

### **How does the law define sexual orientation?**

The Wisconsin Fair Employment Law defines "sexual orientation" as having a preference for heterosexuality, homosexuality or bisexuality, having a history of such a preference or being identified with such a preference.

### **What actions are covered?**

The law prohibits discrimination in:

- Recruitment and hiring
- Job assignments
- Pay
- Leave or benefits
- Promotion
- Licensing or union membership
- Training
- Lay-off and firing
- Other employment related actions

The law also prohibits an employer from retaliating against applicants or employees who assert rights under the law. Harassment on the job because of a person's sexual orientation is also prohibited. Under Wisconsin law, harassment may include verbal abuse, epithets, vulgar or derogatory language, display of offensive cartoons or materials, mimicry, lewd or offensive gestures, and telling jokes that target groups of people based on sexual orientation. The behavior must be more than a few isolated incidents or casual comments. Harassment involves a pattern of abusive and degrading conduct directed against the employee based on sexual orientation that is sufficient to interfere with his or her work or to create an offensive and hostile work environment.

### **Who is protected?**

The law applies to all private and public employers, regardless of the number of employees, except for federal government or tribal employers.

### **Can an employer refuse to hire a person because of their sexual orientation?**

No, sexual orientation is not a permissible consideration when hiring an employee. Religious institutions are sometimes exempt from the law when hiring for a religion-based position. In order to be exempt, the job description must demonstrate that the position is clearly related to the religious teachings and beliefs of the institution.

### **Can an employer discriminate against a person because of association with people of different sexual orientations?**

No, the law prohibits discrimination because of being identified as a relative, friend or significant other of someone with a particular sexual orientation.

### **May an employer ask about an applicant's sexual orientation?**

The Fair Employment Law prohibits any inquiry that implies or expresses any limitation because of a protected basis, including sexual orientation. Marital status discrimination is also prohibited under Wisconsin law and questions about marital status that are designed to detect a person's sexual orientation may violate both marital status and sexual orientation provisions of the law.

### **Is an individual protected if an employer thinks the employee's sexual orientation is different than it really is and acts on that perception?**

Yes, the definition includes being identified with a preference for a particular sexual orientation. It is illegal for an employer to discriminate against someone based on perceived sexual orientation, even if the perception is wrong, for example, it would be a violation of the law if an employer assumes a man is homosexual because he is effeminate and discharges him because of that perception.

**How is the law enforced?**

Persons who believe they have been discriminated against because of sexual orientation may file a complaint with the Equal Rights Division within 300 days of knowing about the alleged discrimination. The division investigates complaints, helps parties settle cases or, as necessary, orders remedies if discrimination is found.

**For information on filing a complaint or questions about employment discrimination please contact:**

**STATE OF WISCONSIN  
DEPARTMENT OF WORKFORCE DEVELOPMENT  
EQUAL RIGHTS DIVISION  
CIVIL RIGHTS BUREAU**

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PO BOX 8928  
MADISON WI 53708

819 N. 6th ST  
ROOM 255  
MILWAUKEE WI 53203

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This is one of a series of pamphlets highlighting programs of the Wisconsin Department of Workforce Development. It is intended to provide only a general description, not a legal interpretation.

**Wisconsin's Fair Employment Law Pamphlets**

- #1 Fair Hiring & Avoiding Loaded Interview Questions
- #2 Harassment In The Workplace
- #3 Pregnancy Employment & The Law
- #4 Persons with Disabilities on the Job
- #5 Fair Employment Law & Complaint Process
- #6 Age Discrimination In The Workplace
- #7 Settlement
- #8 Race, Color, National Origin and Ancestry
- #9 Sexual Orientation Protection