

03/22/2001 03:19:29 PM
Page 1

2001 DRAFTING REQUEST

Bill

Received: **01/31/2001**

Received By: **malaigm**

Wanted: **As time permits**

Identical to LRB:

For: **Christine Sinicki (608) 266-8588**

By/Representing: **Jan Koloen**

This file may be shown to any legislator: **NO**

Drafter: **malaigm**

May Contact:

Addl. Drafters:

Subject: **Discrimination - employment**

Extra Copies:

Pre Topic:

No specific pre topic given

Topic:

Equal pay commission

Instructions:

See Attached--establish equal pay commission to study and make recommendations on wage disparities based on gender, race, and national origin and provide for damages and civil penalties for employment discrimination.

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	malaigm 02/09/2001	jdye 02/09/2001		_____			S&L
/1			pgreensl 02/12/2001	_____	lrb_docadmin 02/12/2001	lrb_docadmin 03/22/2001	

FE Sent For:

<END>

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1?	malaigm	1/1 2/9 jld	2/12 pg	2/12 pmf pg			

FE Sent For:

<END>

Equal Pay Remedies and Enforcement Act

SECTION 1. SHORT TITLE

SHORT TITLE - This Act shall be called the "Equal Pay Remedies and Enforcement Act."

SECTION 2. FINDINGS AND STATEMENT OF PURPOSE

(a) FINDINGS - The [name of legislative body] finds the following:

(1) Despite federal and state laws banning discrimination in employment and pay, in both the private and public sector, wage differentials persist between women and men, and between minorities and non-minorities in the same jobs, and in jobs that are dissimilar but that require equivalent composites of skill, effort, responsibility and working conditions;

(2) The existence of such wage differentials

(A) depresses wages and living standards for employees necessary for their health and efficiency;

(B) reduces family incomes and contributes to the higher poverty rates among female-headed and minority households;

(C) prevents the maximum utilization of the available labor resources;

(D) tends to cause labor disputes, thereby burdening, affecting, and obstructing commerce;

(E) constitutes an unfair method of competition; and

(F) [insert a state specific finding, e.g., "constitutes an unfair labor practice under state law or violates the state's public policy against discrimination"];

(3) Discrimination in wage-setting practices has played a role in depressing wages for women and minorities generally;

(4) Many individuals work in occupations that are dominated by individuals of their same sex, race, and/or national origin, and discrimination in hiring, job assignment and promotion has played a role in establishing and maintaining segregated work forces;

(5) Eliminating discrimination in compensation based on sex, race and national origin would have positive effects, including -

(A) providing a solution to problems in the economy created by discriminatory wage differentials;

(B) reducing the number of working women and people of color earning low wages, thereby lowering their incidence of poverty during normal working years and in retirement; and

(C) promoting stable families by raising family incomes.

(6) Current remedies imposed on employers who practice discrimination in pay between men and women, and between minorities and non-minorities, have proven to be only partially effective in eliminating such wage disparities;

(7) Understanding the full extent and the causes of wage disparities in the private and public sector, between men and women, and between minorities and non-minorities, would enable the state to take more effective measures to reduce disparities and to eliminate discrimination in wage-setting.

(b) PURPOSE - It is the purpose of this Act to:

(1) effectively correct and deter discriminatory wage practices based on sex, race, and/or national origin;

(2) develop reliable data about the extent of such wage discrimination; and

(3) provide greater understanding about its causes.

SECTION 3. ENHANCED PENALTIES

(a) Section ____ [citation to remedial section of State Equal Pay Act] of the [name of State Equal Pay Act] is amended:

1. by inserting after [citation to sentence providing for monetary remedies]: "Any employer who violates section(s) [citation to section(s) prohibiting wage discrimination] shall additionally be liable for such compensatory and punitive damages as may be appropriate."

2. by inserting after [citation to last section on remedies]: "Any employer found liable by virtue of a final judgment under this Act for any monetary damages provided thereunder shall pay to the state a civil penalty equal to 10 percent of the amount of damages owed. Such civil penalty shall be used by the state solely for the purpose of carrying out its responsibilities for the administration and/or enforcement of this Act, including, but not limited to, carrying out the research mandated by Section 5 of this Act, and/or the administration and/or enforcement of [insert name(s) of other state employment discrimination laws]."

SECTION 4. EQUAL PAY COMMISSION

~~(a)~~ Within 90 days after the effective date of this Act, the [title of State Commissioner or Secretary of Labor/Employment] shall appoint a Commission of 9 members, to be known as the "Equal Pay Commission."

~~(b)~~ Membership on the Commission shall be as follows:

~~(1)~~ two representatives of business in the State, who are appointed from among individuals nominated by state business organizations and business trade associations;

~~(2)~~ two representatives of labor organizations, who have been nominated by State labor federations; for purposes of this subclause, a State labor federation is an organization that

~~(a)~~ is chartered by a federation of national or international unions,

~~(b)~~ admits to membership local unions, and;

~~(c)~~ exists primarily to carry on educational, legislative and coordinating activities;

~~(3)~~ two representatives of organizations whose objectives include the elimination of pay disparities between men and women and/or minorities and non-minorities, and who have undertaken advocacy, educational or legislative initiatives in pursuit of that objective; and

~~(4)~~ three individuals drawn from higher education or research institutions who have experience and expertise in the collection and analysis of data concerning such pay disparities and whose research has already been used in efforts to promote the elimination of those disparities.

~~(5)~~ The Commission shall make a full and complete study of:

~~(1)~~ the extent of wage disparities, both in the public and private sector, between men and women, and between minorities and non-minorities; and

~~(2)~~ those factors which cause, or which tend to cause, such disparities, including segregation between women and men, and between minorities and non-minorities across and within occupations; payment of lower wages for work in female-dominated occupations; child-rearing responsibilities; and education and training; and

~~(3)~~ the consequences of such disparities on the economy and families affected; and

~~(4)~~ actions, including proposed legislation, that are likely to lead to the elimination and prevention of such disparities.

~~(5)~~ The Commission shall, no later than 12 months after its members are appointed, make its report to the [title of State Commissioner or Secretary of Labor/Employment], who shall, in turn, transmit it to the Governor.

~~(6)~~ The Commission's report shall include the results of its study as well as recommendations, legislative and otherwise, for the elimination and prevention of disparities in wages between men and women, and between minorities and non-minorities.

SECTION 5. EFFECTIVE DATE - This act shall take effect on July 1, 2001.

Malaise, Gordon

From: Koloen, Jan
Sent: Wednesday, January 31, 2001 8:47 AM
To: Malaise, Gordon
Cc: Champagne, Rick
Subject: RE: Equal Pay

This budget amendment applies only to employers of 40 or more people--Rep. Sinicki's intent is to prohibit discrimination altogether. I have attached model legislation below. Please call me at 6-8588 to discuss it.



Doc2.doc

-----Original Message-----

From: Malaise, Gordon
Sent: Tuesday, January 30, 2001 1:01 PM
To: Koloen, Jan
Cc: Champagne, Rick
Subject: Equal Pay

<< File: 99b1361/1 >>

Jan:

Rick Champagne has advised me that you are interested in drafting a bill requiring equal pay for equal work. Actually, current s. 111.36 (1) (a) already prohibits discrimination in compensation paid for equal or substantially similar work. What current law does not cover, however, is discrimination in compensation paid for work of *comparable worth*, that is, work that is different from the work in question, but is of comparable worth as measured by the skill, effort, and responsibility normally required in the performance of the work and the conditions under which the work is normally performed.

For an example of comparable worth legislation, see Assembly Amendment 9 to ASA 1 to AB 133, a copy of which is attached, which was introduced by the Assembly Democratic Caucus in last session's budget debate.

If this is what you have in mind, please advise and I can redraft AA 9 or something similar as a bill for this session.

Gordon M. Malaise
Senior Legislative Attorney
Legislative Reference Bureau
Phone: (608) 266-9738



State of Wisconsin
2001 - 2002 LEGISLATURE

LRB-2336/10
GMM.....
JLC

LPS - please
check auto refs

1 AN ACT ^{gen}...; relating to: authorizing ~~a hearing examiner~~ in the department of
 2 workforce development to order a person who discriminates in promotion,
 3 compensation, or in terms, conditions, or privileges of employment on the basis
 4 of sex, race, color, national origin, or ancestry to pay compensatory and punitive
 5 damages and an assessment, ~~and~~ directing the secretary of workforce
 6 development to appoint a committee to study wage disparities between men
 7 and women and between minority group members and nonminority group
 8 members. ^{and making an appropriation}

That

Analysis by the Legislative Reference Bureau

Under the current fair employment law, if the department of workforce development (DWD) finds that a person has refused to hire an individual, terminated an individual's employment, or discriminated against an individual in promotion, compensation, or in terms, conditions, or privileges of employment on the basis of the individual's age, race, creed, color, disability, marital status, sex, national origin, ancestry, arrest or conviction record, membership in the national guard or military reserves, or use or nonuse of a lawful product during nonwork hours, DWD may order the person to take such action as will effectuate the purpose of the fair employment law. ~~This~~ action may include reinstating the employee and providing back pay for not more than two years before the filing of the complaint, costs, and attorney's fees. Current law, however, does not authorize DWD to order the payment

of compensatory or punitive damages or any other assessments or penalties in a case of employment discrimination.

This bill authorizes DWD to order a person who has discriminated against an individual in promotion, compensation, or in terms, conditions, or privileges of employment on the basis of the individual's sex, race, color, national origin or ancestry to pay to the individual compensatory and punitive damages in an amount that DWD finds appropriate and to pay to DWD an assessment equal to 10% of the amount of compensatory and punitive damages ordered. DWD ~~then~~ must use those assessments collected for the administration of the fair employment law. (secretary)

The bill also directs the secretary of workforce development, to appoint a committee to study the issue of wage disparities between men and women and between minority group members and nonminority group members and to recommend solutions and policy alternatives, including proposed legislation to eliminate and prevent those wage disparities. The committee must consist of representatives of business and industry, organized labor, organizations whose objectives include the elimination of wage disparities, and employees of institutions of higher education or research institutions who have experience and expertise in the collection and analysis of data concerning wage disparities. The committee must report its findings, conclusions, and recommendations to the secretary of workforce development by the first day of the 15th month beginning after publication of the bill, and the secretary must submit that report to the appropriate standing committees of the legislature and to the governor by the first day of the 16th month beginning after publication of the bill.

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. 20.445 (1) (gr) of the statutes is created to read:
2 20.445 (1) (gr) *Employment discrimination assessments*. All moneys received
3 from assessments collected under s. 111.39 (4) (c) 2., for the administration of subch.
4 II of ch. 111.

5 SECTION 2. 111.39 (4) (c) of the statutes is renumbered 111.39 (4) (c) 1. and
6 amended to read:

7 111.39 (4) (c) 1. If, after hearing, the examiner finds that the respondent has
8 engaged in discrimination, unfair honesty testing, or unfair genetic testing, the

1 examiner shall make written findings and order such action by the respondent as
2 will effectuate the purpose of this subchapter, with or without back pay. ~~If the~~
3 ~~examiner awards any payment to an employee because of a violation of s. 111.321 by~~
4 ~~an individual employed by the employer, under s. 111.32 (6), the employer of that~~
5 ~~individual is liable for the payment. If the examiner finds a respondent violated s.~~
6 ~~111.322 (2m), the examiner shall award compensation in lieu of reinstatement if~~
7 ~~requested by all parties and may award compensation in lieu of reinstatement if~~
8 ~~requested by any party. Compensation in lieu of reinstatement for a violation of s.~~
9 ~~111.322 (2m) may not be less than 500 times nor more than 1,000 times the hourly~~
10 ~~wage of the person discriminated against when the violation occurred.~~ ✓ Back pay
11 liability may not accrue from a date more than 2 years prior to the filing of a
12 complaint with the department. Interim earnings or amounts earnable with
13 reasonable diligence by the person discriminated against or subjected to unfair
14 honesty testing or unfair genetic testing shall operate to reduce back pay otherwise
15 allowable. Amounts received by the person discriminated against or subject to the
16 unfair honesty testing or unfair genetic testing as unemployment benefits or welfare
17 payments shall not reduce the back pay otherwise allowable, but shall be withheld
18 from the person discriminated against or subject to unfair honesty testing or unfair
19 genetic testing and immediately paid to the unemployment reserve fund or, in the
20 case of a welfare payment, to the welfare agency making the payment.

History: 1973 c. 268; 1977 c. 29, 196; 1979 c. 221, 319, 355; 1981 ~~a.~~ ✓ 34 ss. 20, 25 (2); Stats. 1981 s. 111.39; 1983 a. 122; 1989 a. 228; 1991 a. 117; 1995 a. 27.

21 **SECTION 3.** 111.39 (4) (c) 2. of the statutes is created to read:

22 111.39 (4) (c) 2. If the examiner ✓ finds that a respondent has discriminated
23 against a person in promotion, compensation, or in terms, conditions, or privileges
24 of employment on the basis of sex, race, color, national origin, or ancestry, ✓ the

1 examiner, in addition to any action ordered under subd. 1., shall order the
 2 respondent to pay to the person compensatory and punitive damages in an amount
 3 that the examiner finds appropriate and to pay to the department an assessment
 4 equal to 10% of the amount of compensatory and punitive damages ordered. All
 5 assessments collected under this subdivision shall be deposited in the general fund
 6 and credited to the appropriation account under s. 20.445 (1) (gr).

7 SECTION 4. 111.39 (4) (c) 3. of the statutes is created to read:

8 111.39 (4) (c) 3. If the examiner orders any payment under subd. 1. or 2. because
 9 of a violation of s. 111.321 by an individual employed by an employer, as defined in
 10 s. 111.32 (6), the employer of that individual is liable for the payment.

11 SECTION 5. 111.39 (4) (c) 4. of the statutes is created to read:

12 111.39 (4) (c) 4. If the examiner finds a respondent violated s. 111.322 (2m), the
 13 examiner shall award compensation in lieu of reinstatement if requested by all
 14 parties and may award compensation in lieu of reinstatement if requested by any
 15 party. Compensation in lieu of reinstatement for a violation of s. 111.322 (2m) may
 16 not be less than 500 times nor more than 1,000 times the hourly wage of the person
 17 discriminated against when the violation occurred.

18 SECTION 6. Nonstatutory provisions.

19 (1) WAGE DISPARITY STUDY. (a) ^{ff} Definition. In this subsection, "minority group
 20 member" has the meaning given in section 560.036 (1) (f) of the statutes.

21 (b) Committee. By the first day of the 3rd month beginning after the effective
 22 date of this paragraph, the secretary of workforce development shall create and appoint a committee consisting of the members
 23 specified in paragraph (c) to study the issues specified in paragraph (d) and report
 24 its findings, conclusions, and recommendations as provided in paragraph (e).

1 (c) *Membership.* The committee shall consist of the following members:

2 1. Two members who are representatives of business and industry, who shall
3 be appointed from a list of candidates submitted by an association that represents
4 the interests of businesses and industries in this state.

5 2. Two members who are representatives of organized labor, who shall be
6 appointed from a list of candidates submitted by a labor organization that is
7 chartered by a federation of national or international labor organizations, admits to
8 membership local labor organizations, and exists primarily to carry on educational,
9 legislative, and coordinating activities.

10 3. Two members who are representatives of organizations whose objectives
11 include the elimination of wage disparities between men and women and between
12 minority group members and nonminority group members and who have
13 undertaken advocacy, educational, or legislative initiatives in pursuit of that
14 objective.

15 4. Three members who are employees of an institution of higher education or
16 a research institution and who have experience and expertise in the collection and
17 analysis of data concerning wage disparities between men and women and between
18 minority group members and nonminority group members and whose research has
19 been used in efforts to eliminate those disparities.

20 (d) *Study.* The committee shall study all of the following:

21 1. The extent to which wage disparities exist, in both the public and private
22 sectors, between men and women and between minority group members and
23 nonminority group members.

24 2. The factors that cause, or that tend to cause, those wage disparities,
25 including segregation between men and women and between minority group

1 members and nonminority group members, both within and across occupations; the
 2 payment of lower wages in occupations dominated by women or by minority group
 3 members; disparities between men and women in child-rearing responsibilities; and
 4 disparities in education and training between men and women and between minority
 5 group members and nonminority group members. *wage*

6 3. The consequences of those *wage* disparities on the economy and on individual
 7 families.

8 (e) *Recommendations.* The committee shall recommend solutions and policy
 9 alternatives, including proposed legislation, to eliminate and prevent wage
 10 disparities between men and women and between minority group members and
 11 nonminority group members. By the first day of the 15th month beginning after the
 12 effective date of this paragraph *revisor inserts date*, the committee shall report
 13 its findings, conclusions, and recommendations to the secretary of workforce
 14 development who shall submit that report to the appropriate standing committees
 15 of the legislature in the manner provided under section 13.72 (3) of the statutes and
 16 to the governor by the first day of the 16th month beginning after publication *revisor inserts date*.
 17 *revisor inserts date*.

18 **SECTION 7. Initial applicability.**

19 (1) *Employment discrimination damages.* The renumbering and amendment
 20 of section 111.39 (4) (c) of the statutes and the creation of section 111.30 (4) (c) 2., 3.,
 21 and 4. of the statutes first apply to acts of employment discrimination committed on
 22 the effective date of this subsection.

23 (END)



STEPHEN R. MILLER
CHIEF

State of Wisconsin

LEGISLATIVE REFERENCE BUREAU

100 NORTH HAMILTON STREET
5TH FLOOR
MADISON, WI 53701-2037

LEGAL SECTION: (608) 266-3561
LEGAL FAX: (608) 264-6948

February 12, 2001

MEMORANDUM

To: Representative Sinicki

From: Gordon M. Malaise, Senior Legislative Attorney

Re: LRB-2336 Equal pay commission

The attached draft was prepared at your request. Please review it carefully to ensure that it is accurate and satisfies your intent. If it does and you would like it jacketed for introduction, please indicate below for which house you would like the draft jacketed and return this memorandum to our office. If you have any questions about jacketing, please call our program assistants at 266-3561. Please allow one day for jacketing.

 X JACKET FOR ASSEMBLY JACKET FOR SENATE

If you have any questions concerning the attached draft, or would like to have it redrafted, please contact me at (608) 266-9738 or at the address indicated at the top of this memorandum.

If the last paragraph of the analysis states that a fiscal estimate will be prepared, the LRB will request that it be prepared after the draft is introduced. You may obtain a fiscal estimate on the attached draft before it is introduced by calling our program assistants at 266-3561. Please note that if you have previously requested that a fiscal estimate be prepared on an earlier version of this draft, you will need to call our program assistants in order to obtain a fiscal estimate on this version before it is introduced.

Please call our program assistants at 266-3561 if you have any questions regarding this memorandum.

Barman, Mike

From: Barman, Mike
Sent: Friday, March 23, 2001 8:51 AM
To: Koloen, Jan
Subject: LRB-2336/1 (per your request)

Mike Barman

Mike Barman - Senior Program Asst. (PH. 608-266-3561)
(E-Mail: mike.barman@legis.state.wi.us) (FAX: 608-264-6948)

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