

STATEMENT OF SCOPE
Department of Workforce Development

Rule No.

Chapters DWD 272 and 274

Relating to

Minimum Wage and Hours of Work and Overtime

Rule Type

Permanent

Detailed Description of the Objective of the Proposed Rule

The proposed permanent rule will modify ch. DWD 272 relating to minimum wages to implement various statutory updates from the past several years, clarify, and update the language of the rule.

The proposed permanent rule will also modify ch. DWD 274 relating to hours of work and overtime to conform to state statutes, clarify, and update the language of the rule.

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

Outdated definitions

Various definitions in chs. DWD 272 and 274 are outdated. The proposed rule will update these definitions to be consistent with current statutory definitions and current usage.

Updates to conform with statutory changes

2015 Wis. Act 55 modified ch. 104, Stats. and made several changes related to minimum wage and how tips or similar gratuities are counted towards the minimum wage. 2021 Wis. Act 26 requires the Department to modify ch. DWD 272 to allow an employer to require tipped employees to sign electronically or otherwise acknowledge electronically, the counting of tips to fulfill the employer's requirement to pay minimum wage. Chapter DWD 272 will be modified to conform with these statutory changes.

2013 Wis. Act 286 updated s. 104.09, Stats., to clarify that employers are not required to keep a record of the hours worked by an employee not paid on an hourly basis who is exempt from the overtime requirements of s. 103.02, Stats. The proposed rule will revise ch. DWD 272 to conform to the statute.

Clarification and updating of certain provisions

The proposed rule may update rules in ch. DWD 272 for clarity, to eliminate sections that repeat statutory language without providing additional interpretation, to update out-of-date language, and to correct typographical errors.

The proposed rule may update ch. DWD 272.09 to clarify and modernize these provisions given changes in federal laws, including the federal Workforce Innovation and Opportunity Act (WIOA).

The proposed rule may update rules in chs. DWD 274 consistent with regulations interpreting the federal Fair Labor Standards Act (FLSA) at 29 CFR parts 541, 778, and 785. The proposed rule will also correct obvious typographical errors in ch. DWD 274.

Policy Alternatives

The policy alternative is to do nothing, which would leave unchanged rules in chs. DWD 272 and 274 that are inconsistent with changes to federal and state statutes and contain outdated and archaic language and typographical errors. Also, rules in ch. DWD 272 would continue to fail to address direct deposit, payroll debit cards, and electronic access to paystubs.

Detailed Explanation of Statutory Authority for the Rule (Including the Statutory Citation and Language) *Section 104.035(7) and (8), Stats.*, provide:

"(7) MINIMUM WAGE ESTABLISHED BY DEPARTMENT. The department shall promulgate rules providing the minimum wage for all of the following:

- (a) An employee or worker with a disability covered under s. 104.07.
- (b) A student learner.
- (c) A student employed by an independent college or university for less than 20 hours per week.

(8) EMPLOYMENT EXEMPTED BY DEPARTMENT. The department shall promulgate rules exempting from the minimum wage requirements under subs. (1) to (7) all of the following:

- (a) A person engaged in casual employment in and around an employer's home on an irregular or intermittent basis for not more than 15 hours per week.
- (b) A person who resides in the home of an employer who, due to advanced age or physical or mental disability, cannot care for his or her own needs, for the purpose of companionship and who spends not more than 15 hours per week on general household work for the employer.
- (c) An elementary or secondary school student performing student performing student work-like activities in the student's school."

Section 104.045, Stats., provides:

"104.045 Tips, meals, lodging, and hours worked. The department shall promulgate rules governing all of the following:

- (1) The counting of tips or similar gratuities toward fulfillment of the employer's obligation under this under s. 104.035 (3). The rules promulgated under this subsection shall allow an employer to require a tipped employee to use an electronic signature or other electronic means that uniquely identifies the employee to acknowledge the counting of tips or similar gratuities for purposes of s. 104.035 (3). In this subsection, "electronic signature" has the meaning given in s. 137.11 (8).
- (2) The deduction of meals or lodging provided by an employer to an employee from the employer's obligation under this chapter.
- (3) The determination of hours worked by an employee during which the employee is entitled to the minimum wage established under s. 104.035."

Section 104.07 (1) and (2), Stats., provide:

"104.07 Rules; license to employ; student learners; sheltered workshops. (1) The department shall promulgate rules, and, except as provided under subs. (5), (6), and (7), grant a license to any employer who employs any employee for whom the minimum wage established under s. 104.035 is not commensurate with the employee's ability. Each license so granted shall establish a wage for any such establish a wage for any such employees of the licensee.

(2) The department shall promulgate rules, and, except as provided under subs. (5), (6), and (7), grant a license to a sheltered workshop, to permit the employment of workers with disabilities at a wage that is commensurate with their ability and productivity. A license granted to a sheltered workshop under this subsection may be issued for the entire workshop or a department of the workshop."

Section 103.005 (1), Stats. provides:

"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 of Other Resources Necessary to Develop the Rule

The total amount of staff time is estimated to be 120 hours.

List with Description of All Entities that May Be Affected by the Proposed Rule

The proposed permanent rule will affect employers, employees, and organizations who are subject to minimum wage and hours of work and overtime requirements.

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 FLSA establishes minimum wage, overtime pay, recordkeeping, and youth employment standards affecting employees in the private sector and in federal, state, and local governments. There are no federal regulations related to direct deposit, payroll debit cards or access to employee paystubs electronically. The proposed rule will modify and update ch. DWD 272 and ch. DWD 274 to clarify the relationship between federal and state laws.

Anticipated Economic Impact of Implementing the Rule (Note if the Rule is Likely to Have a Significant 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.

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