

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.

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.

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, rein-statement, 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.

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.

ERD PAMPHLET SERIES

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

The Department of Workforce Development is an equal opportunity service provider. If you need assistance to access services or need material in an alternate format, please contact the Equal Rights Division.

Questions about employment discrimination should be directed to:

EQUAL RIGHTS DIVISION

201 E Washington Ave
Room A300
PO Box 8928
Madison WI 53708-8928

Phone: (608) 266-6860
TTY: (608) 264-8752

819 N 6th Street
Room 723
Milwaukee WI 53203

Phone: (414) 227-4384
TTY: (414) 227-4081

Web Site <http://dwd.wisconsin.gov/er/>

Wisconsin's Fair Employment Laws

#5 in a Series

Fair Employment Law and Complaint Process



STATE OF WISCONSIN



Department of Workforce Development

Equal Rights Division

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 other-wise 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
- ◆ Pay
- ◆ Promotion
- ◆ Training
- ◆ Lay-off & firing
- ◆ Demotion
- ◆ Job assignments
- ◆ Leave or benefits
- ◆ Licensing or union membership
- ◆ Other employment-related actions

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**.

PROTECTED CLASSES UNDER THE WFEA		Year WI Adopted	Federal Laws
Race	Being a member of a group distinguished by genetically transmitted physical characteristics (e.g., African-American, Caucasian).	1945	Title VII
Color	Having skin color that is black, white or any color in between.	1945	Title VII
Creed	Having a system of religious beliefs that are sincerely held with the strength of traditional religious views. Employers have a "duty to accommodate" an individual's religious observance or practice.	1945	Title VII
Ancestry	Being a descendant of a country, nation, tribe or other identifiable group.	1945	Title VII
National Origin	Having come from a particular nation or country.	1945	Title VII
Age	Being age 40 or older.	1959	ADEA
Sex	Being female or male.	1961	Title VII & EPA
Disability	Having a physical or mental impairment which makes achievement unusually difficult or limits the capacity to work, or having a record of (or being perceived as having) such an impairment. Employers have a "duty to accommodate" individuals with disabilities.	1965	ADA
Arrest Record/ Conviction Record	Having been questioned, arrested, taken into custody, charged or convicted of a felony, misdemeanor or other offense.	1977	----
Marital Status	Being married, single, divorced, separated or widowed.	1982	----
Sexual Orientation	Having a preference for heterosexuality, homosexuality or bisexuality; or having a history of (or being identified as) having such a preference.	1982	----
Military Service	Being a member of the U.S. armed forces, the state defense force, the national guard or any component of the US Armed Forces.	1987	----
Use or Non-use of Lawful Products	Using or not using lawful products (e.g., tobacco, alcohol) off the employer's premises during nonworking hours.	1992	----
Declining to Attend a Meeting About Religious or Political Matters	Declining to attend an employer-sponsored meeting or to participate in any communication which is intended to communicate the employer's opinion about religious or political matters.	2009	----

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.

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
- ◆ **ADEA** is the Age Discrimination in Employment Act. 29 U.S.C. §§ 621-643.
- ◆ **ADA** is the Americans with Disabilities Act, as amended. 42 U.S.C. §12101 et seq.
- ◆ **EPA** is the Equal Pay Act of 1964. 29 U.S.C. § 206

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)**