A faint, light-colored illustration of the Wisconsin State Capitol building, showing its iconic dome and classical architectural details like columns and a pediment. The illustration is centered in the background of the page.

WISCONSIN LEGISLATOR
BRIEFING BOOK
2015-16

CHAPTER 22 - LABOR AND EMPLOYMENT LAW

Reflecting the importance of the millions of workers in the state and the businesses and industries that employ them, Wisconsin has a number of laws that regulate the relationship between employers and employees. Many of these laws establish minimum standards for the workplace, and others provide assistance to workers who are unemployed or who are injured on the job.

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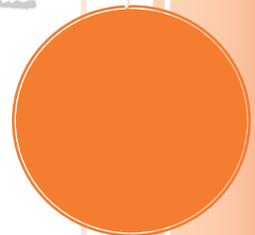


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INTRODUCTION

This chapter summarizes various state laws that affect the relationship between an employee and employer. In addition to state law, this relationship may also be governed by federal law and regulations, collective bargaining agreements, employment contracts, and employer policies. Although this chapter briefly describes the state laws relating to collective bargaining, any significant discussion of federal law and regulations, employment contracts, and employer policies is beyond the scope of this chapter.

In general, Wisconsin’s employment laws are administered by the state’s Department of Workforce Development (DWD), including the laws relating to wages and hours, employment discrimination, family and medical leave, unemployment insurance, and worker’s compensation. The Wisconsin Employment Relations Commission (WERC) and the Office of State Employment Relations (OSER) play significant roles in the collective bargaining process.

COLLECTIVE BARGAINING

Collective bargaining is a process in which an employer and a representative of the employer’s employees negotiate over certain subjects relating to employment, with the intention of reaching an agreement. An agreement reached between the employer and the employees’ representative is oftentimes formalized in a written document called a collective bargaining agreement.

Public Sector Employers and Employees

Collective bargaining for public sector employees is governed by the Municipal Employment Relations Act (MERA) for municipal employees and the State Employment Labor Relations Act (SELRA) for state employees. [subchs. IV and V of ch. 111, Stats.] 2011 Wisconsin Act 10, as amended by 2011 Wisconsin Act 32, made significant changes to MERA and SELRA.

Public sector employees can collectively bargain on base wages but are prohibited from bargaining on other subjects. However, public safety employees and certain transit employees generally can bargain on wages, hours, and conditions of employment.

MERA distinguishes between three types of municipal employees: (1) general municipal employees; (2) public safety employees; and (3) transit employees. SELRA distinguishes between two types of state employees: (1) general state employees; and (2) public safety employees. A “general municipal employee” is a municipal employee who is not a public safety employee or transit employee. Likewise, a “general state employee” is a state

employee who is not a public safety employee. A “public safety employee” is generally a police officer, fire fighter, or emergency medical services provider.

As a result of Act 10, general municipal employees and general state employees can collectively bargain with their employers on base wages but are prohibited from bargaining collectively on other subjects, including hours and conditions of employment. Base wages can be bargained on up to a maximum limit, which is determined by a statutory formula. Any increase in total base wages that exceeds the limit must be approved by referendum. Under MERA and SELRA, “base wages” does not include overtime, premium pay, merit pay, performance pay, supplemental compensation, pay schedules, or automatic pay progressions.

Public safety employees and transit employees can collectively bargain with their employers on wages, hours, and conditions of employment, with some exceptions.

Private Sector Employers and Employees

Collective bargaining for private sector employees is generally governed by federal law, specifically the federal National Labor Relations Act (NLRA). The National Labor Relations Board (NLRB) administers the NLRA. Private sector employees can collectively bargain on wages, hours, and other terms and conditions of employment.

Private sector employees can collectively bargain on wages, hours, and other terms and conditions of employment.

State law contains some provisions relating to collective bargaining for private sector employees. [subch. I of ch. 111, Stats.]

WAGES AND HOURS

Minimum Wage

Wisconsin sets minimum wage rates that employers must comply with when paying employees. Wisconsin’s minimum wage requirements generally apply to all public and private sector employers, including nonprofit organizations, regardless of whether they are covered by the federal minimum wage law. For most employees, including minor employees, the Wisconsin minimum wage is set at \$7.25 per hour. (The federal minimum wage is also \$7.25 per hour.)

The Wisconsin and federal minimum wages are \$7.25 per hour.

More information about the minimum wage may be found at:

http://dwd.wisconsin.gov/er/labor_standards_bureau/minimum_wage.htm

However, for “opportunity employees” (those employees who are not yet 20 years old and who have been in an employment status with a particular employer for 90 or

fewer consecutive days from the date of their initial employment), the minimum wage is \$5.90 per hour. For employees receiving tips as part of their compensation, the minimum wage is \$2.33 per hour (or \$2.13 per hour for tipped opportunity employees).

The payment of wages that are less than those minimums described above is authorized in some limited circumstances. For example, employers who receive a special license from the DWD and who employ workers with disabilities, operate rehabilitation facilities, or participate in student learner programs may pay sub-minimum wages.

The state's minimum wage law is to be construed as providing a uniform living wage throughout the state. A county, city, village, or town may not enact a living wage ordinance. This prohibition, however, does not apply to local ordinances that apply to certain employees who contract with or are employed by a county, city, village, or town. [ch. 104, Stats., and ch. DWD 272, Wis. Adm. Code.]

Overtime Pay

In addition to the minimum wage, state law also requires the payment of overtime pay in certain situations. Generally, employees must be paid one and one-half times their regular rate of pay for all hours worked in excess of 40 hours per week. This requirement applies to most employees, but certain employees are exempt from overtime pay requirements, including certain administrative, executive, and professional employees; certain outside sales and commissioned employees; taxi drivers; employees of motor carriers who are covered by federal regulations; and salespersons, parts personnel, and mechanics employed by motor vehicle dealers.

Generally, employees must be paid one and one-half times their regular rate of pay for all hours worked in excess of 40 hours per week.

More information about overtime pay may be found at:

http://www.dwd.state.wi.us/er/labor_standards_bureau/hours_of_work_and_overtime.htm

Federal and state laws differ on the exemptions that apply to some employees. To comply with both federal and state overtime requirements, a Wisconsin employer must meet both federal and state law regarding a given exemption, which generally requires that an employer satisfy the more stringent criteria of the two types of law. [ss. 103.01 to 103.03, Stats., and ch. DWD 274, Wis. Adm. Code.]

Wage Payment and Wage Claims

Generally, Wisconsin law requires employers to pay their employees at least once per month. An employee who quits or is discharged from his or her job must be paid in accordance with the employer's regularly established payroll schedule. If an employee is not paid in a timely manner, is not paid at all, or is paid an incorrect amount, the employee may file a wage claim with the DWD for the unpaid wages or may bring an action in court against his or her employer.

If an employee is not paid, the employee may file a wage claim or bring an action in court against an employer.

Once a wage claim is filed, the DWD seeks to resolve the matter between the employer and employee. For purposes of the wage claim laws, wages include the following:

- Salaries.
- Commissions.
- Overtime pay.
- Holiday pay.
- Vacation pay.
- Severance pay.
- Dismissal pay.
- Bonuses.
- Other similar advantages that the employer and employee agree to or that are provided by the employer to the employees as an established policy.

More information about wage payment and wage claims may be found at:

http://www.dwd.state.wi.us/er/labor_standards_bureau/wage_payment_and_collection_law.htm

More information about child labor laws may be found at:

http://dwd.wisconsin.gov/er/labor_standards_bureau/child_labor_laws.htm

Typically, an employee must file a wage claim within two years. The DWD or an employee who brings a wage claim has a lien for the amount of the wage claim or deficiency on the employer's property. This lien generally has priority over all other liens except certain environmental

remediation liens and liens of banks and various other lenders. However, a wage lien will generally take precedence over the lien of a lender that originated before the wage lien took effect, only as to the first \$3,000 of certain unpaid wages covered under the lien. [ch. 109, Stats.]

Prevailing Wage

Wisconsin law generally requires that an employee who works on a project of public works be paid the prevailing wage for the trade or occupation. The “prevailing wage” is the hourly basic rate of pay, plus the hourly contribution for health insurance benefits, vacation benefits, pension benefits, and any other *bona fide* economic benefit, paid directly or indirectly, for a majority of the hours worked in the trade or occupation on projects in the area.

Employees who work on a public works project must be paid the prevailing wage.

The prevailing wage law applies to public works projects in which the state, a state agency, or a local governmental unit is a party to the project. To determine the prevailing wage for workers on a project, the state agency or local governmental unit must apply to DWD for the determination. Any contractor who performs work on the project is required to pay its employees the prevailing wage.

The prevailing wage law does not apply to a single-trade project for which the estimated completion cost is less than \$48,000 or a multiple-trade project for which the estimated

More information about prevailing wage may be found at:

http://dwd.wisconsin.gov/er/prevailing_wage_rate/pw_laws.htm

completion cost is less than \$100,000, or in the case of a multiple-trade project erected, constructed, repaired, remodeled, or demolished by a private contractor for a city or village having a population of less than 2,500 or for a town, a multiple-trade project for which the estimated completion cost is less than \$234,000.

[ss. 66.0903 and 103.49, Stats.; see also s. 103.50, Stats., for prevailing wage on highway and bridge construction projects.]

Child Labor

Wisconsin regulates the employment of minors with respect to types of employment and hours of work. A minor may not work at any employment or in any place of employment that is dangerous or prejudicial to the life, health, safety, or welfare of the minor or where the employment of the minor may be dangerous or prejudicial to the life, health, safety, or welfare of other employees or frequenters. Further, a minor under 16 years of age may not work at any employment for such hours of the day or week, for such days of the week, or at such periods of the day as may be dangerous or prejudicial to the life, health, safety, or welfare of the minor.

State law regulates the types and hours of employment for minors.

A minor under 18 years of age may not work at any gainful occupation during the hours that the minor is required to attend school, unless the minor has completed high school. In

addition, Wisconsin law contains additional restrictions on the hours that a minor under 16 years of age may work. Specifically, a minor under 16 years of age may not work in any gainful occupation, other than domestic service, farm labor, or public exhibitions, as follows:

- For more than three hours on a school day or eight hours on a nonschool day.
- For more than 18 hours in a school week or 40 hours in a nonschool week.
- For more than six days in a week.
- Before 7:00 a.m. or after 7:00 p.m. from the day after Labor Day to May 31.
- Before 7:00 a.m. or after 9:00 p.m. from June 1 to Labor Day.

Furthermore, an employer of a minor is required to provide meal periods to employees under the age of 18 if the minor works for more than six consecutive hours. Those meal periods must be at least 30 minutes in length and generally must be provided reasonably close to the meal times of 6:00 a.m., noon, 6:00 p.m., or midnight. [ss. 103.64 to 103.82, Stats., and ch. DWD 270, Wis. Adm. Code.]

Breaks and Meal Periods

State law generally prohibits a person from being employed at any employment for periods of time that are dangerous or prejudicial to the person's life, safety, health, or welfare.

Wisconsin law does **not** require employers to provide rest periods or breaks to adult employees.

Employers are not required to provide rest periods or breaks to adult employees.

More information about breaks and meal periods may be found at:

http://www.dwd.state.wi.us/er/labor_standards_bureau/breaks_and_meals.htm

Similarly, employers are not required to provide meal periods to adult employees, but state law **recommends** that employers provide at least 30 minutes for a meal period for each shift longer than six hours. Typically, employers must pay all employees for an “on-duty” meal period. An “on-duty” meal period is a period during which the worker is not provided at least 30 minutes away from work or allowed to leave the employer's premises. [s. 103.02, Stats., and s. DWD 274.02, Wis. Adm. Code.]

FAMILY AND MEDICAL LEAVE

Wisconsin is one of several states that has its own Family and Medical Leave Act (FMLA) in addition to the federal FMLA. Wisconsin's FMLA covers employers with 50 or more permanent employees. An employee is covered under Wisconsin's FMLA if the employee has been employed by the same

Wisconsin's FMLA requires that employees be allowed leave for certain family or medical reasons.

More information about FMLA may be found at:

http://dwd.wisconsin.gov/er/family_and_medical_leave/default.htm

employer for the prior 52 consecutive weeks and has worked at least 1,000 hours during that period. The law requires that such employees be allowed up to the following amounts of leave in a 12-month period:

- Six weeks of leave for the birth or adoption of a child.
- Two weeks of leave to care for a parent, child, spouse, or domestic partner with a serious health condition.
- Two weeks of leave for the employee’s own serious health condition.

[s. 103.10, Stats., and ch. DWD 225, Wis. Adm. Code.]

FAIR EMPLOYMENT

More information about fair employment may be found at:

http://dwd.wisconsin.gov/er/discrimination_civil_rights/fair_employment_law.htm

Subject to certain exceptions, Wisconsin’s Fair Employment Law prohibits discrimination in employment based on the following classifications:

- Age.
- Ancestry.
- Arrest record.
- Color.
- Conviction record.
- Creed.
- Declining to attend a meeting or to participate in any communication about religious matters or political matters. (DWD does not enforce this classification in circumstances where such enforcement would be preempted by the NLRA.)
- Disability.
- Genetic testing.
- Honesty testing.
- Marital status.
- Military service.
- National origin.
- Pregnancy or childbirth.
- Race.
- Sex.
- Sexual orientation.
- Use or nonuse of lawful products off the employer’s premises during nonworking hours.

Wisconsin’s Fair Employment Law prohibits discrimination in employment based on certain classifications.

Employment discrimination includes refusing to employ or terminating any individual based on the above classifications or discriminating against any individual in compensation, promotion, or terms, privileges, or conditions of employment based on any of the above classifications. If an individual is discriminated against in violation of the Fair Employment Law, he or she may be awarded reinstatement, back pay, attorney fees, and costs. [subch. II of ch. 111, Stats., and ch. DWD 218, Wis. Adm. Code.]

UNEMPLOYMENT INSURANCE

The Unemployment Insurance Division of the DWD administers the state’s Unemployment Insurance (UI) program. Wisconsin’s UI law, which was enacted in 1932, provides temporary cash benefits to eligible employees when they are out of work. Financing for the program comes from a combination of federal and state taxes paid by employers who are subject to federal and state UI laws.

The maximum weekly UI benefit is \$363, and the minimum weekly UI benefit is \$54.

Generally, the Federal Unemployment Tax Act (FUTA) imposes a tax on a portion of the wages paid for covered employment. That tax rate is 6.0% of the first \$7,000 of each employee’s earnings for the calendar year. The employer is then provided a credit against the FUTA tax for quarterly tax paid to state-operated UI programs. This system was set up by the federal government to encourage states to have a broad UI program. Generally, some of the FUTA money that is collected is returned to the state in order for the state to administer the UI program.

UI provides temporary cash benefits to eligible employees who become unemployed.

In addition to the FUTA tax, the state imposes its own tax to finance UI benefits paid to unemployed workers.

Generally, most private, for-profit employers pay a state unemployment tax into the UI reserve fund. The tax is paid on the first \$14,000 of wages paid by an employer to an employee during each calendar year. The tax is based on an experience rating system. The rating system requires that the particular tax rate paid by an employer is based on, and varies with, the layoff experience of that employer. Employers with greater layoff experience will have higher tax rates. A private employer’s rate may increase or decrease depending on changes in benefits charged to that employer, contributions credited to that employer, and the amount of that employer’s taxable payroll.

Some employers, however, most notably governmental employers and nonprofit organizations, finance their UI benefits for their employees through a reimbursement system. Instead of paying the quarterly UI tax on payroll into the UI reserve fund, these employers reimburse DWD the actual amount of any benefits paid to their employees.

Generally, an employer is subject to Wisconsin's UI law if it paid \$1,500 or more in wages in any quarter in that year or the preceding calendar year or if it had at least one employee in at least 20 different weeks in a year or the preceding calendar year. Although the law exempts certain types of work from the UI law, the definition of employment in the UI law is, on the whole, very broad.

Typically, to qualify for UI benefits, an employee must satisfy the following requirements:

- Have sufficient base period wages in covered employment.
- Be available for work and able to work.
- Register for work.
- Undertake a reasonable search for work.
- Make a claim for benefits.

Claims may be made with the DWD through an automated touch-tone telephone service or via the Internet. The major reasons that an unemployed worker would be disqualified from receiving benefits include discharge for misconduct or voluntarily leaving employment. Both of these disqualifications depend on the facts in a particular case.

The amount of benefits an eligible employee may receive is based upon his or her wages. Typically, the weekly benefit will equal 4% of the wages paid to the employee in the calendar quarter in which the highest wages were paid to the employee, subject to certain statutory minimums and maximums. As of January 5, 2014, the minimum weekly benefit rate is \$54 and the maximum rate is \$370. The maximum amount a claimant may normally receive is the lesser of 26 times the weekly benefit rate or 40% of the total base

The Legislative Council staff has prepared Act Memos that describe the changes made by the 2011-12 Legislature in 2011 Wisconsin Acts 198 and 236. The Act Memos may be found at:
<http://www.legis.wisconsin.gov/lc>

More information about UI may be found at: <http://dwd.wisconsin.gov/ui/>

period wages. However, both state and federal law contain provisions allowing for the payment of extended unemployment benefits during difficult economic times when unemployment rates exceed certain levels. These extended benefits may be paid to unemployed workers who have exhausted their initial 26 weeks of benefits. Because of unemployment conditions in recent years, the federal government has implemented several extensions of UI benefits between 2008 and 2013.

Wisconsin has established an Unemployment Insurance Advisory Council (UIAC) to advise DWD and the Legislature regarding matters affecting the development and administration of the state's UI law. The UIAC is made up of five labor representatives, five management representatives, and one nonvoting chairperson. The UIAC is required to advise DWD on

the administration of the UI law and to report its view on pending legislation concerning UI to the appropriate committees of the Legislature. In addition, the UIAC submits to the Legislature, generally on a biennial basis, legislation approved by the UIAC to make changes to the UI law. Recently, those recommended changes have been adopted by the Legislature with few or no amendments. [ch. 108, Stats., and chs. DWD 100 to 150, Wis. Adm. Code.]

WORKER'S COMPENSATION

The Worker's Compensation Division of DWD administers the state's Worker's Compensation (WC) program. The WC law provides for a system of no-fault insurance that pays benefits to employees for accidental injuries or diseases arising from an employee's job. Generally, for workplace injuries, WC is the exclusive remedy against the employer. In other words, an injured employee is typically precluded from suing his or her employer for the injury and may only recover those benefits authorized by the WC law.

WC pays benefits to employees for accidental injuries or diseases arising from employment.

An employer is required to cover his or her employees with WC insurance if the employer usually has three or more employees or if the employer has fewer than three employees but a payroll of \$500 or more during any calendar quarter. In addition, farmers who employ six or more employees on any 20 days in a calendar year must have insurance within 10 days after the 20th day of employment.

Benefits payable under WC include reasonable and necessary medical costs and lost wages.

The cost of WC insurance typically varies, based on job classification. Insurance rates and classifications depend on past work-related injury experience, payroll, and level of hazard in an occupation. The Wisconsin Compensation Rating Bureau sets the premium rate for each class with the approval of the Commissioner of Insurance. The law provides for penalties for employers who fail to obtain insurance when required to do so.

Some employers in Wisconsin, including some larger private sector and various governmental employers, are self-insured. They do not purchase WC insurance but pay their claims using their own funds. An employer must have written approval from the DWD before becoming self-insured.

More information about WC may be found at:
<http://dwd.wisconsin.gov/wc/>

Benefits payable under a WC policy include the following:

- All reasonable and necessary medical costs.

- Benefits for lost wages while recovering from an injury.
- Benefits for permanent disability if the employee does not fully recover from the injury.
- Death benefits and burial expenses up to certain limits.

Generally, for the period when an employee is out of work and recovering from his or her injury, the employee may receive 2/3rds of his or her weekly wage in WC benefits up to a certain weekly maximum. Payment is made on the basis of a six-day work week (Monday through Saturday) regardless of the number of days per week an employee actually works. A waiting period applies before a benefit may be paid. The waiting period is the first three days, excluding Sunday, after the accident in which an injury is received. If a disability from work lasts beyond the seventh day, the first three days are fully compensated. Generally, the first insurance payment is made within 14 days of the injury.

In addition to the above-described temporary benefit payments during the period of healing, if an employee has a permanent disability, the employee will receive additional compensation based upon statutory formulas in existence at the time of the injury.

Typically, an employer may not unreasonably refuse to rehire an injured employee if suitable employment is available within the employee's physical and mental limitations. If the employer has suitable employment available and unreasonably refuses to rehire the employee, the employer is liable for any lost wages up to a total of one year's wages. However, the employer is not required to hold or create a job for the employee after an injury.

As with UI, Wisconsin has implemented a Worker's Compensation Advisory Council (WCAC). The WCAC was created to advise the DWD and the Legislature regarding matters affecting the administration and development of the WC law. The membership of the WCAC is made up of five voting labor representatives, five voting management representatives, three nonvoting insurance representatives, and one representative from the DWD. As with the UIAC, the WCAC forwards to the Legislature, on a biennial basis,

recommended changes to the WC law. [chs. 102 and 626, Stats., and chs. DWD 80 to 82, Wis. Adm. Code.]

The Legislative Council staff has prepared an Act Memo that describes the changes made by the 2011-12 Legislature in 2011 Wisconsin Act 183. The Act Memo may be found at:

<http://www.legis.wisconsin.gov/lc>

ADDITIONAL REFERENCES

1. The DWD has prepared a number of publications that provide information concerning employment laws. Those publications may be found at: <http://dwd.wisconsin.gov>.

2. The U.S. Department of Labor has information on federal employment laws available on its website at: <http://www.dol.gov/>.

3. At the beginning of each biennial legislative session, the Legislative Fiscal Bureau publishes Informational Papers that describe various state programs, including Wisconsin's UI program, available at: <http://www.legis.wisconsin.gov/lfb>.
4. The Legislative Reference Bureau prepares publications concerning employment laws. Those publications may be found at: <http://www.legis.wisconsin.gov/lrb>.
5. For audits concerning employment issues, see the following Legislative Audit Reports at <http://www.legis.wisconsin.gov/lab/>:
 - *Unemployment Reserve Fund* (Audit Report 13-9).
 - *Overtime in State Agencies and UW System* (Letter Report, May 2011).

GLOSSARY

Department of Workforce Development (DWD): The state agency that administers many of Wisconsin's employment laws and programs.

Family and Medical Leave Act (FMLA): The state or federal law that requires that employees be allowed leave for family or medical reasons.

Municipal Employment Relations Act (MERA): The state law that governs collective bargaining for municipal employers and employees.

National Labor Relations Act (NLRA): The federal law that governs collective bargaining for private sector employers and employees.

Office of State Employment Relations (OSER): The state agency that administers various laws and policies relating to state employment, including the state civil service system, and that represents the state in collective bargaining with most state employees.

State Employment Labor Relations Act (SELRA): The state law that governs collective bargaining for state employers and employees.

Unemployment Insurance (UI): The state program that provides temporary cash benefits to eligible employees who become unemployed.

Wisconsin Employment Relations Commission (WERC): The state agency that processes cases and resolves disputes relating to collective bargaining.

Worker's Compensation (WC): The state program that pays benefits to employees for accidental injuries or diseases arising out of employment.

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