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WORKER PROTECTION LAWS IN WISCONSIN

Beginning with the Progressive Era in the early part of the 20th century, Wisconsin has enacted a significant body of law regulating health and safety in the workplace and promoting the welfare and economic security of employees. This brief summarizes laws designed to protect workers. It also provides citations to relevant statutes and administrative rules, and gives agency contacts for further assistance.

SOCIAL WELFARE

Worker's Compensation. In 1911, Wisconsin was the first state to establish a worker's compensation program. Workers who have sustained work-related injuries or illnesses are entitled to monetary and other benefits, financed directly by self-insured employers or covered by private insurers who collect premiums from employers based on the nature of the industry and a company's previous claims experience. The system encourages rehabilitation and reemployment efforts and actively promotes safety education and regulation to reduce work-related injuries, illnesses and deaths.

Citation: Chapter 102, Wisconsin Statutes.

Contact: Department of Workforce Development, Worker's Compensation Division, at (608) 266-1340.

Unemployment Insurance. In 1931, Wisconsin was the first state to authorize payments for unemployed workers. An eligible worker who loses a job is paid up to 26 weeks at a rate based upon the employee's previous earnings. The system is funded through a tax on employers, which is based primarily upon each employer's total payroll and previous claims. Governmental entities and nonprofit organizations have different financing options. Compensation is usually collected by those who have been laid off, but persons who quit for "just cause" may also be eligible for benefits.

Citation: Chapter 108, Wisconsin Statutes.

Contacts: Department of Workforce Development, Unemployment Insurance Division, at (800) 494-4944. To file a claim: (800) 822-5246.

JOB SECURITY

Equal Opportunity and Antidiscrimination in Employment. Under Wisconsin's fair employment law, employers may not discriminate against qualified current or prospective workers in terms of hiring, compensation, promotions, treatment on the job or termination. A 1945 law prohibited employment discrimination on the basis of race, creed, color, national origin or ancestry. Protections were subsequently added for: age 40 and over (1959); gender (1961); handicap/disability (1965); arrest or conviction record (1977); marital status (1982);

sexual orientation (1982); membership in the national guard, state defense force or any other reserve component of the military forces (1987); and use or nonuse of lawful products, such as tobacco, off the employer's premises during nonworking hours, i.e., "smoker's rights" legislation (1991). The prohibition against discrimination based on sexual orientation was the first so-called "gay rights" law in the nation. When hiring, employers may not ask questions unrelated to the job or which tend to have an adverse effect on minorities or protected classes. In addition, the Americans with Disabilities Act (ADA), enacted by the U.S. Congress in 1990 (Public Law 101-336), provides protections to persons with physical or mental disabilities and requires reasonable accommodation for those who can perform essential job functions unless the accommodation would pose a hardship on the employer's business.

An employer is not required to hire or retain a worker who is unable to adequately perform job tasks and can discriminate when the distinction is required by the business activity. For example, discriminatory hiring related to arrest or conviction records is permitted if the applicant or worker was convicted of a crime substantially related to the job.

Citations: Subchapter II of Chapter 111, Wisconsin Statutes; Chapter DWD 218, Wisconsin Administrative Code.

Contacts: Wisconsin Department of Workforce Development, Equal Rights Division, at (608) 266-6860; U.S. Department of Justice, Civil Rights Division, at (202) 514-0301.

Sexual Harassment. Employers may not permit sexual harassment that substantially interferes with a worker's job performance or creates an intimidating, hostile or offensive work environment. Sexual harassment includes unwelcome sexual advances or requests for sexual favors, unwelcome physical contact, and verbal or physical conduct of a sexual nature.

Citations: Sections 111.32 (13) and 111.36, Wisconsin Statutes.

Contact: Department of Workforce Development, Equal Rights Division, at (608) 266-6860.

Family and Medical Leave. Typically, leave provisions are a matter of company policy or collective bargaining agreement. Employers are not required by law to grant regular vacation or sick leave, whether paid or unpaid. An important exception is the Wisconsin family and medical leave law, created by 1987 Wisconsin Act 287, which requires employers with 50 or more permanent employees to allow employees of either sex up to six weeks leave in a calendar year for the birth or adoption of the employee's child (within 16 weeks of the birth or placement) and up to two weeks' leave in a calendar year in the case of an employee's own health problems or the need to care for a family member (child, spouse or parent) with a serious health condition. To be eligible, the employee must have worked for the employer for more than 52 consecutive weeks and at least 1,000 hours during the preceding 52-week period. Total family leave cannot exceed eight weeks in any 12-month period. Employees must, if possible, give reasonable advance notice of intent to take leave and should make an effort to schedule medical treatment so that it does not unduly disrupt work operations. Upon return from leave, the employee must be restored to the same or an equivalent position without penalty for having taken the leave. Leave granted under the law is generally unpaid, but the Wisconsin Court of Appeals ruled in 1991 (*Richland School District v. DILHR*, 166 Wis. 2d 262) that the law allows an employee to substitute accumulated paid or unpaid leave of any other type (such as sick leave) for portions of family and medical leave.

Citations: Section 103.10, Wisconsin Statutes; Chapter DWD 225, Wisconsin Administrative Code.

Contact: Department of Workforce Development, Equal Rights Division, at (608) 266-6860.

The federal Family and Medical Leave Act of 1993 (Public Law 103-3) allows unpaid time off for reasons similar to Wisconsin's law, but provides for up to 12 weeks of leave during any 12-month period. The leave law does not apply unless the employer has at least 50 employees working within a 75 mile radius and the employee has worked at least 1,250 hours over the preceding 12 months. The federal law, however, does not supercede any state or local law that provides greater leave rights.

Contact: U.S. Department of Labor, Wage and Hour Division, at (608) 264-5221.

Plant Closing and Mass Layoffs Notice. In general, unless otherwise specified by a union contract or other agreement, workers may be fired at the discretion of the employer ("employment at will") without being given prior notice, severance pay or a reason for the discharge, and workers are not required to give advance notice before quitting a job. However, the Wisconsin Supreme Court has ruled that employees can sue if fired for refusing to follow unlawful orders.

An exception to the employment at will rule is that a business with more than 50 employees in Wisconsin must give 60 days notice prior to a business closing or mass layoff. A business closing is defined as a shutdown at one or more facilities affecting 25 or more employees and a mass layoff means a reduction in the workforce affecting: (1) at least 25% of the employer's workforce or 25 employees, whichever is greater or (2) at least 500 employees. Notice must be given to DWD, the affected employees, the union (if applicable), and the highest official of the affected municipality. Failure to provide timely notice can result in liability for back pay and benefits and a business closing surcharge payable to the municipality.

Employers are not liable for failure to give notice in certain circumstances, such as unforeseen business circumstances or if notice would be detrimental to a good-faith effort to raise capital or to increase business orders. Another exception arises if the purchasers of the business promise in writing to hire substantially all of the affected employees with not more than a 6-month break in employment.

Citations: Section 109.07, Wisconsin Statutes; Chapter DWD 279, Wisconsin Administrative Code.

Contact: Department of Workforce Development, Business Closing and Mass Layoffs Office, at (608) 266-6860.

Retaliation and "Whistleblower" Protection. An employer may not discharge, discipline, retaliate against or otherwise discriminate against an employee because the employee has exercised certain rights, filed a complaint, or testified or assisted in an enforcement action relating to a violation of the state's labor laws. Government workers are also protected if they exercise their free speech rights by publicly disclosing information about believed violations of any state or federal law; mismanagement or abuse of authority in state government; a substantial waste of public funds; or a danger to public health or safety. In addition, workers may sue their employer in circuit court for damages, court costs and attorney fees.

Citations: Sections 46.90, 50.07, 111.322, 230.80-230.89, and 895.65, Wisconsin Statutes.

Criminal penalties may be imposed against any employer, including the owner or an official of a long-term care facility, such as a nursing home, who retaliates or discriminates against an employee for reporting or providing information relating to a suspected case of abuse or neglect of an elderly person or other resident of a care facility. An employee of a state agency who suffers retaliation may file a complaint with the Wisconsin Personnel Commission and an employee of a private firm operating a long-term care facility may file a complaint with

DWD. Both classes of employees may seek judicial review after pursuing their cases through administrative channels. Other persons, including facility residents, who suffer retaliation or discrimination resulting from reporting suspected abuse may commence an action in circuit court for damages if the employer is convicted of violating the antiretaliation law.

Citations: Sections 16.009 (5), 46.90, 50.07, 106.06 (5), and 230.45 (1), Wisconsin Statutes.

Contacts: State government employees – Personnel Commission at (608) 266-5897; Others – Department of Workforce Development, Equal Rights Division, at (608) 266-6860.

Honesty Testing. In general, employers cannot request or require current or prospective employees to undergo tests by means of a polygraph (“lie detector”) machine. They also may not discharge, discipline, discriminate against, or fail to hire or promote someone who refuses to take a test. Exceptions include hiring involving law enforcement agencies; drug companies; security, armored car or alarm systems firms; and jobs in which the employee would be involved with operations having a significant effect on the public health, safety or welfare, such as electric or nuclear power, water supply, shipment or storage of toxic or radioactive waste, and public transportation.

Employers may request, but not require, honesty tests in connection with investigations involving economic loss or injury to the business, including theft, embezzlement, misappropriation, and industrial espionage or sabotage. To justify a test, the employee must have had access to the property, and there must be a reasonable cause for suspicion that the employee was involved in an illegal activity. In addition, the employer must provide the questions in writing, and certain types of questions are prohibited. The employee may end the test at any time and must be allowed to review the results of the test and explain any questionable responses or retake the test.

Citations: Sections 111.37 and 942.06, Wisconsin Statutes.

Genetic Testing. An employer may not solicit or require a genetic test of a prospective or current employee except to investigate a worker’s compensation claim or to determine the employee’s susceptibility or level of exposure to potentially toxic chemicals or substances in the workplace. The employee must give written informed consent prior to the test, and the results may not adversely affect employment. Health insurers or self-insured governments may not require DNA tests or use the results to deny medical insurance coverage or to charge higher rates to an employee or member of the employee’s family. However, an insurer writing life insurance or income continuation insurance may base coverage and rate decisions on the results of genetic tests.

Citations: Sections 111.372, 631.89, and 942.07, Wisconsin Statutes.

HIV Testing. In general, an employer cannot request or require a current or prospective employee, as a condition of employment, to undergo a test for the presence of HIV (the virus which causes AIDS). Employers may also not discriminate in hiring, firing or job treatment against an employee, based on the results of a test for HIV that the employee chooses to take.

Citation: Section 13.15, Wisconsin Statutes.

Contact: Department of Workforce Development, Equal Rights Division, at (608) 266-6860.

PAY, BENEFITS AND HOURS

Collective Bargaining (Labor Unions). Workers may organize and bargain collectively with management over the terms and conditions of work, such as pay rates; fringe benefits,

including vacation, sick leave, health insurance and retirement programs; and complaint grievance procedures. An employer must negotiate with a union if the workers have chosen the union to represent them through a formal election process. Union members are protected from intimidation, coercion and unfair labor practices in the exercise of their union rights. In general, workers may strike or take other job actions if contract negotiations reach a stalemate. The law also provides for impartial mediators to facilitate agreements and arbitrators who are called in to choose between the two parties' final offers. In Wisconsin, public employees, including police officers, fire fighters and teachers, may not strike. Bargaining with teachers is further constrained by state law, which provides a school district board does not have to go to binding arbitration if it submits a qualified economic offer (QEO) as defined by law.

Some states have "right to work" laws, which provide workers cannot be forced to join or financially support a union in order to keep their jobs. However, in Wisconsin, private employers may enter into "union shop" agreements in which all workers must pay union dues, whether or not they formally become union members. In local and state government, employees may vote to institute "fair share" agreements whereby they must pay their proportionate share of the cost of collective bargaining and contract administration (usually an amount equivalent to the dues assessment) regardless of union membership.

Citation: Subchapter I of Chapter 111, Wisconsin Statutes.

Contact: Employment Relations Commission at (608) 266-1381.

Minimum Wages. The Department of Workforce Development is required to prescribe by administrative rule a minimum "living wage", defined by law as "compensation . . . sufficient to enable the employe . . . to maintain himself or herself under conditions consistent with his or her welfare." In determining the living wage, the department may consider the effect that an increase in the living wage might have on the economy of the state, including its impact on job creation, retention and expansion; on the availability of entry-level jobs; and on regional economic conditions within the state. Lower wage rates apply to: employees who receive tips, agricultural employees, minors, probationary employees who have been employed less than 60 days, and certain other categories. The federal government also establishes a minimum wage, which has been \$5.15 per hour since September 1, 1997, that applies to most Wisconsin workers because their employment is broadly defined as interstate commerce. The Wisconsin living wage currently equals the federal minimum wage, but in the past it has sometimes been lower.

Citations: Chapter 104, Wisconsin Statutes; Chapter DWD 272, Wisconsin Administrative Code.

Contacts: Department of Workforce Development, Equal Rights Division, at (608) 266-6860; U.S. Department of Labor, Wage and Hour Division, at (608) 264-5221.

Hours of Work, Overtime Pay and Prevailing Wages Law. In general, Wisconsin law does not set a maximum restriction on the number of hours an employee may work. However, an hourly employee who works in excess of 40 hours in a single week must be paid for overtime hours worked at a rate of at least one and one-half times the employee's regular hourly rate. Many categories of workers are exempt from the overtime pay requirements, particularly administrative, executive and professional employees, certain sales or transportation workers or those in industries requiring nonstandard hours or working conditions. No work is permitted in places or at times that threaten a person's life, health, safety or welfare. Depending on the job situation, activities that are considered paid work time may include: waiting to per-

form job tasks or receive medical attention; travel during duty hours; attendance at lectures, meetings or training programs; civic or charitable work; handling grievances; sleeping and other personal activities. A worker must be paid if the employer is aware that the person is voluntarily working past the scheduled end of a shift.

State government must pay the prevailing wage rates on state highway construction and other state public works projects, and local governments must pay prevailing rates on any local public works project. Prevailing wages are determined by DWD for geographical areas, based on the pay and benefits received by a majority of the workers in the respective trades in that locality. This normally equates to union scale. Workers in public works projects must be paid at least 1.5 times their normal hourly rate for overtime hours, which means hours worked in excess of the number of hours customary in those trades in that area.

Citations: Sections 66.293, 103.02, 103.49 and 103.50, Wisconsin Statutes; Chapters DWD 274 and 290-294, Wisconsin Administrative Code.

Contact: Department of Workforce Development, Wages and Hours Office, at (608) 266-6860.

Frequency of Wage Payments and Listing Deductions From Wages. Subject to certain exceptions, workers must be paid the wages owed them at least monthly. Different payment schedules may be established under collective bargaining agreements. The number of hours worked, the rate of pay, and the amount of and reason for each payroll deduction must be clearly indicated on the paycheck or related document.

Citations: Sections 103.457 and 109.03, Wisconsin Statutes; Chapter DWD 272.10, Wisconsin Administrative Code.

Contact: Department of Workforce Development, Wages and Hours Office, at (608) 266-6860.

Deductions for Faulty Workmanship, Loss, Theft or Damage. An employer generally may not make a deduction from wages for defective or faulty workmanship, lost or stolen property, or damage to property unless the employee authorizes the deduction in writing. However, deductions may be made if the employer and a representative designated by the employee, such as a union steward, agree that the problem is due to the employee's negligence, carelessness, or intentional conduct or if the employee is found liable in court. In disputes about these matters, DWD serves as the determining party, subject to a court appeal.

Citation: Section 103.455, Wisconsin Statutes.

Contact: Department of Workforce Development, Equal Rights Division, at (608) 266-6860.

Wage Claims Collection. DWD investigates and attempts to settle disputes between workers and employers over claims that the worker is owed pay. It may sue the employer for wage deficiencies or refer claims to the district attorney for prosecution and collection. In a January 13, 1998, decision the Court of Appeals affirmed the "wage lien" law which provides that workers with wage claims get first priority over most other creditors when the assets of insolvent employers are disposed of in bankruptcy.

Citation: Section 109.09, Wisconsin Statutes.

Contact: Department of Workforce Development, Wages and Hours Office, at (608) 266-6860.

Health Insurance Protections. 1995 Wisconsin Act 289 provided increased protection for workers covered by employer-sponsored group health insurance plans. In general, the law

provides that insurers may not deny, exclude or limit medical benefits due to preexisting health conditions. Acceptance for all eligible employees in a group is guaranteed, and the law creates renewability and termination protections and enhances the ability to be covered if a worker changes jobs. Wisconsin's protections are similar to those contained in the federal Health Insurance Portability and Accountability Act of 1996 (Public Law 104-91).

Citations: Sections 632.745, 632.747 and 632.749, Wisconsin Statutes.

Contacts: Office of the Commissioner of Insurance at (608) 267-9336; U.S. Dept. of Labor at (800) 236-8517.

Lunch Breaks and Rest Periods. It is recommended, but not required, that each adult worker be allowed a meal period of at least 30 minutes during each shift of six or more hours. The employee must be paid for an on-duty meal period, that is, one in which the employer does not provide at least 30 minutes free from work or does not allow the worker to leave the premises. Meal periods should be granted reasonably close to usual meal times (6 a.m., noon, 6 p.m. or midnight) or near the middle of a shift.

Breaks during working hours are not required, but the Wisconsin Administrative Code states that rest periods of short duration, running less than 30 minutes, are common in industry and that they promote the efficiency of the employee. If granted, rest breaks must be paid as working time.

Citations: Chapters DWD 272.12 and 274.02, Wisconsin Administrative Code.

One Day of Rest in Seven. Employees in factories or mercantile establishments must be allowed one day (24 consecutive hours) of rest in every calendar week. It need not be on the same day each week, so employees can go more than seven days without a scheduled rest. The law does not apply to certain workers, such as janitors, security personnel, or employees of bakeries or dairy products manufacturing plants.

Citations: Section 103.85, Wisconsin Statutes; Chapter DWD 275, Wisconsin Administrative Code.

Contact: Department of Workforce Development, Wages and Hours Office, at (608) 266-6860.

WORKING CONDITIONS

Safe Workplace and Employees' Right to Know. Employers must provide a safe workplace and do whatever is reasonably necessary to protect the life, safety, health and welfare of employees, including providing and encouraging the use of safety devices and safeguards. Under the employees' right to know law, posted notices must inform workers that they may request information about toxic substances, infectious agents, or pesticides that may be present in the workplace. Upon request, the employer must provide written information regarding hazardous substances to which the worker may be exposed, ill effects or symptoms, recommended handling precautions, personal protective equipment to be worn or used, emergency treatment procedures, and procedures for cleanup and disposal. If an employer has not responded in a timely or complete manner, an employee may refuse to work with a toxic substance, infectious agent or pesticide, with no retaliation or discipline permitted. The law also provides for fire detection, prevention and suppression and proper air ventilation.

Citations: Sections 101.025, 101.055, 101.11, 101.14, 101.578, 101.58, 101.581, 101.583, 101.585, 101.586, and 101.595, Wisconsin Statutes.

Contact: Department of Commerce, Division of Safety and Buildings, at (608) 266-3151.

Clean Indoor Air Law. Except in designated smoking areas, persons generally may not smoke cigarettes or tobacco products in offices, schools, hospitals, retail establishments, or any enclosed, indoor area of a government building. The law does not apply in factories or in offices in which the main occupants are smokers. Local law enforcement officials may enforce the clean indoor air act, based upon citizen complaints, and the Wisconsin Department of Justice is also authorized to take enforcement action. An official or affected person may request a court injunction against persistent violators.

Citation: Section 101.123, Wisconsin Statutes.

Seats for Workers. Employees in manufacturing, mechanical or mercantile establishments must be provided suitable seats which they must be allowed to use when not engaged in active work duties.

Citation: Section 103.16, Wisconsin Statutes.

Contact: Department of Workforce Development, Equal Rights Division, at (608) 266-6860.

Personal Dress and Grooming Standards. New workers must be notified at the time of hiring about any hairstyle, facial hair or clothing requirement.

Citation: Section 103.14, Wisconsin Statutes.

Monitoring of Telephone and Electronic Mail. Workers do not enjoy a right to communications privacy while on the job. Employers or their agents may listen to or record telephone conversations or read electronic mail messages transmitted by company-owned telecommunications or computer equipment if the monitoring is conducted for mechanical or service quality control purposes.

Citations: Section 968.31 (2) (a), Wisconsin Statutes; Title 18, United States Code, Section 3131.

Contact: Wisconsin Public Service Commission, Telecommunications Division, at (608) 266-1567.

CHILD AND MIGRANT LABOR

Child Labor. DWD administers the laws relating to the employment of persons under the age of 18 years. These laws require work permits and restrict the types of jobs permitted; hours of work allowed, particularly during the school year; wages; and working conditions.

Citations: Sections 103.64 -103.83, Wisconsin Statutes; Chapters DWD 270 and 271, Wisconsin Administrative Code.

Contact: Department of Workforce Development, Child Labor Office, at (608) 266-6860.

Migrant Labor. DWD administers laws relating to the hours of labor, wage payments, work agreements, working and living conditions of migrant agricultural workers and certifying and regulating the activities of migrant labor contractors.

Citations: Sections 103.91-103.97, Wisconsin Statutes; Chapter DWD 301, Wisconsin Administrative Code.

Contact: Department of Workforce Development, Migrant Services Bureau, at (608) 266-7426.

MISCELLANEOUS

Employee Access to Personnel Records. Employers must allow workers to inspect and make or receive copies of their personnel files maintained by the employer. The request, which the employer may require in writing, must be fulfilled within seven working days. Unless otherwise provided in a collective bargaining agreement, the employer must grant at least two such requests each calendar year and may not charge more than the actual reproduction costs. If an employee disagrees with any information in the record and the employee and the employer are unable to agree to the removal or correction of the information, the employer must insert an employee's written statement of explanation into the record. The statement must remain attached to the disputed portion of the record and be included whenever the personnel record is released to a third party. In general, medical records kept by the employer must also be open to the worker. Employers must keep records containing payroll and other required information for at least three years.

Citations: Section 103.13, Wisconsin Statutes; Chapter DWD 272.11, Wisconsin Administrative Code.

Contact: Department of Workforce Development, Equal Rights Division, at (608) 266-6860.

Employment References. 1995 Wisconsin Act 441 created a grant of immunity from liability in civil court for an employer who, in good faith, provides a reference concerning a current or former employee's job performance or qualifications for employment.

Citation: Section 895.487, Wisconsin Statutes.

Jury Duty and Court Testimony. An employer must grant a leave of absence for the entire period of jury service and may not discharge or otherwise discipline an employee for any absence due to jury service. For the purpose of determining seniority or pay advancement, the employee's work history will be considered to have been uninterrupted by the jury service. An employer is not required to pay a worker for time missed due to jury service. In addition, no retaliation is permitted if an employee is subpoenaed to testify in a criminal case.

Citations: Sections 103.87 and 756.25, Wisconsin Statutes.

Contact: A worker who is fired or experiences problems with an employer regarding jury service should consult with the judge presiding over the trial or the county clerk of circuit court.

Fraudulent Advertising for Labor. Employers may not use false or deceptive advertising or claims to entice employees to change jobs. An offer is considered false or deceptive if it involves untrue or misleading information about the kind of work to be done, the pay, the sanitary or other conditions, or the fact that there is a strike or lockout.

Citation: Section 103.43, Wisconsin Statutes.

Required Postings in Workplace. Employers must conspicuously display notices in the workplace relating to the following employee rights: family and medical leave, plant closing and mass layoff notice, lie detectors, fair employment (antidiscrimination), minimum wages, child labor, occupational injuries and illnesses, safety and health, hazardous chemicals, and unemployment benefits. A set of posters may be ordered from the Document Sales Office of the Department of Administration at (800) 362-7253.