

## Risk Management Guidance for School-to-Work/Work Experience Programs Overview

December 2018 – Gänder Consulting Group, LLC, Consultant to the WASB Insurance Plan

The attached documents have been developed over time and were initially prompted by the 1995 addition of Wis. Stats. §102.077, which afforded public school districts the authority to insure the workers' compensation exposure associated with students participating in unpaid school-to-work/work experience programs.

As used in this resource, the phrase "school-to-work/work experience" (hereinafter referred to as "STW"), applies to any situation in which a student participates in a work study, job shadowing, school-to-work, youth apprenticeship, co-op, service learning or volunteer program.

The attached information has historically been shared and discussed at workshops and conferences. It highlights topics that, from a risk management perspective, schools have specifically underscored as concerns.

While statutes are cited, the material's risk management objective is the importance of ***in-person and written communication***. Communicate with students, their parents and the community organizations with which the students are placed. Begin early; do it often; be redundant.

The good news is that, to date, losses, claims and injuries associated with STW placements have been all but non-existent. Hooray! Keep in mind, however, that misunderstandings and problems often arise because a party, be it the student's family or the community organization, perceives it was not aware, and/or informed, of certain details surrounding the student's placement. The familiar chorus of, "If I'd known Georgia was driving herself to ACME Manufacturing..."

The WASB Insurance Plan (the "Plan") provides this information understanding the limitations of doing so without the benefit of commentary may well be confusing and raise more questions than it answers. As such, the Plan encourages districts to contact Joy Gänder, Gänder Consulting Group, LLC at (608) 286-0286 or [gander@ganderconsulting.com](mailto:gander@ganderconsulting.com) with questions.

The attachments consist of the following:

### PowerPoint Presentations

1. "The Best Offense is ...a Good Offense" **Paid** Career-Based Learning Programs; and
2. "The Best Offense is ...a Good Offense" **Unpaid** Career-Based Learning Programs.

### STW Agreements

1. Youth Apprenticeship Program – Form #DETW-9471-E (R. 09/2017) – **required** for EVERY youth apprenticeship arrangement. Please note: This document states the student's family will arrange for transportation to the work site. The inability of a student's family to provide transportation to the work site should not preclude the student from participating in the youth apprenticeship program.

2. Sample Service Learning Agreement
3. Work-Based Learning – Written Agreements & Wages (Gänder Consulting, 2018)

### **Workers' Compensation Insurance**

1. Work Study Endorsement, #WC 48 03 02 A (Ed. 1-13), added to a district's workers' compensation policy when it agrees to accept the workers' compensation exposure of a student placed in an unpaid STW program. The district must ASK for this endorsement. As of this writing, the premium is a flat \$350 per year.
2. Wisconsin Compensation Rating Bureau – Work Comp Class Code 9428, "Work Study Coverage" Historical Performance – Details the number and amount of claims associated with Wisconsin school districts electing to cover unpaid STW students on their workers' compensation policy.
3. Wisconsin Compensation Rating Bureau – Circular Letter 3098, January 2013 – describes the situations to which class code 9428 applies and the cost thereof.
4. "Workers' Compensation Statutes and Volunteers" (Gänder Consulting, 2017).

### **Transportation**

1. "Questions and DPI Responses Related to Alternative Vehicles and Drivers," 2005 DPI, revised 2013, 2014.
2. "Transportation Guidelines for Work Experience Program Students and Exhibits" – Please note: In Wisconsin, waivers and releases should not be perceived to insulate school districts from claims or lawsuits arising out of students driving themselves to/from STW programs. The exhibits should be considered for use with both paid and unpaid STW placements.

Three exhibits accompany the Guidelines. The many statements for which the initials of students and parents are needed are intentionally simplistic so that the signers can understand what they are reading.

Keep in mind the waivers were not authored by an attorney. Any waiver should be reviewed by the district's legal counsel before being used.

3. Cell Phones, Driving and the Law – DMV/DOT, 5/17

### **DWD Information**

1. Employment of Minors – PowerPoint
2. Unpaid Work Experiences & the Law – PowerPoint
3. FLSA Fact Sheet #71 – Internship Programs Under The Fair Labor Standards Act – US DOL/WHM (4/2010)

## “The Best Offense is...a Good Offense”

Paid Career-Based Learning  
Student Program Liability Workshop

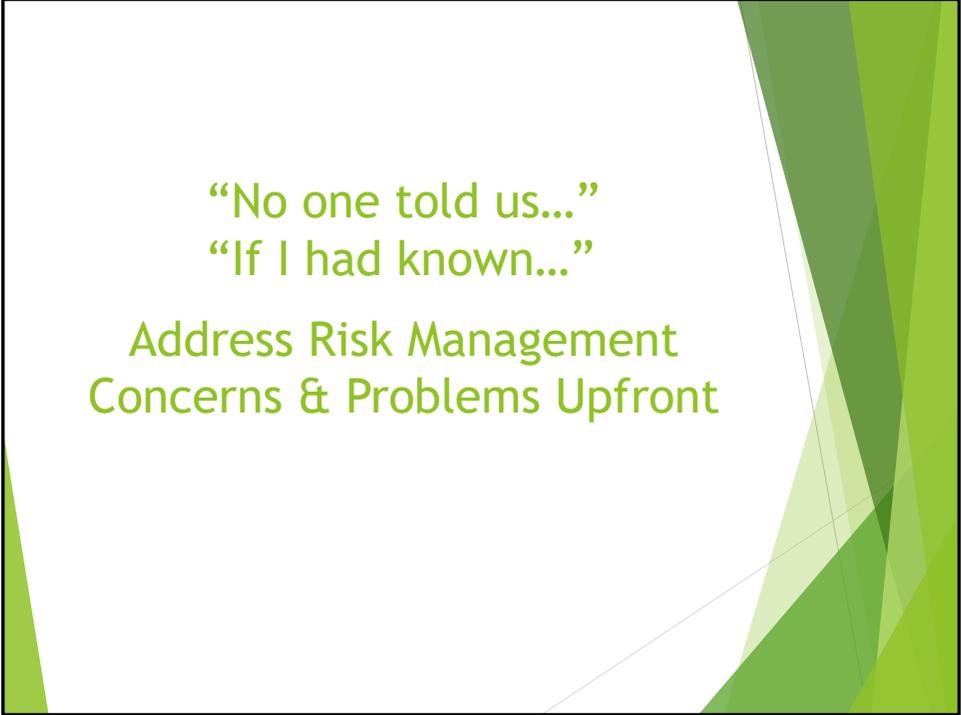
February 27, 2018

CESA 1 - Pewaukee, WI - 8:30-9:30 a.m.

Joy M. Gänder, CPCU, ARM - Principal  
Gänder Consulting Group, LLC - Madison, WI  
608-286-0286 • gander@ganderconsulting.com

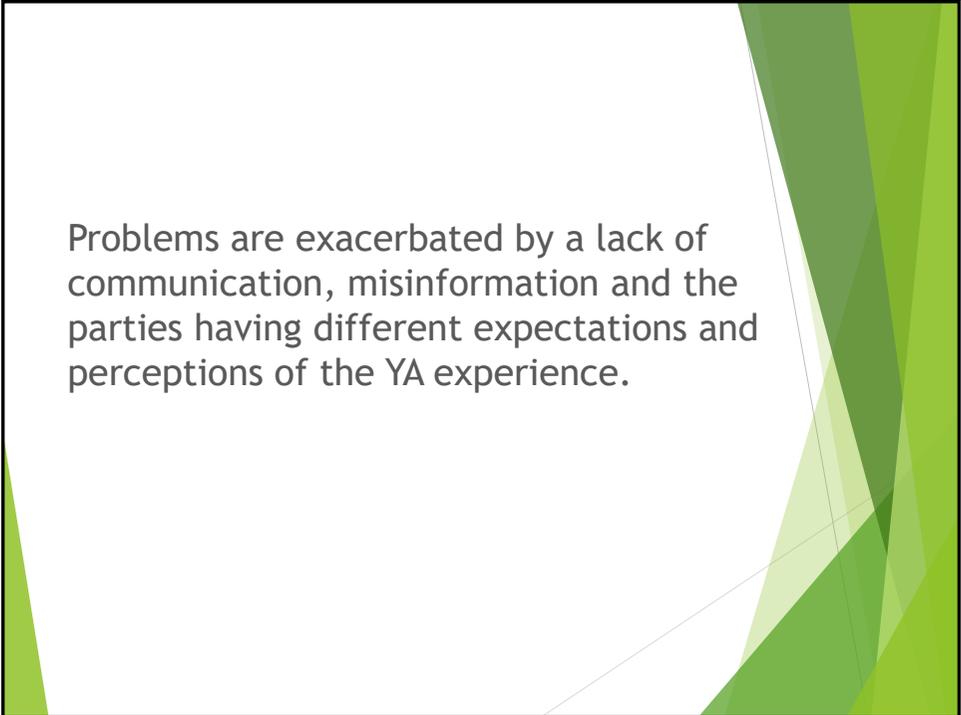
## Introduction

Gänder Consulting Group, LLC  
and  
WASB Insurance Plan



“No one told us...”  
“If I had known...”

Address Risk Management  
Concerns & Problems Upfront



Problems are exacerbated by a lack of communication, misinformation and the parties having different expectations and perceptions of the YA experience.

## Reduce the Unknowns

1. Faithfully use the “Education/ Training Agreement: Wisconsin Youth Apprenticeship” document [DWD form: DETW-9471 (R. 09/2017)]. Add further details by attachment, if necessary, to clarify the situation.

[https://dwd.wisconsin.gov/dwd/forms/dws/pdf/detw\\_9471.pdf](https://dwd.wisconsin.gov/dwd/forms/dws/pdf/detw_9471.pdf)

2. Expect the student to be treated like any other employee.

- a. Zero tolerance discrimination policy in effect
- b. Working with registered sex offenders
- c. Employers' lock-down policies

2. Expect the student to be treated like any other employee. (cont.)

- d. Cell phone usage §346.89(3), (4) and (4m) *(see attached DMV/DOT document)*
- e. All other mobile devices - tablets, etc.
- f. Use of employer's computers and mobile devices
  - 1) Prohibited websites
  - 2) No expectation of privacy

### 3. Transportation to/from the work site

The DWD agreement form stipulates the parent/guardian of the student participant must ensure transportation to and from the work site.

BUT...All other things being equal, the opportunity to participate in a YA program should not be dependent on whether the student has transportation to and from the work site.

There may be instances in which the district should, must or needs to provide transportation to and from the work site.

- ▶ Alternative forms of transportation (DPI document - FAQ)
- ▶ Wis. Stats. §121.555
- ▶ Cell phones and other mobile devices

## Transportation

- 18+ years
- Less than 18 years old

Sample Transportation Acknowledgment & Waiver Forms

<https://wasb.org/wasb-insurance-plan/insurance-library/>



## [Most] Relevant Types of Insurance Carried by School Districts & Employers

1. General Liability - Coverage for bodily injury and property damage claims, etc. Basis of Coverage - A duty is owed, there is a breach in that duty (“negligence”), an injury or loss occurs, and the breach is the proximate cause of the injury/loss.

## 2. Automobile Liability

- a. The insurance follows the car (Wis. Stats. §632.32(3)(a)) - also known as the Omnibus clause.

## 2. Automobile Liability (cont.)

- b. DWD 270.12(21) - 16 year olds cannot drive for employers on public roads.

## Student Driving Employer's Vehicle

If driven with the employer's permission, the employer's auto liability policy responds for student.

### DWD 270.12(21)

- ▶ Minors younger than 17 may not drive employers' cars on public roads
- ▶ Minors 17+ may drive employers' vehicles subject to certain requirements/circumstances.



### 3. Employment-Related Practices Liability



### 4. Workers' Compensation



Risk Management/Insurance  
References & Resources  
WASB, Inc. Members

- 
1. WASB, Inc. Policy Resource Guide  
“Authorization of Alternative Vehicles  
and Drivers to Transport Students” -  
sample rules and exhibits.

2. Paid and unpaid PPTs and support materials are in the WASB Insurance Plan online library in the Property & Casualty/Risk Management section, Property & Casualty/Risk Management Directory, Risk Management Guidance...document.

<https://wasb.org/wasb-insurance-plan/insurance-library/library-property-casualty-risk-management/>

3. Other risk management and employee benefit resources in the WASB Insurance Plan online library.

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4. Sample Transportation Acknowledgment and Waiver Forms

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5. Every WI school district/CESA is a WASB, Inc. member! A valuable member benefit: Access to risk management and insurance assistance as part of membership dues on a complimentary basis.

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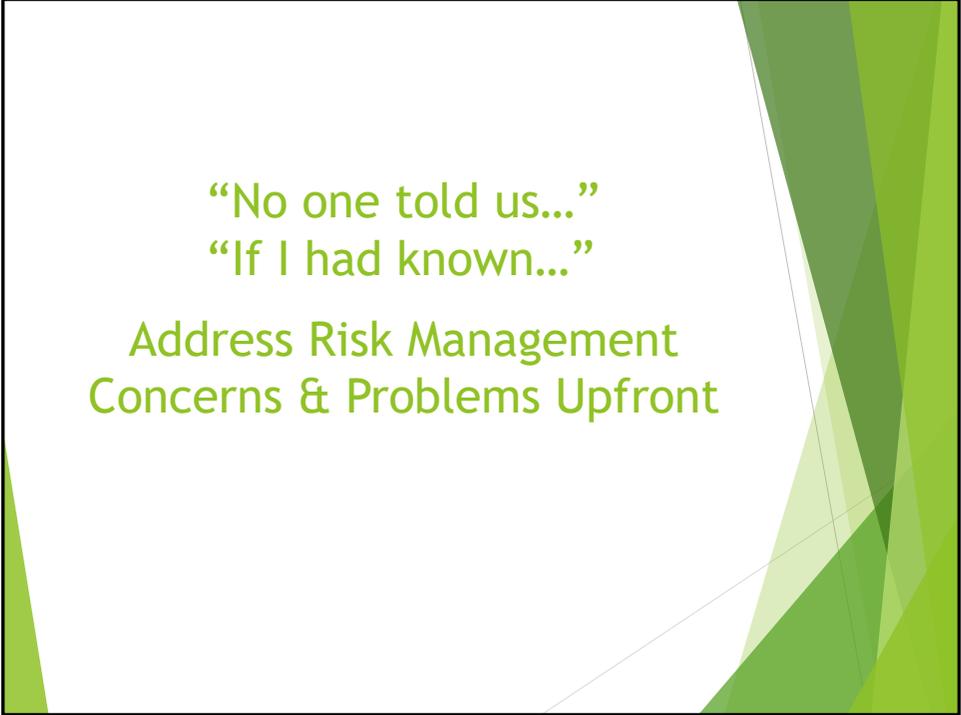
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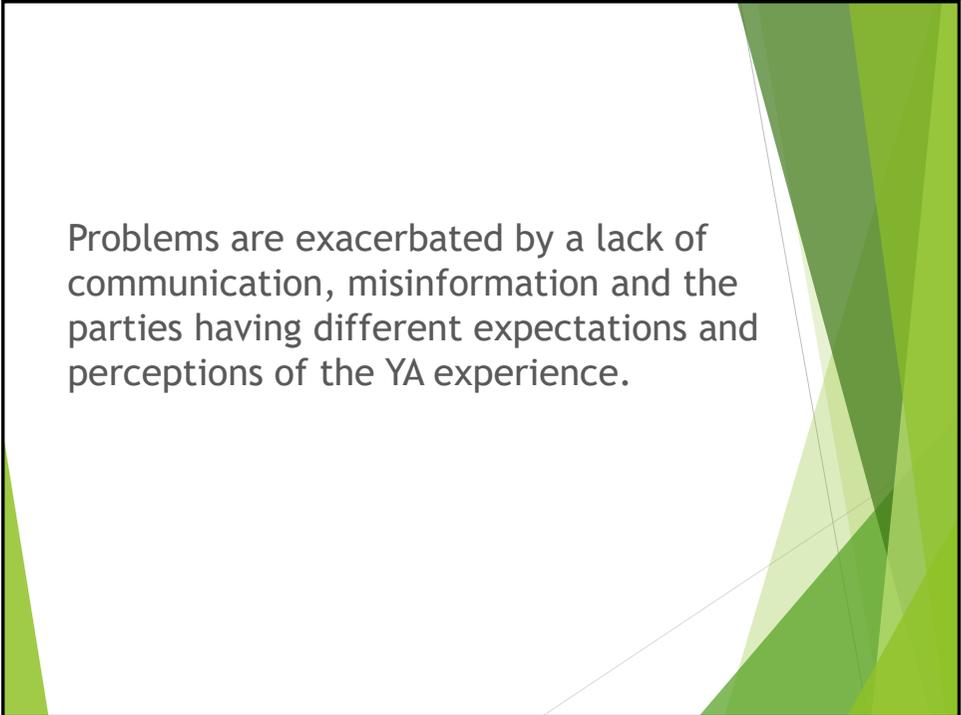
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## Education/Training Agreement: Wisconsin Youth Apprenticeship

A fully signed copy of this Agreement is effective immediately. The agreement must be on file with the Employer and School when the student begins working. DWD should receive a copy within 30 days of the student's start date.

This agreement is between

Youth Apprentice

**AND**

Primary Employer

Secondary Employer (If Applicable)

The undersigned parties agree to enter into a youth apprenticeship authorized by Chapter 106.13 of the Wisconsin statutes for the purpose of educating the student named above as a student learner in the industry area and pathway of:

\_\_\_\_\_ (YA Program Area);

and \_\_\_\_\_ (YA Pathway).

Starting wage for the youth apprentice will be \$ \_\_\_\_\_ (minimum wage or higher) per hour.

The apprenticeship will begin on \_\_\_\_\_ (Month / Day / Year) and be completed by \_\_\_\_\_ (Month / Day / Year).

The youth apprentice and parent/guardian signatures authorize the school to release reports on Youth Apprenticeship grades, attendance, and progress towards high school graduation to the Youth Apprenticeship Coordinator and the Department of Workforce Development while this agreement is in effect to assist the youth apprentice.

### Assurances – The undersigned parties agree to comply with the following:

- A. No individual shall be excluded from participation in, denied the benefits of, subjected to discrimination under, or denied employment in the administration of or in connection with any youth apprenticeship program on the basis of the person's sex, race, religion, national origin, ancestry, creed, pregnancy, marital or parental status, sexual orientation or physical, mental, emotional or learning disability.
- B. Youth apprentices will be provided with adequate and safe equipment and a safe and healthful workplace in conformity with all health and safety standards of Federal and State law.
- C. The local youth apprenticeship consortium will establish and maintain a grievance procedure for youth apprentices, a copy of which will be given to and explained to the youth apprentice at the beginning of the program.
- D. Youth apprentices will not displace any currently employed worker (including a partial displacement, such as a reduction in the hours of non-overtime work, wages, or employment benefits).
- E. The youth apprenticeship program will not impair existing contracts for services or collective bargaining agreements. Any youth apprenticeship program that would be inconsistent with the terms of a collective bargaining agreement shall be approved only with the written concurrence of the labor organization and employer involved.
- F. An employer will not hire a youth apprentice when:
  1. Any other individual is on temporary layoff, with the clear possibility of recall, from the same or any substantially equivalent jobs, or
  2. The employer has terminated the employment of any regular employee or otherwise reduced its work force with the intention of filling the vacancy so created with a youth apprentice.
- G. To comply with Child Labor laws, youth apprentices shall not work in a company where a strike or lockout is in active progress.
- H. Pupil records released pursuant to this agreement will not be further disclosed without prior written consent of the youth apprentice and/or the parent or guardian.

### The Youth Apprentice agrees to:

- A. Maintain the academic and attendance requirements required by the youth apprenticeship consortium;
- B. Observe company rules and other requirements identified by the employer;
- C. Participate in progress reviews scheduled with mentors, school personnel and parent(s) or guardian(s); and
- D. Comply with the items stated in the Assurances section above.

**Youth Apprentice:**

Printed (Typed) Name	Signature	Date Signed
Email Address	Telephone Number	Date of Birth

**The Youth Apprentice's Parent or Guardian agrees to:**

- A. Assist the youth apprentice in meeting the academic and attendance requirements of the program;
- B. Ensure transportation to and from the work site is provided;
- C. Participate in progress reviews scheduled with mentors, school personnel and the youth apprentice; and
- D. Comply with the items stated in the Assurances section above.

**Parent or Guardian:**

Printed (Typed) Name	Signature	Date Signed
Email Address	Telephone Number	

**The Employer agrees to:**

- A. Provide a work based learning experience for the length of the agreement (or as specified if one of multiple employers);
- B. Pay the youth apprentice for all work performed during the program at no less than minimum wage;
- C. Provide worker's compensation for the youth apprentice for all hours worked;
- D. Instruct the youth apprentice in the required competencies provided for this program;
- E. Comply with all applicable state and federal child labor laws;
- F. Ensure that any work performed in occupations declared hazardous shall be under the direct and close supervision of a qualified and experienced person;
- G. Ensure that the work of any student learner in the occupations declared hazardous are incidental to his/her training, shall be intermittent and only for short periods of time;
- H. Ensure that safety instruction will be provided;
- I. Authorize the mentor to attend training related to the program;
- J. Authorize the mentor to participate in progress reviews scheduled with the youth apprentice, the youth apprentice's parent or guardian, and school personnel; and
- K. Comply with the items stated in the Assurances section above.

**Employer Representative:**

Printed (Typed) Name	Signature	Date Signed	
Street Address	City	State	Zip Code
Email Address	Telephone Number		

**The School District agrees to:**

- A. Ensure the youth apprentice will meet high school requirements and the student will have the opportunity to successfully complete all requirements of the youth apprenticeship program;
- B. Participate in progress reviews scheduled with mentors, the youth apprentice, and youth apprentice's parent or guardian;
- C. Award credit toward graduation for both the related instruction and work-based component;
- D. Provide safety instruction for work considered hazardous under child labor laws; and
- E. Comply with the items stated in the Assurances section above.

**School Principal (or designee):**

Printed (Typed) Name	Signature	Date Signed
Title	Telephone Number	Email Address

**Youth Apprenticeship Coordinator:**

Printed (Typed) Name	Signature	Date Signed
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**[MIDDLE/HIGH SCHOOL DISTRICT LETTERHEAD]**

**SERVICE-LEARNING AGREEMENT**

The xxxx HIGH/MIDDLE SCHOOL is committed to maintaining strong communication between the student service-learner, the teacher, and the community partner in order to achieve a positive educational experience. The parties are encouraged to contact the teacher with any questions or concerns relating to the service-learning experience. As a part of thinking critically about expectations, xxxx HIGH/MIDDLE SCHOOL offers this **SERVICE-LEARNING AGREEMENT** below for faculty to utilize in their classroom.

**Student Information:**

<i>Student name:</i>		<i>Cell phone:</i>
<i>Course (name and number):</i>	<i>Section:</i>	<i>Teacher/Faculty Name:</i>

**Organization Information:**

<i>Site (agency or organization):</i>
<i>Are you a non-profit with 501(c)(3) status?</i>
<i>Site address:</i>

<i>Supervisor:</i>	<i>Phone:</i>	<i>Email:</i>
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<i>Dates and times student will be at site or working on project:</i>						
<b>OR</b> <i>Weekly schedule at agency:</i>						

<i>Mon.</i>	<i>Tue.</i>	<i>Wed.</i>	<i>Thu.</i>	<i>Fri.</i>	<i>Sat.</i>	<i>Sun.</i>
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<i>Other organization requirements (criminal background check, TB test, orientation, application, etc.):</i>
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**Service Description and/or Activities:**

*The community partner representative, teacher and student should collaborate here to describe the service-learning assignment and the course connections.*

As a **student**, I agree to:

- Attend an orientation at my service-learning site.
- Complete all of the scheduled service-learning for the semester.
- Keep track of my hours served at my service-learning site throughout the semester.
- Call the designated contact at my service-learning site if I am unable to make my regularly scheduled time.
- Act in a professional manner and wear appropriate attire when at my service-learning site.
- Complete and return all paperwork within designated time frames.
- Notify the teacher if I am having problems relating to my service-learning site or experience.
- Abide by and behave in accordance with the service learning site's employee manual.

Student/Service-Learner signature: \_\_\_\_\_ Date: \_\_\_\_\_

Cell phone: \_\_\_\_\_ Email address: \_\_\_\_\_ Best way to contact? Phone / Email

As a **teacher** using service-learning in my course, I agree to:

- Provide an orientation to service-learning in collaboration with the community partner.
- Help students relate their service-learning assignment to their course curriculum and learning objectives.
- Address any problems relating to service-learning during the semester.

Teacher signature: \_\_\_\_\_ Date: \_\_\_\_\_

Phone: \_\_\_\_\_ Email address: \_\_\_\_\_ Best way to contact? Phone / Email

As a **Community Partner** with xxxx HIGH/MIDDLE SCHOOL, I agree to:

- Provide an orientation to the site in collaboration with the teacher.
- Place students in service assignments which will complement their classwork.
- Provide adequate training and supervision while the student is at the service-learning site.
- Be available to the service-learners to discuss any problems or issues that may arise.
- Inform service-learners about any relevant or special events at the site.
- Provide timely feedback on the service-learner's performance.
- Notify the teacher if I have problems with a service-learner or any assignment.

Community Partner signature: \_\_\_\_\_ Date: \_\_\_\_\_

Phone: \_\_\_\_\_ Email address: \_\_\_\_\_ Best way to contact? Phone / Email

As the **Parent/Guardian** of the above-noted student, I understand my child is participating in the above-described service-learning experience.

Parent/Guardian signature: \_\_\_\_\_ Date: \_\_\_\_\_

Phone: \_\_\_\_\_ Email address: \_\_\_\_\_ Best way to contact? Phone / Email

CC: Student, Teacher, Community Parnter, Student's Parents/Guardians

**THIS PAGE IS TO BE GIVEN TO THE COMMUNITY PARTNER.**

Dear Community Partner:

You are receiving this letter because you have agreed to host a xxxx HIGH/MIDDLE SCHOOL service-learner this semester. Service-learning helps students deepen their understanding of course content through experiences in the community and reflection in the classroom.

We will be calling you soon to verify this partnership. During this verification, we will ask that you submit some information about your organization.

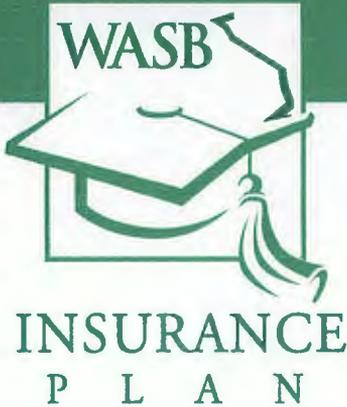
If you have any further questions on the service-learning timeline or overall process, please don't hesitate to contact our office.

Thank you for supporting xxxx HIGH/MIDDLE SCHOOL service-learners, and we look forward to working with you this semester!

In Service,

Teacher  
xxxx HIGH/MIDDLE SCHOOL  
Contact Info

Misc present\2017\CESA 1\SERVICE Learning K-12 agree sample



WISCONSIN ASSOCIATION OF SCHOOL BOARDS, INC.  
122 W. WASHINGTON AVENUE, MADISON, WI 53703  
PHONE: 608-257-2622 • FAX: 608-257-8386

### Work-Based Learning – Written Agreements & Wages

1. Use a written agreement which includes all parties: student, his/her parents/guardians, school district and community employer. Address the following details:

- Who is involved?
- What will the student do?
- When will the experience take place?
- Where will the experience take place?
- How much will the student be paid (*should* the student be paid)?
- If applicable, address means of transportation and use transportation releases.
- For YA Programs, parties must use, "Education/Training Agreement: Wisconsin Youth Apprenticeship" form (9-17 ed.)  
[https://dwd.wisconsin.gov/dwd/forms/dws/pdf/detw\\_9471.pdf](https://dwd.wisconsin.gov/dwd/forms/dws/pdf/detw_9471.pdf).

2. Wage requirements vary by type of non-youth apprenticeship program, such as:

- Job Shadowing
- Service Learning
- Internship/trainee (for the purposes of the FLSA, seven criteria are considered to determine whether an intern must be paid) – See FLSA Fact Sheet #71
- Volunteering to meet graduation requirements

Question: Does the student's behavior result in productive work for the employer?

3. Work Study Workers Compensation Class Code 9428 – for non-paid experiences, \$350 annual premium for secondary schools, and \$1,000 for post-secondary schools.

[https://www.wcrb.org/WCRB/circulars/CircularLetters2013/Circular\\_Letter\\_3098\\_WI\\_Work-Study\\_Program.pdf](https://www.wcrb.org/WCRB/circulars/CircularLetters2013/Circular_Letter_3098_WI_Work-Study_Program.pdf)

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(608) 286-0286

Misc. Presentations\2018\CESA 1\written agree 2-18

**WISCONSIN WORK-STUDY COVERAGE ENDORSEMENT**

This endorsement applies only to the insurance provided by the policy because Wisconsin is shown in Item 3.A. of the Information Page.

You have elected to name as an employee students who are engaged in performing services as part of a school work training, work experience or work-study program.

This election only applies:

- while the student is engaged in performing services as part of a school work training, work experience or work-study program, and
- if the student is not on the payroll of the employer providing the work training or work experience, or is not otherwise receiving compensation on which a workers compensation carrier could assess premiums on that employer, and
- where an agreement between you and the employer providing the work training or work experience specifies that you so elect, and
- where the election with regard to such student is evidenced in writing.

This endorsement changes the policy to which it is attached and is effective on the date issued unless otherwise stated.

**(The information below is required only when this endorsement is issued subsequent to preparation of the policy.)**

Endorsement  
Insured

Effective Policy No.

Endorsement No.  
Premium

Insurance Company

Countersigned by \_\_\_\_\_



# Class Code Historical Performance Report

## Class Code Search

Results for Class Code: **9428**

Results reflect: **All (Voluntary and Assigned Risk)**

Description: **WORK STUDY COVERAGE - SECONDARY SCHOOLS (EFFECTIVE 10-1-13, A FLAT PREMIUM CHARGE APPLIES)**

Status: **Active**

[\[Full Class Code Description\]](#)

Year	Payroll	Modified Premium	Incurred Indemnity	Incurred Medical	Total Claims	Loss Ratio	Freq Ratio
2015	\$0	\$0	\$0	\$0	0	0.0000	0.000
2014	\$0	\$0	\$0	\$0	0	0.0000	0.000
2013	\$13,660	\$10,000	\$0	\$0	0	0.0000	0.000
2012	\$13,994	\$18,701	\$0	\$0	0	0.0000	0.000
2011	\$0	\$17,356	\$19	\$3,006	4	0.1740	
2010	\$0	\$13,711	\$0	\$0	0	0.0000	0.000
2009	\$0	\$11,971	\$0	\$0	0	0.0000	0.000
2008	\$0	\$14,480	\$0	\$973	3	0.0670	
2007	\$0	\$10,302	\$0	\$0	0	0.0000	0.000
2006	\$0	\$10,900	\$0	\$441	1	0.0400	

## CIRCULAR LETTER 3098—JANUARY 7, 2013

TO: Members of the Bureau

FROM: Donna Knepper

RE: WI Work Study Program

Pursuant to ch. 626, Wis. Stat., the Office of the Commissioner of Insurance has approved the Governing Board's recommended changes to the current WI Work Study Program. The current program applies to high school students engaged in work training, work experience or work study programs. The WI Work Study Program is extended to post-secondary schools. The current premium charge for the Wisconsin Work-Study Coverage Endorsement has also been revised.

The following changes are effective 10-1-13, applicable to new and renewal business:

- Revised [Wisconsin Work-Study Coverage Endorsement](#) (see wcrb.org, Forms, Standard Endorsements, WC 48 03 02 A)
- Work Study Endorsement Charge—The charge for the work study endorsement is currently \$0.50 per student per week. This charge creates policy auditing issues, as the list of students can change periodically. The per student charge is eliminated and a flat endorsement charge is applied. The charge for the endorsement is \$350 for secondary schools and \$1,000 for post-secondary schools. Code 9428—Work Study Coverage—Secondary Schools or code 9447—Work Study Coverage—Post Secondary Schools must be added to the policy.
- Create Wisconsin Basic Manual Rule V. F.

### F. WORK STUDY PROGRAM

An educational institution may elect to have students enrolled in a work training, work experience, or work study program deemed to be an employee of the educational institution. The policy may be endorsed to add coverage, provided the student is not on the payroll of the employer providing the training or work experience and the student is not otherwise receiving compensation on which an insurance carrier could assess a workers' compensation premium. If this endorsement is provided for a secondary educational institution, code 9428—Work Study Coverage—Secondary Schools must be added to the policy. If this endorsement is provided for a post-secondary educational institution, code 9447—Work Study Coverage—Post Secondary Schools must be added to the policy. To provide this coverage, the carrier must attach endorsement WC 48 03 02A Wisconsin Work Study Coverage Endorsement; associated premium and losses must be reported under codes 9428 or 9447.

- The endorsement charges will be reviewed with the annual rate revision.
- Revisions to the Wisconsin Statistical Plan Manual are being prepared for filing and will be released under separate circular letter.

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## Workers' Compensation Statutes and Volunteers

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### Workers' Compensation ("WC") Statutes

Insurance for Youth Apprenticeship Situations – 99 percent of employers that would be approached for YA opportunities must carry WC insurance. If they are not required by law to carry insurance, consider another employer. OR Make sure all parties understand the employer is not required by law to carry WC insurance, and medical expenses incurred due to an injury sustained in the course of employment may or may not be paid by health insurance and payment of lost wages is not available.

Insurance for Unpaid Experiences – Work-study, job shadowing, internships, trainees (WC Class Code 9428 – Work Study) – Also, consult Wisconsin's WC statutes:

- §102.07(12m)(b) – Employee defined
- §102.077 – Election by school district or private school
- §102.29(8) – Third party liability
- Farming statutes:
  - §102.04(1)(c)
  - §102.05(3)
  - §102.07(5)
  - §102.07(5)(a)
  - §102.07(5)(b)
  - §102.07(5)(c)
  - §102.07(5)(d)

### Insurance for Volunteer Activities (Those activities required for graduation and otherwise.)

1. DWD 270.18(3) Volunteer Service – The organization for which the volunteer is serving shall provide insurance for on-duty injuries that may occur to the volunteer. Caveat: Wisconsin's WC laws do not allow organizations to provide WC coverage to volunteers. Note: The organization could buy a Volunteer Accident policy (AD&D).
2. Liability – Realistically, non-profit entities accepting assistance from volunteers should carry some general liability insurance, which, if properly issued, should extend coverage to the organization's volunteers.
3. Limited Liability of Volunteers §181.067

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## Questions and DPI Responses Related to Alternative Vehicles and Drivers

### Alternative Vehicle Drivers

#### **1. What constitutes an “alternative vehicle” for the purposes of Act 280?**

An alternative vehicle is a motor vehicle described in Section 121.555(1), Wis. Stats.

#### **2. Do the requirements relating to criminal background checks and driver record checks apply to school district employees, such as coaches, teachers and others, who occasionally transport students to/from school-related activities or events?**

Section 121.555(3)(a), Wis. Stats., states that these requirements apply to any individual who does not hold a valid school bus endorsement and who is employed or under contract to transport pupils. If the employee’s contract includes the responsibility of transporting students, the employer must comply with the Act 280 requirements relating to obtaining the background information form, and conducting a criminal background check and a driver record check. For individuals whose contracts do not include transportation responsibilities, as well as those who do not have an employment contract, the DPI recommends that the school district/employer consult their attorney and insurance carrier prior to determining that the requirements of Act 280 do not apply.

#### **3. Do the requirements relating to criminal background checks and driver record checks apply to parent volunteers?**

If the parent is not employed nor under contract to provide the pupil transportation, the requirements would not apply. However, this does not preclude the school district/employer from requiring anyone who transports children, other than their own children, to complete a background information form and conducting criminal background and driver record checks on that person.

#### **4. If the alternative vehicle driver is also a licensed teacher, for whom a background check has already been conducted, must the school district/employer conduct another background check?**

Yes. The results of the criminal background check must be compared to the list of offenses which disqualify an individual from operating an alternative vehicle to provide pupil transportation. This list can be obtained at <http://www.dot.state.wi.us/drivers/forms/mv3740.doc>. The list of disqualifying offenses is different from the list of offenses which disqualify an individual from obtaining a teacher’s license.

#### **5. What if the alternative vehicle driver also drives a school bus?**

A school bus driver must hold a valid school bus endorsement to his/her driver’s license. The Department of Transportation is required to conduct a criminal background check prior to the issuance or renewal of a school bus endorsement. The same disqualifying convictions that apply to alternative vehicle drivers also apply to school bus drivers, and the list of these offenses is available on the Department of Transportation’s web site at <http://www.dot.state.wi.us/drivers/forms/mv3740.doc>. For additional information on the requirements for school bus drivers, contact the Department of Transportation at (608) 266-2353.

**6. What if an alternative vehicle driver was convicted of a felony that would disqualify him/her from transporting pupils, but the conviction occurred several years ago?**

The length of time an individual is disqualified from providing pupil transportation under Act 280 depends on the crime of which he/she was convicted and varies from two years to life. The list of disqualifying convictions, as well as the term of the disqualification, is available at <http://www.dot.state.wi.us/drivers/forms/mv3740.doc>. An individual who was convicted of a disqualifying offence within the timeframe listed may not transport pupils.

**7. What if an alternative vehicle driver is convicted of a disqualifying offense *after* a background check is conducted?**

An individual who is employed by or under contract with a person to operate an alternative vehicle to provide pupil transportation is required to report any motor vehicle accident in which the individual was the driver, any suspension or revocation of operating privileges, and any conviction or operating privilege revocation that would disqualify the individual from providing pupil transportation. The report must be in writing to the individual's employer or the entity with whom the individual has contracted and must be made within 10 days of the occurrence of the accident, conviction, suspension or revocation. The individual would be prohibited from transporting pupils for the time period specified.

**8. How often must criminal background and driver record checks be conducted for alternative vehicle drivers?**

Section 121.555(3)(a), Wis. Stats., specifies that the school district/employer must obtain the completed background information form from the driver and must request a criminal background check and a driver record check "before the individual is initially permitted to operate the vehicle and every 4 years thereafter." However, for individuals who were already employed or under contract to provide pupil transportation in an alternative vehicle on or before January 31, 2005, these requirements did not apply until September 1, 2005.

**9. Can the school district/employer use the Department of Transportation form "MV3740" as the information request form for an alternative vehicle driver?**

The form at <http://www.dot.state.wi.us/drivers/forms/mv3740.doc> can be used by drivers of alternative vehicles.

**10. What if the school district contracts with a private company for all pupil transportation services?**

Any contract for pupil transportation that was entered into, modified or renewed on or after February 1, 2005, between a school board and the owner or lessee of privately owned motor vehicles transporting pupils for compensation must include a requirement that the owner or lessee perform any action necessary to comply with the requirements of Act 280.

# Transportation Guidelines for Work Experience\* Program Students

Revised March 2018 for Wisconsin Public School Districts

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## **INTRODUCTION**

The manner in which students participating in work experience\* programs are transported to and from job sites can be a challenge, and sometimes a logistical headache. From a risk management and liability perspective, the ideal situation is one in which the students do not drive themselves to or from the work site. However, as with many issues, several alternatives, ranging from ideal to feasible, exist.

## **WHAT OPTIONS ARE AVAILABLE?**

1. The “*Education/Training Agreement: Wisconsin Youth Apprenticeship*” [Form DETW-9471-E (R. 11/2016)] stipulates the parents/guardians agree to ensure the students’ transportation to and from the work site. However, families’ inability to provide transportation should not preclude a student from participating in a youth apprenticeship program.
2. Ideally, the school district should transport work experience students in a district vehicle, such as a yellow school bus. If this is not feasible, then using a district van (nine or fewer passengers) or private passenger vehicle, driven by a district employee, contract driver or vetted volunteer, is preferred.

Employing or contracting with an individual to use his/her personal vehicle to transport students is addressed in Wis. Stats. §121.555, Alternative Methods of Providing Transportation.

3. Motor Vehicle Records (MVR) and Criminal Background Checks, and Cell Phone Use
  - a. The MVRs of employees, contracted drivers and volunteers who will likely be driving on the district's behalf (for any reason) should be checked annually. Verify the driver's license is valid and he/she has received no more than three minor moving violations in the last five years. Major moving violations within the last five years, such as reckless driving, operating while intoxicated, etc., should be grounds for not allowing the individual to drive on the district’s behalf.
  - b. Be sure all individuals are informed their MVR may be checked by the district, and obtain from them prior, affirmative written permission using documents compliant with the Fair Credit Reporting Act.

- c. Criminal background checks on district employees, contracted drivers and volunteers who drive students should be conducted in accordance with district policy and procedure. Again, it is imperative written permission compliant with the Fair Credit Reporting Act be obtained from the person on whom a background check will be ordered prior to doing so.
  - d. Districts should have a policy regarding the use of cell phones and other electronic mobile devices by any person while driving any vehicle on the district's behalf, and make all school-obtained/allowed drivers aware of it. At a minimum, the policy should contemplate the rules of the road in Wisconsin statutes §346.89 (1), (3), (4) and (4m).
3. Alternative Forms of Transportation - Wis. Stats. §121.555 describes requirements that must be met before an individual can drive on behalf of a school district, regardless of who owns the vehicle. These include, but are not limited to, proving they are physically capable of having sufficient use of both hands, the foot used to operate the foot brake, and a long list of convictions that will disqualify the individual from driving students on the district's behalf.
  4. If district private passenger vehicles are not available, allowing district employees, contracted drivers, and volunteers to use their *personally-owned vehicles* to transport students is acceptable. If an accident occurs under these circumstances, the driver's personal automobile insurance will apply first to any damages arising out of the accident. The district's automobile policy will respond on behalf of the district on a primary basis, and on an excess basis for the driver.

Every six months, require drivers, who may drive on the district's behalf, to provide proof of personal automobile liability insurance in an amount no less than \$100,000/\$300,000/\$100,000. Though higher than what is required by statute, these limits are reasonable minimum limits of protection.

Districts should assess the acceptability of all drivers based on the requirements detailed in §121.555.

5. If district vehicles and district representatives (employees, contracted individuals or volunteers) are not available, consider using a third-party contractor to transport students to the work experience, such as taxis or public busses.
6. **THOUGH NOT RECOMMENDED**, if all methods of transportation described above are not feasible or viable, students may be allowed to drive themselves to their respective community employers/job sites. Prior to approving this mode of transportation, the district should ensure the following occurs:
  - a. Inform the student and his/her parents he/she will be allowed to drive himself/herself to the job site contingent upon the following:

- 1) Verification of the student's valid driver's license;
- 2) No more than one minor moving violation and no major moving violations appear on the student's MVR in the last three years. School districts can receive guidance from their insurance companies about what constitutes minor and major moving violations;
- 3) Proof the car driven by the student carries automobile liability coverage with limits no less than \$100,000/\$300,000/\$100,000. Proof of renewed coverage should be required upon expiration of the insurance policy initially submitted. NOTE: The student driver is not insured by the district's auto liability policy;

*Use attached Exhibit A.2. and B.2. to accomplish items #2) and #3) above.*

- 4) Written acknowledgment from the student about driving to/from the work site, including the student's agreement to abide by the driving parameters established by the district. This may be accomplished through the document describing the work experience program;
  - 5) IMPORTANT, as a separate document, obtain a written transportation-related waiver from the student's parents/guardians regarding the work experience transportation arrangements (*Exhibit A.1.*); and
  - 6) IMPORTANT, as a separate document, obtain a written transportation-related waiver from the student *if the student is 18 years old (Exhibit B.1.)*.
- b. Inform the parents about the work experience transportation arrangements. This can, and should, be accomplished through a written document outlining the transportation details.

Consideration should also be given to requiring parents to attend in person, or via teleconference, a meeting at which the work experience program will be discussed.

The transportation-related waiver document should be signed by parents (or guardians) and the school district. Sample waivers are attached (*Exhibits A.1 and B.1.*). PLEASE NOTE: THE ATTACHED WAIVERS WERE NOT AUTHORED BY AN ATTORNEY. THEY SHOULD BE REVIEWED BY THE DISTRICT'S LEGAL COUNSEL BEFORE USE.

Do not combine the waiver document with any other information. It should remain a separate, stand-alone document. Combining it with any other information will likely compromise its effectiveness.

**Make sure the waiver is reviewed and approved by the district's legal counsel before use.**

7. It is not recommended, and we greatly discourage, districts allowing one student to drive another student to a work site, even if they are participating in the same program at the same time. **However, if this is the only possible solution for transporting a student to a work site, the waiver signed by the passenger student (if 18 years of age) or his/her parents/guardians (if less than 18 years old) should be amended to include an acknowledgment that a fellow student will be driving their child to the work site.**

*A final word about waivers. Wisconsin courts do not look kindly upon waivers of any sort. They are strongly held to be against public policy. Wisconsin courts have opined that, among other factors, absent the ability to negotiate the terms of waivers, they will not likely be upheld. See Benjamin Atkins v. Swimwest Family Fitness Center, case #03-2487-FT; Ronald J. Brooten v. Hickok Rehabilitation Services, LLC, et. al, case #2012AP1940; and Patti J. Roberts v. T.H.E. Insurance Company, case #2014AP1508.*

*As such, school districts should understand that use of any waivers may only act as a deterrent against lawsuits, not prevent them.*

Questions about this document, or others relating to risk management and insurance, can be directed to Joy Gänder of Gänder Consulting Group, LLC. She can be reached at [gander@ganderconsulting.com](mailto:gander@ganderconsulting.com) or (608) 286-0286.

*\*The term "Work Experience" refers to any student involved in a work study, job shadowing, school-to-work, youth apprenticeship, co-op, service learning or volunteer program. These Transportation Guidelines should be considered without regard to whether the student is receiving wages, compensation, or credit for his/her efforts.*

**SAMPLE WORK EXPERIENCE TRANSPORTATION AUTOMOBILE LIABILITY WAIVER  
FOR PARENTS/GUARDIANS FOR STUDENTS LESS THAN 18 YEARS OLD**

*If the student is at younger than 18 years of age, the following should be completed by the student's parents or guardians.*

*This document is offered for informational purposes only. Any liability waiver the School District wishes to use should be reviewed by the District's legal counsel before use.*

\*\*\*\*\*

**[DISTRICT NAME] SCHOOL DISTRICT WORK EXPERIENCE PROGRAM  
TRANSPORTATION LIABILITY WAIVER  
For Student-Provided Transportation by [student name] for  
[Name of Work Experience Program]**

1. I/We, [parents'/guardians' name], understand my/our son/daughter, [student's name], will be participating in the [name of work experience program], in conjunction with [name of employer, company or entity and address].

\_\_\_\_\_ [Parents' or guardians' Initials]

2. He/She will be participating in this program for [duration of program], commencing [date program starts] at the address noted in #1 above. The days and hours of his/her participation are: [Example:]

*Monday-Wednesday-Friday, from 12:00 p.m. to 3:00 p.m., inclusive of 30 minutes to reach the program's location and 30 minutes to return to school.*

\_\_\_\_\_ [Parents' or guardians' Initials]

3. I/We understand and consent to our/my son/daughter transporting himself/herself from [high school name] to and from [name of employer, company or entity and address] for the above-described work experience program.

\_\_\_\_\_ [Parents' or guardians' Initials]

4. I/We understand our/my son/daughter may sustain injuries, including permanent disability or death, as a result of operating a motor vehicle while driving himself/herself from [high school name] to and from [name of employer, company or entity and address] for the above-described work experience program.

\_\_\_\_\_ [Parents' or guardians' Initials]

5. Based on our understanding of the information above, I/we understand and agree to waive my/our rights to file a claim, pursue legal action against, or seek financial reimbursement or damages from the [School District name], its Board members, employees, and volunteers for

bodily injury to my/our child or property damage arising out of my child's negligence while driving himself/herself to and/or from [employer, company or entity and address].

\_\_\_\_\_      \_\_\_\_\_      *[Parents' or guardians' Initials]*

Signature of Parent or Guardian \_\_\_\_\_ Date \_\_\_\_\_

Signature of Parent or Guardian \_\_\_\_\_ Date \_\_\_\_\_

Signature of School District Representative \_\_\_\_\_

Title \_\_\_\_\_ Date \_\_\_\_\_

**SAMPLE WORK EXPERIENCE TRANSPORTATION CONFIRMATION OF DRIVER'S LICENSE  
AND AUTO INSURANCE**

**SAMPLE FOR STUDENTS WHO ARE LESS THAN 18 YEARS OF AGE**

***If the student is younger than 18 years of age, the following should be completed by the student's parents or guardians.***

***This document is offered for informational purposes only. Any liability waiver the School District wishes to implement and use should be reviewed by the District's legal counsel before use.***

\*\*\*\*\*

**[DISTRICT NAME] SCHOOL DISTRICT WORK EXPERIENCE PROGRAM  
PARENT/GUARDIAN CONFIRMATION OF STUDENT'S DRIVER'S LICENSE  
AND AUTO INSURANCE.**

**For Student-Provided Transportation by [student name] for  
[Name of Work Experience Program]**

1. We affirm our son/daughter, *[student's name]* has a valid driver's license and no more than one minor moving violation in the last three years and no major moving violations appear on his/her motor vehicle record (MVR).\* We understand and agree MVR activity exceeding the levels previously described will result in our son/daughter losing the privilege to drive him/herself to *[name of employer, company or entity]*.

\_\_\_\_\_ *[Parents'/Guardians' Initials]*

2. We affirm the vehicle our son/daughter will be using to transport himself/herself to the above described school-to-work experience is, at all times during this work experience, insured by an automobile insurance policy which provides no less than the following liability limits: \$100,000 per person for bodily injury, \$300,000 for bodily injuries sustained by all people injured as the result of the ownership, use or maintenance of the aforementioned vehicle, and \$100,000 for all property damage caused by the use of the aforementioned vehicle.

\_\_\_\_\_ *[Parents'/Guardians' Initials]*

Signature of Parent or Guardian \_\_\_\_\_ Date \_\_\_\_\_

Signature of Parent or Guardian \_\_\_\_\_ Date \_\_\_\_\_

Signature of School District Representative \_\_\_\_\_

Title \_\_\_\_\_ Date \_\_\_\_\_

\*The school district should define what minor and major moving violations are.

**WORK EXPERIENCE TRANSPORTATION AUTOMOBILE LIABILITY WAIVER  
SAMPLE FOR STUDENT WHO IS AT LEAST 18 YEARS OF AGE**

*If the student is at least 18 years of age, the following should be completed by the student.*

*This document is offered for informational purposes only. Any liability waiver the School District wishes to implement and use should be reviewed by the District's legal counsel before use.*

\*\*\*\*\*

**[DISTRICT NAME] SCHOOL DISTRICT WORK EXPERIENCE PROGRAM  
TRANSPORTATION LIABILITY WAIVER  
For Student-Provided Transportation by [student name] for  
[Name of Work Experience Program]**

1. I *[student's name]*, understand I will be participating in the *[name of work experience program]*, in conjunction with *[name of employer, company or entity]*.

\_\_\_\_\_ *[Student's Initials]*

2. I will be participating in this program for *[duration of program]*, commencing *[date program starts]*. The days and hours of my participation are: *[Example:]*

*Monday-Wednesday-Friday, from 12:30 p.m. to 2:30 p.m.*

\_\_\_\_\_ *[Student's Initials]*

3. I understand I may sustain injuries, including permanent disability or death, as a result of operating a motor vehicle while driving myself from *[high school name]* to and from *[name of employer, company or entity and address]* for the above-described work experience program.

\_\_\_\_\_ *[Student's Initials]*

4. Based on my understanding of the information above, I understand and agree to waive my right to file a claim, pursue legal action against, or seek financial reimbursement or damages from the *[School District name]*, its Board members, employees, and volunteers for bodily injury to me or property damage arising out of my negligence while driving myself to and/or from *[employer, company or entity and address]*.

\_\_\_\_\_ *[Student's Initials]*

Signature of Student \_\_\_\_\_ Date \_\_\_\_\_

Signature of School District Representative \_\_\_\_\_

Title \_\_\_\_\_ Date \_\_\_\_\_

**WORK EXPERIENCE TRANSPORTATION CONFIRMATION OF DRIVER'S LICENSE  
AND AUTO INSURANCE**

**SAMPLE FOR STUDENT WHO IS AT LEAST 18 YEARS OF AGE**

***If the student is at least 18 years of age, the following should be included and completed by the student.***

***This document is offered for informational purposes only. Any liability waiver the School District wishes to implement and use should be reviewed by the District's legal counsel before use.***

\*\*\*\*\*

**[DISTRICT NAME] SCHOOL DISTRICT WORK EXPERIENCE PROGRAM  
STUDENT CONFIRMATION OF STUDENT'S DRIVER'S LICENSE  
AND AUTO INSURANCE.**

**For Student-Provided Transportation by [student name] for  
[Name of Work Experience Program]**

1. I affirm I have a valid driver's license and no more than one minor moving violation and no major moving violations appear on my motor vehicle record (MVR). \* I understand and agree MVR activity exceeding the levels previously described will result in me losing the privilege of driving to [name of employer, company or entity].

\_\_\_\_\_ *[Student's Initials]*

2. I affirm the vehicle I will be using to transport myself to the above described school-to-work experience is, at all times during this work experience, insured by an automobile insurance policy which provides no less than the following liability limits: \$100,000 per person for bodily injury, \$300,000 for bodily injuries sustained by all people injured as the result of the ownership, use or maintenance of the aforementioned vehicle, and \$100,000 for all property damage caused by the use of the aforementioned vehicle.

\_\_\_\_\_ *[Student's Initials]*

Signature of Student \_\_\_\_\_ Date \_\_\_\_\_

Signature of School District Representative \_\_\_\_\_

Title \_\_\_\_\_ Date \_\_\_\_\_

\*The school district should define what minor and major moving violations are.

# Cell Phones, Driving and the Law



## Know the law

- Hand-held or hands-free cell phone use while driving is against the law in Wisconsin for any driver with a probationary license or instruction permit, except to report an emergency.
- No driver may use a hand-held, mobile device when driving through a road work zone, except to report an emergency.
- Texting while driving is against the law for ALL drivers in Wisconsin.

## Know the cost

- Ticket for Inattentive Driving, fine and four demerit points.
- Demerit points double if you have an instruction permit or probationary license and a prior moving violation.
- Graduated Driver License (GDL) restrictions are extended six more months if you have a probationary license, are under GDL restrictions and have a prior moving conviction.
- If you have an instruction permit, you must wait six months from the date of violation to be eligible for a probationary license.

## Avoid the risk and stay safe

- Turn off your phone or switch to silent mode every time you get behind the wheel.
- Record your voice mail message to tell callers that you are driving.
- Pull over and stop in a safe area if you must use your cell phone.
- Or ask a passenger to call or text for you.

## Understand the most important cost

- Your risk of crashing into someone or something greatly increases when you use a cell phone while operating your vehicle.

**What's the cost if you damage your vehicle or hurt someone?**

**Texting while driving is against the law for ALL drivers in Wisconsin.**

**DRIVE NOW  
TEXT LATER**





**WISCONSIN**  
**DWD**  
Department of Workforce Development

## Employment of Minors Brief Overview 2018

Equal Rights Division  
(608) 266-6860 – Madison  
(414) 227-4384 – Milwaukee  
<http://dwd.wisconsin.gov/er>

**Jim Chiolino**  
Deputy Administrator  
Director, Labor Standards Bureau  
jim.chiolino@dwd.wisconsin.gov



## Employment of Minors

### Work Permit Required (Child Labor/Street Trades)

- ⦿ Since June, 23, 2017 – only required under age 16.
- ⦿ Issued to employer -- not to minor
- ⦿ Not required in agricultural employment or in domestic service
- ⦿ To obtain a permit, the minor must bring:
  - ⦿ letter of intent to hire, explaining hours/duties
  - ⦿ birth certificate / Wis. driver's license
  - ⦿ social security card
  - ⦿ parental consent
  - ⦿ \$10.00 fee (paid by employer or reimbursed)



STATE OF WISCONSIN  
**DWD**  
Department of Workforce Development

## Employment of Minors

### At what age may minors work?

- ▶ Generally, must be 14. May work as young as 12 in the following areas:
  - ▶ Agriculture
  - ▶ Domestic Service
  - ▶ School lunch programs
  - ▶ Caddies on golf courses
  - ▶ Street Trades
  - ▶ Working in a business owned by a parent



## Employment of Minors

### Hours and time of day restrictions

- ▶ May not work while required to be in school.
- ▶ Otherwise, 16- and 17-year-olds are not restricted.
- ▶ Under 16 years of age, 3 hours per day on school days; 8 hours per day on non-school days. 18 hours per week in school year (Labor Day through May 31); 40 hours per week in summer (June 1 through the Labor Day). Not past 7 pm in school year; not past 9 pm in summer.
- ▶ Minors may not work more than 6 consecutive hours without at least a 30-minute meal period.



## Employment of Minors

### Prohibited Employment

- ▶ Generally, type of occupation or piece of machinery is prohibited -- not an establishment
- ▶ Depends upon the age of the minor
- ▶ There is a “student learner” exemption that allows some otherwise prohibited work in certain circumstances.



## Prohibited / Hazardous Employment

- Work prohibited to ALL minors is listed, alphabetically in the Administrative Code (Wis. Admin. Code § DWD 270.12). It includes such items as:
  - Coal mines
  - Hoists & hoisting apparatuses
  - Lifeguards
  - Meat processing
- It is important to read each section; there are always exceptions.



## Prohibited / Hazardous Employment

- Work prohibited to minors under the age of 16 only is listed, alphabetically at Wis. Admin. Code § DWD 270.13. It includes such items as:
  - Construction
  - Hospitals and nursing homes
  - Loading and unloading
  - Manufacturing, mining, & processing occupations
- Certain sections have exceptions and clarifications.



## Prohibited / Hazardous Employment

### Resources:

#### Guide to Wisconsin's Child Labor Laws:

[http://dwd.wisconsin.gov/dwd/publications/erd/pdf/erd\\_17231\\_p.pdf](http://dwd.wisconsin.gov/dwd/publications/erd/pdf/erd_17231_p.pdf)

#### Manufacturing & Construction Equipment & Wisconsin's Child Labor Laws:

[http://dwd.wisconsin.gov/dwd/publications/erd/pdf/erd\\_17607\\_p.pdf](http://dwd.wisconsin.gov/dwd/publications/erd/pdf/erd_17607_p.pdf)



## Student Learner Exemption

- See Wis. Admin. Code § DWD 270.14(3).
- A "student learner" is a
  - student of an accredited school who is
    - employed on a part-time basis to obtain both scholastic credit and
    - employment training
  - under a bona fide written school-work training program agreement.



## Student Learner Exemption

- A student learner is permitted to do some work that is otherwise prohibited if the student learner is performing service within a bona fide school-work training program
- sponsored by an accredited school
  - authorized and approved by
    - the state department of public instruction,
    - the technical college system board, or
    - the department's youth apprenticeship program.



## Student Learner Agreement Must Include:

- Any work prohibited under DWD 270.12- 270.13 is incidental to student learner's training, and shall be intermittent and for short periods of time.
- The student learner shall be under the direct and close supervision of a qualified and experienced person.
- That safety instructions will be given by the school and correlated by the employer with on-time job training.
- A schedule of organized and progressive work processes to be completed on the job.



## Types of Work That Are Prohibited Under Student Learner Agreements

- Manufacturing of brick, tile and similar products
- Coal mining
- Explosives
- Hoists and hoisting apparatuses (except those that are allowed to all minors)
- Logging, saw mill, lath mill, shingle mill, or cooperage stock mill
- Motor vehicle driver or outside helper
- Radioactive and ionizing radiations substances
- Wrecking, demolition and ship breaking
- Manufacturing , mining or processing applications



## Hoists and Hoisting Apparatuses

- 16/17 year old may operate floor jacks , service jacks, hand jacks drive on lifts, arm lifts, (and some automation and signal elevators see DWD 270.12(12)) used in conjunction with repairing or servicing motor vehicles.



## 17 Year Olds May Operate an Automobile If:

- ▶ **The driving is only occasional and incidental to the minor's employment,**
- ▶ **The driving is restricted to daylight hours,**
- ▶ **The driving takes place within a 30-mile radius of the minor's place of employment,**
- ▶ **The motor vehicle does not exceed 6,000 pounds gross vehicle weight,**
- ▶ **The minor has completed driver's education and has a valid license**



## 17 Year Olds May Operate an Automobile If:

- ▶ The minor has no records of any moving violations at the time of hire,
- ▶ The vehicle has seatbelts for all occupants, and the employer has instructed the minor that the belts must be used when driving and riding,
- ▶ The driving does not involve towing of vehicles; route delivery or sales; transportation for hire of property, goods, or passengers; urgent time sensitive deliveries, transporting more than 3 passengers who are employees of the employer.



## Minimum Wage

- ▶ \$7.25 per hour -- General rate (including minors and agriculture)
- ▶ \$5.90 per hour -- Opportunity rate
  - “Opportunity employee”
    - ▶ Under 20 years of age
    - ▶ In employment status for 90 or fewer consecutive days with a particular employer



# Breaks

**Meal Periods / Coffee Breaks**

- ▶ Not required (BUT – the employer can require them)
- ▶ Recommended that meal breaks be given at times reasonably close to normal meal times
- ▶ Less than 30 minutes, break must be paid
- ▶ 30 minutes or more, break may be unpaid if
  - ▶ Completely relieved of duty
  - ▶ Free to leave the premises



# Thank You!

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# Unpaid Work Experiences & the Law

**Equal Rights Division**  
**(608) 266-6860 – Madison**  
**(414) 227-4384 – Milwaukee**  
<http://dwd.wisconsin.gov/er>

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# Employment

## Wisconsin's regulation

- ▶ Wage/Hour laws regulate "employment."
  - ▶ Minimum Wage, for example, covers "employees," defined as  
... every individual who is in receipt of or is entitled to any compensation for labor performed for any employer. Wis. Stat. § 104.01(2)(a).
  - ▶ It defines "employer" as meaning  
... every person, firm or corporation, agent, manager, representative, contractor, subcontractor or principal, or other person having control or direction of any person employed at any labor... Wis. Stat. § 104.03(a).



## Employment of Minors

- ▶ Regulates gainful employment AND occupations where minors are “employed or permitted to work.”
- ▶ The Administrative Rule (Wis. Admin. Code § DWD 270.18) allows minors to volunteer under certain circumstances:
  - ▶ Occupation not dangerous
  - ▶ Minor has parent’s / guardian’s consent
  - ▶ The organization provides insurance for on-duty injuries that may occur to volunteers
  - ▶ The organization is a non-profit
  - ▶ The minor does not replace a paid employee



## Employment of Minors

### Student “worklike” activities

- ▶ A separate rule allows minors NOT to be treated as employees in certain circumstances (Wis. Admin. Code § DWD 270.19).
  - ▶ Work AT the minor’s school, with or without compensation
  - ▶ Assisting in school lunchroom or cafeteria, cleaning of classrooms, hall monitor duties, or clerical duties in school office or library
  - ▶ Periods of one hour or less on days school is in session; longer on non-school days, but limited to average of one hour per school day when averaged over the school year
  - ▶ Adult supervision
  - ▶ Minor does not replace a paid employee



## Internships / Student Workers

### Fair Labor Standards Act

- ▶ US Department of Labor, Wage & Hour Division issued a new interpretive Fact Sheet in January 2018 (Fact Sheet #71)
- ▶ “Primary Beneficiary Test”
- ▶ Similar to the old 6-factor test; followed by several Circuit Courts
- ▶ Wisconsin will follow this



## Fact Sheet #71 – Internship Programs

- ▶ “Primary Beneficiary Test” – 7 factors, examining the “economic reality”:
  1. The extent to which the intern and employer understand there is no expectation of compensation
  2. The extent to which the internship provides training that is similar to educational training, including clinical or hands-on training provided by educational institutions
  3. The extent to which the internship is tied to the intern’s formal education by integrated coursework or academic credit
  4. The extent to which the internship accommodates the intern’s academic commitments by corresponding to the school calendar



## Fact Sheet #71 – Internship Programs

### ▶ “Primary Beneficiary Test” – 7 factors:

5. The extent to which the internship provides training that is similar to educational training, including clinical or hands-on training provided by educational institutions
6. The extent to which the intern’s work complements, rather than displaces, the work of paid employees WHILE providing educational benefit to the intern
7. The extent to which the intern and employer understand that the internship is conducted without entitlement to a paid job at the conclusion of the internship



## Fact Sheet #71 – Internship Programs

### ▶ “Primary Beneficiary Test”:

- ▶ The test is flexible. No single factor is determinative
- ▶ Dependent on the unique circumstances of each case



# Questions?



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## **Fact Sheet #71: Internship Programs Under The Fair Labor Standards Act**

This fact sheet provides general information to help determine whether interns must be paid the minimum wage and overtime under the Fair Labor Standards Act for the services that they provide to “for-profit” private sector employers.

### **Background**

The Fair Labor Standards Act (FLSA) defines the term “employ” very broadly as including to “suffer or permit to work.” Covered and non-exempt individuals who are “suffered or permitted” to work must be compensated under the law for the services they perform for an employer. Internships in the “for-profit” private sector will most often be viewed as employment, unless the test described below relating to trainees is met. Interns in the “for-profit” private sector who qualify as employees rather than trainees typically must be paid at least the minimum wage and overtime compensation for hours worked over forty in a workweek.\*

### **The Test For Unpaid Interns**

There are some circumstances under which individuals who participate in “for-profit” private sector internships or training programs may do so without compensation. The Supreme Court has held that the term “suffer or permit to work” cannot be interpreted so as to make a person whose work serves only his or her own interest an employee of another who provides aid or instruction. This may apply to interns who receive training for their own educational benefit if the training meets certain criteria. The determination of whether an internship or training program meets this exclusion depends upon all of the facts and circumstances of each such program.

The following six criteria must be applied when making this determination:

1. The internship, even though it includes actual operation of the facilities of the employer, is similar to training which would be given in an educational environment;
2. The internship experience is for the benefit of the intern;
3. The intern does not displace regular employees, but works under close supervision of existing staff;
4. The employer that provides the training derives no immediate advantage from the activities of the intern; and on occasion its operations may actually be impeded;
5. The intern is not necessarily entitled to a job at the conclusion of the internship; and
6. The employer and the intern understand that the intern is not entitled to wages for the time spent in the internship.

If all of the factors listed above are met, an employment relationship does not exist under the FLSA, and the Act’s minimum wage and overtime provisions do not apply to the intern. This exclusion from the definition of employment is necessarily quite narrow because the FLSA’s definition of “employ” is very broad. Some of the most commonly discussed factors for “for-profit” private sector internship programs are considered below.

### **Similar To An Education Environment And The Primary Beneficiary Of The Activity**

In general, the more an internship program is structured around a classroom or academic experience as opposed to the employer's actual operations, the more likely the internship will be viewed as an extension of the individual's educational experience (this often occurs where a college or university exercises oversight over the internship program and provides educational credit). The more the internship provides the individual with skills that can be used in multiple employment settings, as opposed to skills particular to one employer's operation, the more likely the intern would be viewed as receiving training. Under these circumstances the intern does not perform the routine work of the business on a regular and recurring basis, and the business is not dependent upon the work of the intern. On the other hand, if the interns are engaged in the operations of the employer or are performing productive work (for example, filing, performing other clerical work, or assisting customers), then the fact that they may be receiving some benefits in the form of a new skill or improved work habits will not exclude them from the FLSA's minimum wage and overtime requirements because the employer benefits from the interns' work.

### **Displacement And Supervision Issues**

If an employer uses interns as substitutes for regular workers or to augment its existing workforce during specific time periods, these interns should be paid at least the minimum wage and overtime compensation for hours worked over forty in a workweek. If the employer would have hired additional employees or required existing staff to work additional hours had the interns not performed the work, then the interns will be viewed as employees and entitled compensation under the FLSA. Conversely, if the employer is providing job shadowing opportunities that allow an intern to learn certain functions under the close and constant supervision of regular employees, but the intern performs no or minimal work, the activity is more likely to be viewed as a bona fide education experience. On the other hand, if the intern receives the same level of supervision as the employer's regular workforce, this would suggest an employment relationship, rather than training.

### **Job Entitlement**

The internship should be of a fixed duration, established prior to the outset of the internship. Further, unpaid internships generally should not be used by the employer as a trial period for individuals seeking employment at the conclusion of the internship period. If an intern is placed with the employer for a trial period with the expectation that he or she will then be hired on a permanent basis, that individual generally would be considered an employee under the FLSA.

### **Where to Obtain Additional Information**

This publication is for general information and is not to be considered in the same light as official statements of position contained in the regulations.

**For additional information, visit our Wage and Hour Division Website: <http://www.wagehour.dol.gov> and/or call our toll-free information and helpline, available 8 a.m. to 5 p.m. in your time zone, 1-866-4USWAGE (1-866-487-9243).**

**U.S. Department of Labor**  
Frances Perkins Building  
200 Constitution Avenue, NW  
Washington, DC 20210

**1-866-4-USWAGE**  
TTY: 1-866-487-9243  
[Contact Us](#)

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\* The FLSA makes a special exception under certain circumstances for individuals who volunteer to perform services for a state or local government agency and for individuals who volunteer for humanitarian purposes for private non-profit food banks. WHD also recognizes an exception for individuals who volunteer their time, freely and without anticipation of compensation for religious, charitable, civic, or humanitarian purposes to non-profit organizations. Unpaid internships in the public sector and for non-profit charitable organizations, where the intern volunteers without expectation of compensation, are generally permissible. WHD is reviewing the need for additional guidance on internships in the public and non-profit sectors.