

1265 RIGHT OF WAY: PERSONS WORKING ON HIGHWAY

A safety statute provides that an operator of a vehicle shall yield the right of way to persons engaged in maintenance or construction work on a highway whenever the operator is notified of their presence by flagmen or warning signs.¹

“Right of way” means the privilege of the immediate use of the roadway.²

If you find that (plaintiff) was engaged in maintenance or construction work on a highway at the time and place in question and that a flagman or warning signs were present to notify (defendant) of (plaintiff)’s presence and occupation, then it became the duty of (defendant) to yield the right of way to (plaintiff).

NOTES

1. Wis. Stat. § 346.27.
2. Wis. Stat. § 40.01(51).

COMMENT

This instruction and comment were approved in 1977. The instruction was revised in 1992 and 2008. Editorial changes were made in 1992 to address gender references in the instruction. This revision was approved by the Committee in September 2021.

As to the lessened duty of care imposed on persons so engaged in highway construction, see Knowles v. Stargel, 261 Wis. 106, 109 10, 52 N.W.2d 387 (1952); Gunning v. King, 249 Wis. 176, 180 81, 23 N.W.2d 602 (1946); Isgro v. Plankington Packing Co., 176 Wis. 507, 514 16, 186 N.W. 606 (1922).

Driver or Operator. This instruction applies to either an operator or a driver of a motor vehicle. If “driver” is more appropriate to the evidence, then substitute “driver” for “operator.”

