

1265 RIGHT OF WAY: PERSONS WORKING ON HIGHWAY

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

"Right of way" means the privilege of the immediate use of the roadway.

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).

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.

The first and second paragraphs refer, respectively, to Wis. Stat. §§ 346.27 and 340.01(51).

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).