


WISCONSIN
DWD
Department of Workforce Development

An Overview of Wisconsin's Labor Standards Laws

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Labor Standards Laws

- ▶ Wage Payment and Collection
- ▶ Minimum Wage
- ▶ Interpretation of Hours Worked
- ▶ Hours of Work and Overtime

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Wage Payment & Collection

Wis. Stat. 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!

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, 2016. He discovered he didn’t like the job and quit on January 14, 2016, 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

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

Benefit Policies

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

Wage Payment & Collection

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

- ▶ 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.

Wage Payment & Collection

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

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



Minimum Wage

Wis. Stat. Chapter 104 / Wis. Admin. 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

Minimum Wage

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

Record-Keeping

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



Interpretation of Hours Worked

“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

Interpretation of Hours Worked

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.



Interpretation of Hours Worked

On-call Time

- ▶ 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
- ▶ Employee who can be reached by pager, phone (cell phone) -- normally NOT work unless response time is VERY short. The test is the same: Can the employees use the time "effectively for their own purposes?"



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

Overtime

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




Overtime

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


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Overtime

White Collar Exemptions

- For each of the “white collar exemptions,” the employer must be sure the position meet the following tests:
 - The salary basis test
 - The salary minimum amount
 - The duties test


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Overtime

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)


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Overtime

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



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Overtime

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)





Overtime

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
- ▶ \$455 weekly salary






Overtime

Changes Coming to FLSA - White Collar Exemptions

- ▶ Effective December 1, 2016
 - ▶ \$913 weekly salary
 - ▶ Some of salary minimum can be made up by nondiscretionary bonuses, incentive pay, commissions (up to 10%) if paid quarterly
 - ▶ \$134,000 for HCE
 - ▶ Updated every 3 years, beginning 1/1/2020.

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Overtime

Seasonal / Recreational & Amusement Exemption

- ▶ Employees are exempt:
 - a) If the establishment does not operate for more than 7 months in any calendar year, or
 - b) if during the preceding calendar year, its average receipts for any 6 months of such year were not more than 33 1/3% of its average receipts for the other 6 months of such year.

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Questions?



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