INSTRUCTIONS FOR OBTAINING DIRECT SELLER PERMIT

- ❑ Complete the Direct Seller Permit Application
- ❑ Pay permit fee. The permit is valid for seven (7) days. Fees are not prorated and are non-refundable.
- ❑ Two or more individuals who are employed as salespersons or in a related support work, who travel together in a group (traveling sales crews) for the purpose of selling consumer goods or services from house to house, on any street, or in public places are **REQUIRED** to have a "Certificate of Registration" from the State of Wisconsin per Wis. Stat. s.103.34. This can be verified by calling the Department of Workforce Development at 608-266-6860.
- ❑ Attach copies of the following:
  - Right To Cancel form giving the customer the right to cancel within 3 days
  - Copies of any brochures, handouts, information sheets
  - Copy of a current Driver license
- ❑ Review City of Eau Claire Ordinances 5.34 and 13.12.060 relating to Direct Sellers
- ❑ **Each direct seller must be licensed.**
- ❑ A background check will be conducted by the Police Department and with the Wisconsin Department of Agriculture, Trade and Consumer Protection. **You will be notified in 7-10 business days with the results of your application.**
- ❑ The initial permit may be renewed multiple times, provided no complaints have been registered with the Police Department or the Department of Agriculture, Trade and Consumer Protection.
- ❑ The permit fee must be paid with each renewal. The requirement for a background check may be waived for subsequent permits at the discretion of the Police Department and the Licensing Specialist.

Questions:

Email – licensing@eauclairewi.gov
Phone – 715-839-4923

- ❑ Mail or bring application with payment to:
  Licensing, City of Eau Claire
  203 S. Farwell St.
  PO Box 909
  Eau Claire WI 54702-0909

08/2019

CITY OF Eau Claire

DIRECT SELLER PERMIT APPLICATION
VALID FOR 7 DAYS FEE: $39.00

Applicant's Drivers License or I.D.#	DL State	Date of Birth	Phone No. ( ) -

Male ☐ Female ☐	First Name	Middle Name	Last Name

Permanent Street Address	Permanent City	State	Zip
Temporary Street Address (if any)	Temporary City (if any)	State	Zip
Business name of the company you are representing	Business Owner's Name		
Business Address	City	State	Zip
Describe goods or services you will be soliciting			
If traveling in groups of two or more a Certificate of Registration from the State of Wisconsin is required. Traveling Sales Crew, Section Wis. Stats. s 103.34.	State Certificate of Registration Number, Traveling Sales		
Location of sale (or specify door-to-door)	How will goods be delivered to customer?		

Email address:

Last 4 digits of your Social Security Number: ___ ___ ___ ___
(used to confirm your identity during the background check)

IMPORTANT: You must attach to this application a sample of all brochures, information sheets, handouts, and Right To Cancel form that will be used during sales. **Copy of Driver's License**.

1. **Have you EVER been convicted of a felony, criminal violation, misdemeanor, ordinance violation, or have you ever been convicted of violating any other Federal, State, or local laws or ordinances of any municipality?** ☐ Yes ☐ No

✶ **If you answered YES you must fill out the back of this form; information will be reviewed by the Police Department**

2. **Have you EVER been on Supervision or Probation?** ☐ Yes ☐ No
3. **Have you EVER changed your name?** ☐ Yes ☐ No

   If yes, list other names you have had: _____

4. **Are there any CRIMINAL charges PRESENTLY PENDING against you?** ☐ Yes ☐ No
   ✶ **If you answered YES you must fill out the back of this form**
5. **Have you ever been contacted by any consumer protection agency?** ☐ Yes ☐ No
6. **What are the dates you would like your permit for**_____
   ✶ **PLEASE be advised that the Police Department will review and verify the information on your application. If any information is omitted, incomplete, or incorrect it is likely that the police department will reject your license application.**

Continued on Reverse

Mail or bring completed form with payment to:

Licensing, City of Eau Claire
PO Box 909
203 S. Farwell St.
Eau Claire WI 54702-0909
Phone: 715-839-4923

08/19

Fee: $39.00 (non-refundable)
Tran Code: 1353
Office use only
Do not write in this area

6. **List the name, location, and date of the last three cities where you conducted business:**

   1. _____
   2. _____
   3. _____

7. **Location and phone number where you can be contacted for at least 7 days after leaving Eau Claire:**

   _____

8. **Make, model, and license number of the vehicle to be used in your business:**

Make	Model	Year	License Plate #	State
_____	_____	_____	_____	_____

APPLICANT'S STATEMENT

I appoint the City Clerk or his/her agent to accept services of process in any civil action brought against me arising out of any sale or service performed in connection with my direct sales activities in the event I cannot, after reasonable effort, be served personally.

I hereby certify that the answers on this application are true and correct to the best of my knowledge. I agree, in the consideration of the granting of this license, to comply with the laws of the State of Wisconsin, and the provisions of the Municipal Code of Ordinances of the City of Eau Claire.

Signature _____ **Date** ____/____/____

LIST ALL PAST VIOLATIONS

Date ___/___/___ **Nature of Offense**_____

Date ___/___/___ **Nature of Offense**_____

Date ___/___/___ **Nature of Offense**_____

Date ___/___/___ **Nature of Offense**_____

LIST ALL PENDING CHARGES

Date ___/___/___ **Nature of Charge**_____

Date ___/___/___ **Nature of Charge**_____

Date ___/___/___ **Nature of Charge**_____

FOR OFFICE USE ONLY

_____ Consumer Protection

_____ I.D.

_____ Brochures, etc. sent to Police

Comments:

BUREAU OF CONSUMER PROTECTION
Consumer Facts
Protecting Wisconsin Consumers for 75 Years

Three-day right to cancel

A provision of the Wisconsin Consumer Act grants Wisconsin consumers the right to cancel certain consumer transactions within three business days. Consumer transactions are those purchases made by individuals that are for personal, family or household purposes. In these transactions merchants are required to provide the consumer with a notice that informs them that they have a right to cancel. In order to cancel consumers must mail their cancellation request within three business days of receiving the "Customers Right to Cancel" notice from the seller.

The three day right to cancel applies to transactions that meet all the following conditions:

1. Certain cash or credit transactions that exceed $25.

2. Transactions entered into away from the seller's normal place of business (such as the consumer's home); and

3. Transactions initiated by face-to-face solicitation away from the seller's regular place of business, or where the transaction is directed to a particular customer via mail or telephone solicitation. The right to cancel law covers fairs and trade shows also.

For example, if a salesperson came to your home and sold you a vacuum cleaner, you would have three business days to cancel. However, if you purchased a vacuum cleaner at an appliance store, the three day right to cancel would not apply.

The right to cancel law is found in Wis. Stats. § 423.203. The cancellation notice that sellers must give consumers looks like this:

"CUSTOMER'S RIGHT TO CANCEL"

You may cancel this agreement by mailing a written notice to (insert name and mailing address of seller) before midnight of the third business day after you signed this agreement. If you wish, you may use this page as that notice by writing "I hereby cancel" and adding your name and address. A duplicate of this page is provided by the seller for your records.

The law requires the seller to give you two copies of a notice setting forth your rights. Wisconsin law requires that the notice be in a specific format.

If the merchant is in any way engaged in interstate commerce, the notice required by federal law must be given. Note that, for most merchants, the federal notice will be required. Compliance with the federal notice requirement will be considered as compliance with the Wisconsin Consumer Act notice requirement.

The cancellation **must be in writing.** Use one of the two copies of the notice of your right to cancel and write on it, "I hereby cancel this contract." Mail it to the seller. The notice must be sent to the seller by midnight of the third business day after the seller has given you the notice. Saturday, Sunday and legal federal or state holidays are not "business days" for purposes of cancellation. You can also send a letter, telegram, or other correspondence indicating your intention to cancel.

Sending the request via certified mail will guarantee proof of mailing date and receipt of notice. Or, consider hand delivering the cancellation notice before midnight of the third business day. Keep the other copy of the cancellation form for your records.

Within ten days, the seller must refund all payments made by you and cancel any contract signed by you. You are not liable for any finance or other charges and the transaction is void.

The seller must return any property traded in by you within 20 days. If the seller has

delivered any property to you, you may keep it until the seller has returned the down payment. At that time, you must make the property available to the seller.

If the property is not picked up within 20 days after you have made it available, you are entitled to keep the property without any obligation to pay for it.

For more information or to file a complaint, visit our website or contact the:

Bureau of Consumer Protection
2811 Agriculture Drive
PO Box 8911
Madison WI 53708-8911

E-MAIL:
DATCPHotline@wi.gov

WEBSITE: datcp.wi.gov

(800) 422-7128

FAX: (608) 224-4677

TTY: (608) 224-5058

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07/16

EXAMPLE 1

You, the buyer may cancel this transaction at any time prior to midnight of the third business day after the date of this transaction. See the attached notice of cancellation form for an explanation of this right.

EXAMPLE 2

NOTICE OF RIGHT TO CANCEL

Date _____

You may CANCEL this transaction, without any penalty or obligation, within THREE BUSINESS DAYS from the above date.

If you cancel, any property traded-in, any payments made by you under the contract or sale, and any negotiable instrument executed by you will be returned within TEN BUSINESS DAYS following receipt by the seller of your cancellation notice, and any security interest arising out of the transaction will be canceled.

If you cancel, you must make available to the seller, at your residence, in substantially as good condition as when received by you, any goods delivered to you under this contract or sale; or you may, if you wish, comply with the instructions of the seller regarding the return shipment of the goods at the seller's expense and risk.

If you do make the goods available to the seller and the seller does not pick them up within 20 days of the date of your notice of cancellation, you may retain or dispose of the goods without any further obligation.

To cancel this transaction, mail or deliver a signed and dated copy of this cancellation notice, or any other written notice or telegram, to:

_____ **at** _____
(Name of Seller)

_____
(Address of Seller's Place of Business)

NO LATER THAN MIDNIGHT OF _____
(Date)

I HEREBY CANCEL THIS TRANSACTION.

_____ _____
(Date) ***(Buyer's Signature)***

CHAPTER 423

CONSUMER APPROVAL TRANSACTIONS AND OTHER CONSUMER RIGHTS

SUBCHAPTER I
GENERAL PROVISIONS
423.101 Short title.
423.102 Scope.
SUBCHAPTER II
RIGHT TO CANCEL
423.201 Definition.
423.202 Right to cancel: manner of cancellation.
423.203 Notice to customer.
423.204 Restoration of down payment; security interest void; return of property.
423.205 Duty of customer.
SUBCHAPTER III
ADVERTISING
423.301 False, misleading or deceptive advertising.
423.302 Remedies and penalty.
SUBCHAPTER IV
CUSTOMER IDENTIFICATION
423.401 Credit card identification information.
423.402 Check identification information.

Cross−reference: See definitions in s. 421.301.

SUBCHAPTER I

GENERAL PROVISIONS

423.101 Short title. This chapter shall be known and may be cited as Wisconsin consumer act — consumer approval transactions and other consumer rights.

History: 1971 c. 239; 1991 a. 158.

423.102 Scope. This chapter applies to all consumer transactions, except that subch. II does not apply to cemetery preneed sales under s. 440.92.

History: 1971 c. 239; 1989 a. 307.

SUBCHAPTER II

RIGHT TO CANCEL

423.201 Definition. In this subchapter:

(1) "Consumer approval transaction" means a consumer transaction other than a sale or lease or listing for sale of real property or a sale of goods at auction that:

(a) Is initiated by face−to−face solicitation away from a regular place of business of the merchant or by mail or telephone solicitation directed to the particular customer; and

(b) Is consummated or in which the customer's offer to contract or other writing evidencing the transaction is received by the merchant away from a regular place of business of the merchant and involves the extension of credit or is a cash transaction in which the amount the customer pays exceeds $25.

(2) "Consumer approval transaction" does not include a catalog sale that is not accompanied by any other solicitation or a consumer loan conducted and consummated entirely by mail.

History: 1971 c. 239; 1983 a. 389; 1997 a. 302; 1999 a. 32; 2011 a. 257.

This section does not restrict the ability of a merchant or seller to have more than one regular place of business. Reusch v. Roob, 2000 WI App. 76, 234 Wis. 2d 270, 610 N.W.2d 168, 98−3102.

423.202 Right to cancel: manner of cancellation. (1) Except as provided in sub. (4), in addition to any right otherwise to revoke an offer, to rescind the transaction or to exercise any remedy for the merchant's breach, a customer has the right to cancel a consumer approval transaction until midnight of the 3rd business day after the merchant has given the notice to the customer in accordance with s. 423.203.

(2) Except as provided in sub. (2m), notice of cancellation shall be by mail addressed to the merchant and shall be considered given at the time mailed.

(2m) If the property which is the subject of the transaction must be custom made in the ordinary course of business, and is unique to that transaction, the merchant may require that the notice of cancellation, if given, be made by certified or registered mail.

(3) Notice of cancellation by the customer need not take a particular form and is sufficient if it indicates by any form of written expression the intention of the customer not to be bound by the consumer approval transaction.

(4) The customer may not cancel a consumer approval transaction if:

(a) The customer has determined that a delay of 3 business days in performance of the merchant's obligation under the transaction will jeopardize the welfare, health or safety of natural persons or endanger property which the customer owns or for which the customer is responsible;

(b) The customer furnishes the merchant with a separate dated and signed personal statement describing the situation requiring immediate remedy and modifying or waiving the customer's right of rescission. The use of printed forms for this purpose is prohibited;

(c) The merchant in good faith makes a substantial beginning of performance of the contract before the customer gives notice of cancellation; and

(d) In the case of goods, the goods cannot be returned to the merchant in substantially as good condition as when received by the customer.

History: 1971 c. 239; 1973 c. 3; 1991 a. 316.

423.203 Notice to customer. (1) Whenever a customer has the right to cancel a consumer approval transaction, the merchant shall give 2 copies of a typed or printed notice of that fact to the customer. The notice must:

(a) Be printed in capital and lowercase letters of not less than 12−point boldface type;

(b) Appear under the conspicuous caption: "CUSTOMER'S RIGHT TO CANCEL";

(c) Read as follows: You may cancel this agreement by mailing a written notice to (*insert name and mailing address of seller*) before midnight of the third business day after you signed this agreement. If you wish, you may use this page as that notice by writing "I hereby cancel" and adding your name and address. A duplicate of this page is provided by the seller for your records.

(2) A merchant who in the ordinary course of business regularly uses a language other than English in any advertising or other solicitation of customers or in any printed forms for use by customers or in any face−to−face negotiations with the merchant's customers shall give the notice described in this section to a customer whose principal language is such other language both in English and in the other language.

(3) The notice required under this section must be delivered either after all the credit cost disclosures have been made to the customer as required by the federal consumer credit protection act and the customer has signed the writing evidencing the transaction, or contemporaneously therewith, but not before.

(3m) Compliance with requirements of federal statutes, rules or regulations governing form of notice of right of cancellation, in consumer approval transactions otherwise subject to this chapter, shall be deemed to satisfy the notice requirements of this chapter.

(4) A violation of this section is subject to s. 425.304.

History: 1971 c. 239; 1973 c. 3; 1991 a. 316.

Legislative Council Note, 1973: [As to sub. (3m)] Allows compliance with federal notice requirements as to form to constitute compliance with the notice requirements of this chapter. This subsection is directed primarily at merchants with interstate operations who are complying with the federal trade commission's recently−promulgated trade regulation on door−to−door sales.

This subsection goes only to the issue of notice. It is preferable not to require interstate merchants to print special forms just to comply with Wisconsin law. It does not accept other portions of the federal rules, such as return of downpayment and repossessing of already−delivered property. These subjects will continue to be governed by Wisconsin law. [Bill 432−A]

423.204 Restoration of down payment; security interest void; return of property. (1) Within 10 days after a consumer approval transaction has been canceled, the merchant shall cause any money paid by the customer, including a down payment, to be returned to the customer and shall take any appropriate action to reflect the termination of the transaction including any security interest created as a result.

(2) Upon cancellation, as allowed by this section, the customer is not liable for any finance or other charge and the transaction, including any security interest, is void.

(3) If the merchant has received any property from the customer, the merchant shall return such property in substantially as good condition as it was when it was given within 20 days after the cancellation of the transaction. If such property is not returned within such time, the customer shall have the right to recover the property or the greater of its agreed or fair market value at retail.

History: 1971 c. 239; 1991 a. 316.

423.205 Duty of customer. (1) The customer has the duty to take reasonable care of the delivered property in the customer's possession from the time of delivery until the expiration of a reasonable time after tender, not to exceed 20 days.

(2) Upon the performance of the merchant's obligations under s. 423.204, the customer shall tender the property to the merchant.

(3) Tender shall be made at the location of the property or at the residence of the customer at the option of the customer.

(4) If the merchant does not take possession of the property within 20 days after tender by the customer, ownership of the property vests in the customer without obligation on the customer's part to pay for it.

(5) If the merchant has performed any services pursuant to a consumer approval transaction prior to its cancellation, the merchant is entitled to no compensation.

History: 1971 c. 239; 1973 c. 3.; 1991 a. 316.

Cross−reference: See also s. DFI−WCA 1.44, Wis. adm. code.

SUBCHAPTER III

ADVERTISING

423.301 False, misleading or deceptive advertising. No merchant shall advertise, print, display, publish, distribute or broadcast or cause to be advertised, printed, displayed, published, distributed or broadcast, in any manner any statement or representation with regard to the extension of consumer credit including the rates, terms or conditions for the extension of such credit, which is false, misleading, or deceptive, or which omits to state material information with respect to the extension of credit that is necessary to make the statements therein not false, misleading or deceptive. With respect to matters specifically governed by the federal consumer credit protection act, compliance with such act satisfies the requirements of this section.

History: 1971 c. 239.

423.302 Remedies and penalty. In addition to any other remedy provided by law, a customer who has been induced to consummate a consumer credit transaction as a result of advertising in violation of s. 423.301 shall be entitled to a recovery from the merchant in accordance with s. 425.305.

History: 1971 c. 239.

SUBCHAPTER IV

CUSTOMER IDENTIFICATION

423.401 Credit card identification information. (1) LIMITATION. Except as provided in sub. (2), a merchant may not record a customer's address, telephone number or any other identification information as a condition for accepting a credit card as payment for a consumer credit transaction.

(2) EXCEPTIONS. A merchant may record a customer's address or telephone number if any of the following conditions exists:

(a) The credit card issuer does not require the merchant to obtain from the issuer prior authorization as to the availability of credit in order to complete the credit card transaction.

(b) The merchant requires the information for shipping, delivery, service orders or installation purposes or to notify the customer of a special order.

(3) REMEDIES. Whoever violates this section is subject to the remedies and penalties under s. 425.303.

History: 1991 a. 158.

423.402 Check identification information. (1) LIMITATION. Except as provided in sub. (4), a merchant may not request or record a customer's credit card number as a condition for accepting a check or share draft as payment for a consumer transaction.

(2) CREDIT CARD DISPLAY. If a customer pays for a consumer transaction by check or share draft, a merchant may request a customer to display a credit card as an indication of the customer's financial responsibility or as additional identification, but the merchant may not record any information except the type of credit card displayed and the credit card expiration date.

(3) CHECK ACCEPTANCE. This section does not require a merchant to accept a check or share draft as payment for a consumer transaction, whether or not a credit card is displayed.

(4) EXCEPTION. A merchant may request and record a customer credit card number as a condition for accepting a check or share draft if all of the following conditions are met:

(a) The merchant has contracted with the card issuer of the requested credit card to cash or accept a check or share draft presented by a holder of the requested credit card.

(b) The card issuer of the requested credit card has contracted with the merchant to guarantee a check or share draft presented to the merchant by a holder of the requested credit card.

(5) REMEDIES. Whoever violates this section is subject to the remedies and penalties under s. 425.303.

History: 1991 a. 158.

NOTICE OF RIGHT TO CANCEL (or, alternatively, NOTICE OF CANCELLATION)

Date_____

You may CANCEL this transaction, without any penalty or obligation, within THREE BUSINESS DAYS from the above date.

If you cancel, any property traded-in, any payments made by you under the contract or sale, and any negotiable instrument executed by you will be returned within TEN BUSINESS DAYS following receipt by the seller of your cancellation notice, and any security interest arising out of the transaction will be canceled.

If you cancel, you must make available to the seller, at your residence, in substantially as good condition as when received by you, any goods delivered to you under this contract or sale; or you may, if you wish, comply with the instructions of the seller regarding the return shipment of the goods at the seller's expense and risk.

If you do make the goods available to the seller and the seller does not pick them up within 20 days of the date of your notice of cancellation, you may retain or dispose of the goods without any further obligation.

To cancel this transaction, mail or deliver a signed and dated copy of this cancellation notice, or any other written notice or telegram, to:

_____ at

(Name of Seller)

_____
(Address of Seller's Place of Business)

NO LATER THAN MIDNIGHT OF _____.
(Date)

I HEREBY CANCEL THIS TRANSACTION.

_____ _____
(Date) (Buyer's Signature)

Chapter 5.34

DIRECT SELLERS

Sections:

5.34.010 Registration required.
5.34.020 Definitions.
5.34.025 Shows and exhibitions.
5.34.030 Exemptions.
5.34.040 Registration.
5.34.050 Investigation.
5.34.060 Appeal.
5.34.070 Regulation of direct sellers.
5.34.080 Records.
5.34.090 Revocation of registration--Appeal.
5.34.100 Penalty.
5.34.110 Severance clause.

5.34.010 Registration required. It shall be unlawful for any direct seller to engage in direct sales within the city of Eau Claire without being registered for that purpose as provided herein. (Ord. 4394 §1, 1983).

5.34.020 Definitions. In this ordinance: A. "Direct Seller" means any individual who, for him/herself, or for a partnership, association or corporation, sells goods or services, or takes sales orders for the later delivery of goods or services, at any location other than the permanent business place or residence of said individual, partnership, association or corporation, and shall include, but not be limited to, peddlers, solicitors and transient merchants. The sale of goods or services includes donations required by the direct seller for the retention of goods or services by a donor or prospective customer.

B. "Permanent merchant" means a direct seller who, for at least one year prior to the consideration of the application of this ordinance to said merchant, a) has continuously operated an established place of business in this city, or b) has continuously resided in this city and now does business from his/her residence. The term shall also include a merchant conducting business during a holiday season in the city for a continuous period of 8 weeks or longer.

C. "Goods" shall include personal property of any kind, and shall include goods provided incidental to services offered or sold.

D. "Charitable organization" shall include any benevolent, philanthropic, patriotic or eleemosynary person, partnership, association or corporation, or one purporting to be such.

E. "Clerk" shall mean the city clerk.

F. "Services" shall include but not be limited to any act, work, assistance, advice or consultation provided for another for pay or other consideration. (Ord. 4980, 1989; Ord. 4394 §1, 1983).

5.34.025 Shows and exhibitions. An individual exhibitor offering goods for sale at a show or exhibition shall not be deemed to be a direct seller if the sponsor of the show or exhibition registers with the city clerk as provided in this chapter and files with the clerk a list of the names and addresses of exhibitors. (Ord. 4547, 1985).

5.34.030 Exemptions. The following shall be exempt from all provisions of this ordinance: A. Any person delivering newspapers, fuel, dairy products or bakery goods to regular customers on established routes;

B. Any person selling goods at wholesale to dealers in such goods;

C. Any person selling agricultural products which such person has grown;

D. Any permanent merchant or employee thereof who takes orders away from the established place of business for goods regularly offered for sale by such merchant within this county and who delivers such goods in their regular course of business;

E. Any person who has an established place of business where the goods being sold are offered for sale on a regular basis, and in which the buyer has initiated contact with, and specifically requested a home visit by, said person;

F. Any person who has had, or one who represents a company which has had, a prior business transaction, such as a prior sale or credit arrangement, with the prospective customer;

G. Any person holding a sale required by statute or by order of any court and any person conducting a bona fide auction sale pursuant to law;

H. Any employee, officer or agent of a charitable organization who engages in direct sales for or on behalf of said organization, provided that there is submitted to the clerk proof that such charitable organization is registered under sec. 440.41, Stats. Any charitable organization not registered under sec. 440.41, Stats., or which is exempt from that statute's registration requirements, shall be required to register under this ordinance;

I. Any person who claims to be a permanent merchant, but against whom complaint has been made to the clerk that such person is a transient merchant; provided that there is submitted to the clerk, proof that such person has leased for at least one year, or purchased, the premises from which he/she is conducting business, or proof that such person has conducted such business in this city for at least one year prior to the date complaint was made;

J. Any person who acts as a direct seller at a private, non-public premise, provided that another person, corporation, partnership, association or other entity has properly registered with the city of Eau Claire pursuant to the terms of this chapter, and where the "license" of such registrant is posted in a place on the premises clearly visible to the public. (Ord. 4455 §1, 1984; Ord. 4394 §1, 1983).

5.34.040 Registration. A. Applicants for registration must complete and return to the clerk a registration form furnished by the clerk which shall require the following information:

1. Name, permanent address and telephone number, and temporary address, if any;
2. Age, height, weight, color of hair and eyes;
3. Name, address and telephone number of the person, firm, association or corporation that the direct seller represents or is employed by, or whose merchandise is being sold;
4. Temporary address and telephone number from which business will be conducted, if any;
5. Nature of business to be conducted and a brief description of the goods offered, and any services offered;
6. Proposed method of delivery of goods, if applicable;
7. Make, model and license number of any vehicle to be used by applicant in the conduct of his/her business;
8. Last cities, villages, towns, not to exceed three, where applicant conducted similar business;
9. Place where applicant can be contacted for at least seven days after leaving this city;
10. Statement as to whether applicant has been convicted of any crime or ordinance violation related to applicant's transient merchant business within the last five years; the nature of the offense and the place of conviction.

B. Applicants shall present to the clerk for examination:

1. A driver's license or some other proof of identity as may be reasonably required;
2. A state certificate of examination and approval from the sealer of weights and measures where applicant's business requires use of weighing and measuring devices approved by state authorities;
3. A state health officer's certificate where applicant's business involves the handling of food or clothing and is required to be certified under state law; such certificate to state that applicant is apparently free from any contagious or infectious disease, dated not more than 90 days prior to the date the application for license is made.

C. At the time the registration is returned, a fee as stated in the City of Eau Claire Fees and Licenses Schedule shall be paid to the clerk to cover the cost of processing said registration and other incidental costs. The applicant shall sign a statement appointing the clerk his/her agent to accept service of process in any civil action brought against the applicant arising out of any sale or service performed by the applicant in connection with the direct sales activities of the applicant, in the event the applicant cannot, after reasonable effort, be served personally. Upon payment of said fee and the signing of said statement, the clerk shall register the applicant as a direct seller and date the entry. Said registration shall be valid for a period of seven days from the date of entry, subject to subsequent refusal as provided in Sec. 5.34.050 (B) below.

D. At the time of registration, the clerk shall issue a numbered registration form entitled "license" to each applicant. If the applicant's business is to be conducted at only one location, said license must be displayed at all times such business is conducted in a place clearly visible to the public. All applicants who will conduct their business from place to place in the city shall also be issued a numbered paper license which must be displayed on their person in a place which is clearly visible to the public, during all times that they conduct such business. (Ord. 6363 §14, 2002; Ord. 4455 §§2, 3, 1984; Ord. 4394, 1983).

5.34.050 Investigation. A. Upon receipt of each application, the clerk may refer it immediately to the chief of police who may make and complete an investigation of the statements made in such registration.

B. The clerk shall refuse to register the applicant if it is determined, pursuant to the investigation above, that: the application contains any material omission or materially inaccurate

statement; complaints of a material nature have been received against the applicant by authorities in the last cities, villages and towns, not exceeding three, in which the applicant conducted similar business; the applicant was convicted of a crime, statutory violation or ordinance violation within the last five years, the nature of which is directly related to the applicant's fitness to engage in direct selling; the applicant failed to comply with any applicable provision of Sec. 5.34.040 B. above; the applicant has failed to provide the clerk with a printed copy of the form required by Sec. 423.203 of the Wisconsin Statutes where necessary; or the applicant has failed to provide the clerk with the Wisconsin Department of Revenue tax number where applicable. (Ord. 4639, 1986; Ord. 4394 §1, 1983).

5.34.060 Appeal. Any person denied registration may appeal the denial to the administrative review board under the procedures specified in ch. 1.06. (Ord. 6572 §5, 2005; Ord. 4394 §1, 1983).

5.34.070 Regulation of direct sellers. A. Prohibited Practices.

1. A direct seller shall be prohibited from calling at any dwelling or other place between the hours of 8:00 p.m. and 9:00 a.m. except by appointment; calling at any dwelling or other place where a sign is displayed bearing the words "No Peddlers", "No Solicitors" or words of similar meaning; calling at the rear door of any dwelling place; or remaining on any premises after being asked to leave by the owner, occupant or other person having authority over such premises.

2. A direct seller shall not misrepresent or make false, deceptive or misleading statements concerning the quality, quantity or character of any goods offered for sale, the purpose of his/her visit, his/her identity or the identity of the organization he/she represents. A charitable organization direct seller shall specifically disclose what portion of the sale price of goods being offered will actually be used for the charitable purpose for which the organization is soliciting. Said portion shall be expressed as a percentage of the sale price of the goods.

3. No direct seller shall impede the free use of sidewalks and streets by pedestrians and vehicles. Where sales are made from vehicles, all traffic and parking regulations shall be observed.

4. No direct seller shall make any loud noises or use any sound amplifying device to attract customers if the noise produced is capable of being plainly heard outside a one-hundred foot radius of the source.

5. No direct seller shall allow rubbish or litter to accumulate in or around the area in which he/she is conducting business.

6. Upon demand from any police officer or other city official, a direct seller shall promptly provide his/her license for examination by that person.

7. The license number issued to a direct seller must appear in a clearly visible place in all printed or written advertisement used by the direct seller to promote his/her business. Such number shall appear at the end of the following phrase: "City of Eau Claire license no. _____."

All radio or television advertisement by a direct seller must also contain either a verbal or a written statement that the advertiser is licensed by the city of Eau Claire, and must include that direct seller's number.

B. Disclosure Requirements.

1. After the initial greeting and before any other statement is made to a prospective customer, a direct seller shall expressly disclose his/her name, the name of the company or organization he/she is affiliated with, if any, and the identity of goods or services he/she offers to sell.

2. If any sale of goods is made by a direct seller, or any sales order for the later delivery of goods is taken by the seller, the buyer shall have the right to cancel said transaction, if it involves the extension of credit or is a cash transaction of more than $25, in accordance with the procedure as set forth in sec. 423.203, Stats.; the seller shall give the buyer two copies of a typed or printed notice of that fact. Such notice shall conform to the requirements of secs. 423.203 (1)(a)(b) and (c), (2) and (3), Stats.

3. If the direct seller takes a sales order for the later delivery of goods, he/she shall, at the time the order is taken, provide the amount paid in advance whether full, partial or no advance payment is made, the name, address and telephone number of the seller, the delivery or performance date and whether a guarantee or warranty is provided and, if so, the terms thereof. (Ord. 4455 §§4, 5, 6, 1984; Ord. 4394 §1, 1983).

5.34.080 Records. The chief of police shall report to the clerk all convictions for violation of this ordinance and the clerk shall note any such violation on the record of the registrant convicted. (Ord. 4394 §1, 1983).

5.34.090 Revocation of registration--Appeal. A. Registration may be revoked by the city clerk, upon administrative determination that the registrant made any material omission or materially inaccurate statement in the application for registration, made any fraudulent, false, deceptive or misleading statement or representation in the course of engaging in direct sales, violated any provision of this ordinance or was convicted of any crime or ordinance or statutory violation which is directly related to the registrant's fitness to engage in direct selling.

B. Appeal from the afore stated determination shall be made to the administrative review board under the procedures specified in ch. 1.06. Appeal shall stay the contested administrative determination pending decision by the board. (Ord. 6572 §5, 2005; Ord. 4394 §1, 1983).

5.34.100 Penalty. Any person convicted of violating any provisions of this ordinance shall forfeit not less than ten dollars nor more than one hundred dollars for each violation plus costs of prosecution. Each violation shall constitute a separate offense. (Ord. 4394 §1, 1983).

5.34.110 Severance Clause. The provisions of this ordinance are declared to be severable, and if any section, sentence, clause or phrase of this ordinance shall for any reason be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sections, sentences, clauses and phrases of this ordinance; they shall remain in effect, it being the legislative intent that this ordinance shall stand notwithstanding the invalidity of any part. (Ord. 4394 §1, 1983).

1. Must be adjacent to or as close as possible to the work area.

2. Permission must be obtained by the permit applicant from the affected property owner, if placed in front of a business or residence that is not affected by the work.

3. Must allow a minimum of 11 feet for traffic when placed in an alley. Both ends of the dumpster or roll-off box must be delineated as in subsection E. of this section.

4. Must not block fire exits or be placed under fire escapes.

5. Must maintain 5 feet for pedestrian access when placed on a sidewalk. Protective barricades, together with signs at both ends, must be used to define the pedestrian passageway.

G. Dumpsters or roll-off boxes shall not be placed:

1. Within a parking stall specifically designated according to section 346.50 of the Wisconsin Statutes for handicapped purposes.

2. Within fifteen feet of any hydrant.

3. Within twenty feet of any alley entrance.

4. Within fifty feet of any street intersection.

5. Within a traffic lane.

H. The director of engineering or designee is authorized to approve placement of a dumpster or roll-off box in other locations within the public right-of-way, if in his or her judgment, the placement will not present a hazard to the public if adequate warning devices and safety measures are used.

I. Failure to take corrective action within forty-eight hours of notification may result in the removal of the offending dumpster or roll-off box by city of Eau Claire personnel. Costs incurred in the removal may be charged against the owner of the dumpster or roll-off box.

J. The penalty for violation of any provision of this section shall be a forfeiture of not less than $50.00 per day or more than $200.00 per day for each violation.

K. Any person, firm, or corporation who repeatedly violates the conditions of this section shall be subject to review as described in section 8.32.040, License or permit--Revocation or suspension.

L. A permit fee, as stated in the City of Eau Claire Fees and Licenses Schedule, shall be charged for each dumpster or roll-off box placed within the public right-of-way. (Ord. 7202, 2016; Ord. 6712, 2006; Ord. 6477, 2004).

13.12.060 Sale of goods. It is unlawful for any person, firm or corporation to set up or park any stand, wagon, automobile or other vehicle upon any of the public streets, sidewalks, boulevards, parkways or alleys in the city for the purpose of selling therefrom or exposing for sale any meat, provisions, popcorn, ice cream, confections, refreshments or other eatables or any goods, wares or merchandise, or for carrying on any business or trade whatsoever. This section shall not apply to mobile food establishments licensed in accordance with section 13.12.066 of this code. (Ord. 7180, 2016; Prior code §5.17).

13.12.062 Sidewalk cafe permit. A. Purpose: To further encourage the revitalization of the downtown and Water Street areas of the city, including the development of social and economic activity, the city council finds and determines:

1. That there exists a need for outdoor eating facilities in certain areas of the city to provide a unique environment for relaxation, social interaction, and food consumption.

2. That sidewalk cafes will permit enhanced use of the available public rights of way, will complement the restaurants operating from fixed premises, and will promote economic activity in an area.

3. That the existence of sidewalk cafes encourages additional pedestrian traffic and their presence may impede the free and safe flow of pedestrians. Therefore, a need exists for regulations and standards for the existence and operation of sidewalk cafes to ensure a safe environment.

4. That the establishment of permit conditions and safety standards for sidewalk cafes is necessary to protect and promote public health, safety, and welfare.

B. Definitions.

1. "Sidewalk cafe" shall mean an expansion of a full service restaurant creating an outdoor dining facility on part of the public right of way that immediately adjoins the licensed premises for the purpose of consuming food or beverages prepared at the full service restaurant adjacent thereto. "Full service restaurant" shall mean an establishment requiring a restaurant license under chapter 8.16 of the city code of ordinances whose food sales are greater than 50 percent of its gross receipts.

2. "Downtown" shall mean the qualifying properties lying within the area bounded on the north by Cameron Street and William Street as extended to the Chippewa River, on the east by Dewey Street, on the south by Lake Street, and on the west by Fifth Avenue/Fulton Street/Whipple Street. The permitted area includes sidewalk located on both sides of a described boundary street.

3. "Water Street" shall mean the qualifying properties lying within the area bounded on the north by Chippewa Street, on the east by Second Avenue, on the south by the Chippewa River, and on the west by Ninth Avenue. The permitted area includes sidewalk located on both sides of a described boundary street.

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CHAPTER 103

EMPLOYMENT REGULATIONS

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Cross–reference: See definitions in s. 101.01.

103.01 Hours of labor; definitions. In ss. 103.01 to 103.03:

(1) (a) "Employer" means every person having control or custody of any employment or place of employment.

(b) "Employer" includes the state, its political subdivisions and any office, department, independent agency, authority, institution, association, society or other body in state or local government created or authorized to be created by the constitution or any law, including the legislature and the courts.

(2) "Employment" means any trade, occupation or process of manufacture, or any method of carrying on such trade or occupation in which any person may be engaged, or for any place of employment.

(3) "Place of employment" means any manufactory, mechanical or mercantile establishment, beauty parlor, laundry, restaurant, confectionary store, or telegraph or telecommunications office or exchange, any express or transportation establishment or any hotel.

History: 1971 c. 228 s. 44; 1975 c. 94; 1983 a. 189; 1985 a. 297 s. 76; 1989 a. 225.

103.02 Hours of labor. No person may be employed or be permitted to work in any place of employment or at any employment for such period of time during any day, night or week, as is dangerous or prejudicial to the person's life, health, safety or welfare. The department shall investigate, ascertain, determine and fix such reasonable classification, and promulgate rules fixing a period of time, or hours of beginning and ending work during any day, night or week, which shall be necessary to protect the life, health, safety or welfare of any person, or to carry out the purposes of ss. 103.01 to 103.03. The department shall, by rule, classify such periods of time into periods to be paid for at regular rates and periods to be paid for at the rate of at least one and one–half times the regular rates. Such investigations, classifications and orders shall be made pursuant to the proceeding in ss. 101.01 to 101.25 which are hereby made a part hereof, so far as not inconsistent with ss. 103.01 to 103.03, and every order of the department shall have the same force and effect as the orders issued under ss. 101.01 to 101.25 and the penalties therein shall apply to and be imposed for any violation of ss. 103.01 to 103.03. Such orders shall be subject to review in the manner provided in ch. 227. Sec-

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tion 111.322 (2m) applies to discharge or other discriminatory acts arising in connection with any proceeding under this section.

History: 1971 c. 228 s. 43; 1975 c. 94; 1989 a. 228.

Section 103.02, Stats. 1969, and administrative rules limiting the maximum hours women may work are superseded by provisions of the Civil Rights Act of 1964 as to employers covered by that act, but other employers remain subject to the state law. 59 Atty. Gen. 114.

Violation of public policy expressed by this section is grounds for wrongful discharge action. Wilcox v. Niagra of Wisconsin Paper Corp. 965 F (2d) 355 (1992).

103.025 Hours of labor; compensatory time. (1) In this section:

(a) "Compensatory time" means hours during which an employe is not working, which are not counted as hours worked during the workweek or other work period classified by the department by rule promulgated under s. 103.02 for purposes of calculating overtime compensation, and for which the employe is compensated at the employe's regular rate of pay.

(b) "Employe" has the meaning given in s. 104.01 (2).

(c) "Overtime compensation" means the compensation required to be paid for hours worked during periods that the department has classified, by rule promulgated under s. 103.02, as periods to be paid for at the rate of at least 1.5 times an employe's regular rate of pay.

(2) An employer described in s. 103.01 (1) (b) may provide an employe, in lieu of overtime compensation, compensatory time off as permitted under 29 USC 207 (o), as amended to April 15, 1986.

History: 1993 a. 144.

103.03 Violations; penalty. The employment of any person in any employment or place of employment at any time other than the permissible hours of labor shall be prima facie evidence of a violation of this section. Every day for each person employed, and every week for each person employed, during which any employer fails to observe or to comply with any order of the department, or to perform any duty enjoined by ss. 103.01 to 103.03, shall constitute a separate offense.

History: 1975 c. 94; Stats. s. 103.03.

103.10 Family or medical leave. (1) DEFINITIONS. In this section:

(a) "Child" means a natural, adopted, foster or treatment foster child, a stepchild or a legal ward to whom any of the following applies:

1. The individual is less than 18 years of age.

2. The individual is 18 years of age or older and cannot care for himself or herself because of a serious health condition.

(am) "Christian Science practitioner" means a Christian Science practitioner residing in this state who is listed as a practitioner in the Christian Science journal.

(b) "Employe" means an individual employed in this state by an employer, except the employer's parent, spouse or child.

(c) Except as provided in sub. (14) (b), "employer" means a person engaging in any activity, enterprise or business in this state employing at least 50 individuals on a permanent basis. "Employer" includes the state and any office, department, independent agency, authority, institution, association, society or other body in state government created or authorized to be created by the constitution or any law, including the legislature and the courts.

(d) "Employment benefit" means an insurance, leave or retirement benefit which an employer makes available to an employe.

(e) "Health care provider" means a person described under s. 146.81 (1).

(f) "Parent" means a natural parent, foster parent, treatment foster parent, adoptive parent, stepparent or legal guardian of an employe or an employe's spouse.

(g) "Serious health condition" means a disabling physical or mental illness, injury, impairment or condition involving any of the following:

1. Inpatient care in a hospital, as defined in s. 50.33 (2), nursing home, as defined in s. 50.01 (3), or hospice.

2. Outpatient care that requires continuing treatment or supervision by a health care provider.

(h) "Spouse" means an employe's legal husband or wife.

(2) SCOPE. (a) Nothing in this section prohibits an employer from providing employes with rights to family leave or medical leave which are more generous to the employe than the rights provided under this section.

(b) This section does not limit or diminish an employe's rights or benefits under ch. 102.

(c) This section only applies to an employe who has been employed by the same employer for more than 52 consecutive weeks and who worked for the employer for at least 1,000 hours during the preceding 52–week period.

(3) FAMILY LEAVE. (a) 1. In a 12–month period no employe may take more than 6 weeks of family leave under par. (b) 1. and 2.

2. In a 12–month period no employe may take more than 2 weeks of family leave for the reasons specified under par. (b) 3.

3. In a 12–month period no employe may take more than 8 weeks of family leave for any combination of reasons specified under par. (b).

(b) An employe may take family leave for any of the following reasons:

1. The birth of the employe's natural child, if the leave begins within 16 weeks of the child's birth.

2. The placement of a child with the employe for adoption or as a precondition to adoption under s. 48.90 (2), but not both, if the leave begins within 16 weeks of the child's placement.

3. To care for the employe's child, spouse or parent, if the child, spouse or parent has a serious health condition.

(c) Except as provided in par. (d), an employe shall schedule family leave after reasonably considering the needs of his or her employer.

(d) An employe may take family leave as partial absence from employment. An employe who does so shall schedule all partial absence so it does not unduly disrupt the employer's operations.

(4) MEDICAL LEAVE. (a) Subject to pars. (b) and (c), an employe who has a serious health condition which makes the employe unable to perform his or her employment duties may take medical leave for the period during which he or she is unable to perform those duties.

(b) No employe may take more than 2 weeks of medical leave during a 12–month period.

(c) An employe may schedule medical leave as medically necessary.

(5) PAYMENT FOR AND RESTRICTIONS UPON LEAVE. (a) This section does not entitle an employe to receive wages or salary while taking family leave or medical leave.

(b) An employe may substitute, for portions of family leave or medical leave, paid or unpaid leave of any other type provided by the employer.

(6) NOTICE TO EMPLOYER. (a) If an employe intends to take family leave for the reasons in sub. (3) (b) 1. or 2., the employe shall, in a reasonable and practicable manner, give the employer advance notice of the expected birth or placement.

(b) If an employe intends to take family leave because of the planned medical treatment or supervision of a child, spouse or parent or intends to take medical leave because of the planned medical treatment or supervision of the employe, the employe shall do all of the following:

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1. Make a reasonable effort to schedule the medical treatment or supervision so that it does not unduly disrupt the employer's operations, subject to the approval of the health care provider of the child, spouse, parent or employe.

2. Give the employer advance notice of the medical treatment or supervision in a reasonable and practicable manner.

(7) CERTIFICATION. (a) If an employe requests family leave for a reason described in sub. (3) (b) 3. or requests medical leave, the employer may require the employe to provide certification, as described in par. (b), issued by the health care provider or Christian Science practitioner of the child, spouse, parent or employe, whichever is appropriate.

(b) No employer may require certification stating more than the following:

1. That the child, spouse, parent or employe has a serious health condition.

2. The date the serious health condition commenced and its probable duration.

3. Within the knowledge of the health care provider or Christian Science practitioner, the medical facts regarding the serious health condition.

4. If the employe requests medical leave, an explanation of the extent to which the employe is unable to perform his or her employment duties.

(c) The employer may require the employe to obtain the opinion of a 2nd health care provider, chosen and paid for by the employer, concerning any information certified under par. (b).

(8) POSITION UPON RETURN FROM LEAVE. (a) Subject to par. (c), when an employe returns from family leave or medical leave, his or her employer shall immediately place the employe in an employment position as follows:

1. If the employment position which the employe held immediately before the family leave or medical leave began is vacant when the employe returns, in that position.

2. If the employment position which the employe held immediately before the family leave or medical leave began is not vacant when the employe returns, in an equivalent employment position having equivalent compensation, benefits, working shift, hours of employment and other terms and conditions of employment.

(b) No employer may, because an employe received family leave or medical leave, reduce or deny an employment benefit which accrued to the employe before his or her leave began or, consistent with sub. (9), accrued after his or her leave began.

(c) Notwithstanding par. (a), if an employe on a medical or family leave wishes to return to work before the end of the leave as scheduled, the employer shall place the employe in an employment position of the type described in par. (a) 1. or 2. within a reasonable time not exceeding the duration of the leave as scheduled.

(9) EMPLOYMENT RIGHT, BENEFIT OR POSITION. (a) Except as provided in par. (b), nothing in this section entitles a returning employe to a right, employment benefit or employment position to which the employe would not have been entitled had he or she not taken family leave or medical leave or to the accrual of any seniority or employment benefit during a period of family leave or medical leave.

(b) Subject to par. (c), during a period an employe takes family leave or medical leave, his or her employer shall maintain group health insurance coverage under the conditions that applied immediately before the family leave or medical leave began. If the employe continues making any contribution required for participation in the group health insurance plan, the employer shall continue making group health insurance premium contributions as if the employe had not taken the family leave or medical leave.

(c) 1. An employer may require an employe to have in escrow with the employer an amount equal to the entire premium or similar expense for 8 weeks of the employe's group health insurance coverage, if coverage is required under par. (b).

2. An employe may pay the amount required under subd. 1. in equal instalments at regular intervals over at least a 12–month period. An employer shall deposit the payments at a financial institution in an interest–bearing account.

3. Subject to subd. 4., an employer shall return to the employe any payments made under subd. 1., plus interest, when the employe ends his or her employment with the employer.

4. If an employe ends his or her employment with an employer during or within 30 days after a period of family leave or medical leave, the employer may deduct from the amount returned to the employe under subd. 3. any premium or similar expense paid by the employer for the employe's group health insurance coverage while the employe was on family leave or medical leave.

(d) If an employe ends his or her employment with an employer during or at the end of a period of family leave or medical leave, the time period for conversion to individual coverage under s. 632.897 (6) shall be calculated as beginning on the day that the employe began the period of family leave or medical leave.

(10) ALTERNATIVE EMPLOYMENT. Nothing in this section prohibits an employer and an employe with a serious health condition from mutually agreeing to alternative employment for the employe while the serious health condition lasts. No period of alternative employment, with the same employer, reduces the employe's right to family leave or medical leave.

(11) PROHIBITED ACTS. (a) No person may interfere with, restrain or deny the exercise of any right provided under this section.

(b) No person may discharge or in any other manner discriminate against any individual for opposing a practice prohibited under this section.

(c) Section 111.322 (2m) applies to discharge or other discriminatory acts arising in connection with any proceeding under this section.

(12) ADMINISTRATIVE PROCEEDING. (a) In this subsection, "department" means:

1. The personnel commission, if the employe is employed by the state or any office, department, independent agency, authority, institution, association, society or other body in state government created or authorized to be created by the constitution or any law, including the legislature and the courts.

2. The department of industry, labor and human relations, if the employe is employed by an employer other than one described in subd. 1.

(b) An employe who believes his or her employer has violated sub. (11) (a) or (b) may, within 30 days after the violation occurs or the employe should reasonably have known that the violation occurred, whichever is later, file a complaint with the department alleging the violation. Except as provided in s. 230.45 (1m), the department shall investigate the complaint and shall attempt to resolve the complaint by conference, conciliation or persuasion. If the complaint is not resolved and the department finds probable cause to believe a violation has occurred, the department shall proceed with notice and a hearing on the complaint as provided in ch. 227. The hearing shall be held within 60 days after the department receives the complaint.

(c) If 2 or more health care providers disagree about any of the information required to be certified under sub. (7) (b), the department may appoint another health care provider to examine the child, spouse, parent or employe and render an opinion as soon as possible. The department shall promptly notify the employe and the employer of the appointment. The employer and the employe shall each pay 50% of the cost of the examination and opinion.

(d) The department shall issue its decision and order within 30 days after the hearing. If the department finds that an employer violated sub. (11) (a) or (b), it may order the employer to take action to remedy the violation, including providing requested family leave or medical leave, reinstating an employe, providing

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back pay accrued not more than 2 years before the complaint was filed and paying reasonable actual attorney fees to the complainant.

(13) CIVIL ACTION. (a) An employe or the department may bring an action in circuit court against an employer to recover damages caused by a violation of sub. (11) after the completion of an administrative proceeding, including judicial review, concerning the same violation.

(b) An action under par. (a) shall be commenced within the later of the following periods, or be barred:

1. Within 60 days from the completion of an administrative proceeding, including judicial review, concerning the same violation.

2. Twelve months after the violation occurred, or the department or employe should reasonably have known that the violation occurred.

(14) NOTICE POSTED. (a) Each employer shall post, in one or more conspicuous places where notices to employes are customarily posted, a notice in a form approved by the department setting forth employes' rights under this section. Any employer who violates this subsection shall forfeit not more than $100 for each offense.

(b) Any person employing at least 25 individuals shall post, in one or more conspicuous places where notices to employes are customarily posted, a notice describing the person's policy with respect to leave for the reasons described in subs. (3) (b) and (4) (a).

History: 1987 a. 287; 1989 a. 228; 1991 a. 39; 1993 a. 446.

Term "disabling" in (1) (g) includes incapacitation or inability to pursue occupation because of physical or mental impairment; "continuing treatment or supervision by a health care provider" requires direct, continuous contact with health care provider. MPI Wi. Machining Div. v. DILHR, 159 W (2d) 358, 464 NW (2d) 79 (Ct. App. 1990).

Sub. (6) (b) requires no advance notice when leave is unplanned or unintended. MPI Wi. Machining Div. v. DILHR, 159 W (2d) 358, 464 NW (2d) 79 (Ct. App. 1990).

No formal application or detailed information need be provided employer to invoke FMLA's protection; employer must have reasonable notice. Jicha v. State, 164 W (2d) 94, 473 NW (2d) 578 (Ct. App. 1991).

As a symptom of pregnancy, morning sickness may be considered a "serious health condition". Haas v. DILHR, 166 W (2d) 288, 479 NW (2d) 229 (Ct. App. 1991).

Sub. (2) (c) does not require an employe to be employed for the fifty–two consecutive weeks preceding the disputed action, but any consecutive fifty–two weeks. Butzlaff v. Wisconsin Personnel Commission, 166 W (2d) 1028, 480 NW (2d) 559 (Ct. App. 1992).

"Equivalent employment" under (8) (a) requires a return to former level of job status, responsibility and authority. Kelley Co., Inc. v. Marquardt, 172 W (2d) 234, 493 NW (2d) 68 (1992).

The only prerequisite for reinstatement and backpay is that the employer violated this section; backpay should be reduced by interim earnings and amounts earnable. Kelley Co. v. Marquardt, 172 W (2d) 234, 493 NW (2d) 68 (1992).

Complainant may recover attorney's fees for successful representation in circuit court on review of department's order although he could have relied on Department of Justice representation of Department; award of attorney's fees is not precluded where complainant is furnished counsel at no personal expense. Richland School Dist. v. DILHR, 174 W (2d) 878, 498 NW (2d) 827 (1993).

Sub. (5) (b) allows an employe to substitute paid leave accumulated under a collective bargaining agreement for unpaid leave under this section when the employe has not met the conditions of leave set forth in the agreement. Richland School Dist. v. DILHR, 174 W (2d) 878, 498 NW (2d) 827 (1993).

A request for medical leave need only be reasonably calculated to advise the employer that the employe is requesting medical leave and the reason for the request. Upon receipt of the request, the employer may approve, disapprove or request more information under the certification process under sub. (7). Sieger v. Wisconsin Personnel Commission, 181 W (2d) 845, 512 NW (2d) 230 (Ct. App. 1994).

Quagmire or Quantum Leap? The Wisconsin Family and Medical Leave Act. Goeldner and Nelson–Glode. Wis. Law. April 1992.

Family & Medical Leave Acts. Sholl and Krupp–Gordon. Wis. Law. Aug. 1993.

103.13 Records open to employe. (1) DEFINITIONS. In this section:

(a) "Employe" has the meaning specified in s. 101.01 (2) (a) and also includes former employes.

(b) "Employer" has the meaning specified in s. 101.01 (2) (b).

(2) OPEN RECORDS. Every employer shall, upon the request of an employe, which the employer may require the employe to make in writing, permit the employe to inspect any personnel documents which are used or which have been used in determining that employe's qualifications for employment, promotion, transfer, additional compensation, termination or other disciplinary action, and medical records, except as provided in subs. (5) and (6). An employe may request all or any part of his or her records, except as provided in sub. (6). The employer shall grant at least 2 requests by an employe in a calendar year, unless otherwise provided in a collective bargaining agreement, to inspect the employe's personnel records as provided in this section. The employer shall provide the employe with the opportunity to inspect the employe's personnel records within 7 working days after the employe makes the request for inspection. The inspection shall take place at a location reasonably near the employe's place of employment and during normal working hours. If the inspection during normal working hours would require an employe to take time off from work with that employer, the employer may provide some other reasonable time for the inspection. In any case, the employer may allow the inspection to take place at a time other than working hours or at a place other than where the records are maintained if that time or place would be more convenient for the employe.

(3) PERSONNEL RECORD INSPECTION BY REPRESENTATIVE. An employe who is involved in a current grievance against the employer may designate in writing a representative of the employe's union, collective bargaining unit or other designated representative to inspect the employe's personnel records which may have a bearing on the resolution of the grievance, except as provided in sub. (6). The employer shall allow such a designated representative to inspect that employe's personnel records in the same manner as provided under sub. (2).

(4) PERSONNEL RECORD CORRECTION. If the employe disagrees with any information contained in the personnel records, a removal or correction of that information may be mutually agreed upon by the employer and the employe. If an agreement cannot be reached, the employe may submit a written statement explaining the employe's position. The employer shall attach the employe's statement to the disputed portion of the personnel record. The employe's statement shall be included whenever that disputed portion of the personnel record is released to a 3rd party as long as the disputed record is a part of the file.

(5) MEDICAL RECORDS INSPECTION. The right of the employe or the employe's designated representative under sub. (3) to inspect personnel records under this section includes the right to inspect any personal medical records concerning the employe in the employer's files. If the employer believes that disclosure of an employe's medical records would have a detrimental effect on the employe, the employer may release the medical records to the employe's physician or through a physician designated by the employe, in which case the physician may release the medical records to the employe or to the employe's immediate family.

(6) EXCEPTIONS. The right of the employe or the employe's designated representative under sub. (3) to inspect his or her personnel records does not apply to:

(a) Records relating to the investigation of possible criminal offenses committed by that employe.

(b) Letters of reference for that employe.

(c) Any portion of a test document, except that the employe may see a cumulative total test score for either a section of the test document or for the entire test document.

(d) Materials used by the employer for staff management planning, including judgments or recommendations concerning future salary increases and other wage treatments, management bonus plans, promotions and job assignments or other comments or ratings used for the employer's planning purposes.

(e) Information of a personal nature about a person other than the employe if disclosure of the information would constitute a clearly unwarranted invasion of the other person's privacy.

(f) An employer who does not maintain any personnel records.

(g) Records relevant to any other pending claim between the employer and the employe which may be discovered in a judicial proceeding.

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(7) COPIES. The right of the employe or the employe's representative to inspect records includes the right to copy or receive a copy of records. The employer may charge a reasonable fee for providing copies of records, which may not exceed the actual cost of reproduction.

(7m) EMPLOYMENT DISCRIMINATION. Section 111.322 (2m) applies to discharge and other discriminatory acts in connection with any proceeding under this section.

(8) PENALTY. Any employer who violates this section may be fined not less than $10 nor more than $100 for each violation. Each day of refusal or failure to comply with a duty under this section is a separate violation.

History: 1979 c. 339; 1981 c. 164; 1983 a. 189 ss. 153, 329 (4); 1989 a. 228.

103.14 Grooming requirement; notification. (1) In this section:

(a) "Employe" has the meaning given in s. 101.01 (2) (a).

(b) "Employer" has the meaning given in s. 101.01 (2) (b).

(2) Each employer shall, at the time of hiring, notify each employe about any hairstyle, facial hair or clothing requirement.

History: 1981 c. 334; 1983 a. 189 s. 329 (4).

103.15 Restrictions on use of a test for HIV. (1) In this section:

(a) "Employer" includes the state, its political subdivisions and any office, department, independent agency, authority, institution, association, society or other body in state or local government created or authorized to be created by the constitution or any law, including the legislature and the courts.

(am) "HIV" means any strain of human immunodeficiency virus, which causes acquired immunodeficiency syndrome.

(b) "HIV infection" means the pathological state produced by a human body in response to the presence of HIV.

(c) "State epidemiologist" means the individual designated by the secretary of health and social services as the individual in charge of communicable disease control for this state.

(2) Notwithstanding ss. 227.01 (13) and 227.10 (1), unless the state epidemiologist determines and the secretary of health and social services declares under s. 250.04 (1) or (2) (a) that individuals who have HIV infections may, through employment, provide a significant risk of transmitting HIV to other individuals, no employer or agent of an employer may directly or indirectly:

(a) Solicit or require as a condition of employment of any employe or prospective employe a test for the presence of HIV, antigen or nonantigenic products of HIV or an antibody to HIV.

(b) Affect the terms, conditions or privileges of employment or terminate the employment of any employe who obtains a test for the presence of HIV, antigen or nonantigenic products of HIV or an antibody to HIV.

(3) Any agreement by an employer or agent of the employer and an employe or prospective employe offering employment or any pay or benefit to an employe or prospective employe in return for taking a test for the presence of HIV, antigen or nonantigenic products of HIV or an antibody to HIV is prohibited, except as provided under sub. (2) (intro.).

History: 1985 a. 29, 73; 1987 a. 70 ss. 1, 36; 1987 a. 403 s. 256; 1989 a. 201 ss. 6, 36; 1989 a. 225; 1993 a. 27.

Police and fire commission is "employer" under this section and may not test paramedic candidates for HIV virus. 77 Atty. Gen. 181.

The rights of an AIDS victim in Wisconsin. 70 MLR 55 (1986).

103.16 Seats for workers; penalty. Every person or corporation employing workers in any manufacturing, mechanical or mercantile establishment in the state of Wisconsin shall provide suitable seats for the workers so employed, and shall permit the use of such seats by them when they are not necessarily engaged in the active duties for which they are employed. Any person or corporation who violates this section may be fined not less than $10 nor more than $30 for each offense.

History: 1975 c. 94 s. 91 (17).

103.17 Mutual forfeit. Any person or corporation engaged in manufacturing, which requires from its employes, under penalty of forfeiture of a part of the wages earned by them, a notice of intention to leave such employ, shall be liable to the payment of a like forfeiture if the person or corporation discharges, without similar notice, a person in such employ except for incapacity or misconduct, unless in case of a general suspension of labor in the person's or corporation's shop or factory or in the department thereof wherein such employe is engaged.

History: 1993 a. 492.

103.18 Threat or promise to influence vote. No person shall, by threatening to discharge a person from his or her employment or threatening to reduce the wages of a person or by promising to give employment at higher wages to a person, attempt to influence a qualified voter to give or withhold the voter's vote at an election.

History: 1993 a. 492.

103.19 Children in shows. No license shall be granted for a theatrical exhibition or public show in which children under fifteen years of age are employed as acrobats, contortionists or in any feats of gymnastics or equestrianism, when in the opinion of the board of officers authorized to grant licenses such children are employed in such manner as to corrupt their morals or impair their physical health.

103.20 Penalty. Any person who shall violate ss. 103.15 (2) or (3), 103.17, 103.18 and 103.19 shall, upon conviction, be fined in a sum not exceeding $100.

History: 1985 a. 29; 1985 a. 73 s. 8.

103.21 Street trades; definitions. As used in ss. 103.21 to 103.31:

(1) Every minor selling or distributing newspapers or magazines on the streets or other public place, or from house to house, is in an "employment" and an "employe," and each independent news agency or (in the absence of all such agencies) each selling agency of a publisher or (in the absence of all such agencies) each publisher, whose newspapers or magazines the minor sells or distributes, is an "employer" of the minor. Every minor engaged in any other street trade is in an "employment" and an "employe," and each person furnishing the minor articles for sale or distribution or regularly furnishing the minor material for blacking boots is the minor's "employer".

(1g) "House–to–house employer" means an employer who employs minors, either directly or through an agent who need not be an employe of the employer, to conduct street trades from house to house through personal contact with prospective customers.

(1r) "Municipality" means a city, village or town.

(2) "Nonprofit organization" means an organization described in section 501 (c) of the internal revenue code.

(3) "Permit officer" means any person designated by the department to issue street trade permits.

(4) "Private school" has the meaning given in s. 115.001 (3r).

(5) "Public school" has the meaning given in s. 115.01 (1).

(6) "Street trade" means the selling, offering for sale, soliciting for, collecting for, displaying or distributing any articles, goods, merchandise, commercial service, posters, circulars, newspapers or magazines, or the blacking of boots, on any street or other public place or from house to house.

History: 1971 c. 271; 1983 a. 189; 1985 a. 1; 1989 a. 113; 1993 a. 492.

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103.22 General standards and powers of the department. The general standards for the employment of minors set forth in s. 103.65 apply to the employment of minors in street trades, and in relation to that employment the department has the powers and duties specified in s. 103.66. Except as the department exercises those powers, the employment of minors in street trades shall be in accordance with ss. 103.23 to 103.31.

History: 1971 c. 271.

103.23 Age minimum. (1) Except as provided in sub. (2), a minor under 12 years of age shall not be employed or permitted to work at any time in any street trade.

(2) A minor under 12 years of age may work in a fund–raising sale for a nonprofit organization, a public school or a private school under the following conditions:

(a) Each minor must give the nonprofit organization, public school or private school written approval from the minor's parent or guardian.

(b) Each minor under 9 years of age or each group containing one or more minors under 9 years of age must be physically accompanied by a parent or a person at least 16 years of age.

History: 1971 c. 271; 1973 c. 183; 1985 a. 1.

103.24 Hours of work. The department shall determine and fix reasonable hours of employment for minors in street trades.

History: 1971 c. 271.

103.245 Designation of a permit officer. (1) (a) The department shall designate a school board, as defined in s. 115.001 (7), as a permit officer unless the school board refuses the designation.

(b) A school board designated as a permit officer under par. (a) may assign the duties of permit officer to an officer or employe of the school district.

(2) The department may designate persons other than school boards as permit officers, regardless of whether any school board refuses designation as a permit officer under sub. (1) (a).

History: 1987 a. 187.

103.25 Permits and identification cards. (1) A minor shall not be employed or permitted to work at any street trade unless the minor's employer first obtains from the department or a permit officer a street trade permit and the minor first obtains an identification card, both issued in accordance with this section.

(2) If upon investigation, the department determines that there are practical difficulties or unnecessary hardships in carrying out sub. (1), the department may by general or special order make reasonable exceptions or modifications with due regard for the life, health, safety and welfare of minors employed in street trades. The investigation and orders shall be made pursuant to ss. 101.01 to 101.25, and have the same force and effect as orders issued pursuant to those sections. These orders are subject to review as provided in ch. 227.

(3) The form and requisites of street trade permits shall be the same as those specified for child labor permits in s. 103.73, except as provided in sub. (3m) and except that the permits may be issued on special street trade permit blanks of a form determined by the department. Each minor for whom a street trade permit is issued shall be provided by the department or the permit officer issuing the permit with a street trade identification card of a form determined by the department. He or she shall carry the identification card while engaged in street trade employment and shall not transfer it to any other person.

(3m) (a) In addition to the information required for a street trade permit under sub. (3), a street trade permit obtained by a house–to–house employer shall contain the minor's permanent home address and social security number.

(b) A house–to–house employer shall have a copy of the street trade permit issued for the minor stamped or endorsed by the clerk of any municipality where the minor conducts a street trade from house to house.

(c) This subsection does not apply to employment of a minor by a newspaper publisher or in a fund–raising sale for a nonprofit organization, a public school or a private school.

(4) In relation to employment in street trades a permit issued under this section has the same force and effect as a permit issued under ss. 103.64 to 103.82; and the failure to obtain a permit when required under this section subjects the employer to the same penalties and liabilities as failure to obtain a permit when required under ss. 103.64 to 103.82.

(5) This section does not apply to employment of a minor in a fund–raising sale for a nonprofit organization, a public school or a private school.

History: 1971 c. 228 s. 43; 1971 c. 271, 307; 1973 c. 183; 1985 a. 1; 1987 a. 187; 1989 a. 113; 1993 a. 492.

103.26 Refusal or revocation of permits and identification cards. (1) The department or permit officer may refuse to grant a street trade permit and identification card to a minor who seems physically unable to perform the work or whose school record indicates that the minor should not undertake such employment in addition to school, or whenever in the judgment of the department or permit officer the best interests of the minor would be served by such refusal.

(2) The department may revoke a street trade permit and identification card if the minor for whom such permit was issued is found by the department to have worked when prohibited under s. 103.24, if it appears to the department that such permit was improperly or illegally issued or if in their judgment the best interests of the minor would be served by such revocation. The department shall by registered mail notify such minor and the minor's employer of such revocation. On receipt of such notice the employer shall immediately return the revoked permit and discontinue the employment of such minor, and the minor shall immediately return the revoked identification card to the permit officer.

History: 1973 c. 183; 1993 a. 492.

103.27 Duties of employers of minors in street trades. (1) Every employer of minors in street trades shall keep a record for each minor of his or her name, address and date of birth.

(2) Every employer shall receive and file a street trade permit authorizing employment of each minor by him or her before the minor is permitted to work; and shall keep the permit on file and allow inspection of the permit at any time by the department or any police or school attendance officer.

(3) This section does not apply to employment of a minor in a fund–raising sale for a nonprofit organization, a public school or a private school.

History: 1971 c. 271; 1973 c. 183; 1979 c. 298; 1985 a. 1; 1993 a. 492.

103.275 Duties of employers in house–to–house street trades. (1) CERTIFICATION REQUIRED. No person may do any of the following without obtaining a certificate under sub. (2):

(a) Act as a house–to–house employer.

(b) Recruit or offer employment to a minor to conduct street trades from house to house.

(2) APPLICATION AND ISSUANCE OF CERTIFICATE. (a) A person shall apply to the department for a house–to–house employer certificate by submitting an application to the department. The department shall furnish applications upon request and applications shall contain all of the following:

1. The name of the applicant and the address and telephone of its principal place of business.

2. If the applicant is a corporation, the date and place of its incorporation.

2L. If the applicant is a limited liability company, the date and place of its organization.

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3. The name and permanent home address of the sole proprietor, managing partner, managers or principal officers of the applicant.

4. The names, permanent home addresses and dates of birth of any of the applicant's employes, agents or representatives who supervise minor employes conducting street trades from house to house.

5. The employer identification numbers assigned to the applicant by the internal revenue service and the department of revenue.

6. Any documents required by the department to prove that the applicant has complied with sub. (3).

7. Any other information that the department considers relevant.

(b) Upon receipt of a properly completed application, the department shall issue a house–to–house employer certificate if all of the following apply:

1. The department is satisfied that the applicant will comply with ss. 103.21 to 103.31.

2. The applicant has established proof of ability to pay under sub. (3).

3. If the application is for a new certificate after revocation under sub. (7), the revocation occurred at least 12 months before issuance of the new certificate.

(c) A person who receives a house–to–house employer certificate shall notify the department of any changes in the information required in the application submitted under par. (a) within 30 days after the change occurs.

(d) A house–to–house employer certificate is valid for a 12–month period. A house–to–house employer may renew a certificate by submitting an application under par. (a), subject to the conditions under par. (b).

(3) FINANCIAL RESPONSIBILITY. (a) A house–to–house employer shall establish proof of its ability to pay any compensation owed to minor employes and any penalties that may be imposed under s. 103.29.

(b) A house–to–house employer shall prove its ability to pay under par. (a) by maintaining one of the following commitments, in an amount of at least $5,000 and in a form approved by the department:

1. A bond.

2. A certificate of deposit.

3. An established escrow account.

4. An irrevocable letter of credit.

(c) The commitment described in par. (b) shall be established in favor of or made payable to the department, for the benefit of the state and any minor employe who does not receive the compensation earned by the minor employe. The house–to–house employer shall file with the department any agreement, instrument or other document necessary to enforce the commitment against the house–to–house employer or any relevant 3rd party, or both.

(4) DISCLOSURE TO MINOR EMPLOYES. (a) When a minor applies for a job to conduct street trades from house to house, the house–to–house employer shall inform the minor in writing of the terms and conditions of employment including all of the following:

1. Compensation, including commissions, bonuses or contest awards.

2. The time and manner of the payment of compensation.

3. The number of days per week and of hours per day that the minor would be required to conduct street trades from house to house.

4. The nature and frequency of required employment–related meetings and how compensation is paid for attendance at the meetings.

5. Whether and how the house–to–house employer provides transportation.

6. The expenses related to employment that the applicant would be required to pay.

(b) No house–to–house employer may fail to comply with the terms of the written disclosure statement required under par. (a). A house–to–house employer may change the terms of a disclosure statement by a supplemental document in writing, if the change applies only prospectively.

(5) RECORDS AND INSPECTION. A door–to–door employer shall do all of the following:

(a) Keep a copy of the street trade permit obtained for an employe under s. 103.25 for at least 3 years after the employe attains the age of 18 or leaves the employment of the employer, whichever occurs first.

(b) Keep a list of the names of all municipalities where minor employes of the house–to–house employer conducted street trades from house to house within the last 3 years.

(c) At the department's request, do any of the following:

1. Allow the department to inspect the certificate issued under sub. (2) or any street trade permits obtained under s. 103.25.

2. Provide a list of the municipalities where the house–to–house employer intends to employ minors to conduct street trades from house to house within 6 months after the date of the request.

(6) NOTIFICATION TO POLICE OR SHERIFF. (a) When a house–to–house employer obtains a stamp from a municipal clerk under s. 103.25 (3m) (b), the house–to–house employer shall provide notice that a minor is or will be conducting a street trade for the house–to–house employer in the municipality to the following:

1. The local police department, if the municipality has a police department and a population of 2,500 or more.

2. To the office of the sheriff of the county where the municipality is located, if the municipality has no police department.

3. To the local police department or the office of the sheriff of the county where the municipality is located, if the municipality has a police department or a population greater than 2,500.

(7) SUSPENSION OR REVOCATION OF CERTIFICATE. (a) The department may investigate and hold hearings in connection with certificates issued under sub. (2).

(b) After providing at least 10 days' notice to a house–to–house employer, the department may, on its own or upon a written and signed complaint, suspend the house–to–house employer's certificate. The department shall serve a copy of the complaint with notice of a suspension of the certificate on the person complained against, and the person shall file an answer to the complaint with the department and the complainant within 10 days after service. After receiving the answer, the department shall set the matter for hearing as promptly as possible and within 30 days after the date of filing the complaint. Either party may appear at the hearing in person or by attorney or agent. The department shall make its findings and determination concerning the suspension within 90 days after the date that the hearing is concluded and send a copy to each interested party.

(c) The department may revoke a certificate issued under sub. (2) after holding a public hearing at a place designated by the department. At least 10 days prior to the revocation hearing, the department shall send written notice of the time and place of the revocation hearing to the person holding the certificate and to the person's attorney or agent of record by mailing the notice to their last–known address. The testimony presented and proceedings at the revocation hearing shall be recorded and preserved as the records of the department. The department shall, as soon after the hearing as possible, make its findings and determination concerning revocation and send a copy to each interested party.

(d) The department may suspend a certificate under par. (b) only if it has reason to believe, or may revoke a certificate under par. (c) only if it finds, that the house–to–house employer has done any of the following:

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1. Submitted false information to the department in an application under sub. (2) (a), if the information caused the department to issue the certificate when it would otherwise not have done so.

2. Failed to notify the department of a change in information under sub. (2) (c).

3. Failed to comply with the terms of a written disclosure statement under sub. (4).

4. Failed to maintain proof of ability to pay under sub. (3).

5. Failed to comply with s. 103.23, 103.24, 103.25 or 103.27 or the rules of the department.

(8) EXCEPTION. This section does not apply to the employment of a minor by a newspaper publisher or in a fund–raising sale for a nonprofit organization, a public school or a private school.

History: 1989 a. 113, 359; 1993 a. 112.

103.28 Enforcement. (1) Sections 103.21 to 103.31 shall be enforced by the department. Police and school attendance officers of cities, towns, villages and school districts shall assist the department in enforcement by questioning minors seen on the streets engaged in street trades and reporting to the department all cases of minors apparently engaged in street trades in violation of ss. 103.21 to 103.31.

(2) The failure of an employer to produce for inspection by the department or any school attendance or police officer a permit required for a minor employed in street trades is prima facie evidence of unlawful employment of the minor.

(3) The department may refer violations of ss. 103.21 to 103.275 for prosecution by the department of justice or the district attorney for the county in which the violation occurred.

History: 1971 c. 271; 1973 c. 183; 1979 c. 298; 1989 a. 113.

103.29 Penalties. (1) Any employer who employs or permits the employment of any minor in street trades in violation of ss. 103.21 to 103.31 or of any order issued thereunder or who hinders or delays the department or any school attendance or police officer in the performance of their duties under ss. 103.21 to 103.31 may be required to forfeit not less than $25 nor more than $1,000 for each day of the first offense and, for the 2nd or subsequent violation of ss. 103.21 to 103.31 within 5 years, as measured from the dates the violations initially occurred, may be fined not less than $250 nor more than $5,000 for each day of the 2nd or subsequent offense or imprisoned not more than 30 days or both.

(2) In addition to the penalties under sub. (1), any employer who employs any minor in violation of s. 103.24 or 103.275 (1) or (4) (b) or rules of the department shall be liable, in addition to the wages paid, to pay to each minor affected, an amount equal to twice the regular rate of pay as liquidated damages for all hours worked in violation per day or per week, whichever is greater.

History: 1971 c. 271; 1981 c. 390; 1987 a. 332 ss. 8 to 10, 64; 1989 a. 113.

103.30 Penalty on newspapers for allowing minors to loiter around premises. A newspaper publisher or printer or person having for sale newspapers or magazines shall not permit any minor under 18 years of age to loiter or remain around any premises where the newspapers or magazines are printed, assembled, prepared for sale or sold when the minor is required under s. 118.15 to attend school. Any person violating this section is subject to the penalties specified in s. 103.29.

History: 1971 c. 271; 1973 c. 183; 1987 a. 332.

103.31 Penalty on parent or guardian. Any parent or guardian who permits a minor under his or her control to be employed in violation of ss. 103.21 to 103.31 or of any order of the department issued thereunder may be required to forfeit not less than $10 nor more than $250 for each day of the first offense and, for the 2nd or subsequent violation of ss. 103.21 to 103.31 within 5 years, as measured from the dates the violations initially occurred, may be required to forfeit not less than $25 nor more than $1,000 for each day of the 2nd or subsequent offense.

History: 1971 c. 271; 1987 a. 332.

103.32 Recovery of arrears of wages. The department, on behalf of the minor, may sue the employer under s. 109.09 for the recovery of any arrears of wages to which the minor is entitled under this chapter.

History: 1971 c. 271, 307; 1975 c. 380 s. 5.

103.33 Discriminatory acts; street trades. Section 111.322 (2m) applies to discharge and other discriminatory acts against an employe arising in connection with any proceeding under s. 103.28 or 103.32.

History: 1989 a. 228.

103.35 Information required for licensure. No state office, department, board, examining board, affiliated credentialing board, commission, council or independent agency in the executive branch, the legislature or the courts may, as a condition for receiving an occupational or professional certificate, license, permit or registration, require the submission of information by the applicant which is not essential for the determination of eligibility for the issuance or renewal of the certificate, license, permit or registration. Information which is not essential to determine eligibility for issuance or renewal may be requested but the applicant shall be notified in a prominent place on or accompanying the request that she or he is not required to provide such information.

History: 1979 c. 34; 1993 a. 107.

103.37 Certain requirements to obtaining employment prohibited. (1) It shall be unlawful for any employer, as defined in sub. (3) to require any employe or applicant for employment to pay the cost of a medical examination required by the employer as a condition of employment.

(2) The term "employe" shall mean and include every person who may be permitted, required or directed by any employer, as defined in sub. (3) in consideration of direct or indirect gain or profit, to engage in any employment.

(3) "Employer", as used in this section means an individual, a partnership, an association, a corporation, a limited liability company, a legal representative, trustee, receiver, trustee in bankruptcy, and any common carrier by rail, motor, water or air doing business in or operating within the state.

(4) Any employer who violates this section may be fined not more than $100 for each violation. The department shall enforce this section.

History: 1977 c. 29 ss. 1034, 1035, 1654 (9) (a); 1977 c. 418; 1983 a. 189 ss. 155, 329 (4); 1993 a. 112.

State, its political subdivisions, and counties are not employers under this section. 69 Atty. Gen. 103.

103.38 Eight hours a day's work, when. In all engagements to labor in any manufacturing or mechanical business, where there is no express contract to the contrary, a day's work shall consist of eight hours and all engagements or contracts for labor in such cases shall be so construed; but this shall not apply to any contract for labor by the week, month or year.

103.43 Fraudulent advertising for labor. (1) It shall be unlawful to influence, induce, persuade or attempt to influence, induce, persuade or engage workmen to change from one place of employment to another in this state or to accept employment in this state or to bring workmen of any class or calling into this state to work in any department of labor in this state, through or by means of any false or deceptive representations, false advertising or false pretenses concerning the kind and character of the work to be done, or amount and character of the compensation to be paid for such work, or the sanitary or other conditions of the employment, or failure to state in any advertisement, proposal or contract for the employment that there is a strike or lockout at the place of

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the proposed employment, when in fact such strike or lockout then actually exists in such employment at such place. Any of such unlawful acts shall be deemed a false advertisement, or misrepresentation for the purposes of this section.

(1a) A strike or lockout shall be deemed to exist as long as the usual concomitants of a strike or lockout exist; or unemployment on the part of workers affected continues; or any payments of strike benefits is being made; or any picketing is maintained; or publication is being made of the existence of such strike or lockout.

(2) Any person who, by himself or herself, or by a servant or agent, or as the servant or agent of any other person, or as an officer, director, servant or agent of any firm, corporation, association or organization of any kind, violates sub. (1) shall upon conviction thereof be punished by a fine of not more than $2,000 or by imprisonment in the county jail not more than one year or by both such fine and imprisonment.

(3) Any person who shall be influenced, induced or persuaded to engage with any persons mentioned in sub. (1), through or by means of any of the things therein prohibited, shall have a right of action for recovery of all damages that he shall have sustained in consequence of the false or deceptive representation, false advertising or false pretenses used to induce him to change his place of employment or to accept such employment, against any person or persons, corporations or companies or associations, directly or indirectly, causing such damage; and in addition to all such actual damages such workman may have sustained, shall be entitled to recover such reasonable attorney fees as the court shall fix, to be taxed as costs in any judgment recovered.

History: 1993 a. 492.

103.45 Time checks; penalty. All persons paying wages in time checks or other paper than legal money shall make such time checks or paper payable in some designated place of business in the county in which the work was performed or at the office of the person if within this state, or at any bank within this state. Any person failing to comply with this section shall be fined not to exceed $100 nor less than $10.

103.455 Deductions for faulty workmanship, loss, theft or damage. No employer shall make any deduction from the wages due or earned by any employe, who is not an independent contractor, for defective or faulty workmanship, lost or stolen property or damage to property, unless the employe authorizes the employer in writing to make such deduction or unless the employer and a representative designated by the employe shall determine that such defective or faulty work, loss or theft, or damage is due to worker's negligence, carelessness, or wilful and intentional conduct on the part of such employe, or unless the employe is found guilty or held liable in a court of competent jurisdiction by reason thereof. If any such deduction is made or credit taken by any employer, that is not in accordance with this section, the employer shall be liable for twice the amount of the deduction or credit taken in a civil action brought by said employe. Any agreement entered into between employer and employe contrary to this section shall be void and of no force and effect. In case of a disagreement between the 2 parties, the department shall be the 3rd determining party subject to any appeal to the court. Section 111.322 (2m) applies to discharge and other discriminatory acts arising in connection with any proceeding to recover a deduction under this section.

History: 1989 a. 228.

The consent of the employe may only serve as a basis for a deduction where it is given in writing after the loss and before the deduction. Donovan v. Schlesner, 72 W (2d) 74, 240 NW (2d) 135.

Termination of employe–at–will may have violated public policy underlying this section. Wandry v. Bull's Eye Credit, 129 W (2d) 37, 384 NW (2d) 325 (1986).

Commissions earned over and above a salary are wages under this section. The 6 year statute of limitations under s. 893.43 applicable to claims for commissions applies to the recovery of deductions from commissions under this section. A claimant need not first bring a claim before DILHR if the employer has never given the employe an opportunity to contest the deductions. Erdman v. Jovoco, Inc. 181 W (2d) 736, 512 NW (2d) 487 (1994).

103.457 Listing deductions from wages. An employer shall state clearly on the employe's pay check, pay envelope, or paper accompanying the wage payment the amount of and reason for each deduction from the wages due or earned by the employe, except such miscellaneous deductions as may have been authorized by request of the individual employe for reasons personal to the employe. A reasonable coding system may be used by the employer.

History: 1993 a. 492.

103.46 Contracts; promises to withdraw from or not to join labor, employers' or cooperative organizations are void. Every undertaking or promise hereafter made, whether written or oral, express or implied, constituting or contained in either:

(1) A contract or agreement of hiring or employment between any employer and any employe or prospective employe, whereby either party to such contract or agreement undertakes or promises not to join, become or remain, a member of any labor organization or of any organization of employers, or either party to such contract or agreement undertakes or promises to withdraw from the employment relation in the event that he or she joins, becomes or remains, a member of any labor organization or of any organization of employers; or

(2) In a contract or agreement for the sale of agricultural, horticultural or dairy products between a producer of such products and a distributor or purchaser thereof, whereby either party to such contract or agreement undertakes or promises not to join, become or remain a member of any cooperative association organized under ch. 185 or of any trade association of the producers, distributors or purchasers of such products, is hereby declared to be contrary to public policy and wholly void and shall not afford any basis for the granting of legal or equitable relief by any court.

History: 1985 a. 30 s. 42; 1993 a. 492.

103.465 Restrictive covenants in employment contracts. A covenant by an assistant, servant or agent not to compete with his employer or principal during the term of the employment or agency, or thereafter, within a specified territory and during a specified time is lawful and enforceable only if the restrictions imposed are reasonably necessary for the protection of the employer or principal. Any such restrictive covenant imposing an unreasonable restraint is illegal, void and unenforceable even as to so much of the covenant or performance as would be a reasonable restraint.

A provision in an employer's profit sharing and retirement plan that calls for forfeiture of benefits by employes who engage in competitive enterprises is valid and enforceable only if it meets the requirements of this section. Holsen v. Marshall & Ilsley Bank, 52 W (2d) 281, 190 NW (2d) 189.

A provision of a pension plan denying benefits if the retired employe accepts any employment in the same industry without limit as to time or area is void. Estate of Schroeder, 53 W (2d) 59, 191 NW (2d) 860.

This section, limiting the enforceability of covenants not to compete to those containing restrictions reasonably necessary for the protection of the employer or principal, incorporates the pre–existing structure of the common law, under which contracts in restraint of trade are viewed with disfavor. Behnke v. Hertz Corp. 70 W (2d) 818, 235 NW (2d) 690.

Where profit sharing plan provided for forfeiture in event covered employe worked for "competitive business", term was construed to mean only businesses which seek out and appeal to same customers and offer substantially identical services. Zimmerman v. Brennan, 78 W (2d) 510, 254 NW (2d) 719.

Five basic requirements necessary to enforcement of a restrictive covenant discussed. Chuck Wagon Catering, Inc. v. Raduege, 88 W (2d) 740, 277 NW (2d) 787 (1979).

Covenant prohibiting executive employe from contacting company clients with whom employe had had no previous contact was not unreasonable per se. Hunter of Wisconsin, Inc. v. Hamilton, 101 W (2d) 460, 304 NW (2d) 752 (1981).

Covenant by employes not to compete is not automatically voided by presence of unreasonable provision for liquidated damages. Whether specific restraints as to area and time are necessary to protect employer is question of law to be resolved on basis of facts. Fields Foundation, Ltd. v. Christensen, 103 W (2d) 465, 309 NW (2d) 125 (Ct. App. 1981).

Agreement requiring agents of insurance company to forfeit their extended earnings if after termination they engaged in certain competitive practices was unenforceable. Streiff v. American Family Mut. Ins. Co. 118 W (2d) 602, 348 NW (2d) 505 (1984).

Territorial limits in a restrictive covenant need not be expressed in geographical terms. General Medical Corp. v. Kobs, 179 W (2d) 422, 507 NW (2d) 381 (Ct. App. 1993).

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Interests of employers which may be protected by covenants discussed. Wausau Medical Center v. Asplund, 182 W (2d) 274, 514 NW (2d) 34 (Ct. App. 1994).

Restrictive covenant was not overbroad. Brunswick Corp. v. Jones, 784 F (2d) 271 (1986).

Drafting and enforcing restrictive covenants not to compete. Richards, 55 MLR 241.

Drafting enforceable covenants not to compete. Nettesheim. WBB Oct. 1986.

103.49 Wage rate on state work. (1) In this section:

(a) "Area" means the county or other locality from which labor for any project would normally be secured.

(b) "Hourly basic rate" means the hourly wage paid to any employe, excluding any contributions or payments for health and welfare benefits, vacation benefits, pension benefits and any other economic benefits, whether paid directly or indirectly.

(c) "Prevailing hours of labor" in any trade or occupation in any area means the hours of labor per day and per week worked within the area by a larger number of workers than are employed in the trade or occupation for any other number of hours per day or week. In no event shall the prevailing hours of labor be deemed to be more than 8 hours per day nor more than 40 hours per week.

(d) "Prevailing wage rate" in any trade or occupation in any area means the hourly basic rate paid plus the hourly contribution for health and welfare benefits, vacation benefits, pension benefits and any other economic benefit, whether paid directly or indirectly, to a majority of all persons employed in the trade or occupation in the area, or if there is no rate at which a majority are employed then the prevailing wage rate shall be the rate which is paid to a larger number of employes than any other rate paid in the area for work in the trade or occupation.

(2) Any contract hereafter made for the erection, construction, remodeling or repairing of any public building or for any other project of public works, except contracts for the construction or maintenance of public highways and bridges, to which the state, any department thereof or any public building corporation is a party shall contain a stipulation that no laborer, workman or mechanic employed directly upon the site of the work by the contractor or by any subcontractor, agent or other person, doing or contracting to do all or a part of the work, shall be permitted to work a greater number of hours per day or per calendar week than the prevailing hours of labor determined pursuant to this section, except that any such laborer, workman or mechanic may be permitted or required to work more than such prevailing number of hours per day and per calendar week if he is paid for all hours in excess of the prevailing hours at a rate of at least 1–1/2 times his hourly basic rate of pay; nor shall he be paid less than the prevailing wage rate in the same or most similar trade or occupation in the area wherein such public building or project of public works is situated; nor shall this section apply to wage rates and hours of employment of laborers, workmen or mechanics engaged in the processing or manufacture of materials or products or to the delivery thereof by or for commercial establishments which have a fixed place of business from which they regularly supply such processed or manufactured materials or products; except that this section shall apply to laborers, workmen or mechanics who deliver mineral aggregate such as sand, gravel or stone which is incorporated into the work under the contract by depositing the material substantially in place, directly or through spreaders, from the transporting vehicle. The prevailing wage rates, prevailing hours of labor, and hourly basic rates of pay determined pursuant to this section shall be set forth specifically in the contract.

(3) Before bids are asked for any work to which this section applies, the department or officer having the authority to prescribe the specifications shall request the department to ascertain the prevailing wage rates, prevailing hours of labor and hourly basic rates of pay for all trades and occupations required in the work under contemplation in the area in which the work is to be done. The department shall make such investigations as may be necessary to enable it to ascertain the prevailing wage rate, prevailing hours of labor and hourly basic rate of pay for each such trade or occupation. It shall make its determination within 30 days after receipt of the request and shall file the same with the department or officer applying therefor. The prevailing hours of labor, the prevailing wage rates, the hourly basic rates of pay and trades or occupations for all labor involved in each project to which this section is applicable shall, together with the provisions of subs. (2) and (4), be kept posted on the project by the employer in at least one conspicuous place for the information of the employes working on the project.

(4) Any officer or employe of the state who publishes any specifications or executes any contract for the erection, construction, remodeling or repairing of any public building or of any other project of public works as defined in sub. (2), to which the state, any department thereof or any public building corporation is a party without complying with this section and any contractor, subcontractor or agent thereof who, after executing a contract in compliance with this section, pays to any laborer, workman or mechanic employed directly upon the site of the work in his or their employ a lesser wage for work done under such contract than the prevailing wage rate as set forth in the contract shall be fined not more than $200, or imprisoned for not more than 6 months, or both. Such agent or subcontractor shall furnish to the contractor evidence of compliance with this section. Each day any violation of this subsection continues shall be deemed a separate offense.

(5) It shall be the duty of the department to enforce this section. To this end it may demand, and it shall be the duty of every contractor and subcontractor to furnish to the department, copies of any or all payrolls and may examine all records relating to the wages paid laborers, workers, or mechanics on work to which this section is applicable. Section 111.322 (2m) applies to discharge and other discriminatory acts arising in connection with any proceeding under this section.

(6) This section shall not apply to a contract, or to work under a contract, described or referred to in sub. (2) if the estimated cost of completing the project is less than the estimated cost of completion under s. 66.293 (3) (c) as adjusted by the department.

(7) (a) Except as provided under pars. (b) and (c), the department shall distribute to all state agencies, as defined in s. 20.001 (1), a list of persons whom the department has found to have failed to pay the prevailing wage rate determined under sub. (1) or to have paid less than 1.5 times the hourly basic rate of pay for hours worked on a project in excess of the prevailing hours determined under sub. (1) at any time in the preceding 3 years. The department shall include with any such name the address of such person and shall specify when and how such person has failed to pay the prevailing wage rate determined under this subsection and when and how such person has failed to pay less than 1.5 times the hourly basic rate of pay for hours worked on a project in excess of the prevailing hours of labor determined under this subsection. No state agency may award any contract to such person unless otherwise recommended by the department or unless 3 years have elapsed from the date the department issued its findings or date of final determination by a court of competent jurisdiction, whichever is later.

(b) The department may not include in a notification under par. (a) the name of any person on the basis of having let work to a person whom the department has found to have failed to pay the prevailing wage rate determined under sub. (1) or has found to have paid less than 1.5 times the hourly basic rate of pay for hours worked on a project in excess of the prevailing hours of labor determined under sub. (1).

(c) This subsection does not apply to any contractor, subcontractor or agent who in good faith commits a minor violation of this section, as determined on a case–by–case basis through administrative hearings with all rights to due process afforded to all parties or who has not exhausted or waived all appeals.

(d) Any person submitting a bid on a project subject to this section shall be required, on the date the person submits the bid, to identify any construction business in which the person, or a shareholder, member, officer or partner of the person, if the person is

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a business, owns, or has owned at least a 25% interest on the date the person submits the bid or at any other time within 3 years preceding the date the person submits the bid, if the business has been found to have failed to pay the prevailing wage rate determined under this section or to have paid less than 1.5 times the hourly basic rate of pay for hours worked on a project in excess of the prevailing hours of labor determined under this section.

(e) The department shall promulgate rules to administer this subsection.

History: 1983 a. 27; 1985 a. 159; 1985 a. 332 ss. 141, 142, 253; 1987 a. 403 s. 256; 1989 a. 228; 1993 a. 112.

103.50 Highway contracts. (1) DEFINITIONS. In this section:

(a) "Area" means the locality from which labor for any project within such area would normally be secured.

(b) "Hourly basic rate" means the hourly wage paid to any employe, excluding any contributions or payments for health and welfare benefits, vacation benefits, pension benefits and any other economic benefits, whether paid directly or indirectly.

(c) "Prevailing hours of labor" means the hours of labor per day and per week worked within the area by a larger number of workers of the same class than are employed within the area for any other number of hours per day and per week. In no event shall the prevailing hours of labor be deemed to be more than 8 hours per day nor more than 40 hours per week.

(d) "Prevailing wage rate" means the hourly basic rate plus the contribution for health and welfare benefits, vacation benefits, pension benefits and any other economic benefit, whether paid directly or indirectly, paid to the largest number of workers engaged in the same class of labor within the area, including rental rates for truck hire paid to those who own and operate the truck. In no event shall the prevailing wage rate for any class of labor be deemed to be less than a reasonable and living wage, nor shall truck rental rates established pursuant to this provision be subject to the provisions of sub. (2) relating to hours worked in excess of the prevailing hours when operated in excess of 8 hours in any one day or 40 hours in any one week.

(2) HOURS OF LABOR. No laborer or mechanic in the employ of the contractor or of any subcontractor, agent or other person doing or contracting to do all or a part of the work under a contract based on bids as provided in s. 84.06 (2) to which the state is a party for the construction or improvement of any highway shall be permitted to work a longer number of hours per day or per calendar week than the prevailing hours of labor determined pursuant to this section; nor shall he be paid a lesser rate of wages than the prevailing rate of wages thus determined, for the area in which the work is to be done; except that any such laborer or mechanic may be permitted or required to work more than such prevailing number of hours per day and per calendar week if he is paid for all hours in excess of the prevailing hours at a rate of at least 1–1/2 times his hourly basic rate of pay. This section shall not apply to wage rates and hours of employment of laborers or mechanics engaged in the processing or manufacture of materials or products or to the delivery thereof by or for commercial establishments which have a fixed place of business from which they regularly supply such processed or manufactured materials or products; except that this section shall apply to laborers or mechanics who deliver mineral aggregate such as sand, gravel or stone which is incorporated into the work under the contract by depositing the material substantially in place, directly or through spreaders, from the transporting vehicle.

(3) INVESTIGATIONS; DETERMINATIONS. (a) The department shall conduct investigations and hold public hearings necessary to define classes of laborers and mechanics and to inform itself as to the hours of labor and wage rates prevailing in all areas of the state for all classes of labor and mechanics commonly employed in highway construction work, with a view to ascertaining and determining prevailing hours of labor, prevailing wage rates and hourly basic rates of pay accordingly.

(b) The department shall inform itself of the nature of the equipment furnished by truck drivers who own and operate trucks on such contract work, with a view to ascertaining and determining minimum rates for the equipment. In order to protect the prevailing wage rates established by the department from evasion through unrealistic rates paid truck drivers for equipment owned and operated by them, the department shall establish minimum rates for the equipment owned and operated by them. It is the intent of this provision to prevent a truck driver who owns the equipment that the truck driver operates from being required to accept less than the actual cost of operating the equipment, thereby reducing the prevailing wage rates established by the department.

(4) CERTIFICATION OF PREVAILING HOURS AND WAGES. The department shall prior to May 1 of the current calendar year certify to the department of transportation the prevailing hours of labor, the prevailing wage rate and the hourly basic rate of pay for all such classes of laborers and mechanics in each area. The certification shall in addition to the current prevailing hours of labor, the prevailing wage rates and the hourly basic rates of pay include future hours and rates when such hours and rates can be determined for any such classes of laborers and mechanics in any area and shall specifically set forth the effective dates thereof when future hours and rates are certified. If a construction project extends into more than one area there shall be but one standard of hours of labor and wage rates for the entire project.

(5) APPEALS TO GOVERNOR. If the department of transportation deems any determination of the department as to the prevailing hours of labor, prevailing wage rates and the hourly basic rates of pay in an area to have been incorrect, it may appeal to the governor, whose determination shall be final.

(6) CONTENTS OF CONTRACTS. The prevailing hours of labor, the prevailing wage rates and the hourly basic rates of pay and classifications for all labor as certified by the department shall be specifically set forth in the proposals and contracts for each highway construction contract to which the state is a party, and shall, together with the provisions of sub. (7), be kept posted on the project by the employer in at least one conspicuous place for the information of employes working on the project.

(7) PENALTIES. (a) Except as provided in par. (b), any contractor, subcontractor or agent thereof who violates this section may be fined not less than $50 nor more than $200 or imprisoned not more than 18 months or both. Each day that any such violation continues shall be deemed a separate offense.

(b) Whoever induces any individual who seeks to be or is employed on any project subject to this section to give up or forego any part of the wages to which he or she is entitled under the contract governing such project by threat not to employ, by threat of dismissal from such employment or by any other means is guilty of an offense under s. 946.15 (1).

(c) Any person employed on a project under a contract subject to this section who knowingly permits the contractor or subcontractor to pay him or her less than the prevailing wage rate set forth in the contract, or who gives up any part of the compensation to which he or she is entitled under the contract, is guilty of an offense under s. 946.15 (2).

(8) ENFORCEMENT AND PROSECUTION. The department of transportation shall require adherence to subs. (2) and (6). The department of transportation may demand, and every contractor and subcontractor shall furnish, copies of payrolls and it may examine all records relating to hours of work and the wages paid laborers and mechanics on the work to which this section is applicable. Upon request of the department of transportation or upon complaint of alleged violation, the district attorney of the county in which the work is located shall make such investigation as nec-

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essary and prosecute violations in a court of competent jurisdiction. Section 111.322 (2m) applies to discharge and other discriminatory acts arising in connection with any proceeding under this section.

History: 1977 c. 29 s. 1654 (8) (c); 1979 c. 269; 1985 a. 332 ss. 143, 144, 253; 1989 a. 228; 1993 a. 492.

Cross–reference: See s. 227.01 (13) (t) for provision that determinations of hours, wages and truck rentals need not be filed as rules but are subject to review under Chapter 227.

The WERC has no jurisdiction to enforce wage rates on a highway project as an unfair labor practice if the rates are violated, where the complaining union had no members among the employes affected and was not seeking to represent them. Chauffeurs, Teamsters & Helpers v. WERC, 51 W. (2d) 391, 187 NW (2d) 364.

The department may not make more than one annual certification of the prevailing hours of labor or prevailing wage rates to apply to state highway project contracts. 59 Atty. Gen. 23.

103.51 Public policy as to collective bargaining. In the interpretation and application of ss. 103.51 to 103.62 the public policy of this state is declared as follows:

Negotiation of terms and conditions of labor should result from voluntary agreement between employer and employes. Governmental authority has permitted and encouraged employers to organize in the corporate and other forms of capital control. In dealing with such employers, the individual unorganized worker is helpless to exercise actual liberty of contract and to protect his freedom of labor, and thereby to obtain acceptable terms and conditions of employment. Therefore it is necessary that the individual workman have full freedom of association, self–organization, and the designation of representatives of his own choosing, to negotiate the terms and conditions of his employment, and that he shall be free from the interference, restraint or coercion of employers of labor, or their agents, in the designation of such representatives or in self–organization or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection.

103.52 "Yellow–dog" contracts. (1) Every undertaking or promise made after July 1, 1931, whether written or oral, express or implied, between any employe or prospective employe and that person's employer, prospective employer or any other individual, firm, company, association or corporation is declared to be against public policy if either party thereto undertakes or promises any of the following:

(a) To join or to remain a member of some specific labor organization or to join or remain a member of some specific employer organization or any employer organization.

(b) Not to join or not to remain a member of some specific labor organization or any labor organization, or of some specific employer organization or any employer organization.

(c) To withdraw from an employment relation in the event that the party joins or remains a member of some specific labor organization or any labor organization, or of some specific employer organization or any employer organization.

(2) No undertaking or promise described in sub. (1) shall afford any basis for the granting of legal or equitable relief by any court against a party to such undertaking or promise, or against any other persons who may advise, urge or induce, without fraud, violence, or threat thereof, either party thereto to act in disregard of such undertaking or promise.

(3) This section in its entirety is supplemental to and of s. 103.46 (1).

History: 1993 a. 492.

103.53 Lawful conduct in labor disputes. (1) The following acts, whether performed singly or in concert, shall be legal:

(a) Ceasing or refusing to perform any work or to remain in any relation of employment regardless of any promise, undertaking, contract or agreement in violation of the public policy declared in s. 103.52;

(b) Becoming or remaining a member of any labor organization or of any employer organization, regardless of any such undertaking or promise as is described in s. 103.52;

(c) Paying or giving to, any person any strike or unemployment benefits or insurance or other moneys or things of value;

(d) By all lawful means aiding any person who is being proceeded against in, or is prosecuting any action or suit in any court of the United States or of any state;

(e) Giving publicity to and obtaining or communicating information regarding the existence of, or the facts involved in, any dispute, whether by advertising, speaking, patrolling any public street or any place where any person or persons may lawfully be, without intimidation or coercion, or by any other method not involving fraud, violence, breach of the peace, or threat thereof;

(f) Ceasing to patronize or to employ any person or persons, but nothing herein shall be construed to legalize a secondary boycott;

(g) Assembling peaceably to do or to organize to do any of the acts heretofore specified or to promote lawful interests;

(h) Advising or notifying any person or persons of an intention to do any of the acts heretofore specified;

(i) Agreeing with other persons to do or not to do any of the acts heretofore specified;

(j) Advising, urging, or inducing without fraud, violence, or threat thereof, others to do the acts heretofore specified, regardless of any such undertaking or promise as is described in s. 103.52; and

(k) Doing in concert any or all of the acts heretofore specified shall not constitute an unlawful combination or conspiracy;

(L) Peaceful picketing or patrolling, whether engaged in singly or in numbers, shall be legal.

(2) No court, nor any judge or judges thereof, shall have jurisdiction to issue any restraining order or temporary or permanent injunction which, in specific or general terms, prohibits any person or persons from doing, whether singly or in concert, any of the foregoing acts.

103.535 Unlawful conduct in labor controversies. It shall be unlawful for anyone to picket, or induce others to picket, the establishment, employes, supply or delivery vehicles, or customers of anyone engaged in business, or to interfere with the person's business, or interfere with any person or persons desiring to transact or transacting business with the person, when no labor dispute, as defined in s. 103.62 (3), exists between the employer and the employer's employes or their representatives.

History: 1993 a. 492.

103.54 Responsibility for unlawful acts. No officer or member of any association or organization, and no association or organization participating or interested in a labor dispute (as these terms are defined in s. 103.62) shall be held responsible or liable in any civil action at law or suit in equity, or in any criminal prosecution, for the unlawful acts of individual officers, members, or agents, except upon proof by a preponderance of the evidence and without the aid of any presumptions of law or fact, both of (a) the doing of such acts by persons who are officers, members or agents of any such association or organization, and (b) actual participation in, or actual authorization of, such acts, or ratification of such acts after actual knowledge thereof by such association or organization.

103.545 Recruitment of strikebreakers. (1) In this section:

(a) "Employer" has the meaning given under s. 111.02 (7).

(b) "Strikebreaker" means any person who at least twice during the previous 12–month period has accepted employment for the duration of a strike or a lockout in place of employes who are involved in a strike or lockout of a specific employer, but does not

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include any supervisory or other permanent employe of the employer who is temporarily assigned to perform the duties of an employe involved in a strike or lockout or other permanent or contractual employe whose services are necessary to ensure that the plant or other property of the employer involved in the strike or lockout is properly maintained and protected for the resumption of normal operations at any time.

(2) No employer may knowingly employ or contract with another to employ any strikebreaker to replace employes who are on strike against the employer or locked out by it.

(3) No person who is not directly involved in a strike or lockout may recruit any strikebreaker for employment or secure or offer to secure employment for any strikebreaker when the purpose thereof is to have the strikebreaker replace an employe in an industry or establishment where a strike or lockout exists.

(4) No person, including a licensed employment agent, may transport or arrange to transport to this state any strikebreaker to be engaged in employment for the purpose of replacing employes in an industry or establishment where a strike or lockout exists.

(5) Whoever violates this section or any order of the department issued under this section may be fined not more than $2,000 or imprisoned in the county jail for not more than one year or both.

(6) Upon complaint of an affected employer, labor organization or employe, the department may investigate violations and issue orders to enforce this section. The investigations and orders shall be made under ss. 101.01 to 101.25. Every order issued under this subsection has the same force and effect as orders issued under ss. 101.01 to 101.25, except as otherwise provided in this section. Orders are subject to review as provided in ch. 227. The department of justice may, upon request of the commission, prosecute violations of this section in any court of competent jurisdiction.

History: 1979 c. 322; 1983 a. 189 s. 329 (4).

103.55 Public policy as to labor litigation. In the interpretation and application of ss. 103.56 to 103.59, the public policy of this state is declared to be:

(1) Equity procedure that permits a complaining party to obtain sweeping injunctive relief that is not preceded by or conditioned upon notice to and hearing of the responding party or parties, or that issues after hearing based upon written affidavits alone and not wholly or in part upon examination, confrontation and cross–examination of witnesses in open court, is peculiarly subject to abuse in labor litigation for the reasons that:

(a) The existing state of affairs cannot be maintained but is necessarily altered by the injunction;

(b) Determination of issues of veracity and of probability of fact from affidavits of the opposing parties that are contradictory and, under the circumstances, untrustworthy rather than from oral examination in open court is subject to grave error;

(c) Error in issuing the injunctive relief is usually irreparable to the opposing party; and

(d) Delay incident to the normal course of appellate practice frequently makes ultimate correction of error in law or in fact unavailing in the particular case.

History: 1979 c. 110 s. 60 (9); 1985 a. 135.

103.56 Injunctions: conditions of issuance; restraining orders. (1) No court nor any judge or judges thereof shall have jurisdiction to issue a temporary or permanent injunction in any case involving or growing out of a labor dispute, as defined in s. 103.62, except after hearing the testimony of witnesses in open court (with opportunity for cross–examination) in support of the allegations of a complaint made under oath, and testimony in opposition thereto, if offered, and except after findings of all the following facts by the court or judge or judges thereof:

(a) That unlawful acts have been threatened or committed and will be executed or continued unless restrained;

(b) That substantial and irreparable injury to complainant's property will follow unless the relief requested is granted;

(c) That as to each item of relief granted greater injury will be inflicted upon complainant by the denial thereof than will be inflicted upon defendants by the granting thereof;

(d) That the relief to be granted does not violate s. 103.53;

(e) That complainant has no adequate remedy at law; and

(f) That the public officers charged with the duty to protect complainant's property have failed or are unable to furnish adequate protection.

(2) Such hearing shall be held after due and personal notice thereof has been given, in such manner as the court shall direct, to all known persons against whom relief is sought, and also to those public officers charged with the duty to protect complainant's property. Provided, however, that if a complainant shall also allege that unless a temporary restraining order shall be issued before such hearing may be had, a substantial and irreparable injury to complainant's property will be unavoidable, such a temporary restraining order may be granted upon the expiration of such reasonable notice of application therefor as the court may direct by order to show cause, but in no case less than forty–eight hours.

(3) Such order to show cause shall be served upon such party or parties as are sought to be restrained and as shall be specified in said order, and then only upon testimony under oath, or in the discretion of the court, upon affidavits, sufficient, if sustained, to justify the court in issuing a temporary injunction upon a hearing as herein provided for.

(4) Such a temporary restraining order shall be effective for no longer than five days, and at the expiration of said five days shall become void and not subject to renewal or extension, provided, however, that if the hearing for a temporary injunction shall have been begun before the expiration of the said five days the restraining order may in the court's discretion be continued until a decision is reached upon the issuance of the temporary injunction.

(5) No temporary restraining order or temporary injunction shall be issued except on condition that complainant shall first file an undertaking with adequate security sufficient to recompense those enjoined for any loss, expense, or damage caused by the improvident or erroneous issuance of such order or injunction, including all reasonable costs (together with a reasonable attorney's fee) and expense against the order or against the granting of any injunctive relief sought in the same proceeding and subsequently denied by the court.

(6) The undertaking herein mentioned shall be understood to signify an agreement entered into by the complainant and the surety upon which a decree may be rendered in the same suit or proceeding against said complainant and surety, the said complainant and surety submitting themselves to the jurisdiction of the court for that purpose. But nothing herein contained shall deprive any party having a claim or cause of action under or upon such undertaking from electing to pursue an ordinary remedy by suit at law or in equity.

History: 1993 a. 492.

103.56 (1) and 103.62, relating to limitations upon the jurisdiction of a court to issue injunctions in cases arising from labor disputes, are inapplicable to actions brought by the state or its political subdivisions against public employes. Joint School v. Wisconsin Rapids Ed. Asso. 70 W (2d) 292, 234 NW (2d) 289.

103.57 Clean hands doctrine. No restraining order or injunctive relief shall be granted to any complainant who has failed to comply with any legal obligation which is involved in the labor dispute in question, or who has failed to make every reasonable effort to settle such dispute either by negotiation or with the aid of any available machinery of governmental mediation or voluntary arbitration, but nothing herein contained shall be deemed to require the court to await the action of any such tribunal if irreparable injury is threatened.

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103.58 Injunctions: contents. Except as provided in s. 103.56, no restraining order or temporary or permanent injunction shall be granted in a case involving or growing out of a labor dispute, except on the basis of findings of fact made and filed by the court in the record of the case prior to the issuance of such restraining order or injunction; and every restraining order or injunction granted in a case involving or growing out of a labor dispute shall include only a prohibition of such specific act or acts as may be expressly complained of in the bill of complaint or petition filed in such case and expressly included in said findings of fact made and filed by the court as provided herein; and shall be binding only upon the parties to the suit, their agents, servants, employes and attorneys, or those in active concert and participation with them, and who shall by personal service or otherwise have received actual notice of the same.

103.59 Injunctions: appeals. If any court issues or denies any temporary injunction in a case involving or growing out of a labor dispute, the court shall, upon the request of any party to the proceedings, and on filing the usual bond for costs, forthwith certify the entire record of the case, including a transcript of the evidence taken, to the appropriate appellate court for its review. Upon the filing of the record in the appropriate appellate court the appeal shall be given preference.

History: 1983 a. 219.

103.60 Contempt cases. If a person is charged with contempt under this chapter for violation of a restraining order or injunction issued by a court or judge or judges thereof, the accused shall enjoy:

(1) The rights as to admission to bail that are accorded to persons accused of crime.

(2) The right to be notified of the accusation and a reasonable time to make a defense, provided the alleged contempt is not committed in the immediate view or presence of the court.

(3) Upon demand, the right to a speedy and public trial by an impartial jury of the county in which the contempt was committed, provided that this requirement shall not be construed to apply to contempts committed in the presence of the court or so near thereto as to interfere directly with the administration of justice or to apply to the misbehavior, misconduct or disobedience of any officer of the court in respect to the writs, orders or process of the court. All contempt proceedings brought for the alleged violation of any such restraining order or injunction are independent, original, special proceedings and shall require a unanimous finding of the jury.

(4) A substitution of judge request in this section shall be made under s. 801.58.

History: 1977 c. 135; 1979 c. 257.

A jury trial is required in cases of criminal contempt where the penalty imposed is serious, but a striker charged with civil contempt for violation of an order enjoining a teachers' strike is not entitled to a jury trial. Joint School v. Wisconsin Rapids Ed. Asso. 70 W (2d) 292, 234 NW (2d) 289.

103.61 Punishment for contempt. Punishment for a contempt, specified in s. 103.60, may be by fine, not exceeding $25, or by imprisonment not exceeding ten days, in the jail of the county where the court is sitting, or both, in the discretion of the court. Where a person is committed to jail, for the nonpayment of such a fine, the person must be discharged at the expiration of fifteen days; but where the person is also committed for a definite time, the fifteen days must be computed from the expiration of the definite time.

History: 1993 a. 492.

103.62 Definitions. When used in ss. 103.51 to 103.62, and for the purposes of these sections:

(1) A case shall be held to involve or to grow out of a labor dispute when the case involves persons who are engaged in a single industry, trade, craft, or occupation; or who are employes of one employer; or who are members of the same or an affiliated organization of employers or employes; whether such dispute is (a) between one or more employers or associations of employers and one or more employes or associations of employes; (b) between one or more employers or associations of employers and one or more employers or associations of employers; or (c) between one or more employes or associations of employes and one or more employes or associations of employes; or when the case involves any conflicting or competing interests in a "labor dispute" (as defined in sub. (3)) of "persons participating or interested" therein (as defined in sub. (2)).

(2) A person or association shall be held to be a person participating or interested in a labor dispute if relief is sought against the person or association and if the person or association is engaged in the industry, trade, craft, or occupation in which such dispute occurs, or is a member, officer, or agent of any association of employers or employes engaged in such industry, trade, craft, or occupation.

(3) The term "labor dispute" means any controversy between an employer and the majority of the employer's employes in a collective bargaining unit concerning the right or process or details of collective bargaining or the designation of representatives. Any organization with which either the employer or such majority is affiliated may be considered a party to the labor dispute. The provisions of this subsection shall supersede any provision of the statutes in conflict therewith.

History: 1993 a. 492.

103.64 Employment of minors; definitions. As used in ss. 103.64 to 103.82:

(1) "Deputy", "employe", "employer", "employment", "frequenter", "general order", "local order", "order", "place of employment", "safe", "safety", "special order" and "welfare" have the meanings given in s. 101.01.

(2) "Nonprofit organization" means an organization described in section 501 (c) of the internal revenue code.

(3) "Permit officer" shall mean any person designated by the department to issue child labor permits.

(4) "Private school" has the meaning given in s. 115.001 (3r).

(5) "Public school" has the meaning given in s. 115.01 (1).

History: 1971 c. 228 s. 44; 1971 c. 271; 1985 a. 1.

103.65 General standards for employment of minors. (1) A minor shall not be employed or permitted to work at any employment or in any place of employment 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 employes or frequenters.

(2) No minor shall be employed or permitted to work at any employment for such hours of the day or week, or such days of the week, or at such periods of the day as shall be dangerous or prejudicial to the life, health, safety or welfare of such minor.

History: 1971 c. 271.

Plaintiff was in class protected by rule promulgated under this section; court did not err in giving "negligence per se" instruction. McGarrity v. Welch Plumbing Co. 104 W (2d) 414, 312 NW (2d) 37 (1981).

Trial court erred in failing to hold as matter of law that employer's violation of child labor laws caused injury and that defense of child's contributory negligence was inapplicable to case. D. L. v. Huebner, 110 W (2d) 581, 329 NW (2d) 890 (1983).

103.66 Powers and duties of the department. (1) The department may investigate, determine and fix reasonable classifications of employments, places of employment and minimum ages for hazardous employment for minors, and may issue general or special orders prohibiting the employment of minors in employments or places of employment prejudicial to the life, health, safety or welfare of minors, and may carry out the purposes of ss. 103.64 to 103.82.

(2) The department may investigate and fix reasonable classifications of employments and hours of employment for minors and may issue general or special orders fixing maximum hours of employment for minors per day and per week, maximum days of employment per week, hours at which employment shall begin

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and end and the duration of lunch and other rest periods as are necessary to protect the life, health, safety, and welfare of minors.

(3) The investigations, classifications and orders provided for in subs. (1) and (2) shall be made pursuant to the procedure specified in ss. 101.01 to 101.25. Every order of the department has the same force and effect as the orders issued pursuant to ss. 101.01 to 101.25. These orders are subject to review as provided in ch. 227.

History: 1971 c. 185 s. 6; 1971 c. 271, 307.

103.67 Minimum ages in various employments. **(1)** A minor 14 to 18 years of age shall not be employed or permitted to work in any gainful occupation during the hours that the minor is required to attend school under s. 118.15 unless the minor has completed high school, except that any minor may be employed in public exhibitions as provided in s. 103.78.

(2) A minor under 14 years of age shall not be employed or permitted to work in any gainful occupation at any time, except that:

(a) Minors 12 years of age or older may be employed in school lunch programs of the school which they attend.

(b) Minors under 14 years of age may be employed in public exhibitions as provided in s. 103.78.

(c) Minors 12 years of age or older may be employed in street trades, and any minor may work in fund–raising sales for nonprofit organizations, public schools or private schools, as provided in ss. 103.21 to 103.31.

(d) Minors 12 and 13 years of age may be employed as caddies on golf courses, if they use caddy carts.

(e) Minors 12 years of age or older may be employed in agricultural pursuits.

(f) Minors 12 years of age or older may be employed in and around a home in work usual to the home of the employer, if the work is not in connection with or a part of the business, trade or profession of the employer and the type of employment is not specifically prohibited by ss. 103.64 to 103.82 or by any order of the department.

(g) Unless prohibited under s. 103.65, minors 12 years of age or older may be employed under the direct supervision of the minor's parent or guardian in connection with the parent's or guardian's business, trade or profession.

(h) Minors 12 and 13 years of age may be employed as sideline officials for high school football games.

(i) Minors 11 to 13 years of age may be employed as ball monitors at high school football games and practices.

(3) Sections 103.64 to 103.82 do not apply to the employment of a minor engaged in domestic or farm work performed outside school hours in connection with the minor's own home and directly for the minor's parent or guardian.

History: 1971 c. 271, 307; 1973 c. 183; 1979 c. 234; 1985 a. 1; 1989 a. 126; 1993 a. 492.

Injured minor cannot be charged with contributory negligence when employment is in violation of child labor law. See note to 895.37, citing Tisdale v. Hasslinger, 79 W (2d) 194, 255 NW (2d) 314.

103.68 Hours of labor. Except as the department may from time to time issue orders as provided under s. 103.66 (2) regulating the hours of employment of minors, the following schedule of hours shall be deemed to be necessary to protect minors from employment dangerous or prejudicial to their life, health, safety, or welfare and shall apply to minors of the ages specified therein:

(1) No minor shall be employed or permitted to work at any gainful occupation other than domestic service or farm labor for more than 8 hours in any one day nor more than 40 hours nor more than 6 days in any one week, nor during such hours as the minor is required under s. 118.15 (2) to attend school.

(2) No minor under sixteen shall be employed or permitted to work in any gainful occupation other than domestic service or farm labor more than twenty–four hours in any one week, nor, except in domestic service, farm labor, or in public exhibitions as defined in s. 103.78, or in street trades as defined in s. 103.21, before seven A.M. nor after six P.M.

(3) At least 30 minutes shall be allowed for each meal period which shall commence reasonably close to 6 a.m., 12 m., 6 p.m. or 12 p.m. or approximately midway of any work period or at such other times as deemed reasonable by the department. No minor under age 18 shall be employed or permitted to work more than 6 consecutive hours without a meal period.

History: 1993 a. 492.

103.69 Council on child labor. The council on child labor shall review biennially the hours of employment for minors and the minimum ages for hazardous employment determined by the department under s. 103.66 and make recommendations to the department it deems necessary to protect the life, health, safety and welfare of minors. The department may, by orders issued under s. 103.66, give effect to the recommendations of the council.

History: 1971 c. 271.

See note to 103.65, citing McGarrity v. Welch Plumbing Co. 104 W (2d) 414, 312 NW (2d) 37 (1981).

103.695 Designation of a permit officer. **(1)** (a) The department shall designate a school board, as defined in s. 115.001 (7), as a permit officer unless the school board refuses the designation.

(b) A school board designated as a permit officer under par. (a) may assign the duties of permit officer to an officer or employe of the school district.

(2) The department may designate persons other than school boards as permit officers, regardless of whether any school board refuses designation as a permit officer under sub. (1) (a).

History: 1987 a. 187.

103.70 Permits necessary for minors; exceptions. **(1)** Except as otherwise provided in sub. (2) and in ss. 103.21 to 103.31 and 103.78, and as may be provided under s. 103.79, a minor, unless indentured as an apprentice in accordance with s. 106.01, or unless 12 years and over and engaged in agricultural pursuits, or unless 14 years and over and enrolled in a youth apprenticeship program under s. 101.265, shall not be employed or permitted to work at any gainful occupation or employment unless there is first obtained from the department or a permit officer a written permit authorizing the employment of the minor within those periods of time stated in the permit, which shall not exceed the maximum hours prescribed by law.

(2) Minors may be employed without permits in any employment limited to work in or around a home in work usual to the home of the employer, if the employment is not in connection with or a part of the business, trade or profession of the employer, is in accordance with the minimum age stated in s. 103.67 (2) (d) and is not specifically prohibited by ss. 103.64 to 103.82 or by any order of the department.

History: 1971 c. 271; 1973 c. 59; 1979 c. 234; 1987 a. 187; 1993 a. 437.

Under the neighborhood youth corps program authorized by the economic opportunity act of 1964, all enrollees of this federally sponsored and locally administered program are employes and must be covered by suitable work permits unless exempt because of age or the nature of their activities. The department does not have the authority to waive the permit fee, there being no statutory exemption. 62 Atty. Gen. 256.

103.71 Conditions for issuance of permits. **(1)** Except as provided in s. 103.78, a permit shall not be issued authorizing any minor 14 to 18 years of age to be employed during the hours that the minor is required to attend school under s. 118.15, unless the minor has completed high school. The department and its permit officers shall accept as evidence of the minor's completion of high school either:

(a) A diploma or certificate to this effect issued by the superintendent of public schools or by the principal of the public school last attended by such minor, or in the absence of both the aforementioned persons by the clerk of the proper school board; or

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(b) A diploma or certificate to this effect issued by the superintendent of the parochial school system or by the principal of the parochial or private school last attended by such minor. Such superintendent, principal or clerk shall issue such diploma or certificate upon receipt of any application in behalf of any minor entitled thereto. As used in this paragraph the term "school district" shall apply to all regularly constituted school districts, including union free high school districts.

(2) No permit may be issued authorizing the employment of any minor under 14 years of age at any time, except for:

(a) The employment of minors 11 to 13 years of age as ball monitors at high school football games as provided in s. 103.67 (2) (i).

(b) The employment of minors 12 years of age and over:

1. In school lunch programs under s. 103.67 (2) (a).

2. In street trades as provided in ss. 103.21 to 103.31.

3. As caddies on golf courses as provided in s. 103.67 (2) (d).

4. In the business, trade or profession of the minor's parent or guardian as provided in s. 103.67 (2) (g).

5. As a sideline official at a high school football game as provided in s. 103.67 (2) (h).

(3) No permit may be issued under sub. (2) (b) 4., unless the department or permit officer is satisfied that employment under s. 103.67 (2) (g) is not injurious or detrimental to the minor's education, health, safety or welfare.

History: 1971 c. 271; 1973 c. 59, 183, 336; 1975 c. 94; 1979 c. 234; 1987 a. 187; 1989 a. 126; 1993 a. 492.

103.72 Refusal and revocation of permits. (1) The department or permit officer may refuse to grant permits in the case of minors who seem physically unable to perform the labor at which they are to be employed. They may also refuse to grant a permit if in their judgment the best interests of the minor would be served by such refusal.

(2) Whenever it shall appear to the department that any permit has been improperly or illegally issued, or that the physical or moral welfare of the minor would be best served by the revocation of the permit, the department may forthwith, without notice, revoke the same, and shall by registered mail notify the person employing such minor and the minor holding such permit of such revocation. Upon receipt of such notice, the employer employing such minor shall forthwith return the revoked permit to the department and discontinue the employment of the minor.

103.73 Form and requisites of permit; as evidence. (1) The permit provided under s. 103.70 shall state the name and the date and place of birth of the minor and that the following evidence, records and papers have been examined, approved and filed:

(a) Such evidence as is required by the department showing the age of the minor. The department shall formulate and publish rules and regulations governing the proof of age of minors who apply for labor permits, and such rules and regulations shall bind all persons authorized by law to issue such permits.

(b) A letter written on the regular letterhead or other business paper used by the person who desires to employ the minor, stating the intention of the person to employ the minor and signed by the person or someone duly authorized by the person.

(2) The permits provided under s. 103.70 shall be issued upon blanks furnished by the department.

(3) A child labor permit duly issued shall be conclusive evidence of the age of the minor for whom it was issued in any proceeding under any of the labor laws and under ch. 102, as to any act or thing occurring subsequent to the date such permit was issued.

History: 1971 c. 271; 1975 c. 147 s. 54; 1979 c. 89; 1993 a. 492.

103.74 Duties of employers of minors. Every employer employing a minor under 18 for whom a permit is required, except in street trades, shall:

(1) Receive and file a child labor permit authorizing employment of the minor by him or her before the minor is permitted to do any work, and shall keep the permit on file and allow inspection of the permit at any time by the department or any school attendance officer. A permit shall be valid only for the employer for whom issued.

(2) Keep a record for each employed minor's name, address, date of birth, the time of beginning and ending work and the time for meals each day and the total hours worked each day and each week.

History: 1971 c. 271; 1979 c. 298; 1993 a. 492.

103.75 Certificates of age. (1) The department or persons designated by it may issue certificates of age for minors under rules the department deems necessary. The certificate is conclusive evidence of the age of the minor to whom issued in any proceeding under any of the labor laws and under ch. 102 as to any act or thing occurring subsequent to the date the certificate was issued.

(2) Any person who knowingly offers or assists in offering false evidence of age for the purpose of obtaining an age certificate or who alters, forges, fraudulently obtains, uses, or refuses to surrender upon demand of the department a certificate of age may be fined not more than $100 or imprisoned not to exceed 3 months.

History: 1971 c. 271; 1975 c. 147 s. 54; 1979 c. 89, 177.

103.76 Proof of age in court. Whenever in any proceeding in any court under any of the labor laws or under ch. 102 there is any doubt of the age of a minor a duly issued child labor permit or age certificate shall be conclusive evidence. In the absence of such permit or certificate a duly attested birth certificate or a verified baptismal certificate shall be produced and filed with the court. Upon proof that the birth or baptismal certificate cannot be secured, the record of age stated in the first school enrollment of the child shall be admissible as evidence thereof.

History: 1975 c. 147 s. 54; 1979 c. 89.

103.78 Minors in public exhibitions, radio and television broadcasts, modeling. (1) Nothing contained in ss. 103.64 to 103.82 shall be construed as forbidding any minor under 18 years of age to appear for the purpose of singing, playing or performing in any studio, circus, theatrical or musical exhibition, concert or festival, in radio and television broadcasts, or as a live or photographic model. Labor permits shall not be required for such employment or appearances but no minor under 18 years of age shall be so employed except under the following conditions:

(a) The activities enumerated shall not be detrimental to the life, health, safety or welfare of the minor.

(b) The activities enumerated shall not interfere with the schooling of the minor and provision for education equivalent to full–time school attendance in the public schools for minors under 16 years of age and part–time attendance for minors 16 to 18 years of age shall be made for those minors who are not high school graduates.

(c) A parent or guardian shall accompany each minor under 16 years of age at all rehearsals, appearances and performances.

(d) The employment or appearance shall not be in a roadhouse, cabaret, dance hall, night club, tavern or other similar place. This prohibition does not apply to:

1. Minors presenting musical entertainment at dances held in any hall on Friday, Saturday or on any other day not followed by a school day or before midnight on Sunday, if the hall was rented for the purpose of celebrating a special event, including but not limited to a wedding, holiday, birthday or anniversary.

2. Dances held solely for minors conducted by private clubs or civic organizations where admission is limited to the membership of the club or by their invitation and the general public is excluded.

3. Performances by minors in theatrical performances at dinner theaters.

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(2) The penalties in s. 103.82 (1) apply to any employer who violates this section.

(3) The penalties in s. 103.82 (3) apply to any parent or guardian who suffers or permits a minor to engage in activities in violation of this section.

(4) Treble the amount of compensation otherwise recoverable as provided in s. 102.60 (4) and wage loss as provided in s. 102.60 (6) are payable to a minor injured during the course of the minor's employment or appearance in violation of this section.

History: 1971 c. 271; 1979 c. 221; 1987 a. 332 s. 64; 1993 a. 492.

103.79 Minor golf caddies. (1) Any minor on a golf course for the purpose of caddying for or while caddying for a person permitted to play golf on such course shall be deemed an employe of the golf club or other person, partnership, association or corporation, including the state and any municipal corporation or other political subdivision thereof, operating such golf course.

(2) The department may investigate and fix by general or special order reasonable regulations relative to the employment of minors as caddies on golf courses. The regulations may include a waiver or modification of permit requirements for caddies. The investigations and orders shall be made pursuant to ss. 101.01 to 101.25, and every such order has the same force and effect as orders issued pursuant to ss. 101.01 to 101.25. The orders are subject to review as provided in ch. 227.

History: 1971 c. 228 s. 43; 1971 c. 271, 307; 1975 c. 94.

103.80 Inspection. (1) The department and school attendance officers shall visit and inspect at all reasonable times, and as often as possible, all places covered by ss. 103.64 to 103.82.

(2) The failure of any employer to produce for inspection to the department, or school attendance officers, the permit provided for in s. 103.70 shall be prima facie evidence of unlawful employment of the minor. The presence of any minor in any factory, workshop or other place of employment shall be prima facie evidence of the employment of the minor.

History: 1979 c. 298.

103.805 Fees; permits and certificates of age. (1) The department shall fix and collect a reasonable fee based on the cost of issuance of permits under ss. 103.25 and 103.71 and certificates of age under s. 103.75. The department may authorize the retention of the fees by the person designated to issue permits and certificates of age as compensation for the person's services if the person is not on the payroll of the division administering this chapter. The permit officer shall account for all fees collected as the department prescribes.

(2) The fee for issuance of permits and certificates of age shall be paid by the employer, but when the minor advances the fee to the permit officer the minor shall be reimbursed by the minor's employer not later than at the end of the minor's first pay period.

History: 1971 c. 271; 1993 a. 492.

103.81 Advertising; penalty. (1) During the term that the public schools are in session, a person shall not advertise or cause or permit any advertisement to be published in any newspaper for the labor or services of any minor during school hours in any employment for which a child labor permit is required under s. 103.70 which does not specifically state the minimum age of the minor whose services are desired, which age must be 18 years or over.

(2) A person shall not solicit in the schools or homes of this state, minors of permit age to leave school and enter their employment, if a child labor permit is required for that employment by s. 103.70.

(3) Any person who violates this section shall forfeit and pay into the state treasury not less than $10 nor more than $100 for each such offense. Every day during which any person violates this section shall constitute a separate and distinct offense.

History: 1971 c. 271.

103.82 Penalties. (1) (a) Any employer who employs or permits any minor to work in any employment in violation of ss. 103.64 to 103.82, or of any order of the department issued under those sections, or who hinders or delays the department or school attendance officers in the performance of their duties, or who refuses to admit or locks out the officer from any place required to be inspected under ss. 103.64 to 103.82 may be required to forfeit not less than $25 nor more than $1,000 for each day of the first offense and, for the 2nd or subsequent violation of ss. 103.64 to 103.82 within 5 years, as measured from the dates the violations initially occurred, may be fined not less than $250 nor more than $5,000 for each day of the 2nd or subsequent offense or imprisoned not more than 30 days or both.

(b) In addition to the penalties provided in par. (a), any employer who employs any minor in violation of s. 103.68, or rules of the department shall be liable, in addition to the wages paid, to pay to each minor affected, an amount equal to twice the regular rate of pay as liquidated damages, for all hours worked in violation per day or per week, whichever is greater.

(3) Any parent or guardian who permits a minor under his or her control to be employed or to work in violation of ss. 103.64 to 103.82, or of any order of the department issued under those sections, may be required to forfeit not less than $10 nor more than $250 for each day of the first offense and, for the 2nd or subsequent violation of ss. 103.64 to 103.82 within 5 years, as measured from the dates the violations initially occurred, may be required to forfeit not less than $25 nor more than $1,000 for each day of the 2nd or subsequent offense.

History: 1971 c. 271; 1979 c. 298; 1987 a. 332.

103.83 Discriminatory acts; employment of minors. Section 111.322 (2m) applies to discharge and other discriminatory acts against an employe arising in connection with any proceeding to enforce ss. 103.64 to 103.82.

History: 1989 a. 228.

103.85 One day of rest in seven. (1) Every employer of labor, whether a person, partnership or corporation, who owns or operates any factory or mercantile establishment in this state, shall allow every person, except those specified in sub. (2), employed in such factory or mercantile establishment, at least 24 consecutive hours of rest in every 7 consecutive days and shall not permit any such person to work for such employer during such 24 consecutive hour period, except in case of breakdown of machinery or equipment, or other emergency, requiring the immediate services of experienced and competent labor to prevent serious injury to person, damage to property, or suspension of necessary operations, when such experienced and competent labor is not otherwise immediately available. This shall not authorize any work on Sunday not now authorized by law.

(2) This section does not apply to:

(a) Janitors.

(b) Security personnel.

(c) Persons employed in the manufacture of butter, cheese or other dairy products or in the distribution of milk or cream, or in canneries and freezers.

(d) Persons employed in bakeries, flour and feed mills, hotels, and restaurants.

(e) Employes whose duties include no work on Sunday other than:

1. Caring for live animals.

2. Maintaining fires.

(f) Any labor called for by an emergency that could not reasonably have been anticipated.

(3) Every employer shall keep a time book showing the names and addresses of all employes and the hours worked by each of them in each day, and such time book shall be open to inspection by the department.

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(4) If upon investigation, the department shall ascertain and determine that there be practical difficulties or unnecessary hardships in carrying out the provisions of this section, or upon a joint request of labor and management, the department may by general or special order make reasonable exceptions therefrom or modifications thereof provided that the life, health, safety and welfare of employes shall not be sacrificed or endangered thereby. Such investigation and orders shall be made pursuant to the proceedings in ss. 101.01 to 101.25; and every order of the department under this section shall have the same effect as orders issued pursuant to said sections. Such orders shall be subject to review under ch. 227.

(5) Every employer who violates this section shall be punished as provided in s. 101.02 (13).

History: 1971 c. 185 s. 7; 1971 c. 228 s. 43; 1985 a. 135.

103.86 Employe welfare funds: default in payments. **(1)** Any employer who promises in writing to make payments to an employe welfare fund, either by contract with an individual employe, by a collective bargaining agreement or by agreement with such employe welfare fund, and who fails to make such payments within 6 weeks after they become due and payable, and after having been notified in writing of the failure to make the required payments, shall be fined not more than $200.

(2) This section shall not apply where the failure to make payments is prevented by act of God, proceedings in bankruptcy, orders or process of any court of competent jurisdiction, or circumstances over which the employer has no control.

History: 1993 a. 492.

103.87 Employe not to be disciplined for testifying. No employer may discharge an employe because the employe is subpoenaed to testify in an action or proceeding pertaining to a crime or pursuant to ch. 48. On or before the first business day after the receipt of a subpoena to testify, the employe shall give the employer notice if he or she will have to be absent from employment because he or she has been subpoenaed to testify in an action or proceeding pertaining to a crime or pursuant to ch. 48. If a person is subpoenaed to testify in an action or proceeding as a result of a crime, as defined in s. 950.02 (1m), against the person's employer or an incident involving the person during the course of his or her employment, the employer shall not decrease or withhold the employe's pay for any time lost resulting from compliance with the subpoena. An employer who violates this section may be fined not more than $200 and may be required to make full restitution to the aggrieved employe, including reinstatement and back pay. Except as provided in this section, restitution shall be in accordance with s. 973.20.

History: 1979 c. 219; 1983 a. 197 s. 10; 1987 a. 398.

103.90 Definitions. In ss. 103.90 to 103.97:

(1) "Emergency" means:

(a) A temporary condition created by an act of nature, demanding immediate action, which could not reasonably have been anticipated or prevented, and which is caused entirely by the forces of nature such as rain, lightning, hail, windstorm, tornado, sleet, frost or other similar natural phenomena.

(b) A sudden and temporary condition not covered under par. (a) which reasonably could not have been anticipated or prevented and which requires immediate action to prevent serious damage to person or property.

(2) "Employer" means a person engaged in planting, cultivating, raising, harvesting, handling, drying, packing, packaging, processing, freezing, grading or storing any agricultural or horticultural commodity in its unmanufactured state who employs a migrant worker.

(3) (a) "Migrant labor camp" means the site and all structures maintained as living quarters by, for or under the control and supervision of any person for:

1. Any migrant worker; or

2. Any other person who is not related by blood or marriage to his or her employer and who occasionally or habitually leaves an established place of residence to travel to another locality to accept seasonal employment in the planting, cultivating, raising, harvesting, handling, drying, packing, packaging, processing, freezing, grading or storing of any agricultural or horticultural commodity in its unmanufactured state.

(b) "Migrant labor camp" does not include:

1. Premises occupied by the employer as a personal residence and by no more than 2 migrant workers.

2. Any accommodation subject to ch. 50.

(4) "Migrant labor contractor" means any person, who, for a fee or other consideration, on behalf of another person, recruits, solicits, hires, or furnishes migrant workers (excluding members of the contractor's immediate family) for employment in this state. Such term shall not include an employer or any full–time regular employes of an employer who engages in any such activity for the purpose of supplying workers solely for the employer's own operation.

(5) (a) "Migrant worker" or "worker" means any person who temporarily leaves a principal place of residence outside of this state and comes to this state for not more than 10 months in a year to accept seasonal employment in the planting, cultivating, raising, harvesting, handling, drying, packing, packaging, processing, freezing, grading or storing of any agricultural or horticultural commodity in its unmanufactured state.

(b) "Migrant worker" or "worker" does not include the following:

1. Any person who is employed only by a state resident if such resident or the resident's spouse is related to the worker as one of the following: child, parent, grandchild, grandparent, brother, sister, aunt, uncle, niece, nephew, or the spouse of any such relative.

2. A student who is enrolled or, during the past 6 months has been enrolled, in any school, college or university unless the student is a member of a family or household which contains a migrant worker.

(c) No more than 3 persons otherwise included in the definition under par. (a) may be excluded under par. (b) 1.

(6) "Order" has the meaning designated under s. 101.01 (1) (g).

History: 1977 c. 17; 1983 a. 189 ss. 156, 329 (4); 1989 a. 236.

"Sharecropping" or other agreements attempting to establish migrant worker as independent contractor violate migrant law. 71 Atty. Gen. 92.

103.905 Department's duties. The department shall:

(1) Promulgate rules for the enforcement and implementation of ss. 103.90 to 103.97.

(2) Cooperate and enter into agreements with departments or agencies of this state or of the United States to coordinate, administer or enforce all other laws and programs designed to assist, serve or protect migrant workers.

(3) Gather, compile and submit to the council on migrant labor data and information relative to ss. 103.90 to 103.97.

(4) Investigate, or cause to be investigated, any complaint filed with the department concerning any violation of ss. 103.90 to 103.97, and during reasonable daylight hours, and upon notice to the employer or person in charge, enter and inspect any premises, inspect such records and make transcriptions thereof, question such persons, and investigate such facts, conditions, practices or matters as may be necessary or appropriate to determine whether a violation of such sections has been committed.

(5) Enforce, or cause to be enforced, ss. 103.90 to 103.97 and any rules promulgated under ss. 103.90 to 103.97, and cooperate with other officers, departments, boards, agencies or commissions of this state, or of the United States, or of any other state, or of any local government in the enforcement of such sections.

History: 1977 c. 17.

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103.91 Migrant labor contractors. **(1)** REGISTRATION REQUIRED. No person may engage in activities as a migrant labor contractor without first obtaining a certificate of registration from the department. The certificate shall constitute a permit from this state to operate as a migrant labor contractor, and shall not be transferable to any person.

(2) APPLICATION. A migrant labor contractor shall apply to the department for a certificate in such manner and on such forms as the department prescribes. The migrant labor contractor may submit a copy of a federal application filed under 7 USC 2045 in lieu of the forms prescribed by the department under this subsection.

(3) ANNUAL FEES. Each certificate shall be renewed annually. The fee for the certificate or renewal shall be in an amount determined by the department, but not to exceed $25.

(4) QUALIFICATIONS. The department may refuse to issue a certificate and may suspend or revoke any certificate previously issued whenever it finds that the applicant or registrant has:

(a) Made a material misrepresentation or false statement in his or her application for a certificate.

(b) Violated ss. 103.90 to 103.97, or any rules promulgated under such sections.

(5) REAL PARTY IN INTEREST. The department may refuse to issue a certificate, and may suspend or revoke any certificate previously issued, whenever it determines that the real party in interest in any such application or certificate is a person who previously has applied for and has been denied a certificate, or is a person who previously had been issued a certificate which subsequently was revoked or suspended by the department.

(6) PENALTIES. Refusal to issue or to renew a certificate or the suspension or revocation of a certificate or renewal shall be in addition to any other penalties imposed.

(7) AGENTS EXEMPT FROM REGISTRATION. A full–time employe of any person holding a valid certificate under ss. 103.90 to 103.97 who has been designated as agent of the registrant and who is employed partly or solely for the purpose of engaging in activities as a migrant labor contractor on behalf of the registrant, shall not be required to obtain a certificate in his or her own name under this section. Every such agent shall have in his or her immediate possession, when engaging in activities as a migrant labor contractor, such identification as the department may require, showing such employe to be an agent of a registrant. Every agent shall be subject to ss. 103.90 to 103.97 and any rules promulgated under such sections to the same extent as if the agent were required to obtain a certificate in his or her own name. The department shall require that every registrant identify to the department all persons who have been, or who subsequently become, agents of the registrant, and may disallow, suspend or revoke the designation as agent of any person pursuant to the qualifications of registrants required by this section. For the purposes of ss. 103.90 to 103.97, every registrant shall be responsible for the activities of every agent designated by him or her, and shall be subject to any penalties, including the refusal, suspension or revocation of a certificate, proceeding from any act of any agent so designated, while the agent is engaged in activities as a migrant labor contractor. No agent shall be permitted separately to engage in activities as a migrant labor contractor.

(8) DUTIES. Every person engaged in activities as a migrant labor contractor and every agent of a migrant labor contractor shall:

(a) Carry at all times the certificate or other identification of such certification as the department may prescribe, and exhibit the same to all persons with whom he or she intends to deal as a migrant labor contractor prior to so dealing.

(b) File at the U.S. post office serving the address of such migrant labor contractor, a correct address within 10 days after a change of address.

(c) Promptly pay or deliver when due to the individuals entitled thereto, all moneys or other things of value entrusted to the contractor by any person.

(d) Comply with the terms and provisions of all legal agreements and contracts entered into between himself or herself as a migrant labor contractor and any person.

(e) Keep such records as the department prescribes and preserve such records for inspection by the department for such periods of time as the department shall prescribe.

(f) Obtain a policy of insurance from any insurance carrier authorized to do business in this state in an amount as prescribed by the department, which policy insures the migrant labor contractor against liability for damages to persons or property arising out of the operation or ownership by the migrant labor contractor or by his or her agent of any vehicle for the transportation of individuals or property in connection with activities as a migrant labor contractor. This paragraph shall not apply if the contractor furnishes transportation only as the agent of an employer who has obtained a policy of insurance against liability for damages arising out of the operation of motor vehicles.

(9) PROHIBITED ACTIVITIES. No person engaged in activities as a migrant labor contractor, and no person acting as an agent for any such person, may:

(a) Knowingly give to any migrant worker or a prospective migrant worker any false or misleading information, or fail to disclose fully to any such worker information concerning terms, conditions or existence of employment.

(b) Receive, disburse or withhold the wages of any worker except to immediately distribute a check payable to a worker.

(c) Charge or collect interest from any worker on account of any loan or extension of credit.

(d) Charge or collect from any worker for the provision of goods or services an amount in excess of the costs to him or her of providing such goods and services.

(e) Recruit any migrant worker except as provided in s. 103.915.

History: 1977 c. 17.

103.915 Migrant work agreements. **(1)** No person may bring or arrange for another to bring a migrant worker into this state for employment, by means of an express or implied job offer induce a migrant worker to come into this state for employment, otherwise recruit a migrant worker to come into this state for employment, or hire a migrant worker for employment in this state unless that person does all of the following:

(a) At the time of the worker's recruitment, provides the migrant worker a written recruiting disclosure statement containing the information required in a work agreement under this section.

(b) At the time of hiring, provides the migrant worker a written work agreement as specified in this section, which shall be signed by the employer and by each migrant worker or head of a family if a family is employed.

(2) The department shall issue a standard form for written work agreements required under this section. An employer may elect not to use such form. If an employer does not use the standard form, the employer shall use a form approved by the department.

(3) In fulfilling its duties under s. 103.905, the department may inspect any work agreement signed under this section.

(4) The work agreement shall include the following:

(a) A statement of the place of employment, kind of work available, applicable wage rates, pay period, approximate hours of employment including overtime applicable, term of employment including approximate beginning and ending dates, kind of housing and any charges in connection therewith, cost of meals if provided by the employer, transportation arrangements, the names of all persons in the family employed if a family is employed and any other charges or deductions from wages beyond those required by law.

(b) A guarantee of a minimum of 20 hours of work in a one–week period or a minimum of 64 hours of work in a 2–week

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period, the work to be the same as or similar to the kind of work specified in the work agreement. The work agreement shall clearly state whether the guarantee is on the basis of a one–week or 2–week period. In the case of a migrant worker employed exclusively in agricultural labor as defined in s. 108.02 (2), the guarantee shall be a minimum of 45 hours in each 2–week period, the work to be the same as or similar to the kind of work specified in the work agreement. The minimum guarantee shall be satisfied if the worker's earnings equal the number of hours guaranteed under this paragraph multiplied by the wage rate specified in the work agreement. The guarantee shall cover the period from the date the worker is notified by the employer to report for work, which date shall be reasonably related to the approximate beginning date specified in the work agreement, or the date the worker reports for work, whichever is later, and continuing until the final termination of employment, as specified in the work agreement, or earlier if the worker is terminated for cause or due to seriously adverse circumstances beyond the employer's control. If the beginning or ending period of employment does not coincide with the employer's pay period, the employer may reduce the guarantee for such beginning or ending period to an amount which is equal to the number of days in the beginning or ending period of employment multiplied by one–sixth of the guarantee if the employer's guarantee is on a weekly basis or multiplied by one–twelfth of the guarantee if the employer's guarantee is on a biweekly basis. If a worker is not available for work, the employer may reduce the minimum guarantee by an amount equal to the wages the worker would have earned if the worker had been available for work. This paragraph shall not apply to any person who is under the age of 18 years and who is a member of a household which contains a worker covered by a migrant work agreement under this section. The payment of the minimum guarantee under this paragraph shall be considered the payment of wages under ch. 108.

(c) A guarantee that the wages together with the other terms and conditions of employment are not less favorable than those provided by the employer for local workers for similar work.

(5) If a worker reports for work as notified by an employer and the worker is never employed due to seriously adverse circumstances beyond the employer's control, the employer shall not be obligated to pay the minimum guarantee under sub. (4) (b) but shall be obligated to pay wages to the worker at the agreed rate of pay for the job for which the worker was recruited for the elapsed time from departure to return to the point of departure, which amount shall not be less than 3 nor more than 6 days' pay at 8 hours per day. The employer shall pay the worker the amount required under this subsection within 24 hours after the worker reports to the employer for work.

(6) The work agreement may contain a guarantee which differs from the guarantee required under sub. (4) (b) if the department finds the guarantee to be no less favorable than the guarantee under sub. (4) (b) and approves the terms of the guarantee prior to the time the employer offers the work agreement to any worker.

(7) Temporary work for another employer with the consent of the worker and his or her first employer shall count toward the guarantee required under sub. (4) (b). Such other employer shall not be required to provide the worker a work agreement.

(8) The recruiting disclosure statement and work agreement required under this section shall be written in English and, if the customary language of the migrant worker is not English, in the language of the worker. The department shall, upon request, provide assistance in translating these statements and agreements.

(9) Any employer who does not satisfy the employer's guarantees in a work agreement as required under sub. (4) shall be considered not in compliance with this section.

History: 1977 c. 17; 1983 a. 189 s. 329 (28); 1985 a. 191.

103.917 Safe transportation. Any transportation provided by the employer to a migrant worker between the worker's places of residence shall be safe and adequate.

History: 1977 c. 17.

103.92 Certification of migrant labor camps. (1) APPLICATION; FEE. Every person maintaining a migrant labor camp shall, annually by April 1 or 30 days prior to the opening of a new camp, make application to the department to operate a camp. Each application shall be accompanied by a nonreturnable application fee in an amount determined by the department, but not to exceed $25.

(2) INSPECTION. The department shall administer and enforce this section and any rules promulgated under this section and may during reasonable daylight hours enter and inspect camps. No agent or employe of the department may enter the premises of a camp for inspection purposes until he or she has given notice to the owner or to the person in charge of the camp that he or she intends to make an inspection. Upon notice an agent or employe of the department may also enter any property to determine whether a camp under this section exists.

(3) CERTIFICATE. The department shall inspect each camp for which application to operate is made, to determine if it is in compliance with the rules of the department establishing minimum standards for migrant labor camps. If the department finds that the camp is in compliance with the rules, it shall issue a certificate authorizing the camp to operate until March 31 of the next year. The department shall refuse to issue a certificate if it finds that the camp is in violation of such rules.

(4) OPERATION. Only certified camps may operate in this state. The department shall order the immediate closing of all other camps. A violation of any such order shall be deemed a public nuisance. All orders shall be enforced by the attorney general or the district attorney for the county in which the violation occurred at the election of the department. The circuit court of any county where violation of such an order has occurred in whole or in part shall have jurisdiction to enforce the order by injunctive and other appropriate relief.

(5) MAINTENANCE. The department may revoke any certificate previously issued if it finds that a camp is in violation of the department's rules for migrant labor camps.

History: 1977 c. 17.

103.925 Access and entry. Any worker shall have the right to decide who may visit with him or her in his or her residence. No person other than the resident may prohibit, bar or interfere with, or attempt to prohibit, bar or interfere with, the access to or egress from the residence of any worker by any person, either by the erection or maintenance of any physical barrier, or by physical force or violence, or by threat of force or violence, or by posting, or by any order or notice given in any manner. This section shall not prohibit the erection or maintenance of a fence around a migrant labor camp if one or more unlocked gates or gateways in the fence are provided, nor shall this section prohibit the posting of land adjacent to a migrant labor camp if access to the camp is clearly marked, nor shall this section prevent a majority of the residents of a migrant labor camp from imposing reasonable limitations on access to common use facilities.

History: 1977 c. 17.

103.926 Vacating residence. After a worker's employment has been terminated, the employer may require a worker to vacate residence at the migrant labor camp operated by the employer upon final payment of wages to the worker.

History: 1977 c. 17.

103.93 Wages. (1) WAGE PAYMENT. (a) Every employer shall pay all wages earned by any migrant worker directly to such

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worker on regular pay days designated in advance by the employer, but in no case less often than semimonthly. Wages shall be paid in U.S. currency or by check or draft.

(b) Every employer shall pay in full all wages due any migrant worker within 3 days after the termination of the period of employment for which the worker was employed except as provided under s. 103.915 (5). If the employer is unable to determine, due to circumstances beyond the employer's control, the amount of wages, figured upon a basis or system other than time rate, due to a worker under this paragraph, the employer shall pay the worker the amount of guaranteed wages due under s. 103.915 (4) (b) within the time required under this paragraph and shall pay any additional wages due within a reasonable time after such wages are determined.

(2) WAGE STATEMENT. Every employer shall furnish to each migrant worker at the time of payment of wages a written statement showing the amount of gross and net wages paid by the employer to the worker, and each amount deducted or withheld for whatever purpose.

(3) DEDUCTIONS. No employer or migrant labor contractor may deduct or withhold from the wages of any migrant worker any amount on account of debts accrued or anticipated unless the worker has previously authorized such deduction or withholding in writing. Nothing in this subsection shall prohibit any employer of a migrant worker from deducting or withholding from any wages paid, such amounts as may be required by law or on account of any court order.

(4) OVERTIME. Any migrant worker not employed exclusively in agricultural labor as defined in s. 108.02 (2) shall be paid not less than one and one–half times the worker's regular rate for any hours worked on Sunday unless the worker is allowed another day of rest in that calendar week.

History: 1977 c. 17; 1983 a. 189 s. 329 (28).

103.935 Hours of labor. (1) In the case of a migrant worker employed exclusively in agricultural labor as defined in s. 108.02 (2), the hours of labor shall be as follows:

(a) Except in an emergency, no migrant worker may be required to work or be penalized for failure to work on any premises for more than 6 days in any one week or more than 60 hours in any one week, or more than 12 hours in any one day.

(b) Whenever an employer permits a migrant worker to work on the premises of another employer in any one week or in any one day, the aggregate number of hours during which the migrant worker is required to work on such premises shall not exceed 60 in any one week or 12 in any one day.

(c) Nothing in this section shall prohibit a migrant worker from voluntarily exceeding the limits prescribed by pars. (a) and (b).

(2) No migrant worker may be required to work for more than 6 hours continuously without a meal period of at least 30 minutes duration unless a shift can be completed within one additional hour. The meal period need not be considered as part of the hours of labor.

(3) Each migrant worker not employed exclusively in agricultural labor as defined in s. 108.02 (2) shall be provided a rest period of at least 10 minutes duration within each 5 hours of continuous employment, which rest period shall be considered a part of the hours of labor.

History: 1977 c. 17; 1983 a. 189 s. 329 (28).

103.94 Civil action by migrant workers. Any migrant worker aggrieved by a violation of ss. 103.90 to 103.97 by an employer or by a migrant labor contractor may maintain a civil action on the basis of such violation without regard to exhaustion of any administrative remedy.

History: 1977 c. 17.

103.945 Nonwaiver of rights. Any agreement by a migrant worker purporting to waive or to modify his or her rights under ss. 103.90 to 103.97 shall be void as contrary to public policy.

History: 1977 c. 17.

103.96 Retaliation prohibited. (1) No employer or migrant labor contractor may terminate, suspend, demote, transfer or take any action otherwise unfavorable to any migrant worker in retaliation for the exercise by such worker of any right secured under the laws and regulations of the United States or of this state or any subdivision thereof.

(2) Any person aggrieved under this section may maintain an action against the employer or migrant labor contractor. In addition to any other damages awarded, an employer or migrant labor contractor found to have violated this section shall be liable to such person aggrieved for full reinstatement and for back wages accumulated during the period of such unlawful retaliation. In cases of wilful violation of this section, the court may assess exemplary damages up to double the amount of back wages found due in addition to any other damages awarded. In cases of aggravated circumstances, the court may also assess reasonable attorney fees in addition to any other damages awarded.

History: 1977 c. 17; 1993 a. 490.

103.965 Correction period. (1) Except as provided in sub. (2), if the department determines that any person has violated ss. 103.90 to 103.97 the person shall have a reasonable time, not to exceed 15 days from the day he or she receives notice of the violation, to correct the violation. If the violation is corrected within that period, no penalty may be imposed under s. 103.97.

(2) If an employer violates s. 103.915 (1) 2 or more times in a 10–year period, or violates s. 103.92 by failure to obtain initial certification before opening a camp 2 or more times in a 10–year period, no correction period exists if the 2nd or subsequent violation is intentional or in reckless disregard of the law. This subsection applies only if the first violation in the 10–year period is a conviction or administrative determination of violation which remains of record and is unreversed. The 10–year period shall be measured from the date of the violation which resulted in the conviction or administrative determination of violation.

History: 1977 c. 17; 1985 a. 191.

NOTE: 1985 Wis. Act 191, which created sub. (2), provides in section 6 that no person may be denied a correction period under sub. (2) for a 2nd or subsequent violation unless the first violation occurred on or after 4–22–86.

103.967 Duties of council on migrant labor. The council on migrant labor shall:

(1) Advise the department and other state officials on any matter affecting migrant workers.

(2) Ascertain the conditions under which migrant workers are recruited, employed, housed and protected.

(3) Review in July of every odd–numbered year the minimum hours guaranteed under s. 103.915 (4) (b) and recommend to the legislature any changes the council finds necessary.

(4) Study the coordination of federal and state statutes and rules designed to assist, serve or protect migrant workers and recommend to the department, legislature and other appropriate state agencies any changes in statutes or rules necessary to achieve uniformity insofar as possible between such state and federal statutes and rules.

(5) Review rules submitted by the department under s. 103.968.

History: 1977 c. 17.

103.968 Council review of rules. The department shall submit every rule which it proposes to promulgate under ss. 103.90 to 103.97 to the council on migrant labor at the same time that the department files notice of its intent to promulgate the rule with the presiding officer of each house of the legislature under s. 227.19 (2). If the council disapproves the rule within 45 days after

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the rule is submitted, the department may not promulgate the rule, and, if promulgated, the rule is void.

History: 1977 c. 17; 1979 c. 34, 154; 1985 a. 182.

103.969 New contract compliance. Any collective bargaining agreement entered into by any person on or after June 7, 1977, shall not violate any provision of chapter 17, laws of 1977.

History: 1977 c. 17.

103.97 Penalties. (1) (a) Except as provided in par. (b), if any person violates ss. 103.90 to 103.97, or fails or refuses to obey any lawful order of the department or any judgment of any court in connection with ss. 103.90 to 103.97, for each such violation, failure or refusal, such person shall forfeit not less than $10 nor more than $100. Each day of continued violation shall constitute a separate offense.

(b) Any person who maintains an uncertified camp in violation of an order issued by the department under s. 103.92 for failure in any year to obtain initial certification before opening a camp shall forfeit not less than $10 nor more than $100 for the first violation, and shall forfeit not less than $500 nor more than $1,000 for any such subsequent violation occurring within 10 years. In this paragraph, a "subsequent violation" is a violation occurring after a conviction or an administrative determination of violation, either of which remains of record and is unreversed.

(2) An employer is not liable for a violation of ss. 103.90 to 103.97 if the violation is due to the employer's good faith reliance on the representations of a worker.

History: 1977 c. 17; 1985 a. 191.

NOTE: 1985 Wis. Act 191, which created sub. (1) (b), provides in section 6 that no person may be assessed a forfeiture under sub. (1) (b) for a subsequent violation unless the first violation occurred on or after 4–22–86.