

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 have a blanket ban on servers drinking or working when intoxicated. In Wisconsin, there is no state law or rule limiting server alcohol consumption. Wisconsin places most of the responsibility for alcohol control on municipal government; accordingly local ordinances prohibiting intoxicated servers have been adopted by some communities to prevent and sanction alcohol impaired servers.

The states that ban intoxicated servers or drinking on duty include:

- Arkansas bans owners, licensees, and “crowd control employees” from consuming alcohol or being “under the influence” of alcohol on duty.ⁱ
- North Carolina does not allow consumption while on duty or in the premises if the employee will return to duty or wearing a work uniform.ⁱⁱ
- Oregon prohibits employees, including individuals checking identification, and agents from drinking or being “under the influence” of alcohol on duty.ⁱⁱⁱ
- Michigan prohibits a licensee or employee from being intoxicated on premises.^{iv}

Why are impaired and intoxicated servers a problem?

Impaired servers may be unable to perform the duties assigned them on behalf of the licensee, such as refusing to serve under age or intoxicated patrons. Server impairment contributes to a range of problems that occur when they are unable to meet their responsibilities to the licensee and the public.

When a municipality licenses a location to sell and serve alcohol the licensee assumes specific responsibilities. Two of the most important responsibilities fall primarily on servers and serving staff; 1) refusing alcohol to individuals who are intoxicated (cutting people off) and 2) determining that customers have reached the minimum legal drinking age (with narrow exceptions) before serving alcohol to them (checking ID).

According to the Centers for Disease Control (CDC), a person with a BAC between .02— .05 experiences impaired judgment, lowered alertness, and a decline in their ability to perform two tasks at the same time^v. 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; Wausau 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.^{vi}

Locations that sell or serve alcohol are licensed businesses. Before any new location serving alcohol opens, the municipality licenses the location, the manager and some servers. At least one individual, a “licensed operator” must be present during business hours. This isn’t unusual or punitive regulation, many professions and businesses are licensed in Wisconsin including hairdressers, pharmacists and auctioneers.

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 higher standard or prohibit alcohol consumption on duty.

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

While the specific language varies, these ordinances either 1) prohibit drinking on duty or 2) limit acceptable levels of blood alcohol content or concentration (BAC) while on duty/working.

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 .08 BAC as the threshold for a violation.

What level of impairment is allowed?

Two municipalities, Madison and Kenosha have ordinances which prohibits serving while “under the influence” of alcohol, drugs or a combination of the two. Kenosha provides a more detailed standard; “Under the influence means that the person has consumed a sufficient amount of alcohol, controlled substance or combination of both to cause the person to be less able to exercise clear judgment and reasonable care in the exercise of services performed.”^{vii} Madison does not provide additional criteria or standard in its ordinance.

Using a .08 BAC standard for impairment for servers mirrors Wisconsin Operating While Intoxicated (OWI or drunk driving) standard for most drivers but it is not the only possible standard. The 2010, report *from the Wisconsin State Council on Alcohol and Other Drug Abuse, Changing Wisconsin’s Alcohol Environment to Promote Safe Healthy Lives* (the ACE report) recommended municipal ordinances limiting server BAC to .04.^{viii} The specific .04 level was selected because .04 BAC constitutes operating while intoxicated for those holding a Commercial Drivers’ License while driving a commercial motor vehicle.^{ix}

The City of Wausau's Impaired Server ordinance adopts the SCAODA standard making any server registering a .04 or higher BAC an impaired server and subject to sanctions.

Who does a Sober Server ordinance apply to?

Most sober server ordinances in Wisconsin apply to all serving staff, bartenders and wait staff. The Village of Jackson places a limit on alcohol consumption by the agent or licensee only.

As noted earlier, 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.

These are the individuals covered among ordinances in effect on January 1, 2014:

- City of La Crosse: Both the server and the licensee may be cited, but the server is most commonly cited.^x
- Village of Jackson: The ordinance is limited to licensee or agent, refusing to take a preliminary breath test upon request by law enforcement may be cause for suspension, revocation or non-renewal of the individual or establishment license
- City of Neenah: Sanctions are limited to the offending server.
- City of Madison: Sanctions apply to the server.
- City of Kenosha: Sanctions are limited to the offending server
- City of Wausau: Sanctions are limited to the server and supervisor, with the potential for demerit point assigned to the licensee.

How are these ordinances enforced?

Three communities, Kenosha, Wausau and the Village of Jackson 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 such as; 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.

Are Sober Server ordinances effective?

Defining the impact of a single specific alcohol policy is often difficult. Not all outcomes are evident, unintended consequences may occur and not all outcomes are equally valued by the community. A sober server ordinance *alone* will - at best - have minimal impact on drunk driving or binge drinking rates. However, the same ordinance may reduce violence in licensed establishments and improve the ability of law enforcement to sanction uncooperative or obstructionist licensees.

None of the sober or impaired server ordinances in Wisconsin have been evaluated by an independent evaluator or reviewer. However, it is known that a “complementary system of strategies” engaging a number of evidence-based policies and practices is more likely to be effective in the long term.^{xi}

Although similar, there are important differences between the six sober sever ordinances in effect on February 1, 2014. The six existing ordinances offer a range of restrictions listed below from the least restrictive to the most restrictive:

1. City of La Crosse: Servers banned from drinking on duty
2. Village of Jackson: Limits acceptable level of intoxication to .08 for licensee or agent on duty while on duty.
3. City of Neenah: Limits acceptable level of intoxication to .08 for servers on duty while on duty.
4. City of Madison: Prohibits employees from being under the influence of alcohol and other controlled substances or a combination of substances while performing services in a licensed establishment.
5. City of Kenosha: Prohibits any licensee or employee from being under the influence of an intoxicant or a controlled substance or a combination of the two in a “sufficient amount” to cause the person to be less able to exercise clear judgment and reasonable care in the exercise of services performed.”
6. City of Wausau: Limits acceptable level of impairment to .04BAC for the licensee, agent and all employees.

If licensed establishments are in fact supervised alternatives to non-commercial venues, it is reasonable for municipalities to take steps to require alcohol servers to remain unimpaired. Establishing a standard that allows for server drinking either as part of the job or simply expected hospitality is difficult but a task well suited to local decision making.

ⁱ Arkansas Administrative Code: AR ADC 006.02.1-1.79

ⁱⁱ North Carolina Administrative Code: 4NCAC 2S.0212

ⁱⁱⁱ Oregon Administrative Rules OR ADC 845-006-0345

^{iv} Michigan Liquor Control Code, Administrative Rule 436.1707(3)

^v Centers for Disease Control and Prevention, Effects of Blood Alcohol Concentration.

http://www.cdc.gov/Motorvehiclesafety/Impaired_Driving/bac.html, accessed January 21, 2014.

^{vi} Testimony of Chief Handel, Wausau City Council January 14, 2014.

^{vii} Kenosha General Ordinances 10.05 (C.) (2)

^{viii} Wisconsin State Council on Alcohol and Other Drug Abuse, Prevention Committee, Alcohol Culture and Environment Work Group, April 2010, page 9.

^{ix} It is illegal to operate, drive a commercial vehicle with any measurable BAC or within 4 hours of consuming an alcohol beverage, (§346.63(7)). A BAC of .04- .08 is defined as Operating While Intoxicated for commercial vehicles in §346.63(5).

^x Conversation with Lt. Patrick Hogan, January 10, 2014.

^{xi} Babor, T., Caetano, R., Casswell, S. et. al. Alcohol: Not Ordinary Commodity, research and policy. Second edition, Oxford University Press, 2010 Page 251