



# Workers Rights Manual

5TH EDITION

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# Introduction

## **Statement from the Executive Director**

This Workers Rights Manual is meant to empower workers to stand up for their rights and organize for better working conditions. It's also meant for community allies who want to learn about existing employment and labor laws, and join the struggle for just working conditions and employee-centered laws. We invite faith congregations, union partners and all community-oriented individuals and organizations to join the movement of rank-and-file workers fighting for justice, many of whom are fighting for worker and immigrant justice side-by-side. The task of improving working conditions begins with education and ends with systemic change. May this manual be an impetus and motivator for the long fight.

Sincerely,  
Rebecca Meier-Rao



## **About Worker Justice Wisconsin**

Worker Justice Wisconsin (WJW) is the result of a merger between the Interfaith Coalition for Worker Justice and the Workers' Rights Center. The Interfaith Coalition for Worker Justice (ICWJ) began in 1999 and launched a study of workplace conditions in Dane County through the Latino Worker Project, which was a collaborative effort of faith community representatives, union leaders, workers, and local service providers. One of the recommendations of the Latino Worker Project was to establish a workers' rights center to address the needs of low-wage and immigrant workers. As a result, ICWJ opened the Workers' Rights Center (WRC) in 2002, and in 2007 the WRC became its own organization. After 10 years apart, the boards of the WRC and ICWJ reviewed their separate models and decided that they would be more effective as a unified organization, centered around worker rights and developing worker leadership. They merged to become Worker Justice Wisconsin in 2018.

Since then, WJW has successfully helped employees—most of them immigrants—recuperate hundreds of thousands of dollars in unpaid wages and delivered countless know-your-rights trainings. In 2020, the organization decided to shift its focus from individual service to collective worker organizing and the development of worker cooperatives. Worker Justice Wisconsin privileges rank-and-file workplace organizing because it is the best means to create profound social change. The center promotes trainings on how to organize and collaborates with non-unionized, primarily immigrant workers who want to build a local movement of

working-class empowerment. We mobilize faith, union and community allies to stand shoulder to shoulder with these workers as they collectively organize for systemic change.

## **Core Values**

The following core values inform Worker Justice Wisconsin's approach to organizing:

- **Dignity:** WJW believes that every individual is entitled to respect by virtue of being a person. Because every human being should be treated as inherently valuable and precious, WJW combats the degradation that so many people encounter as a worker. The hardship and humiliation many people experience at work demeans their humanity. Yet work is central to our human existence. We spend much of our time at work. It either enables or undercuts our ability to access food, housing, healthcare, education, and recreation that are essential to our flourishing. For these reasons, dignifying work—treating workers as fully human—is one of the most important struggles. Drawing on faith-based and humanistic traditions, the staff at WJW embrace the righteous anger caused by undignified working conditions that grind people down.
- **Democracy:** WJW posits workplace democracy as the solution to workplace indignities. Many people experience work as a small dictatorship. Wielding power over their workers, exploitative employers get away with abusive behavior and trample on employees' rights because individual workers feel precarious and exposed. As individuals, we have little power to stop mistreatment. Many workers have no voice in business decisions that affect their livelihoods. And, too often, the costs of speaking up are high. Even under tolerable working conditions, employees feel apprehension around the boss. Fear is the tool of oppression. WJW advances the democratization of work as a dignified alternative. We believe workers should be empowered to advocate for themselves and exercise their will through participatory decision making. WJW aims to help workers realize their power and collective agency to create dignified working conditions.
- **Solidarity:** To democratize work, WJW aims to foster solidarity among all laboring peoples. Only through solidarity—through the construction of a community united in righteous struggle—can workers overcome employers' power and put an end to exploitation. Achieving that community requires sacrifice. Solidarity means taking action on behalf of one another, recognizing—paradoxically—that individual risk is the path to collective liberation. It means that our collective vulnerability makes us an indivisible force that can bring about dignity in the workplace for all.

## **How We Make Change**

Worker Justice Wisconsin embraces workplace organizing and direct action as the best and quickest means to dignify work. We recognize that to change society, one must have power. To acquire power, one must turn weakness into strength. Historically, workers have turned their individual weakness—dependence on the boss' wages—into collective strength by organizing.

Employers depend on their workforce to produce profit. An organized workforce inverts the unequal power relationship. By organizing, employees can compel the employer to make choices that benefit everyone. In a just workplace, as in a truly democratic society, the people most affected by decisions should have the power to make them. WJW embraces organizing and direct action over other strategies of social transformation that do not go to the root of the power inequality between employer and employee such as the following:

- ***Relying on the employer.*** There are good employers with a sense of social responsibility. There are employers who invite their employees to have a real voice in shaping their working conditions. There are employers who go to great lengths to ensure that their employees' material needs are met. There are even employers who place people over profit at times. But even a benevolent boss is still a boss. They still have power over their workers. This inequality of power can always be turned against the worker.
- ***The law.*** The law is a useful but limited approach to improving working conditions. Laws are not neutral. Some favor employers, others favor workers. While this manual offers a guide to pro-worker laws, it is also meant to show workers that the law can only achieve so much. Moreover, the state agencies that enforce pro-worker laws are often very slow to act. By contrast, there are no limits as to what workers can achieve if they are organized enough. And the more workers organize, the more they can pressure governments to write favorable laws. Organizing comes first.
- ***Relying on politicians.*** Politics can also improve workers' lives, but it, too, is constrained. Just as there are decent employers, there are good politicians who try to do the right thing. But reformist politicians are often bogged down by the United States' political system that makes it exceptionally hard to pass good policies. We also reject the notion that politicians will be working peoples' saviors. Relying on well-meaning politicians or employers to make change will not build a powerful labor movement.
- ***Charity.*** Charity is a form of palliative care. Sometimes, it is necessary. Giving is good. But it treats the symptoms of exploitation rather than the root cause. Charity does not alter the unequal power relations in society. It does not work toward the end of exploitation.
- ***Skills training.*** The reality of today's economy is that workers with marketable skills can dramatically improve their lives. Skills training is a crucial tool of personal growth. It empowers the individual to get ahead in life. This, too, is good. But, like charity, it does not get to the root of the power relations inherent to the labor market. Workers still have to sell their labor to an employer, placing them in a vulnerable position.

The strategies listed above can and do produce positive results, but none of them can transform our society. In all of them, someone other than the workers—the vast majority of society—acts on their behalf. That is a recipe for a disempowered society. These strategies also try to circumvent the fundamental power inequality between employer and employees. WJW embraces workplace

organizing and direct action because we believe that workers must go to the root of the cause to put an end to human exploitation in the workplace.



## **Lessons Learned from the Labor Movement's History**

The history of the labor movement informs WJW's embrace of organizing and direct action. Since the Industrial Revolution, billions of workers all around the world have learned a simple but hard lesson: the only rights you have are the ones you can defend. The better organized workers' power, the better positioned laboring people are to rewrite the rules that govern our society. People have organized and died for many of today's workplace standards. The eight hour day, child labor laws, the right to have a union, social security, health and safety protections, anti-discrimination policies at work— all these rights came about because workers organized and pressured governments and businesses to establish dignified standards. Workers had to fight together through marches, strikes, workplace occupations, pickets, and boycotts.



Beginning in the late 1700s, the Industrial Revolution transformed the global economy by introducing the factory system. Production increased and technology advanced, but at a massive human cost. The factory system funneled people into dangerous working conditions and inhumane housing. In search of raw materials for industrialists, governments promoted colonialism. Meanwhile, employers profited. Organized labor emerged from Chile to China to combat this exploitative system and continues to fight employers' abuse of power to this day.

During the 1930s, in response to the Great Depression, millions of workers all across the country went on strike in various industries. It was only after years of organizing that workers in this country could amass such power, pressuring the US government to enact the pro-labor legislation that still exists today. They also compelled businesses to abide by the new laws. The prosperity that many working-class American families experienced after World War II was a direct consequence of previous generations' struggle.

During the 1960s and 1970s, agricultural and public sector workers had their own heyday of rank-and-file organizing. Hispanic and Filipino organizers united agricultural workers to fight for

basic human dignity in the California fields. The struggle for Civil Rights during the 1960s coincided with Black workers' struggle, most famously in the 1968 sanitation workers' strike in Memphis. These movements grew out of decades of rank-and-file organizers' efforts to give power to the racially marginalized sectors of the working class.

Yet the decrease in union membership and the decline in large-scale organizing activity has resulted in across the board cuts in the private and public sectors. A disorganized labor force results in increased employer power in the labor market. Long hours, unpredictable schedules, at-will employment, stagnant wages, shrinking (if any) benefits and personal time off are not natural or permanent—they are not dictates of the market. They are the result of big business' offensive against the working people in this country.

"Wisconsin is currently an 'at-will' state. That means an employer can fire an employee for any reason (so long as it's not illegal) and without notice. Although an employee can quit for any reason and without notice, 'at-will' employment benefits primarily the employer."

Working people who know their history are well aware of what it takes to win a better world for all. The past is our bridge to a better future. Aware of this history of mass struggle, WJW—like many other worker centers—aims to do its part in rebuilding an international and intersectional, rank-and-file labor movement that empowers human beings to assert their dignity. We do not embrace workplace organizing and direct action because we desire conflict. We embrace them because they are proven means of making profound social change in a world where the fundamental imbalance of power between bosses and workers reigns. The struggles listed above demonstrate that the best way to defend and expand your rights is to organize.



# Before You Read

## **How to Use this Manual**

### ***What It Is***

This manual is a tool to support workplace organizing by providing organizers and workers a broad understanding of the policies and state agencies that affect workplace rights in Wisconsin. This manual maps the laws and state agencies that workers—citizens, immigrants, and the undocumented—in Wisconsin need to be aware of when organizing and defending their rights in the workplace. It is a reference manual that should be used as part of your organizing conversations and campaigns.

Whenever you have a problem at work, consult Chapter 1. THE RIGHT TO ORGANIZE YOUR WORKPLACE first. Then, consult the issue-specific chapter to learn more about the laws and state agencies that address your issue. Your approach to solving your workplace issue should encompass the lessons from both chapters.

### ***What It Is Not***

It is not intended as legal advice. It is also not meant to be used individually. If you are experiencing a workplace problem, the information contained in this pamphlet *is not* a substitute for collective workplace organizing. It is a supplement. While you can take advantage of the state agencies discussed here to resolve a workplace issue or assert your rights, you are more likely to win more and better improvements through organizing.

Feel free to copy all portions of the manual and distribute them to family, friends, and coworkers.

## **Keeping Records**

Keep complete and detailed records about your workplace. The better records you keep, the better you and your coworkers can protect your rights. Keep all pay stubs, contracts, schedules, emails or text messages from your supervisor/boss, letters or notices you receive from your employer, changes in your benefit plans, performance reviews at your work, disciplinary notices, etc. Keep records as you would keep a personal diary. If you think there is a problem, write down what the problem is, when it happened, and where it happened. Write down who else saw it or was threatened by it. If someone else is experiencing this problem, note it.

## **Requesting Personnel Files from your Employer**

Wisconsin State Statute Wis. Stat. §103.13 enables an employee to request that their employer allow them to inspect their personnel files. By personnel records, the law includes records which

are used or which have been used to determine the employee's qualifications for employment, promotion, transfer, additional compensation, termination, or other disciplinary action. This request also includes all of the medical records that the employer may have in its possession. The employee may make at least two such requests per year. The employer must provide the personnel file within seven working days.

An employee may also designate a representative in writing who can request and inspect the personnel files. A Worker Justice Wisconsin staff member can fulfill this role if an employee chooses.

# 1. The Right to Organize Your Workplace

*Workers have the right to take action together to improve their wages, hours, and working conditions—with or without a union. It is illegal for an employer to retaliate against workers who are talking about or organizing to address a workplace problem. It does not matter if you are not legally authorized to work. Undocumented workers enjoy the same protections detailed below.*

## **The National Labor Relations Act and Your Right to Organize**

The National Labor Relations Act (NLRA) gives you the right to:

- Talk to coworkers about improving working conditions (better pay, schedules, health benefits, safety, etc.).
- Organize, form, or become a member of a labor organization such as a workplace organizing committee or a union free from threats, intimidation, or harassment.
- Collectively bargain to negotiate a contract with your employer as a group (but only if you are represented by a labor union).

The NLRA applies to the employees of private companies. Your employer cannot retaliate against you for exercising these rights (although they often will). However, this law does not cover public sector employees, agricultural laborers, independent contractors, and supervisors (with limited exceptions).

The National Labor Relations Board (NLRB) is the federal agency that administers this law and investigates its violation by employers. To file a complaint with the NLRB, it must be filed within six months of the date of the illegal act or within six months when you or your union (if you have one) should have reasonably known about it.

Although public sector employees are excluded from the NLRA, Wisconsin state law extends these same protections. Under Wis. Stat. § 111.04, municipal and public employees have the right to form or join a labor organization to collectively bargain and to engage in concerted activity.

## **Concerted Activity**

Concerted activity is when two or more employees discuss, or take some kind of action together to improve, wages, hours, or working conditions. For example, if a group of employees all march to their supervisor's office to complain about unsafe working conditions, this is protected

activity, and those workers cannot be punished or retaliated against. Concerted activity is protected by the NLRA.

Concerted activity has proven to be an effective tool of organizing workers. For example, on August 18, 2022, a judge ordered Starbucks to reinstate seven employees at a Memphis, TN café that the company fired for union activity. Locally, workers have also made use of concerted activity. When the owner of Crushin' It Apparel laid off his employees for signing a petition to discuss working conditions, an NLRB agent simply informed the employer of the meaning of concerted activity, resulting in their reinstatement in September 2022.

Nevertheless, employers will retaliate against workers who exercise their rights. Before engaging in concerted activity, it is advisable to meet with an organizer from WJW.

If a worker tries to push their coworkers to take action or speaks on behalf of other employees to improve working conditions for everyone, this activity is also protected.

This protection applies even if you do not have a union.

## **Immigrant and Undocumented Workers**

Immigrant and undocumented workers enjoy the same right to concerted activity under the NLRA.

If you are fired for practicing concerted activity, the National Labor Relations Board has made it clear that it *will not ask* a worker their immigration status after they have filed a complaint against their employer for an unfair labor practice. The Board will assume your employer has correctly filed the I-9 and will seek reinstatement and backpay. *Simply do not bring up your status in your dealings with the Board.* The NLRB also *will not* give the information of your case to Immigration and Customs Enforcement (ICE). ICE also cannot raid your workplace while an unfair labor practice investigation is ongoing.

If your employer informs the Board of your undocumented status during the course of their investigation, the Board will seek relief for you. By citing your status during the proceeding, your employer is trying to interfere with the Board's investigation of workplace issues. The Board wants to prevent this chilling effect. However, if it learns that you are undocumented, it cannot obligate the employer to reinstate you.

If you or your coworkers suspect, at any point during your organizing, that the employer may use immigration status to retaliate, you may qualify for deferred action. To learn more about this kind of relief, see chapter 8. IMMIGRANT AND UNDOCUMENTED WORKERS' RIGHTS. You should also bring this concern to a Worker Justice Wisconsin organizer or the union organizer supporting your campaign.

*What does all of this mean for immigrant and undocumented workers?* It means that it is difficult for employers to use the immigration status of workers against them when these workers make use of the NLRA and NLRB. By using the law and the federal agency, they are not exposing themselves to government persecution. If your undocumented status comes up during the proceedings (i.e., your employer unwisely admits to fudging your I-9), the NLRB will still seek some form of reconciliation even if they cannot, by law, seek your reinstatement or back pay because you lack work authorization.

## **Labor Organizations**

A labor organization is a formal organization of employees that act together to improve working conditions. Creating or joining a labor organization with coworkers is the best and fastest way to improve working conditions. The two most prevalent forms of labor organization are workplace organizing committees (WOC) and labor unions. Sometimes, WOCs evolve into labor unions. But labor organizations are only as successful as their members make it. You must get involved and support your labor organization for it to be successful. It is not some outside organization that will come in and solve your workplace problems. You must join together with your coworkers to make it effective.

### ***Workplace Organizing Committee***

A workplace organizing committee is a council of workers from one or several job sites that identifies workplace problems and leads the campaign for improvements. It can be as big or as small as the workers want it to be. It can have elected officers or it can be open to anyone. The WOC is the organizing hub. It recruits other workers to join, holds assemblies with workers to make decisions, and envisions and implements the campaign strategy.

Worker Justice Wisconsin helps workers establish and govern WOCs in their job sites. WOCs are the foundation of all workplace organizing.

### ***Labor Union***

A labor union is very similar to a WOC in that it organizes workers to fight for improvements. However, it typically differs from WOCs in three crucial ways. 1) All unions have an elected leadership. 2) Most unions are part of a larger, national or international organization. 3) Most unions seek legal recognition from the state through union elections. Workers can petition the National Labor Relations Board for a union election where they vote 'yes' or 'no' for the union to be their legal representative in negotiations with their employer. If the union wins the election, the employer is *legally obligated* to bargain a contract with the union. After the negotiations, the workers vote to accept or reject that contract. Through this process, workers are able to have a direct say in their working conditions.

In Wisconsin, unless you are covered by a union contract, your employer can fire you at any time for any reason or for no reason unless you can show that firing you violates an interest clearly and explicitly recognized by law. Without a union contract, an employer can also change your wages, hours and working conditions at any time without your consent unless you can show the change is discrimination prohibited by law. Having a union is an important bulwark against abuse.

Being part of a union and having a collective bargaining agreement can bring additional important benefits such as:

- Protection from being fired without cause
- Protection from being fired, demoted, or disciplined without warning
- Added protection from undignified treatment or disrespect
- Health and safety protection in addition to what OSHA stipulates
- Seniority
- Health insurance
- Higher wages
- Breaks
- A grievance procedure
- Pensions
- Parental leave
- Paid personal time off
- Anything else workers are willing to fight for and include in the collective bargaining agreement

If you are represented by a union, you can expect help from someone with your grievances and enforcing the union contract. There should be a coworker at your job site who acts as a shop steward to enforce the contract or a union representative who may be responsible for a number of different job sites who can help. It is a good idea to get a copy of your union contract and read it. Ask your shop steward or union representative if you have any questions or problems.

If your workplace does not already have a union, you can help to start a union organizing drive. Federal law protects your legal right to form a union and participate in union activity. If there is a union organizing drive where you work it is *illegal* for your employer to:

- Ask you what you think about the union; ask if you have signed a union authorization card, or if you plan to sign one; or ask if you know who has signed union authorization cards, or who is involved in the organizing campaign
- Promise you, or give you, raises, promotions, or other benefits if you oppose the union
- Threaten to or actually fire you, lay you off, cut your pay, reduce your hours or benefits, or retaliate in any way because you support the union
- Discriminate against or treat differently employees that support the union, including disciplinary actions and transfers
- Deny the union the right to talk to you or try to prevent you from talking about the union

If your employer engages in any of these activities during a union drive, it is extremely important to document it and bring it to Worker Justice Wisconsin, a labor lawyer, the union with which you are organizing, and/or the NLRB.

## 2. Minimum Wage and Overtime

*Under State and Federal Law, most workers must be paid at least the minimum wage of \$7.25 per hour for adults and \$5.90 per hour for certain individuals under 20. Your employer must pay you for all hours that you work. In most cases, any hours over 40 in a week must be paid at time and a half. Except for deduction of taxes, your employer must have your permission to deduct money from your paycheck. Your employer must give you a pay stub that lists any deductions from your paycheck. You have a right to at least 24 consecutive hours off each week. Breaks of less than thirty minutes are on paid time.*

### **Minimum Wage Law**

The National Labor Relations Act (NLRA) gives you the right to:

The Federal and State minimum wage laws require employers to pay workers at least \$7.25 per hour. The State of Wisconsin additionally ensures that employees who work within the state shall be compensated for work, paid based on time, piecework or otherwise, sufficient to enable the employee receiving it to maintain him/herself under conditions consistent with his or her welfare. Wis. Stat. § 104.035 permits the following workers not covered by the Fair Labor Standards Act (FLSA) to be paid less:

- Workers under 20 years old may be paid \$5.90 per hour during their first 90 consecutive calendar days of employment.
- Certain full-time students, student learners, apprentices, and workers with disabilities may be paid less than the minimum wage with the permission of the U.S. Department of Labor.
- Tipped workers must receive a cash wage of at least \$2.33 per hour, except tipped opportunity workers who must receive a cash wage of at least \$2.13 per hour. If a worker's tips combined with the employer's cash wage of at least \$2.33 per hour do not equal the hourly minimum wage, the employer must make up the difference. The regular pay rate of tipped workers is subject to overtime pay. The full minimum wage rate becomes the tipped worker's regular rate of pay.

Your company has to pay for all of the time that you work. For example, if you have to drive from your employer's shop or office to the worksite, your employer must pay you for that driving time. If your employer chooses to give you a 15-minute break during the workday, your employer must pay you for this time. Also, even if your employer is unhappy with the quality of your work, you must be paid for the time you worked. Bona fide meal breaks generally are not paid as work time.



The fair value of meals, lodging, or other facilities provided by the employer may sometimes be considered part of a worker's wages.

Current Minimum Hourly Wage in Wisconsin – effective on July 24th, 2009:  
As of July 24th, 2009, there is no longer a separate minimum wage for minors in Wisconsin.

### **Wisconsin's Current Minimum Wage Rates**

	Adult & Minor	Opportunity*
General	\$7.25	\$5.90
Tipped	\$2.33	\$2.13
*An opportunity employee is not yet 20 years old and has been employed under a particular employer for 90 or fewer consecutive days from the date of initial employment.		

These minimum wage rates apply to all employees, including indentured apprentices, employees at private employments including nonprofit organizations, whether paid on a time, piece rate, commission, or other basis.

### **Mandatory Overtime Pay**

Under the FLSA, an employer can legally require you to work more than 40 hours per week. Most hours worked over 40 hours per week are considered overtime. Overtime pay equals one and one half times your regular hourly wage. For example, a worker who gets paid \$10.00 per hour should earn \$15.00 per hour for every hour over 40 hours worked during a week. Overtime must be looked at on a *weekly* basis: *you are not entitled to overtime pay for a single shift longer than 8 hours*. If you work overtime, you must be paid for it, even if your employer didn't request it. *If the employer let it happen and benefited from it, you must be paid for it. You can refuse to work overtime, but you could be terminated for that choice.*

There are different Federal overtime laws for hospital, nursing home and residential health care workers, state and local government workers and law enforcement and fire protection personnel.

Some groups not covered by Federal overtime laws include: administrative and professional workers, commissioned retail workers, farm workers, private domestic workers, some non-profit organizations, federal agencies, and truck drivers transporting goods in commerce.

## **Paycheck Deductions**

Your employer usually cannot make deductions from your pay unless you agree to them. For example, before making deductions for safety equipment that you need to perform your job properly, your employer must ask for and receive your agreement. Exceptions include income taxes and Social Security (FICA).

## **Interpretation of Hours Worked**

Employees must be paid for all time spent in “physical or mental exertion (whether burdensome or not) controlled or required by the employer and pursued necessarily and primarily for the benefit of the employer’s premises, on duty or at a prescribed workplace.”

## **Rest Periods**

Employees must be paid for all time spent in “physical or mental exertion (whether burdensome or not) controlled or required by the employer and pursued necessarily and primarily for the benefit of the employer’s premises, on duty or at a prescribed workplace.”

### ***Meal Periods:***

- The law recommends but does not require that employers provide 30 minutes or more for a meal period.
- Employers must provide at least a 30 minute meal period to all workers under the age of 18.
- No minor may work for more than 6 consecutive hours without a meal period.
- All employers must pay all workers for “on duty” meal periods.
- An “on duty” meal period is when the worker doesn’t have at least 30 minutes free from work or is not free to leave the premises of the employer.
- Workers cannot be required to accept employer provided meals as part of their wages.

### ***Coffee Breaks:***

- Coffee breaks are not required by Wisconsin law.
- If the coffee break is less than 30 minutes, there should be no deduction from wages.

### ***Bathroom Breaks:***

- There is no law about the number of bathroom breaks workers are permitted during the course of a shift.

- Occupational Safety and Health Administration (OSHA) requires employers to have a sufficient number of toilets to meet sanitation standards.
- If an employer doesn't have the necessary number of toilets, keeps them locked or otherwise inaccessible, they are in violation of the Federal government's sanitation standards.

### ***Day of Rest:***

- The "One Day of Rest in Seven" Law guarantees most full-time workers in factories and mercantile establishments at least 24 consecutive hours of rest in each calendar week.
- Certain specific occupations are exempt from coverage of this law including janitors, security guards, bakery, dairy, hotel and restaurant workers.
- The days of rest may fall on the first and last days given every seven days so that an employer may legally schedule work for 12 consecutive days within a two week period.

Check a copy of your employee handbook or Union contract to see what the manual has to say about rest periods, meal breaks, and bathroom breaks. If you are being denied the rest periods provided by the handbook or contract and have a union, speak to your union representative. If you don't have a union, contact Worker Justice Wisconsin.

## **Child Labor**

Youth under the age of 17 are limited in the number of hours and kind of work they can do. In certain circumstances, workers under the age of 20 may be paid less than minimum wage. Most Wisconsin employers hiring minors ages 12-15 years must possess a valid work permit for each minor before work may be performed (with the exception of agriculture). Only high school graduates and other minors who are exempt from attending school may be employed the same hours as an adult.

### ***Permitted Employment***

Youths 12 and 13 years old may be employed only as caddies, in agriculture, domestic services, street trades, school lunch programs, for a parent/guardian who owns a business, as sideline officials for high school football games or other athletic events under the direct supervision of an adult, work in fund-raising sales for nonprofit organizations, public or private schools. A worker must be at least 14 years old to work in most non-farm jobs, and at least 18 years old to work in non-farm jobs that could be detrimental to their health and well being.

## **Work Hours**

<b>Maximum Hours of Work for 14 &amp; 15 year-old minors</b>	<b>After Labor Day through May 31</b>	<b>June 1 through Labor Day</b>
<i>Daily Hours</i>		
Non-School Days	8 hours	8 hours
School Days	3 hours	3 hours
<i>Weekly Hours</i>		
Non-School Weeks	40 hours	40 hours
School Weeks	18 hours	18 hours
Permitted Time of Day	7 am - 7 pm	7 am - 9 pm

State employment of minors laws prohibit work during times that minors are required to be in school, except for students participating in work experience and career exploration programs operated by the school.

Minors under 16 years of age are limited to the maximum hours and time of day restrictions even though they may work for more than one employer during the same day or week.

Minors 16 and 17 years of age who are employed after 11:00 pm must have 8 hours of rest between the end of one shift and the start of the next shift.

State and federal laws do not limit the hours that minors 16 years of age or over may work, except that they may not be employed or permitted to work during hours of required school attendance under Wis. Stat. § 118.15.

State and federal laws also permit minors under 16 to work up to seven days per week in the delivery of newspapers and agriculture. In most other types of labor, minors under 16 may only work six days a week.

## **Wages**

As of July 24, 2009 there is no longer a separate Wisconsin minimum wage law for minors and minors receive the same \$7.25 per hour wage as adults.

- Certain full-time students, student learners, apprentices, and workers with disabilities may be paid less than the minimum wage with the permission of the U.S. Department of Labor.

- Minors 16 and 17 may be employed no more than 50 hours per week during the weeks in which they are not required to attend school on any day of the week, if the employer pays whichever is the greater of the following:
  - Time and one-half their regular rate of pay for all overtime hours worked over 10 hours per day or over 40 hours per regularly recurring period of 168 hours.
  - Overtime as provided under the employer's pay plan to other workers.
- Minors ages 14-17 working in agriculture must be paid time and one-half for work over 50 hours per week during peak periods.

Wisconsin has one of the lowest minimum wage rates in the country. To compare, visit this link: <https://www.dol.gov/agencies/whd/minimum-wage/state>.

### ***Wage Claims and Enforcement***

For all but the smallest businesses, the U.S. Department of Labor (USDOL) enforces the Fair Labor Standards Act (FLSA) – minimum wage, overtime, and child labor laws. Inviting the USDOL to enforce the FLSA is an important tool in workers' organizing toolkit when there are violations of the law. To file a wage and hour complaint or to find out more information, contact the Labor Standards Division of the Wisconsin Department of Workforce Development.

To file a wage claim, you must use a form furnished by the Department of Workforce Development. Use this website to access the form – <https://dwd.wisconsin.gov/er/laborstandards/wageclaim.htm> – or call (608) 266-3131.

# 3. Unemployment Insurance

*You may be eligible for unemployment benefits if you lose your job or are forced to quit. The amount paid will be based on past earnings. To be eligible you must be physically able and available for full-time work. To continue to receive benefits, you must prove you are looking for work. Filing for unemployment benefits can be done by phone or online. If your claim is rejected you may appeal in writing.*

## **Eligibility**

If you lose your job or are forced to quit, you may be eligible for Unemployment Insurance (UI). You may not be eligible if you are “at fault” for losing your job. Examples of being “at fault” may include:

- Deliberate and repeated misconduct, such as chronic absence or tardiness without a good explanation, sleeping on the job, or violating other workplace rules.
  - Note: It is not enough that you were careless or negligent on the job, that you arguably used poor judgment, or that you accidentally damaged some of your employer’s property. Generally, misconduct must be purposeful and, unless it is very serious, must have happened more than one time.
- You refused to accept a similar job without good reason.
- You quit your job without good reason.

A number of reasons are usually considered good enough for you to quit your job and still be eligible for UI:

- Some sort of fraud was involved in recruiting you for the job. (Example: certain wages were offered when you were hired, but once you started working your wages were reduced.)
- Your life or health was endangered by the employer’s failure to maintain a safe workplace.
- The nature of the work changed dramatically from what you had originally been hired to do.
- You were subjected to some intolerable or illegal condition on the job, such as discrimination or sexual harassment.
- You were hired to work a particular shift, but then required to transfer to another shift that would result in a lack of childcare for minor children. Note: In Wisconsin, you will

generally not be eligible for UI if you left your job because childcare arrangements fell through, you did not have transportation, etc.

Generally, undocumented workers are *not* eligible for UI, but you may want to consult an attorney to discuss your situation.

To be eligible for UI benefits, you must be physically able and available for full-time work. You must also prove that you are looking for work. An easy way to do this is to keep a list of the employers you contact, including their names, addresses, phone numbers, and the dates that you contacted them.

## **How To Apply for Unemployment Insurance**

Your initial claim application must be filed in the week you want your claim to begin. Wisconsin does not have a waiting period. To apply, contact the Department of Workforce Development, Unemployment Insurance Division.

To File a New Claim, reopen an Existing Claim, or file a weekly claim certification for a benefit check, go to: <https://dwd.wisconsin.gov/uiben/apply/>.

### ***How to Prepare***

You must have the following information ready before filing an initial claim:

- Your Social Security Number;
- Your Personal Identification Number (see below);
- Your Wisconsin driver's license number, if you have one; and
- A list of employers for whom you worked in the past 18 months, their complete addresses, telephone numbers and the first and last date you worked for each of them.

### ***Personal Identification Number (PIN)***

Your PIN is a 4-digit number that you make up before filing a claim. Your PIN identifies you and protects you from having another person file your claim or obtain information about your claim. You are responsible for your PIN. Do not share your PIN with anyone.

## **After Your Initial Claim Has Been Filed...**

You will receive a claim confirmation form and handbook in the mail:

- If you qualify for UI benefits, you will receive Form UCB-700 that tells you the amount of benefits you can receive and how that amount was computed.

- If you do not qualify for UI benefits, you will receive a form that explains how your ineligibility was determined.

You must file a claim certification each week after you file your initial claim.

## **How to File an Appeal**

If your claim is denied, you may challenge the decision by filing an appeal by the date stated on the decision mailed to you. During this period, you **MUST** continue to file weekly claims. Otherwise, you will not receive any benefits, even if you win the appeal.

- Your appeal must be in writing, but it does not have to be long. A single sentence, such as “I am writing to appeal the initial determination.” is usually enough.
- Include a copy of the decision or identify it by its nine-digit number located in the upper left-hand corner of the page. Include your name, social security number, the name of your place of employment, and your actual worksite address.
- Include dates and times when you and your witnesses and representatives cannot be available for a hearing.
- Indicate any special needs such as an interpreter or other accommodations needed due to disability.
- You, your agent, or your attorney must sign the appeal.
- The appeal should be delivered during office hours, mailed, or faxed to the hearing office listed on the back of the determination under WHERE TO FILE AN APPEAL.

Extensive information about UI appeals and the hearing process can be found at:

<http://dwd.wisconsin.gov/dwd/publications/ui/hearing.htm>.



## 4. Workers' Compensation

*Under Wisconsin Workers' Compensation laws, workers who become ill or injured as a direct result of their job are eligible to get a weekly check from their employer's Workers' Compensation Insurance to cover their medical expenses and a portion of their lost wages. If your employer harasses or fires you because you have filed a Workers' Compensation claim, they could face a variety of penalties.*

### **If You Are Injured At Work**

Seek medical attention immediately! Let your employer know in writing the name and address of the doctor you visited. An injured employee should give notice to the employer within 30 days of any injury (ideally, in writing!). In the case of an occupational disease, the employee should give notice within 30 days of the time the employee knows about the disability and its relation to the employment (ideally, in writing!). However, it is still possible to give notice any time within two years of the date the injury occurred, the onset of the disease, or the date the worker first realized that such injury or disease was caused by their work. You are not required to accept treatment from a health care provider recommended by your employer. For serious or life-threatening emergencies, go to the emergency room. For injuries that are not life-threatening, try to go to a hospital or clinic with an occupational medicine department.

Tell the doctor exactly how your injury happened. Get any recommended work restrictions in writing and *ensure that your doctor writes that the injury or illness is work related.*

Keep records of the accident and physical conditions that may have contributed to the accident.

All compensation and medical payments are based on medical support from your doctor. Upon written request, the worker must allow an examination by a doctor named by the employer or Workers' Compensation Carrier. Workers are entitled to copies of all examination reports prepared by an employer's physician and to have a doctor of his or her own choice present at the examination.

### **What Types of Injuries Are Covered?**

Worker's Compensation covers mental harm, physical harm, or death caused by accidents or occupational diseases. It may also cover the aggravation of preexisting physical conditions.

- *Note:* the term occupational disease under Wisconsin law is defined as a disease that is acquired as the result of working in an industry over an extended period of time.
- Worker's Compensation also covers damage to artificial members, dental appliances, teeth, hearing aids, and eyeglasses.

- *Note:* hearing aids and eyeglasses are covered only if they are damaged by an accident that also caused personal injury entitling the employee to compensation for either disability or treatment.

If you work only in one place, such as a factory, store or office, your injury will usually be covered only if it occurs at work. If your work requires travel, you are covered at all times while traveling, including the time you are eating or sleeping, unless you deviate from regular work duties for a private or personal reason.

## **Exceptions**

Generally, Workers' Compensation is not paid for injuries incurred while a worker is doing something of a strictly private nature, injuries received from provoking a fight or engaging in horseplay, or self-inflicted injuries.

## **Types of Claims**

There are four types of WC claims:

### ***Temporary Total Disability (TTD):***

- Paid during the period of treatment and healing
- Paid before permanent disability is determined
- Paid if there is a total loss of wages, either because the worker is unable to do any kind of work, or because the employer is unable to provide work within limitations set by the doctor
- Almost all workers' compensation cases are initially for temporary total disability

### ***Temporary Partial Disability (TPD):***

- Paid when a worker sustains a wage loss
- Paid when the worker is offered a wage reduction because of the disabling effects of the injury or disease during the healing period
- Paid in proportion to the wage reduction

### ***Permanent Total Disability (PTD):***

- Paid when extremely serious injury prevents worker from performing any gainful employment

- Weekly benefits are paid for life; the amount of payment depends on the severity of the permanent disability
- Permanent total injuries are the loss of both eyes, the loss of both arms, the loss of both legs, the loss of an arm and a leg, and other extreme conditions determined by the Division of Workforce Development to prevent the injured worker from working
- If a work-related accident causes a worker's death, their spouse and children are entitled to compensation

***Permanent Partial Disability (PPD):***

- Paid after the healing period
- Paid if the worker has limitations which are expected to remain unchanged in the future

**Who Pays the Bills?**

Your employer is required to pay your medical expenses and mileage. Send any bills you receive to your employer or its insurer. If you paid any of your medical expenses, send itemized receipts to your employer or its insurer for reimbursement.

*Always keep a copy of any bills, medical records, letters, or receipts that you receive!*

**How is Compensation Paid?**

- The amount of compensation depends on the type of injury sustained.
  - **Temporary Total Disability:** while you are healing from your injury, you will get two-thirds of your weekly wage, up to \$808 a week.
  - **Temporary Partial Disability:** this amount varies. The employee will receive the same percentage of benefits as wages lost when compared to their wage at the time of the injury.
  - **Permanent Partial Disability:** this benefit is calculated as two-thirds of a maximum average permanent partial weekly wage provided for in the law at the time of injury.
  - **Permanent Total Disability:** this benefit is calculated as two-thirds of the employee's average weekly rate subject to the maximum amount specified by law.
- There is a three-day waiting period before benefits can be paid for all disabilities lasting seven days or less. If you are disabled for more than seven days or there is permanent

disability, you will receive compensation for the entire period, including the three-day waiting period.

- Worker's Compensation is never paid for the day of injury.
- In most cases, the first payment will be made by the insurance company within 14 days of your last day worked.

### **Do I Need a Lawyer?**

It is a good idea to contact a lawyer if:

- Your doctor and the company doctor disagree;
- You are asked to sign a document or give a statement;
- You can't return to work because of your injury; or
- It has been over 2 weeks since your accident and you have not received any benefits.

*Note:* Lawyer's fees are charged in WC cases only if the claim is successful. Lawyers are allowed to charge 20% of the amount in dispute.

# 5. Family and Medical Leave

*Under Federal or State law, a worker may have a right to unpaid leave for the birth or adoption of a child, a serious medical condition, or a family member's serious medical condition. Upon returning to work, the employee has the right to the same or similar position. During leave, the employer must continue to make benefit contributions.*

## **Federal Law**

The Federal Family and Medical Leave Act (FMLA) allows workers up to 12 work weeks of *unpaid* leave for the following reasons:

- A serious health condition that makes a worker unable to perform their job;
- The birth of a worker's natural child;
- Placement of a child with a worker for adoption or foster care; and
- To care for a spouse (including a common-law spouse), child, or parent (but not "parent-in-law") with a serious health condition.

The law does not require your time off to be paid, although some companies have policies that allow you to be paid when you take time off under the FMLA. But you can always organize your coworkers to demand that your employer offer you paid time off.

Your employer must continue to provide the same health insurance during the leave as was provided while you were working. Workers are also entitled to the same or an equivalent job in terms of pay, benefits, and conditions of employment upon returning to work.

## **Eligibility Under the Federal FMLA**

To be eligible for leave under the FMLA, you must:

- Work for an employer who employs at least 50 employees within 75 miles of your worksite;
- Have worked for your employer for at least 52 weeks (this need not be 52 consecutive weeks); and;
- Have worked at least 1,250 hours in the last 12 months.

Again, you can always organize to demand that the standards of the FMLA or better be applied to your jobsite. Legally, there is nothing stopping you.

## **Intermittent or Reduced Leave**

You do not have to use all 12 weeks of leave at once. You may take intermittent leave or reduced leave instead. Intermittent leave is time off taken in separate blocks. You can use intermittent leave for things such as doctor appointments to care for a serious health condition. Reduced leave reduces your number of working hours. For example, if your doctor instructs you to work half-time following surgery, your employer is required to follow this schedule for up to 24 weeks (equivalent to 12 weeks of full-time work).

## **Wisconsin Family Medical Leave Act (WFMLA)**

Employers must comply with any provisions of State or local law that provide greater family or medical leave rights than the rights established by the Federal FMLA. Therefore employers covered by both Federal and State FMLA must comply with the provisions of both.

Under the Wisconsin FMLA, a worker can take:

- Up to 6 weeks of leave for the birth or adoption of a child. However, the WFMLA does not include leave in connection with placement of a child for foster care.
- Up to 2 weeks to care for a parent (*including "parent-in-law"*), child, or spouse (legal husband or wife only) with a serious health condition.
- Up to 2 weeks for their own serious health condition.

The Wisconsin FMLA has several provisions that differ from the Federal FMLA. For example:

- WFMLA does not have exemptions for salaried or key workers. Therefore, even a worker who might be excluded under Federal FMLA could take advantage of WFMLA if eligible.
- WFMLA has less stringent guidelines for making a leave request. While federal law requires 30 days notice when possible, Wisconsin law only says notification should be made in advance "in a reasonable and practicable manner."
- Under WFMLA, a worker is allowed to take intermittent leave for birth and adoption in increments equal to the shortest increment permitted by the employer for any other non-emergency leave.
- WFMLA has no military-specific family leave provisions.
- WFMLA lets workers choose whether to use paid or unpaid leave of any type provided by the employer to the worker.
- Under Wisconsin law, an eligible worker could choose to use accumulated vacation or paid sick time or they could choose to save that paid time for later.

- Under Federal law an employer can require that a worker use accrued paid leave.

To be eligible for FMLA under Wisconsin law, a worker must:

- Work for an employer with at least 50 permanent workers during at least 6 of the preceding 12 calendar months;
- Have worked for 52 consecutive weeks for an employer; and
- Have worked at least 1,000 hours in the prior 12 months.

### ***Steps for Obtaining Medical Leave***

1. Submit a request in writing to your employer as soon as you know you will need leave time.
2. Give your employer 30 days notice, if possible. Explain that you need to take time off for medical reasons.
3. Keep a copy of your request for your records.
  - a. *Note:* You do not have an obligation to designate whether the leave you are taking is Federal or State FMLA leave.
4. Your employer must provide you with a written notice of your rights and responsibilities while on leave.
5. Obtain and keep copies of relevant medical records.
6. Keep copies of all documents that you submit to or receive from your employer.
7. If your employer denies your request, file a complaint with the U.S. Department of Labor–Wage & Hour Division.

### **How to File a Complaint**

If you believe that your employer is violating the Federal FMLA, you have two years to file a complaint with the U.S. Department of Labor–Wage & Hour Division:

- By Phone: 1-866-487-9243
- Online: <https://www.dol.gov/agencies/whd/contact/complaints>

If you believe your employer is violating the Wisconsin FMLA you have just 30 days to file a complaint with the Department of Workforce Development– Equal Rights Division.

- By Phone: 608-266-6860 (Madison); 414-227-4384 (Milwaukee)

- Online: <https://dwd.wisconsin.gov/er/tech/onlinecomplaint.htm>



## 6. Safety and Health

*You have the right to a safe and healthy workplace. You should have proper safety equipment, the proper training, and instruction and information about any chemicals or materials used in your workplace. If you believe your workplace is unsafe, you should organize your coworkers to compel the employer to obey the Occupational Safety and Health Administration's standards ("OSHA").*

### **The Occupational Safety and Health Act**

The Occupational Safety and Health Act of 1970 guarantees the right to safe and healthy working conditions. Under this Act, *all* employers must:

- Provide a safe workplace that is free of unsafe and hazardous conditions.
- Examine the workplace to make certain that it follows OSHA standards and regulations.
- Provide safe tools and equipment and properly maintain this equipment.
- Use color codes, labels, signs, and posters to warn workers of possible safety hazards.
- Provide medical examinations and training when required by OSHA standards.
- Display in a prominent place the OSHA poster informing workers of their rights and responsibilities.
- Not discriminate against workers who exercise their rights under this Act.
- Post OSHA violation notices at or near the hazardous work area. These notices and citations must be displayed for 3 days or for as long as the violation remains unfixed, whichever is longer.

OSHA is the government agency in charge of seeing that dangerous or unhealthy workplace conditions are fixed. After a complaint is filed with OSHA, OSHA will conduct an inspection of the workplace.

#### ***All workers have the right to:***

- Receive training on how to do a job and handle equipment safely.
- Request information from employers:
  - about the health and safety hazards of their workplace.
  - about the standards and regulations regarding workplace safety.
  - about the chemicals and other toxic substances used in the workplace.
  - about relevant exposure and medical records regarding the workplace.
  - Receive the proper equipment to do the job safely.

- Request that employers fix and correct workplace health and safety hazards, even if these hazards are not OSHA violations.
- File a complaint with OSHA if there are OSHA violations or other serious safety hazards at the workplace.
- Choose to remain confidential if they do not want their employer to know that they filed an OSHA complaint.
- Make complaints without their employer's knowledge, either on their own or with the help of an attorney.
- Be involved in the OSHA workplace inspection.
- A representative of the workers can accompany the OSHA investigators on their inspection of the workplace.
- The employer may not choose the worker representative.
- Ask the OSHA inspectors questions confidentially, point out safety violations at the workplace, and describe injuries and medical conditions suffered as a result of the violations.
- Inform the OSHA investigators if the employer has changed anything in the workplace just for the inspection, including turning off equipment, opening windows, or anything else that is not part of the normal workplace routine or environment.
- Find out the results of an OSHA inspection.
- OSHA will let the employees' representative know the outcome of the inspection and investigation.
- Not to be fired or retaliated against for making suggestions or filing a complaint with OSHA.
- File discrimination complaints if they are punished for reporting a violation or exercising their health and safety rights.
- Workers can also file a discrimination complaint if they were punished for refusing to work when there was an imminent danger of death or serious bodily harm and there was no time for an OSHA inspection.
- Workers who have been punished or discriminated against because they complained about a safety hazard or violation must file their discrimination complaint in court within 30 days of the punishment or discrimination.

***Workers have responsibilities to:***

- Read and understand the OSHA posters and signs at the workplace.
- Follow all OSHA standards and regulations.
- Follow all workplace safety rules and use all protective equipment and clothing while working.
- Report hazardous conditions to the supervisor.
- Report all job-related injuries and illnesses to the employer and seek treatment promptly.
- Exercise OSHA rights thoroughly and responsibly.

### **Workers' Right to Refuse Dangerous Work**

Refusing to do work that you feel is unsafe is complicated. If the condition *clearly* presents a risk of death or serious physical harm, and there is not sufficient time for OSHA to inspect, and, where possible, you have brought the condition to the attention of your employer, you may have a legal right to refuse to work in a situation in which you would be exposed to the hazard.

Your right to refuse to do a task is protected if *all* of the following conditions are met:

- Where possible, you have asked the employer to eliminate the danger, and the employer failed to do so; and
- You refused to work in "good faith." This means that you must genuinely believe that an imminent danger exists; and
- A reasonable person would agree that there is a real danger of death or serious injury; and
- There isn't enough time, due to the urgency of the hazard, to get it corrected through regular enforcement channels, such as requesting an OSHA inspection.

You should take the following steps:

- Ask your employer to correct the hazard, or to assign other work;
- Tell your employer that you won't perform the work unless and until the hazard is corrected; and
- Remain at the worksite until ordered to leave by your employer.

For example, if you were a painter whose boss asked to do roofing one day, you should *strategically* refuse to do the work if you feel it is unsafe. Ask your boss to provide you with the necessary training and safety equipment for you to complete the task first. Or, ask your boss to provide you with a different task because you feel that you are not adequately prepared. Do not

leave the worksite or outright refuse work unless you are asked to leave for the day. If multiple workers are being asked to do work that they feel is unsafe, you should collectively raise the issue with your employer. This will increase the likelihood that OSHA inspectors decide that the workers are asking for reasonable accommodations.

If your employer retaliates against you for refusing to perform the dangerous work, contact Worker Justice Wisconsin and/or OSHA immediately. Complaints of retaliation must be made to OSHA within 30 days of the alleged reprisal.

## **Hazardous Chemicals**

Employers are required to provide information and training about the hazardous chemicals to which workers are exposed. Employers must:

- Inventory all chemicals that are used in the workplace;
- Evaluate hazardous materials by using lists to determine if they cause cancer, reproductive damage or birth defects;
- Develop a written Hazard Communication Program, which lists chemicals present at the site;
- List where chemical information will be available to employees;
- Identify who is responsible for this program at the workplace;
- Explain how requirements for chemical labeling, safety data sheets, and employee information and training are going to be met in the workplace;
- Label chemical containers with the name and manufacturer of the chemical;
- Hazard warnings (a brief statement of the hazardous effects of the chemical);
- Labels must be legible and prominently displayed;
- Optional: precautionary measures (ex. “do not use near open flame”);
- Provide Material Safety Data Sheets (“MSDS”).

Employers must provide a MSDS for every hazardous chemical they use in the workplace. Employers may rely on information provided by their chemical suppliers. Included on the MSDS must be:

- Potential hazardous effects;
- Physical and chemical characteristics;

- Recommendations for appropriate protective measures;
- The MSDS sheets must be easily accessible to every worker in the workplace. Many employers store all the MSDS sheets in binders at a central location. Others have computer databases which can be accessed by all employees.
- If the MSDS is not readily available, it must be requested in writing before using the hazardous chemical. Within 15 days of the request for a MSDS, the employer must place the MSDS on the side of the chemical container. If the employer does not comply with the request for a MSDS, contact OSHA, a Worker Justice Wisconsin organizer, or an attorney.
- Train workers about the chemicals' health effects, and in the safe handling, storage, and transportation of the chemicals.

The chemical inventory and the Material Safety Data Sheets (MSDS) must be accessible at all times, on all shifts. If you do not know the effects of a substance or how to handle it, consult the MSDS. If an MSDS is not readily available, request it in writing before using the hazardous substance.

Notify Worker Justice Wisconsin and report to the nearest OSHA office within 8 hours any fatal accident or any accident that results in 3 or more workers being admitted to the hospital. Keep records of all work-related injuries and illnesses. All current workers, former workers, and their representatives should have access to these records

## **How to File an OSHA Complaint: Step-By-Step**

The Occupational Safety and Health Act of 1970 gives employees the right to file complaints about workplace safety and health hazards. The Act also gives workers the right to request that their names not be revealed to their employers.

### ***1. File A Complaint***

Workers may file complaints online or in writing. Download the OSHA complaint form at <http://www.osha.gov/oshforms/osha7.pdf>. Fax or mail the completed form to the local OSHA Regional Office (see Wisconsin contact information below). Be sure to include a name, address, and telephone number so that OSHA can contact you. Workers do not need a complaint form to file a complaint. Workers only need to send the name and address of their workplace, a detailed description of the unsafe or unhealthful condition, and a signed statement that the person making the complaint is a worker.

File a discrimination complaint if your employer has punished you for exercising any employee rights established under OSHA or for refusing to work when faced with an imminent danger of death or serious injury and there is insufficient time for OSHA to inspect. You can file a

complaint by calling your local OSHA Regional Office (see Wisconsin information below). In states with approved state plans, employees may file a complaint with both the State and Federal OSHA.

If there is an emergency, or the hazard is immediately life threatening, call the local OSHA office (see Wisconsin OSHA offices, below) or call 1-800-321-OSHA.

OSHA Regional Offices (These four federal OSHA offices cover private sector employers and workers in Wisconsin):

Appleton Area Office

1648 Tri Park Way  
Appleton, WI 54914  
(920) 734-4521

Eau Claire Area Office

1310 W. Clairemont Avenue  
Eau Claire, WI 54701  
(715) 832-9019  
(715) 832-1147

Madison Area Office

1402 Pankratz Street, Suite #114  
Madison, WI 53704  
(608) 733-2822  
(608) 733-2823

Milwaukee Area Office

310 West Wisconsin Avenue, Room 1180  
Milwaukee, WI 53203  
(414) 297-3315  
(414) 297-4299

**2. When Can a Complaint Be Filed?**

OSHA recommends that employees try to resolve safety and health issues first by reporting them to their supervisors, managers or the safety and health committee. At any time, however, employees can complain to their local OSHA Regional Office and ask for an inspection or an investigation.

**3. Who Can Complain?**

Employees or their representatives have a right to request an inspection of a workplace if they believe there is a violation of a safety or health standard, or if there is any danger that threatens physical harm, or if an "imminent danger" exists. Anyone who knows about a workplace safety or health hazard may complain, and OSHA will investigate the concerns reported.

An "imminent danger" is a hazard that:

- Poses a threat of death or serious physical harm. "Serious physical harm" means that a part of the body is damaged so severely that it cannot be used or cannot be used very well.
- Poses a threat in that there must be a reasonable expectation that toxic substances or other health hazards are present and exposure to them will shorten life or cause

substantial reduction in physical or mental efficiency. The harm caused by the health hazard does not have to happen immediately.

- A hazard that is immediate or imminent. This means that you must believe that death or serious physical harm could occur within a short time, for example before OSHA could investigate the problem.

#### **4. What Information Must The Worker Provide?**

Workers or their representatives must provide enough information for OSHA to determine that a hazard probably exists. Workers do not have to know whether a specific OSHA standard has been violated in order to file a complaint.

Helpful information includes the following:

- How many workers are at the workplace and how many of them are exposed to the hazard?
- How are workers exposed to the hazard and at what times of the day/night?
- What type of equipment is used? Is the equipment in good condition?
- What materials and/or chemicals are used?
- Have employees been trained in how to handle hazardous materials or equipment?

#### **5. How Does OSHA Respond To Worker Complaints?**

OSHA can respond to complaints in two ways:

- *On-Site Inspection*
  - On-Site inspections usually occur for hazards that pose an imminent danger to workers. These are hazards that expose workers to death or serious bodily harm. This includes any fatality or catastrophe that results in the hospitalization of three or more workers. However, OSHA will consider conducting on-site inspections for all complaints received.
  - If OSHA decides to conduct an on-site investigation, it will contact the employer and notify them of the complaint. The name of the complaining worker will not be revealed to the employer. OSHA will advise the employer that it should investigate and determine whether the complaint is valid. The employer then has 5 days to send a response to OSHA. The employer is required to share this response with all the workers at the workplace.

- The workers have the right to select a representative to accompany the inspector on his tour of the workplace. However, any worker can talk to the inspector confidentially. Workers are encouraged to point out hazards, describe illnesses and accidents that resulted from hazards. Workers should also inform the inspector if the conditions on the day of the inspections are different from how they are normally.
- *Off-Site Investigation (also called a "phone/fax investigation")*
  - This investigation is used when a phone, fax, or letter investigation would be a better alternative than an on-site investigation.
  - This investigation is used for hazards that are not as urgent or threatening.
  - In this investigation, OSHA telephones the employer, describes the alleged hazards and then follows up with a fax or letter. The employer must respond in writing within five days, identifying any problems found and noting corrective actions taken or planned. If the response is adequate, OSHA generally will not conduct an inspection. The employee or employee representative who filed the original complaint will receive a copy of the employer's response.
  - However, if workers are not satisfied with this investigation, they have the right to request an on-site inspection.

## **6. How to Get the Most Out of an OSHA Inspection**

- Gather Information about hazards.
- Tell your supervisor about the hazard. Put these concerns in writing and keep a copy. OSHA will ask if your employer knows about the hazard.
- Get help from Worker Justice Wisconsin or your union if you have one. Enlist as many workers as you can who are directly affected by the safety hazard to talk to OSHA.
- Prepare documentation of specific hazards and incidents, who was involved, and when the incidents occurred.
- Give OSHA names of other workers or witnesses who are aware of the problem.
- The OSHA inspector will hold opening and closing conferences with the employer. If the worker decides to reveal their identity, they have a right to attend these conferences.
- At the opening conference, the OSHA inspector will explain the purpose of the visit, the scope of the inspections, and the standards that will apply.
- Request copies of the inspection results.



# 7. Employment Discrimination

Civil rights laws protect individuals who are members of certain groups against discrimination in employment. Federal laws, State laws, and, if your employer is located in the City of Madison, Madison laws cover many different forms of discrimination. Types of discrimination prohibited by these various laws are summarized below:



## Protected Classes by Jurisdiction 2022

CITY OF MADISON	STATE OF WISCONSIN	UNITED STATES OF AMERICA				
		E.O.D (28)	E.R.D (18)	E.E.O.C. (9)	H.U.D. (9)	D.O.J. (8)
		90-120 days	120 days to 1 year	Employment	Housing	Public Places
sex (incl. pregnancy)	sex (pregnancy or childbirth) (employment only)	sex (pregnancy/sexual orientation)	sex	sex		
race	race	race	race	race		
religion	creed (religion)	religion	religion	religion		
color	color	color	color	color		
national origin or ancestry	national origin or ancestry	national origin	national origin	national origin		
age (18 and over)	age (employment = 40 and over) (housing and public accommodation = 18 and over)	age (40 and over)	age (40 and over)	age (40 and over)		
handicap/disability	disability	disability	disability	disability		
marital status	marital status (employment, housing only)					
source of income (includes rent assistance)	lawful source of income (housing only)					
arrest record (employment/public accommodations)	arrest record (employment only)					
conviction record (employment/public accommodations)	conviction record (employment only)					
less than honorable discharge	military service membership (employment only)					
physical appearance						
sexual orientation	sexual orientation					
gender identity						
political beliefs						
familial status	familial status (housing only)		familial status			
student status						
social security # disclosure (not in housing)						
domestic partners						
citizenship						
credit history (employment only)						
genetic identity (employment & housing)	genetic testing (employment only)	genetic identity				
victim of domestic abuse, sexual assault or stalking (housing only)						
retaliation	retaliation (employment, housing only)	retaliation	retaliation	retaliation		
unemployment (employment only)						
	honesty testing (employment only)					
	use/nonuse of lawful products (employment only)					
non-religion						
homelessness						

These laws prohibit discrimination in any term and condition of employment, including pay, hours, work assignments, hiring, firing, promotions, or layoffs.

While these laws make many types of discrimination illegal, it is important to know what forms of discrimination or unfair practices they *do not* cover. *Most workers are considered "at will" workers.* This means that an employer does not need to have a good reason to fire a worker. A worker can be fired for any reason or for no reason at all. In the same manner, a worker can quit for any reason or no reason at all. It is perfectly legal for employers to choose not to hire or fire workers because they do not like the way the worker dresses, do not like the color of their hair, or because the employer thinks the worker is lazy or supports the wrong football team.

Many employers abuse this power and workers are surprised to learn there is nothing they can do about it. There are only two legal limitations on such abuses:

- First, the employer cannot fire a worker for one of the prohibited reasons in the chart above.
- Second, an employer must prove it has a valid reason to fire or discipline a worker who is covered by a union contract or other written employment agreement.

But workers without a union can still organize and engage in direct action to protest and prevent at-will firings. If the employer knows that firing an employee for an unjust reason will provoke their workforce to disrupt production, they will be less likely to do it. An organized workforce is your best defense.

## **Addressing Workplace Discrimination**

A successful discrimination complaint can result in one or more of the following outcomes:

- Reinstatement
- Promotion
- Compensation for lost wages and benefits
- Damages for emotional distress caused by the discrimination
- Punitive damages (to punish the employer for the discrimination)
- Attorneys' fees
- Court orders to change discriminatory policies

If you believe you have been discriminated against, you can file a charge with one of three agencies listed below. You do not need a lawyer to file a charge against your employer with any of these agencies. Each agency has its own form to complete. You can fill out the form online, mail the complaint, or complete it at the agency's office. Sometimes, agency employees will help you to fill out the charge form.

### Federal

EEOC Milwaukee Office Reuss Federal Plaza  
310 West Wisconsin Ave, Ste. 500  
Milwaukee, WI 53203-2292  
Tel: 414-662-3680  
<https://publicportal.eeoc.gov/>

### Madison

City of Madison Department of Civil Rights  
210 Martin Luther King, Jr. Blvd. Room 523  
Madison, WI 53703-3346  
Tel: (608) 266-4910  
Email: [dcr@cityofmadison.com](mailto:dcr@cityofmadison.com)  
<https://discrimination.cityofmadison.com/Home/ComplaintView>

### State

Department of Workplace Development  
Equal Rights Division  
201 E. Washington Avenue, Room A100  
P.O. Box 8928  
Madison, WI 53708-8928  
Tel: (608) 266-6860  
<https://dwd.wisconsin.gov/er/tech/onlinecomplaint.htm>

## ***The Equal Employment Opportunities Commission (EEOC)***

This is the federal agency that monitors employment discrimination. Filing a complaint with the EEOC allows you to go to federal court and get a jury trial, and perhaps recover more substantial money damages than are permitted through the DWD-ERD, below, such as damages for emotional distress. The EEOC can hear cases on race, sex, age, national origin, and disability. The EEOC does not hear cases on sexual orientation, marital status, arrest-and-conviction record, military membership, and the use of lawful products.

Any individual who believes that their employment rights have been violated may file a charge of discrimination with EEOC. An individual, organization, or agency may file a charge with the EEOC on behalf of another person who wants to keep their identity a secret. Workers who need the assistance of an interpreter, sign language specialists, large-font printed materials, etc. to file a charge should inform the EEOC local office so that accommodations can be made.

To file a charge with the EEOC, you must provide:

- The complaining party's name, address, and telephone number;
- The name, address, and telephone number of the employer, employment agency, or union that is alleged to have discriminated, and number of workers (or union members), if known;
- A short description of the alleged discrimination;

- The date of the alleged discrimination;

All laws enforced by EEOC, except the Equal Pay Act, require filing a charge with EEOC before a private lawsuit may be filed in court. There are strict time limits within which charges must be filed:

- A charge must be filed with EEOC within *180 days* from the date of the alleged violation
- This 180-day filing deadline is extended to *300 days* if the charge also is covered by a state or local anti-discrimination law. In Wisconsin, the deadline is 300 days.
- To protect legal rights, it is always best to contact EEOC promptly when discrimination is suspected

If, after reviewing the evidence, the EEOC determines that discrimination has occurred, the EEOC will attempt to negotiate with the employer to try and find a remedy to the situation. If the EEOC is successful at negotiating a remedy with the employer, and the remedy is implemented faithfully by the employer, neither the charging worker nor the EEOC may go to court unless the employer violates the remedy agreement. If the EEOC is not successful at negotiating a remedy with the employer, the EEOC will decide whether they want to bring a lawsuit against the employer in federal court on behalf of the complaining worker. If the EEOC decides *not* to bring a lawsuit, the complaining worker has 90 days to bring a lawsuit on their own behalf. These 90 days begin after the EEOC sends the worker a note saying that they are not bringing a lawsuit and that the worker has the “right to sue”.

### ***The Wisconsin Department of Workforce Development Equal Rights Division (DWD-ERD)***

This agency generally processes complaints faster than the EEOC or the MEOC. The DWD-ERD can hear cases on race, sex, age, national origin, and disability. Only the DWD-ERD or the MEOC, below, can hear cases based on sexual orientation, marital status, and arrest-and-conviction record. Only the DWD-ERD can hear cases involving military membership and the use of lawful products (ex. tobacco). A person who believes that they are the victim of unlawful employment discrimination may file a complaint with the Equal Rights Division within 300 days of the discriminatory action. Resolution of some cases may take longer than one year. The Division makes every effort to settle or resolve cases in a timely manner.

When a complaint is filed, it is assigned to an equal rights officer to be investigated. The investigator acts independently, and does NOT represent either the complaining worker or the employer. The investigator cannot give legal advice to either party. An attorney should be contacted if the worker needs legal advice. The Equal Rights Division can provide a list of attorneys who handle fair employment law cases. After the complaint is received by the Equal Rights Division, a copy of the complaint is sent to the employer, who must provide a written answer to the complaint. The investigator may still contact the worker or employer after

receiving this answer in order to get additional information. The investigator may also ask the worker and the employer if they want to resolve the case through settlement.

If there is no settlement, the Equal Rights officer will complete an investigation and determine whether or not there is Probable Cause that the law was violated. *Probable Cause* is not a finding that there was discrimination. Rather, it means that the investigator found enough believable information about discrimination to send the case to a formal hearing. *No Probable Cause* is when an investigator finds that there was not enough evidence of discrimination. This does not mean that there was no discrimination. The case is dismissed, but the complaining worker can file an appeal within 30 days.

Discrimination hearings are similar to court proceedings. Both parties present evidence under oath before an administrative law judge (ALJ). The ALJ reviews the evidence and hears testimony of witnesses, then issues a decision on whether or not discrimination occurred. All relevant evidence and testimony must be presented at this hearing. It is the only chance for the parties to do so. Information given earlier to the investigator is not considered at the hearing. The judge cannot represent either party. It is advisable for parties to have a lawyer at this point, although having a lawyer is not required. If discrimination is proven, the judge has the choice of awarding lost wages, interest on lost wages, and attorney fees and costs.

### ***Madison Equal Opportunities Commission (MEOC)***

MEOC can hear cases on race, sex, age, national origin, and disability. MEOC can hear cases based on sexual orientation, marital status, and arrest-and-conviction record. Only the MEOC can hear cases on sources of income (welfare), political ideas and beliefs, less-than-honorable military discharge, student status, or physical appearance.

The EOC accepts complaints from all job applicants as well as full-time, part-time, seasonal, and temporary employees. The EOC also accepts complaints that involve employment agencies and labor unions. They do not accept cases involving an independent contractor relationship.

In order for the EOC to investigate a complaint, complaining parties must satisfy three factors:

- **Location:** The discrimination must have occurred within the City of Madison.
- **Length of Time Between the Incident and the Filing of the Complaint:** A complaint must be filed within 300 days of the incident, unless the discrimination is continuous and ongoing.
- **Legal Requirements:** The complaining party must belong to one of the following protected groups (it is very important to show that the discrimination or unfair treatment occurred because of the worker's membership in a protected class and not for any other reason):

- Sex
- Age
- Race
- Color
- Religion
- Arrest Record
- Conviction Record
- Marital status
- Student status
- National Origin or Ancestry
- Physical Appearance
- Handicap/Disability
- Sexual Orientation
- Political Beliefs
- Source of Income
- Retaliation
- Less-than-Honorable Discharge from the military

**Example:**

If your employer wrote you up because you came in to work late, you cannot automatically assume that your employer discriminated against you. It is important to notice whether or not you were singled out. For example, if you are the only Hispanic cook at a restaurant, and you notice that the employer wrote you up when you were 15 minutes late, but did not write up any of the other non-Hispanic cooks when they came in 15 minutes late. This sort of action could signal discrimination based on membership in a protected class.

Like the DWD-ERD, the EOC will determine if there is or is not probable cause. After a determination of Probable Cause, the case moves to Conciliation. Conciliation is a voluntary process to try to settle the case. After a Probable Cause determination is made, the parties will be asked if they want to try to discuss a settlement. If both parties agree, the conciliator will arrange a conference. If either or both parties do not wish to discuss a settlement, or if they cannot reach an agreement, the case will proceed to a hearing on the merits.

At the hearing, each party may present evidence, call witnesses, cross examine witnesses, make objections, and make opening and closing statements. The hearing examiner will preside over the hearing and decide if discrimination occurred. The examiner will not consider information from the investigation – you must present all of the evidence and call all of the witnesses at the hearing that you want the examiner to consider. You may ask the examiner to issue subpoenas for the witnesses and documents that you want to present. Based on the evidence presented at the hearing, the examiner will decide whether or not discrimination occurred. This decision is called the Recommended Findings of Fact, Conclusion of Law, and Order. This decision will have a finding of discrimination and a remedy for the discrimination, or, if there was a finding of no discrimination, why there was a finding of no discrimination. Either party may request an appeal of the hearing. This appeal is submitted to the EOC. The Commission reviews the record made at the hearing. No new evidence is submitted. Either party may appeal the decision of the Commission to the circuit court.

## ***What Documents And Materials Should I Keep?***

- Keep a written record of any actions and comments that may help to show that you were discriminated against.
- Write down the date and time of conversations you had with your supervisor or anyone else. Write down and keep the name of witnesses, notices, and letters you thought were discriminatory, and any responses that you received from your employer.
- Save all emails and text messages between you and your supervisor.
- You do not need this information to file a complaint, but it will help you present your case once the investigation begins.

## ***Witnesses***

It can help your case if you find people who witnessed the discrimination you experienced. The Equal Opportunity Commission will not call these witnesses, but it is your responsibility to get a written statement from them. Ask all witnesses to write a statement about what they saw and heard. Ask them to sign and date their statement and write their phone number and address. Keep these statements in a personal file separate from any workplace files. These statements can be helpful after you file a complaint for discrimination.

## **Disability Discrimination**

The Americans with Disabilities Act (“ADA”) protects job applicants and workers from discrimination in hiring, classification, grading, discharge, discipline, compensation, or other terms and conditions of employment based on disability.

The ADA covers private employers who employ *15 or more workers*. It also covers state and local government employers, employment agencies, labor unions, and the U.S. Congress.

According to the ADA, an individual with a disability is a person who:

- Has a physical or mental impairment that substantially limits one or more major life activities;
- Has a record of such an impairment; OR
- Is regarded as having such an impairment

Under the ADA, a current user of illegal drugs is not protected, although an individual who is recovering or who is in a supervised rehabilitation program is covered.

Reasonable accommodations for people with disabilities include, but are not limited to:

- Making existing facilities used by employees readily accessible to and usable by persons with disabilities;
- Job restructuring, modifying work schedules, reassignment to a vacant position;
- Acquiring or modifying equipment or devices, adjusting or modifying examinations, training materials, or policies, and providing qualified readers or interpreters.

### ***Disabled Individuals' Rights***

If you are qualified and can do the job, your employer must make reasonable accommodations for you to perform the job. These accommodations can include:

- Changing equipment so that you can use it;
- Changing your work schedule; and
- Making buildings and facilities more accessible.

An employer is required to make a reasonable accommodation to the known disability of a qualified applicant or employee if it would *not* impose an "undue hardship" on the operation of the employer's business. Undue hardship is defined as an action requiring significant difficulty or expense when considered in light of factors such as an employer's size, financial resources, and the nature and structure of its operation. An employer is *not* required to lower quality or production standards to make an accommodation; nor is an employer obligated to provide personal use items such as glasses or hearing aids.

Under the ADA, employers may NOT:

- Recruit only job applicants without obvious disabilities
- Ask job applicants to describe disabilities or take medical examinations before a job offer is made
- Applicants may be asked about their ability to perform specific job functions. A job offer may be conditioned on the results of a medical examination, but only if the examination is required for all entering employees in similar jobs. Medical examinations of employees must be job related and consistent with the employer's business needs.
- Give fewer or less attractive advancement opportunities to qualified workers with disabilities than to others
- Fire a qualified worker because of a disability
- Treat qualified workers with disabilities worse than non-disabled workers



- Retaliate against an individual for opposing employment practices that discriminate based on a disability, or for filing a discrimination charge, testifying, or participating in any way in an investigation, proceeding, or litigation under the ADA.

### ***In Wisconsin***

Wisconsin’s Fair Employment Law gives civil rights protections to qualified individuals with disabilities. Unlike the federal ADA, the Fair Employment Law applies to all public and private workers, regardless of the number of workers.

Under the Wisconsin law, disabled people are protected from discrimination in:

- |                                 |   |
|---------------------------------|---|
| ● Recruitment and hiring        | ● Training                                      |
| ● Job assignments               | ● Lay-offs and firing                           |
| ● Pay                           | ● Other employment-related actions              |
| ● Leave or benefits             | ● Retaliation for acting against discrimination |
| ● Promotion                     | ● Harassment on the job because of a disability |
| ● Licensing or union membership |   |

AIDS is a disability under the law and no person may be discriminated against because of this disease.

Alcoholism and drug addiction are disabilities under state law, and a person cannot be discriminated against for these reasons, likewise, a person who is recovering from alcoholism or drug addiction or who is in a supervised rehabilitation program cannot be discriminated against.

### ***Can an Employer Refuse to Hire Somebody Because of Their Disability?***

A person with a disability may be passed over if the disability is reasonably related to the person’s ability to adequately and safely perform job-related duties. An employer may consider if a person’s disability would constitute a hazard to the safety of the person, coworkers, or the public. However, an employer may not assume a hazard exists because of a person’s disability and must typically establish through objective or medically-supported evidence that a significant risk of substantial harm would occur. An employer has a legitimate interest in maintaining a safe workplace, but may not generalize rejection of persons with disabilities. If a hazard is found to exist, an employer has a further duty to determine if a reasonable accommodation can be made to reduce the hazard to an acceptable level.

### ***In Madison***

Madison’s Disability Rights and Services Program (“DR&SP”) is the part of the City Department of Civil Rights that serves city residents with disabilities. This program is designed to coordinate

compliance with the federal ADA and the Wisconsin Fair Employment Law. The Disability Rights Coordinator works with all city departments to assure their compliance with the ADA. The coordinator also intakes, investigates, and resolves all disability-based complaints from users of city services.

## **Gender Discrimination**

The federal Civil Rights Act of 1964 protects individuals against employment discrimination on the basis of gender. This law applies to all employers with *15 or more workers*, and to all state and local governments. It is unlawful to discriminate against any worker or applicant for employment because of their gender in regard to hiring, termination, promotion, compensation, job training, or any other term, condition, or privilege of employment. The Act also prohibits employment decisions based on stereotypes and assumptions about abilities, traits, or the performance of individuals on the basis of gender and that are not job-related.

### ***Gender-based discrimination includes:***

- Sexual Harassment
  - Direct requests for sexual favors, also called “Quid pro quo” sexual harassment. This occurs when a supervisor conditions job benefits on submitting to unwelcome sexual conduct or punishes a worker for refusing to participate in such conduct.
  - Workplace conditions that create a hostile environment for persons of either gender, is sexual harassment (the ADA has not been updated to have more inclusive language). The discrimination in this case must be severe and pervasive.
  - Examples of sexual harassment:
    - You have to go along with a supervisor’s sexual advances to get hired or to keep a job, or to get a raise or a vacation, or to influence other decisions about your job;
    - Behavior such as touching, making sexual remarks, asking for sex, or making sexual advances is so severe and pervasive that it is very difficult for you to perform your work.
  - Federal law may protect you:
    - Even if no-one witnessed the harassing behavior;
    - Even if the harassing behavior does not threaten or cause you to lose your job;

- Regardless of whether it is a boss, co-worker, or client who harasses you; and even if the harassment occurred only once
- If You Are Being Sexually Harassed:
  - Keep clear records of each incident of harassment.
  - Get support from friends, family, and co-workers.
  - Find out if other co-workers have the same problem. Join together to take these steps toward ending the sexual harassment. A Worker Justice Wisconsin organizer can help you develop an organizing plan to put an end to the sexual harassment.
  - Talk to your employer. Find out if your employer has a sexual harassment policy and carefully follow the steps of that policy.
  - If you are in a union, talk to your union representative. Check the union contract for a sexual harassment policy.
  - Keep clear records of your job performance. Keep all evaluations and memos relating to your job performance. The harasser might question your job performance in order to defend such behavior.
  - File a charge with the Equal Employment Opportunity Commission (EEOC), or the Wisconsin Department of Workforce Development (DWD), or the Madison Equal Employment Opportunities Commission (MEOC).
- Pregnancy Discrimination
  - The Pregnancy Discrimination Act prohibits discrimination on the basis of pregnancy, childbirth, or related medical conditions.
  - Examples of pregnancy discrimination:
    - An employer refuses to hire a woman because she is pregnant;
    - An employer fires a worker or forces her to leave because she is pregnant;
    - An employer takes away credit for previous years, accrued retirement benefits, or seniority because of maternity leave;
    - An employer fires or refuses to hire a woman because she had an abortion.
- If you are unable to work because of complications with your pregnancy, you are entitled to the same rights, leave privileges, and benefits as other workers who are out of work for a short period of time due to other disabilities. If your doctor or health care provider

says you are sick and unable to work during some or all of your pregnancy, you may be able to take up to 12 weeks off without pay under the Federal Family and Medical Leave Act (FMLA).

- The FMLA requires federal, state, and local government employers, as well as private employers with 50 or more workers, to grant eligible female workers up to 12 weeks of unpaid pregnancy leave. If other workers who can't do their jobs for short periods of time are given easier duties, you should also be given easier duties if your pregnancy prevents you from being able to do your job. Likewise, any short-term disability leave policy that your company offers to injured or ill workers must be offered to you as well.

### ***Gender-Based Wage Discrimination***

The Equal Pay Act of 1963 requires that men and women be given equal pay for equal work in the same establishment. *The jobs need not be identical, but they must be substantially equal.* Under the Equal Pay Act, it is illegal for employers with at least 15 workers to:

- Pay women less for work similar to that performed by men who have the same employer;
- Withhold training opportunities from women workers that are offered to men;
- Refuse to consider promoting women to higher-paid managerial or professional positions; or
- Set lower wages for “women’s jobs” than for “men’s jobs” that require equal skill, effort, responsibility, and working conditions, because women will “work for less” or because “the job market” allows lower wages for women.

### ***Lilly Ledbetter Fair Pay Act of 2009***

Under this Act, each paycheck that delivers compensation that is gender discriminatory is illegal under federal law, regardless of when the discrimination began. Under the Act, an individual subject to compensation discrimination because of their gender has 180 days (or 300 days if the state allows for 300 days for such a complaint—Wisconsin does!) to file a complaint after any of the following:

- Discriminatory compensation or discriminatory practices affecting compensation is adopted;
- When the individual is affected by the discriminatory compensation;
- When the individual’s compensation is affected by discriminatory compensation, including each time the individual receives compensation that is the result of gender discrimination.

This Act is retroactive, and applies to all claims of discriminatory compensation pending or filed on or after May 28, 2007.

### ***In Wisconsin and Madison: A Few Important Facts***

The victim of harassing behavior does not always have to confront the alleged harasser in order to establish that the behavior is unwelcome. Expressing an objection is not required where any reasonable person would find the behavior offensive. However, in employment, the victim has to report the behavior to a member of management in order for the employer to be liable if the situation is not corrected. Or, the victim must be able to demonstrate that the employer knew or should have known about the harassment. Offenders can be supervisors, co-workers, owners, or third-party individuals (such as associates, vendors, delivery persons, clients). A person that consents to the advances may still be a victim of sexual harassment if they later reject more advances or refuse to participate in the behavior. Non-sexual, abusive, hostile, or rude treatment of one individual or group may still be harassment.

### **Race and Color Discrimination**

The Civil Rights Act of 1964 protects individuals against employment discrimination on the basis of race and color. It is illegal for an employer to discriminate against you because of your race or color in terms of hiring, termination, promotion, compensation, job training, or any other condition of employment. Your employer may not base decisions about your work assignments on stereotypes and assumptions about abilities, traits, or the performance of your racial group. The Act applies to private employers with 15 or more workers, and to federal, state, and local governments. The Act also applies to employment agencies and labor unions.

The Act not only prohibits intentional, direct discrimination, but also neutral job policies that disproportionately affect persons of a certain race or color and that are not related to the job and the needs of the business. Employers should adopt “best practices” to reduce the likelihood of discrimination and address barriers to equal employment opportunities.

It is also illegal for an employer to discriminate against you because of:

- Marriage to, or association with, an individual of a different race;
- Membership in, or association with, ethnic-based organizations or groups; or
- Attendance or participation in schools or places of worship generally associated with certain minority groups.

### ***Harassment***

Ethnic slurs, racial “jokes,” offensive or derogatory comments, or other verbal or physical conduct based on an individual’s race or color constitutes unlawful harassment if the conduct creates an intimidating, hostile, or offensive working environment, or interferes with the

individual's work performance. Employers are required to take appropriate steps to prevent and correct harassment. Likewise, employees are responsible for reporting harassment at an early stage to prevent its escalation.

### ***Segregation And Classification of Workers***

Employers may not:

- Physically isolate minority workers from other workers or from customer contact;
- Routinely assign primarily minorities to predominantly minority establishments or geographic areas;
- Exclude minorities from certain positions or groups or categorize workers or jobs so that certain jobs are generally held by minorities; or
- Code applications and resumes to designate an applicant's race. Such coding is evidence of discrimination where minorities are excluded from employment or from certain positions.

### ***Race-Related Characteristics Or Conditions***

Discrimination on the basis of a characteristic associated with race – such as skin color, hair, texture, or certain facial features – violates the Civil Rights Act of 1964. It is also illegal to discriminate on the basis of a condition which predominantly affects a race unless the practice is job-related and consistent with business necessity. For example, since sickle-cell anemia predominantly occurs in African-Americans, a policy that excludes individuals with sickle-cell anemia must be job-related and consistent with business necessity.

### ***Are There Any Exceptions To The Law?***

There are some exceptions to the law. The law permits an employer to legally consider a person's race or national origin in a few very narrow exceptions:

- **Affirmative Action:** A formally adopted affirmative action plan *may* permit an employer to consider race or national origin in the job selection process.
- **Counselor:** An employer seeking a staff counselor, mentor, or role model for a group of teens having a certain cultural or ethnic background *may* be able to demonstrate a business necessity for hiring a person from such cultural or ethnic background.
- **Actors or Models:** In some cases, an employer may hire persons with certain racial or ethnic characteristics for the purposes of authenticity or another business necessity.

### ***The Immigration Reform and Control Act (IRCA)***

The IRCA prohibits the hiring of unauthorized workers, but it also prohibits employers from treating persons differently because they are foreign-born, "foreign-looking", have

“foreign-sounding” names, or speak with an accent. Work authorization documents must be reviewed for *all* applicants, not just those who appear to be foreign or whose primary language is not English.

### ***Religious Discrimination***

The Civil Rights Act of 1964 prohibits employers from discriminating against you because of your religion in terms of hiring, termination, promotion, compensation, job training, or any other term, condition, or privilege of employment. This Act applies to private employers with 15 or more workers, as well as state and local governments, employment agencies, and labor unions.

For example, an employer may NOT:

- Schedule examinations or other selection activities in conflict with a current or prospective worker’s religious needs;
- Inquire about an applicant’s future availability at certain times;
- Maintain a restrictive dress code; or
- Refuse to allow observance of the Sabbath or a religious holiday;

Employers must reasonably accommodate the religious practices of an employee or prospective employee, *unless doing so would create an undue hardship upon the employer*. An employer can claim undue hardship when accommodating an employee’s religious practices requires more than the ordinary administrative costs or jeopardizes seniority systems. Examples of employer accommodation include:

- Flexible scheduling;
- Voluntary substitution or swaps of schedules or responsibilities;
- Job reassignments; and
- Lateral transfers

### **Citizenship Discrimination and Document Abuse**

Every day, many people legally authorized to work in the United States are unfairly denied jobs because they look or sound “different,” because they are not U.S. citizens, or because of their ancestry or national origin. Under the Civil Rights Act of 1964, it may be illegal for a private employer with 15 or more employees to deny you employment because of your ancestry or place of origin, or because you have the physical, cultural, or linguistic characteristics of a particular racial or ethnic group.

National origin/citizenship discrimination means treating someone less favorably because they come from a particular place, because of their ethnicity or accent, or because it is believed that

they have a particular ethnic background. National origin discrimination also means treating someone less favorably at work because of marriage or other association with someone of a particular nationality. Citizenship discrimination occurs when an employer refuses to hire you, fires you, or a recruiter refuses to refer you for a job because of your citizenship or immigration status. If you have legal work papers, the law protects you against discrimination based on citizenship. For example, it is illegal for an employer to hire only U.S. citizens or only workers with green cards, unless required to do so by law, regulation, or government contract. There is an exception in law for security clearances, defense contractors, and government work.

*Examples of violations under the Civil Rights Act include:*

### ***Refusal to Employ***

An employer cannot deny you employment based on your ancestry or national origin. Likewise, an employer cannot request more documentation of your citizenship status than you are legally required to produce simply because of your appearance, language, accent, or any other attributes which are suggestive of national origin. Such a request by your employer may constitute document abuse.

The Immigration Reform and Control Act (IRCA) prohibits the hiring of unauthorized workers, but it also prohibits employers from treating persons differently because they are foreign-born, “foreign-looking”, have “foreign-sounding” names, or speak with an accent. Work authorization documents must be reviewed for all applicants, not just those who appear to be foreign or whose primary language is not English.

### ***English-Only Rules***

An “English Only” rule requires employees to speak only English in the workplace. Your employer must demonstrate that an “English Only” rule is necessary for business. Otherwise, such a rule may constitute discrimination based on ancestry or national origin. If your employer believes that an “English Only” rule is necessary for business purposes, they must tell you when you must speak English and the consequences of violating that rule. An “English Only” rule may be used if it is needed to promote the safe or efficient operation of the employer’s business.

### ***Harassment***

Your employer bears the responsibility of keeping your workplace free of harassment based on your ancestry or national origin. Ethnic slurs, jokes, or other verbal or physical conduct relating to your national origin are harassment when such behavior causes you to feel intimidated or offended, interferes with your ability to do your job, or otherwise affects your employment opportunities.



## ***I-9 Employment Eligibility Verification Form***

The same law that protects you against citizenship discrimination also requires employers to make sure that workers are legally eligible to work. To do this, the employer must fill out a special form for each person hired. The form is called the I-9 Employment Eligibility Verification Form. In order for your employer to fill out the I-9 form, you must provide documents that prove your identity and your employment eligibility. Documents are grouped in three categories. You can choose one document from Group A because it shows both your identity and your eligibility to work. Or you can choose two documents: one from Group B, which shows identity, and one from Group C, which shows eligibility to work. Expired documents are no longer acceptable.

### ***Group A – Identity and work authorization documents:***

- Unexpired U.S. Passport or Passport Card
- Unexpired Foreign Passport with I-551 stamp or temporary I-551 printed notation on machine-readable immigration visa.
- Alien Registration Receipt Card or Permanent Resident Card (INS Form I-551)
- Unexpired Employment Authorization Document issued by the INS which contains a photograph (INS Form I-766)
- Unexpired Foreign Passport with Form I-94 containing an endorsement of the alien's nonimmigrant status. (For aliens authorized by the INS to work only for a specific employer.)
- Passport from Federal States of Micronesia or the Republic of the Marshall Islands with unexpired I-94 or I-94A form.

### ***Group B – Identity:***

- Driver's License or State ID with photo or personal information including name, date of birth, gender, height, eye color, and address
- School ID with Photo
- Voter's Registration Card
- U.S. Military ID or Draft Card
- Canadian Driver's License
- Native American Tribal document
- Federal, state, or local government ID with photo or personal information including name, date of birth, gender, height, eye color and address

- Military Dependent's Identification Card
- United States Coast Guard Merchant Mariner Card
- If you are under 18 and unable to produce the above documents, you may also choose 1) a school report card or school record, 2) a clinic, doctor or hospital record, or 3) a nursery school or day care record.

**Group C – Work authorization:**

- Native American Tribal document
- U.S. Birth Certificate issued by a state, county, municipal authority, or territory with official seal
- U.S. Citizen ID (I-197)
- ID card for use of resident citizen in U.S. (I-179)
- Social Security Card (unless stamped "not valid for employment")
- Certification of Birth Abroad of U.S. Citizen (FS-545 or DS-1350)
- DHS document authorizing employment

You may choose which legally acceptable documents you want to show to your employer. Your employer cannot make you show particular documents or more than the legally required number of documents just because he or she wants to see them. If your employer makes you show more documents than are legally required or rejects valid documents that appear genuine, your employer may have committed document abuse. An employer should not ask to see your documents prior to the interview or selection process. If you have already provided documents for an I-9 form, an employer cannot ask you to see them again simply because the I-9 requirements have changed.

# 8. Immigrant and Undocumented Workers' Rights

*Although immigrant and undocumented workers generally have the same labor and employment rights as United States citizens, this chapter explains some of the special rules affecting them.*

## **Deferred Action**

Deferred action is an important tool to protect undocumented workers' right to organize.

Deferred action is when an undocumented worker obtains a temporary legal status to live and work in the United States. Concretely, deferred action means:

- Work authorization for four years
- Protection from deportation for four years
- A valid Social Security number
- Access to unemployment insurance
- Access to a driver's license

To obtain deferred action, an undocumented worker must be part of a government investigation into an employer's violation of labor or employment law. Often, undocumented workers qualify for deferred action because they participated in a campaign to organize/unionize their workplace and the employer retaliated or threatened to retaliate against them for exercising their legal right to organize.

If your employer infringes upon your right to organize, or makes you believe that they will call the police or Immigration Customs & Enforcement (ICE) to intimidate you, you may qualify for deferred action.

*The process is straightforward:*

Workers begin organizing → The employer finds out and retaliates or threatens to retaliate → Workers fear immigration-based retaliation → The workers, with assistance from Worker Justice Wisconsin and/or their union, file an unfair labor practice charge with the National Labor Relations Board and request a letter of Statement of Interest (this letter informs the Department of Homeland Security [DHS] that there is an ongoing labor dispute and that ICE should not interfere in this worksite) → Undocumented workers who are part of that campaign then use that letter to apply for deferred action with DHS → If DHS approves it, they can apply for deferred action.

## **U-Visas**

Immigrants who are a victim to a certain crime and are assisting or have assisted law enforcement in the investigation or prosecution of that crime can obtain a U-Visa. A U-Visa grants them the right to remain in the United States temporarily while assisting law enforcement. Under certain circumstances, they may even obtain a green card.

A victim is defined, generally, as someone who has suffered direct and proximate harm as a result of a qualifying crime.

Not all crimes qualify for a U-Visa. The following do:

- Abduction
- Abusive Sexual Contact
- Blackmail
- Domestic Violence
- Extortion
- False Imprisonment
- Female Genital Mutilation
- Felonious Assault
- Fraud in Foreign Labor Contracting
- Hostage
- Incest
- Involuntary Servitude
- Kidnapping
- Manslaughter
- Murder
- Obstruction of Justice
- Peonage
- Perjury
- Prostitution
- Rape
- Sexual Assault
- Sexual Exploitation
- Slave Trade
- Stalking
- Torture
- Trafficking
- Witness Tampering
- Unlawful Criminal Restraint

While an employer's violation of the Fair Labor Standards Act on its own does not qualify an immigrant worker for a U-Visa, a violation of the law in addition to one of the following crimes listed above might qualify the individual. For example, if an employee has filed a complaint about wage theft with a state agency and their employer threatens to fire them or call ICE, then that can qualify as obstruction of justice, blackmail, or witness tampering.

To be eligible for a U-Visa, the victim must submit a law enforcement certification by a certifying agency. These include:

- Federal and State Departments of Labor
- Equal Employment Opportunity Commission
- Federal, State, and Local Family Protective Services
- Federal, State, and Local Judges
- Federal, State, and Local Prosecutors' offices
- Federal, State, and Local Law Enforcement Agencies

## **T-Visas**

T-Visas are for individuals who are victims of human trafficking. Upon being approved for a T-Visa, they receive work permits immediately. They may even obtain a green card three years after receiving their T-Visa.

In addition to victims of sex trafficking, T-Visas are granted to workers who have experienced labor trafficking, or someone who is compelled to work without getting paid, to continue working on the promise of eventually getting paid, or to deduct so many additional expenses from their pay that they can never pay back the employer.

*To qualify for a T-Visa, an individual must:*

- Be present in the United States
- Suffer extreme hardship, including unusual and severe harm, if removed from the United States
- Comply with any reasonable request for assistance in a trafficking investigation or prosecution or is less than eighteen years old. Immigrants over the age of eighteen should submit a law enforcement agency endorsement if possible. Child victims under eighteen do not have to show that they assisted a law enforcement agency in the investigation and/or prosecution of their traffickers.

## **Work Authorization**

By law, employers are required to hire only workers who are authorized to work in the U.S. Employers must verify the identity and work eligibility of employees.

The employer must ask each employee to fill out an I-9 form within three days of beginning their job. The I-9 lists the documents you can use to establish your identity and employment eligibility. It is against the law for the employer to demand which document the worker shows or to demand that the worker present more documents than required. If the employer does not allow you to choose which documents you show from the I-9 form, they are engaging in “document abuse.”

### ***E-Verify***

Your employer may participate in an electronic employment eligibility verification system called e-verify. This requires the employer to submit an inquiry that will compare worker information on the I-9 form with records in DHS and SSA databases. This modifies the I-9 procedure in three ways: 1) the worker must provide a social security number in section 1 of the I-9 form, 2) the employer can only accept a document from list B containing a photo, and 3) if the worker has an I-551 or I-766 form, the employer must make a photocopy of the document.

*E-Verify should only be used to verify new hires. It should not be used to re-verify information on current employees or employees hired by the company before it adopted E-Verify. If your employer is using E-Verify to verify existing employees, contact Worker Justice Wisconsin.*

### ***Re-verification of Work Authorization***

An employer is required to reverify a worker's employment eligibility *only* when the information the employee provided on the I-9 form indicates his or her work authorization is about to or has expired. Additionally, an employer who is audited by the INS and informed that there is a discrepancy with some of its workers' documents must also reverify those workers' documents. Once a worker has filled out an I-9 form, they are considered to be a "continuing employee" and therefore are not required to fill out a new I-9 form or to show their documents again, except for reverification.

You are considered a "continuing employee" and your employer should not require reverification of work authorization in the following circumstances:

- If you are a lawful permanent resident (you have a green card)
- If you have protested or complained about working conditions
- If you are returning to work after a temporary lay off due to a lack of work so long as it has not been more than three years
- After a temporary leave that your employer approved for family or medical leave
- If you are on strike
- As retaliation for engaging in union activities
- You received a promotion, demotion, or a pay raise
- You are transferred to a different unit within the same company
- You are reinstated in your job because of a decision made by a labor arbitrator or other state agency decision.

It is illegal for an employer to reverify work authorization documents of only certain workers if the employer's intent is to discriminate against those employees because of their immigration status or national origin. However, an employer *can* reverify documents *if* they do it for all workers.

### **Social Security "No-Match" Letters**

Problems about legal work status sometimes arise when an employer receives a Social Security Administration no-match letter. The Social Security Administration (SSA) periodically sends

letters to employers listing information from employer-provided W-2's that do not match the SSA's records concerning an employee's name, date of birth, sex, or social security number. These letters sent by the SSA are intended solely for the purpose of making sure that social security contributions are being credited to the proper accounts.

Some employers, though, have interpreted these letters as proof that workers are undocumented. Unrecorded name changes and data entry errors are just two of many reasons why employees might show up as a no-match. *SSA is not responsible for tracking down undocumented immigrants and is not giving employers this information for that purpose.*

Immigration laws strictly limit when an employer may ask to review an employee's work authorization or identity documents. Employers are *not* allowed to ask to see such documents upon receiving a Social Security Administration no-match letter.

If an employer receives a no-match letter, they should not lay-off, fire, suspend, or discriminate against the worker for whom the no-match letter was sent. It is not sufficient proof to show they are undocumented. *An employer who disciplines a worker for a no-match letter may be violating anti-discrimination laws.*

If a worker believes an employer has engaged in unlawful reverification, the worker should first contact their union, if they are represented by one, or an immigrant worker advocate. If the advocate determines that the worker might be a victim of document abuse or citizenship or national origin discrimination, the advocate can assist the worker in filing a charge with the Office of Special Counsel for Immigration-Related Unfair Employment Practices.

*If you receive a no-match letter:*

- Do not panic.
- Do not quit your job.
- You do not have to tell your employer if you receive a no-match letter at your house. This does not mean that your employer received one.
- If you do not have a union, ask a coworker to accompany you to any meeting with management.
- If you are a union member, contact your union representative and ask them to accompany you to any meeting you might have with management.

If your employer retaliates or discriminates against you for receiving a no-match letter, write down or record everything they say and contact Worker Justice Wisconsin.

## **What to Do if Your Employer Says There is a Problem with Your Documents**

1. If you were already a continuing employee, ask why they decided to check your documents now. Contact Worker Justice Wisconsin.
2. Locate the documents you showed your employer back when you were hired to ensure that the information matches the employer's information.
3. Ask your employer to tell you what were the specific problems they found with your documents.
4. If you have valid, updated, or different documents that could resolve the issue, present them and your employer will send the new information to ICE. ICE may ask to interview you. ICE can arrest you if they learn during the interview that you are unauthorized to work.
5. If ICE finds an issue with your documents and you decide not to provide new ones to solve the problem, you might be terminated.

## **What to Do if There is an ICE Raid**

The U.S. Department of Labor and ICE have signed a "Memorandum of Understanding" to limit ICE's enforcement of immigration laws in cases of declared labor conflicts. Workers can exercise the following rights without fear of suffering from immigration-related retaliation:

- The right to a minimum wage, a promised or contracted wage, and overtime
- The right to receive family medical leave and employee benefits
- The right to a safe workplace and workers' compensation
- The right to work without discrimination
- The right to form, join, or assist a labor organization, to engage in collective bargaining, and to engage in other concerted activities
- The right to be free from retaliation for trying to enforce any of these rights and without fear of ICE intervening

*If questioned by ICE or the police, regardless of whether or not you are documented, you have the right to:*

- Remain silent and not answer any questions
- Not be asked or forced to show documentation because you "look" foreign, speak with an accent, or do not speak English



- Deny ICE or the police entry into your house without a search warrant with your correct name and address

*If detained or arrested by ICE or the police, you have the right to:*

- Remain silent and not answer questions
- Ask for a telephone to call family or a lawyer
- Ask for and receive a list of low-cost legal immigrant services if you do not have a lawyer
- Talk to a lawyer before answering any questions
- Have a lawyer present if you agree to answer questions
- Be released from jail on bail (unless you have been convicted of a serious crime)
- Not sign anything you cannot read or understand
- Not sign any paper that states that you will voluntarily depart from the U.S. in exchange for not having to go to court (because you may be eligible to stay)
- Speak with your home country's consulate
- Appear in front of a judge in court
- Be treated humanely

To avoid increasing your chances of deportation, wait to answer any questions until you have spoken with a lawyer.

*If ICE or the police mistreat you, you can:*

- Ask the officer for their name and badge number
- Write down the names and phone numbers of eyewitnesses
- Get medical attention and take pictures of injuries
- Contact a community organization or lawyer as soon as possible

# Appendix 1: Sample Documents

## **Sample Worker Membership Form**

I, \_\_\_\_\_, pledge to be a worker member of Worker Justice Wisconsin. By becoming a worker member, I promise to take an active role in the labor movement for social justice in all workplaces. I understand that membership entails specific rights and responsibilities.

It is my right:

- To participate in collective decision making with other worker members to determine the issues and strategies of WJW campaigns.
- To serve on a workplace organizing committee as an elected representative.
- To receive support from WJW to resolve personal and collective workplace problems.

It is also my responsibility:

- To promote the core values of WJW.
- To help build a local movement that is welcoming to all workers from all walks of life.
- To educate my fellow workers on their rights and their power.
- To pay dues to WJW.

By signing this pledge, I commit to membership in perpetuity unless I communicate my desire to terminate my membership to the WJW staff.

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

Worker Justice Wisconsin staff witness: \_\_\_\_\_

## **Sample Workplace Organizing Committee Agreement**

We, the undersigned, constitute a workplace organizing committee in our workplace. As the provisional members of this committee, we declare our intent to bring our coworkers together to identify shared issues, articulate demands for improvement, and envision a strategy for change.

We pledge to foster a culture of workplace democracy through this committee. We will engage all of our coworkers and actively pursue their involvement. We will create a clear decision making process that fosters participation to ensure that proposed solutions and strategies express the will of all the workers.

We acknowledge that any worker may attend and speak at WOC meetings. We acknowledge that the WOC must hold regular and frequent assemblies with workers to ensure accountability.

We pledge that, within one year of this committee's constitution, elections will be held for all of the offices on this committee. The number of offices will be decided by the membership. With the exception of chairmanship, the creation and distribution of offices will be decided by the candidates who secure the most votes proportionally. From that date forward, so long as this WOC exists, yearly elections will be held. For a worker to present themselves as a candidate, they must be a worker member of WJW to ensure maximum accountability.

Employment Site: \_\_\_\_\_

Date of Construction: \_\_\_\_\_

Provisional Committee Members:

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## **Sample Requests to Inspect Personnel File in Wisconsin**

Employer: \_\_\_\_\_

Address: \_\_\_\_\_

### **RE: COMPLETE PERSONNEL RECORDS**

Dear Employer,

Pursuant to Wis. Stat. §103.13, please provide me with a copy of my entire employee file. In making this request, I refer to the definition of “personnel records” in that statute, which indicates that the term personnel records” encompasses more than what is commonly known as a personnel file. The term includes records which are used or which have been used to determine the employee’s qualifications for employment, promotion, transfer, additional compensation, termination, or other disciplinary action. This request also includes all of the medical records that the employer may have in its possession.

Please send my complete personnel record to the address below, within the seven (7) business days, as allowed by the Statute.

Thank you in advance for your prompt attention.

Sincerely,

\_\_\_\_\_

Name and Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

*Note:* Wis. Stat. §103.13 (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.

### **WORKER JUSTICE WISCONSIN AUTHORIZATION FOR RELEASE OF INFORMATION**

*Note:* Any information regarding the client is considered privileged and confidential and is managed accordingly by the advocates of the Workers’ Rights Center. Information with respect to these matters is not allowed to be disseminated without prior written consent of client.

I, \_\_\_\_\_, give my permission to  
\_\_\_\_\_ to release to / obtain from (circle one)

\_\_\_\_\_  
\_\_\_\_\_

*(Name and address of the agency, program or individual)*

Information about:

\_\_\_\_\_  
\_\_\_\_\_

Rationale to release information is:

\_\_\_\_\_  
\_\_\_\_\_

I can cancel my permission to release information at any moment, except the information that is already obtained or released.

This authorization expires \_\_\_\_\_ (should not exceed 90 days from date of signature.)

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Title

## **Sample Letter to the Boss**

July 29, 2022

[Employer]

[Employer address]

Dear [owner/manager],

We, the undersigned, are writing to express our concern at the treatment we have received as employees at [business name]. We are able and committed workers with many years of combined experience in the hospitality industry. However, our working environment has progressively deteriorated to the point of becoming unacceptable and a blemish on the [brand name]. Taking great pride in our work, we wish to make you formally aware of the issues we encounter in our workplace and the solutions we propose.

In recent years, we have experienced: inadequate pay, a reduction in holiday pay, overwork, and a culture of disrespect more generally.

Regarding wages, new and senior employees agree that our pay is below market standards. New employees begin at \$14.00/hour while senior employees—some of whom have worked at [business name] for twenty years—earn only \$16.50/hour, with everyone else falling within this range. We have spoken with employees at similar businesses in Madison where the starting wage is \$17/hour. There have been numerous instances of management promising raises after workers' first year, but these increases are often delayed by several months if and when they appear.

The reduction in holiday pay has also injured the dignity of the workforce and lowered the [business]'s previously high standards regarding employee satisfaction. For many years, employees who worked on holidays received double pay. Employees who had holidays off still received their regular pay as a sign of appreciation. However, management recently abandoned this practice, paying only time and a half to employees who work holidays and eliminating all pay for workers who stay home.

In addition to inadequate wages, management increasingly overworks its employees. Workers who clean rooms are often expected to clean ten or eleven rooms a day, but they are not given sufficient time to do a satisfactory job. Rather than reduce the workload or hire more staff, management manipulates our hours as a stopgap measure. At the end of a shift, management asks us to stay additional hours to continue cleaning with the promise of being paid overtime. But when we reach our forty hours, they suddenly send us home to avoid paying overtime and instead grab someone else—renewing the cycle. This is a dishonest and inefficient means of managing labor.

Finally, housekeeping and laundry employees—all of whom are Hispanic—have noticed a general culture of disrespect from management. We feel that when we bring up issues with management, they are not taken seriously. For example, one employee reported to [manager] that she suspected that a guest was armed, but [manager] did not take any action. When a pregnant employee made herself a waffle because she needed more energy, the general manager took it from her and threw it away. Employees have also been victims of robbery, but when they report these incidents to management no action is taken.

We, as employees of [business name], believe that these problems are beneath the standards of this [business]—standards that we diligently try to uphold despite low pay, shrinking benefits, and incidents of disrespect. To remedy these issues, we request the following improvements:

1. A \$4/hour increase for all employees.
2. A \$1/hour increase for all employees who work weekends.
3. That holiday pay returns to its previous standard—where employees earn double for working and their regular pay for staying home.
4. A maximum of ten rooms per 8-hour shift/regular workday.
5. That management pays time-and-a-half if there are uncleaned rooms and management asks us to continue working past our shift.
6. That management respects and treats all of its employees cordially in every interaction.

Given the importance of this matter, we ask that you either agree to these requests or invite us to a meeting to discuss within 7 working days from the receipt of this letter. We also understand the complexity of the industry and know that [business] is owned by [corporation] and operated by [management firm]. If you do not have the authority to implement these requests, we ask that you send this letter to, and connect us with, the appropriate decision maker within 7 working days.

If we cannot agree on the above requests, we will continue our campaign for improvements including, but not limited to, seeking our legal options such as filing a charge with the National Labor Relations Board, which extends legal protection from retaliation to this petition and its signers under concerted activity as defined by the National Labor Relations Act Sec. 7. [§ 157.] and Sec. 8. [§ 158.]. Thank you in advance for your prompt attention to this matter.

Sincerely,

[Your Name]

## **Sample Letter to Reject Request for Re-Verification of Work Authorization**

To: [name]  
[Title]

At [business name]  
[Business address]

I/we are employees at [business name]. On [date], you requested that I/we provide [list the documents your employer asked for] to re-verify my/our eligibility to work in the United States despite the fact that I already provided satisfactory documentation when I was hired. I/we are writing this letter to inform you that you may be violating the Immigration Reform and Control Act by asking to re-verify my work authorization. Unless federal immigration authorities have informed you that there is an issue with my/our documentation, you may be in violation of the IRCA by re-verifying them.

I/we are strongly requesting that you immediately refrain from trying to re-verify our documents. This letter is proof of protected concerted activity, and no retaliation can be taken against us as established by Section 7 of the National Labor Relations Act.

Sincerely,

[Your Name]



# Appendix 2: Other Resources

## **Federal Government Agencies**

### **Worker Organizing, Collective Action, Concerted Activity, and Unions**

National Labor Relations Board (NLRB), Region 30

310 West Wisconsin Ave, Suite 450W, Milwaukee, WI 53203

(414) 297-3861

<https://www.nlr.gov/about-nlr/who-we-are/regional-offices/region-18-minneapolis>

### **Unpaid Wages**

U.S. Department of Labor Wage and Hour Division

740 Regent St, Suite 102 Madison, WI 53715

(608) 264 – 5221

<https://www.dol.gov/agencies/whd>

### **Discrimination**

Equal Employment Opportunity Commission (EEOC) Milwaukee District Office

Reuss Federal Plaza

310 Wisconsin Ave., Suite 500

Milwaukee, WI 53203

414-662-3680

<https://www.eeoc.gov/field-office/milwaukee/location>

### **Health & Safety Protections**

Occupational Safety & Health Administration (OSHA) – Madison area office

1402 Pankratz Street, Suite #114

Madison, WI 53704

(608) 733-2822

<https://www.osha.gov/contactus/bystate/WI/areaoffice>

## **Wisconsin Government Agencies**

### **Unpaid Wages & Discrimination**

Wisconsin Department of Workforce Development Equal Rights Division

201 E. Washington Ave. Room A100

P.O. Box 8928 Madison, WI 53708-8928

608-266-6860

<https://dwd.wisconsin.gov/er/contacts.htm>

## **City of Madison Agencies**

### **Discrimination**

City of Madison Department of Civil Rights  
210 Martin Luther King Jr. Blvd, Suite 523 Madison, WI 53703  
(608) 266-4910  
<https://www.cityofmadison.com/civil-rights/contact>

## **Ally Community Organizations**

### **Legal Action of Wisconsin, Inc.**

744 Williamson Street, Suite 200  
Madison, WI 53703  
608-256-3304  
<https://www.legalaction.org/>

### **University of Wisconsin Neighborhood Law Project**

Villager Mall  
2238 South Park Street  
Madison, WI 53713  
608-890-0678  
<https://law.wisc.edu/eji/nlc/>

### **Catholic Multicultural Center**

1862 Beld Street  
Madison, WI 53713  
608-661-3512  
<https://cmcmadison.org/>

### **Centro Hispano**

810 W. Badger Rd. Madison, WI 53713  
(608) 255-3018  
<https://www.micentro.org/>

### **NAACP-Dane County Branch**

P.O. Box 44366  
Madison, WI 53744  
<https://www.naacpofdaneco.org/>

### **South Central Federation of Labor, AFL-CIO**

1602 S. Park St., #228  
Madison, WI 53715  
(608) 256-5111  
[www.scfl.org](http://www.scfl.org)

### **United Migrant Opportunity Services (UMOS)**

2317 International Lane  
Madison, WI 53704  
(608) 249-1180  
<https://www.umos.org/contact-us/>

### **United Asian Services of Wisconsin**

2132 Fordem Ave.  
Madison, WI 53704  
(608) 256-6400  
[www.ursw.org](http://www.ursw.org)

### **Urban League of Greater Madison, Inc.**

2222 S. Park St., Suite 200  
Madison, WI 53713  
(608) 729-1200  
[www.ulgm.org](http://www.ulgm.org)

### **Wisconsin State AFL-CIO**

6333 W. Blue Mound Rd. Milwaukee, WI 53213  
(414)771-0700  
[www.wisafclcio.org](http://www.wisafclcio.org)

# Credits

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- Iva Petrova
- Socorro Cortez
- Frida Ballard
- Daniela Jaime
- Kurt Kobelt
- Julio Garcia
- Rebecca Meier-Rao

**Learn more at [workerjustice.org](https://workerjustice.org)**