



## WISCONSIN LEGISLATIVE COUNCIL AMENDMENT MEMO

**2007 Senate Bill 165**

**Senate Amendments 1 and 2**

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### **Current Law**

Under the current fair employment law, when the Department of Workforce Development (DWD) finds that a person has refused to hire an individual, terminate an individual's employment or discriminated against an individual in promotion, in 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. That action may include reinstating the employee, providing back pay for not more than two years before the filing of the complaint, and paying costs and attorney fees. Current law, however, does not authorize DWD to order the payment of compensatory or punitive damages or any other surcharges or penalties in a case of employment discrimination.

### **Senate Bill 165**

**Senate Bill 165** permits a person who has been discriminated against or DWD to bring an action in circuit court to recover damages caused by the act of discrimination. Under the bill, if the circuit court finds that a defendant has committed an act of discrimination, the circuit court must order the defendant to pay to the person discriminated against compensatory and punitive damages in an amount that the court finds appropriate and to pay the circuit court a surcharge equal to 10% of the amount of the compensatory and punitive damages ordered.

The bill also directs the Secretary of DWD to appoint a committee to study the disparities between men and women and between minority and nonminority group members and to make recommendations, including legislation, to eliminate and prevent any wage disparities.

### **Senate Amendment 1**

*Senate Amendment 1* to Senate Bill 165 limits the amount of compensatory damages. Specifically, the sum of the amount of compensatory damages for future economic losses and for pain and suffering, emotional distress, mental anguish, loss of enjoyment of life, and other noneconomic losses and the amount of punitive damages a circuit court may order a defendant to pay to a person discriminated against may not exceed the following:

1. In the case of a defendant who employs 100 or fewer employees for each working day in each of 20 or more calendar weeks in the current or preceding year, \$50,000.
2. In the case of a defendant that employs more than 100, but fewer than 201, employees for each working day in each of 20 or more calendar weeks in the current or preceding year, \$100,000.
3. In the case of a defendant who employs more than 200, but fewer than 501 employees for each working day in each of 20 or more calendar weeks in the current or preceding year, \$200,000.
4. In the case of a defendant that employs more than 500 employees on each working day in each of 20 or more calendar weeks in the current or preceding year, \$300,000.

Senate Amendment 1 makes no other changes in the bill.

### **Senate Amendment 2**

*Senate Amendment 2* deletes the provisions in the bill that directed the Secretary of DWD to appoint a committee to conduct a wage disparity study. Senate Amendment 2 also deletes the delayed effective date in the bill. It should be noted that the Act will take effect on the day following publication. Also, the damages section will first apply to acts of employment discrimination committed on the effective date of the Act.

### **Legislative History**

Senate Bill 165 was introduced on April 25, 2007, by Senator Hansen and others; cosponsored by Representative Sinicki and others and referred to the Committee on Labor, Elections and Urban Affairs. That committee held a public hearing on August 28, 2007. At an executive session held on January 23, 2008, the committee adopted Senate Amendment 1 on a vote of Ayes, 5; Noes, 0 and recommended passage of the bill, as amended, on a vote of Ayes, 3; Noes, 2.

Senate Amendment 2 was introduced by Senator Hansen. Senate Amendments 1 and 2 were both adopted by the Senate on voice votes. The bill was recommended for passage on a vote of ayes, 18; Noes, 14, and messaged to the Assembly.

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