

1991 Assembly Bill 515

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1991 WISCONSIN ACT 117

AN ACT to amend 111.375 (1) and (2), 111.39 (1), 111.39 (4) (b), 111.39 (4) (c), 111.39 (4) (d) and 111.39 (6); and to create 111.32 (7m), 111.32 (13r), 111.372 and 942.07 of the statutes, relating to: prohibiting genetic testing by employers, labor organizations, employment agencies and licensing agencies and providing penalties.

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

SECTION 1. 111.32 (7m) of the statutes is created to read:

111.32 (7m) "Genetic testing" means a test of a person's genes, gene products or chromosomes, for abnormalities or deficiencies, including carrier status, that are linked to physical or mental disorders or impairments, or that indicate a susceptibility to illness, disease, impairment or other disorders, whether physical or mental, or that demonstrate genetic or chromosomal damage due to environmental factors.

SECTION 2. 111.32 (13r) of the statutes is created to read:

111.32 (13r) "Unfair genetic testing" means any test or testing procedure that violates s. 111.372.

SECTION 3. 111.372 of the statutes is created to read:

111.372 Use of genetic testing in employment situations. (1) No employer, labor organization, employment agency or licensing agency may directly or indirectly:

(a) Solicit, require or administer a genetic test to any person as a condition of employment, labor organization membership or licensure.

(b) Affect the terms, conditions or privileges of employment, labor organization membership or licensure or terminate the employment, labor organization membership or licensure of any person who obtains a genetic test.

(2) Except as provided in sub. (4), no person may sell to or interpret for an employer, labor organization, employment agency or licensing agency a genetic test of an employe, labor organization member or licensee or of a prospective employe, labor organization member or licensee.

(3) Any agreement between an employer, labor organization, employment agency or licensing agency and another person offering employment, labor organization membership, licensure or any pay or benefit to that person in return for taking a genetic test is prohibited.

(4) This section does not prohibit the genetic testing of an employe who requests a genetic test and who provides written and informed consent to taking a genetic test for any of the following purposes:

(a) Investigating a worker's compensation claim under ch. 102.

(b) Determining the employe's susceptibility or level of exposure to potentially toxic chemicals or potentially toxic substances in the workplace, if the employer does not terminate the employe, or take any other action that adversely affects any term, condition or privilege of the employe's employment, as a result of the genetic test.

SECTION 4. 111.375 (1) and (2) of the statutes are amended to read:

111.375 (1) Except as provided under sub. (2), this subchapter shall be administered by the department. The department may make, amend and rescind such rules as are necessary to carry out this subchapter. The department or the commission may, by such agents or agencies

as it designates, conduct in any part of this state any proceeding, hearing, investigation or inquiry necessary to the performance of its functions. The department shall preserve the anonymity of any employe who is the aggrieved party in a complaint of discrimination in promotion, compensation or terms and conditions of employment ~~or~~ of unfair honesty testing or of unfair genetic testing against his or her present employer until a determination as to probable cause has been made, unless the department determines that the anonymity will substantially impede the investigation.

(2) This subchapter applies to each agency of the state except that complaints of discrimination ~~or~~ unfair honesty testing or unfair genetic testing against the agency as an employer shall be filed with and processed by the personnel commission under s. 230.45 (1) (b). Decisions of the personnel commission are subject to review under ch. 227.

SECTION 5. 111.39 (1) of the statutes is amended to read:

111.39 (1) The department may receive and investigate a complaint charging discrimination ~~or~~ discriminatory practices ~~or~~ unfair honesty testing or unfair genetic testing in a particular case if the complaint is filed with the department no more than 300 days after the alleged discrimination ~~or~~ unfair honesty testing or unfair genetic testing occurred. The department may give publicity to its findings in the case.

SECTION 6. 111.39 (4) (b) of the statutes is amended to read:

111.39 (4) (b) If the department finds probable cause to believe that any discrimination has been or is being committed ~~or that~~ unfair honesty testing has occurred or is occurring or that unfair genetic testing has occurred or is occurring, it may endeavor to eliminate the practice by conference, conciliation or persuasion. If the department does not eliminate the discrimination ~~or~~ unfair honesty testing or unfair genetic testing, the department shall issue and serve a written notice of hearing, specifying the nature of the discrimination ~~which that~~ appears to have been committed or unfair honesty testing ~~which or unfair genetic testing that~~ has occurred, and requiring the person named, in this section called the "respondent", to answer the complaint at a hearing before an examiner. The notice shall specify a time of hearing not less than 30 days after service of the complaint, and a place of hearing within either the county of the respondent's residence or the county in which the discrimination ~~or~~ unfair honesty testing or unfair genetic testing appears to have occurred. The testimony at the hearing shall be recorded or taken down by a reporter appointed by the department.

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

111.39 (4) (c) If, after hearing, the examiner finds that the respondent has engaged in discrimination ~~or~~ unfair honesty testing or unfair genetic testing, the examiner

shall make written findings and order such action by the respondent as will effectuate the purpose of this subchapter, with or without back pay. If the examiner awards any payment to an employe because of a violation of s. 111.321 by an individual employed by the employer, under s. 111.32 (6), the employer of that individual is liable for the payment. If the examiner finds a respondent violated s. 111.322 (2m), the examiner shall award compensation in lieu of reinstatement if requested by all parties and may award compensation in lieu of reinstatement if requested by any party. Compensation in lieu of reinstatement for a violation of s. 111.322 (2m) may not be less than 500 times nor more than 1,000 times the hourly wage of the person discriminated against when the violation occurred. Back pay liability may not accrue from a date more than 2 years prior to the filing of a complaint with the department. Interim earnings or amounts earnable with reasonable diligence by the person discriminated against or subjected to unfair honesty testing or unfair genetic testing shall operate to reduce back pay otherwise allowable. Amounts received by the person discriminated against or subject to the unfair honesty testing or unfair genetic testing as unemployment benefits or welfare payments shall not reduce the back pay otherwise allowable, but shall be withheld from the person discriminated against or subject to unfair honesty testing or unfair genetic testing and immediately paid to the unemployment reserve fund or, in the case of a welfare payment, to the welfare agency making the payment.

SECTION 8. 111.39 (4) (d) of the statutes is amended to read:

111.39 (4) (d) The department shall serve a certified copy of the findings and order on the respondent, the order to have the same force as other orders of the department and be enforced as provided in ch. 101. Any person aggrieved by noncompliance with the order may have the order enforced specifically by suit in equity. If the examiner finds that the respondent has not engaged in discrimination ~~or~~ unfair honesty testing or unfair genetic testing as alleged in the complaint, the department shall serve a certified copy of the examiner's findings on the complainant together with an order dismissing the complaint.

SECTION 9. 111.39 (6) of the statutes is amended to read:

111.39 (6) If an order issued under sub. (4) is unenforceable against any labor organization in which membership is a privilege, the employer with whom the labor organization has an all-union shop agreement shall not be held accountable under this chapter when the employer is not responsible for the discrimination ~~or the~~ unfair honesty testing or the unfair genetic testing.

SECTION 11. 942.07 of the statutes is created to read:
942.07 Use of genetic tests. (1) In this section:

(a) "Employer" has the meaning given in s. 111.32 (6).

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(b) “Employment agency” has the meaning given in s. 111.32 (7).

(c) “Genetic test” means a test of a person’s genes, gene products or chromosomes for abnormalities or deficiencies, including carrier status, that are linked to physical or mental disorders or impairments, or that indicate a susceptibility to illness, disease, impairment or other disorders, whether physical or mental, or that demonstrate genetic or chromosomal damage due to environmental factors.

(d) “Labor organization” has the meaning given in s. 111.32 (9).

(e) “Licensing agency” has the meaning given in s. 111.32 (11).

(2) No employer, labor organization, employment agency or licensing agency may require or administer a genetic test without the prior written and informed consent of the employe, labor organization member or licensee, or of the prospective employe, labor organization member or licensee, who is the subject of the test.

(3) No person may disclose to an employer, labor organization, employment agency or licensing agency that an employe, labor organization member or licensee, or a prospective employe, labor organization member or licensee, has taken a genetic test, and no person may disclose the results of such a test to an employer, labor organization, employment agency or licensing agency without the prior written and informed consent of the subject of the test.

(4) Whoever violates this section is guilty of a Class B misdemeanor.

SECTION 12. Initial applicability. (1) COLLECTIVE BARGAINING AGREEMENTS. The treatment of section 111.372 of the statutes first applies to a collective bargaining agreement that contains provisions inconsistent with section 111.372 of the statutes, as created by this act, on the day after that collective bargaining agreement expires or on the day on which that contract is extended, modified or renewed.
