

Fair Employment, Antidiscrimination, and Worker Protection Laws in Wisconsin

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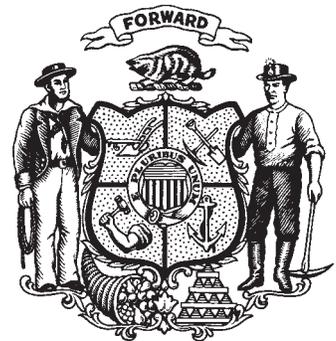


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FAIR EMPLOYMENT, ANTIDISCRIMINATION, AND WORKER PROTECTION LAWS IN WISCONSIN

SUMMARY

Wisconsin has historically been a leader in enacting laws promoting equal employment opportunities and better working conditions for its citizens, and protecting them from discrimination in other aspects of daily life.

This bulletin summarizes current Wisconsin Statutes in the areas of fair employment, antidiscrimination, and worker protection, and discusses the enforcement of those rights and protections.

WISCONSIN “FIRSTS”

Wisconsin has been an innovator in the areas of fair employment, antidiscrimination, and worker protection. It was the first state to have an operating “workmen’s compensation” law to provide monetary benefits for workers injured on the job (1911); give a single department authority over all state labor laws (1911); eliminate legal discrimination against women (1919); authorize monetary benefits for unemployed workers (1932); prohibit the use of race or national origin as factors in hiring teachers (1933); prohibit unlawful discrimination on the basis of handicap in hiring properly qualified persons (1965); and prohibit discrimination in employment, housing, and public places of accommodation or amusement on the basis of a person’s sexual orientation (1982).

FAIR EMPLOYMENT AND ANTIDISCRIMINATION LAWS

Since World War II, Wisconsin has enacted legislation prohibiting discrimination in employment on the basis of race, sex, creed, national origin, marital status, ancestry, arrest or conviction record, off-duty use of lawful products, membership in military service, sexual orientation, age, and disability.

State Policy of Nondiscrimination in Employment. Chapter 490, Laws of 1945, which prohibited employment discrimination on certain bases, contained a “Declaration of

policy” which, as amended, provides in Section 111.31, Wisconsin Statutes:

The legislature finds that the practice of unfair discrimination in employment against properly qualified individuals . . . substantially and adversely affects the general welfare of the state [and deprives] those individuals of the earnings that are necessary to maintain a just and decent standard of living.

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 . . . 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.

The statement directs that prospective employees should be evaluated on their individual qualifications and that the law should be liberally interpreted and applied to further the goal of nondiscriminatory employment. However, the law does not require affirmative action programs to correct imbalances in the workforce.

Sections 111.321 and 111.322, and Chapter DWD 218, Wisconsin Administrative Code (promulgated by the Department of Workforce Development), provide that employers, labor organizations, and employment agencies may not discriminate against properly qualified persons in hiring or termination, or with respect to promotion or

compensation, or in the terms, conditions, or privileges of employment for any of the following reasons:

- **Race:** Created by Chapter 490, Laws of 1945.
- **Creed:** Chapter 490, Laws of 1945. “Creed” is defined as 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. Employers must reasonably accommodate an employee’s religious observance or practice unless it creates an undue hardship on the business activities.
- **“Color”:** Chapter 490, Laws of 1945.
- **National origin:** Chapter 490, Laws of 1945.
- **Ancestry:** Chapter 490, Laws of 1945.
- **Age:** Chapter 149, Laws of 1959. Protects those age 40 and over. Individuals may be terminated if physically or otherwise unable to perform duties. Other exceptions include employment where employee is exposed to physical danger or hazard, such as in law enforcement or fire fighting, or mandatory retirement in certain jobs by reason of bona fide occupational qualification.
- **Sex (gender):** Chapter 529, Laws of 1961. 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 business operation would be undermined if employees were not hired exclusively from one sex. Illegal discrimination includes engaging in or permitting **sexual harassment**, which has the purpose or effect of substantially interfering with an employee’s work performance or creating an intimidating, hostile, or offensive work environment. “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, including repeated, deliberate gestures or comments or offensive graphic materials. Also prohibited is harassment due to a person’s gender, such as unwelcome verbal or physical conduct, or discriminating against a woman on the basis of pregnancy, childbirth, maternity leave, or related medical conditions.
- **Disability:** Chapter 230, Laws of 1965. (Changed from “Handicap” by 1997 Wisconsin Act 112.) Employers must reasonably accommodate an employee’s disability unless it creates an undue hardship on business activities. Discrimination in hiring, promotion, compensation, etc. is permitted if reasonably related to the employee’s ability to

adequately undertake job-related responsibilities, and the safety of the individual, coworkers, or the public may be considered on a case-by-case basis. “Individual with a disability” means a person who has a physical or mental impairment which makes achievement unusually difficult or limits the capacity to work, or has a record of or is perceived as having such an impairment.

- **Arrest or conviction record:** Chapter 125, Laws of 1977. An employer may generally not ask an employee to supply information about the employee’s arrest or conviction record unless the circumstances of the conviction or charge substantially relate to the particular job or affect the bondability of the employee, if required.
- **Sexual orientation:** Chapter 112, Laws of 1981. “Sexual orientation” means having a preference for heterosexuality, homosexuality, or bisexuality, or having a history of or being identified with such a preference.
- **Marital status:** Chapter 334, Laws of 1981. “Marital status” means the status of being married, single, divorced, separated, or widowed. It is not considered employment discrimination to prohibit an individual from directly supervising or being directly supervised by his or her spouse.
- **Military membership:** 1987 Wisconsin Act 61. Includes membership in the national guard, state defense force, or any other reserve component of the military forces of the United States or Wisconsin.
- **Use of lawful products:** 1991 Wisconsin Act 310. Employers may generally not discriminate against employees for the use or nonuse of lawful products (e.g., smoking tobacco) off the employer’s premises during nonworking hours.

No Discriminatory Questions During Hiring. An employer may not make any inquiries to a prospective employee that in any way imply or express that a prohibited basis of discrimination may be a consideration in hiring. Similar discriminatory limitations may not be included in application forms or mentioned in job advertisements. [s. 111.322 (2)]

Retaliation Prohibited. Employers may not discharge or otherwise discipline or discriminate against an employee who files a complaint or attempts to enforce any antidiscrimination or worker protection right. Disciplinary action is also barred against

someone who testifies or assists in any action to enforce these rights. [s. 111.322 (2m), (3)]

Genetic Testing Prohibited. An employer may not solicit, require, or administer a genetic test as a condition of employment. Excepted are DNA tests with the employee's informed consent for the purposes of investigating a worker's compensation claim or determining the worker's susceptibility or exposure to potentially toxic workplace chemicals or substances. [s. 111.372]

HIV Test Restrictions. Employers may generally not ask or require employees to submit to a test for the HIV virus (which may lead to AIDS), and may not use the results of such a test to affect the conditions of a person's employment. [s. 103.15]

Honesty Testing Restricted. Employers may generally not ask or require prospective or current employees to submit to a lie detector test (e.g., polygraph, voice stress analyzer). Excepted are investigations relating to theft, embezzlement, and other crimes, if the employee had access to the missing property and there is reasonable suspicion of involvement. Testing is also permitted for certain workers such as security or armored car personnel. [s. 111.37]

Open Housing. It is illegal to discriminate in the rental, lease, sale, financing, or contracting for construction of housing (including vacant land intended for construction of a residential development) because of a person's sex, race, color, sexual orientation, disability, religion, national origin, marital status, family status (such as having children), lawful source of income, age, or ancestry. Discrimination is also not permitted on the grounds that a person with a disability is associated with the buyer or renter. A person with a disability must be allowed to make reasonable, necessary modifications to rental housing provided they agree to restore the interior to the previous condition before they vacate the premises. The

landlord may require a renter to pay over time into an interest-bearing escrow account to ensure funds will be available for restorations. Persons who use a service animal to assist them due to impaired vision, hearing, or mobility may not be discriminated against, but they are responsible for sanitation and any damages caused by the animal. Landlords must make reasonable accommodations in rules, policies, practices, and services to allow persons with disabilities the full enjoyment of their housing. [s. 106.50]

Residential Insurance. A person in the business of selling residential hazard insurance may not discriminate regarding the terms and conditions of a residential policy on account of any of the bases listed in the open housing law. [s. 106.50 (2) (e)]

Public Places of Accommodation or Amusement. A proprietor may not deny someone or charge a price higher than the regular rate for the full and equal enjoyment of any place of accommodation or amusement because of a patron's sex, race, color, creed, disability, sexual orientation, national origin, or ancestry. The law applies to places such as hotels and other lodging establishments, restaurants, taverns, medical facilities, and other places of business, entertainment, or recreation. Also prohibited is discrimination in rental of public facilities. [s. 106.52]

Access by Physically Disabled Persons. The Department of Commerce must by rule provide minimum requirements to facilitate the use of public buildings and places of employment by physically disabled persons where traffic by such persons might reasonably be expected. [s. 101.13]

Service Animals in Public Facilities. A proprietor generally may not deny full and equal access to a public place of accommodation or amusement or charge a higher price to a person with a disability who uses a service animal. A person using a service animal may be excluded only if allowing the animal in would fundamentally alter the

nature of the accommodations, amusement, service, goods, or services provided or jeopardize the safe operation of the establishment. The patron may not be required to produce documentation of his or her disability or a certification or other credential that the animal is trained to be a service animal. [s. 106.52 (3) (am)]

Discrimination in Education. A public school may not discriminate against a child in admission to or treatment in any public school on account of the pupil's sex, race, religion, or national origin, ancestry, creed, pregnancy, marital or parental status, sexual orientation, or physical, mental, emotional, or learning disability. [s. 118.13, 106.58]

Higher Education Discrimination Due to Handicap. A university, technical college, or other postsecondary educational institution, if it receives any public funding, generally may not discriminate in admission or treatment due to a person's physical condition or developmental disability. [s. 106.56]

AIDS/HIV Test Insurance Protection. A health or accident insurance policy may not contain exclusions or limitations, including deductibles or copayments, for coverage of the treatment of HIV infection or a related illness or condition unless they apply to other illnesses or medical conditions covered by the policy. A life insurance policy may not deny or limit benefits solely because the insured's death is related to HIV. [s. 631.93]

DNA Tests and Insurance. A health insurer may not request an individual or a family member to obtain a genetic test or consider in the determination of policy rates whether a genetic test has been taken or the results thereof. [s. 631.89]

Motor Vehicle Insurance. An insurer may not refuse to furnish automobile insurance or charge someone a higher rate because of the person's race, color, creed, disability, national origin, or ancestry. [s. 106.52 (3) (a) 4.]

WORKER PROTECTION LAWS

Worker's Compensation. Employees who have sustained job-related injuries or illnesses are entitled to monetary and other benefits, financed either directly by self-insured employers or covered by private insurers who collect premiums from employers based on the nature and risks of the industry and a company's previous claims experience. The system encourages rehabilitation and reemployment efforts and actively promotes safety education and regulation to reduce work-related injuries, illnesses, and deaths. [Chap. 102]

Unemployment Insurance. Generally, an eligible worker who loses a job may be paid for up to 26 weeks at a rate based upon the employee's previous earnings. The system is funded through a tax on employers, which is based primarily upon each employer's total payroll and claims history. Governmental entities and nonprofit organizations have different financing options. Compensation is typically collected by those who have been laid off, but persons who quit for "just cause" may also qualify for benefits. [Chap. 108]

Family and Medical Leave. The Wisconsin Family and Medical Leave Law, created by 1987 Wisconsin Act 287, requires employers with 50 or more permanent employees to allow employees of either sex up to six weeks of leave in a calendar year for the birth or adoption of the employee's child (taken within 16 weeks of the birth or placement) and up to two weeks of leave in a calendar year in the case of an employee's own health problems or the need to care for a family member (child, spouse, or parent) with a serious health condition. To be eligible, the employee must have worked for the employer for more than 52 consecutive weeks and at least 1,000 hours during the preceding 52-week period. Total family leave taken under the law cannot exceed eight weeks in any 12-month period. Employees must, if

possible, give reasonable advance notice of intent to take leave and should make an effort to schedule medical treatment so that it does not unduly disrupt work operations. Upon return from leave, the employee must be restored to the same or an equivalent position without penalty for having taken leave. Leave taken under the law is not required to be compensated, but employers may choose to pay workers during their absence, and an employee may substitute, for portions of family or medical leave, paid or unpaid leave of any other type provided by the employer (such as sick leave). [s. 103.10]

Plant Closing and Mass Layoffs Notice. In general, unless otherwise specified by a union contract or other agreement, workers may be fired at the discretion of the employer (“employment at will”) without being given prior notice, severance pay, or a reason for the cause of the discharge. (On the other hand, workers are not required to give advance notice before quitting a job.) An exception to the at-will employment policy is that a business with more than 50 employees in the state must give 60 days written notice prior to a business closing or mass layoff. A business closing is defined as a shutdown at one or more facilities affecting 25 or more employees, and a mass layoff means a reduction in the workforce affecting: (1) at least 25% of the employer’s workforce or 25 employees, whichever is greater, or (2) at least 500 employees. Notice must be provided to the Department of Workforce Development, the affected employees, any affected union, and the highest official of the impacted municipality. Failure to provide proper and timely notice can result in liability for back pay and benefits and a business closing surcharge payable to the municipality. [s. 109.07]

Collective Bargaining Rights (labor unions). Workers may organize and bargain collectively with management over the terms and conditions of work, such as pay and benefits. An employer must negotiate in good faith with a union’s representatives, and

members are protected from intimidation, coercion, and unfair labor practices in the exercise of their rights. However, strikes and similar job actions are prohibited by public employees, such as police officers, prison guards, fire fighters, and teachers.

Some other states have “right to work” laws, which provide that workers cannot be forced to join or financially support a union as a condition of employment. In Wisconsin, private employers may enter into “union shop” agreements, whereby all of the employees in a collective bargaining unit are required to be members of a single labor union. In local government employment, the employer and a labor union representing the employees may enter into a “fair share” (agency shop) agreement, under which all employees are required to pay a proportionate share of the cost of collective bargaining and contract administration. In state government, employees in a collective bargaining unit may authorize the state and a labor union to enter into either a “fair share” agreement or a “maintenance of membership” agreement. Under a “maintenance of membership” format, all union members, and all nonunion employees in a collective bargaining unit hired after the effective date of the agreement, are required to pay the collective bargaining and contract administration costs. [Chap. 111]

Any contract or agreement which involves an employee or prospective employee promising to join, not to join, or remain a member of a labor organization is void and not enforceable. [s. 103.46, 103.52]

Minimum Wage (“Living Wage”). The Department of Workforce Development (DWD) is required to prescribe by administrative rule a minimum “living wage,” defined by law as “compensation . . . sufficient to enable the employee . . . to maintain himself or herself under conditions consistent with his or her welfare.” In determining the level of the wage, DWD may consider the effect that increasing the rate might have on the state’s economy, including its impact on job creation,

retention, and expansion; on the availability of entry-level jobs; and on regional economic conditions within the state. Lower wage rates apply to employees who receive tips, agricultural employees, minors, probationary workers who have been employed less than 60 days, and certain other categories.

After remaining static since 1997, the statewide general minimum wage for adults was increased from \$5.15 per hour to \$5.70 on June 1, 2005, and further raised to \$6.50 effective June 1, 2006. (The federal minimum wage was increased from \$5.15 to \$5.85 on July 24, 2007. It will be further increased to \$6.55 on July 24, 2008, and to \$7.25 on July 24, 2009.) State government agencies must pay the prevailing wage rates on state highway construction and other state public works projects, and municipal governments must pay prevailing rates on any local public works projects. Prevailing wages are determined by DWD for geographical areas, based on the pay and benefits received by a majority of the workers in the respective trades in that locality, which normally means union scale. [s. 103.49, s. 103.50, Chap. 104; Chap. DWD 272]

Hours of Labor, Overtime Pay. In general, Wisconsin law does not set a maximum limit on the number of hours an employee may work. However, an hourly employee who works in excess of 40 hours in a single week must be paid for overtime hours worked at a rate of at least 1.5 times the employee's regular hourly wage. Some categories of workers are exempt from the overtime pay requirements, particularly administrative, executive, and professional employees, certain sales or transportation workers, or those in industries requiring nonstandard hours and working conditions. Workers in public works projects must be paid at least 1.5 times their normal hourly rate for overtime hours, which means hours worked in excess of the number of hours customary in those trades in that area. Government employees may be provided compensatory time off in lieu of overtime pay.

Employees must generally be paid as worktime for all time controlled or required by their employer and pursued for the benefit of the employer's business, including work performed away from the premises or job site. Thus, the "workday" may be longer than the employee's scheduled shift, hours, tour of duty, or time on the production line. Ordinary commuting does not count, unless the travel involves part of the day's work.

Depending on the job situation, activities that may be considered paid work time include: waiting to perform job tasks; waiting to receive medical attention as the result of job-related illness or injury; travel during duty hours; attendance at job-approved lectures, meetings, or training programs; job-approved civic or charitable work; handling grievances; and job-approved sleeping and other personal activities. A worker must be paid if the employer is aware or should know that the person is voluntarily working past the scheduled end of an assigned shift. [s. 66.0903, s. 103.02, s. 103.025, s. 103.49, s. 103.50; DWD 272.12, Chap. DWD 274]

Deductions for Faulty Workmanship, Loss, Theft, or Damage. An employer generally may not make a deduction from wages for defective or faulty workmanship, lost or stolen property, or damage to property unless the employee authorizes the deduction in writing. However, deductions may be made if the employer and a representative designated by the employee, such as a union steward, agree that the problem is due to the employee's negligence, carelessness, or intentional misconduct or if the employee is found liable in court. In disputes about such matters, DWD serves as the determining party, subject to a court appeal. [s. 103.455]

Frequency of Wage Payments; Listing Deductions From Wages. Workers must generally be paid at least monthly, although different payment schedules may be established under collective bargaining agreements. The number of hours worked, the rate of pay, and the amount of and reason for

each payroll deduction must be clearly indicated on the paycheck or related document. [s. 103.457, s. 109.03; DWD 272.10]

Unpaid Wage Claims Collection. On behalf of workers, DWD investigates and attempts to settle disputes when an employee claims to be owed pay. It may sue the employer for wage deficiencies or refer cases to the district attorney for prosecution and collection. [s. 109.09]

The department may place a wage claim lien on the real and personal property of an employer so that the wages can be collected in the event of the firm's sale or bankruptcy. Wage claim liens take priority over most other liens or debts, regardless of when they are filed. The costs of certain environmental remediation expenses incurred by the state take precedence over wage claim liens, and liens filed by commercial lending institutions generally take precedence if the bank, credit union, or other financial institution files its lien before the wage claim lien takes effect. However, a worker's claim for the first \$3,000 of unpaid wages, if earned within the previous six months, takes precedence over any lien filed by a lender. [s. 109.09]

Safe Workplace. Every employer is required to furnish a safe workplace. The employer must provide and use safety devices and safeguards, and adopt and use methods and procedures reasonably adequate to protect the life, health, safety, or welfare of workers and visitors. Employers must also install and maintain only safe machines, mechanical devices, or steam boilers. State and local government employees are entitled to the same occupational safety and health protections granted to employees in the private sector under the federal Occupational Safety and Health Act. [s. 101.02 (15), 101.11, 101.17, 101.055]

Safe Hours of Work. A person may not be permitted to work in or at a place of employment for a period or during any day, night, or week that is dangerous to the life,

health, safety, or welfare of the employee. [s. 103.02; DWD 274.02 (1)]

Employee's Right to Know About Toxic Substance, Infectious Agent, or Pesticide. Under the employee's right to know law, posted notices must inform workers that they may request information about any toxic substances, infectious agents, or pesticides that may be present in the workplace. Upon request, the employer must provide written information regarding hazardous substances to which the worker may be exposed, ill effects or symptoms, recommended handling precautions, personal protective equipment to be worn or used, emergency treatment procedures, and procedures for cleanup and disposal. If an employer has not responded in a timely or complete manner, an employee may refuse to work with a dangerous substance, with no retaliation or discipline permitted. Prior to an employee's initial assignment to a workplace where the employee may be routinely exposed to hazardous substances, the employer must provide an appropriate education or training program. The law also provides for fire detection, prevention and suppression, and proper air ventilation. [s. 101.578-101.599]

Lunch Breaks. It is recommended, but not required, that each adult worker be allowed an off-duty meal period of at least 30 minutes during each shift of six or more hours, which should be granted reasonably close to usual meal times or near the middle of a shift. An employee must be paid for any on-duty meal period, that is, one in which the employer does not provide at least 30 minutes free from work or does not allow the employee to leave the premises. [DWD 272.12]

Rest Breaks. Breaks during work hours are not required, but the administrative code states that rest periods ("coffee breaks") of short duration, running less than 30 minutes, are common in industry and that they promote worker efficiency. They are customarily paid

for as working time and must be counted as hours worked. [DWD 272.12 (2) (c)]

Lunchrooms. A suitable space for eating lunches must be provided if the Department of Commerce determines it is reasonably necessary for protection of the life, health, safety, and welfare of employees. [s. 101.211]

Seats for Workers. Employees in manufacturing, mechanical, or mercantile establishments must be provided suitable seats which they must be allowed to use when not engaged in active work duties. [s. 103.16]

Personal Dress and Grooming Standards. New employees must be notified at the time of hiring about any hairstyle, facial hair, or clothing requirement. [s. 103.14]

One Day of Rest in Seven. Employees in factories or mercantile establishments must be allowed one day (24 consecutive hours) of rest in every calendar week. It need not be on the same day each week, so an employee can go for more than seven days without a scheduled rest. The rest requirement does not apply to certain workers, such as janitors, security personnel, employees of bakeries or dairies, or calls to duty due to mechanical breakdown or other emergency. [s. 103.85; Chap. DWD 275]

Access to, Correction, and Retention of Employee Records. Employers must allow workers to inspect and make or receive copies of their personnel files maintained by the employer, including documentation relating to any disciplinary action. The request, which the employer may require in writing, must be fulfilled within seven working days. Unless otherwise provided in a collective bargaining agreement, the employer must grant at least two requests each calendar year and may not charge more than the actual reproduction costs. If an employee disagrees with any information in the record and the parties are unable to agree regarding the removal or correction of the information, the employer must insert an employee's written statement of explanation into the file. The statement must remain attached to the disputed portion of the record and be included whenever the

personnel file is released to a third party. Medical records kept by the employer must generally also be open to the worker. Employers must keep records containing payroll and other required information for at least three years. [s. 103.13; DWD 272.11]

Employment References. An employer is immune from liability in civil court if, upon request of an employee or a prospective employer of the employee, the employer provides a good faith reference concerning a current or former employee's job performance or qualifications. [s. 895.487]

Jury Duty and Court Testimony. An employee called for jury duty must be granted a leave of absence with no adverse effect on the worker's status or loss of time in service credit. However, an employer is not required to pay for time missed due to jury service. An employee may not be discharged if subpoenaed to testify in court in a criminal or juvenile justice case. [s. 103.87, 756.255]

Retaliation Protection. A private employer may not discharge, demote, discipline, retaliate, or otherwise discriminate against an employee because he or she has exercised rights, filed a complaint, or testified or assisted in an enforcement action relating to a violation of certain state labor laws, such as hours of work, payment of wages, or the Family or Medical Leave Law. [s. 111.322]

State Government "Whistleblower" Protection. In general, employees of state government departments, agencies, or other bodies may not be disciplined for publicly disclosing information about believed violations of state or federal law, mismanagement or abuse of authority in state or local government, a substantial waste of public funds, or a danger to public health and safety. [s. 230.80-230.90]

Health Care Worker Protection – Reporting of Violations. If an employee of a hospital, nursing home, or other health care facility becomes aware of information that would lead a reasonable person to believe that there is or has been a violation of a state law or

rule or federal law or regulation, such as substandard quality of patient care or abuse of elderly people, and the disclosure of such information is not expressly legally prohibited, then the employee may report the violation to an appropriate enforcement agency. No disciplinary action may be taken against an employee who reports a violation in good faith. [s. 46.90, 146.997]

Migrant Labor Protection. DWD administers the laws regulating migrant labor. Among the protections provided is that laborers be paid all remaining wages within three days after termination of a job; agricultural workers may not be required to work more than six days in any one week, 60 hours in any one week, or 12 hours in any one day; and no laborer may be terminated or have other adverse action taken against them in retaliation for exercising any legal right. [s. 103.90 to 103.97; Chap. DWD 301]

Child Labor Laws. DWD administers the laws relating to the employment of children under age 18. Minors under age 14 generally may not be gainfully employed, except in occupations such as street trades and farming. Minors must obtain work permits, may generally not work during school hours, and are limited by age in the number of working hours. [s. 103.64 to 103.83; Chap. DWD 270]

Health Insurance Protections. In general, workers covered by an employer-sponsored group health plan may not have their benefits denied, excluded, or limited due to a preexisting health condition or their medical history, claims experience, or disability. An insurer must accept all eligible employees in the group, and there are renewability and termination protections, as well as some portability should a worker change jobs. [s. 632.745 to 632.749]

An employer of 50 or more persons who has decided to cease providing health care benefits must generally give at least 60 days written notice to all affected employees,

retirees, dependents, and collective bargaining representatives. [s. 109.075]

Clean Indoor Air Law. Except in designated smoking areas, persons generally may not smoke cigarettes or tobacco products in offices, schools, hospitals, retail establishments, or any enclosed, indoor area of a government building. Exempted are factories or offices in which the main occupants are smokers. Local police officers may enforce the law, generally upon receiving citizen complaints, and the Wisconsin Department of Justice is authorized to take enforcement action. An official or affected person may request a court injunction against repeated violators. [s. 101.123]

Ventilation Requirements for Places of Employment. If a rule requires the intake of outside air for ventilation in public buildings or places of employment, the Department of Commerce must establish minimum quantities of outside air that must be supplied based upon the type of occupancy, the number of occupants, areas with toxic or unusual contaminants, and other relevant criteria determined by the department. [s. 101.025]

Fraudulent Advertising for Labor. Employers may not use false or deceptive claims to entice workers to change jobs. An offer is in violation if it involves untrue or misleading information about the kind of work to be performed, the pay, the sanitary or other workplace conditions, or the existence of a current strike or lockout. [s. 103.43]

Noncompetition Agreements. A covenant by an employee or agent not to compete with his or her employer after termination within a specified territory and time is lawful and enforceable only if the restrictions imposed are reasonably necessary for the protection of the employer. [s. 103.465]

Required Postings in Workplace. Employers must conspicuously display notices in the workplace relating to certain employee rights. All employers are required

to display posters for the Fair Employment Law, Minimum Wages, and Unemployment Benefits. Most employers of 50 or more workers must display posters for the Family and Medical Leave Law, the "Plant Closing" law, and notification regarding the cessation of health care benefits. Other posters may be required depending on the workplace situation. (Posters available on DWD Web site: <http://dwd.state.wi.us/dwd/posters.htm>.)

ENFORCEMENT

The Department of Workforce Development's Equal Rights Division enforces laws relating to fair employment, open housing, public accommodations and amusement, wage claims, labor standards, plant closing/mass lay-off notification, cessation of health care benefits, family or medical leave, and the prevailing wage for government projects. It conducts investigations in response to complaints. The process may involve attempts to resolve an issue through conference, conciliation, or persuasion; formal hearings resulting in written findings and an order issued by a hearing examiner; and department fines. Available remedies include reinstatement and the awarding of compensation, such as back pay. The complainant may file a lawsuit if the employer fails to comply with the order.

If either party is dissatisfied with the examiner's findings and order, a petition may be filed for review by the Labor and Industry Review Commission (LIRC), an independent, quasi-judicial body attached to the department. LIRC may affirm,

modify, or reverse the examiner's conclusions in whole or in part, or set them aside and remand the matter to DWD for further proceedings. LIRC decisions are enforced by the Department of Justice (DOJ) or the commission's legal staff, and may be appealed to the circuit court. The DOJ represents the commission in court appeals.

The Department of Commerce administers and enforces laws relating to workplace health and safety.

FURTHER INFORMATION

Contacts. The departmental Web sites enable a person to e-mail inquiries, and contain summaries of laws, answers to frequently asked questions, and complaint forms and procedures.

- **DWD Equal Rights Division.** Telephone: (608) 266-6860; Milwaukee office (414) 227-4384.
Web site: <http://www.dwd.state.wi.us/er/>
- **DWD Unemployment Insurance Division:** Telephone (800) 494-4944.
Web site: <http://www.dwd.state.wi.us/ui/>
- **DWD Worker's Compensation Division:** Telephone (608) 166-1340.
Web site: <http://www.dwd.state.wi.us/wc/>
- **Department of Commerce Safety and Buildings Division:** Telephone: (608) 266-3151.
Web site: <http://commerce.wi.gov/SB/>

Statutes and Administrative Code. For copies of the statutes and rules referenced in this bulletin, go to the legislature's Web site at: <http://www.legis.wisconsin.gov>. Printed volumes of the Wisconsin Statutes are available at any public library, and statutory and code excerpts may be obtained from the Wisconsin Legislative Reference Bureau by calling (608) 266-0341.

Selected Legislative Reference Bureau Publications

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Research Bulletins

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