

Labor

AB 31 – Employment Discrimination

Rep. Sinicki

Summary of Bill (*as amended*):

Under current law a person alleging a violation of the Fair Employment Law may file a complaint with DWD. If a hearing examiner finds a violation, the examiner may order reinstatement of the employee and payment of back pay, attorney fees, and costs. Current law does not allow DWD to order the payment of compensatory or punitive damages.

Assembly Bill 31 allows the person discriminated against or DWD to bring an action in circuit court against an employer to recover damages caused by an act of employment discrimination after the completion of an administrative proceeding. If the circuit court finds the defendant guilty of discrimination, the court must order the defendant to pay compensatory and punitive damages in an amount determined by the court. The circuit court must also order the defendant pay a surcharge equal to 10% of the compensatory and punitive damages amount, which is deposited into the general fund to be credited to a DWD appropriation account. If the circuit court orders payment because of a violation by an individual employed by an employer, the employer of that individual is liable for the payment.

Assembly Substitute Amendment 1 permits DWD or a person who has been discriminated against or subjected to unfair honesty or genetic testing to bring action in circuit court to recover compensatory and punitive damages, plus reasonable costs and attorney fees, after the completion of all administrative proceedings before DWD and the Labor & Industry Review Commission. The damages are in addition to any back pay or other amounts awarded in the administrative proceeding.

The amendment prohibits such action against the state, a state agency, or a local governmental unit, or against an employer employing fewer than 15 employees. The amendment provides that the sum of the amount of compensatory damages be indexed for inflation and may not exceed the following: employers with 16-100 employees -- \$50,000; 100-200 employees -- \$100,000; 201-500 employees -- \$200,000; more than 500 employees -- \$300,000 (currently identical to federal caps).

The circuit court must order that the defendant pay a fee to the court equal to 10% of the damages. Half of the fee must be deposited by DOA into the general fund to be credited to a DWD appropriation account. The other half is retained by the court to pay for the cost of operating the county's circuit court. *[ASA1 to AB 31 adopted 5-3-1; Honadel, Nass, and Knodl voted No; Soletski absent]*

Fiscal Effect:

DWD anticipates that fewer than 10 cases per year will actually be litigated in circuit court and the surcharge awarded in these cases will generate no more than \$5,000 annually in revenue for the department.

If AB 31 becomes law, DOJ will defend the state when it is sued as an employer for violations. DOJ estimates that it will require one additional Assistant Attorney General and one additional paralegal to handle the increased caseload resulting from these new legal defense responsibilities. *{Note: the bill as amended prohibits any such actions against the state.}* DOJ may provide legal services to DWD in cases where DWD is the plaintiff. If the number of cases in which DOJ prosecutes, rather than defends, is significant, DOJ will require further additional resources.

Supporters Message:

- Ensuring a fair workplace is essential for all employees and they have a right to damages when a violation occurs.
- This bill is necessary to put teeth in existing law to ensure equal pay and fair treatment.

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Opponents Message:

- By allowing compensatory and punitive damages under unclear standards in the judicial process, this bill will have a strong negative impact on the state's business climate, especially at a time of unprecedented economic challenge.
- Will force businesses to spend more time and money on liability issues rather than investment and innovation.
- The bill does not provide a standard for punitive damages, allowing an employee to receive damages even if there is no showing of malice or recklessness by the employer.
- The surcharge feature of the bill creates an incentive for DWD to take employment discrimination claims to circuit court to fund agency operations; and creates a conflict of interest for the court, which would benefit from a percentage of judgments awarded.

Key Supporters:

Rep. Christine Sinicki (author); Sen. Dave Hansen (author); Wisconsin State AFL-CIO; AFT-Wisconsin. Wisconsin Counties Association registered in favor on the GAB web site.

Key Opponents:

WMC; NFIB; WI Civil Justice Council; WI Restaurant Association; WI Builders Association; WI Hospital Association. Registering on the GAB web site: Alliance of Wisconsin Retailers, LLC; American Family Insurance Group; Associated General Contractors of Greater Milwaukee Inc; Fox Cities Chamber of Commerce & Industry; Green Bay Area Chamber of Commerce; Midwest Equipment Dealers Association Inc; Midwest Food Processors Association Inc; Sentry Insurance Group; Wisconsin Association of Campground Owner; Wisconsin Automotive Aftermarket Association Inc; Wisconsin Automotive Parts Association; Wisconsin Car Rental Alliance; Wisconsin Cast Metals Association; Wisconsin Defense Counsel (formerly Civil Trial Counsel of Wisconsin); Wisconsin Innkeepers Association; Wisconsin Petroleum Marketers & Convenience Store Association.

Committee Vote:

On April 16, 2009, the Assembly Committee on Labor recommended passage of AB31, as amended, on a vote of 5-3-1. [Honadel, Nass, and Knodl voted No; Soletski absent]

Staff Author of Bill Summary

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