

SUBCHAPTER II FAIR EMPLOYMENT

Cross-reference: See also ch. DWD 218, Wis. adm. code.

111.31 Declaration of policy. (1) The legislature finds that the practice of unfair discrimination in employment against properly qualified individuals by reason of their age, race, creed, color, disability, marital status, sex, national origin, ancestry, sexual orientation, arrest record, conviction record, military service, use or nonuse of lawful products off the employer's premises during nonworking hours, or declining to attend a meeting or to participate in any communication about religious matters or political matters, substantially and adversely affects the general welfare of the state. Employers, labor organizations, employment agencies, and licensing agencies that deny employment opportunities and discriminate in employment against properly qualified individuals solely because of their age, race, creed, color, disability, marital status, sex, national origin, ancestry, sexual orientation, arrest record, conviction record, military service, use or nonuse of lawful products off the employer's premises during nonworking hours, or declining to attend a meeting or to participate in any communication about religious matters or political matters, deprive those individuals of the earnings that are necessary to maintain a just and decent standard of living.

(2) It is the intent of the legislature to protect by law the rights of all individuals to obtain gainful employment and to enjoy privileges free from employment discrimination because of age, race, creed, color, disability, marital status, sex, national origin, ancestry, sexual orientation, arrest record, conviction record, military service, use or nonuse of lawful products off the employer's premises during nonworking hours, or declining to attend a meeting or to participate in any communication about religious matters or political matters, and to encourage the full, nondiscriminatory utilization of the productive resources of the state to the benefit of the state, the family, and all the people of the state. It is the intent of the legislature in promulgating this subchapter to encourage employers to evaluate an employee or applicant for employment based upon the individual qualifications of the employee or applicant rather than upon a particular class to which the individual may belong.

(3) In the interpretation and application of this subchapter, and otherwise, it is declared to be the public policy of the state to encourage and foster to the fullest extent practicable the employment

of all properly qualified individuals regardless of age, race, creed, color, disability, marital status, sex, national origin, ancestry, sexual orientation, arrest record, conviction record, military service, use or nonuse of lawful products off the employer's premises during nonworking hours, or declining to attend a meeting or to participate in any communication about religious matters or political matters. Nothing in this subsection requires an affirmative action program to correct an imbalance in the work force. This subchapter shall be liberally construed for the accomplishment of this purpose.

(4) The practice of requiring employees or prospective employees to submit to a test administered by means of a lie detector, as defined in s. 111.37 (1) (b), is unfair, the practice of requesting employees and prospective employees to submit to such a test without providing safeguards for the test subjects is unfair, and the use of improper tests and testing procedures causes injury to the employees and prospective employees.

(5) The legislature finds that the prohibition of discrimination on the basis of creed under s. 111.337 is a matter of statewide concern, requiring uniform enforcement at state, county and municipal levels.

111.32 Definitions. When used in this subchapter:

(1) "Arrest record" includes, but is not limited to, information indicating that an individual has been questioned, apprehended, taken into custody or detention, held for investigation, arrested, charged with, indicted or tried for any felony, misdemeanor or other offense pursuant to any law enforcement or military authority.

(2) "Commission" means the labor and industry review commission.

(2r) "Constituent group" includes a civic association, community group, social club, fraternal society, mutual benefit alliance, or labor organization.

(3) "Conviction record" includes, but is not limited to, information indicating that an individual has been convicted of any felony, misdemeanor or other offense, has been adjudicated delinquent, has been less than honorably discharged, or has been placed on probation, fined, imprisoned, placed on extended supervision or paroled pursuant to any law enforcement or military authority.

(3m) "Creed" means a system of religious beliefs, including

moral or ethical beliefs about right and wrong, that are sincerely held with the strength of traditional religious views.

(4) “Department” means the department of workforce development.

(5) “Employee” does not include any individual employed by his or her parents, spouse or child.

(6) (a) “Employer” means the state and each agency of the state and, except as provided in par. (b), any other person engaging in any activity, enterprise or business employing at least one individual. In this subsection, “agency” means an office, department, independent agency, authority, institution, association, society or other body in state government created or authorized to be created by the constitution or any law, including the legislature and the courts.

(b) “Employer” does not include a social club or fraternal society under ch. 188 with respect to a particular job for which the club or society seeks to employ or employs a member, if the particular job is advertised only within the membership.

(7) “Employment agency” means any person, including this state, who regularly undertakes to procure employees or opportunities for employment for any other person.

(7m) “Genetic testing” means a test of a person’s genes, gene products or chromosomes, for abnormalities or deficiencies, including carrier status, that are linked to physical or mental disorders or impairments, or that indicate a susceptibility to illness, disease, impairment or other disorders, whether physical or mental, or that demonstrate genetic or chromosomal damage due to environmental factors.

(8) “Individual with a disability” means an individual who:

(a) Has a physical or mental impairment which makes achievement unusually difficult or limits the capacity to work;

(b) Has a record of such an impairment; or

(c) Is perceived as having such an impairment.

(9) “Labor organization” means:

(a) Any organization, agency or employee representation committee, group, association or plan in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours or other terms or conditions of employment; or

(b) Any conference, general committee, joint or system board

or joint council which is subordinate to a national or international committee, group, association or plan under par. (a).

(10) “License” means the whole or any part of any permit, certificate, approval, registration, charter or similar form of permission required by a state or local unit of government for the undertaking, practice or continuation of any occupation or profession.

(11) “Licensing agency” means any board, commission, committee, department, examining board, affiliated credentialing board or officer, except a judicial officer, in the state or any city, village, town, county or local government authorized to grant, deny, renew, revoke, suspend, annul, withdraw or amend any license.

(12) “Marital status” means the status of being married, single, divorced, separated or widowed.

(12g) “Military service” means service in the U.S. armed forces, the state defense force, the national guard of any state, or any other reserve component of the U.S. armed forces.

(12j) “Political matters” means political party affiliation, a political campaign, an attempt to influence legislation, or the decision to join or not to join, or to support or not to support, any lawful political group, constituent group, or political or constituent group activity.

(12m) “Religious association” means an organization, whether or not organized under ch. 187, which operates under a creed.

(12p) “Religious matters” means religious affiliation or the decision to join or not to join, or to support or not to support, any bona fide religious association.

(13) “Sexual harassment” means unwelcome sexual advances, unwelcome requests for sexual favors, unwelcome physical contact of a sexual nature or unwelcome verbal or physical conduct of a sexual nature. “Sexual harassment” includes conduct directed by a person at another person of the same or opposite gender. “Unwelcome verbal or physical conduct of a sexual nature” includes but is not limited to the deliberate, repeated making of unsolicited gestures or comments of a sexual nature; the deliberate, repeated display of offensive sexually graphic materials which is not necessary for business purposes; or deliberate verbal

or physical conduct of a sexual nature, whether or not repeated, that is sufficiently severe to interfere substantially with an employee's work performance or to create an intimidating, hostile or offensive work environment.

(13m) "Sexual orientation" means having a preference for heterosexuality, homosexuality or bisexuality, having a history of such a preference or being identified with such a preference.

(13r) "Unfair genetic testing" means any test or testing procedure that violates s. 111.372.

(14) "Unfair honesty testing" means any test or testing procedure

111.321 Prohibited bases of discrimination. Subject to ss. 111.33 to 111.365, no employer, labor organization, employment agency, licensing agency, or other person may engage in any act of employment discrimination as specified in s. 111.322 against any individual on the basis of age, race, creed, color, disability, marital status, sex, national origin, ancestry, arrest record, conviction record, military service, use or nonuse of lawful products off the employer's premises during nonworking hours, or declining to attend a meeting or to participate in any communication about religious matters or political matters.

111.322 Discriminatory actions prohibited. Subject to ss. 111.33 to 111.365, it is an act of employment discrimination to do any of the following:

(1) To refuse to hire, employ, admit or license any individual, to bar or terminate from employment or labor organization membership any individual, or to discriminate against any individual in promotion, compensation or in terms, conditions or privileges of employment or labor organization membership because of any basis enumerated in s. 111.321.

(2) To print or circulate or cause to be printed or circulated any statement, advertisement or publication, or to use any form of application for employment or to make any inquiry in connection with prospective employment, which implies or expresses any limitation, specification or discrimination with respect to an individual or any intent to make such limitation, specification or discrimination because of any basis enumerated in s. 111.321.

(2m) To discharge or otherwise discriminate against any individual because of any of the following:

- (a) The individual files a complaint or attempts to enforce any right under s. 103.02, 103.10, 103.13, 103.28, 103.32, 103.34, 103.455, 103.50, 104.12, 106.04, 109.03, 109.07, 109.075, or 146.997 or ss. 101.58 to 101.599 or 103.64 to 103.82.
- (b) The individual testifies or assists in any action or proceeding held under or to enforce any right under s. 103.02, 103.10, 103.13, 103.28, 103.32, 103.34, 103.455, 103.50, 104.12, 106.04, 109.03, 109.07, 109.075, or 146.997 or ss. 101.58 to 101.599 or 103.64 to 103.82.
- (bm) The individual files a complaint or attempts to enforce a right under s. 49.197 (6) (d) or 49.845 (4) (d) or testifies or assists in any action or proceeding under s. 49.197 (6) (d) or 49.845 (4) (d).
- (c) The individual files a complaint or attempts to enforce a right under s. 66.0903, 103.49, or 229.8275 or testifies or assists in any action or proceeding under s. 66.0903, 103.49, or 229.8275.
- (d) The individual's employer believes that the individual engaged or may engage in any activity described in pars. (a) to (c).

(3) To discharge or otherwise discriminate against any individual because he or she has opposed any discriminatory practice under this subchapter or because he or she has made a complaint, testified or assisted in any proceeding under this subchapter.

111.325 Unlawful to discriminate. It is unlawful for any employer, labor organization, licensing agency or person to discriminate against any employee or any applicant for employment or licensing.

111.327 Construction contractors. Any employer described in s. 108.18 (2) (c) or engaged in the painting or drywall finishing of buildings or other structures who willfully and with intent to evade any requirement of this subchapter misclassifies or attempts to misclassify an individual who is an employee of the employer as a nonemployee shall be fined \$25,000 for each violation. The department shall promulgate rules defining what constitutes a willful misclassification of an employee as a nonemployee for purposes of this section and of ss. 102.07 (8) (d) and 108.24 (2m).

111.33 Age; exceptions and special cases. (1) The prohibition against employment discrimination on the basis of age applies only to discrimination against an individual who is age 40 or over.

(2) Notwithstanding sub. (1) and s. 111.322, it is not employment discrimination because of age to do any of the following:

- (a) To terminate the employment of any employee physically or otherwise unable to perform his or her duties.
- (b) To implement the provisions of any retirement plan or system of any employer if the retirement plan or system is not a subterfuge to evade the purposes of this subchapter. No plan or system may excuse the failure to hire, or require or permit the involuntary retirement of, any individual under sub. (1) because of that individual's age.
- (d) To apply varying insurance coverage according to an employee's age.
- (e) To exercise an age distinction with respect to hiring an individual to a position in which the knowledge and experience to be gained is required for future advancement to a managerial or executive position.
- (f) To exercise an age distinction with respect to employment in which the employee is exposed to physical danger or hazard, including, without limitation because of enumeration, certain employment in law enforcement or fire fighting.
- (g) To exercise an age distinction under s. 343.12 (2) (a) and (3).

111.335 Arrest or conviction record; exceptions and special cases. (1)

(a) Employment discrimination because of arrest record includes, but is not limited to, requesting an applicant, employee, member, licensee or any other individual, on an application form or otherwise, to supply information regarding any arrest record of the individual except a record of a pending charge, except that it is not employment discrimination to request such information when employment depends on the bondability of the individual under a standard fidelity bond or when an equivalent bond is required by state or federal law, administrative regulation or established business practice of the employer and the individual may not be bondable due to an arrest record.

(b) Notwithstanding s. 111.322, it is not employment discrimination because of arrest record to refuse to employ or license, or to suspend from employment or licensing, any individual who is subject to a pending criminal charge if the circumstances of the charge substantially relate to the circumstances of the particular job or licensed activity.

(c) Notwithstanding s. 111.322, it is not employment discrimination because of conviction record to refuse to employ or license, or to bar or terminate from employment or licensing, any individual who:

1. Has been convicted of any felony, misdemeanor or other offense the circumstances of which substantially relate to the circumstances of the particular job or licensed activity; or

2. Is not bondable under a standard fidelity bond or an equivalent bond where such bondability is required by state or federal law, administrative regulation or established business practice of the employer.

(cg) 1. Notwithstanding s. 111.322, it is not employment discrimination because of conviction record to deny or refuse to

renew a license or permit under s. 440.26 to a person who has been

2. Notwithstanding s. 111.322, it is not employment discrimination because of conviction record to revoke a license or permit

under s. 440.26 (6) (b) if the person holding the license or permit has been convicted of a felony and has not been pardoned for that

felony.

3. Notwithstanding s. 111.322, it is not employment discrimination because of conviction record to refuse to employ a person

in a business licensed under s. 440.26 or as an employee specified in s. 440.26 (5) (b) if the person has been convicted of a felony and has not been pardoned for that felony.

(cm) Notwithstanding s. 111.322, it is not employment discrimination because of conviction record to refuse to employ as

an installer of burglar alarms a person who has been convicted of a felony and has not been pardoned.

(cs) Notwithstanding s. 111.322, it is not employment discrimination because of conviction record to revoke, suspend or refuse

to renew a license or permit under ch. 125 if the person holding or applying for the license or permit has been convicted of one or more of the following:

1. Manufacturing, distributing or delivering a controlled substance or controlled substance analog under s. 961.41 (1).

2. Possessing, with intent to manufacture, distribute or deliver, a controlled substance or controlled substance analog under s. 961.41 (1m).

3. Possessing, with intent to manufacture, distribute or deliver, or manufacturing, distributing or delivering a controlled substance or controlled substance analog under a federal law that is substantially similar to s. 961.41 (1) or (1m).

4. Possessing, with intent to manufacture, distribute or deliver, or manufacturing, distributing or delivering a controlled substance or controlled substance analog under the law of another state that is substantially similar to s. 961.41 (1) or (1m).

5. Possessing any of the materials listed in s. 961.65 with intent to manufacture methamphetamine under that section or under a federal law or a law of another state that is substantially similar to s. 961.65.

(cv) Notwithstanding s. 111.322, it is not employment discrimination because of conviction record to refuse to employ in a position

in the classified service or in a position described in s. 230.08

(2) (k) a person who has been convicted under 50 USC, Appendix, section 462 for refusing to register with the selective service system and who has not been pardoned.

111.337 Creed; exceptions and special cases.

(1) Employment discrimination because of creed includes, but is not limited to, refusing to reasonably accommodate an employee's or prospective employee's religious observance or practice unless the employer can demonstrate that the accommodation would pose an undue hardship on the employer's program, enterprise or business.

(2) Notwithstanding s. 111.322, it is not employment discrimination because of creed:

(a) For a religious association not organized for private profit or an organization or corporation which is primarily owned or controlled by such a religious association to give preference to an applicant or employee who is a member of the same or a similar religious denomination.

(am) For a religious association not organized for private profit or an organization or corporation which is primarily owned or controlled by such a religious association to give preference to an applicant or employee who adheres to the religious association's creed, if the job description demonstrates that the position is clearly related to the religious teachings and beliefs of the religious association.

(b) For a fraternal as defined in s. 614.01 (1) (a) to give preference to an employee or applicant who is a member or is eligible for membership in the fraternal, with respect to hiring to or promotion to the position of officer, administrator or salesperson.

(3) No county, city, village or town may adopt any provision concerning employment discrimination because of creed that prohibits activity allowed under this section.

111.34 Disability; exceptions and special cases.

(1) Employment discrimination because of disability includes, but is not limited to:

(a) Contributing a lesser amount to the fringe benefits, including life or disability insurance coverage, of any employee because of the employee's disability; or

(b) Refusing to reasonably accommodate an employee's or prospective employee's disability unless the employer can demonstrate that the accommodation would pose a hardship on the

employer's program, enterprise or business.

(2) (a) Notwithstanding s. 111.322, it is not employment discrimination because of disability to refuse to hire, employ, admit or license any individual, to bar or terminate from employment, membership or licensure any individual, or to discriminate against any individual in promotion, compensation or in terms, conditions or privileges of employment if the disability is reasonably related to the individual's ability to adequately undertake the job-related responsibilities of that individual's employment, membership or licensure.

(b) In evaluating whether an individual with a disability can adequately undertake the job-related responsibilities of a particular job, membership or licensed activity, the present and future safety of the individual, of the individual's coworkers and, if applicable, of the general public may be considered. However, this evaluation shall be made on an individual case-by-case basis and may not be made by a general rule which prohibits the employment or licensure of individuals with disabilities in general or a particular class of individuals with disabilities.

(c) If the employment, membership or licensure involves a special duty of care for the safety of the general public, including but not limited to employment with a common carrier, this special duty of care may be considered in evaluating whether the responsibilities of a particular job, membership or licensed activity. However, this evaluation shall be made on an individual case-by-case basis and may not be made by a general rule which prohibits the employment or licensure of individuals with disabilities in general or a particular class of individuals with disabilities.

111.345 Marital status; exceptions and special cases.

Notwithstanding s. 111.322, it is not employment discrimination because of marital status to prohibit an individual from directly supervising or being directly supervised by his or her spouse.

111.35 Use or nonuse of lawful products; exceptions and special cases. (1)

(a) Notwithstanding s. 111.322, it is not employment discrimination because of use of a lawful product off the employer's premises during nonworking hours for a nonprofit corporation that, as one of its primary purposes or objectives, discourages the general public from using a lawful product to refuse to hire or employ an individual, to suspend or terminate the employment of an individual, or to discriminate against an individual in promotion, in compensation or in terms, conditions or privileges of employment, because that individual uses off the employer's premises during nonworking hours a lawful product

that the nonprofit corporation discourages the general public from using.

(b) Notwithstanding s. 111.322, it is not employment discrimination because of nonuse of a lawful product off the employer's premises during nonworking hours for a nonprofit corporation that, as one of its primary purposes or objectives, encourages the general public to use a lawful product to refuse to hire or employ an individual, to suspend or terminate the employment of an individual, or to discriminate against an individual in promotion, in compensation or in terms, conditions or privileges of employment, because that individual does not use off the employer's premises during nonworking hours a lawful product that the nonprofit corporation encourages the general public to use.

(2) Notwithstanding s. 111.322, it is not employment discrimination because of use or nonuse of a lawful product off the employer's premises during nonworking hours for an employer, labor organization, employment agency, licensing agency or other person to refuse to hire, employ, admit, or license an individual, to bar, suspend or terminate an individual from employment, membership or licensure, or to discriminate against an individual in promotion, in compensation or in terms, conditions or privileges of employment or labor organization membership if the individual's use or nonuse of a lawful product off the employer's premises during nonworking hours does any of the following:

(a) Impairs the individual's ability to undertake adequately the job-related responsibilities of that individual's employment, membership or licensure.

(b) Creates a conflict of interest, or the appearance of a conflict of interest, with the job-related responsibilities of that individual's employment, membership or licensure.

(c) Conflicts with a bona fide occupational qualification that is reasonably related to the job-related responsibilities of that individual's employment, membership or licensure.

(d) Constitutes a violation of s. 254.92 (2).

(e) Conflicts with any federal or state statute, rule or regulation.

(3) (a) Notwithstanding s. 111.322, it is not employment discrimination because of use of a lawful product off the employer's premises during nonworking hours for an employer, labor organization, employment agency, licensing agency or other person to offer a policy or plan of life, health or disability insurance coverage under which the type of coverage or the price of coverage for an individual who uses a lawful product off the employer's premises during nonworking hours differs from the type of coverage or the price of coverage provided for an individual who does not use

that lawful product, if all of the following conditions apply:

1. The difference between the premium rates charged to an individual who uses that lawful product and the premium rates charged to an individual who does not use that lawful product reflects the cost of providing the coverage to the individual who uses that lawful product.

2. The employer, labor organization, employment agency, licensing agency or other person that offers the coverage provides each individual who is charged a different premium rate based on that individual's use of a lawful product off the employer's premises during nonworking hours with a written statement specifying the premium rate differential used by the insurance carrier.

(b) Notwithstanding s. 111.322, it is not employment discrimination because of nonuse of a lawful product off the employer's premises during nonworking hours for an employer, labor organization, employment agency, licensing agency or other person to offer a policy or plan of life, health or disability insurance coverage under which the type of coverage or the price of coverage for an individual who does not use a lawful product off the employer's premises during nonworking hours differs from the type of coverage or the price of coverage provided for an individual who uses that lawful product, if all of the following conditions apply:

1. The difference between the premium rates charged to an individual who does not use that lawful product and the premium rates charged to an individual who uses that lawful product reflects the cost of providing the coverage to the individual who does not use that lawful product.

2. The employer, labor organization, employment agency, licensing agency or other person that offers the coverage provides each individual who is charged a different premium rate based on that individual's nonuse of a lawful product off the employer's premises during nonworking hours with a written statement specifying the premium rate differential used by the insurance carrier.

(4) Notwithstanding s. 111.322, it is not employment discrimination because of use of a lawful product off the employer's premises during nonworking hours to refuse to employ an applicant if the applicant's use of a lawful product consists of smoking tobacco and the employment is as a fire fighter covered under s. 891.45 or 891.455.

111.355 Military service; exceptions and special cases.

(1) Employment discrimination because of military service includes an employer, labor organization, licensing agency, employment agency, or other person refusing to hire, employ,

admit, or license an individual, barring or terminating an individual from employment, membership, or licensure, or discriminating against an individual in promotion, in compensation, or in the terms, conditions, or privileges of employment because the individual is or applies to be a member of the U.S. armed forces, the state defense force, the national guard of any state, or any reserve component of the U.S. armed forces or because the individual performs, has performed, applies to perform, or has an obligation to perform military service.

(2) Notwithstanding s. 111.322, it is not employment discrimination because of military service for an employer, licensing agency, employment agency, or other person to refuse to hire, employ, or license an individual or to bar or terminate an individual from employment or licensure because the individual has been discharged from military service under a bad conduct, dishonorable, or other than honorable discharge, or under an entry-level separation, and the circumstances of the discharge or separation substantially relate to the circumstances of the particular job or licensed activity.

111.36 Sex, sexual orientation; exceptions and special cases.

(1) Employment discrimination because of sex includes, but is not limited to, any of the following actions by any employer, labor organization, employment agency, licensing agency or other person:

(a) Discriminating against any individual in promotion, compensation paid for equal or substantially similar work, or in terms, conditions or privileges of employment or licensing on the basis of sex where sex is not a bona fide occupational qualification.

(b) Engaging in sexual harassment; or implicitly or explicitly making or permitting acquiescence in or submission to sexual harassment a term or condition of employment; or making or permitting acquiescence in, submission to or rejection of sexual harassment the basis or any part of the basis for any employment decision affecting an employee, other than an employment decision that is disciplinary action against an employee for engaging in sexual harassment in violation of this paragraph; or permitting sexual harassment to have the purpose or effect of substantially interfering with an employee's work performance or of creating an intimidating, hostile or offensive work environment. Under this paragraph, substantial interference with an employee's work performance or creation of an intimidating, hostile or offensive work environment is established when the conduct is such that a reasonable person under the same circumstances as the employee would consider the conduct sufficiently severe or pervasive to

interfere substantially with the person's work performance or to create an intimidating, hostile or offensive work environment.

(br) Engaging in harassment that consists of unwelcome verbal or physical conduct directed at another individual because of that individual's gender, other than the conduct described in par. (b), and that has the purpose or effect of creating an intimidating, hostile or offensive work environment or has the purpose or effect of substantially interfering with that individual's work performance.

Under this paragraph, substantial interference with an employee's work performance or creation of an intimidating, hostile or offensive work environment is established when the conduct is such that a reasonable person under the same circumstances as the employee would consider the conduct sufficiently severe or pervasive to interfere substantially with the person's work performance or to create an intimidating, hostile or offensive work environment.

(c) Discriminating against any woman on the basis of pregnancy, childbirth, maternity leave or related medical conditions by engaging in any of the actions prohibited under s. 111.322, including, but not limited to, actions concerning fringe benefit programs covering illnesses and disability.

(d) 1. For any employer, labor organization, licensing agency or employment agency or other person to refuse to hire, employ, admit or license, or to bar or terminate from employment, membership or licensure any individual, or to discriminate against an individual in promotion, compensation or in terms, conditions or privileges of employment because of the individual's sexual orientation;

or

2. For any employer, labor organization, licensing agency or employment agency or other person to discharge or otherwise discriminate against any person because he or she has opposed any discriminatory practices under this paragraph or because he or she has made a complaint, testified or assisted in any proceeding under this paragraph.

(2) For the purposes of this subchapter, sex is a bona fide occupational qualification if all of the members of one sex are physically incapable of performing the essential duties required by a job, or if the essence of the employer's business operation would be undermined if employees were not hired exclusively from one sex.

(3) For purposes of sexual harassment claims under sub. (1) (b), an employer, labor organization, employment agency or licensing agency is presumed liable for an act of sexual harassment by that employer, labor organization, employment agency or

licensing agency or by any of its employees or members, if the act occurs while the complaining employee is at his or her place of employment or is performing duties relating to his or her employment, if the complaining employee informs the employer, labor organization, employment agency or licensing agency of the act, and if the employer, labor organization, employment agency or licensing agency fails to take appropriate action within a reasonable time.

111.365 Communication of opinions; exceptions and

special cases. (1) Employment discrimination because of declining to attend a meeting or to participate in any communication about religious matters or political matters includes all of the following:

(a) Discharging or otherwise discriminating against an employee because the employee declines to attend an employer-sponsored meeting or to participate in any communication with the employer or with an agent, representative, or designee of the employer, the primary purpose of which is to communicate the opinion of the employer about religious matters or political matters.

(b) Threatening to discharge or otherwise discriminate against an employee as a means of requiring the employee to attend a meeting or participate in a communication described in par. (a).

(2) Notwithstanding s. 111.322, it is not employment discrimination because of declining to attend a meeting or to participate in any communication about religious matters or political matters for an employer to refuse to hire or employ an individual, to suspend or terminate the employment of an individual, or to discriminate against an individual in promotion, in compensation, or in terms, conditions, or privileges of employment, because the individual declines to attend a meeting or to participate in a communication described in sub. (1) (a) if any of the following applies:

(a) The employer is a religious association not organized for private profit or an organization or corporation that is primarily owned or controlled by such a religious association and the primary purpose of the meeting or communication is to communicate the employer's religious beliefs, tenets, or practices.

(b) The employer is a political organization, including a political party or any other organization that engages, in substantial part, in political activities, and the primary purpose of the meeting or communication is to communicate the employer's political tenets or purposes.

(c) The primary purpose of the meeting or communication is to communicate information about religious matters or political

matters that the employer is required by law to communicate and no information is communicated about those matters beyond what is legally required.

(3) This section and s. 111.322 do not limit any of the following:

(a) The application of s. 11.36.

(b) The right of an employer's executive, managerial, or administrative personnel to discuss issues relating to the operation of the employer's program, business, or enterprise, including issues arising under this section.

(c) The right of an employer to offer meetings or other communications about religious matters or political matters for which attendance or participation is strictly voluntary.

111.37 Use of honesty testing devices in employment

situations. (1) DEFINITIONS. In this section:

(a) "Employer", notwithstanding s. 111.32 (6), means any person acting directly or indirectly in the interest of an employer in relation to an employee or prospective employee. "Employer", notwithstanding s. 111.32 (6), does not include the federal government.

(b) "Lie detector" means a polygraph, deceptograph, voice stress analyzer, psychological stress evaluator or other similar device, whether mechanical or electrical, that is used, or the results of which are used, to render a diagnostic opinion about the honesty or dishonesty of an individual.

(c) "Polygraph" means an instrument that fulfills all of the following requirements:

1. Records continuously, visually, permanently and simultaneously any changes in cardiovascular, respiratory and electrodermal patterns as minimum instrumentation standards.

2. Is used, or the results of which are used, to render a diagnostic opinion about the honesty or dishonesty of an individual.

(2) PROHIBITIONS ON LIE DETECTOR USE. Except as provided in subs. (5) and (6), no employer may do any of the following:

(a) Directly or indirectly require, request, suggest or cause an employee or prospective employee to take or submit to a lie detector test.

(b) Use, accept, refer to or inquire about the results of a lie detector test of an employee or prospective employee.

(c) Discharge, discipline, discriminate against or deny employment or promotion to, or threaten to take any such action against, any of the following:

1. An employee or prospective employee who refuses, declines or fails to take or submit to a lie detector test.

2. An employee or prospective employee on the basis of the

results of a lie detector test.

(d) Discharge, discipline, discriminate against or deny employment or promotion to, or threaten to take any such action against, an employee or prospective employee for any of the following reasons:

1. The employee or prospective employee has filed a complaint or instituted or caused to be instituted a proceeding under this section.
2. The employee or prospective employee has testified or is about to testify in a proceeding under this section.
3. The employee or prospective employee, on behalf of that employee, prospective employee or another person, has exercised any right under this section.

(3) NOTICE OF PROTECTION. The department shall prepare and distribute a notice setting forth excerpts from, or summaries of, the pertinent provisions of this section. Each employer that administers lie detector tests, or that has lie detector tests administered, to its employees shall post and maintain that notice in conspicuous places on its premises where notices to employees and applicants for employment are customarily posted.

(4) DEPARTMENT'S DUTIES AND POWERS. (a) The department shall do all of the following:

1. Promulgate rules that are necessary under this section.
2. Cooperate with regional, local and other agencies and cooperate with, and furnish technical assistance to, employment agencies other than this state, employers and labor organizations to aid in enforcing this section.
3. Make investigations and inspections and require the keeping of records necessary for the administration of this section.

(b) For the purpose of any hearing or investigation under this section, the department may issue subpoenas.

(5) EXEMPTIONS. (a) Except as provided in sub. (6), this section does not prohibit an employer from requesting an employee to submit to a polygraph test if all of the following conditions apply:

1. The test is administered in connection with an ongoing investigation involving economic loss or injury to the employer's business, including theft, embezzlement, misappropriation and unlawful industrial espionage or sabotage.
2. The employee had access to the property that is the subject of the investigation under subd. 1.
3. The employer has a reasonable suspicion that the employee was involved in the incident or activity under investigation.

4. The employer executes a statement, provided to the examinee before the test, that sets forth with particularity the specific incident or activity being investigated and the basis for testing particular employees; that is signed by a person, other than a polygraph examiner, authorized legally to bind the employer; that is retained by the employer for at least 3 years; and that identifies the specific economic loss or injury to the business of the employer, indicates that the employee had access to the property that is the subject of the investigation and describes the basis of the employer's reasonable suspicion that the employee was involved in the incident or activity under investigation.

(b) Except as provided in sub. (6), this section does not prohibit an employer from administering polygraph tests, or from having polygraph tests administered, on a prospective employee who, if hired, would perform the employer's primary business purpose if the employer's primary business purpose is providing security personnel, armored car personnel or personnel engaged in the design, installation and maintenance of security alarm systems and if the employer protects any of the following:

1. Facilities, materials or operations that have a significant impact on the public health, safety or welfare of this state or the national security of the United States, including facilities engaged in the production, transmission or distribution of electric or nuclear power; public water supply facilities; shipments or storage of radioactive or other toxic waste materials; and public transportation.
2. Currency, negotiable securities, precious commodities or instruments and proprietary information.

(bm) Except as provided in sub. (6), this section does not prohibit a Wisconsin law enforcement agency from administering a polygraph test, or from having a polygraph test administered, on a prospective employee.

(c) Except as provided in sub. (6), this section does not prohibit an employer that is authorized to manufacture, distribute or dispense a controlled substance included in schedule I, II, III, IV or V under ch. 961 from administering a polygraph test, or from having a polygraph test administered, if the test is administered to a prospective employee who would have direct access to the manufacture, storage, distribution or sale of the controlled substance or to a current employee if the test is administered in connection with an ongoing investigation of criminal or other misconduct that involves, or potentially involves, loss or injury to the manufacture, distribution or dispensing of the controlled substance by that employer and the employee had access to the person or property that is the subject of the investigation.

(6) RESTRICTIONS ON USE OF EXEMPTIONS. (a) The exemption

under sub. (5) (a) does not apply if an employee is discharged, disciplined, denied employment or promotion or otherwise discriminated against on the basis of an analysis of a polygraph test chart or a refusal to take a polygraph test without additional supporting evidence. The evidence required by sub. (5) (a) may serve as additional supporting evidence.

(b) The exemptions under sub. (5) (b) to (c) do not apply if an analysis of a polygraph test chart is used, or a refusal to take a polygraph test is used, as the sole basis upon which an adverse employment action described in par. (a) is taken against an employee or prospective employee.

(c) The exemptions under sub. (5) (a) to (c) do not apply unless all of the following requirements are fulfilled:

1. Throughout all phases of the test the examinee is permitted to end the test at any time; the examinee is not asked questions in a manner that degrades, or needlessly intrudes on, the examinee; the examinee is not asked any question about religious beliefs or affiliations, political beliefs or affiliations, sexual behavior, beliefs or opinions on racial matters, or about beliefs, affiliations, opinions, or lawful activities regarding unions or labor organizations; and the examiner does not conduct the test if there is sufficient written evidence provided by a physician that the examinee is suffering from a medical or psychological condition or undergoing treatment that might cause abnormal responses during the testing.

2. Before the test is administered the prospective examinee is provided with reasonable oral and written notice of the date, time and location of the test, and of the examinee's right to obtain and consult with legal counsel or an employee representative before each phase of the test; is informed orally and in writing of the nature and characteristics of the tests and of the instruments involved; is informed orally and in writing whether or not the testing area contains a 2-way mirror, a camera or any other device through which the test can be observed; is informed orally and in writing whether or not any device other than the polygraph, including any device for recording or monitoring the test, will be used; is informed orally and in writing that the employer or the examinee may, after so informing the examinee, make a recording of the test; is read and signs a written notice informing the examinee that the examinee cannot be required to take the test as a condition of employment, that any statement made during the test may constitute additional supporting evidence for the purposes of an adverse employment action under par. (a), of the limitations on the use of a polygraph test under this subsection, of the legal rights and remedies available to the examinee under this section and ss. 905.065 and 942.06, of the legal rights and remedies available to

the examinee if the polygraph test is not conducted in accordance with this section and of the legal rights and remedies of the employer under this section; is provided an opportunity to review all questions to be asked during the test; and is informed of the right to end the test at any time.

3. The examiner does not ask the examinee any question during the test that was not presented in writing for review to the examinee before the test.

4. Before any adverse employment action, the employer interviews the examinee on the basis of the results of the test; provides the examinee written copies of any opinion or conclusion rendered as a result of the test, the questions asked during the test and the corresponding charted responses; and offers the examinee the opportunity to explain any questionable responses or to retake the examination or both. If the subsequent responses or the reexamination clarify any questionable response, the results of the initial tests shall not be reported further and shall be removed, corrected or clarified in the employee's personnel records under s. 103.13 (4).

5. The examiner does not conduct and complete more than 5 polygraph tests on any day and does not conduct any polygraph test that lasts for less than 90 minutes.

6. The test is administered at a reasonable time and location.

(d) The exemptions under sub. (5) (a) to (c) do not apply unless the individual who conducts the polygraph test satisfies all of the following requirements:

1. Maintains at least a \$50,000 bond or an equivalent amount of professional liability coverage.

2. Renders no opinion or conclusion about the test unless it is in writing and based solely on an analysis of polygraph test charts, does not contain information other than admissions, information, case facts and interpretation of the charts relevant to the purpose and stated objectives of the test, and does not include any recommendation concerning the employment of the examinee.

3. Maintains all opinions, reports, charts, written questions, lists and other records relating to the test for at least 3 years after administration of the test.

(7) DISCLOSURE OF INFORMATION. No person other than the examinee may disclose information obtained during a polygraph test, except that a polygraph examiner may disclose information acquired from a polygraph test to the examinee or any other person specifically designated in writing by the examinee.

(8) ENFORCEMENT PROVISIONS. (a) In addition to the rights, remedies and procedures under ss. 111.375 and 111.39, any

employer who violates this section may be required to forfeit not more than \$10,000.

(b) The rights, remedies and procedures provided by this section may not be waived by contract or otherwise, unless that waiver is part of a written settlement agreed to and signed by the parties to an action or complaint under this section.

111.371 Local ordinance; collective bargaining agreements.

Section 111.37 does not do any of the following:

(1) Prevent a county, city, village or town from adopting an ordinance that prohibits honesty testing, restricts the use of honesty testing to a greater extent than s. 111.37 or provides employees with more rights and remedies with respect to honesty testing than are provided under s. 111.37.

(2) Supersede, preempt or prohibit provisions of a collective bargaining agreement that prohibit honesty testing, restrict the use of honesty testing to a greater extent than s. 111.37 or provide employees with more rights and remedies with respect to honesty testing than are provided under s. 111.37.

111.372 Use of genetic testing in employment situations.

(1) No employer, labor organization, employment agency or licensing agency may directly or indirectly:

(a) Solicit, require or administer a genetic test to any person as a condition of employment, labor organization membership or licensure.

(b) Affect the terms, conditions or privileges of employment, labor organization membership or licensure or terminate the employment, labor organization membership or licensure of any person who obtains a genetic test.

(2) Except as provided in sub. (4), no person may sell to or interpret for an employer, labor organization, employment agency or licensing agency a genetic test of an employee, labor organization member or licensee or of a prospective employee, labor organization member or licensee.

(3) Any agreement between an employer, labor organization, employment agency or licensing agency and another person offering employment, labor organization membership, licensure or any pay or benefit to that person in return for taking a genetic test is prohibited.

(4) This section does not prohibit the genetic testing of an

employee who requests a genetic test and who provides written and informed consent to taking a genetic test for any of the following purposes:

(a) Investigating a worker's compensation claim under ch. 102.

(b) Determining the employee's susceptibility or level of exposure to potentially toxic chemicals or potentially toxic substances in the workplace, if the employer does not terminate the employee, or take any other action that adversely affects any term, condition or privilege of the employee's employment, as a result of the genetic test.

111.375 Department to administer. (1) This subchapter shall be administered by the department. The department may make, amend and rescind such rules as are necessary to carry out this subchapter. The department or the commission may, by such agents or agencies as it designates, conduct in any part of this state any proceeding, hearing, investigation or inquiry necessary to the performance of its functions. The department shall preserve the anonymity of any employee who is the aggrieved party in a complaint of discrimination in promotion, compensation or terms and conditions of employment, of unfair honesty testing or of unfair genetic testing against his or her present employer until a determination as to probable cause has been made, unless the department determines that the anonymity will substantially impede the investigation.

(2) This subchapter applies to each agency of the state.

111.38 Investigation and study of discrimination.

Except as provided under s. 111.375 (2), the department shall:

(1) Investigate the existence, character, causes and extent of discrimination in this state and the extent to which the same is susceptible of elimination.

(2) Study the best and most practicable ways of eliminating any discrimination found to exist, and formulate plans for the elimination thereof by education or other practicable means.

(3) Publish and disseminate reports embodying its findings and the results of its investigations and studies relating to discrimination and ways and means of reducing or eliminating it.

(4) Confer, cooperate with and furnish technical assistance to employers, labor unions, educational institutions and other public or private agencies in formulating programs, educational and

otherwise, for the elimination of discrimination.

(5) Make specific and detailed recommendations to the interested parties as to the methods of eliminating discrimination.

(6) Transmit to the legislature from time to time recommendations for any legislation which may be deemed desirable in the light of the department's findings as to the existence, character and causes of any discrimination.

111.39 Powers and duties of department. Except as provided under s. 111.375 (2), the department shall have the following powers and duties in carrying out this subchapter:

(1) The department may receive and investigate a complaint charging discrimination, discriminatory practices, unfair honesty testing or unfair genetic testing in a particular case if the complaint is filed with the department no more than 300 days after the alleged discrimination, unfair honesty testing or unfair genetic testing occurred. The department may give publicity to its findings in the case.

(2) In carrying out this subchapter the department and its duly authorized agents are empowered to hold hearings, subpoena witnesses, take testimony and make investigations in the manner provided in s. 103.005. The department or its duly authorized agents may privilege witnesses testifying before them under the provisions of this subchapter against self-incrimination.

(3) The department shall dismiss a complaint if the person filing the complaint fails to respond within 20 days to any correspondence from the department concerning the complaint and if the correspondence is sent by certified mail to the last-known address of the person.

(4) (a) The department shall employ such examiners as are necessary to hear and decide complaints of discrimination and to assist in the effective administration of this subchapter. The examiners may make findings and orders under this section.

(b) If the department finds probable cause to believe that any discrimination has been or is being committed, that unfair honesty testing has occurred or is occurring or that unfair genetic testing has occurred or is occurring, it may endeavor to eliminate the practice by conference, conciliation or persuasion. If the department does not eliminate the discrimination, unfair honesty testing or unfair genetic testing, the department shall issue and serve a written notice of hearing, specifying the nature of the discrimination

that appears to have been committed or unfair honesty testing or unfair genetic testing that has occurred, and requiring the person named, in this section called the "respondent", to answer the complaint at a hearing before an examiner. The notice shall specify a time of hearing not less than 30 days after service of the complaint, and a place of hearing within either the county of the respondent's residence or the county in which the discrimination, unfair honesty testing or unfair genetic testing appears to have occurred. The testimony at the hearing shall be recorded or taken down by a reporter appointed by the department.

(c) If, after hearing, the examiner finds that the respondent has engaged in discrimination, unfair honesty testing or unfair genetic action by the respondent as will effectuate the purpose of this subchapter, with or without back pay. If the examiner awards any payment to an employee because of a violation of s. 111.321 by an individual employed by the employer, under s. 111.32 (6), the employer of that individual is liable for the payment. If the examiner finds a respondent violated s. 111.322 (2m), the examiner shall award compensation in lieu of reinstatement if requested by all parties and may award compensation in lieu of reinstatement if requested by any party. Compensation in lieu of reinstatement for a violation of s. 111.322 (2m) may not be less than 500 times nor more than 1,000 times the hourly wage of the person discriminated against when the violation occurred. Back pay liability may not accrue from a date more than 2 years prior to the filing of a complaint with the department. Interim earnings or amounts earnable with reasonable diligence by the person discriminated against or subjected to unfair honesty testing or unfair genetic testing shall operate to reduce back pay otherwise allowable. Amounts received by the person discriminated against or subject to the unfair honesty testing or unfair genetic testing as unemployment benefits or welfare payments shall not reduce the back pay otherwise allowable, but shall be withheld from the person discriminated against or subject to unfair honesty testing or unfair genetic testing and immediately paid to the unemployment reserve fund or, in the case of a welfare payment, to the welfare agency making the payment.

(d) The department shall serve a certified copy of the findings and order on the respondent, the order to have the same force as other orders of the department and be enforced as provided in s. 103.005. Any person aggrieved by noncompliance with the order may have the order enforced specifically by suit in equity. If the examiner finds that the respondent has not engaged in discrimination, unfair honesty testing, or unfair genetic testing as alleged in the complaint, the department shall serve a certified copy of the examiner's findings on the complainant, together with an order

dismissing the complaint. If the examiner finds that the respondent has engaged in discrimination, unfair honesty testing, or unfair genetic testing as alleged in the complaint, the department shall serve a certified copy of the examiner's findings on the complainant, together with a notice advising the complainant that after the completion of all administrative proceedings under this section he or she may bring an action as provided in s. 111.397 (1) (a) to recover compensatory and punitive damages as provided in s. 111.397 (2) (a) and advising the complainant of the time under s. 111.397 (1) (b) within which the action must be commenced or be barred.

(5) (a) Any respondent or complainant who is dissatisfied with the findings and order of the examiner may file a written petition with the department for review by the commission of the findings and order.

(b) If no petition is filed within 21 days from the date that a copy of the findings and order of the examiner is mailed to the last-known address of the respondent the findings and order shall be considered final for purposes of enforcement under sub. (4) (d). If a timely petition is filed, the commission, on review, may either affirm, reverse or modify the findings or order in whole or in part, or set aside the findings and order and remand to the department for further proceedings. Such actions shall be based on a review of the evidence submitted. If the commission is satisfied that a respondent or complainant has been prejudiced because of exceptional delay in the receipt of a copy of any findings and order it may extend the time another 21 days for filing the petition with the department.

(c) On motion, the commission may set aside, modify or change any decision made by the commission, at any time within 28 days from the date thereof if it discovers any mistake therein, or upon the grounds of newly discovered evidence. The commission may on its own motion, for reasons it deems sufficient, set aside any final decision of the commission within one year from the date thereof upon grounds of mistake or newly discovered evidence, and remand the case to the department for further proceedings.

(d) If the commission affirms a finding that the respondent has engaged in discrimination, unfair honesty testing, or unfair genetic testing as alleged in the complaint, the commission shall serve a certified copy of the commission's decision on the complainant, together with a notice advising the complainant that after the completion of all administrative proceedings under this section he or she may bring an action as provided in s. 111.397 (1) (a) to recover compensatory and punitive damages as provided in s. 111.397 (2) (a) and advising the complainant of the time under s.

111.397 (1) (b) within which the action must be commenced or be barred.

(6) If an order issued under sub. (4) is unenforceable against any labor organization in which membership is a privilege, the employer with whom the labor organization has an all-union shop agreement shall not be held accountable under this chapter when the employer is not responsible for the discrimination, the unfair honesty testing or the unfair genetic testing.

111.395 Judicial review. Findings and orders of the commission under this subchapter are subject to review under ch. 227. Orders of the commission shall have the same force as orders of the department under chs. 103 to 106 and may be enforced as provided in s. 103.005 (11) and (12) or specifically by a suit in equity. In any enforcement action the merits of any order of the commission are not subject to judicial review. Upon such review, or in any enforcement action, the department of justice shall represent the commission.

111.397 Civil action. (1) (a) Except as provided in this paragraph, after the completion of all administrative proceedings under s. 111.39 concerning a violation of s. 111.321, 111.37, or 111.372, the department or a person discriminated against or subjected to unfair honesty testing or unfair genetic testing may bring an action in circuit court against any employer, labor organization, or employment agency that engaged in that discrimination, unfair honesty testing, or unfair genetic testing to recover compensatory and punitive damages caused by the violation, plus reasonable costs and attorney fees incurred in the action. Those damages are in addition to any back pay or other amounts awarded under s. 111.39. The department or a person discriminated against or subjected to unfair honesty testing or unfair genetic testing may not bring an action under this paragraph against any local governmental unit, as defined in s. 19.42 (7u), or against any employer, labor organization, or employment agency employing fewer than 15 individuals for each working day in each of 20 or more calendar weeks in the current or preceding year.

(b) An action under par. (a) shall be commenced within 60 days after the date on which a copy of the final decision under s. 111.39 (4) (d) is mailed to the last-known address of the complainant or, if that decision is reviewed by the commission, within 60 days after the date on which a copy of the final decision under s. 111.39 (5) (d) is mailed to the last-known address of the complainant, or be barred.

(c) If a petition for judicial review of the findings and order of

the commission concerning the same violation as the violation giving rise to the action under par. (a) is filed, the court shall consolidate the proceeding for judicial review and the action under par. (a).

(2) (a) Subject to pars. (c) and (d), in an action under sub. (1) (a), the circuit court shall order the defendant to pay to the person discriminated against or subjected to unfair honesty testing or unfair genetic testing compensatory damages, and punitive damages under s. 895.043, in an amount that the circuit court or jury finds appropriate, plus reasonable costs and attorney fees incurred in the action. Those damages are in addition to any back pay or other amounts awarded under s. 111.39. The sum of the amount of compensatory damages for future economic losses and for pain and suffering, emotional distress, mental anguish, loss of enjoyment of life, and other noneconomic losses and the amount of punitive damages that a circuit court may order may not exceed the following:

1. In the case of a defendant that employs 100 or fewer employees for each working day in each of 20 or more calendar weeks in the current or preceding year, \$50,000.
2. In the case of a defendant that employs more than 100 but fewer than 201 employees for each working day in each of 20 or more calendar weeks in the current or preceding year, \$100,000.
3. In the case of a defendant that employs more than 200 but fewer than 501 employees for each working day in each of 20 or more calendar weeks in the current or preceding year, \$200,000.
4. In the case of a defendant that employs more than 500 employees for each working day in each of 20 or more calendar weeks in the current or preceding year, \$300,000.

(c) If the circuit court orders any payment under par. (a) because of a violation of s. 111.321, 111.37, or 111.372 by an individual employed by an employer, the employer of that individual is liable for the payment.

(d) 1. In this paragraph, "consumer price index" means the average of the consumer price index for all urban consumers, U.S. city average, as determined by the bureau of labor statistics of the U.S. department of labor.

2. Except as provided in this subdivision, beginning on July 1, 2010, and on each July 1 after that, the department shall adjust the amounts specified in par. (a) 1., 2., 3., and 4. by calculating the percentage difference between the consumer price index for the 12-month period ending on December 31 of the preceding year and the consumer price index for the 12-month period ending on December 31 of the year before the preceding year and adjusting those amounts by that percentage difference. The department

shall publish the adjusted amounts calculated under this subdivision in the Wisconsin Administrative Register, and the adjusted amounts shall apply to actions commenced under sub. (1) (a) beginning on July 1 of the year of publication. This subdivision does not apply if the consumer price index for the 12-month period ending on December 31 of the preceding year did not increase over the consumer price index for the 12-month period ending on December 31 of the year before the preceding year.