



# Wisconsin

# Human Resources LEGAL FACT SHEET

*Disclaimer: This fact sheet summarizes state laws and regulations on a variety of human resource issues for dairy farms, including wages, paystubs, deductions, child labor, and more. It is not intended to provide legal advice. The fact sheet is simply an overview of select issues with a high-level explanation of key requirements for each one, with links to more information and resources throughout the document. This fact sheet does not include all legal requirements for dairies. It was created in May 2018, and while it will be periodically updated, it may not reflect the current state of the law on every topic covered. Dairies should also review the federal fact sheet because employers—depending on size—may be required to comply with some or all of the applicable federal laws and regulations as well. By using this fact sheet you understand that there is no attorney-client relationship between you and the attorneys who were involved in developing the fact sheet. This fact sheet should not be used as a substitute for competent legal advice from a licensed attorney.*

## ARE THERE WISCONSIN STATE LAWS PERTAINING TO DAIRY FARMS ABOUT:

### HIRING

TOPIC	ANSWER	DETAILS
Notice of Payday/ Pay Rate	<b>NO</b>	No state requirement to give notice of the payday or pay rate at the time of hire, though it is generally good practice.
Reporting <sup>1</sup>	<b>YES</b>	<u>New hires</u> and rehires must be reported to the State Directory of New Hires within 20 days.

### WAGES

TOPIC	ANSWER	DETAILS
Payday <sup>2</sup>	<b>YES</b>	Must pay employees <u>at least quarterly at regular intervals</u> .
Final Pay <sup>3</sup>	<b>YES</b>	Employees that quit, are fired, or otherwise terminated must be paid final wages owed on the next regularly scheduled payday. Whether an employer must pay for unused benefit pay depends upon the terms of an established policy.
Overtime <sup>4</sup>	<b>NO</b>	<u>Agriculture is exempt</u> from state overtime requirements. Federal laws may still apply. See Child Labor (below) for overtime requirements for minors.
Minimum Wage <sup>5</sup>	<b>YES</b>	<u>\$7.25 per hour</u> . No exemption for family.
Hours Worked <sup>6</sup>	<b>YES</b>	Wisconsin minimum wage rules define hours worked as all times that an employee is exerting mental or physical effort that is controlled or required by the employer and for the employer's business. This includes time employees are "suffered or permitted to work" (time spent working voluntarily when the employer knows or has reason to believe that employees are continuing to work). It is the duty of management to exercise control and see that work is not performed if the employer does not want it to be performed. An employer cannot sit back and accept the benefits without compensating employees for them. Worked performed away from the premises or jobsite or even at home can be counted as time worked, if the employer knows or has reason to believe that work is being performed. Whether or not waiting time and prep time or other activities count as hours worked depends on the circumstances. Employers should <u>review the rule, DWD 272.12</u> .

# WAGES

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TOPIC	ANSWER	DETAILS
Reporting Time Pay	<b>NO</b>	Wisconsin does not have reporting time pay requirements, i.e. an employee is only required to be paid for actual hours worked.
Pay Stub <sup>7</sup>	<b>YES</b>	<p><u>Paychecks</u> or accompanying paper must state:</p> <ul style="list-style-type: none"> <li>• <i>Hours worked</i></li> <li>• <i>Rate of pay</i></li> <li>• <i>Amount and reason for each deduction (all deductions must be included)</i></li> </ul> <p>Electronic pay statements are permitted if employees have computer access and the ability to print statements on payday. Otherwise, paper stubs must be provided.</p>
Taxes and Withholding <sup>8</sup>	<b>YES</b>	<p>Dairy farms <u>do not need</u> to withhold Wisconsin income taxes. However, you must still give your employees a federal <u>Form W-2, 1099-MISC or 1099-R</u>.</p> <p>You must pay <u>Wisconsin Unemployment Insurance</u> taxes if:</p> <ul style="list-style-type: none"> <li>• <i>You paid cash wages to farm workers of \$20,000 or more in a quarter in the current or prior calendar year; OR,</i></li> <li>• <i>You employed ten or more farm workers for some part of a day in 20 or more weeks of the current or prior calendar year.</i></li> </ul> <p>Certain family employment is excluded from coverage requirements (a parent employed by their son/daughter, a person employed by their spouse, or a child under 18 employed by a parent). Unemployment taxes are paid by the employer; they are not taken out of employee pay. You can credit the amount you pay to Wisconsin in calculating how much you owe for federal unemployment taxes. There are <u>special rules</u> for seasonal employees.</p>
Deductions <sup>9</sup>	<b>YES</b>	<p>Deductions required by law or courts (for ex. tax withholdings) do not require written authorization from the employee. However, other deductions must be both (1) allowed by law; and (2) agreed to in writing.</p> <p>Employers can only make wage deductions <u>for loss, theft, damage, or faulty workmanship</u> if:</p> <ul style="list-style-type: none"> <li>• <i>The employee agrees to it in advance, in writing;</i></li> <li>• <i>a representative chosen by the employee determines the employee was at fault and agrees to the deduction;</i></li> <li>• <i>or, the employee is found guilty or held liable in court.</i></li> </ul> <p>Employers cannot require an employee or applicant to pay for the cost of a medical examination that is required as a condition of employment.</p> <p>Meals and lodging can be taken as allowances against an employee's wages (counting toward the minimum wage), but there are limits to how much you can charge: For lodging, \$58 per week or \$8.30 per day. For meals, \$87 per week or \$4.15 per meal. Employees must voluntarily agree to accept some of their wages as meals/lodging (i.e. it cannot be a requirement of employment). Room and board cannot be deducted from a seasonal, non-resident employee that would result in him/her receiving less than the minimum wage.</p> <p>There are additional federal rules around deductions. Refer to the federal fact sheet.</p>
Bonuses <sup>10</sup>	<b>YES</b>	<p>Bonuses agreed upon between the employer and the employee or provided under an established policy are included in the definition of wages under Wisconsin wage law. Nondiscretionary bonuses are therefore considered part of wages and protected under state wage laws. But discretionary bonuses may not constitute wages.</p> <p>Employers should follow any written policy they have about paying bonuses as a best practice.</p> <p>A nondiscretionary bonus is one where the amount and criteria for getting the bonus are announced in advance. For example, performance goals (like meeting somatic cell count goals) that workers know about in advance. Discretionary bonuses are ones that are not announced in advance, not expected by the employee, and not an incentive for the employee. For example, when the farm reaches a certain financial goal and decides to give all employees a bonus.</p>

# RECORD KEEPING

TOPIC	ANSWER	DETAILS
Payroll or Wages <sup>11</sup>	YES	<p>Keep the following time and payroll records for at least 3 years for each employee:</p> <ul style="list-style-type: none"> <li>• <i>Name and address</i></li> <li>• <i>Date of birth</i></li> <li>• <i>Dates employment began and ended</i></li> <li>• <i>Time work began and ended each day</i></li> <li>• <i>Total hours worked daily and weekly</i></li> <li>• <i>Rate of pay for each payroll period</i></li> <li>• <i>Wages paid each payroll period</i></li> <li>• <i>Amount and reason for each deduction</i></li> <li>• <i>Output of employee, if paid on other than a time basis.</i></li> </ul> <p>The records or a duplicate copy must be kept safe and accessible at the workplace or a central office in the state of Wisconsin. The records must be available for inspection by an authorized deputy of the Department of Workforce Development during the farm's normal business hours.</p>
Personnel Files – Employee Access <sup>12</sup>	YES	<p>A past or present employee has the right to view and copy their personnel records at least two times each calendar year. Upon request, the employer then has seven (7) working days to provide the employee with an opportunity to inspect the documents.</p> <p>“Personnel documents” can mean any documents which are used, or which have been used, to determine qualifications for employment, promotion, transfer, additional compensation, termination or other disciplinary action, and medical records. <u>Some documents are excluded under this requirement.</u></p>
Unemployment Insurance <sup>13</sup>	YES	<p>Employers covered under Wisconsin's Unemployment Insurance law are required to report <u>quarterly wage information for each employee.</u></p> <p>All employers in the state must maintain work records to include:</p> <ul style="list-style-type: none"> <li>• <i>The full name, address and social security number of each individual who performs services for the employing unit;</i></li> <li>• <i>The dates on which each individual performed services;</i></li> <li>• <i>The weekly wages earned by each individual who performed services; and</i></li> <li>• <i>The dates on which the wages were paid to each individual.</i></li> </ul> <p>Preserve the work records and any other records which may show payments for services for 6 years from the date on which each individual last worked for you. The Department of Workforce Development may, at any reasonable time, inspect the work records and any other records which may show records for payments for services.</p>
Workers' Compensation <sup>14</sup>	YES	<p>Any employer with 3 or more employees and also any employer subject to workers' compensation coverage requirements must keep records of all work-related accidents causing death or disability.</p> <p>The record must include: name, address, age, and wages of the deceased or injured employee, the time and causes of the accident, and the nature and extent of the injury and any other information the department of labor may require by rule or order.</p> <p>In connection with an injury or death, the Division of Hearings and Appeals has the right to inspect time books or payroll records of the employer.</p>
OSHA	YES	See federal OSHA recordkeeping requirements on the federal fact sheet.
Federal	YES	There are numerous federal rules about recordkeeping. Employers should review the federal fact sheet.

## WORKING CONDITIONS

TOPIC	ANSWER	DETAILS
Bathrooms <sup>15</sup>	YES	Dairy farms must have one or more sanitary toilets that are conveniently accessible by workers in milking operations. A conveniently accessible toilet may include a toilet in a farm residence or other farm building. Toilets must be in clean and sanitary condition. Every toilet room shall be enclosed and separated from other areas of the building in a manner that will ensure privacy.
Working Hours <sup>16</sup>	NO	<u>No max hour requirements for adults.</u> See Child Labor (below) for maximum hours for minors. Although state statute does provide that no worker be employed or be permitted to work for periods of time that would be dangerous or prejudicial to the life, health, safety or welfare of such person.
Rest and Meal Breaks <sup>17</sup>	YES/NO	Not required for adults. However, the Department of Workforce Development recommends that employers give brief rest periods, coffee breaks, or meal periods to adult employees, even though it is not required. Employers need to pay employees for meal breaks less than 30 minutes long and/or if the employee is not allowed to leave the premises during the break. Employers that choose to provide rest and meal breaks must follow the applicable federal rules. Refer to federal fact sheet.
Labor Relations <sup>18</sup>	YES	The Wisconsin Employment Peace Act protects the right of farmworkers to form, join, or work with labor organizations, or to choose to refrain from doing so. The law puts in certain restrictions on striking on dairy farms (for ex., must give 10 days notice).
Whistleblower Protection	YES/NO	Wisconsin law does not provide a general protection for private sector employees in whistleblower cases. However, topic-specific laws (like wage discrimination, wage laws, etc.) may protect employees that report unlawful practices. And specific employee disclosures (for example, OSHA-related violations) are protected from retaliation.
Paid Vacation or Sick Leave <sup>19</sup>	NO	Not required to provide vacation or sick leave benefits, either paid or unpaid. But if an employer chooses to do so, it must comply with the terms of its leave policy or employment contract.
Breaks for Nursing Mothers	NO	No state law on <u>accommodating nursing employees in the workplace</u> , but federal rules may apply. Refer to the federal fact sheet.
Pregnancy Accommodations and Leave <sup>20</sup>	YES	In general, employers are required to treat <u>pregnancy, childbirth, maternity leave and related medical conditions</u> the same as they would treat any other temporary disability for all employment and benefits purposes. Pregnancy leave is covered under Family and Medical Leave below.
Family and Medical Leave <sup>21</sup>	YES	<u>Wisconsin's Family and Medical leave provides unpaid leave</u> for an employee's serious health condition, the serious health condition of a parent, child or spouse, or for the birth or adoption of a child. A covered employer has at least 50 permanent employees during at least 6 of the last 12 months. Covered employees have worked for the employer for at least 52 consecutive weeks and for at least 1000 hours in the preceding 52-week period. An employer must permit the employee to take up to 2 weeks of leave for their own serious health condition in a calendar year, up to 2 weeks for the serious health condition of a parent, child or spouse, and up to 6 weeks for the birth or adoption of a child. This leave may be taken as needed in blocks or intermittently as needed by the employee. Furthermore, a covered employer must allow employees to take up to six weeks of leave in a 12-month period to serve as bone marrow or organ donors. Information about how this law interacts with federal law <a href="#">can be found online</a> .
Crime Victim and Witness Leave <sup>22</sup>	YES	Employers must allow employees to take leave to appear as witnesses in court proceedings. Employers cannot penalize employees for taking court attendance leave, as long as employees provide advance notice of their need for leave.

## WORKING CONDITIONS

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TOPIC	ANSWER	DETAILS
Military and Other Service Leave <sup>23</sup>	YES	Permanent employees are entitled to leave for and reinstatement after active federal or state duty service. Generally the length of absence is capped at 5 years, though there are some exceptions.
Voting Leave <sup>24</sup>	YES	Employers must allow employees to take up to three consecutive hours of leave to vote while election polls are open. If employees are appointed to serve as election officials, they can take leave for the entire 24-hour period of the election day for which they are performing as election officials. <u>Employees serving as election officials</u> must also be granted leave with 7 days' notice.
Jury Duty Leave <sup>25</sup>	YES	Employers must allow employees to <u>take unpaid leave to serve as jurors</u> . Employers cannot take any disciplinary action against employees because they take jury duty leave.
School Activity Leave	NO	Wisconsin law does not address leave for private sector employees to attend a child's school activity.
Other Leave <sup>26</sup>	YES	<p><b>Bone Marrow and Organ Donation</b> Employers with 50 or more employees must allow employees to take up to six weeks of leave in a 12-month period to serve as bone marrow or organ donors.</p> <p><b>Emergency Responders</b> Employers must provide unpaid leave to employees who are qualified volunteer firefighters, emergency medical services practitioners, emergency medical responders, or ambulance drivers who respond to emergencies that begin before they are required to report to work. Employers can't retaliate against these employees. Employers also must provide employees leave to serve in the Civil Air Patrol.</p>

## HUMAN RIGHTS

TOPIC	ANSWER	DETAILS
Harassment/ Sexual Harassment <sup>27</sup>	YES	<p>Harassment is a type of employment discrimination. Harassment is unwelcome conduct. It becomes illegal when (1) employees have no choice but to tolerate the harassment if they want to keep their job; (2) it is so severe that a regular person would see it as intimidating, hostile, or abusive.</p> <p><u>Wisconsin state law protects workers from harassment</u> in the workplace based on the characteristics described above under Employment Discrimination (i.e. age, race, color, etc.). This applies to all businesses, regardless of size.</p> <p>Harassment is a pattern of behavior (i.e. more than a few isolated events) that can include verbal abuse, vulgar/ derogatory language, showing or posting offensive cartoons, and telling of jokes offensive to the protected class members (like jokes about race, age, or gender).</p> <p><u>Sexual harassment</u> includes unwelcome sexual advances, requests for sexual favors and verbal or physical conduct of a sexual nature when:</p> <ul style="list-style-type: none"> <li>• <i>Engaging in such conduct is made an implicit or explicit term or condition of employment. Example: A newly hired milker is told that sexual jokes, touching and nude posters are just part of farm life and she should try to ignore it.</i></li> <li>• <i>Acceptance or rejection of such conduct is used as the basis for an employment decision affecting an employee. Example: A manager tells a worker applying for a promotion that the job would be his if he just "treated her right."</i></li> <li>• <i>The conduct interferes with an employee's work or creates an intimidating, hostile or offensive work environment. Example: One worker experiences repeated advances from another asking her for dates or "just to go out for drinks after work." The worker says she isn't interested, but the co-worker won't take 'no' for an answer.</i></li> </ul> <p>It is illegal to retaliate against employees for filing or otherwise aiding with a complaint.</p>

## HUMAN RIGHTS

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TOPIC	ANSWER	DETAILS
Employment Discrimination <sup>28</sup>	YES	Employers cannot discriminate based on: <u>Age (40+)</u> , <u>race</u> , creed, color, disability, marital status, sex, religion, <u>gender</u> , disability, <u>national origin</u> , <u>ancestry</u> , arrest record, genetic information, sexual orientation, conviction record, military service, pregnancy, <u>and more</u> . Employment discrimination means bias in hiring, promotion, compensation, job assignments, firing, pay, and any other term of employment.  It is illegal to retaliate against employees for filing or otherwise aiding with a complaint of discrimination.
Forced Labor <sup>29</sup>	YES	Human trafficking is a <u>felony in Wisconsin</u> . Trafficking for labor means: recruiting, harboring, transporting, transferring, providing, buying, purchasing, receiving, or obtaining by any means a person for forced labor or services. <u>More details</u> .  Employers should ensure they are carefully following all visa requirements or work agreements to avoid any inadvertent violations.

## HEALTH AND SAFETY

TOPIC	ANSWER	DETAILS
OSHA	YES	Wisconsin is under federal OSHA jurisdiction. See the federal portion of the fact sheet for more information.
Workers' Compensation <sup>30</sup>	YES	You <u>need workers compensation insurance</u> if you have 6 or more employees working on the same day for 20 days or more during the calendar year (days do not need to be consecutive). <u>More details</u> .  <u>If there's an injury:</u> <ul style="list-style-type: none"> <li>• <i>Report work-related fatalities to the Worker's Compensation Division and the insurance carrier within 24 hours of the incident. Note that OSHA requires fatalities to be reported to OSHA within 8 hours.</i></li> <li>• <i>Insured employers also report any claim of an injury to the insurance carrier within 7 days</i></li> <li>• <i>Insurance carriers (which includes farms if they are self-insured) must report injuries which result in more than 3 days lost time from work to the Worker's Compensation Division</i></li> </ul> <p>See Federal OSHA requirements for accident reporting to OSHA.</p>
Housing <sup>31</sup>	YES	Lodging defined for minimum wage purposes means "adequate, decent and sanitary, according to usual and customary standards. Employees cannot be required to share a bed."  Wisconsin law does not explicitly address other standards for permanent agricultural housing, though general landlord/tenant or public health laws may apply. Employers should follow best practices when providing housing – which includes, at minimum, a written housing agreement and properly maintaining the facilities. The FARM HR Manual has guidance around best practices for agricultural worker housing.

# CHILD LABOR

TOPIC	ANSWER	DETAILS
Child Labor <sup>32</sup>	YES	<p><u>No work permits required</u> for minors 12 or over working in agriculture.</p> <p><u>Minimum age:</u></p> <ul style="list-style-type: none"> <li>• <i>During school hours: 18</i></li> <li>• <i>Outside school hours: 12</i></li> </ul> <p>Max Hours:</p> <ul style="list-style-type: none"> <li>• <i>16 or over: No max hours</i></li> <li>• <i>Under 16</i> <ul style="list-style-type: none"> <li>- <i>School days/weeks: 3 hours per day, 18 hours per week</i></li> <li>- <i>Non-school days/weeks: 8 hours per day, 40 hours per week</i></li> <li>- <i>Can work 7am to 7pm from Labor Day through May 31. And from 7am to 9pm from June 1 through Labor Day.</i></li> </ul> </li> </ul> <p>Minors aged 14-17 can work outside of school hours for more than the above limits during peak periods, which is decided a case-by-case basis. No minor under 18 can be required to work during school hours (except if they have already graduated or passed an equivalency exam).</p> <p>Minimum Wage for minors is \$7.25 per hour. Employers may pay an “Opportunity Wage” of \$5.90 per hour for the first 90 days of employment. On the 91st day, the wage must increase to \$7.25 per hour.</p> <p>Need to give minors <u>a meal period of at least 30 minutes</u> for each consecutive 6 hours worked. The meal period should be reasonably close to a usual meal period time and does not need to be paid.</p> <p>There are rules on <u>prohibited or restricted occupations</u>.</p> <p><u>More details on employing minors</u>.</p>

## References

1. DWD 142.03
2. Wisc. Stat. § 109.03
3. Wisc. Stat. § 109.03
4. Wisconsin DWD 274.04
5. Wisc. Stat. § 104
6. DWD 272.12
7. DWD 272.10; Wis. Stat. §103.457
8. Wis. Stat. §§ 71.63(6); 108.02(13); 108.02(15)(k)11
9. Wis. Stat. §§ 103.455, 103.37; 103.457; 104.035; DWD 272.04 and 272.05; See also
10. Wisc. Stat. § 109.01(3), 29 CFR §778.208; FOH §30b07
11. DWD 272.11
12. Wisc. Stat. § 103.13
13. Wisc. Stat. § 108.205; 108.21; DWD 110.02
14. Wisc. Stat. § § 102.37; 102.17(1)(e)
15. ATCP 65.22(6); SPS 362.1210
16. Wisc. Stat. § 103.85; DWD 274.02
17. DWD 274.02
18. Wisc. Stat. § 111.01 et seq
19. Wis. Stat. § 109.01(3)
20. Wisc. Stat. § 111.36
21. Wisc. Stat. § § 103.001, 103.005, 103.10, Wis. Admin. Code 225.01 to 225.25, 225.031
22. Wis. Stat. § 103.87
23. Wis. Stat. § § 321.64 to 321.66
24. Wis. Stat. § § 6.76, 7.33, 12.07, 12.60, 103.18, 103.20
25. Wis. Stat. §756.255
26. Wis. Stat. § § 103.11, 103.88
27. See above
28. Wis. Stats. § § 111.31 to 111.395; 452.38; 942.07
29. Wisc. Stat. § 940.302(2)(a)
30. Wisc. Stat. § 102; DWD 80.02
31. DWD 272.04
32. Wis. Stat. § 103.64-103.82 and DWD 270