

STATE EMPLOYMENT REGULATIONS FOR WISCONSIN

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STATE EMPLOYMENT REGULATIONS FOR WISCONSIN

What's New

- 061505 – Minimum wage in Wisconsin is now \$5.70, \$5.30 for minor employees, and \$2.33 for tipped employees.
- 071505 – Wisconsin law now prohibits local governments in Wisconsin from having a higher minimum wage for employees in their jurisdictions; any such ordinances are now null and void.
- 060506 – Minimum wage in Wisconsin is now \$6.50, \$5.90 for minor employees, and \$2.33 for tipped employees.
- 072408 – The Wisconsin minimum wage was raised to \$6.55 per hour as of July 24, 2008 following the federal minimum wage. Tipped employees must be paid a minimum of \$2.13 per hour.
- 072409 – The Wisconsin minimum wage was raised to \$7.25 per hour as of July 24, 2009 following the federal minimum wage. Tipped employees must be paid a minimum of \$2.33 per hour.
- 012613 - Changes were made to the following sections: Discrimination, Jury Duty, Child Labor, Military Leave, Minimum Wage, Payment of Wages and Family Leave. The following sections were added: Breastfeeding, New Hire Reporting, Job Reference Liability, Smoking, Disaster and Emergency Services Leave and Access to Personnel Files.
- 041013 - Changes were made to the following section: State Continuation of Benefits.

STATE EMPLOYMENT REGULATIONS FOR WISCONSIN

Introduction

Employment laws vary from state to state with some being more employee-friendly than others. Federal regulations set minimum standards of worker protections that all employers of a given size must meet. Individual states, however, are free to grant workers additional or expanded rights or protections above this federal minimum.

Virtually all employers in the U.S. are subject to federal employment regulations. Only the smallest, strictly local employers are not subject to federal regulations. If an employer does any of the following, they are participating in interstate commerce and are subject to federal employment regulations:

- Production of goods for commerce, such as transportation or communication
- Use of mail over state lines
- Interstate communications using the telephone
- Use of the Internet over state lines
- Interstate communications using electronic mail
- Make purchases from out-of-state vendors
- Sell to customers in other states

This summary of employment regulations does not include information for those few employers not subject to the federal minimum employment regulations.

Many states have regulations for public employers that are different than those for employers in the private sector. This document also does not include information on regulations (federal and state) that apply only to public sector employers.

In this document we summarize the workplace regulations and worker protections available in Wisconsin. Although not an exhaustive list, it covers the major topics small to mid-sized employers must deal with on a regular basis. Covered areas include:

- Wage, hour and overtime rules (including child labor and break rules);
- Leaves of absence (family leaves, voting time and jury duty);
- Discrimination and harassment regulations; and
- State rules on continuation of benefits.

The federally mandated, but state run new-hire reporting requirements are covered under a separate document, available for download from Libretto or from the Agent 77 store.

The following Quick View table summarizes these regulations. This is followed by a more detailed description of these regulations. Please be sure to read both carefully to understand your responsibilities under Wisconsin and federal law. Also, see the resources section below for reference websites and Libretto tools that can help you comply with these regulations.

QUICK VIEW OF STATE EMPLOYMENT REGULATIONS FOR WISCONSIN

Topic	Wisconsin Regulation
Minimum Wage	<ul style="list-style-type: none"> • \$7.25 / hour • Starter wage for under 20 years in the first 90 days is \$5.90 / hour • Tipped employees may be paid a minimum of \$2.33
Overtime	Non-exempt employees must be paid at least 1.5 times their regular rate for hours worked over 40 in a given week
Payment of Wages	<ul style="list-style-type: none"> • Employees must be paid at least every monthly. • Final paychecks must be delivered no later than the payday following termination. • Final wages includes vacation pay when such a policy or agreement is in place.
Work Hours and Breaks	<ul style="list-style-type: none"> • 30-minute break for every 6 hours worked recommended, but not required (except for minors)
Child Labor	<ul style="list-style-type: none"> • Employers employing minors under 18 must keep an employment certificate (issued by Superintendent of Schools) and proof of age on file • Required 30-minute break for every 6 hours worked • Federal and Wisconsin law prohibit minors in certain occupations. See the U.S. Department of Labor and the Wisconsin Department of Workforce Development for information on these prohibitions (contact information is in the reference section). • See table below for restrictions on hours minors may work
Military Leave	<ul style="list-style-type: none"> • Employers must grant up to 5 years of military leave • Employee must be reinstated to same or equivalent position after completion of military leave • Wisconsin gives employees returning from military service 90 days to notify employers of their intent to return to work • Employers may not terminate or threaten to terminate any employee called to military service • Special benefit rules apply for military leave • Wisconsin has separate leave requirements detailed below.
Disaster and Emergency Services Leave	<ul style="list-style-type: none"> • Employers must permit volunteer firefighters and other emergency responders time off to respond to emergencies.
Jury Duty / Witness Leave	<ul style="list-style-type: none"> • Leave is required, but is unpaid • Employee must be reinstated to same position after completion of jury duty • If testimony relates to employment, the leave must be paid.

QUICK VIEW OF STATE EMPLOYMENT REGULATIONS FOR WISCONSIN

Voting Time	<ul style="list-style-type: none"> • 3 hours for any election where employee is qualified to vote • Request must be made prior to Election Day • Employer can specify times for leave • Pay may be deducted for non-exempt employees
Family Leave	<ul style="list-style-type: none"> • Applies to companies of 50 or more employees • Benefit for employees who have at least 1000 hours in last 52 weeks (all leave is unpaid): <ul style="list-style-type: none"> o Up to 6 weeks for birth or adoption (if taken within 16 weeks of event) o Up to 2 weeks for serious illness of spouse, child, parent or themselves o Medical benefits must be continued o Employee must be reinstated to same position • Benefit for employees who have completed a year of service or 1250 hours (all leave is unpaid): <ul style="list-style-type: none"> o Up to 12 weeks of family medical leave o Grant leave for birth or adoption of a child, serious medical condition of the employee, to care for a family member with a serious medical condition, qualifying exigency for military leave and illness/injury of covered service member for leave. o Employee must be reinstated to same or equivalent position after completion of leave • Benefits must be maintained during leave
Breastfeeding	<ul style="list-style-type: none"> • A woman may breast feed her child in any public or private location where she and her child are otherwise authorized to be present.
New Hire Reporting	<ul style="list-style-type: none"> • Employers are required to report information regarding new hires/rehires to the state within 20 days.
Access to Personnel Files	<ul style="list-style-type: none"> • Employees are allowed access to their personnel file information, with some exceptions, at least twice per year.
Job Reference Liability	<ul style="list-style-type: none"> • Employers are generally immune from civil liability if disclosing information that is truthful and provided in good faith.
Smoking	<ul style="list-style-type: none"> • Smoking is prohibited in public places including indoor workplaces. • Posting requirements apply.

QUICK VIEW OF STATE EMPLOYMENT REGULATIONS FOR WISCONSIN

Discrimination and Harassment	<ul style="list-style-type: none">• Wisconsin prohibits employers from discriminating based on ancestry or national origin, race or color, age (over 40), disability, marital status, religion, arrest or conviction records, service in the armed forces, sexual orientation, sex (including sexual harassment, pregnancy, childbirth, and other pregnancy-related conditions), or the use of lawful products during non-working hours.• In addition genetic testing or lie detector tests are prohibited as a condition of employment.
Continuation of Benefits	<ul style="list-style-type: none">• Details and contact information are listed below.

STATE EMPLOYMENT REGULATIONS FOR WISCONSIN

Wage, Hour and Overtime Rules

Employers are subject to the federal minimum wage, hour and overtime rules through the Fair Labor Standards Act. This act specifies that businesses that do at least \$500,000 in gross revenue, as well as all health care facilities and schools are subject to the federal rules. Also, employers involved in interstate commerce are subject to the federal rules.

Minimum Wage

Wisconsin minimum wage is \$7.25 per hour. A special minimum of \$5.90 per hour may be used for employees under 20 years old in the first 90 days of employment. Employers may pay tipped employees a minimum of \$2.33 per hour, provided that the total wages plus tips come to at least the minimum of \$7.25 per hour.

Wisconsin law now prohibits local governments in Wisconsin from having a higher minimum wage for employees in their jurisdictions; with some exceptions. Some localities have living wage requirements. Employees covered by collective bargaining agreements will continue at the agreed upon amounts until the expiration of the agreement.

Finally, both federal and Wisconsin regulations allow employers to apply for licenses to pay sub-minimum wages to certain disabled persons. Please contact the U.S. Department of Labor or the Wisconsin Department of Workforce Development for more information on applying for these licenses. (Contact information for both are listed in the reference section below.)

Overtime

Wisconsin has the same overtime rules as the federal government. That is, for any hours worked over 40 in a given week, non-exempt employees must be paid at least one and one-half times their regular pay.

Like the federal rules Wisconsin exempts certain employees from minimum wage and overtime rules. Excluded employee classes include: executive, administrative, professional, outside salespeople and computer professionals. (Use Libretto's FLSA Resource Package for help in determining whether a given employee is exempt). Wisconsin also permits exemptions for certain small employers not involved in interstate commerce. See the Wisconsin Department of Workforce Development web site for a list of these exemptions.

Payment of Wages

Wisconsin law requires that employees be paid at least monthly, and payment must be for work not more than 31 days prior to the payment date. These regular pay periods must be established and published for all employees.

Final paychecks must be delivered no later than payday following termination (unless the business is sold, moved or closed, in which final paychecks are due 24 hours after termination). Deductions from the final paycheck may not be made without the employee's written consent, unless required by law.

Final wages include vacation pay, when an employer provides such pay under a company policy or employment agreement.

Work Hours and Breaks

Wisconsin recommends a 30-minute break, close to mealtime, for each 6 hours worked. This is not required, however, except for minors (see below). Also, if granted, breaks of less than 30 minutes must be paid.

STATE EMPLOYMENT REGULATIONS FOR WISCONSIN

Wisconsin does require employers operating factories or mercantile businesses to give employees at least one 24-hour period off in each workweek.

Child Labor

Wisconsin child labor law requires all employers employing minors under the age of 18 to have employment certificates (issued by a city or county superintendent of schools) and proof of age on file.

Employers who employ minors (under 18 years of age) are subject to strict limits for hours worked per day and per week for their minor employees. Wisconsin law prohibits minors from working during times that school is in session, regardless of whether the school has flexible hours or not. Minors 16 and 17 years of age who are employed after 11:00 PM must have 8 hours between the end of one shift and the start of the next shift.

Both federal and Wisconsin law prohibits minors from working in hazardous or certain other occupations. Please contact the U.S. Department of Labor or the Wisconsin Department of Workforce Development for more information on restricted occupations for minor employees.

Wisconsin law also requires that any minor working 6 or more continuous hours in a day be given a 30-minute break. The breaks must be scheduled reasonably close to customary meal times.

Leaves of Absence

Military Leave

Employees must be granted up to 5 years of military leave and must be restored to their position (or an equivalent position) within the company as if they had been on furlough. Also, employers may not terminate or threaten to terminate any employee called to military service. Please see Libretto's White Paper on USERRA for more details on military leave.

Wisconsin provides that employees who enlist in or are inducted or ordered into federal active duty for 90 days or more, and any person who is requested by the federal government for national defense work as a civilian during a national emergency, who leaves or has left a permanent position, is entitled to reemployment after completion of duty. The employee must make re-employment application within 90 days after completion of service or within 6 months after release of hospitalization for duty-connected injury or disease. Employees are to be reinstated as if they had been on furlough.

Disaster and Emergency Services Leave

Employers must permit employees who are volunteer firefighters, emergency medical technicians, first responders or ambulance drivers for a volunteer fire department or fire company, a public agency or a non-profit organization to be late or absent from work in order to respond to an emergency that begins before the employee is required to report to work. This time off may be paid or unpaid. When dispatched, the employee must make every effort to notify the employer that he/she may be late to work or absent from work due to the emergency response.

Voting Time

Employees must be granted three hours off for any election in which they are eligible to vote, provided a request is made prior to Election Day. The employer may specify the hours during which an employee may vote.

STATE EMPLOYMENT REGULATIONS FOR WISCONSIN

Jury Duty

In Wisconsin, employers must provide leave for jury duty or when called as a witness, but need not pay for the leave. Also, employers may not terminate or threaten to terminate any employee called to jury duty or subpoenaed as a witness, and employees must be restored to their position within the company as if they had been on furlough. If testimony is given in a proceeding as a result of a crime committed against an employer or an incident that occurred in the course of employment, leave must be paid.

Employees who are covered by FLSA exemptions must be paid their full wage (minus jury duty stipend) or risk losing their exemption status.

Family Leave

Federal FMLA leave states that employers with 50 or more employees in a 75-mile radius must grant up to 12 weeks of unpaid family medical leave to employees who have completed a year of service or 1250 hours. This leave must be granted for the birth or adoption of a child, serious medical condition of the employee, to care for a family member with a serious medical condition, qualifying exigency for military leave and illness/injury of covered service member for leave. After completion of the leave the employee must be reinstated to the same or an equivalent position (as regards to salary, benefits and seniority). Also, benefits, such as health care coverage and retirement benefits, must be maintained during leave.

Wisconsin family leave has different eligibility requirements: all employers of 50 or more employees must offer Wisconsin family leave. Employees who have worked for the same employer the last 52 weeks and for at least 1000 hours within that time are eligible for the following benefits:

- Up to 6 weeks of unpaid leave for the birth or adoption of a child within a 12-month period (provided it is taken within 16 weeks of the birth or adoption).
- Up to 2 weeks of unpaid leave in a 12-month period for the serious illness of a child, parent or spouse.
- Up to 2 weeks of unpaid leave in a 12-month period for their own serious illness.
- The employer must continue to offer medical benefits during the leave (and continue to pay the employer's share of these benefits).
- The employee must be reinstated to the same or equivalent position on returning from leave, retaining all seniority.
- Employers may require medical certification of any serious health condition requiring leave.

Note: Employees may not take more than 8 weeks of Wisconsin family leave within a 12-month period for any combination of reasons.

An employee has the option to substitute other types of paid or unpaid leave provided by the employer for portions of family or medical leave.

Wisconsin's domestic partnership law extends limited rights to registered same-sex partnerships, including allowing domestic partners to take family and medical leave to care for a seriously ill partner.

STATE EMPLOYMENT REGULATIONS FOR WISCONSIN

Other Employment Regulations

Breastfeeding

A woman may breast feed her child in any public or private location where she and her child are otherwise authorized to be present.

New Hire Reporting

Employers are required to report to the state, within 20 days of hire/rehire, the following information: Employee's name, address, SSN and dates of birth and hire as well as the employer's name, address and FEIN. The reports may be made on form W-4 or through the state's website. Employees who return to work after taking a 90 days or longer leave of absence must also be reported.

Access to Personnel Files

Employees are permitted to inspect personnel documents used in determining the employee's qualifications for employment, transfer, additional compensation, termination, disciplinary action and medical records within 7 days of making the request and employers must grant at least two (2) requests per year. Records relating to the investigation of a possible criminal offense, letters of reference, any portion of a test document except for a cumulative test score, materials used by the employer for staff management planning and information of a personal nature about a person other than the employee are excluded from employee access.

If an employee disagrees with the information in his/her personnel record, removal or correction of that information may be agreed upon by the employer and the employee. If agreement is not reached, the employee may submit a written position statement and the employer must attach the statement to the disputed portion of the personnel record.

Job Reference Liability

An employer cannot conspire to attempt to prevent a discharged employee from obtaining other employment. Employers are generally immune from liability when providing, at the request of a prospective employer or current/former employee, a statement about the employee's job performance or qualifications for employment provided that the information is provided in good faith, the employer did not knowingly provide false information or made the reference maliciously or in violation of law.

Smoking

Smoking is prohibited, with limited exceptions, in public places, including indoor workplaces, restaurants and taverns. Businesses can establish an outdoor smoking area that cannot be regulated by local governments.

Signs setting forth the smoking prohibition must be posted.

Discrimination and Harassment

Wisconsin prohibits discrimination or harassment based on:

- Ancestry or national origin
- Race or color
- Age (over 40)
- Mental or physical disability

STATE EMPLOYMENT REGULATIONS FOR WISCONSIN

- Marital status
- Religion
- Arrest or conviction records
- Service in the armed forces
- Sexual orientation
- Sex (including sexual harassment, pregnancy, childbirth, and other pregnancy-related conditions), or
- Use of lawful products during non-working hours
- The following are prohibited as a condition of employment:
 - o Genetic testing
 - o Polygraph (Lie Detector) tests
 - o AIDS test

Additionally, employers with 15 or more employees are covered by GINA, which prohibits discrimination based on genetic testing.

Wisconsin has several employment-related poster requirements that can be located on state and federal websites.

Whistleblowing is protected.

State Continuation of Benefits

Continuation coverage requirements generally apply to employers that provide group health insurance coverage to employees. Eligible employees have the right to continue coverage for up to eighteen (18) months.

The following link will access a fact sheet on continuation rights issued by the Commissioner of Insurance:

<http://oci.wi.gov/pub list/pi-023.pdf/>

Resources/Posters

Wisconsin Department of Workforce Development

<http://www.dwd.state.wi.us/>

United States Department of Labor

<http://www.dol.gov/>

Wisconsin New Hire Reporting

www.wi-newhire.com

Related Libretto Products

FLSA Resource Package (for help in determining overtime exempt / non-exempt status of employees)

Overtime Guidelines

Break Period Guidelines

Family Medical Leave of Absence Policy

STATE EMPLOYMENT REGULATIONS FOR WISCONSIN

Military Leave of Absence Policy

Jury Duty-Witness Leave Policy

Voting Time Policy

Prohibited Harassment and Nondiscrimination Policy & Employee Acknowledgement

COBRA Continuation Coverage Policy

General Notice of COBRA Continuation Coverage Rights

COBRA Continuation Coverage Election Information: Notice And Form

New Hire Reporting for Wisconsin

Hours and Times of Day Minors May Work in Wisconsin

State and federal laws do not limit the hours that minors 16 years of age or over may work, except that they may not be employed or permitted to work during hours of required school attendance under Wis. Stat. § 118.15.

State and federal laws also permit minors under 16 to work up to seven days per week in the delivery of newspapers and agriculture. In most other types of labor, minors under 16 may only work six days a week.

Most employers must obtain work permits for minors before permitting them to work. For further information, see the Wisconsin Employment of Minors Guide (ERD-4758-P).

Maximum Hours of Work for 14 & 15 year-old minors	After Labor Day through May 31	June 1 through Labor Day
<u>Daily Hours</u>		
Non-School Days	8 hours	8 hours
School Days	3 hours	3 hours
<u>Weekly Hours</u>		
Non-School Weeks	40 hours	40 hours
School Weeks	18 hours	18 hours
Permitted Time of Day	7am-7pm	7am-9pm

Employers subject to both federal and state laws must comply with the more stringent section of the two laws.

State child labor laws prohibit work during times that minors are required to be in school, except for students participating in work experience and career exploration programs operated by the school.

Minors under 16 years of age are limited to the maximum hours and time of day restrictions even though they may work for more than one employer during the same day or week.

Minors under 14 years of age are allowed to work in certain occupations (e.g., street trades, agriculture, and work in school lunch programs. See the Wisconsin Employment of Minors Guide, ERD-4758-P, for more detail). These minors are subject to the same hourly and time of day restrictions as minors who are 14 or 15 years of age.

Minors under 18 years of age may not work more than 6 consecutive hours without having a 30-minute, duty free meal period.

Minors 16 & 17 years of age who are employed after 11:00 pm must have 8 hours of rest between the end of one shift and the start of the next shift.

Minimum Wage for minors is \$7.25 per hour. Employers may pay an "Opportunity Wage" of \$5.90 per hour for the first 90 days of employment. On the 91st day, the wage must increase to \$7.25 per hour.

For further information about the federal child labor laws call (608) 441-5221, or write to U.S. Department of Labor, Wage & Hour, 740 Regent Street, Suite 102, Madison, WI 53715.

For further information about the state child labor laws, call the Equal Rights Division in Madison (608) 266-6860 or Milwaukee (414) 227-4384.

DEPARTMENT OF WORKFORCE DEVELOPMENT - EQUAL RIGHTS DIVISION

PO BOX 8928 MADISON WI 53708
Telephone: (608) 266-6860 TTY: (608) 264-8752

Website: <http://dwd.wisconsin.gov/er/>

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