

RULES CERTIFICATE

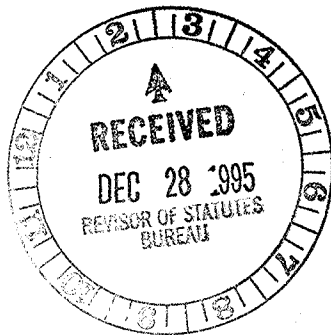
STATE OF WISCONSIN)
) SS
 DEPT. OF INDUSTRY,)
 LABOR & HUMAN RELATIONS)

TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETINGS:

I, Carol Skornicka, Secretary of the Department of Industry, Labor and Human Relations, and custodian of the official records of said department, do hereby certify that the annexed rule(s) relating to ch. 272, Wis. Admin. Code - Minimum Wage
 (Subject)

were duly approved and adopted by this department on December 22, 1995
 (Date)

I further certify that said copy has been compared by me with the original on file in the department and that the same is a true copy thereof, and of the whole of such original.



IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the official seal of the department at 12:00 Noon in the city of Madison, this 22nd day of Dec. A.D. 19 95.

Carol Skornicka
 Secretary

ORDER OF ADOPTION

Pursuant to authority vested in the Department of Industry, Labor and Human Relations by section(s)

104.04

Stats., the Department of Industry, Labor and Human Relations creates; amends;

repeals and recreates; repeals and adopts rules of Wisconsin Administrative Code chapter(s):

ILHR 272

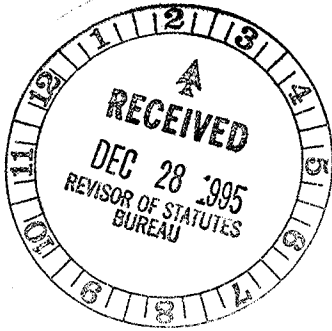
(Number)

Minimum Wage

(Title)

The attached rules shall take effect on the first day of the month following publication

in the register pursuant to section 227.22, Stats.



Adopted at Madison, Wisconsin this

date: December 22, 1995

DEPARTMENT OF INDUSTRY, LABOR AND
HUMAN RELATIONS

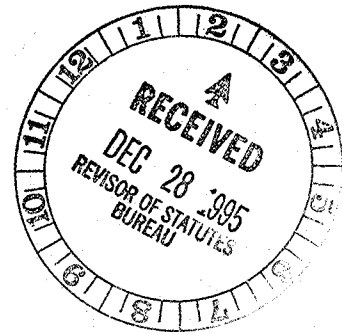
A handwritten signature in cursive script, appearing to read 'Laura P...'.

Secretary



State of Wisconsin \ Department of Industry, Labor and Human Relations

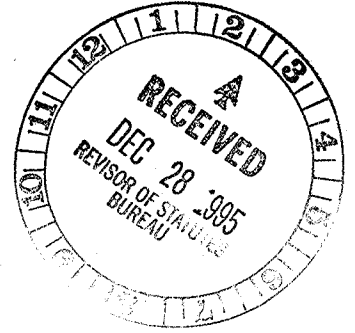
RULES in FINAL DRAFT FORM



Rule No.: _____ ILHR 272 _____

Relating to: _____ Minimum Wage _____

Clearinghouse Rule No.: _____ 95-172 _____



CHAPTER ILHR 272

RULES RELATING TO THE MINIMUM WAGE

Pursuant to the authority vested in the Wisconsin Department of Industry, Labor and Human Relations by §§101.02(1) and 104.04, Stats., the department proposes an order to renumber ch. Ind 72(title), Ind 72.001(1) and (3) to (7), Ind 72.01 to Ind 72.11, Ind 72.12(1), (2) (a), (b), (c) and (d) 1, 2 and 3.b, and Ind 72.13; to renumber and amend Ind 72.001(2), Ind 72.09(title), and Ind 72.12(2)(d)3.a and 4 ; and to create ILHR 272.09(1)(dm) and (18) and ILHR 272.12(2)(d)1 and 5, relating to the minimum wage, subminimum wage licenses for rehabilitation facilities, and employment in home care premises.

Analysis

This rule is proposed by the DILHR Equal Rights Division to make a number of changes to the rules relating to the state minimum wage.

(1) Response to Dane County Circuit Court ruling and amendment to ch. 104, Stats. In a decision issued on March 27, 1995, in the case of Service Employees International Union v. DILHR, the Dane County Circuit Court issued an order requiring DILHR to reconsider its administrative rule setting the living wage using the criteria set by ch. 104, Stats. In addition, §104.04, Stats. was amended by 1995 Wisconsin Act 27, effective July 29, 1995, to provide that DILHR may consider the effect that an increase in the living-wage might have on the economy of the state, including the effect of a living-wage increase on job creation, retention and expansion, on the availability of entry-level jobs and on regional economic conditions within the state.

After performing the review required by the court decision and considering the factors authorized by the amendment to §104.04, Stats., DILHR has decided not to propose any change to the current minimum wage rates. The proposed rule includes an amendment to reflect the consideration of the factors authorized by the amendment to §104.04, Stats.

(2) Renumbering. The proposed rule renumbers the minimum wage rule from ch. Ind 72 to ch. ILHR 272 to conform to the current system for the classification of DILHR rules.

(3) Subminimum wage licenses for rehabilitation facilities. The proposed rule adopts the guidelines that are currently followed by the U.S. Labor Department for the application of the federal wage and hour laws to vocational rehabilitation programs. The proposed rule incorporates these guidelines into the state's rules for the issuance of subminimum wage licenses to rehabilitation facilities.

(4) **Hours worked in home care premises.** The proposed rule also adopts the federal standards that apply to residential care or group home establishments on the issue of classifying the hours worked by an employe who has a separate permanent residence but also resides in the "home care premises" for at least 120 hours in a work week. The proposed rule defines "home care premises" more broadly than the federal standards.

SECTION 1. ILHR 272.09(1)(dm) is created to read:

ILHR 272.09(1)(dm) "IWRP" means individualized written rehabilitation plan.

SECTION 2. ILHR 272.09(18) is created to read:

ILHR 272.09(18) REHABILITATION FACILITIES. (a) Statement of intent. The department and community-based rehabilitation organizations are committed to the continued development and implementation of individual vocational rehabilitation programs that will facilitate the transition of persons with disabilities into employment within their communities. This transition must take place under conditions that will not jeopardize the protection afforded by the minimum wage law to program participants, employes, employers or other programs providing rehabilitation services to individuals with disabilities.

(b) When all of the following criteria are met, the department shall not assert an employment relationship for the purposes of the minimum wage:

1. Participants are individuals with physical or mental disabilities for whom competitive employment at or above the minimum wage level is not immediately obtainable and who, because of their disabilities, will need intensive ongoing support to perform in a work setting.

2. Participation is for vocational exploration, assessment or training in a community-based placement work site under the general supervision of rehabilitation organization personnel.

3. Community-based placements are clearly defined components of individual rehabilitation programs developed and designed for the benefit of each participant. The statement of needed transition services established for the exploration assessment or training components shall be included in each participant's IWRP.

4. The department does not require disclosure of the information contained in the IWRP. However, the department does require documentation as to the participant's enrollment in the community-based placement program. The participant and, when appropriate, the parent or guardian of the participant, shall be fully informed of the IWRP and the community-based placement component and shall have indicated voluntary participation with the understanding that participation in such a component does not entitle the participant to wages.

5. The activities of the participants at the community-based placement site do not result in an immediate advantage to the business. The department shall be more likely to conclude that there has been no immediate advantage to the business if all of the following determinations can be made:

a. There has been no displacement of employees, vacant positions have not been filled, employees have not been relieved of assigned duties, and the participants are not performing services that, although not ordinarily performed by employees, clearly are of benefit to the business.

b. The participants are under continued and direct supervision by either representatives of the rehabilitation facility or by employees of the business.

c. The placements are made according to the requirements of the participant's IWRP and not to meet the labor needs of the business.

d. The periods of time spent by the participants at any one site or in any clearly distinguishable job classification are specifically limited by the IWRP.

6. Each component of the IWRP may not exceed the following limitations:

a. Vocational explorations: 5 hours per job experienced.

b. Vocational assessment: 90 hours per job experienced.

c. Vocational training: 120 hours per job experienced.

7. A participant is not entitled to employment at the business at the conclusion of his or her IWRP, however, if a participant does become an employee, he or she cannot be considered to be a trainee at that particular community-based placement unless he or she is in a clearly distinguishable occupation.

(c) An employment relationship shall exist unless all of the criteria described in par. (b) are met. If an employment relationship is found to exist, the business shall be held responsible for full compliance with the applicable sections of the minimum wage law.

(d) Businesses and rehabilitation organizations may, at any time, consider participants to be employees and may structure a program so that the participants are compensated in accordance with the requirements of the minimum wage law. Whenever an employment relationship is established, the business may make use of the special minimum wage provisions provided by this section.

SECTION 3. ILHR 272.12(2)(d)1 is created to read:

ILHR 272.12(2)(d)1. 'Definitions.' In this paragraph:

a. "Day" means a calendar day or a period of 24 consecutive hours.

b. "Home care premises" means premises or locations, including group homes, in which the employer is acting either directly or indirectly as an agent to provide home care services for an elderly person, a person with a disability, a person otherwise in need of care and assistance in the home, or for the family of such a person.

c. "Homelike environment" means facilities, including private quarters as defined in par. (e), and also including facilities for cooking and eating on the same premises; for bathing in private; and for recreation, such as television. The amenities and quarters shall be suitable for long-term residence by individuals and shall be similar to those found in typical private residence or apartment, rather than those found in institutional facilities such as dormitories, barracks, and short-term facilities for travelers.

d. "Off-duty" means the time period during which the employe is completely relieved from duty and is free to leave the home care premises or otherwise use the time for his or her benefit.

e. "On-duty" means the period of time the employe is required to be on the home care premises or otherwise working for the employer.

f. "Private quarters" means living quarters that are furnished, are separate from the clients and from any other staff members, have as a minimum the same furnishings available to

clients, such as bed, table, chair, lamp, dresser, closet, and in which the employe is able to leave his or her belongings during on-duty and off-duty periods.

g. "Workweek" means seven consecutive 24 hour periods.

SECTION 4. ILHR 272.12(2)(d)5 is created to read:

ILHR 272.12(2)(d)5 'Home care premises.' a. When an employe who provides home care services does not maintain his or her permanent residence on the home care premises and does not otherwise reside on the premises 7 days a week, the department shall consider an employe who sleeps in private quarters, in a homelike environment, to reside on the premises for an extended period of time within the meaning of par. (d) 4, if the employe resides on the premises for a period of at least 120 hours in a workweek.

b. An employe shall be found to reside on the premises for extended periods of time if both of the following apply: (i) the employe is on duty at the home care premises and is compensated for at least eight hours in each of five consecutive 24-hour periods; and (ii) the employe sleeps on the premises for all sleep periods between the beginning and end of the 120 hour period. Any 24-hour period can be utilized, and the eight compensated hours per 24-hour period need not be consecutive. An employe who is on duty and compensated for the period 5:00 p. m. to 10:00 p.m. Monday, 6:00 a.m. to 9:00 a.m. and 3:00 p.m. to 10:00 p.m. Tuesday through Friday, and 6:00 a.m. to 9:00 a.m. Saturday, and who sleeps on the premises (10:00 p.m. to 6:00 a.m.) for all sleep periods from Monday night through Friday night, has been compensated for at least eight hours in five consecutive 24-hour periods between 5:00 p.m. Monday and 5:00 p.m. Saturday. The employe would also have slept five consecutive nights on the premises.

Provided the other conditions were met, this would be considered to be residing on the premises for an extended period of time. An employe who is on duty and is compensated from 6:00 a.m. to 9:00 a.m. and 5:00 p.m. to 10:00 p.m., Monday through Friday, and who sleeps Monday through Thursday nights on the premises, would be considered to reside on the premises for extended periods of time. These employes are called "full-time" employes.

c. Where one or more employes meet the "full-time employe residing on the premises test" of subd. b., the department shall apply the provisions of par. (d) 4 to one or more "relief" employes who reside on the premises for one to three nights, provided these employes are on duty and are compensated for at least eight hours in each 24-hour period in question and sleep on the premises all intervening nights. Although it is anticipated that there will be no more than one relief employe for each full-time employe, it is possible that there may be more than one. To come within the provisions the relief employe shall be relieving a full-time employe. That is, the full-time employe and the employe or employes relieving that employe may not be on duty for more than a combined total of seven days and seven nights in each workweek. A part-time employe shall not be considered a relief employe if that employe and the full-time employe being relieved are on duty simultaneously for more than one hour a day.

d. In order to deduct sleep time for full-time and relief employes, the employes shall be provided private quarters in a homelike environment. A reasonable agreement shall be reached, in advance, regarding compensable time. The employer and the employe may agree to exclude up to eight hours per night of uninterrupted sleep time. They may also agree to exclude a period of off-duty time during the day when the employe is completely relieved of all responsibilities. These exclusions shall be the result of an employe-employer agreement and not a unilateral decision of

the employer. Such an agreement should normally be in writing to preclude any possible misunderstanding of the terms and conditions of the individual's employment.

e. Where sleep time is to be deducted, the employer should determine if the following criteria are met: (i) the employer and the employee have reached agreement in advance that sleep time is being deducted; (ii) adequate sleeping facilities with private quarters were furnished, (iii) if interruptions occurred, employees got at least five hours of sleep during the scheduled sleeping period; (iv) employees are compensated for any interruptions in sleep; and (v) no more than eight hours of sleep time is deducted for each full 24-hour on-duty period.

f. Sleep time may not be deducted for relief or other part-time employees who are not relieving a full-time employee, unless such employees are themselves on duty for 24 hours or more as provided in subd. 3. An off-duty period during a weekday for such employees breaks an on-duty period for the purposes of subd. 3. For example, a duty period from 5:00 p.m. of one day to 5:00 p.m. the following day, during which an employee has uncompensated free time between 9:00 a.m. and 3:00 p.m. of the on-duty period, is not considered to be a 24-hour period.

SECTION 5. Chapter Ind 72(title), Ind 72.001(1) and (3) to (7), Ind 72.01(1) to (11), Ind 72.02 to Ind 72.085, Ind 72.09(1)(a) to (f) and (2) to (17), Ind 72.10 to Ind 72.11, Ind 72.12(1), (2)(a), (b), (c) and (d) 1, 2 and 3.b, and Ind 72.13 are renumbered ch. ILHR 272 (title), ILHR 272.001(1) and (3) to (7), ILHR 272.01(1) to (11), ILHR 272.02 to ILHR 272.085, ILHR 272.09(1)(a) to (f) and (2) to (17), ILHR 272.10 to ILHR 272.11, ILHR 272.12(1), (2)(a), (b), (c) and (d)(intro.), 2, and 3.b, and ILHR 272.13.

SECTION 6. Ind 72.001(2) is renumbered ILHR 272.001(2) and amended to read:

ILHR 272.001(2) The rates adopted in this chapter reflect compensation that has been determined to be adequate to permit any employe to maintain herself or himself in minimum comfort, decency, physical and moral well-being. The department has also considered the effect that an increase in the living-wage might have on the economy of the state, including the effect of a living-wage increase on job creation, retention and expansion, on the availability of entry-level jobs and on regional economic conditions within the state.

SECTION 7. Ind 72.01(12) to (15) and (17) are renumbered ILHR 272.09(1)(g), (h), (j), (k), and (m).

SECTION 8. Ind 72.01(16) is renumbered ILHR 272.01(12).

SECTION 9. Ind 72.09(title) is renumbered ILHR 272.09(title) and amended to read:

ILHR 272.09 SUBMINIMUM WAGE LICENSES FOR REHABILITATION FACILITIES AND FOR THE EMPLOYMENT OF WORKERS WITH DISABILITIES AND STUDENT LEARNERS.

SECTION 10. Ind 72.09(1)(g), (h), and (i) are renumbered ILHR 272.09(1)(I), (L), and (n).

SECTION 11. Ind 72.12(2)(d)3.a is renumbered ILHR 272.12(2)(d)3.a and amended to read:

ILHR 272.12(2)(d)3.a. Where an employe is required to be on duty for 24 consecutive hours ~~of or more or required to be on duty during a regularly scheduled sleeping period,~~ the employer and the employe pursuant to a mutual written agreement may agree to exclude bona fide

meal periods and a bona fide regularly scheduled sleeping period of not more than 8 hours from hours worked per 24 hour period, provided adequate sleeping facilities are furnished by the employer and the employe can usually enjoy an uninterrupted night's sleep. If the sleeping period is of more than 8 hours, only 8 hours ~~will~~ shall be credited per 24 hour period. Where no, ~~expressed or implied~~ written agreement to the contrary is present, the 8 hours of sleeping time and lunch periods constitute hours worked. If the sleeping period is interrupted by a call to duty, the interruption ~~must~~ shall be counted as hours worked. Employers may take credit for board and lodging as prescribed by ~~s. Ind 72.03(3) or (4)~~ s. ILHR 272.03(3) or (4), whichever is applicable. Record keeping requirements provided in ~~s. Ind 72.11~~ s. ILHR 272.11 shall apply.

SECTION 12. Ind 72.12(2)(d)4 is numbered ILHR 272.12(2)(d)4 and amended to read:

ILHR 272.12(2)(d)4 Employes residing on the employer's premises, home care premises or working at home. An employe who resides on ~~their~~ his or her employer's premises or home care premises on a permanent basis or for extended periods of time is not considered as working all the time ~~they are~~ he or she is on the premises. Ordinarily, ~~they~~ the employe may engage in normal private pursuits and thus have enough time for eating, sleeping entertaining, and other periods of complete freedom from all duties when ~~they~~ he or she may leave the premises for purposes of ~~their~~ his or her own. It is of course difficult to determine the exact hours worked under these circumstances and any reasonable written agreement of the parties which takes into consideration all of the pertinent facts ~~will~~ shall be accepted.

SECTION 13. EFFECTIVE DATE. This rule shall take effect on the first day of the month following publication in the Wisconsin administrative register as provided in s. 227.22(2)(intro.), Stats.

(End)

Tommy G. Thompson
Governor
Carol Skornicka
Secretary



Mailing Address:
201 E. Washington Avenue
Post Office Box 7946
Madison, WI 53707-7946
Telephone (608) 266-7552

State of Wisconsin Department of Industry, Labor and Human Relations

December 28, 1995

Gary Poulson
Assistant Revisor of Statutes
Suite 800
131 W. Wilson St.
Madison, Wisconsin 53703-3233

Douglas LaFollette
Secretary of State
10th Floor
30 West Mifflin Street
Madison, Wisconsin 53703

Dear Messrs. Poulson and LaFollette:

TRANSMITTAL OF RULE ADOPTION

CLEARINGHOUSE RULE NO.: 95-172

RULE NO.: ILHR 272

RELATING TO: Minimum Wage

Pursuant to section 227.20, Stats., agencies are required to file a certified copy of every rule adopted by the agency with the offices of the Secretary of State and the Revisor of Statutes.

At this time, the following material is being submitted to you:

1. Order of Adoption.
2. Rules Certificate Form.
3. Rules in Final Draft Form.

Pursuant to section 227.114, Stats., a summary of the final regulatory flexibility analysis is included for permanent rules. A fiscal estimate and fiscal estimate worksheet is included with an emergency rule.

Respectfully submitted,

Handwritten signature of Carol Skornicka in cursive.

Carol Skornicka
Secretary

