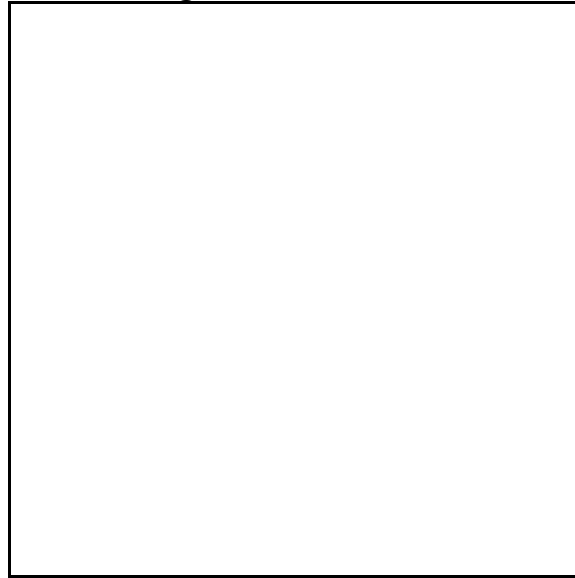


## Clearinghouse Rule 08-069



**State of Wisconsin  
Department of Workforce Development  
Equal Rights Division**

**Increasing Wisconsin's Minimum Wages**

**DWD 272**

The Wisconsin Department of Workforce Development proposes to repeal DWD 272.07(3g); to amend DWD 272.03(1m)(intro.) and (3m)(intro.), 272.05, and 272.07(3r); to repeal and recreate DWD 272.03(1) and (3), and 272.07(3), relating to increasing Wisconsin's minimum wages and affecting small businesses.

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**Analysis Prepared by the Department of Workforce Development**

**Statutory authority:** Sections 104.04 and 227.11, Stats.

**Statutes interpreted:** Chapter 104 and s. 227.11, Stats.

**Related statutes and rules:** Section 103.02, Stats, and Chapter DWD 274.

**Explanation of agency authority.** Chapter 104, Stats., and Chapter DWD 272 provide that Wisconsin's minimum wage should be sufficient to enable the employee receiving it to maintain himself or herself under conditions consistent with his or her reasonable comfort, physical well-being, decency, and moral well-being. Section 104.04, Stats., directs the Department to determine the state's minimum wage taking into consideration the effect of the wage on the economy of the state, including employment opportunities for low-wage workers and regional economic conditions within the state.

**Summary of the proposed rule.** Under the Fair Labor Standards Act (FLSA), the federal minimum wage will be \$7.25 per hour effective July 24, 2009. The Department proposes to increase the state minimum wage to \$7.25 per hour effective July 24, 2009, to match the federal rate. The minimum wage rate and various special rates will be increased as follows:

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<b>Category</b>	<b>Current Rate</b>	<b>Proposed Rate 7/24/09</b>	<b>Federal Rate 7/24/09</b>
Non-Agricultural work			
Adult	\$6.50	\$7.25	\$7.25
Minor	\$5.90	\$7.25	\$7.25
Opportunity	\$5.90	no change	\$4.25

<b>Category</b>	<b>Current Rate</b>	<b>Proposed Rate 7/24/09</b>	<b>Federal Rate 7/24/09</b>
Agricultural work			
Adult	\$5.15	\$7.25	\$7.25
Minor	\$4.25	\$7.25	\$7.25
Camp Counselors	<u>Salary per week</u>	<u>Salary per week</u>	
Adults, no board or lodging	\$315	\$350	exempt
Adults, with board only	\$240	\$265	exempt
Adults, with board and lodging	\$189	\$210	exempt
Minors, no board or lodging	\$275	\$350	exempt
Minors, with board only	\$209	\$265	exempt
Minors, with board and lodging	\$165	\$210	exempt

The proposed rule will affect employees not covered by or exempt from the federal minimum wage law. The federal minimum wage law applies to employees of businesses that have annual gross sales or value of business done of at least \$500,000. It also applies to employees of smaller businesses if the employees are engaged in interstate commerce or in the production of goods for commerce, such as employees who work in transportation or communications or who regularly use the mail or telephones for interstate communications.

In addition, the FLSA covers employees who perform duties that are closely related and directly essential to interstate activities, including guards, janitors, and maintenance workers. It also applies to employees of government agencies, hospitals, and schools, and it generally applies to domestic workers.

The FLSA exempts any employee employed by an establishment that is an amusement or recreational establishment, organized camp, or religious or non-profit educational conference center, if either of the following apply:

- It does not operate for more than 7 months in any calendar year.
- During the preceding calendar year, its average receipts for any 6 months of the year were not more than 33 1/3% of its average receipts for the other six months of the year.

The proposed increase to the state minimum wage may affect camp counselors and other seasonal amusement and recreational workers. In 2007, there were 2,401 Wisconsin workers that were paid less than \$7.25 per hour in the Standard Occupational Classification codes for the categories of amusement and recreational attendants; recreation workers; lifeguards, ski patrol, and other recreational protective service workers; and tour guides and escorts. The Department does not know how many of these workers were employed by an establishment that is seasonal.

**Summary of related federal law.** The current federal minimum wage rate is \$5.85 per hour. It will increase to \$6.55 per hour on July 24, 2008, and to \$7.25 per hour on July 24, 2009.

**Comparison with laws in adjacent states.** Illinois. The minimum wage rate will be \$7.75 effective July 1, 2008; \$8.00 effective July 1, 2009; and \$8.25 effective July 1, 2010.

Michigan. The minimum wage rate will be \$7.40 per hour effective July 1, 2008.

Iowa. The minimum wage rate is \$7.25 per hour.

Minnesota. The minimum wage rate is \$6.15 per hour. The Governor recently vetoed a bill that would have increased the minimum wage rate to \$6.75 per hour in July 2008 and \$7.75 per hour in July 2009.

**Summary of factual data and analytical methodologies.** The proposed rule increases the state minimum wage rate to match the federal minimum wage rate effective July 24, 2009. Under the proposed rule, minors and agricultural workers will have the same minimum wage rate as adult nonagricultural workers. There are no special rates for minors or agricultural workers under federal law. The proposed rule does not eliminate these special categorical rates, which may differ from the adult nonagricultural rate in the future.

The camp counselor minimum wage is a weekly salary based on the hourly rate of \$7.25 per hour for 48 hours. Camp counselors are exempt from the federal minimum wage law. The state has a special salary

rate for camp counselors due to the difficulty in interpreting hours worked in many camp situations. The responsibilities of a camp counselor can vary widely. Some counselors are working 24 hours per day for 6 days per week under the interpretation of hours worked in s. DWD 272.12. The minimum weekly salary for camp counselors is an attempt at a reasonable and affordable rate for the special circumstances.

**Effect on small business.** The rule will affect small businesses but will not have a significant economic impact on a substantial number of small businesses as defined in s. 227.114(1), Stats.

**Analysis used to determine effect on small businesses.** The number of workers that will be covered by the state minimum wage increase but are not covered by the federal minimum wage is very small. Also, most of the amusement and recreational workers who were paid less than \$7.25 per hour in 2007 were already being paid at least \$7.00 per hour.

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**SECTION 1. DWD 272.03 (1) is repealed and recreated to read:**

**DWD 272.03 Minimum rates. (1) MINIMUM RATES.** This subsection is effective on July 24, 2009.

Except as provided in ss. DWD 272.05 to 272.09, no employer may employ any employee in any occupation, trade, or industry at a lesser hourly rate than as follows:

- (a) All employees except opportunity and minor employees \$7.25 per hour.
- (b) Minor employees \$7.25 per hour.
- (c) Opportunity employees \$5.90 per hour.

**SECTION 2. DWD 272.03 (1m) (intro.) is amended to read:**

**DWD 272.03 (1m) MINIMUM RATES.** This subsection ~~becomes effective on~~ is in effect from June 1, 2006, to July 23, 2009. Except as provided in ss. DWD 272.05 to 272.09, no employer may employ any employee in any occupation, trade, or industry at a lesser hourly rate than as follows:

**SECTION 3. DWD 272.03 (3) is repealed and recreated to read:**

**DWD 272.03 (3) ALLOWANCE FOR BOARD AND LODGING.** This subsection is effective on July 24, 2009. Where board or lodging or both are furnished by the employer in accordance with s. DWD 272.04, and accepted and received by a particular employee, an allowance may be made not to exceed the following amounts:

- (a) *Lodging.* 1. All employees except opportunity and minor employees \$58.00 per week or \$8.30 per day.
  - 2. Minor employees \$58.00 per week or \$8.30 per day.
  - 3. Opportunity employees \$47.20 per week or \$6.75 per day.
- (b) *Meals.* 1. All employees except opportunity and minor employees \$87.00 per week or \$4.15 per meal.
  - 2. Minor employees \$87.00 per week or \$4.15 per meal.
  - 3. Opportunity employees \$70.80 per week or \$3.35 per meal.

**SECTION 4. DWD 272.03 (3m) (intro.) is amended to read:**

**DWD 272.03 (3m) ALLOWANCE FOR BOARD AND LODGING.** This subsection ~~becomes~~ effective on is in effect from June 1, 2006, to July 23, 2009. Where board or lodging or both are furnished by the employer in accordance with s. DWD 272.04, and accepted and received by a particular employee, an allowance may be made not to exceed the following amounts:

**SECTION 5. DWD 272.05 is amended to read:**

**DWD 272.05 Agriculture. (1) MINIMUM RATES.** The minimum wage of employees employed in agriculture shall be as follows:

- (a) Employees 18 years of age and over: . . . ~~\$5.15~~ \$7.25 per hour.
- (b) Employees 17 years of age and under: . . ~~\$4.25~~ \$7.25 per hour.

**(2) ALLOWANCE FOR BOARD AND LODGING.** Where board or lodging or both are furnished by the employer in accordance with s. DWD 272.04, and accepted and received by the employee, an allowance may be made not to exceed the following amounts:

(a) Lodging—Employees 18 years of age and over:	\$ <del>41.20</del> <u>\$58.00</u> per week or \$ <del>5.90</del> <u>\$8.30</u> per day.
Employees 17 years of age and under:	\$ <del>34.00</del> <u>\$58.00</u> per week or \$ <del>4.85</del> <u>\$8.30</u> per day.
(b) Meals — Employees 18 years of age and over:	\$ <del>61.80</del> <u>\$87.00</u> per week or \$ <del>2.95</del> <u>\$4.15</u> per meal.
Employees 17 years of age and under:	\$ <del>51.00</del> <u>\$87.00</u> per week or \$ <del>2.40</del> <u>\$4.15</u> per meal.

**SECTION 6. DWD 272.07 (3) is repealed and recreated to read:**

**DWD 272.07 (3) COUNSELORS.** This subsection is effective on July 24, 2009. The minimum wage of counselors employed in seasonal recreational or educational camps and day camps may be computed on a weekly basis as follows:

- (a) Adult counselors 18 years of age and over:

PER WEEK

- 1. If board and lodging are not furnished.....\$350.00
- 2. If board only is furnished.....\$265.00
- 3. If board and lodging are furnished.....\$210.00

(b) Counselors 17 years of age and under:

PER WEEK

1. If board and lodging are not furnished.....\$350.00
2. If board only is furnished.....\$265.00
3. If board and lodging are furnished.....\$210.00

**SECTION 7. DWD 272.07 (3g) is repealed.**

**SECTION 8. DWD 272.07 (3r) (intro.) is amended to read:**

**DWD 272. 07(3r) COUNSELORS.** This subsection ~~becomes effective on~~ is in effect from June 1, 2007, to July 23, 2009. The minimum wage of counselors employed in seasonal recreational or educational camps and day camps may be computed on a weekly basis as follows:

**SECTION 9. EFFECTIVE DATE.** This rule shall take effect the first day of the month following publication in the Administrative Register as provided in s. 227.22 (2) (intro.), Stats.