

Sober Server and Impaired Server Ordinances in Wisconsin

What are “Sober Server” or “Impaired Server” ordinances?

Many states have statutes, rules, or regulations prohibiting individuals selling or serving alcohol from drinking on the job or working while intoxicated. Many establishments, including chains and franchise operations, ban servers from drinking or working when intoxicated. Wisconsin does not have any state-wide law or rule limiting server alcohol consumption. However, local ordinances prohibiting intoxicated or impaired servers have been adopted by some communities.

Limiting and prohibiting servers from being impaired or drinking on the job isn't an uncommon business practice. Many establishments, including chains and franchise operations, have a blanket ban on servers drinking or working when intoxicated for both legal and financial reasons. Individual businesses are able to set individual policies for server alcohol consumption as long as those policies are not inconsistent with local ordinance. For example, if a community establishes a ceiling on the acceptable blood alcohol level for servers the establishment may set a

exceptions) before serving alcohol to them (checking ID).

According to the Centers for Disease Control and Prevention (CDC), a person with a Blood Alcohol Concentration (BAC) between 0.02 percent to 0.08 percent experiences impaired judgment, lowered alertness, and a decline in their ability to perform two tasks at the same time.² Even when only mildly impaired, servers may be less likely to recognize intoxication in others, carefully review ID for age, or respond appropriately in an emergency.

Impaired servers also present a risk for law enforcement. For example, in testimony before the Wausau City Council, Police Chief Jeff Hardel estimated that his officers find an impaired server approximately half the time police respond to a problem at a bar or tavern. He noted that impaired servers are often uncooperative and belligerent.⁴

What do the Sober Server or Impaired Server ordinances adopted in Wisconsin prohibit?

While the specific language varies, these ordinances may do any combination of the following:

- 1) prohibit drinking on duty
- 2) limit acceptable levels of blood alcohol concentration (BAC) while on duty
- 3) prohibit use while on duty of any controlled substances that impair judgment
- 4) prohibit working while having any detectable amount of a controlled substance in the blood

The primary distinction between communities setting limits on consumption is that some communities simply prohibit serving alcohol or working in an establishment while “under the influence” of alcohol, drugs, or a combination of both substances, while others set a threshold BAC for a violation, such as 0.04 or 0.08 percent.

What level of impairment is allowed?

The 2021 report from the Wisconsin State Council on Alcohol and Other Drug Abuse recommends that municipalities adopt sober server ordinances that require those who sell or serve alcohol to be unimpaired and have a BAC under 0.04 percent while working.⁵ The Ad Hoc Alcohol Prevention

² Blood alcohol concentration (BAC) is expressed as either: a) the number of grams of alcohol per 100 milliliters of a person’s blood; or b) the number of grams of alcohol per 210 liters of a person’s breath. Wis. Stat. § 300.11v. Both calculations produce the same number, which is commonly expressed as a percentage, e.g. 0.08 percent.

³ Centers for Disease Control and Prevention, 2019.

Committee selected the 0.04 percent threshold due to impaired judgment that already happens at that blood alcohol concentration. Some communities may prefer to raise the threshold BAC of 0.08 percent for impairment for servers to mirror Wisconsin's Operating While Intoxicated (OWI or drunk driving) standard for most drivers. However, Wisconsin law provides other more appropriate examples for persons who are on duty or working. For example, driving or operating a commercial motor vehicle with a BAC of 0.04 percent is sufficient for a person to be charged with OWI while driving a commercial motor vehicle. In addition, employees working for the state on public works or utility projects are considered to be under the influence of alcohol if they have a BAC of 0.04 percent or higher.

A Few Examples:

A number of communities in Wisconsin have sober server ordinances. A few representative examples follow:

- x Kenosha prohibits a licensee, the licensee's agent, and the licensee's employees from being "under the influence" which it defines based on the effects of using alcohol or a controlled substance

Under the influence means that the person has consumed a sufficient amount of alcohol, controlled substance or combination of alcohol and controlled substance, cause the person to be less able to exercise clear judgment and reasonable care in the exercise of services performed.

- x Madison prohibits the licensee or employee of a licensed establishment from being "under the influence of an intoxicant, or a controlled substance or a combination of an intoxicant and a controlled substance, while performing services on the licensed premises" specifies that "under the influence" means

not only all the wellknown and easily recognized conditions and degrees of intoxication, but any abnormal mental or physical condition which is the result of

Committee. p. 20.

⁶ In Wisconsin, a person who operates or drives a commercial vehicle with a blood alcohol concentration of 0.04 or more but less than 0.08 may be charged with operating a commercial vehicle while having a prohibited alcohol concentration. Wis. Stat. §346.63(5). A person may not operate, drive, or be on duty time with respect to a commercial vehicle in Wisconsin with a measurable BAC or within 4 hours of consuming any alcohol beverage. Wis. Stat. §346.63(7).

⁷ Wis. Stat. §03.503(2).

⁸ Kenosha Code of Ordinances 10.05 (Neenah uses a similar definition. Neenah Code of Ordinances 4.95(g).

⁹ Madison Code of Ordinances 38.06 (8).

indulging to any degree in alcohol beverages and which tends to deprive a person of the clearness of intellect and control of himself or herself which he or she would otherwise possess¹⁰.

- x Jackson prohibits a licensee or agent of the licensee from serving alcohol beverages while intoxicated, with intoxication defined as having a BAC of 0.08 or more.
- x Wausau uses a similar definition of “under the influence” as Madison, but also adopts a presumption that testing with a BAC of 0.04 percent or more is proof of intoxication by the licensee, agent, or employee of the licensee.

Who does a Sober Server ordinance apply to?

Most sober server ordinances in Wisconsin apply to all serving staff, bartenders, and wait staff, including the licensee or agent when on duty. Some apply only to the licensee and agent or only to the servers. Some state rules or statutes require security and crowd control staff to remain sober.

Who is sanctioned under a Sober Server Ordinance?

Each municipality has the authority to create a standard and penalty for impaired servers. Most communities chose to sanction the server, but several retain the option of sanctioning the licensee.

How are these ordinances enforced?

Some communities allow law enforcement to request a preliminary breath test (PBT) upon belief the server is impaired or intoxicated. The initial determination is possible during a visit for any of the frequent reasons law enforcement may enter a licensee's premises: responding to a call for service conducting alcohol age compliance checks, conducting a bar “walk through” (a common law enforcement practice where uniformed officers simply walk through a licensed establishment looking for signs of underage drinking, over-serving and dangerous impaired customers) or checking compliance with license conditions. Communities with this ordinance have not undertaken specific operations to identify violators.

¹⁰ Madison Code of Ordinances 38.02.

¹¹ Jackson Code of Ordinances 67.

¹² Wausau Code of Ordinances 5.64.05 (Full ordinance in Appendix A).

