THE COMPLAINT PROCESS IN THE EQUAL RIGHTS DIVISION

How is an employment discrimination complaint filed under state law?

A person who believes he or she has been unlawfully discriminated against may file a complaint with the Equal Rights Division within 300 days of the last act of alleged discrimination.

A complaint form with instructions is available from the Division. The form is also available on the Division’s website. Please see the end of this pamphlet for the Division’s website address and the telephone numbers and addresses of the two main offices of the Equal Rights Division.

What happens after a complaint is filed?

The complaint is assigned to an equal rights officer to be investigated. The investigator acts impartially and independently, and does not represent either the complainant (the person filing the complaint) or the respondent (the employer being complained about). The investigator cannot give legal advice to the parties. A party who needs legal advice should contact an attorney. The Division can provide a list of attorneys who handle fair employment cases.

After a complaint is received, a copy is sent to the respondent, who must provide a written response to the complaint. The investigator may contact the complainant after receiving this response and may ask for more information from the parties or their witnesses. The investigator may ask the parties if they want to resolve the case through a settlement.

If a case is not settled, the equal rights officer will complete an investigation and then write an initial determination of whether there is "Probable Cause" or "No Probable Cause" to believe that the law has been violated.

Probable Cause (PC) is not a finding of discrimination. It means there was enough believable information about discrimination to send the case on for a hearing on its merits.

No Probable Cause (NPC) means there wasn’t enough evidence of discrimination. The case is dismissed, unless the complainant files a written appeal and request for hearing within 30 days.

What happens at a hearing?

A hearing is similar to a court proceeding. Both parties present evidence under oath before an Administrative Law Judge (ALJ). Hearings on appeals of no probable cause findings are conducted in the same manner as hearings where there has been a finding of probable cause.

The ALJ listens to testimony from the witnesses and reviews exhibits which are received at hearing. All relevant evidence and testimony must be presented at this hearing. Information given earlier to the investigator is not considered at the hearing unless the party introduces it at the hearing.

The ALJ cannot represent either party. It may be helpful to have an attorney, but this is not required. After the hearing, the ALJ issues a written decision and an appropriate order.

What remedies are available?

- If discrimination is proven, an ALJ can make the complainant “whole” by awarding back pay, reinstatement, lost benefits, interest and attorney’s fees and costs. Other remedies may be awarded, based upon the circumstances of the case.

- An ALJ cannot award damages for humiliation or emotional pain or punitive damages.

How long does it take to get a decision?

The Division makes every effort to settle or resolve cases in a timely manner. However, resolution of some cases may take longer than one year from the date the complaint was filed.

States of Wisconsin
Fair Employment Laws
#5 in a Series
Fair Employment Law
and Complaint Process

ARE RECORDS OPEN TO THE PUBLIC?

Complaint records are open for public review. However, during the investigation, files (other than the complaint itself) are open only to the parties involved in the dispute.

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 of the law, not a legal interpretation.

The Equal Rights Division has additional informational materials explaining various aspects of the Wisconsin fair employment laws.

CONSIDER SETTLEMENT

The division has trained mediators who can assist the parties with settlement at any stage of the process. Settlement is often a good option for both parties. Mediators can assist the parties to work out a fair and equitable resolution. They can also help draft a voluntary agreement. The merits of settlement should be seriously considered by the parties at any time in the process, even up to the day of a formal hearing. Let us know if you would like more details on the benefits of mediation and how it is handled.

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THE WISCONSIN FAIR EMPLOYMENT ACT

What is the purpose of the law?
The purpose of the Wisconsin Fair Employment Act is to protect the rights of all people to obtain employment and to be able to work free from unlawful discrimination.
- It is unlawful for public and private employers, employment agencies, licensing agencies and unions, to refuse to hire, to discharge, or to otherwise discriminate against a person in any term or condition of work, because of the person's protected class.
- The protected classes are shown in the chart on the right. The Wisconsin Fair Employment Act (WFEA) is contained in sections 111.31-111.395, Wisconsin Statutes. Please consult the statute for further details about the law.
- It is important to note that unfair treatment is not necessarily unlawful. Certain employment actions may be harsh, insensitive or unjust. But they do not become unlawful unless an action is taken, at least in part, because of a person's protected class.

What protections are provided?
Generally, it is unlawful to treat people less favorably than others because of their protected class. The law prohibits discrimination in employment-related actions such as:
- Recruitment & hiring
  - Job assignments
- Pay
- Promotion
- Training
- Lay-off & firing
- Demotion

Other prohibited practices are:
- Retaliation against persons who assert their rights under the fair employment law, the Wisconsin family and medical leave law or certain other state labor standards laws.
- Harassment on the job because of a person's sex or because they belong to a particular protected class.
- Engaging in most types of Genetic Testing.
- Administering an improper Honesty Test.

Federal Anti-Discrimination Laws
Federal laws differ from state laws, in some respects. Some of the federal anti-discrimination laws are shown on the chart on the left:
- Title VII is part of the Civil Rights Act of 1964, as amended. 42 U.S.C. § 2000e.
- ADA is the Americans with Disabilities Act, as amended. 42 U.S.C. §12101 et seq.

For more details on these laws and information about filing a federal discrimination complaint, contact:
U.S. Equal Employment Opportunity Commission (EEOC)
310 W. Wisconsin Avenue, Suite 800
Milwaukee, WI 53203
414-297-1112
1-800-669-4000 (toll free number)

Are there any exceptions under the law?
Yes, there are times when an employer may "legally" discriminate against a person even though a person may otherwise be protected under the law. Examples of cases where an exception might apply include:
- Conviction Record: An employer may reject an applicant or fire an employee whose conviction is substantially related to the job.
- Age: An employer may set maximum age requirements in certain physically dangerous or hazardous jobs.
- Marital Status: An employer may prevent a person from directly supervising his or her spouse.
- Disability: In limited cases, an employer may refuse to employ a person with a disability if the person presents a significant risk of real harm to the health or safety of the individual or of others.

PROTECTED CLASSES UNDER THE WFEA

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<td>Declining to Attend a Meeting About Religious or Political Matters</td>
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