



WISCONSIN LEGISLATIVE COUNCIL ACT MEMO

2009 Wisconsin Act 20
[2009 Senate Bill 20]

Compensatory and Punitive Damages for Employment Discrimination

Current law provides that a person alleging a violation of the Wisconsin Fair Employment Law may file a complaint with the Department of Workforce Development (DWD). If a hearing examiner finds a violation, the examiner may order such action as will effectuate the purpose of the Fair Employment Law, including reinstatement of the employee and payment of back pay, attorney fees, and costs. However, current law does not allow DWD to order the payment of compensatory or punitive damages.

2009 Wisconsin Act 20 provides that if a hearing examiner finds, or the Labor and Industry Review Commission (LIRC) affirms a finding, that the respondent has engaged in discrimination, unfair genetic testing, or unfair honesty testing, DWD or LIRC must serve a certified copy of the examiner's findings or LIRC's decision on the complainant, along with a notice advising the complainant that after the completion of administrative proceedings the complainant may bring an action in circuit court to recover compensatory and punitive damages and advising the complainant of the time within which the action must be commenced.

Further, the Act provides that, after the completion of administrative proceedings, DWD or a person discriminated against or subjected to unfair genetic testing or unfair honesty testing may bring an action in circuit court against an employer, labor organization, or employment agency to recover compensatory damages, and punitive damages under s. 895.043, Stats., caused by the violation, plus reasonable costs and attorney fees incurred in the action. The damages are in addition to any back pay or other amounts awarded in the administrative proceedings.

The Act prohibits such action against a local governmental unit or against an employer, labor organization, or employment agency employing fewer than 15 individuals for each working day in each of 20 or more calendar weeks in the current or preceding year. If the circuit court orders payment because of a violation by an individual employed by an employer, the employer of that individual is liable for the payment.

This memo provides a brief description of the Act. For more detailed information, consult the text of the law and related legislative documents at the Legislature's Web site at: <http://www.legis.state.wi.us/>.

The Act provides that the sum of the amount of compensatory damages for future economic losses and for pain and suffering, emotional distress, mental anguish, loss of enjoyment of life, and other noneconomic losses and the amount of punitive damages may not exceed the following, as indexed for inflation:

- In the case of a defendant that employs 100 or fewer employees for each working day in each of 20 or more calendar weeks in the current or preceding year, \$50,000.
- In the case of a defendant that employs more than 100 but fewer than 201 employees for each working day in each of 20 or more calendar weeks in the current or preceding year, \$100,000.
- In the case of a defendant that employs more than 200 but fewer than 501 employees for each working day in each of 20 or more calendar weeks in the current or preceding year, \$200,000.
- In the case of a defendant that employs more than 500 employees for each working day in each of 20 or more calendar weeks in the current or preceding year, \$300,000.

Lastly, under the Act, an action in circuit court must be commenced within 60 days after the date on which a copy of the final decision of the hearing examiner is mailed to the last-known address of the complainant or, if that decision is reviewed by LIRC, within 60 days after the date on which a copy of LIRC's final decision is mailed to the last-known address of the complainant. If a petition for judicial review of the findings and order of LIRC regarding the same violation is filed, the court must consolidate the proceeding for judicial review and the civil action.

Effective Date: The Act takes effect on the second day after publication of the 2009-11 Biennial Budget Act.

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