



WORKER RIGHTS · WISCONSIN

Know Your Rights in Wisconsin

What every hospitality worker should know, in plain language.
No legal jargon.

Read this first — Wisconsin's overtime law covers hospitality by name: restaurants, hotels, motels, and resorts are on the state's covered list. And in Wisconsin, the tip paperwork matters as much as the tips — no signed tip declaration, no tip credit.

General information only — not legal advice.

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The Minimum Wage

- Wisconsin's minimum wage is \$7.25 per hour — for adults and minors alike — in effect since July 24, 2009. No increase is scheduled, and there is no automatic inflation adjustment.
- Opportunity wage: an employee under 20 may be paid \$5.90 per hour for the first 90 consecutive calendar days of employment. After 90 days, or when the employee turns 20 — whichever comes first — the full \$7.25 applies.
- If your employer furnishes meal and lodging allowances, it may count them at these rates (general employees): lodging \$58 a week or \$8.30 a day; meals \$87 a week or \$4.15 a meal.
- Cities, villages, towns, and counties may not set their own minimum wage. Wisconsin law declares a uniform statewide wage.

Tips — The Paperwork Is the Trap

- Tipped cash wage: \$2.33 per hour. For a tipped opportunity employee (under 20, first 90 days), \$2.13 per hour. The credit applies only if tips plus wages reach the applicable minimum wage in a week. If they fall short, your employer must make up the difference.

TRAP — the signed tip declaration. When your employer takes a tip credit, it must have a tip declaration signed by you each pay period, plus payroll records showing taxes withheld and that tips plus wages reached at least the minimum rate. If the records do not contain these requirements, NO tip credit is allowed at all — the full \$7.25 cash wage is owed for those periods. The Department may also refuse to act on a minimum-wage deficiency claim by a tipped employee who refused or failed to file an accurate signed declaration each pay period.

- A tip is a sum presented by a customer as a gift or gratuity, in an amount the customer alone decides. Unless you agreed otherwise, a tip becomes the property of the person in recognition of whose service it was given. Only tips you actually receive as your own money, usable as you choose free of employer control, count toward tipped-employee status.
- Tip splitting under the state rule: where waiters give part of their tips to bus persons, both the amounts kept and the amounts given count as tips of the individuals who keep them.
- Federal rules also apply: an employer — including managers and supervisors — may never keep any portion of employees' tips, directly or through a tip pool, whether or not a tip credit is taken. Where a tip credit is taken, a required pool may include only employees in occupations that customarily and regularly receive tips. Where the employer pays at least the full \$7.25 in cash wages, the pool may also include non-tipped staff such as cooks and dishwashers — but managers and supervisors may never take from a pool.

- Service charges are not tips under the state rule: a compulsory charge for service (the rule's example: 15% of the bill) is not a tip unless it is distributed to the employees. Where a hotel or restaurant banquet negotiation includes amounts for distribution to employees, those amounts must be distributed by the end of the pay period in which they are earned. If payroll records break the charge down, only the amount designated for tips must be paid that way.

Overtime

- Covered workers must be paid one and a half times their regular rate for all hours worked over 40 in a week. The state law applies to most Wisconsin employers — the Department's list expressly includes restaurants, hotels, motels, resorts, factories, retail and wholesale stores, and laundries.
- Overtime is calculated week by week — each week in a pay period stands alone. Example: 35 hours in week 1 and 45 in week 2 means 5 hours of overtime premium, not zero. Work your employer did not request but suffered or permitted is work time and must be paid. You and your employer cannot agree to waive state overtime law.
- Comp time: if your employer pays the overtime premium in compensatory time, you get 1.5 hours of comp time per overtime hour — and a nongovernment employer must ensure you use it within 31 days of when it was earned.

- Adults may work an unlimited number of hours per day and week — the law sets no cap. The regular rate includes commissions, nondiscretionary bonuses, premium pay, and piecework incentives. Workers aged 16 to 17 must be paid overtime after 10 hours in a day or 40 in a week.
- Exemptions exist — domestic service in a private home, some nonprofits, federal agencies, and categories such as executive, administrative, professional, outside sales, motor carrier, and agricultural workers. Ask the Department of Workforce Development which category you fall in.

Getting Paid

- The 31-day rule: every employer must pay at least monthly, covering all wages earned to a day not more than 31 days before the payday. Employers may pay more often — weekly, biweekly, or semimonthly.
- Your employer may require direct deposit, at no cost to you, and must still give you a check stub. Every paycheck, envelope, or accompanying paper must state the hours worked, the rate of pay, and the amount and reason for each deduction. Electronic stubs are allowed if you have printer access and are not charged to print.
- Final pay — quit or fired, the same rule: you must be paid in full no later than the date you regularly would have been paid under your employer's established payroll schedule, or the date required under the 31-day rule, whichever is EARLIER. There is no separate faster deadline for being fired.

TRAP — the 24-hour rule on closure or relocation. If you are separated because your employer merges, liquidates or otherwise disposes of the business, ceases operations in whole or in part, or relocates the business, all unpaid wages must be paid at the usual place of payment within 24 hours of separation.

- If you are absent at payday, or not paid then for any reason, you must be paid thereafter on 6 days' demand.
- Notice is generally not required from either side to quit or fire. But if your employer has a policy requiring resignation notice — or reducing the final paycheck rate without it — and you were made aware of it, the employer may be able to reduce your final paycheck if you do not follow it. A worker who gives two weeks' notice and is fired immediately is not owed wages for the notice period not worked.
- Vacation and PTO payout turns on the written policy. Wisconsin employers are not required to provide vacation, holiday, or sick pay at all. But if your employer has a written vacation policy with NO written forfeit policy, earned unused vacation must be paid at separation.

Breaks

- Adults: no meal or rest break is required. State rules recommend employers provide adults a meal period of 30 minutes or more, but do not require it.
- Breaks under 30 minutes are paid work time — your employer may not deduct for time off of less than 30 consecutive minutes. An on-duty meal period is paid: if you are not given at least 30 consecutive minutes free from work, or you are not free to leave the premises, the meal period is work time. Employers may not require you to accept meals as part of your wages.
- Minors: at least a 30-minute duty-free meal period on any shift over 6 hours, reasonably close to usual meal times. No minor may work more than 6 consecutive hours without a meal period.

Sick Leave and Family Leave

- Wisconsin has no statewide paid sick leave mandate. Employers are not required to provide sick pay as a benefit, and when an employer creates a benefit policy it may set its own conditions. Local ordinances cannot fill the gap — state law bars cities, villages, towns, and counties from enacting ordinances requiring employers to provide leave, paid or unpaid, for a health condition or family care, and more broadly from requiring or setting terms for employment benefits.

- Wisconsin Family and Medical Leave Act (WFMLA) — unpaid, job-protected state leave. A covered employer has at least 50 permanent employees during at least 6 of the last 12 months. A covered employee has worked at least 52 consecutive weeks for the employer and at least 1,000 hours in the preceding 52 weeks.
- WFMLA amounts per calendar year: up to 6 weeks for the birth or adoption of a child (the leave must begin within 16 weeks of the birth or placement); up to 2 weeks to care for a child, spouse, domestic partner, or parent — or a parent of a domestic partner — with a serious health condition; and up to 2 weeks for your own serious health condition. Leave may be taken in blocks or intermittently. It is unpaid by law, but you may substitute any paid or unpaid leave of another type your employer provides. Health insurance must be continued on the same conditions, and on return you must be restored to the same or an equivalent position. State and federal leave run at the same time where both apply, and you get whichever law protects you more on each point.

TRAP — the WFMLA complaint deadline is 30 DAYS. A complaint must be filed with the Department within 30 days after the violation occurs or you should reasonably have known of it, whichever is later. Compare the clocks in this guide: 30 days for a WFMLA complaint, 2 years for a wage claim, 300 days for a discrimination complaint. The shortest clock is the one that decides.

- Posting: employers with 50 or more employees must display the Wisconsin FMLA poster. Employers with 25 or more must post their own leave policy.

- There is no Wisconsin paid family or medical leave insurance program. State family leave is unpaid.

Non-Competes

- Under Wisconsin law, an employee non-compete is lawful and enforceable only if the restrictions are reasonably necessary for the protection of the employer, within a specified territory and a specified time. The statute sets no wage threshold and no blanket ban.
- The rule is all-or-nothing: if the restraint is unreasonable, the covenant is illegal, void, and unenforceable even as to any part that would have been reasonable. Wisconsin courts cannot trim an overbroad covenant down — it fails entirely.

Deductions From Your Pay

TRAP — no deduction for defective or faulty workmanship, lost or stolen property, or damage to property is allowed unless ONE of these is true: (a) you authorize the deduction in writing; (b) your employer and a representative you designate determine the problem was due to your negligence, carelessness, or willful and intentional conduct; or (c) you are found guilty or liable in court for that conduct. Blanket authorizations are not valid — written permission must be obtained after each occurrence. A deduction taken outside these routes makes the employer liable for twice the amount deducted, and any agreement to the contrary is void. If you and your employer disagree, the Department is the third determining party, subject to court appeal.

One Day of Rest in Seven

- The general rule for factories and mercantile employers: at least 24 consecutive hours of rest in every 7 consecutive days.

TRAP — that rest rule does NOT apply to persons employed in bakeries, flour and feed mills, HOTELS, and RESTAURANTS. If you work in hospitality, the one-day-of-rest rule does not cover you. Other exemptions include janitors, security personnel, dairy and creamery workers, emergencies, and an employee who voluntarily chooses in writing to work without the rest.

Records Your Employer Must Keep

- Your employer must keep records for each non-exempt employee for at least 3 years: name and address, date of birth, dates of employment, start and end of work each day, start and end of meal periods where required or deducted, total hours per day and week, rate and wages per payroll period, the amount and reason for each deduction, and production if you are paid on other than a time basis.

Filing a Wage Claim

- File with the Wisconsin Department of Workforce Development, Equal Rights Division (ERD) — online or on a paper form. Before filing: if your employer refuses to pay on the regular payday, request payment. If you do not receive it after 6 days, you may file. Claims can cover salaries, commissions, holiday, vacation, severance and dismissal pay, bonuses, illegal deductions, and similar agreed benefits.
- Deadline: 2 years after the date the wages are DUE. If wages are owed and unpaid after investigation, the claim may be forwarded to the local district attorney, and a court may assess increased wages of up to 100% of the wages due. You may also sue without filing a claim first. Retaliation for filing a complaint, enforcing a right, testifying, or assisting in a case is prohibited.
- ERD contacts: Madison — 201 E Washington Ave, Room A100, PO Box 8928, Madison, WI 53708, (608) 266-6860. Milwaukee — 819 N 6th St, Room 723, Milwaukee, WI 53203, (414) 227-4384.

Discrimination

- The Wisconsin Fair Employment Law, enforced by the Equal Rights Division, prohibits employment discrimination. File a complaint — online or on paper, in English or Spanish — within 300 days of the action or when you became aware of it.
- Protected bases: age (40 or over), race, color, ancestry, national origin, creed, sex, pregnancy or childbirth, sexual orientation, disability, marital status, arrest and conviction record, genetic testing, honesty testing, military service, use or nonuse of lawful products off the employer's premises during nonworking hours, and declining to attend a meeting or participate in a communication about religious or political matters. The law reaches hiring, assignments, pay, leave and benefits, promotion, training, layoff and firing. Harassment on a protected basis and retaliation are also prohibited.
- Arrest and conviction record: it is not discrimination when the arrest or conviction is substantially related to the job. The Department's examples: a theft-related conviction is substantially related to a cashier position; a drunk-driving offense is substantially related to a truck-driver position, and probably not to a cashier position.

Sources

Wisconsin Statutes chapters 103, 104, 109, and 111 — docs.legislature.wisconsin.gov. Wisconsin Department of Workforce Development, minimum wage — dwd.wi.gov/er/laborstandards/minimumwage.htm; hours of work and overtime FAQ — dwd.wi.gov/er/laborstandards/overtimefaq.htm; wage payment and collection — dwd.wi.gov/er/laborstandards/wages.htm; how to file a wage claim — dwd.wisconsin.gov/er/laborstandards/wageclaim.htm; one day of rest in seven — dwd.wisconsin.gov/er/laborstandards/restday.htm; Wisconsin FMLA — dwd.wi.gov/er/civilrights/fmla/; employment discrimination — dwd.wi.gov/er/civilrights/discrimination/default.htm. U.S. Department of Labor, Fact Sheet #15 (tipped employees) — dol.gov/agencies/whd/fact-sheets/15-tipped-employees-flsa.