

Wisconsin's Fair Employment Law has prohibited discrimination based on race, color, national origin and ancestry.

The law covers all employers, employment agencies, licensing agencies, and unions. Employers may not legally discriminate because of a person's **race, color, national origin, ancestry**, creed, age, sex, disability, arrest or conviction record, marital status, sexual orientation, military status, and use or nonuse of lawful products away from work.

Unfair treatment is not necessarily a violation of the law. Some employment actions may be harsh, insensitive, or unjust. Adverse treatment violates the law when it is based -- at least in part -- on a person's or group's race, color, national origin, ancestry, or other protected class characteristic.

What do the terms race, color, national origin and ancestry mean?

"Race" refers to a group of people united or classified together based on a common history, nationality or geography. It includes all races, not just members of a racial minority. Racial groups include American Indian or Alaska Native, Asian, Native Hawaiian or Pacific Islander, Black or African American, and White. Bi-racial and multi-racial designations are also recognized.

"Color" refers to a person's skin color.

"National Origin" refers to a person's, or his or her ancestor's, country of birth. It can also refer to the physical, cultural, or linguistic characteristics of a national origin group.

"Ancestry" refers to the country, nation, tribe, or other identifiable group of people from which a person descends. It can also refer to the physical, cultural, or linguistic characteristics of the person's ancestors.

What protections does the law provide?

The law prohibits discrimination in employment-related actions such as:

- Recruitment and hiring
- Pay
- Promotion
- Training
- Lay-off and firing
- Job assignments
- Leave or benefits
- Licensing or union membership
- Any other employment action affecting a term or condition of work

Any adverse employment action is illegal if it occurs, even in part, because of a person's race, color, national origin, or ancestry.

What kinds of actions might be unlawful?

It would be unusual for one single action or one piece of evidence to be enough to prove unlawful discrimination. However, positive responses to any of the following questions may indicate that unlawful discrimination exists:

Does the employer treat people of certain races or nationality groups differently than other persons in the same situation who are not in those groups?

Did the employer permit or engage in rude or derogatory comments, ethnic slurs, or other actions directed at someone because of his/her race or national origin, and was the behavior severe and pervasive enough to substantially interfere with work or create a hostile, offensive, or intimidating work environment?

Has the employer imposed a “speak English only” rule which doesn’t seem necessary for successful job performance? An employer can rarely justify requiring English-only policies, even during breaks and lunchtime.

Were people of certain races or national origin groups treated more harshly or disciplined more severely for workplace rule violations such as tardiness, absenteeism, or failing to meet production standards?

Does it seem that race or national origin is a factor in who gets favorable or unfavorable treatment, who gets training for job advancement, who is promoted, who gets preferred vacation days, who is given flexible hours, or who is placed in undesirable or dead-end jobs?

Does it appear that race or national origin is a factor in any term or condition of work?

Did an employer violate one of its policies in making a decision that adversely affected certain racial or ethnic group members?

Were less-qualified people of one or more racial or ethnic groups retained while persons of certain racial or ethnic groups were laid off or terminated?

Has there been a noticeable reduction in the number of certain racial or national origin group members in the workplace?

Is there a history of bias or hostility in the workplace toward certain racial or national origin groups?

At a job interview were questions asked about race, nationality, ancestry, or where an applicant or his or her parents were born (employers can ask if a person is legally able to work in the US)?

In applying for work, were you asked to provide more or different documents than required under the Immigration Reform and Control Act (IRCA)?

Other practices are also prohibited:

It is unlawful to retaliate against persons who assert their rights under the fair employment law, the family & medical leave law or other labor standards laws. It is unlawful to retaliate against persons who oppose discrimination.

Engaging in most types of genetic testing is also prohibited as is giving an improper honesty test.

Are there any exceptions under the law?

The law permits an employer to legally consider a person’s race or national origin in a few very narrow exceptions. A few examples include:

- **Affirmative Action:** A formally adopted affirmative action plan may permit an employer to consider race or national origin in the selection process.
- **Counselor:** An employer seeking a staff counselor, mentor, and role model for a group of teens having a certain cultural or ethnic background, may be able to demonstrate a business necessity for hiring a person from such a cultural or ethnic background.
- **Actors or Models:** In some cases, an employer may hire persons with certain racial or ethnic characteristics for the purposes of authenticity or for another business necessity.

Generally, however, in practically all jobs available in today’s workforce, the law prohibits an employer from considering race, color, national origin, or ancestry in making an employment-related decision.

How does the IF75 relate to the anti-discrimination law?

While the Immigration Reform and Control Act (IRCA) prohibits hiring unauthorized workers, it also prohibits employers from singling out or otherwise treating persons differently because they are foreign born, “foreign-looking”, have “foreign-sounding” names or speak with an accent.

Work authorization documents must be reviewed for all applicants, not just those who appear to be foreign or whose primary language is not English.

Can a person be passed over for a job because of an accent or language skill level?

An employer may not refuse to hire an applicant who is reasonably able to meet job performance requirements, despite an accent or less than perfect language skills. However an employer may reject an applicant whose language skill level is such that it would significantly interfere with job performance.

Can a person be discriminated against for associating with a person of another race or national origin group?

No. The law prohibits discrimination against a person based on the race or national origin of a spouse, family member, friend, or associate. Likewise, the law forbids discrimination against an individual because of his membership in an organization that advances the interests of a certain racial or national origin group.

Can employers fill jobs without advertising in public?

The law doesn't specify the method an employer must use in filling job vacancies but the method used must not be discriminatory. An employer who employs mostly members of one race or national origin group who **only** fills jobs by employee referral or word of mouth may be engaging in unlawful discrimination against other racial or national origin groups who are not represented in the employer's workforce.

How is a complaint filed under Wisconsin law?

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

A **complaint form** with instructions is available from the Division. Please see the last page of this handout for the telephone numbers and addresses of ERD's two main offices and the link to the Division's website.

What happens when a complaint is filed?

After the Equal Rights Division receives a complaint, it assigns an equal rights officer to investigate. 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. Parties may contact attorneys for legal advice. The Division has a list of attorneys who handle fair employment cases.

Soon after the Division receives a complaint, it sends a copy to the respondent, who must provide a written answer to the complaint. The investigator may contact the complainant after receiving this answer and may gather more information from the parties or any witnesses to the actions. The investigator may also ask the parties if they want to try to resolve the case through a voluntary settlement. The parties may also engage in formal mediation with one of the Division's Administrative Law Judge/Mediators at any time.

If the investigator finds probable cause to believe that discrimination exists, the case will be referred for a formal hearing. For more details on the complaint process, please ask for Pamphlet #5, Fair Employment and Complaint Process.

Federal Anti-Discrimination Laws

Federal laws differ from state laws, as do procedures for complaints. The most common federal laws, which might apply to issues involving race, color, national origin and ancestry, are:

Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000 e
The Civil Rights Act of 1866, 42 U.S.C.A. § 1981

For more details on federal laws and filing a federal discrimination complaint, contact:

U S EQUAL EMPLOYMENT OPPORTUNITY COMMISSION (EEOC)
310 W WISCONSIN AVE, SUITE 800
MILWAUKEE WI 53203
Telephone Number (414) 297-1111 TTY (414) 297-1115

Questions about employment discrimination should be directed to:

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

201 E WASHINGTON AVE ROOM A100
PO BOX 8928
MADISON WI 53708

819 N 6th ST
ROOM 723
MILWAUKEE WI 53203

Telephone Number: (608) 266-6860
TTY Number: (608) 264-8752

Telephone Number: (414) 227-4384
TTY Number: (414) 227-4081

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

DWD is an equal opportunity employer and service provider. If you need assistance to access services or need material in an alternate format, please contact us.

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