



DISCRIMINATION BILL MAKES ITS WAY TO GOVERNOR DOYLE'S DESK

By: Jodi Arndt

Last week the Wisconsin Assembly called a "Special Session" to address a new bill that would make compensatory and punitive damages available to employees who prevail in discrimination cases brought under Wisconsin's Fair Employment Act. The final amended bill ("SB20") passed the Senate on Tuesday April 28th. After some contentious discussion, the Assembly passed the Senate's version of the Bill by a vote of 51-47. The amended bill now goes to Governor Doyle to sign into law. Based on the fact that this has been a bill introduced and supported by the Democrats in both houses, and that it has been amended to make it slightly more acceptable to employer groups than the original draft, it is likely the Governor will sign it into law.

The bill updates Wisconsin's Fair Employment Act (WFEA) by directing circuit courts to order people or companies to pay compensatory and punitive damages if they are found guilty of discriminating against employees. Under current law, neither compensatory nor punitive damages are available under the WFEA. Rather, discrimination cases are kept within the Wisconsin Department of Workforce Development (DWD) and the DWD may order only reinstatement of an employee, back pay, front pay, and payment of legal fees for the victim of discrimination.

The punitive and compensatory damages provided for under the new discrimination bill would be in addition to any penalties imposed by the DWD and the Labor and Industry Review Commission (LIRC) in the administrative proceeding.

The key components of the bill are:

1. If the DWD or LIRC finds in their proceeding that the employee has been discriminated against, they then must advise the employee of their right to bring an action in circuit court on the same offense within 60 days of the notification of the finding. This in essence creates two levels of litigation on the same claim, thereby increasing the expense of defending discrimination claims.
2. If the court finds the employer guilty, it may award compensatory damages, applying the following caps:
 - 15 - 100 employees (for each working day in each of 20 or more weeks in the current & preceding year): Maximum of \$50,000
 - 101 - 200 employees: \$100,000 cap
 - 201 - 500 employees: \$200,000 cap
 - 500 + employees: \$300,000 cap

Each of the foregoing caps is subject to Consumer Price Index (CPI) increases annually, starting in July 2010.



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3. An action for damages cannot be brought against an employer with less than 15 employees.
4. State/county/local governments are exempt from the new circuit court damages

The Bill would go into effect on the day after the new law is published, or by the second day after publication of the state's new budget act - whichever is later.

This Bill, if passed into law, will dramatically change the landscape of employment discrimination litigation in the State. The Liebmann, Conway employment team will continue to monitor progress on this Bill, and its ramifications if signed into law.