

Fair Employment Law & Family Medical Leave Act Remedies at a Glance

State of Wisconsin
Dept Of Workforce Development
Equal Rights Division

This document is for general informational purposes only, is subject to change and is not to be considered legal advice. Individuals who wish to obtain legal advice in a particular matter should consult an attorney. Also, individuals who desire more information about the state laws may contact the Equal Rights Division of the State of Wisconsin at (608) 266-6860 in Madison or (414) 227-4384 in Milwaukee. Individuals who desire more information about the federal fair employment laws referenced should contact the U.S. Equal Employment Opportunity Commission at (414) 297-1112. Persons seeking more information on the federal Family & Medical Leave Act may call the Wage & Hour Division of the U.S. Labor Department at (608) 264-5221.

I. Fair Employment Remedies

- WFEA** Section 111.31 et seq. of the Wisconsin Statutes is referred to as the Wisconsin Fair Employment Act.
- Title VII** 42 U.S.C. sections 2000e, et seq. is referred to as Title VII of the Civil Rights Act of 1964.
- ADA** 42 U.S.C. sections 12101, et seq. is referred to as the Americans with Disabilities Act of 1990.
- ADEA** 29 U.S.C. sections 621, et seq. is referred to as the Age Discrimination in Employment Act of 1967.
- EPA** 29 U.S.C. sections 206 (d), et seq. is referred to as the Equal Pay Act. (It is part of the Fair Labor Standards Act, 29 U.S.C. section 201, et seq.)

y = available; n = not available

	Wisconsin	Federal			
	WFEA	Title VII	ADA	ADEA	EPA
◆ Backpay	y	y	y	y	y
◆ Front Pay	(a)	y	y	y	(b)
◆ Interest	y	y	y	y	y
◆ Reinstatement	y	y	y	y	(b)
◆ Attorney Fees and Costs	y	y	y	y	y
◆ Compensatory Damages for Emotional Harm	(c)	y	y	n	n
◆ Punitive Damages	(c)	y	y	n	n
◆ Liquidated Damages	n	n	n	y	y
◆ Other Remedies	y	y	y	y	y

- (a)** Front pay instead of reinstatement can be awarded under the WFEA in retaliation cases brought under sec. 111.322 (2m), Wis. Stats. Whether front pay instead of reinstatement can be awarded for retaliation claims under section 111.322 (3), Wisconsin Statutes and/or for other Discrimination claims under the WFEA is not yet settled by case law.
- (b)** Claims under the federal EPA (Equal Pay Act) ordinarily involve a wage differential. However, the EPA also has a retaliation prohibition, and reinstatement or front pay are possible remedies for unlawful retaliation where a discharge is involved.
- (c)** Compensatory and punitive damages may be awarded by a circuit court if an ALJ finds that a complainant has been unlawfully discriminated against or if LIRC affirms a finding of discrimination. A complainant must file a separate action in circuit court to obtain these types of damages after the administrative proceedings have been concluded.

“**Liquidated Damages**” on the chart generally refers to a **doubling** of the compensation that the person would otherwise be entitled to under the ADEA or the EPA. Even if a person establishes a violation of the

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ADEA, the person is not automatically entitled to the liquidated damages (or doubling) unless a certain additional standard of proof is met. Under the EPA, even if a person has established a violation, the employer may avoid the liquidated damages if it can present the required “good-faith” defense.

“**Other Remedies**” on the chart includes such remedies as cease and desist orders, and requiring an employer to provide training to supervisors or employees.

“**Compensatory Damages**” and “**Punitive Damages**” are generally subject to caps (for the combined total of the compensatory and punitive damages) based on employer size as follows:

Number of Employees	Cap
15-100	\$50,000
101-200	\$100,000
201-500	\$200,000
501 or more	\$300,000

Note: There is no cap for race discrimination cases (or national origin discrimination cases if the national origin claim involves ancestry or ethnic characteristics) which are brought under 42 U.S.C. sec. 1981.

	Wisconsin WFEA	Federal			
		Title VII	ADA	ADE A	EPA
Protected Classes	age, race, creed, color, disability, marital status, sex, national origin, ancestry, sexual orientation, arrest record, conviction record, military service, use or nonuse of lawful products off the employer’s premises during non working hours	race, color, sex, religion, national origin	disability	age	sex
Administrative Hearing (appeal to Labor and Industry Review Commission and then to court)	y	n	n	n	n
Court Hearing (federal claims may be filed in federal or state court)	appeal to circuit court	y	y	y	y
Jury Trial	n	y	y	y	y
Class Action	n	y	y	y	y
Number of Employees	no minimum	15 or more	15 or more	20 or more	no minimum

For details on damages under federal law, see EEOC’s Website at www.eeoc.gov/docs/damages.txt.

Special Note: Individuals with complaints against federal agencies regarding employment discrimination may contact the U.S. Equal Employment Opportunity Commission at (414) 297-1111 regarding applicable procedures.

II. Family and Medical Leave Act Remedies

Wisconsin Law

The Wisconsin Family and Medical Leave Law is found at section 103.10, Wisconsin Statutes. It covers employers with fifty or more employees. The law is enforced administratively through the Wisconsin Equal Rights Division. In addition to those remedies for which a “y” is shown in the chart below, a separate civil court action may be brought after the administrative proceeding (including any court appeals), has been completed to recover other damages caused by a violation of the state law.

Federal Law

The federal Family and Medical Leave Act is found at 29 U.S.C. sections 2611, et seq. It covers employers with 50 or more employees. A complaint may be filed with the U.S. Department of Labor and a civil court action may also be filed. In addition to individual complaints, a class action may be filed.

y = available; n = not available	Wisconsin	Federal
♦ Backpay	y	y
♦ Reinstatement	y	y
♦ Interest	y	y
♦ Attorney Fees and Costs	y	y
♦ Liquidated Damages	n	y
♦ Other Damages	possibly in court	n
♦ Other Remedies	y	y

“**Liquidated Damages**” on the chart generally refers to a doubling of the compensation that the person would otherwise be entitled to under the U.S. Family and Medical Leave Act. If a person establishes a violation of the U.S. Family and Medical Leave Act, the employer may avoid liquidated damages if it can present the required “good faith” defense.

“**Other Remedies**” on the chart includes such remedies as cease and desist orders, and requiring an employer to provide training to supervisors or other employees.

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