

## Fair Employment Law

### What is the law's purpose

The purpose of the law is to protect the rights of people to employment free of unlawful discrimination.

- It is unlawful for public and private employers, employment agencies, licensing agencies, and unions, to refuse to hire, to discharge, or otherwise discriminate in any term or condition of work, **because of** a person's protected class.
- The protected classes are shown in the chart below. The fair employment law is contained in sections 111.31-111.395, of the Wisconsin Statutes.
- **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 under the above law unless an adverse 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 and hiring | •Job assignments                  |
| •Pay                    | •Leave or benefits                |
| •Promotion              | •Licensing or union membership    |
| •Training               | •Lay-off and firing               |
| •Demotion               | •Other employment related actions |

### Other prohibited practices are:

- **Retaliation** against persons who assert their rights under the fair employment law, the family and medical leave law, and other labor standards laws.
- **Harassment** on the job because of a person's sex or because of their particular protected class.
- Engaging in most types of **Genetic Testing** or giving an improper **Honesty Test**.

### Are there any exceptions under the law?

Yes, there are times when an employer may "legally" discriminate even though a person may otherwise be protected under the law. While legal exceptions are very limited and uncommon, a few 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:** In certain physically dangerous or hazardous jobs an employer may set maximum age requirements.

**Marital Status:** An employer may prevent a person from directly supervising his or her spouse.

**Disability:** In limited cases, employment of a person with a disability may present a significant risk of real harm to the health or safety of the individual or others.

<b>Protected Classes</b>		<b>Year WI Adopted</b>	<b>Federal Laws</b>
<b>Race</b>	Generally, a member of a group united or classified together on the basis of common history, nationality or geography.	1945	Title VII
<b>Color</b>	Black to white and all colors in between.	1945	Title VII
<b>Creed</b>	Religious, moral or ethical beliefs about right and wrong that are sincerely held. Employer has a “duty to accommodate.”	1945	Title VII
<b>Ancestry</b>	The country, nation, tribe or other identifiable group from which one descends.	1945	Title VII
<b>National Origin</b>	Generally a member of a nation by origin, birth or naturalization or having common origins or traditions.	1945	Title VII
<b>Age</b>	Being age 40 or older.	1959	ADEA
<b>Sex/Gender</b>	Being female or male.	1961	Title VII & EPA
<b>Handicap Or Disability</b>	Physical or mental impairment making achievement difficult or limiting the capacity; having a record of or being perceived as having a work disability. Employer has a “duty to accommodate.”	1965	ADA
<b>Arrest/ Conviction Record</b>	Information indicating a person was questioned, arrested, charged or convicted of a felony or misdemeanor.	1977	----
<b>Marital Status</b>	Status of being married, single, divorced, separated or widowed.	1982	----
<b>Sexual Orientation</b>	Having a preference for heterosexuality, homosexuality or bisexuality; having a history of or being identified as having such a preference.	1982	----
<b>Military Service</b>	Member of the U.S. armed forces, national guard, state defense force or other state or federal reserve unit.	1987	----
<b>Outside Lawful Products</b>	Use or nonuse of lawful products (e.g., tobacco, alcohol) off the employer’s premises during nonworking hours.	1992	----

### **Federal Anti-Discrimination Laws**

Federal laws differ from state laws, as do procedures for complaint handling. The most common federal laws that might apply are shown on the chart above:

- **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, 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**  
**414 297-1115 (TTY)**  
**1-800 669-4000 – toll free number**

## The Complaint Process

### How is a complaint filed under Wisconsin law?

A person who believes he or she has been discriminated against because of unlawful employment discrimination may file a complaint with the Equal Rights Division within **300 days** of the alleged discrimination.

- A **complaint form** with instructions is available from the Division. The form is also available at the division's website. Please see the end of this pamphlet for the telephone numbers and addresses of our two main division offices, as well as our website address.

### How long does it take?

Resolution of some cases may take longer than **one year**. The Division makes every effort to settle or resolve cases in a timely manner.

### 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 represents neither the complainant (person filing the complaint) nor the respondent (employer being complained against). The investigator cannot give legal advice to the parties. An attorney should be contacted if legal advice is needed by either party. (**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 answer** to the complaint. The investigator may contact the complainant after receiving this answer and may want more information from the parties or any witnesses. The investigator may ask the parties if they want to resolve the case through a settlement.

### Consider Settlement

Settlement is often a good option for **both** parties. Staff is trained to assist the parties 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 merits of settlement 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 to believe that the law has been violated. It does not always mean there was no discrimination. The case is dismissed, unless the complainant files a written appeal within **30 days**.

### What happens at a formal hearing?

A discrimination hearing is similar to a court proceeding. Both parties present evidence under oath before an Administrative Law Judge (ALJ).

The ALJ reviews the evidence and hears testimony of witnesses, then issues a **decision** on whether or not discrimination occurred. **All** relevant evidence and testimony must be presented at this hearing. It is the only chance for the parties to do so. Information given earlier to the investigator is **not** considered at the hearing.

The ALJ cannot represent either party. Legal counsel may be advisable at this point, but is not required.

## **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 for punitive damages. However, a complainant who has been discriminated against can file an action for these types of damages in circuit court after the ALJ’s decision is issued.
- 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

## **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 fact sheets highlighting programs of the Wisconsin Department of Workforce Development. It is intended to provide only a general description, not a legal interpretation.

The Equal Rights Division has additional informational materials explaining various aspects of the fair employment law. Check the division’s website for access to information in English and Spanish.

## **PAMPHLET SERIES**

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 Protections

**Questions about employment discrimination should be directed to the**

### **EQUAL RIGHTS DIVISION**

201 E WASHINGTON AVE Rm A300  
PO BOX 8928  
MADISON WI 53708  
(608) 266-6860  
(608) 264-8752 TTY

819 N 6<sup>th</sup> ST  
ROOM 255  
MILWAUKEE WI 53203  
(414)227-4384  
(414) 227-4081 TTY

**Office Hours: Mon – Fri are 7:45 AM – 4:30 PM**

**The Department of Workforce Development is an equal opportunity service provider. If you have a disability and/or have a civil rights question and need this information in an alternate format, or need it translated to another language, please contact us at the above numbers.**

**<http://dwd.wisconsin.gov/er>**