



2017 ASSEMBLY BILL 974

February 22, 2018 - Introduced by Representative SINICKI, cosponsored by Senator CARPENTER. Referred to Committee on State Affairs.

1 **AN ACT** *to amend* 111.39 (4) (d), 111.39 (5) (b) and 814.04 (intro.); and *to create*
2 111.39 (5) (d) and 111.397 of the statutes; **relating to:** authorizing the circuit
3 court to order a person who engages in discrimination in employment on the
4 basis of military service to pay compensatory and punitive damages.

Analysis by the Legislative Reference Bureau

This bill permits the Department of Workforce Development or a person who is alleged or was found to have been discriminated against on the basis of military service to bring an action in circuit court to recover compensatory and punitive damages caused by the act of discrimination, plus reasonable costs and attorney fees incurred in the action. Those damages are in addition to any back pay or other amounts awarded in any administrative proceeding. The bill, however, does not permit an action for damages to be brought against any local governmental unit or against any employer employing fewer than 15 individuals.

Under the bill, if the circuit court finds that a defendant has discriminated on the basis of military service, the circuit court must order the defendant to pay to the person discriminated against compensatory and punitive damages in an amount that the circuit court finds appropriate, subject to the following limitations:

1. If the defendant employs 100 or fewer employees, no more than \$50,000.
2. If the defendant employs more than 100 but fewer than 201 employees, no more than \$100,000.
3. If the defendant employs more than 200 but fewer than 501 employees, no more than \$200,000.

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4. If the defendant employs more than 500 employees, no more than \$300,000.

The bill requires DWD to annually revise these amounts based upon the change in the consumer price index in the previous year, if any positive change has occurred.

Under current law, employment discrimination on the basis of military service includes discriminating against an individual 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. Employment discrimination on the basis of military service, however, does not include refusing to hire, employ, or license an individual or barring or terminating an individual from employment or licensure because the individual has been less than honorably discharged from military service and the circumstances of the discharge substantially relate to the circumstances of the particular job or licensed activity.

Under current law, a person alleging discrimination in employment on the basis of military service may file a complaint with DWD seeking action that will effectuate the purpose of the employment discrimination law, including reinstating the complainant, providing back pay, and paying costs and attorney fees. Current law, however, does not authorize DWD to award compensatory or punitive damages to a complainant.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 111.39 (4) (d) of the statutes is amended to read:

2 111.39 (4) (d) The department shall serve a certified copy of the findings and
3 order on the respondent, the order to have the same force as other orders of the
4 department and be enforced as provided in s. 103.005. The department shall also
5 serve a certified copy of the findings and order on the complainant, together with a
6 notice advising the complainant about the right to seek, and the time for seeking,
7 review by the commission under sub. (5); about the right to bring, and the time for
8 bringing, an action for judicial review under s. 111.395; and, if the complaint alleges
9 discrimination on the basis of military service, about the right to bring, and the time
10 for bringing, an action under s. 111.397 (1) (a). Any person aggrieved by

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1 noncompliance with the order may have the order enforced specifically by suit in
2 equity. If the examiner finds that the respondent has not engaged in discrimination,
3 unfair honesty testing, or unfair genetic testing as alleged in the complaint, the
4 ~~department shall serve a certified copy of the examiner's findings served~~ on the
5 complainant, ~~together with~~ shall be accompanied by an order dismissing the
6 complaint.

7 **SECTION 2.** 111.39 (5) (b) of the statutes is amended to read:

8 111.39 (5) (b) ~~If no petition is filed~~ the respondent or complainant does not file
9 a petition under par. (a) within 21 days from the date that a copy of the findings and
10 order of the examiner is ~~mailed to the last-known address of the respondent served~~
11 on that party, the findings and order shall be considered final for purposes of
12 enforcement under sub. (4) (d). If a timely petition is filed, the commission, on review,
13 may either affirm, reverse, or modify the findings or order in whole or in part, or set
14 aside the findings and order and remand to the department for further proceedings.
15 Such actions shall be based on a review of the evidence submitted. If the commission
16 is satisfied that a respondent or complainant has been prejudiced because of
17 exceptional delay in the receipt of a copy of any findings and order, ~~it~~ the commission
18 may extend the time another 21 days for filing the petition with the department.

19 **SECTION 3.** 111.39 (5) (d) of the statutes is created to read:

20 111.39 (5) (d) The commission shall serve a certified copy of the commission's
21 decision on the complainant, together with a notice advising the complainant about
22 the right to bring, and the time for bringing, an action for judicial review under s.
23 111.395 and, if the complaint alleges discrimination on the basis of military service,
24 about the right to bring, and the time for bringing, an action under s. 111.397 (1) (a).

25 **SECTION 4.** 111.397 of the statutes is created to read:

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1 **111.397 Civil action.** (1) (a) Except as provided in this paragraph, the
2 department or a person alleged or found to have been discriminated against on the
3 basis of military service may bring an action in circuit court against any employer,
4 labor organization, or employment agency that is alleged or found to have engaged
5 in that discrimination to recover compensatory and punitive damages caused by the
6 violation, plus reasonable costs and attorney fees incurred in the action. Those
7 damages are in addition to any back pay or other amounts awarded under s. 111.39
8 or 111.395. The department or a person alleged or found to have been discriminated
9 against may not bring an action under this paragraph against any local
10 governmental unit, as defined in s. 19.42 (7u), or against any employer, labor
11 organization, or employment agency employing fewer than 15 individuals for each
12 working day in each of 20 or more calendar weeks in the current or preceding year.

13 (b) If a petition for judicial review of the findings and order of the commission
14 concerning the same violation as the violation giving rise to the action under par. (a)
15 is filed, the circuit court shall consolidate the proceeding for judicial review and the
16 action under par. (a).

17 **(2)** (a) Subject to pars. (b) and (c), in an action under sub. (1) (a), if the circuit
18 court finds that discrimination on the basis of military service has occurred, or if such
19 a finding has been made by an examiner or the commission and not been further
20 appealed, the circuit court shall order the defendant to pay to the person
21 discriminated against compensatory damages, and punitive damages under s.
22 895.043, in an amount that the circuit court or jury finds appropriate, plus
23 reasonable costs and attorney fees incurred in the action. Those damages are in
24 addition to any back pay or other amounts awarded under s. 111.39 or 111.395. The
25 sum of the amount of compensatory damages for future economic losses and for pain

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1 and suffering, emotional distress, mental anguish, loss of enjoyment of life, and other
2 noneconomic losses and the amount of punitive damages that a circuit court may
3 order may not exceed the following:

4 1. In the case of a defendant that employs 100 or fewer employees for each
5 working day in each of 20 or more calendar weeks in the current or preceding year,
6 \$50,000.

7 2. In the case of a defendant that employs more than 100 but fewer than 201
8 employees for each working day in each of 20 or more calendar weeks in the current
9 or preceding year, \$100,000.

10 3. In the case of a defendant that employs more than 200 but fewer than 501
11 employees for each working day in each of 20 or more calendar weeks in the current
12 or preceding year, \$200,000.

13 4. In the case of a defendant that employs more than 500 employees for each
14 working day in each of 20 or more calendar weeks in the current or preceding year,
15 \$300,000.

16 (b) If the circuit court orders any payment under par. (a) because of a violation
17 by an individual employed by an employer, the employer of that individual is liable
18 for the payment.

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

22 2. Except as provided in this subdivision, beginning on July 1, 2019, and on
23 each July 1 after that, the department shall adjust the amounts specified in par. (a)
24 1., 2., 3., and 4. by calculating the percentage difference between the consumer price
25 index for the 12-month period ending on December 31 of the preceding year and the

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1 consumer price index for the 12-month period ending on December 31 of the year
2 before the preceding year and adjusting those amounts by that percentage
3 difference. The department shall publish the adjusted amounts calculated under
4 this subdivision in the Wisconsin Administrative Register, and the adjusted amounts
5 shall apply to actions commenced under sub. (1) (a) beginning on July 1 of the year
6 of publication. This subdivision does not apply if the consumer price index for the
7 12-month period ending on December 31 of the preceding year did not increase over
8 the consumer price index for the 12-month period ending on December 31 of the year
9 before the preceding year.

10 **SECTION 5.** 814.04 (intro.) of the statutes is amended to read:

11 **814.04 Items of costs.** (intro.) Except as provided in ss. 93.20, 100.195 (5m)
12 (b), 100.30 (5m), 106.50 (6) (i) and (6m) (a), 111.397 (2) (a), 115.80 (9), 767.553 (4) (d),
13 769.313, 802.05, 814.245, 895.035 (4), 895.044, 895.443 (3), 895.444 (2), 895.445 (3),
14 895.446 (3), 895.506, 943.212 (2) (b), 943.245 (2) (d), 943.51 (2) (b), and 995.10 (3),
15 when allowed costs shall be as follows:

16 **SECTION 6. Initial applicability.**

17 (1) **EMPLOYMENT DISCRIMINATION ON THE BASIS OF MILITARY SERVICE; DAMAGES.** This
18 act first applies to acts of employment discrimination on the basis of military service
19 committed on the effective date of this subsection.

20 **(END)**