

**1901 SAFE-PLACE STATUTE: DEFINITION OF FREQUENTER**

The term "frequenter" means and includes every person except a trespasser who may go in or be in (a place of employment or a public building).

One who goes upon premises owned, occupied, or possessed by another without an invitation, express or implied, extended by the owner, occupant, or possessor, and solely for his or her pleasure, advantage, or purpose is a trespasser and not a frequenter.

The term "express invitation" means a specific invitation to come upon premises. An "implied invitation" is one which may be reasonably assumed from the circumstances which have caused a person to be on the premises of another.

[1. When the (owner) or (possessor) of premises has ordered a contractor to do work upon the premises, it is implied that the employees of the contractor have the invitation and consent of the (owner) or (possessor) to come upon the premises and do the work which has been ordered.]

[2. When a retail merchant, theater proprietor, etc., solicits the patronage of the public in the conduct of business, the invitation could be both express and implied.]

[3. Under some circumstances, an invitee, either express or implied, may be a frequenter of one part of the (owner)'s or (possessor)'s premises and a trespasser in another part to which (he) (she) has not been invited (behind the meat counter, in the boiler room, etc.).]

**COMMENT**

The instruction and comment were originally published in 1969. The instruction was revised in 1986. The comment was updated in 1980 and 1996. Editorial changes were made in 1992 to address gender references in the instruction.

Wis. Stat. § 101.01(2)(e). Barthel v. Wisconsin Elec. Power Co., 69 Wis.2d 446, 230 N.W.2d 863 (1975).

Definition of "trespasser": Restatement, Second, Torts § 329 (1965); Antoniewicz v. Reszczynski, 70 Wis.2d 836, 843, 236 N.W.2d 1 (1975); Lloyd v. S. S. Kresge Co., 85 Wis.2d 296, 270 N.W.2d 423 (1978).

Trespasser in portion of building to which a person has not been invited, McNally v. Goodenough, 5 Wis.2d 293, 92 N.W.2d 890 (1958).

Implied invitation, Mustas v. Inland Constr. Inc., 19 Wis.2d 194, 121 N.W.2d 274 (1963); Reddington v. Beefeaters Tables, Inc., 72 Wis.2d 119, 123, 240 N.W.2d 363 (1976).

Wis JI-Civil 1901 is offered to meet a situation where it is an issue of fact whether the plaintiff is a frequenter or trespasser. The instruction is to be used when the verdict inquires whether plaintiff was a frequenter.

The provision of Wis. Stat. § 101.01(2)(d) which says: "Frequenter means every person other than an employee, who may go in or be in a place of employment or a public building" (emphasis added) does not exclude a frequenter from protection by the safe-place statute when on an entranceway to a retail store. Callan v. Peters Constr. Co., 94 Wis.2d 225, 242, 288 N.W.2d 146 (Ct. App. 1979).

An employee of an independent contractor doing work on the premises is a "frequenter working in a place of employment." Hortman v. Becker Constr. Co., Inc., 92 Wis.2d 210, 226, 284 N.W.2d 621 (1979).

The distinction in Wisconsin between invitees and licensees has been abolished. Clark v. Corby, 75 Wis.2d 292, 296-97, 249 N.W.2d 567 (1977).