

STATEMENT OF SCOPE

Department of Workforce Development

Rule No.

Chapter DWD 274, Wis. Admin. Code

Relating to

Hours of Work and Overtime

Rule Type

Permanent

Detailed Description of the Objective of the Proposed Rule

The proposed rule will modify ch. DWD 274 relating to hours of work and overtime to conform to state statutes and federal regulations on overtime under the Fair Labor Standards Act (FLSA).

Description of Existing Policies Relevant to the Rule, New Policies Proposed to be Included in the Rule, and an Analysis of Policy Alternatives

The proposed rule will align ch. DWD 274 with state statutes and federal regulations.

Meal Periods

Under the current rule, it is recommended that an employer allow an employee over the age of 18 at least 30 minutes for each meal period during shifts of more than 6 consecutive hours. The current rule states that employers are required to pay employees for on-duty meal periods, but does not address off-duty meal periods. The proposed rule will clarify that an off-duty meal period of at least 30 minutes is not paid time, regardless if the employee is required to stay on the premises or allowed to leave premises.

Employee Exemptions for Overtime Pay

Section DWD 274.04 provides exemptions for certain employees relating to overtime pay requirements. The proposed rule will provide that the standards for determining overtime exemptions for executive, administrative and professional employees shall be the same as the current standards incorporated under FLSA.

Determining Applicability of Overtime Requirements

The proposed rule will incorporate standards followed under FLSA for determining the applicability of overtime requirements to an employee compensated on a salary basis.

The alternative to proceeding with this rule is to do nothing, which would leave the unchanged provisions that are out of date in conflict with state statutes and federal regulations.

Detailed explanation of statutory authority for the rule, including the statutory citation and language

Section 103.005(1), Stats., provides:

"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."

Section 103.02, Stats., provides:

"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."

Estimate of amount of time that state employees will spend developing the rule, and other resources necessary to develop the rule

The total amount of staff time is estimated to be 100 hours.

List with description of all entities that may be affected by the proposed rule

The proposed rule would affect employers and employees.

Summary and preliminary comparison with any existing or proposed federal regulation that is intended to address the activities to be regulated by the proposed rule

The Wages and Fair Labor Standards Act (FLSA) establishes minimum wage, overtime pay, recordkeeping, and youth employment standards affecting employees in the private sector and in Federal, State and local governments. The proposed rule will modify and update ch. DWD 274 to conform to standards specified by FLSA and align state and federal policies.

Anticipated economic impact of implementing the rule (note if the rule is likely to have an economic impact on small businesses)

It is anticipated that the proposed rule would make regulatory compliance easier for small businesses. The rule will not have a significant economic impact on a substantial number of small businesses.

Contact Person:

Jim Chiolino, DWD Equal Rights Division
P. O. Box 8928, Madison WI 53708
(608) 266-3345
Jim.Chiolino@dwd.wisconsin.gov