

**WISCONSIN**



**DWD**

Department of Workforce Development

# Wisconsin's Wage & Hour Laws:

## Basics & Beyond

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# Labor Standards Laws



- Wage Payment & Collection
- Minimum Wage
- Interpretation of Hours Worked
- Overtime
- Open Personnel Records

# Wage Payment & Collection



- Wisconsin Statutes Chapter 109
  - Wages payable as agreed
  - Frequency of payment
  - Payment at termination
  - Fringe benefits
  - Deductions from wages

# Wage Payment & Collection



- Frequency of payment
  - Once a month
  - Not more than 31 days between pay periods (with some exceptions)
- Payment at termination: in accordance with regular pay schedule

# Wage Payment & Collection



- Statute requires employers to pay “wages” as agreed.
- What are wages?
  - Remuneration payable for personal services,
  - includes fringe benefits and other “similar advantages agreed upon” between the parties, or provided “as an established policy”

# Pop Quiz!! (Vacation Pay)



- **Company A's vacation pay policy says:**
  - Employees get 2 weeks of paid vacation each year. Unused vacation pay is paid at termination of employment.
- Ed started with Company A on January 2, 2017. He discovered he didn't like the job and quit on January 14, 2017, with no notice.

# Pop Quiz!! (Vacation Pay)



- **Which of the following four statements is true?**
  - A. Ed is entitled to payment for 1/26th of his two weeks' vacation pay since he worked 1/26th of the year.**
  - B. Ed is not entitled to vacation pay since he quit with no notice.**
  - C. Ed is entitled to 2 weeks of vacation pay.**
  - D. Ed is not entitled to vacation pay since he was still in a probationary period for the first 90 days.**

# Pop Quiz!! (Vacation Pay)



- **Ed is probably entitled to 2 weeks of vacation pay.**
- **This employer needs to revise its policy to make it clearer!**



# Wage Payment & Collection



## **Fringe benefits – vacation / sick leave / PTO**

- ④ **While there is no requirement, best practice is to have policies in writing and clear.**
- ④ **Fill in all details; don't leave it open to interpretation.**

- ④ **Vacation pay policy should:**
  - ④ **State how the pay is earned;**
  - ④ **State how the pay is used;**
  - ④ **State whether or not all or part of the benefit is payable at termination of employment; and**
  - ④ **Be clear, concise, and complete**

# Wage Payment & Collection



## **Deductions from wages for Loss of property, theft, damage to property, or faulty workmanship (Wis. Stat. § 103.455)**

- **Types of authorization required**
  - **Written authorization from employee**
  - **Representative agrees to deduction**
  - **Judgment in court**
- **Authorization must be obtained AFTER the incident of loss, but before deduction is made**
- **“Blanket” authorizations are unacceptable.**

## Deductions from wages

- **Other deductions may be made if agreed to between the employer and employee (e.g.: loans, payment of personal sums owed to employer)**
- **Deductions for advances or inadvertent overpayments may be made with or without authorization of employee.**

# Wage Payment & Collection



## Wage Complaints – standards / process

- ④ 2 year statute of limitations.
- ④ “Equitable” settlement.
- ④ Decision:
  - ④ If violation found, we request payment;
  - ④ If no violation found, we dismiss.
- ④ District Attorney prosecutes claims referred by Department.
- ④ Private right of action.

# Minimum Wage



**Wisconsin Statutes Chapter 104 /**

**Wisconsin Administrative Code Chapter DWD 272**

- Covers all employment in Wisconsin, including nonprofit organizations
- Regular rates / Opportunity rates
- Tipped rates
- Allowances for board or lodging
- Meal periods / Coffee breaks
- Record keeping

# Minimum Wage



- \$7.25 per hour -- General rate (including minors and agriculture)
- \$5.90 per hour -- Opportunity rate
  - “Opportunity employee”
    - Under 20 years of age
    - In employment status for 90 or fewer consecutive days with a particular employer

## Meal Periods / Coffee Breaks

- ⦿ Not required
- ⦿ Recommended that meal breaks be given at times reasonably close to normal meal times (required for minors)
- ⦿ Less than 30 minutes, break must be paid
- ⦿ 30 minutes or more, break may be unpaid if
  - ⦿ Completely relieved of duty
  - ⦿ Free to leave the premises



## Wis. Admin. Code § DWD 272.11

- ▶ Must keep listed records for 3 years
- ▶ Records must be kept for each employee other than exempt employees paid on other than an hourly basis.
- ▶ Includes time in and time out each day, time out and time back in for breaks, total number of hours worked per day and per week

# Interpretation of Hours Worked



## Wis. Admin. Code § DWD 272.12

- Explains what constitutes “hours worked”
- “Suffered or permitted” employment
- Waiting Time
- Sleep Time
- Lectures, meetings, and training programs
- Travel Time

## “Suffered or permitted” employment

- Work not requested, but “suffered” is still beneficial to employer, and must be paid
- Duty of management to see that work is not done if it doesn't want it to be done

## Waiting Time

- On Duty (engaged to wait)
  - Messenger doing a crossword puzzle while waiting for an assignment
  - Machinist waiting for a machine to be repaired
  - Repair person waiting for customer
- Off Duty (waiting to be engaged)
  - Completely relieved of duty
  - Long enough to use time “effectively for their own purposes.”

# Pop Quiz!! (Hours Worked)



Sue is a property manager for an apartment complex and works 30 hours per week, Monday through Friday. Apart from this, she is required to be on call at all times - 24 x 7 x 365 - in the event of an emergency at the complex. If she is called to duty, the employer wants her there within 30 minutes. She is not to be intoxicated.

- Which of these three statements is true?
- A. All of the on call time is work time since the employer is intruding on Sue's life.
- B. 40 hours per week must be paid.
- C. None of the on call time is work time.

## On-call Time

- ④ Employee on-call at employer's premises or so close thereto that he or she cannot use the time "effectively for their own purposes" is working while on call.
- ④ Employee who can be reached by pager, phone (cell phone) – normally is NOT work unless response time is VERY short. The test is the same: Can the employees use the time "effectively for their own purposes?"

## Sleep Time

- Less than 24 hour duty - sleep time is work time
- Duty of 24 hours or more:
  - Up to 8 hours per 24 hour period may be deducted if there is an agreement in advance
  - Sleep is usually uninterrupted
  - Calls to duty are paid

# Pop Quiz!! (Training Time)



- XYZ Company hires Human Resources personnel who have PHR/SPHR (Professional in Human Resources / Senior Professional in Human Resources) certification.
- XYZ does not pay for the training to receive this credential.
- XYZ does not require employees who do not have the credentials to obtain it.
- Ed wants to move from his secretarial position into the HR Department. To qualify, he takes a PHR/SPHR accreditation course through SHRM online.
- **Should Ed be paid for the time spent in the course?**



## Lectures, Meetings, Training Programs

- Not work if ALL 4 of the following are met:
  - Attendance is outside employee's regular working hours
  - Attendance is in fact voluntary
  - Course is not directly related to the employee's job
  - Employee performs no productive work during course

# Pop Quiz!! (Travel Time)



**Cindy is a construction worker and travels each day to a different work site in or around her home in West Allis.**

**Cindy's employer obtains a job in Madison and Cindy is required to report to work in Madison each day during a particular week.**

# Pop Quiz!! (Travel Time)



Which of the following four statements is NOT true?

- A. Cindy must be paid for the travel time to Madison because it is more than 50 miles from home.
- B. Cindy does not have to be paid for the travel time since this is regular home to work travel.
- C. If Cindy first reports to the shop to pick up tools that she then carries to the job site, the travel time to Madison is work time.
- D. If the employer requires Cindy to give rides to other employees, the travel time to Madison is work time.

# Interpretation of Hours Worked



## Travel Time

- Normal home to work travel is NOT work time
- Travel time away from the home community overnight for business purposes that occurs for the benefit of the employer is considered hours worked
- Travel that is “all in the day’s work” is work time

**Wisconsin's overtime laws (Wis. Stat. §§ 103.01 – 103.02; Wis. Admin. Code Ch. DWD 274) cover all businesses except:**

- ▶ Non-profit organizations
- ▶ Agricultural employers
- ▶ Domestic service employees
  
- ▶ EXEMPTIONS DIFFER FROM FEDERAL LAW!

## The Basics

- Time and one-half the regular rate after 40 hours worked in a week
- “Week” is a regularly recurring 7 day period
- Each week stands by itself
- Paid time off does not have to count as time worked in a given week for overtime purposes
- There are 15 exemptions to Wisconsin’s overtime law
- Some exemptions apply to the whole establishment and some apply to individuals
- In some instances federal and state laws differ

## White Collar Exemptions

- For each of the “white collar exemptions,” the employer must be sure the position meets both:
  - The salary basis test
  - The duties test

## White Collar Exemptions

- Salary basis test
  - Regularly paid sum on a weekly or less frequent basis (no daily salaries)
  - Not subject to reduction due to quality or quantity of work performed (except certain recognized allowable deductions)



## White Collar Exemptions

- The most common allowable deductions
  - Full day absence for personal reasons other than illness or accident
  - Full day absence for illness or accident when deduction is in conjunction with a bona fide sick leave policy
  - Salary may be prorated in initial and terminal weeks of work
  - Absences for compelled appearance in court and jury duty
  - Family and Medical Leave

## White Collar Exemptions

- ▶ Duties Test – Administrative, Executive, Professional (§DWD 274.04(1)). Example - Executive
  - ▶ primary duty is management of the enterprise or of a customarily recognized department or subdivision, AND
  - ▶ who regularly directs the work of 2 or more employees (80 hours per week), AND
  - ▶ who has the authority to hire & fire or whose recommendations are given particular weight, AND
  - ▶ who doesn't devote more than 20% of his or her time to non-exempt activities (40% in retail or service)

## Federal Law – FLSA

- **White Collar Exemptions**
  - Duties test slightly different since 2004
    - Primary duty is most important duty
    - No percentage test
    - Highly compensated employee exemption
  - \$684 weekly salary

# Overtime – blended rate

- Also called a “weighted average” under federal law
- All wages and hours must be counted when determining overtime pay, not necessarily the wage earned when the overtime is worked
- The formula is pretty simple:

Gross regular pay for all hours / number of hours worked = blended rate

- The employer pays the extra half-time wages based on the employee’s blended rate in that pay period

# Overtime – blended rate

Example:

Employee works 25 hours at \$10/hour and 25 hours at \$15/hour.  
She earned \$625 in gross wages.

$\$625 / 50 = \$12.50/\text{hour}$  blended rate. Any hours worked in excess of 40 are paid a premium of \$6.25 per hour, whether the hours were worked at the \$10 or \$15 per hour rates.

This calculation gets slightly more complicated if employees are being paid based on the tip credit.

# Open Personnel Records Law



- §103.13, Wis. Stats.
- What are “personnel documents?”
  - “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...”

# Open Personnel Records Law



- Documents must be released within 7 working days of request
- Employer may require written request
- Right of inspection, copies, or both
- Employer may charge “reasonable fee” for providing copies
- Employee may designate a representative to inspect the records
- Personnel record correction

## Medical Records

- If the employer believes that release of medical records to the employee would be detrimental, the employer may release them through a physician designated by the employee.
- The physician may release the records to the employee or to the employee's immediate family.



## Exceptions to Release Requirement

- ④ Records relating to investigation of possible criminal offenses
- ④ Letters of reference
- ④ Portion of test document; employee may see cumulative test score or section scores.
- ④ Staff management planning -- “forecasting”
- ④ Information of a personal nature about someone else
- ④ Records relevant to a pending claim

# Questions?



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