



2003 ASSEMBLY BILL 338

May 13, 2003 - Introduced by Representatives JOHNSRUD, HAHN, MUSSER, OTT, ALBERS, HINES, LOEFFELHOLZ and GRONEMUS, cosponsored by Senator ROBSON. Referred to Committee on Labor.

1 **AN ACT to amend** 111.33 (2) (intro.), 111.33 (2) (a), 111.39 (1) and 230.44 (3); and
2 **to create** 111.33 (1m) of the statutes; **relating to:** prohibiting an employer
3 from terminating the employment of an employee who is 40 years of age or over
4 without just cause and the time within which an employment discrimination
5 complaint in which the act charged is termination of employment must be filed.

Analysis by the Legislative Reference Bureau

Under current law, subject to certain exceptions, the employer-employee relationship is governed by the employment-at-will doctrine, under which an employer may discharge an employee "for good cause, for no cause, or even for a cause morally wrong, without being thereby guilty of a legal wrong." *Hauseman v. St. Croix Care Center*, 214 Wis. 2d 655 (1997). Currently, one of the exceptions to the employment-at-will doctrine is the fair employment law, which prohibits discrimination on various bases including discrimination on the basis of age against a person 40 years of age or over. This bill specifies that employment discrimination because of age includes terminating the employment of an employee who is 40 years of age or over without just cause.

The bill provides, however, that it is not employment discrimination because of age to terminate the employment of an employee because of misconduct, malfeasance, inefficiency, or neglect of duty connected with the employee's employment or to lay off an employee due to a work stoppage or a lack of work or funds or due to any conditions in which continuation of the employee's employment

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would be inefficient or nonproductive. In addition, the bill excludes from its coverage temporary employees, probationary employees, employees covered by a collective bargaining agreement that prohibits termination of employment without just cause, public officers who are appointed to serve at the pleasure of the appointing authority, elective or appointed public officers whose removal from office is already governed under procedures specified under current law, and state and local government employees, such as University of Wisconsin System faculty and academic staff, law enforcement officers, and employees covered under a civil service system, for whom termination of employment for cause is already governed under procedures specified under current law.

Under current law, the Department of Workforce Development (DWD) or, in the case of a state employee, the Personnel Commission may receive and investigate a complaint charging discrimination in employment if the complaint is filed with DWD or the Personnel Commission no more than 300 days after the alleged discrimination occurred. In cases in which the act of discrimination charged is termination of employment, the date on which the alleged discrimination occurred is considered to be the date on which the employee was notified of the termination and not the date on which the termination took effect. *Hilmes v. DILHR*, 147 Wis. 2d 48 (Ct. App 1988). This bill permits DWD or the Personnel Commission to receive and investigate a complaint in which the act of discrimination charged is termination of employment if the complaint is filed with DWD or the Personnel Commission no more than 300 days after the date on which the employer notified the employee of the termination or the date on which the termination took effect, whichever is later.

For further information see the *state and local* 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.** 111.33 (1m) of the statutes is created to read:
- 2 111.33 **(1m)** (a) In this subsection:
- 3 1. “Probationary period” means, in the case of an employee who is required
- 4 under a civil service system or a collective bargaining agreement to serve a
- 5 probationary period on original appointment, the probationary period that the
- 6 employee is required to serve under that system or agreement before achieving
- 7 permanent status or, in the case of an employee other than an employee who is
- 8 required under a civil service system or a collective bargaining agreement to serve

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1 a probationary period on original appointment, a reasonable probationary period
2 established by the employer that is no longer than necessary to ensure that the
3 employee has the knowledge, skills, and abilities to perform competently the
4 required tasks of the employee's position.

5 2. "Temporary employee" means an employee who is employed for a brief,
6 nonrecurrent period with no reasonable expectation that the employee's position will
7 continue indefinitely or for a significant period of time.

8 (b) Subject to par. (c) and sub. (2) (a), employment discrimination because of age
9 includes terminating the employment of an employee who is age 40 or over without
10 just cause.

11 (c) Paragraph (b) does not apply to a temporary employee, an employee serving
12 a probationary period, an employee who is covered under a collective bargaining
13 agreement that prohibits termination of employment without just cause, a public
14 officer who is appointed to serve at the pleasure of the appointing authority, an
15 elective or appointed public officer whose removal from office is governed under ss.
16 17.06 to 17.16, or an employee of the state or of a local governmental unit for whom
17 termination of employment for cause is governed by the procedures specified in s.
18 21.28 (3), 21.37, 36.13 (5), 36.15 (3), 59.26 (8) (b), 59.52 (8), 60.56 (1) (am), 61.65 (1)
19 (am), 62.13 (5) or (6m), 62.50 (11) to (22), 63.10, 63.43, 63.44, 66.0509, 118.22, 118.23,
20 119.42, or 230.44 (1) (c).

21 **SECTION 2.** 111.33 (2) (intro.) of the statutes is amended to read:

22 111.33 (2) (intro.) Notwithstanding ~~sub.~~ subs. (1) and (1m) and s. 111.322, it is
23 not employment discrimination because of age to do any of the following:

24 **SECTION 3.** 111.33 (2) (a) of the statutes is amended to read:

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1 111.33 (2) (a) To terminate the employment of any employee because the
2 employee is physically or otherwise unable to perform his or her duties or because
3 of misconduct, malfeasance, inefficiency, or neglect of duty connected with the
4 employee's employment or to lay off any employee due to a work stoppage or a lack
5 of work or funds or due to any conditions in which continuation of the employee's
6 employment would be inefficient or nonproductive.

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

8 111.39 (1) The Except as provided in this subsection, the department may
9 receive and investigate a complaint charging discrimination, discriminatory
10 practices, unfair honesty testing, or unfair genetic testing in a particular case if the
11 complaint is filed with the department no more than 300 days after the date on which
12 the alleged discrimination, discriminatory practice, unfair honesty testing, or unfair
13 genetic testing occurred. The department may receive and investigate a complaint
14 in which the act charged is termination of employment if the complaint is filed with
15 the department no more than 300 days after the date on which the employer notified
16 the employee of the termination or the date on which the termination took effect,
17 whichever is later. The department may give publicity to its findings in the case.

18 **SECTION 5.** 230.44 (3) of the statutes is amended to read:

19 230.44 (3) TIME LIMITS. Any Except as provided in this subsection, any appeal
20 filed under this section may not be heard unless the appeal is filed within 30 days
21 after the effective date of the action, or within 30 days after the appellant is notified
22 of the action, whichever is later, except that if. If the appeal alleges discrimination
23 under subch. II of ch. 111, the time limit for that part of the appeal alleging such
24 discrimination shall be 300 days after the alleged discrimination occurred, except
25 that if the act alleged is termination of employment, the time limit for that part of

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1 the appeal alleging that act shall be 300 days after the date on which the appointing
2 authority notified the employee of the termination or the date on which the
3 termination took effect, whichever is later.

4 **SECTION 6. Initial applicability.**

5 (1) FILING OF EMPLOYMENT DISCRIMINATION COMPLAINTS. This act first applies to
6 an employee who is notified on the effective date of this subsection that his or her
7 employment is being terminated.

8 (END)