The information in this brochure should be regarded as only a summary of the overtime regulations. You are urged to contact the division for more details as they apply to a specific situation.

**OVERTIME COVERAGE:**

The state overtime law applies to most Wisconsin employers, including state and local units of government but not necessarily to each individual worker. Covered workers, regardless of age, must be paid 1 1/2 times their regular rate of pay for all hours worked in excess of 40 hours a week.

Wisconsin’s overtime pay requirements apply to both non-profit and for profit factories, hotels, motels, beauty parlors, laundries, express and transportation firms, restaurants, retail and wholesale stores, telegraph and telephone exchanges, and mechanical establishments. The law also applies to mercantile establishments operated on a “for profit” basis. Wisconsin’s overtime law doesn’t apply to non-profit mercantile establishments except for those listed in this paragraph as being covered.

“Mercantile” means pertaining to merchants or trade. The term includes all establishments or businesses that sell or barter a product or service.

Under the Wisconsin Child Labor regulation, 16- and 17-year-old minors may be employed more than 8 hours in a day or 40 hours in a week when school is not in session provided that the minor receives one and one-half the regular rate of pay for all hours worked in excess of 10 hours per day or 40 hours per week and that the minor does not work in excess of 50 hours per week. The exception to this rule is that minors who are 14 to 17 years of age may be employed more than 50 hours per week in agriculture during peak periods.

**ESTABLISHMENTS EXEMPT FROM OVERTIME — ALL EMPLOYEES:**

1. Agriculture (farming) as defined Wis. Stats. 102.04(3)
2. Domestic service (in the private home of the employer)
3. Federal government agencies

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**PERSONS EXEMPT FROM OVERTIME IN CERTAIN BUSINESSES AND CIRCUMSTANCES AS PROVIDED IN DWD 274.04**

It is the intent of the department to interpret these exemptions to be consistent with any comparable federal statute or regulation in respect to the following employees:

1. Persons whose primary duty consists of ADMINISTRATIVE, EXECUTIVE, or PROFESSIONAL work.
   - “Executive” means an employee employed in a bona fide executive capacity who meets the following criteria:
     1. Whose primary duty consists of the management of the enterprise in which he or she is employed or of a customarily recognized department or subdivision; and
     2. Who customarily and regularly directs the work of 2 or more other employees; and
     3. Who has the authority to hire or fire other employees or whose suggestions and recommendations about the hiring, firing, advancement or promotion or any other change of status of other employees will be given particular weight; and
     4. Who customarily and regularly exercises discretionary powers; and
     5. Who does not devote more than 20% (or in the case of an employee of a retail or service establishment who does not devote as much as 40%) of his or her hours of work in the workweek to activities which are not directly and closely related to the performance of the work described in subds. (1) through (4), provided, that this paragraph shall not apply in the case of an employee who is in sole charge of an independent establishment or a physically separated branch establishment, or who owns at least a 20% interest in the enterprise in which he or she is employed; and
     6. Who is compensated for their services on a salary basis at a rate of $700 per month or more.
   (b) “Administrative” means an employee employed in a bona fide administrative capacity who meets the following criteria:
     1. Whose primary duty consists of the performance of office or non-manual work directly related to management policies or general business operations of his or her employer or the employer’s customers, or
2. Who customarily and regularly exercises discretion and independent judgment; and
3. a. Who regularly and directly assists a proprietor, or an employee employed in a bona fide executive or administrative capacity; or
   b. Who performs under only general supervision work along specialized or technical lines requiring special training, experience, or knowledge, or
   c. Who executes special assignments and tasks solely under only general supervision; and
4. Who does not devote more than 20% (or in the case of an employee of a retail or service establishment who does not devote as much as 40%) of his or her hours worked in the workweek to activities which are not directly and closely related to the performance of the work described in subds. (1) through (3); and
5. Who is compensated for his or her services on a salary or fee basis at a rate of $700 per month or more.

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(c) “Professional” means an employee employed in a bona fide professional capacity who meets the following criteria:

1. Whose primary duty consists of the performance of:
   a. Work requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study, as distinguished from a general academic education and from an apprenticeship, and from training in the performance of routine mental, manual or physical processes, or
   b. Work that is original and creative in character in a recognized field of artistic endeavor (as opposed to work which can be produced by a person endowed with general manual or intellectual ability and training), and the result of which depends primarily on the invention, imagination, or talent of the employee, or
2. Whose work requires the consistent exercise of discretion and judgment in its performance; and
3. Whose work is predominantly intellectual and varied in character (as opposed to routine mental, manual, mechanical or physical work) and for which the product or the result accomplished cannot be standardized in relation to a given period of time; and
4. Who does not devote more than 20% of his or her hours worked in the workweek to activities which are not an essential part of the work described in subds. (1) through (3); and
5. Who is compensated for services on a salary or fee basis at a rate of $750 per month or more.
2. Can an employer and an employee enter into an agreement to waive state overtime regulations?
An employer and an employee do not have the authority to reach an agreement to waive a state law or regulation concerning overtime pay. Since federal law may also require an employer to pay its employees overtime pay, it should be noted that a modification or waiver of state overtime rules would not exempt the employer from any federal overtime requirement.

3. If an employee works overtime hours that were not authorized by the employer, is the employer required to pay the employee for these hours?
Yes. Work not requested but suffered or permitted is work time. It is the duty of management to exercise control and see the work is not performed if it does not want it to be performed. It cannot sit back and accept the benefits without compensating for them.

4. Can an employer use a compensatory time plan to reimburse employees who work overtime hours instead of paying overtime pay to these workers?
No, except in the same week the work is performed. Wisconsin’s Wage Payment and Collection law, Chapter 109, requires that employees be paid all wages within 31 days of when the wages were earned. This requirement effectively prohibits employees accruing overtime hours beyond the week in which it was worked.

5. Must an employer give its employees meal or rest breaks during a work shift?
Employees under the age of 18 years of age must receive at least a 30-minute duty free meal period when working a shift greater than 6 hours in duration. Section 274.02 (2) recommends that employers provide similar breaks to adults but does not require such breaks for adults. If an employer provides breaks of less than 30 consecutive minutes in duration, the break time will be counted as work time.

Employers must pay all employees for “on-duty” meal periods. An “on-duty” meal period is one where the worker is not provided at least 30 minutes’ free from work, or where the worker is not free to leave the premises of the employer during a meal period.

Employers also are not allowed to require that meals be accepted as part of the worker’s wages.

State law does not require that brief rest periods, or coffee breaks, be provided to employees. Such matters are to be determined between the employer and the employee.

Therefore, the total wages to be paid for that week equals $245.00 plus $11.14, for a total of $256.14.

**WISCONSIN’S PREVAILING WAGE RATE LAWS:**

Wisconsin has three (3) separate prevailing wage rate laws. Each law covers a different type of project. Section 103.49 covers all types of projects bid by the state, except highway and related projects; Section 103.52 covers all highway and related projects bid by the state; and Section 66.293 covers all projects bid or negotiated by a local governmental unit in the state. All workers that perform manual labor on the site of projects covered by these laws must receive the “prevailing wage rate” for the work they perform.

As of April 30, 1996, each of these laws require that all workers must receive at least time and one-half for all work performed in excess of 10 hours a day on Monday through Friday and for all work performed on Saturday, Sunday and six (6) legal holidays (News Year’s Day, Memorial Day, July 4th, Labor Day, Thanksgiving Day and Christmas Day).

Workers covered by these laws must also receive at least time and one-half for all work performed in excess of 40 hours in any calendar week on the site of a project covered by these laws.

As of January 1, 1986, daily overtime is no longer required on projects subject only to the federal Davis-Bacon Act. If a project is subject to both the state and federal laws, daily overtime must be paid.

**NUMBER OF DAYS OF WORK:**

Employers can set the hours and days of work they wish their employees to work in factories and mercantile establishments. Wisconsin sets limits in which employees must have one day of rest somewhere in a seven-day workweek, by the “One Day of Rest in Seven” Law. This law also exempts certain specific employments from coverage. The department can explain to you which jobs are exempted.

The law provides that all employees in those covered establishments must be given 24 consecutive hours of rest in each calendar week.

However, the law does not provide that the rest must be given every 7 days. For example, an employer may legally schedule work for 12 consecutive days within a two-week period if the days of rest fall on the first and last days of the two-week period.

An employer is permitted, upon joint request of its employees, to ask the department to waive provision of the One Day of Rest in Seven.”
CALCULATING OVERTIME COMPENSATION:  

Each employee subject to Wisconsin's overtime regulations must pay to each covered employee time and one half the employee's regular rate of pay for all hours worked in excess of 40 hours per week.

"Week" means a calendar week or a regular recurring period of 168 hours in the form of 7 consecutive 24-hour periods.

Adults may work an unlimited number of hours per day and per week as the law sets no limits.

The employer has the legal right to set the schedule of hours to be worked and the employee does not have the right to refuse to work unless otherwise negotiated in a collective bargained agreement.

"Regular rate" includes all remunerations paid to or on behalf of the employee such as commissions, non-discretionary bonus, premium pay, and piece work incentives.

"Regular Rate of Pay" is defined as the employee's rate of pay per hour. An employer may choose to pay employees on a salary, commission, piece rate or other basis but for purposes of calculating overtime pay for an employee, the employee's wages must be converted into an hourly rate of pay. This can be accomplished by dividing the total hours an employee actually works in a pay period into the total regular wages the employee is paid in that pay period (regular wages would include hourly wages, commission, piece rate pay, bonuses, etc.).

Example:
The employee earns a salary of $200.00 per week plus commission. In this week, the employee worked 44 hours and earned a commission of $45.30. Total wages earned in that week total $245.00. The $245.00 becomes straight time for the 44 hours worked. The 44 hours are then divided into the $245.00 to arrive at the regular average hourly rate of $5.57 per hour. The $5.57 is then divided in half, $2.785, to arrive at the half time rate. Then the 4 hours of overtime (44 hours minus 40 equals 4 hours of overtime), times $2.785 equals an additional $11.14 in overtime wage due in this week.
FILING OF CLAIMS OR COMPLAINTS:

To file claims or complaints, or to obtain more information about any of these provisions, contact the Department's Equal Rights Division (except where otherwise noted) at either of these locations:

GEF 1 State Office Building
P.O. Box 8928
Madison, WI 53708
(608) 266-5860
TTY: (608) 264-8752

Milwaukee State Office Building
819 N. 6th Street, Room 255
Milwaukee, WI 53203
(414) 227-4384
TTY: (414) 227-4081

Offices are open 7:45 a.m. to 4:30 p.m., Monday thru Friday.

THE FEDERAL MINIMUM WAGE AND OVERTIME LAW:

The Federal Minimum Wage and Overtime Law, which is administered by the U.S. Dept. of Labor, may set overtime pay requirements for occupations or industries exempted by state law. It is the responsibility of the employer to determine liability under both laws. Complaints may also be filed with this agency.

U.S. Labor Department, Wage and Hour Office
Federal Center Building
740 Regent Street, Suite 102
Madison, WI 53715
(608) 264-5221

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