identification card issued under s. 343.50 without requiring proof that the minor's birth certificate or baptismal certificate cannot be secured.

(b) A letter written on the regular letterhead or other business paper used by the person who desires to employ the minor, stating the intention of the person to employ the minor and signed by the person or someone duly authorized by the person.

**(2)** The permits provided under s. 103.70 shall be issued upon forms furnished by the department.

**(3)** A child labor permit duly issued shall be conclusive evidence of the age of the minor for whom it was issued in any proceeding under any of the labor laws and under ch. 102, as to any act or thing occurring subsequent to the date such permit was issued.

**History:** 1971 c. 271; 1975 c. 147 s. 54; 1979 c. 89; 1993 a. 492; 1999 a. 132; 2001 a. 107.

**Cross Reference:** See also s. DWD 270.003, Wis. adm. code.

**103.74 Duties of employers of minors.** Every employer employing a minor under 18 for whom a permit is required, except in street trades, shall:

**(1)** Receive and file a child labor permit authorizing employment of the minor by him or her before the minor is permitted to do any work, and shall keep the permit on file and allow inspection of the permit at any time by the department or any school attendance officer. A permit shall be valid only for the employer for whom issued.

**(2)** Keep a record for each employed minor's name, address, date of birth, the time of beginning and ending work and the time for meals each day and the total hours worked each day and each week.

**History:** 1971 c. 271; 1979 c. 298; 1993 a. 492.

**103.75 Certificates of age. (1)** The department or persons designated by the department may issue certificates of age for minors under rules the department deems necessary. In issuing a certificate of age for a minor, the department or person designated by the department shall accept as evidence of the minor's age the evidence specified in s. 103.73 (1) (a) in the manner specified in s. 103.73 (1) (a). The certificate is conclusive evidence of the age of the minor to whom issued in any proceeding under any of the labor laws and under ch. 102 as to any act or thing occurring subsequent to the date the certificate was issued.

**(2)** Any person who knowingly offers or assists in offering false evidence of age for the purpose of obtaining an age certifi-

cate or who alters, forges, fraudulently obtains, uses, or refuses to surrender upon demand of the department a certificate of age may be fined not more than \$100 or imprisoned not to exceed 3 months.

**History:** 1971 c. 271; 1975 c. 147 s. 54; 1979 c. 89, 177; 1999 a. 132.

**Cross Reference:** See also ss. DWD 270.01 and 270.02, Wis. adm. code.

**103.76 Proof of age in court.** Whenever in any proceeding in any court under any of the labor laws or under ch. 102 there is any doubt of the age of a minor, a duly issued child labor permit or age certificate shall be conclusive evidence. In the absence of such permit or certificate, a duly attested birth certificate, a verified baptismal certificate, a valid operator's license issued under ch. 343 that contains the photograph of the license holder or an identification card issued under s. 343.50 shall be produced and filed with the court. Upon proof that the birth certificate, baptismal certificate, operator's license or identification card cannot be secured, the record of age stated in the first school enrollment of the child shall be admissible as evidence of the minor's age.

**History:** 1975 c. 147 s. 54; 1979 c. 89; 1999 a. 132.

**103.78 Minors in public exhibitions, radio and television broadcasts, modeling.** (1) Nothing contained in ss. 103.64 to 103.82 shall be construed as forbidding any minor under 18 years of age to appear for the purpose of singing, playing or performing in any studio, circus, theatrical or musical exhibition, concert or festival, in radio and television broadcasts, or as a live or photographic model. Labor permits shall not be required for such employment or appearances but no minor under 18 years of age shall be so employed except under the following conditions:

(a) The activities enumerated shall not be detrimental to the life, health, safety or welfare of the minor.

(b) The activities enumerated shall not interfere with the schooling of the minor and provision for education equivalent to full-time school attendance in the public schools for minors under 16 years of age and part-time attendance for minors 16 to 18 years of age shall be made for those minors who are not high school graduates.

(c) A parent or guardian shall accompany each minor under 16 years of age at all rehearsals, appearances and performances.

(d) The employment or appearance shall not be in a roadhouse, cabaret, dance hall, night club, tavern or other similar place. This prohibition does not apply to:

1. Minors presenting musical entertainment at dances held in any hall on Friday, Saturday or on any other day not followed by a school day or before midnight on Sunday, if the hall was rented for the purpose of celebrating a special event, including but not limited to a wedding, holiday, birthday or anniversary.

2. Dances held solely for minors conducted by private clubs or civic organizations where admission is limited to the membership of the club or by their invitation and the general public is excluded.

3. Performances by minors in theatrical performances at dinner theaters.

(2) The penalties in s. 103.82 (1) apply to any employer who violates this section.

(3) The penalties in s. 103.82 (3) apply to any parent or guardian who suffers or permits a minor to engage in activities in violation of this section.

(4) Treble the amount of compensation otherwise recoverable as provided in s. 102.60 (4) and wage loss as provided in s. 102.60 (6) are payable to a minor injured during the course of the minor's employment or appearance in violation of this section.

**History:** 1971 c. 271; 1979 c. 221; 1987 a. 332 s. 64; 1993 a. 492.

**103.79 Minor golf caddies.** (1) Any minor on a golf course for the purpose of caddying for or while caddying for a person permitted to play golf on such course shall be deemed an employee of the golf club or other person, partnership, association or corporation, including the state and any municipal corporation or other political subdivision thereof, operating such golf course.

(2) The department may investigate and fix by general or special order reasonable regulations relative to the employment of minors as caddies on golf courses. The regulations may include a waiver or modification of permit requirements for caddies. The investigations and orders shall be made as provided under s. 103.005. The orders are subject to review as provided in ch. 227.

**History:** 1971 c. 228 s. 43; 1971 c. 271, 307; 1975 c. 94; 1995 a. 27.

**Cross Reference:** See also s. DWD 270.07, Wis. adm. code.

**103.80 Inspection.** (1) The department and school attendance officers shall visit and inspect at all reasonable times, and as often as possible, all places covered by ss. 103.64 to 103.82.

(2) The failure of any employer to produce for inspection to the department, or school attendance officers, the permit provided for in s. 103.70 shall be prima facie evidence of unlawful employment of the minor. The presence of any minor in any factory, workshop or other place of employment shall be prima facie evidence of the employment of the minor.

**History:** 1979 c. 298.

**103.805 Fees; permits and certificates of age.** (1) The department shall fix and collect a reasonable fee based on the cost of issuance of permits under ss. 103.25 and 103.71 and certificates of age under s. 103.75. The department may authorize the retention of the fees by the person designated to issue permits and certificates of age as compensation for the person's services if the person is not on the payroll of the division administering this chapter. The permit officer shall account for all fees collected as the department prescribes.

(2) The fee for issuance of permits and certificates of age shall be paid by the employer, but when the minor advances the fee to the permit officer the minor shall be reimbursed by the minor's employer not later than at the end of the minor's first pay period.

**History:** 1971 c. 271; 1993 a. 492.

**Cross Reference:** See also s. DWD 270.09, Wis. adm. code.

**103.81 Advertising; penalty.** (1) During the term that the public schools are in session, a person shall not advertise or cause or permit any advertisement to be published in any newspaper for the labor or services of any minor during school hours in any employment for which a child labor permit is required under s. 103.70 which does not specifically state the minimum age of the minor whose services are desired, which age must be 18 years or over.

(2) A person shall not solicit in the schools or homes of this state, minors of permit age to leave school and enter their employment, if a child labor permit is required for that employment by s. 103.70.

(3) Any person who violates this section shall forfeit and pay into the state treasury not less than \$10 nor more than \$100 for each such offense. Every day during which any person violates this section shall constitute a separate and distinct offense.

**History:** 1971 c. 271.

**103.82 Penalties.** (1) (a) Any employer who employs or permits any minor to work in any employment in violation of ss. 103.64 to 103.82, or of any order of the department issued under those sections, or who hinders or delays the department or school attendance officers in the performance of their duties, or who refuses to admit or locks out the officer from any place required to be inspected under ss. 103.64 to 103.82 may be required to forfeit not less than \$25 nor more than \$1,000 for each day of the first offense and, for the 2nd or subsequent violation of ss. 103.64 to 103.82 within 5 years, as measured from the dates the violations initially occurred, may be fined not less than \$250 nor more than \$5,000 for each day of the 2nd or subsequent offense or imprisoned not more than 30 days or both.

(b) In addition to the penalties provided in par. (a), any employer who employs any minor in violation of s. 103.68, or rules of the department shall be liable, in addition to the wages paid, to pay to each minor affected, an amount equal to twice the

regular rate of pay as liquidated damages, for all hours worked in violation per day or per week, whichever is greater.

(3) Any parent or guardian who permits a minor under his or her control to be employed or to work in violation of ss. 103.64 to 103.82, or of any order of the department issued under those sections, may be required to forfeit not less than \$10 nor more than \$250 for each day of the first offense and, for the 2nd or subsequent violation of ss. 103.64 to 103.82 within 5 years, as measured from the dates the violations initially occurred, may be required to forfeit not less than \$25 nor more than \$1,000 for each day of the 2nd or subsequent offense.

**History:** 1971 c. 271; 1979 c. 298; 1987 a. 332.

**103.83 Discriminatory acts; employment of minors.** Section 111.322 (2m) applies to discharge and other discriminatory acts against an employee arising in connection with any proceeding to enforce ss. 103.64 to 103.82.

**History:** 1989 a. 228.

**103.85 One day of rest in seven.** (1) Every employer of labor, whether a person, partnership or corporation, who owns or operates any factory or mercantile establishment in this state, shall allow every person, except those specified in sub. (2), employed in such factory or mercantile establishment, at least 24 consecutive hours of rest in every 7 consecutive days and shall not permit any such person to work for such employer during such 24 consecutive hour period, except in case of breakdown of machinery or equipment, or other emergency, requiring the immediate services of experienced and competent labor to prevent serious injury to person, damage to property, or suspension of necessary operations, when such experienced and competent labor is not otherwise immediately available. This shall not authorize any work on Sunday not now authorized by law.

(2) This section does not apply to:

- (a) Janitors.
- (b) Security personnel.
- (c) 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.
- (d) Persons employed in bakeries, flour and feed mills, hotels, and restaurants.
- (e) Employees whose duties include no work on Sunday other than:
  1. Caring for live animals.
  2. Maintaining fires.
- (f) Any labor called for by an emergency that could not reasonably have been anticipated.

(3) Every employer shall keep a time book showing the names and addresses of all employees and the hours worked by each of them in each day, and such time book shall be open to inspection by the department.

(4) If upon investigation, the department shall ascertain and determine that there be practical difficulties or unnecessary hardships in carrying out the provisions of this section, or upon a joint request of labor and management, the department may by general or special order make reasonable exceptions therefrom or modifications thereof provided that the life, health, safety and welfare of employees shall not be sacrificed or endangered thereby. Such investigation and orders shall be made as provided under s. 103.005. Such orders shall be subject to review under ch. 227.

(5) Every employer who violates this section shall be punished as provided in s. 103.005 (11) and (12).

**History:** 1971 c. 185 s. 7; 1971 c. 228 s. 43; 1985 a. 135; 1995 a. 27.

**Cross Reference:** See also ch. DWD 275, Wis. adm. code.

**103.86 Employee welfare funds: default in payments.**

(1) Any employer who promises in writing to make payments to an employee welfare fund, either by contract with an individual employee, by a collective bargaining agreement or by agreement with such employee welfare fund, and who fails to make such pay-

ments within 6 weeks after they become due and payable, and after having been notified in writing of the failure to make the required payments, shall be fined not more than \$200.

(2) This section shall not apply where the failure to make payments is prevented by act of God, proceedings in bankruptcy, orders or process of any court of competent jurisdiction, or circumstances over which the employer has no control.

**History:** 1993 a. 492.

**103.87 Employee not to be disciplined for testifying.**

No employer may discharge an employee because the employee is subpoenaed to testify in an action or proceeding pertaining to a crime or pursuant to ch. 48 or 938. On or before the first business day after the receipt of a subpoena to testify, the employee shall give the employer notice if he or she will have to be absent from employment because he or she has been subpoenaed to testify in an action or proceeding pertaining to a crime or pursuant to ch. 48 or 938. If a person is subpoenaed to testify in an action or proceeding as a result of a crime, as defined in s. 950.02 (1m), against the person's employer or an incident involving the person during the course of his or her employment, the employer shall not decrease or withhold the employee's pay for any time lost resulting from compliance with the subpoena. An employer who violates this section may be fined not more than \$200 and may be required to make full restitution to the aggrieved employee, including reinstatement and back pay. Except as provided in this section, restitution shall be in accordance with s. 973.20.

**History:** 1979 c. 219; 1983 a. 197 s. 10; 1987 a. 398; 1995 a. 77.

**103.90 Definitions.** In ss. 103.90 to 103.97:

(1) "Emergency" means:

(a) A temporary condition created by an act of nature, demanding immediate action, which could not reasonably have been anticipated or prevented, and which is caused entirely by the forces of nature such as rain, lightning, hail, windstorm, tornado, sleet, frost or other similar natural phenomena.

(b) A sudden and temporary condition not covered under par. (a) which reasonably could not have been anticipated or prevented and which requires immediate action to prevent serious damage to person or property.

(2) "Employer" means a person engaged in planting, cultivating, raising, harvesting, handling, drying, packing, packaging, processing, freezing, grading or storing any agricultural or horticultural commodity in its unmanufactured state who employs a migrant worker.

(3) (a) "Migrant labor camp" means the site and all structures maintained as living quarters by, for or under the control and supervision of any person for:

1. Any migrant worker; or

2. Any other person who is not related by blood, marriage or adoption to his or her employer and who occasionally or habitually leaves an established place of residence to travel to another locality to accept seasonal employment in the planting, cultivating, raising, harvesting, handling, drying, packing, packaging, processing, freezing, grading or storing of any agricultural or horticultural commodity in its unmanufactured state.

(b) "Migrant labor camp" does not include:

1. Premises occupied by the employer as a personal residence and by no more than 2 migrant workers.

2. Any accommodation subject to ch. 50.

(4) "Migrant labor contractor" means any person, who, for a fee or other consideration, on behalf of another person, recruits, solicits, hires, or furnishes migrant workers, excluding members of the contractor's immediate family, for employment in this state. "Migrant labor contractor" shall not include an employer or any full-time regular employees of an employer who engages in any such activity for the purpose of supplying workers solely for the employer's own operation.

(5) (a) "Migrant worker" or "worker" means any person who temporarily leaves a principal place of residence outside of this



state and comes to this state for not more than 10 months in a year to accept seasonal employment in the planting, cultivating, raising, harvesting, handling, drying, packing, packaging, processing, freezing, grading or storing of any agricultural or horticultural commodity in its unmanufactured state.

(b) “Migrant worker” or “worker” does not include the following:

1. Any person who is employed only by a state resident if such resident or the resident’s spouse is related to the worker as one of the following: child, parent, grandchild, grandparent, brother, sister, aunt, uncle, niece, nephew, or the spouse of any such relative.

2. A student who is enrolled or, during the past 6 months has been enrolled, in any school, college or university unless the student is a member of a family or household which contains a migrant worker.

(c) No more than 3 persons otherwise included in the definition under par. (a) may be excluded under par. (b) 1.

**History:** 1977 c. 17; 1983 a. 189 ss. 156, 329 (4); 1989 a. 236; 1995 a. 27, 225; 1999 a. 162.

“Sharecropping” or other agreements attempting to establish a migrant worker as an independent contractor violate migrant law. 71 Atty. Gen. 92.

### 103.905 Department’s duties. The department shall:

(1) Promulgate rules for the enforcement and implementation of ss. 103.90 to 103.97.

(2) Cooperate and enter into agreements with departments or agencies of this state or of the United States to coordinate, administer or enforce all other laws and programs designed to assist, serve or protect migrant workers.

(3) Gather, compile and submit to the council on migrant labor data and information relative to ss. 103.90 to 103.97.

(4) Investigate, or cause to be investigated, any complaint filed with the department concerning any violation of ss. 103.90 to 103.97, and during reasonable daylight hours, and upon notice to the employer or person in charge, enter and inspect any premises, inspect such records and make transcriptions thereof, question such persons, and investigate such facts, conditions, practices or matters as may be necessary or appropriate to determine whether a violation of such sections has been committed.

(5) Enforce, or cause to be enforced, ss. 103.90 to 103.97 and any rules promulgated under ss. 103.90 to 103.97, and cooperate with other officers, departments, boards, agencies or commissions of this state, or of the United States, or of any other state, or of any local government in the enforcement of such sections.

**History:** 1977 c. 17.

**Cross Reference:** See also ch. DWD 301, Wis. adm. code.

**103.91 Migrant labor contractors. (1) REGISTRATION REQUIRED.** No person may engage in activities as a migrant labor contractor without first obtaining a certificate of registration from the department. The certificate shall constitute a permit from this state to operate as a migrant labor contractor, and shall not be transferable to any person.

(2) **APPLICATION.** (a) A migrant labor contractor shall apply to the department for a certificate in such manner and on such forms as the department prescribes. The migrant labor contractor may submit a copy of a federal application filed under 7 USC 2045 in lieu of the forms prescribed by the department under this paragraph.

(b) 1. Except as provided in subd. 2m., the department shall require each applicant for a certificate under par. (a) who is an individual to provide the department with the applicant’s social security number, and shall require each applicant for a certificate under par. (a) who is not an individual to provide the department with the applicant’s federal employer identification number, when initially applying for or applying to renew the certificate.

2. If an applicant who is an individual fails to provide the applicant’s social security number to the department or if an applicant who is not an individual fails to provide the applicant’s federal employer identification number to the department, the depart-

ment may not issue or renew a certificate under par. (a) to or for the applicant unless the applicant is an individual who does not have a social security number and the applicant submits a statement made or subscribed under oath or affirmation as required under subd. 2m.

2m. If an applicant who is an individual does not have a social security number, the applicant shall submit a statement made or subscribed under oath or affirmation to the department that the applicant does not have a social security number. The form of the statement shall be prescribed by the department. A certificate issued under par. (a) in reliance upon a false statement submitted under this subdivision is invalid.

3. The subunit of the department that obtains a social security number or a federal employer identification number under subd. 1. may not disclose the social security number or the federal employer identification number to any person except to the department of revenue for the sole purpose of requesting certifications under s. 73.0301 or on the request of the subunit of the department that administers the child and spousal support program under s. 49.22 (2m).

(3) **ANNUAL FEES.** Each certificate shall be renewed annually. The fee for the certificate or renewal shall be in an amount determined by the department.

(4) **QUALIFICATIONS.** (a) The department may refuse to issue a certificate and may suspend or revoke any certificate previously issued whenever it finds that the applicant or registrant has:

1. Made a material misrepresentation or false statement in his or her application for a certificate.

2. Violated ss. 103.90 to 103.97, or any rules promulgated under such sections.

(b) The department shall deny, suspend, restrict, refuse to renew or otherwise withhold a certificate of registration under sub. (1) for failure of the applicant or registrant to pay court-ordered payments of child or family support, maintenance, birth expenses, medical expenses or other expenses related to the support of a child or former spouse or for failure of the applicant or registrant to comply, after appropriate notice, with a subpoena or warrant issued by the department or a county child support agency under s. 59.53 (5) and related to paternity or child support proceedings, as provided in a memorandum of understanding entered into under s. 49.857. Notwithstanding s. 103.005 (10), an action taken under this paragraph is subject to review only as provided in the memorandum of understanding entered into under s. 49.857 and not as provided in ch. 227.

(c) The department shall deny an application for the issuance or renewal of a certificate under sub. (1), or revoke such a certificate already issued, if the department of revenue certifies under s. 73.0301 that the applicant or registrant is liable for delinquent taxes. Notwithstanding s. 103.005 (10), an action taken under this paragraph is subject to review only as provided under s. 73.0301 (5) and not as provided in ch. 227.

(5) **REAL PARTY IN INTEREST.** The department may refuse to issue a certificate, and may suspend or revoke any certificate previously issued, whenever it determines that the real party in interest in any such application or certificate is a person who previously has applied for and has been denied a certificate, or is a person who previously had been issued a certificate which subsequently was revoked or suspended by the department.

(6) **PENALTIES.** Refusal to issue or to renew a certificate or the suspension or revocation of a certificate or renewal shall be in addition to any other penalties imposed.

(7) **AGENTS EXEMPT FROM REGISTRATION.** A full-time employee of any person holding a valid certificate under ss. 103.90 to 103.97 who has been designated as agent of the registrant and who is employed partly or solely for the purpose of engaging in activities as a migrant labor contractor on behalf of the registrant, shall not be required to obtain a certificate in his or her own name under this section. Every such agent shall have in his or her immediate possession, when engaging in activities as a

migrant labor contractor, such identification as the department may require, showing such employee to be an agent of a registrant. Every agent shall be subject to ss. 103.90 to 103.97 and any rules promulgated under such sections to the same extent as if the agent were required to obtain a certificate in his or her own name. The department shall require that every registrant identify to the department all persons who have been, or who subsequently become, agents of the registrant, and may disallow, suspend or revoke the designation as agent of any person pursuant to the qualifications of registrants required by this section. For the purposes of ss. 103.90 to 103.97, every registrant shall be responsible for the activities of every agent designated by him or her, and shall be subject to any penalties, including the refusal, suspension or revocation of a certificate, proceeding from any act of any agent so designated, while the agent is engaged in activities as a migrant labor contractor. No agent shall be permitted separately to engage in activities as a migrant labor contractor.

**(8) DUTIES.** Every person engaged in activities as a migrant labor contractor and every agent of a migrant labor contractor shall:

(a) Carry at all times the certificate or other identification of such certification as the department may prescribe, and exhibit the same to all persons with whom he or she intends to deal as a migrant labor contractor prior to so dealing.

(b) File at the U.S. post office serving the address of such migrant labor contractor, a correct address within 10 days after a change of address.

(c) Promptly pay or deliver when due to the individuals entitled thereto, all moneys or other things of value entrusted to the contractor by any person.

(d) Comply with the terms and provisions of all legal agreements and contracts entered into between himself or herself as a migrant labor contractor and any person.

(e) Keep such records as the department prescribes and preserve such records for inspection by the department for such periods of time as the department shall prescribe.

(f) Obtain a policy of insurance from any insurance carrier authorized to do business in this state in an amount as prescribed by the department, which policy insures the migrant labor contractor against liability for damages to persons or property arising out of the operation or ownership by the migrant labor contractor or by his or her agent of any vehicle for the transportation of individuals or property in connection with activities as a migrant labor contractor. This paragraph shall not apply if the contractor furnishes transportation only as the agent of an employer who has obtained a policy of insurance against liability for damages arising out of the operation of motor vehicles.

**(9) PROHIBITED ACTIVITIES.** No person engaged in activities as a migrant labor contractor, and no person acting as an agent for any such person, may:

(a) Knowingly give to any migrant worker or a prospective migrant worker any false or misleading information, or fail to disclose fully to any such worker information concerning terms, conditions or existence of employment.

(b) Receive, disburse or withhold the wages of any worker except to immediately distribute a check payable to a worker.

(c) Charge or collect interest from any worker on account of any loan or extension of credit.

(d) Charge or collect from any worker for the provision of goods or services an amount in excess of the costs to him or her of providing such goods and services.

(e) Recruit any migrant worker except as provided in s. 103.915.

**History:** 1977 c. 17; 1995 a. 27; 1997 a. 191, 237; 1999 a. 9.

**Cross Reference:** See also s. DWD 301.05, Wis. adm. code.

**103.915 Migrant work agreements.** **(1)** No person may bring or arrange for another to bring a migrant worker into this state for employment, by means of an express or implied job offer

induce a migrant worker to come into this state for employment, otherwise recruit a migrant worker to come into this state for employment, or hire a migrant worker for employment in this state unless that person does all of the following:

(a) At the time of the worker's recruitment, provides the migrant worker a written recruiting disclosure statement containing the information required in a work agreement under this section.

(b) At the time of hiring, provides the migrant worker a written work agreement as specified in this section, which shall be signed by the employer and by each migrant worker or head of a family if a family is employed.

**(2)** The department shall issue a standard form for written work agreements required under this section. An employer may elect not to use such form. If an employer does not use the standard form, the employer shall use a form approved by the department.

**(3)** In fulfilling its duties under s. 103.905, the department may inspect any work agreement signed under this section.

**(4)** The work agreement shall include the following:

(a) A statement of the place of employment, kind of work available, applicable wage rates, pay period, approximate hours of employment including overtime applicable, term of employment including approximate beginning and ending dates, kind of housing and any charges in connection therewith, cost of meals if provided by the employer, transportation arrangements, the names of all persons in the family employed if a family is employed and any other charges or deductions from wages beyond those required by law.

(b) A guarantee of a minimum of 20 hours of work in a one-week period or a minimum of 64 hours of work in a 2-week period, the work to be the same as or similar to the kind of work specified in the work agreement. The work agreement shall clearly state whether the guarantee is on the basis of a one-week or 2-week period. In the case of a migrant worker employed exclusively in agricultural labor as defined in s. 108.02 (2), the guarantee shall be a minimum of 45 hours in each 2-week period, the work to be the same as or similar to the kind of work specified in the work agreement. The minimum guarantee shall be satisfied if the worker's earnings equal the number of hours guaranteed under this paragraph multiplied by the wage rate specified in the work agreement. The guarantee shall cover the period from the date the worker is notified by the employer to report for work, which date shall be reasonably related to the approximate beginning date specified in the work agreement, or the date the worker reports for work, whichever is later, and continuing until the final termination of employment, as specified in the work agreement, or earlier if the worker is terminated for cause or due to seriously adverse circumstances beyond the employer's control. If the beginning or ending period of employment does not coincide with the employer's pay period, the employer may reduce the guarantee for such beginning or ending period to an amount which is equal to the number of days in the beginning or ending period of employment multiplied by one-sixth of the guarantee if the employer's guarantee is on a weekly basis or multiplied by one-twelfth of the guarantee if the employer's guarantee is on a biweekly basis. If a worker is not available for work, the employer may reduce the minimum guarantee by an amount equal to the wages the worker would have earned if the worker had been available for work. This paragraph shall not apply to any person who is under the age of 18 years and who is a member of a household which contains a worker covered by a migrant work agreement under this section. The payment of the minimum guarantee under this paragraph shall be considered the payment of wages under ch. 108.

(c) A guarantee that the wages together with the other terms and conditions of employment are not less favorable than those provided by the employer for local workers for similar work.

(5) If a worker reports for work as notified by an employer and the worker is never employed due to seriously adverse circumstances beyond the employer's control, the employer shall not be obligated to pay the minimum guarantee under sub. (4) (b) but shall be obligated to pay wages to the worker at the agreed rate of pay for the job for which the worker was recruited for the elapsed time from departure to return to the point of departure, which amount shall not be less than 3 nor more than 6 days' pay at 8 hours per day. The employer shall pay the worker the amount required under this subsection within 24 hours after the worker reports to the employer for work.

(6) The work agreement may contain a guarantee which differs from the guarantee required under sub. (4) (b) if the department finds the guarantee to be no less favorable than the guarantee under sub. (4) (b) and approves the terms of the guarantee prior to the time the employer offers the work agreement to any worker.

(7) Temporary work for another employer with the consent of the worker and his or her first employer shall count toward the guarantee required under sub. (4) (b). Such other employer shall not be required to provide the worker a work agreement.

(8) The recruiting disclosure statement and work agreement required under this section shall be written in English and, if the customary language of the migrant worker is not English, in the language of the worker. The department shall, upon request, provide assistance in translating these statements and agreements.

(9) Any employer who does not satisfy the employer's guarantees in a work agreement as required under sub. (4) shall be considered not in compliance with this section.

**History:** 1977 c. 17; 1983 a. 189 s. 329 (28); 1985 a. 191.

**Cross Reference:** See also s. DWD 301.06, Wis. adm. code.

**103.917 Safe transportation.** Any transportation provided by the employer to a migrant worker between the worker's places of residence shall be safe and adequate.

**History:** 1977 c. 17.

### 103.92 Certification of migrant labor camps.

(1) APPLICATION; FEE. (a) Every person maintaining a migrant labor camp shall, annually by April 1 or 30 days prior to the opening of a new camp, make application to the department for a certificate to operate a camp. Each application shall be accompanied by an application fee in an amount determined by the department.

(b) 1. Except as provided in subd. 2m., the department shall require each applicant for a certificate under par. (a) who is an individual to provide the department with the applicant's social security number, and shall require each applicant for a certificate under par. (a) who is not an individual to provide the department with the applicant's federal employer identification number, when initially applying for or applying to renew the certificate.

2. If an applicant who is an individual fails to provide the applicant's social security number to the department or if an applicant who is not an individual fails to provide the applicant's federal employer identification number to the department, the department may not issue or renew a certificate under par. (a) to or for the applicant unless the applicant is an individual who does not have a social security number and the applicant submits a statement made or subscribed under oath or affirmation as required under subd. 2m.

2m. If an applicant who is an individual does not have a social security number, the applicant shall submit a statement made or subscribed under oath or affirmation to the department that the applicant does not have a social security number. The form of the statement shall be prescribed by the department. A certificate issued under par. (a) in reliance upon a false statement submitted under this subdivision is invalid.

3. The subunit of the department that obtains a social security number or a federal employer identification number under subd. 1. may not disclose the social security number or the federal employer identification number to any person except to the department of revenue for the sole purpose of requesting certifica-

tions under s. 73.0301 or on the request of the subunit of the department that administers the child and spousal support program under s. 49.22 (2m).

(2) INSPECTION. The department shall administer and enforce this section and any rules promulgated under this section and may during reasonable daylight hours enter and inspect camps. No agent or employee of the department may enter the premises of a camp for inspection purposes until he or she has given notice to the owner or to the person in charge of the camp that he or she intends to make an inspection. Upon notice an agent or employee of the department may also enter any property to determine whether a camp under this section exists.

(3) CERTIFICATE. The department shall inspect each camp for which application to operate is made, to determine if it is in compliance with the rules of the department establishing minimum standards for migrant labor camps. Except as provided under subs. (6) and (7), if the department finds that the camp is in compliance with the rules, it shall issue a certificate authorizing the camp to operate until March 31 of the next year. The department shall refuse to issue a certificate if it finds that the camp is in violation of such rules, if the person maintaining the camp has failed to pay court-ordered payments as provided in sub. (6) or if the person maintaining the camp is liable for delinquent taxes as provided in sub. (7).

(4) OPERATION. Only certified camps may operate in this state. The department shall order the immediate closing of all other camps. A violation of any such order shall be deemed a public nuisance. All orders shall be enforced by the attorney general or the district attorney for the county in which the violation occurred at the election of the department. The circuit court of any county where violation of such an order has occurred in whole or in part shall have jurisdiction to enforce the order by injunctive and other appropriate relief.

(5) MAINTENANCE. The department may revoke any certificate previously issued if it finds that a camp is in violation of the department's rules for migrant labor camps.

(6) FAILURE TO PAY SUPPORT OR TO COMPLY WITH SUBPOENA OR WARRANT; MEMORANDUM OF UNDERSTANDING. The department shall deny, suspend, restrict, refuse to renew or otherwise withhold a certificate to operate a migrant labor camp for failure of the applicant or person operating the camp to pay court-ordered payments of child or family support, maintenance, birth expenses, medical expenses or other expenses related to the support of a child or former spouse or for failure of the applicant or person operating the camp to comply, after appropriate notice, with a subpoena or warrant issued by the department or a county child support agency under s. 59.53 (5) and related to paternity or child support proceedings, as provided in a memorandum of understanding entered into under s. 49.857. Notwithstanding s. 103.005 (10), an action taken under this subsection is subject to review only as provided in a memorandum of understanding entered into under s. 49.857 and not as provided in ch. 227.

(7) LIABILITY FOR DELINQUENT TAXES. The department shall deny an application for the issuance or renewal of a certificate to operate a migrant labor camp, or revoke such a certificate already issued, if the department of revenue certifies under s. 73.0301 that the applicant or person operating the camp is liable for delinquent taxes. Notwithstanding s. 103.005 (10), an action taken under this subsection is subject to review only as provided under s. 73.0301 (5) and not as provided in ch. 227.

**History:** 1977 c. 17; 1995 a. 27; 1997 a. 191, 237; 1999 a. 9, 185.

**Cross Reference:** See also s. DWD 301.07, Wis. adm. code.

**103.925 Access and entry.** Any worker shall have the right to decide who may visit with him or her in his or her residence. No person other than the resident may prohibit, bar or interfere with, or attempt to prohibit, bar or interfere with, the access to or egress from the residence of any worker by any person, either by the erection or maintenance of any physical barrier, or by physical force or violence, or by threat of force or violence, or by posting,

or by any order or notice given in any manner. This section shall not prohibit the erection or maintenance of a fence around a migrant labor camp if one or more unlocked gates or gateways in the fence are provided, nor shall this section prohibit the posting of land adjacent to a migrant labor camp if access to the camp is clearly marked, nor shall this section prevent a majority of the residents of a migrant labor camp from imposing reasonable limitations on access to common use facilities.

**History:** 1977 c. 17.

**103.926 Vacating residence.** After a worker's employment has been terminated, the employer may require a worker to vacate residence at the migrant labor camp operated by the employer upon final payment of wages to the worker.

**History:** 1977 c. 17.

**103.93 Wages. (1) WAGE PAYMENT.** (a) Every employer shall pay all wages earned by any migrant worker directly to such worker on regular pay days designated in advance by the employer, but in no case less often than semimonthly. Wages shall be paid in U.S. currency or by check or draft.

(b) Every employer shall pay in full all wages due any migrant worker within 3 days after the termination of the period of employment for which the worker was employed except as provided under s. 103.915 (5). If the employer is unable to determine, due to circumstances beyond the employer's control, the amount of wages, figured upon a basis or system other than time rate, due to a worker under this paragraph, the employer shall pay the worker the amount of guaranteed wages due under s. 103.915 (4) (b) within the time required under this paragraph and shall pay any additional wages due within a reasonable time after such wages are determined.

**(2) WAGE STATEMENT.** Every employer shall furnish to each migrant worker at the time of payment of wages a written statement showing the amount of gross and net wages paid by the employer to the worker, and each amount deducted or withheld for whatever purpose.

**(3) DEDUCTIONS.** No employer or migrant labor contractor may deduct or withhold from the wages of any migrant worker any amount on account of debts accrued or anticipated unless the worker has previously authorized such deduction or withholding in writing. Nothing in this subsection shall prohibit any employer of a migrant worker from deducting or withholding from any wages paid, such amounts as may be required by law or on account of any court order.

**(4) OVERTIME.** Any migrant worker not employed exclusively in agricultural labor as defined in s. 108.02 (2) shall be paid not less than one and one-half times the worker's regular rate for any hours worked on Sunday unless the worker is allowed another day of rest in that calendar week.

**History:** 1977 c. 17; 1983 a. 189 s. 329 (28).

**Cross Reference:** See also s. DWD 301.08, Wis. adm. code.

**103.935 Hours of labor. (1)** In the case of a migrant worker employed exclusively in agricultural labor as defined in s. 108.02 (2), the hours of labor shall be as follows:

(a) Except in an emergency, no migrant worker may be required to work or be penalized for failure to work on any premises for more than 6 days in any one week or more than 60 hours in any one week, or more than 12 hours in any one day.

(b) Whenever an employer permits a migrant worker to work on the premises of another employer in any one week or in any one day, the aggregate number of hours during which the migrant worker is required to work on such premises shall not exceed 60 in any one week or 12 in any one day.

(c) Nothing in this section shall prohibit a migrant worker from voluntarily exceeding the limits prescribed by pars. (a) and (b).

**(2)** No migrant worker may be required to work for more than 6 hours continuously without a meal period of at least 30 minutes duration unless a shift can be completed within one additional

hour. The meal period need not be considered as part of the hours of labor.

**(3)** Each migrant worker not employed exclusively in agricultural labor as defined in s. 108.02 (2) shall be provided a rest period of at least 10 minutes duration within each 5 hours of continuous employment, which rest period shall be considered a part of the hours of labor.

**History:** 1977 c. 17; 1983 a. 189 s. 329 (28).

**103.94 Civil action by migrant workers.** Any migrant worker aggrieved by a violation of ss. 103.90 to 103.97 by an employer or by a migrant labor contractor may maintain a civil action on the basis of such violation without regard to exhaustion of any administrative remedy.

**History:** 1977 c. 17.

**103.945 Nonwaiver of rights.** Any agreement by a migrant worker purporting to waive or to modify his or her rights under ss. 103.90 to 103.97 shall be void as contrary to public policy.

**History:** 1977 c. 17.

**103.96 Retaliation prohibited. (1)** No employer or migrant labor contractor may terminate, suspend, demote, transfer or take any action otherwise unfavorable to any migrant worker in retaliation for the exercise by such worker of any right secured under the laws and regulations of the United States or of this state or any subdivision thereof.

**(2)** Any person aggrieved under this section may maintain an action against the employer or migrant labor contractor. In addition to any other damages awarded, an employer or migrant labor contractor found to have violated this section shall be liable to such person aggrieved for full reinstatement and for back wages accumulated during the period of such unlawful retaliation. In cases of willful violation of this section, the court may assess exemplary damages up to double the amount of back wages found due in addition to any other damages awarded. In cases of aggravated circumstances, the court may also assess reasonable attorney fees in addition to any other damages awarded.

**History:** 1977 c. 17; 1993 a. 490.

**103.965 Correction period. (1)** Except as provided in sub. (2), if the department determines that any person has violated ss. 103.90 to 103.97 the person shall have a reasonable time, not to exceed 15 days from the day he or she receives notice of the violation, to correct the violation. If the violation is corrected within that period, no penalty may be imposed under s. 103.97.

**(2)** If an employer violates s. 103.915 (1) 2 or more times in a 10-year period, or violates s. 103.92 by failure to obtain initial certification before opening a camp 2 or more times in a 10-year period, no correction period exists if the 2nd or subsequent violation is intentional or in reckless disregard of the law. This subsection applies only if the first violation in the 10-year period is a conviction or administrative determination of violation which remains of record and is unreversed. The 10-year period shall be measured from the date of the violation which resulted in the conviction or administrative determination of violation.

**History:** 1977 c. 17; 1985 a. 191.

**NOTE:** 1985 Wis. Act 191, which created sub. (2), provides in section 6 that no person may be denied a correction period under sub. (2) for a 2nd or subsequent violation unless the first violation occurred on or after 4-22-86.

**Cross Reference:** See also s. DWD 301.13, Wis. adm. code.

**103.967 Duties of council on migrant labor.** The council on migrant labor shall:

**(1)** Advise the department and other state officials on any matter affecting migrant workers.

**(2)** Ascertain the conditions under which migrant workers are recruited, employed, housed and protected.

**(3)** Review in July of every odd-numbered year the minimum hours guaranteed under s. 103.915 (4) (b) and recommend to the legislature any changes the council finds necessary.

**(4)** Study the coordination of federal and state statutes and rules designed to assist, serve or protect migrant workers and rec-

commend to the department, legislature and other appropriate state agencies any changes in statutes or rules necessary to achieve uniformity insofar as possible between such state and federal statutes and rules.

(5) Review rules submitted by the department under s. 103.968.

History: 1977 c. 17.

**103.968 Council review of rules.** The department shall submit every rule which it proposes to promulgate under ss. 103.90 to 103.97 to the council on migrant labor at the same time that the department files notice of its intent to promulgate the rule with the presiding officer of each house of the legislature under s. 227.19 (2). If the council disapproves the rule within 45 days after the rule is submitted, the department may not promulgate the rule, and, if promulgated, the rule is void.

History: 1977 c. 17; 1979 c. 34, 154; 1985 a. 182.

**103.969 New contract compliance.** Any collective bargaining agreement entered into by any person on or after June 7, 1977, shall not violate any provision of chapter 17, laws of 1977.

History: 1977 c. 17.

**103.97 Penalties. (1)** (a) Except as provided in par. (b), if any person violates ss. 103.90 to 103.97, or fails or refuses to obey any lawful order of the department or any judgment of any court in connection with ss. 103.90 to 103.97, for each such violation, failure or refusal, such person shall forfeit not less than \$10 nor more than \$100. Each day of continued violation shall constitute a separate offense.

(b) Any person who maintains an uncertified camp in violation of an order issued by the department under s. 103.92 for failure in any year to obtain initial certification before opening a camp shall forfeit not less than \$10 nor more than \$100 for the first violation, and shall forfeit not less than \$500 nor more than \$1,000 for any such subsequent violation occurring within 10 years. In this paragraph, a “subsequent violation” is a violation occurring after a conviction or an administrative determination of violation, either of which remains of record and is unreversed.

(2) An employer is not liable for a violation of ss. 103.90 to 103.97 if the violation is due to the employer’s good faith reliance on the representations of a worker.

History: 1977 c. 17; 1985 a. 191.

**NOTE: 1985 Wis. Act 191, which created sub. (1) (b), provides in section 6 that no person may be assessed a forfeiture under sub. (1) (b) for a subsequent violation unless the first violation occurred on or after 4–22–86.**