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Details:

(FORM UPDATED: 08/11/2010)

**WISCONSIN STATE LEGISLATURE ...
PUBLIC HEARING - COMMITTEE RECORDS**

2007-08

(session year)

Senate

(Assembly, Senate or Joint)

**Committee on ... Labor, Elections and Urban
Affairs (SC-LEUA)**

COMMITTEE NOTICES ...

- Committee Reports ... **CR**
- Executive Sessions ... **ES**
- Public Hearings ... **PH**

INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL

- Appointments ... **Appt** (w/Record of Comm. Proceedings)
- Clearinghouse Rules ... **CRule** (w/Record of Comm. Proceedings)
- Hearing Records ... bills and resolutions (w/Record of Comm. Proceedings)
(**ab** = Assembly Bill) (**ar** = Assembly Resolution) (**ajr** = Assembly Joint Resolution)
(**sb** = Senate Bill) (**sr** = Senate Resolution) (**sjr** = Senate Joint Resolution)
- Miscellaneous ... **Misc**

Memo

TO: Members of the Senate Committee on Labor, Elections and Urban Affairs

FROM: James Buchen, Vice President, Government Relations

DATE: August 28, 2007

RE: Senate Bill 165 – Cause of Action in Court and Punitive Damages and Administration Assessment for Wisconsin Fair Employment Act Cases

Background

Under the current Wisconsin Fair Employment Act (WFEA), 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, in compensation, or in the 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 WFEA.

Remedies for a violation may include reinstating the employee and providing back pay for not more than two years before the filing of the complaint, costs, and attorney fees. The current WFEA 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.

Provisions of SB 165

1. **WFEA Cause of Action in Court and Unlimited Punitive Damages**
This bill permits DWD or a person who has been discriminated against in promotion, in compensation, or in the terms, conditions, or privileges of employment on the basis of the various protected classes to bring action in circuit court to recover damages caused by the act of discrimination.
2. Under the bill, if the circuit court finds that a defendant has committed such 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 circuit court finds appropriate and to pay to the circuit court an assessment equal to 10 percent of the amount of compensatory and punitive damages ordered. Assessments collected under the bill must be transmitted to the state treasurer, deposited in the general fund, and credited to an appropriation account of DWD, which must use those assessments for the administration of the fair employment law.
3. **Wage Disparity Study**
The bill also directs the secretary of workforce development (secretary) 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 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.

WMC Position – Oppose

The bill allows unlimited punitive damages to be assessed in court actions against all Wisconsin employers, regardless of size, for violations of the WFEA. These remedies go significantly beyond the damages available for violations of Federal Title VII discrimination laws.

The smallest Wisconsin employers, employing fewer than fifteen workers, who are not subject to Federal Title VII claims, are subject to the WFEA and would be subject to the punitive damage provisions of the bill.

The bill also creates a rather cumbersome process requiring employers to defend themselves both in front of the DWD in an administrative proceeding and, in addition, before the courts for a determination of punitive damages. This will be a costly and time consuming process requiring legal counsel.

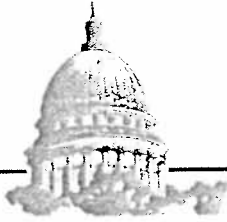
WMC strongly opposes the proposed unlimited liability for punitive damages for WFEA violations. This legislation would have a strong negative impact on the Wisconsin business climate.

WMC also opposes any provision in the law, like the one proposed here, that creates an incentive for an agency to find discrimination. The administrative assessment in this proposal will have that affect.

Conclusion

For these reasons, WMC opposes SB 165, and urges the Committee to vote against this legislation.





WISCONSIN STATE SENATOR

DAVE HANSEN

SENATOR – 30TH DISTRICT

ASSISTANT MAJORITY LEADER

Testimony on SB 83, 121, 165
Senate Committee on Labor, Elections and Urban Affairs
Tuesday, August 28, 2007

Chairman Coggs and members

Thank you for the opportunity to speak today in favor of three proposals I have introduced this session that I believe will help all working families in Wisconsin. Senate Bill 83 exempts all unemployment compensation from state taxes. When a family is struggling to pay their bills with the loss of employment, I don't think the state should be taking more money out of their pockets. We should be doing all we can to help them get back on their feet. This bipartisan legislation will provide a little more help to families struggling through the economic hardship of job loss.

Senate Bill 121 was introduced on behalf of Teamsters Local 75 to remedy a situation that recently occurred in Brown County.

After over two years of bargaining with Brown County, the union and

Committees

Joint Committee on Finance, Senate Vice Chair
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Commerce, Utilities and Rail
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the county went to interest arbitration. After arbitration, the county took the union's dues check off away. They had taken the arbitration rights away in the summer of 2004 after contracts had expired in December, 2003. During this time, the union was reduced to filing prohibitive practice charges for minor infractions but was left with no ability to protect their members from discharge during this time. They were, in effect, "employees at will" even though they were represented. While the dues check off was taken away, members were required to pay their dues directly to the local union without payroll deduction. While the union is now trying to convince Brown County to recoup the delinquent dues from the employees, the county is not complying. This is all unreasonable because both taking away the dues check off and denying the grievance arbitration procedures is aimed at union busting. Neither helps the employer in any way other than putting a hardship on the union. This gives the employer an advantage over the union in bargaining. The dispute resolution process was put in place to avoid strikes. This loophole only fuels tension between employees and their employers.

Senate Bill 121 closes this loophole by making it a prohibited practice under MERA for an employer or an employee to end any grievance arbitration agreement during a contract hiatus and for an employer to end any fair-share agreement during a contract hiatus.

And finally, Senate Bill 165, the Equal Pay Enforcement Act. This legislation is long overdue and I very much appreciate your and the committee's consideration, Mr. Chair.

SB 165 is needed because Wisconsin families lose more than \$4,000 per year due to unequal pay. While women nationally earn approximately 77 cents on the dollar compared to men, here in Wisconsin women earn 75% of that earned by their male coworkers. Wisconsin ranks 39th nationally on this issue.

The Equal Pay Enforcement Act sends an important message about the value that we, as a society, place on the efforts of individual workers. People deserve to be fairly compensated for putting in a hard day's work. We need to find ways to make sure people are paid in a fair and equitable manner for being productive, contributing

members of our workforce and to encourage policies that help working families become independent and economically secure.

The wage gap is not going to correct itself quickly, or without our intervention. The wage gap has narrowed, on average a half a penny per year over the 30 years since the federal Equal Pay Act was passed. The Equal Pay Enforcement Act will allow the Department of Workforce Development to order payment or damages in cases of employment discrimination. This bill also directs the Secretary of DWD to appoint a committee to study the issue of wage disparities between men and women and between minority group members and nonminority groups.

It is time for the State of Wisconsin to return to its progressive roots and set an example for the rest of our country.

The Equal Pay Enforcement Act will ensure that wages are based on skill, effort, responsibility and working conditions, and not race or gender.

Thank you Mr. Chairman and members. I'd be happy to answer any questions.





WISCONSIN LEGISLATURE

P.O. Box 7882 Madison, WI 53707-7882

FROM THE OFFICES OF:

State Sen. Dave Hansen 608 266-5670

State Rep. Christine Sinicki 608 266-8588

FOR IMMEDIATE RELEASE

August 28, 2007

Senator Hansen and Representative Sinicki Testify in Support of Equal Pay Enforcement Act *Wisconsin Lawmakers Want to Ensure Equal Pay for Working Families*

(Madison)--State Senator Dave Hansen and Representative Christine Sinicki testified today in favor of Senate Bill 165, legislation that seeks to secure equal pay for the thousands of working families who are denied fair pay due to wage discrimination based on race and gender. Lieutenant Governor Barb Lawton also testified in favor of the legislation.

"This bill has support and momentum in the Legislature to become law," stated State Representative Christine Sinicki of Milwaukee, a co-author of the legislation and author of the Assembly companion legislation (Assembly Bill 310). "I hope we'll see this bill scheduled for hearing in the Assembly soon as well."

Senate Bill 165 is being considered by the Senate Committee on Labor, Elections and Urban Affairs, chaired by Senator Spencer Coggs.

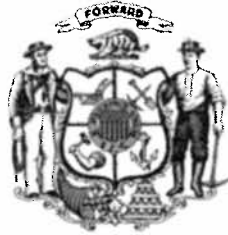
"I am pleased, now that my Democratic colleague is chairing the Senate committee, that this bill will finally receive the consideration it deserves," said Hansen. "As policy makers, we need to find ways to make sure people are paid in a fair and equitable manner for the work they do regardless of things like what age, race or gender they are,"

The Equal Pay Enforcement Act will do two things. First, it will strengthen existing pay equity laws. Second, the bill will call for a study of existing wage disparities to identify causes, solutions, and policy alternatives for the Department of Workforce Development to pursue.

Nationally, working families lose \$200 billion per year because women are paid less than men for the same work. Wisconsin families lose more than \$4,000 per year due to unequal pay. While women nationally earn approximately 77 cents on the dollar compared to men, here in Wisconsin women earn 75% of that earned by their male counterparts.

"We need to encourage policies that promote fairness for all in the workplace and by doing so we'll help working families become independent and economically secure," Hansen said.





STATE OF WISCONSIN

BARBARA LAWTON
LT. GOVERNOR

SB 165
Folder

Tuesday, August 28, 2007

Contacts: Robert Chappell, Office of the Lieutenant Governor, 608-266-3516 or 608-219-4371

Lt. Governor Lawton Offers “Unequivocal Support” for Equal Pay Enforcement

Lt. Governor Testifies Before Senate Panel in Support of Senate Bill 165

MADISON – Lt. Governor Barbara Lawton today presented the following testimony before the State Senate Committee on Labor, Elections and Urban Affairs in support of the Equal Pay Enforcement Act, which would allow for compensatory and punitive damages in cases of workplace discrimination:

“To Chairman Coggs and Senator Wirsch, Senator Lehman, Senator Grothman and Senator Lasee:

“Thank you for the opportunity to personally voice my unequivocal support of Senate Bill 165 to guarantee enforcement of equal pay protections and set the state on the path to better policy to eliminate discriminatory wage disparities once and for all.

“I will focus my comments on equal pay for women because it directly impacts nearly every one of us – either as wage earners that constitute half of the population or as their family members. In fact, nearly 80% mothers of school-age children were in the paid workforce in 2003. And that 25 cent wage gap on every dollar – more if you are a woman of color – translates to anywhere from \$700,000 to \$2-3 million (and more for higher paid professions) in wages lost over a woman’s work life, money that could change health outcomes and education preparation – lost opportunities for families, lost tax revenue for our state.

“Our administration appreciates the important contribution women make to our state, and we know we can no longer afford to undervalue their work. Wisconsin counts a higher than average percentage of baby boomers, lower than average birthrate and a significant brain drain –loss of college educated young people—that is, in its majority, young women. And we have a workforce crisis bearing down on us because of it.

“I believe we must then brand ourselves as the best state in the nation for women to work and raise a family to change our economic prospects. That is the advice of the national group CEOs for Cities in their report titled *The Young and the Restless in a Knowledge Economy*. They say that if we want to recruit and retain the talent we need

to drive economic growth in our state in this 21st century global economy, we must make people the focus of economic development and become a place where women and ethnically diverse young people can achieve their goals.

“If we want to develop a strong workforce, retain our college educated youth and recruit more of the same, Senate Bill 165 is an essential first-step strategy. I wish we could boast bipartisan support for this bill that is so critical to our economic outlook. I ask every one of you to provide leadership to make that happen to make Wisconsin strong.”



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J. Michael End, Milwaukee
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Daniel A. Rottier, Madison



Keeping Wisconsin Families Safe
www.watl.org

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August 28, 2007

Senator Spencer Coggs
Chair, Senate Committee on Labor, Elections and Urban Affairs
Room 123 South, State Capitol
P.O. Box 7882
Madison, WI 53707

RE: Senate Bill 165

Dear Sen. Coggs:

The Wisconsin Academy of Trial Lawyers (WATL) is unable to appear in person today to speak in favor of Senate Bill 165, however please register our support for the bill.

WATL, established as a voluntary trial bar, is a non-profit corporation with approximately 1,000 members located throughout the state. The objectives and goals of WATL are the preservation of the civil jury trial system, the improvement of the administration of justice, the provision of facts and information for legislative action, and the training of lawyers in all fields and phases of advocacy.

Discrimination is a pervasive problem in society. Numerous complaints are filed each year in Wisconsin alleging discrimination on the basis of race, sex, religion, national origin, physical disability, age and sexual orientation. Discriminatory practices include bias in hiring, promotion, job assignment, termination, compensation, and various types of harassment.

The main body of employment discrimination laws is composed of federal and state statutes. The United States Constitution and some state constitutions provide additional protection where the employer is a

governmental body or the government has taken significant steps to foster the discriminatory practice of the employer. Discrimination in the private sector is not directly constrained by the Constitution, but has become subject to a growing body of federal and state statutes.

Under federal anti-discrimination statutes, a person alleging discrimination is entitled to compensatory and punitive damages. A complaint is filed with the Equal Opportunity Employment Commission (EEOC), which interprets and enforces the Equal Payment Act, Age Discrimination in Employment Act, Title VII, Americans With Disabilities Act, and sections of the Rehabilitation Act.

After an investigation, the EEOC issues a notice of right to sue. This is an expensive and time-consuming proposition because the lawsuit must be brought in federal court. It may take two or three years before the case is heard and it will cost thousands of dollars to prosecute.

The State of Wisconsin and the EEOC have concurrent jurisdiction over discrimination complaints. In other words, discrimination complaints are shared between the state and federal agencies. State and federal agencies can investigate complaints and a complainant can start at the federal level and move to the state level or start at the federal level and move to the state level. However, once a complaint is filed in court, he or she cannot switch tracks.

Current state remedies for discrimination are very limited, which is why passage of SB 165 is very important. Right now a person alleging discrimination can only recover damages for lost wages and the right to be reinstated in the job. The lost wage damages may be very little because they are reduced by wages earned in a new job. In other words, if a person is earning \$8 an hour and leaves because of discrimination and then finds a new job for \$6 an hour, he or she can only recover the \$2 an hour lost.

In addition, Wisconsin has no provision for providing damages if people have not lost their jobs, but are working in a "hostile work environment." Why should people lose their job before they can bring a claim for discrimination in Wisconsin?

Limited damages make it very difficult to bring discrimination cases. Attorneys turn down dozens of cases because damages are limited and most people cannot afford to pay an hourly fee.

Employers know the penalties for discrimination are very low in Wisconsin and that they can engage in discriminatory practices without being held accountable. Passage of SB 165 sends a very important message to employers that Wisconsin will no longer tolerate discrimination in the workplace.

If you have any questions, please do not hesitate to contact our office.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert Jaskulski". The signature is fluid and cursive, with the first name "Robert" written in a larger, more prominent script than the last name "Jaskulski".

Robert L. Jaskulski, President



Plotkin, Adam

From: Kim Bautz [kbautz@wmc.org] on behalf of James Buchen [jbuchen@wmc.org]
Sent: Wednesday, January 23, 2008 9:47 AM
To: Sen.Coggs; Sen.Wirch; Sen.Lehman; Sen.Grothman; Sen.Lasee
Cc: James Buchen; John Metcalf
Subject: Oppose SB 165

TO: Members of the Senate Committee on Labor, Elections and Urban Affairs

FROM: James Buchen, Vice President, Government Relations

DATE: January 23, 2008

RE: Opposition to Senate Bill 165 – Cause of Action in Court and Punitive Damages and Administrative Assessment for Wisconsin Fair Employment Act Cases

Background

Under the current Wisconsin Fair Employment Act (WFEA), 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, in compensation, or in the 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 WFEA.

Remedies for a violation may include reinstating the employee and providing back pay for not more than two years before the filing of the complaint, costs, and attorney fees. The current WFEA 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.

Provisions of SB 165

1. **WFEA Cause of Action in Court and Unlimited Punitive Damages**
This bill permits DWD or a person who has been discriminated against in promotion, in compensation, or in the terms, conditions, or privileges of employment on the basis of the various protected classes to bring action in circuit court to recover damages caused by the act of discrimination.
2. Under the bill, if the circuit court finds that a defendant has committed such 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 circuit court finds appropriate and to pay to the circuit court an assessment equal to 10 percent of the amount of compensatory and punitive damages ordered. Assessments collected under the bill must be transmitted to the state treasurer, deposited in the general fund, and credited to an appropriation account of DWD, which must use those assessments for the administration of the fair employment law.
3. **Wage Disparity Study**
The bill also directs the secretary of workforce development (secretary) 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 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.

WMC Position – Oppose Unlimited Damages

The bill allows unlimited punitive damages to be assessed in court actions against all Wisconsin employers, regardless of size, for violations of the WFEA. These remedies go significantly beyond the damages available for violations of Federal Title VII

discrimination laws.

The smallest Wisconsin employers, employing fewer than fifteen workers, who are not subject to Federal Title VII claims, are subject to the WFEA and would be subject to the punitive damage provisions of the bill.

Cumbersome Review Process

The bill also creates a rather cumbersome process requiring employers to defend themselves both in front of the DWD in an administrative proceeding and, in addition, before the courts for a determination of punitive damages. This will be a costly and time consuming process requiring legal counsel.

WMC strongly opposes the proposed unlimited liability for punitive damages for WFEA violations. This legislation would have a strong negative impact on the Wisconsin business climate.

Agency Incentive

WMC also opposes any provision in the law, like the one proposed here, that creates an incentive for an agency to find discrimination. The administrative assessment in this proposal will have that affect.

Conclusion

For these reasons, WMC opposes SB 165, and urges the Committee to vote against this legislation.





Wisconsin

April 22, 2008

Dear Legislator,

Today, we are joining women from across the country in acknowledging Equal Pay Day. This is the day in 2008 that women finally earn what men earned as of the end of December, 2007.

On the average, women earn \$.77 to every man's dollar. The situation is even more serious for women of color. African American women earn \$.72 and Latino women earn \$.59. Only one group is better than the average and that is Asian American women who earn \$.93. Even though the gap has narrowed over the years, at its current rate pay equity will not be achieved until 2057.

While earnings statistics do not tell the whole story, they are an important indicator of the progress we have made in wage parity and in economic opportunity, such as ensuring fair opportunities to earn more.

Pay equity does not mandate across-the-board salaries for any occupation, nor does it tamper with supply and demand. It merely means that wages must be based on job requirements such as skill, effort, responsibility and working conditions without consideration of race, sex, or ethnicity.

In today's society with more heads of households being single women, it is imperative that women obtain pay equity. Women are not given a discount for groceries, housing, utilities, transportation, or education simply for being women. Why should they be expected to accept a "discount" in their pay?

Every day women are falling further behind, many ending up living out their final years in poverty. Do you want that to happen to yourself? To your mother, or wife or daughter? This is **not** simply a woman's issue. It is an issue that affects families, business and communities.

We are asking you to stand up for the women of this state and pledge that you will **support Equal Pay** for all.

Lin Clousing
BPW.WI Legislation Chair

Packet

SB 165
Folder

WISCONSIN FEDERATION OF BUSINESS & PROFESSIONAL WOMEN **LEGISLATIVE PLATFORM**

Because the fundamental law is embodied in our governmental constitution and all statutory rights are derived there from, support of enactment of the Alice Paul Equal Rights Amendment shall stand first and foremost above all other items which may appear on the Legislative Platform of the Wisconsin Federation of Business and Professional Women (BPW/WI) until equal rights for all citizens are constitutionally guaranteed.

MISSION STATEMENT

To achieve equity for all women in the workplace through education, advocacy and information.

PURPOSE

BPW/WI supports the right of women to develop to their fullest potential and encourages responsible political involvement at every level of government.

ACTION ITEMS

- ITEM 1: Support initiatives to bring about equality for women in all areas of Employment including achieving pay equity and the elimination of sex discrimination.
- ITEM 2: Support the research, funding and access to issues affecting women's health including reproductive freedom, aging, equitable and affordable insurance coverage
- ITEM 3: Support and encourage equitable educational opportunities at all levels and in all areas of study.
- ITEM 4: Support initiatives to end domestic violence and all other acts of violence against women.

BPW/WI will support other issues of importance that promote its goals and objectives.

The Wage Gap...

it's not just about women anymore!



The wage gap isn't just a women's issue. Equal pay for women raises family income, and the whole family benefits.

In 2006, women earned 77 cents for every dollar men received. That's \$23 less to spend on groceries, housing, child care and all other expenses for every \$100 worth of work done. Nationwide, working families lose \$200 billion of income annually to the wage gap. At the current rate, equal pay won't be realized until 2057.

The wage gap is even worse for most women of color. Latinas earn 59 cents and African American women earn 72 cents for every dollar men earn, while Asian American women earn 93 cents.*

* CPS, 2007

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...they wouldn't suffer from the wage gap.

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CURRENT LEGISLATION

National Committee on Pay Equity



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[Pay Equity Information](#)

Top 10 Reasons for the Wage Gap

1: Wage Secrecy Hurts Women

Part of the problem is that wage data are largely kept secret in America, so women and minorities can be underpaid without knowing it. Employers frequently have policies that forbid workers from discussing their salaries, even though these policies are unfair and sometimes unlawful. Yet corporate cultures continue to intimidate workers by making it taboo to discuss salary, even among trusted co-workers.

In addition, because women often don't know what a job truly pays, she can undervalue herself when negotiating a new salary (and that can label her as an underachiever). So not knowing about wage discrepancies can perpetuate them.

2: Suing is Not a Practical Remedy

Taking an employer to court under the Equal Pay Act, Title VII of the Civil Rights Act, or appropriate state laws is an option out of reach for many women. "I don't have \$250 for an initial consultation with an attorney," said one woman who contacted NCPE. Because awards are severely limited in Equal Pay Act cases, there is a lack of incentive for attorneys to accept cases.

In addition, pursuing an equal pay case can wreak havoc on the personal lives and finances of the plaintiffs. Employers often fight back aggressively and ruin an employee's credibility as they seek to defend the company. Retaliation against women who file claims is common. NCPE has talked with plaintiffs who say their supervisors have turned hostile, their offices were moved to undesirable locations, that negative letters appeared in their personnel files, that their gynecological medical records were subpoenaed in an attempt to intimidate them, or that they were fired outright. This kind of treatment can last years while a case weaves its way through the legal process. Even if a woman wins her Equal Pay Act case, she may be labeled a troublemaker and have a hard time finding another job within the industry.

3: When You Take Home Less, You'll Stay Home More

Given their lower earnings, women are usually the parent who takes time off to raise small children. That means they are out of the workforce for a few years, which lowers their earnings when they return.

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fairpay@pay-equity.org

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National Committee
on Pay Equity

But not all women are taking time off - many families rely on two paychecks and cannot afford for one parent to stay home. A 1992 study by the international executive search firm Korn/Ferry found that, of women in senior management positions in Fortune 1000 industrial and 500 service companies, only a third had taken a leave of absence, and most took fewer than six months off.

Shouldn't families be able to have pay equity and children?

4: Even if They're Equal In Value, Women's Jobs Pay Less

Sometimes the jobs dominated by women in a company are not valued in the same way that men's jobs are. Studies have shown that the more women and people of color fill an occupation, the less it pays. Using a point factor job evaluation system, the state of Minnesota found that the "women's jobs" paid 20 percent less on average than male-dominated jobs, even when their jobs scored equally on the job evaluation system. (Pay equity adjustments were phased in over four years at a cost of 3.7 percent of overall payroll.)

5: Market Forces Are Not Eliminating Discrimination

Some say market forces will eliminate salary inequities, yet it has been 41 years since the Equal Pay Act was signed into law and 40 years since the Civil Rights Act was signed into law. Still, discrimination exists. If we had relied on market forces to implement fairness, we never would have needed the Civil Rights Act, the Family and Medical Leave Act, or the Americans with Disabilities Act. Market forces do not overcome bias in the workplace. Bigoted employers will pay more to work with white people, for example. Even Alan Greenspan has acknowledged that too often, companies practice discrimination, which hurts America's economy.

6: Discrimination is Intangible, But It's There

Discrimination is almost never found in the form of a smoking gun - like the Texaco tapes, for example, in which senior executives at the company were heard making racial slurs. Instead, discrimination takes a more subtle yet pervasive form. For example, in the class action sex-discrimination suit filed against Merrill Lynch, female employees complained that the accounts of retiring employees, walk-ins, and other lucrative networking opportunities were steered towards the men in the company. Another typical concern is that women are not offered career shaping assignments or spots on important committees. NCPE often hears from women who say there is an "old boys network" or glass ceiling at work. When women have trouble advancing, in a company, they can't gain the experience needed to lead.

7: Old Stereotypes Die Hard

In this day and age, women are still told they don't make as much as the men because the men have families to support. Women are not working for pin money. They are supporting America's families. As one plaintiff recounted, a manager told her, "You don't need pay equity, you're married." There are also

stereotypes about what kind of work is appropriate for women, which hinder women's advancement in some fields currently dominated by men.

8: Not all Jobs are Open to Women

Over half of all women are concentrated in the broad categories of sales, clerical, and service jobs. Women can have a hard time breaking into the male-dominated jobs, as evidenced through Department of Labor audits of federal contractors. For example, in 1999, Berkline Corporation and its parent company, Lifestyle Furnishings International, agreed to pay \$300,000 in back pay for refusing to hire women as woodworkers. Kohler Corporation, a national plumbing hardware manufacturer in Wisconsin, agreed to pay nearly \$900,000 to 2000 women who were not hired because of their gender. When women do break into male-dominated jobs, sometimes they experience hostile work environments and find little support for their presence there.

9: Companies Fail to Address Unfair or Haphazard Pay Practices

Why won't employers address the issue on their own? Perhaps they are worried about future liability. Part of it may be psychological – many employers don't want to believe they are discriminating or that they have tolerated discrimination. But because our socialization in America is not free from sex or race bias, it can lead to undervaluing women and minorities on the job. Employers need to put their fears aside. Private sector compensation experts can help to develop a fair pay system that is phased in quietly over time. A written pay policy will show workers that the system is based on objective criteria.

10: Current Laws Are Not Strong Enough

Put simply, current laws prohibiting wage discrimination need to be strengthened. The Equal Pay Act and Title VII of the Civil Rights Act are important laws, but they are hard to enforce, and legal cases are extremely difficult to prove and win. Because enforcement of the laws is complaint driven and most of the information needed to prove a complaint is held by employers, these laws lack the ability to completely rid America of discriminatory pay practices. In addition, the Equal Pay Act does not allow women to file class-action lawsuits, and it provides very insubstantial damages.



Date?

STATEMENT OF FRED GANTS IN OPPOSITION TO SB 165

Good morning, Senators. My name is Fred Gants, and I have been a lawyer in private practice for over thirty years in Wisconsin. I am a partner with the law firm of Quarles & Brady LLP here in Madison, and advise and represent employers in labor and employment matters.

While I am primarily a management lawyer, I also have considerable experience representing employees. For example, I was retained last week by a former employee to review and advise him on a severance agreement with his former employer. As recently as last year, I successfully represented an employee in a contract dispute with his employer. I have also represented employees in challenging employers on unreasonable and overly broad non-competition agreements.

I am here today to speak individually and with WMC to oppose SB 165, which would allow unlimited punitive damages to be assessed against all Wisconsin employers in discrimination cases. My prime reason for opposing this legislation may surprise you. I am primarily opposed to SB 165 because I am concerned that it will increase legal costs for employers, which are already significant in defending discrimination cases. I am concerned that this proposed legislation could harm not only employers but also the employees working for these employers.

Let me explain why I am concerned about this proposed SB 165 by briefly discussing current law. For example, under the current Wisconsin Fair Employment Act, if a minority female employee over age 40 has her employment terminated, she can bring a race, sex and age discrimination complaint against her former employer by filing that complaint with the Wisconsin Equal Rights Division. An investigator will consider the matter and, after receiving a position statement and further letters from the employer, will

then issue an initial determination of probable cause, finding the case is worthy for a hearing on the merits or an initial determination of no probable cause dismissing the complaint.

My point is that in either event, the employee has many rights and the employer often incurs significant legal costs regardless of whether it has a strong or weak defense. If there is a probable cause ruling, the matter proceeds to a hearing on the merits before an Administrative Law Judge who, after hearing the evidence, can award attorneys' fees for the employee, reinstatement, and back pay. If there was a no probable cause ruling and the complaint was dismissed, the employee can appeal that dismissal and will be entitled to a probable cause hearing before an Administrative Law Judge. Last week, one of my partners defended an employer at a probable cause hearing last week for 2 ½ days following the dismissal of a complaint.

When we take into account federal law, the potential liability and legal costs for an employer can be increased beyond the level of state law. An employee may during or after a state proceeding bring an action in federal court in which they can recover in addition, compensatory and punitive damages for discriminatory actions by employers. For example, an employer with 15-100 employees can be liable for compensatory and punitive damages up to \$50,000. Going up the scale, an employer with 501 or more employees can be liable for compensatory and punitive damages up to \$300,000.

My concern about the proposed SB 165 is that an employee has the potential to recover unlimited compensatory and punitive damages in excess of \$1,000,000 against the smallest Wisconsin employer, employing less than 15 individuals, as well as against the largest Wisconsin employer. I am concerned that the potential for such large

compensatory and punitive damages against any employer in the State of Wisconsin will encourage larger settlements and more monies being paid by companies to those darn lawyers to defend such claims. If Wisconsin companies face the specter of large damage awards or settlements, and especially have to pay lawyers more to defend or resolve their cases, the increased costs can result in companies going out of business, hiring fewer employees, or terminating more employees.

At this hearing, I have not suggested that any of the current employment discrimination laws be rolled back or provide lesser rights than they currently provide. However, because I believe that employees already have numerous rights to remedy acts of employment discrimination, I am encouraging you to not expand these laws, and not to expand legal damages and legal costs to employers in our challenging economic times.

Our state has experienced periods where it has been regarded either positively or negatively by companies considering the possibility of moving to Wisconsin. Unfortunately, in recent years, the Forbes Magazine surveys have shown that Wisconsin is not regarded presently as having a favorable business climate. Indeed, we slipped several points from where we were last year. The introduction and passage in Wisconsin of a bill that would allow unlimited compensatory and punitive damages would only further harm the perception of Wisconsin's business climate. If companies make a decision to not come to Wisconsin because the business climate is unfavorable or because the legislature is viewed as passing laws that are harmful to Wisconsin businesses, new companies will not come here and job opportunities will be lost.

Finally, I want to also comment on one other part of the bill which directs the Department of Workforce Development to form a committee to study wage disparities

between men and women and between minority group members and non-minority group members. It is estimated that the Department would incur over \$600,000 in costs to prepare for and staff this committee. My view is that our state should not spend over one-half million dollars for another study, which may well show that men make more than women and non-minority group members make more than minority group members. Rather than incur the costs of another study, I suggest that if it is felt that this is really important, the state go right to the core and simply provide increased funding for higher education of women and minority group members. I suggest that a much better use of the legislature's funds is to concentrate on simply helping people rather than doing another study.

To sum up, I am concerned that the proposed SB 165 will put more money in the hands of lawyers than the employees it was designed to help. Because I feel that employees already have many rights and protections under our fair employment laws, and that the possibility of increased punitive damages to employees will result primarily in increased legal costs filling the pockets of lawyers defending companies, I encourage you to not pursue the enactment of SB 165. Thank you.



Date?

SB 165

Equal Pay Enforcement Act

2007 - LRB 1935

Hansen/Sinicki (Young, Grigsby, Fields, Turner, Taylor)

- 2005 SB 195 / AB 406
- All Dem co-sponsors
- died in Nass & Reynolds' committees
- 2003 SB 130 / AB 318
 - SC was assembly co-sponsor
 - Moore, Yang, Turner, Colon
 - one repub - Loeffelholz
 - died in Nass/Reynolds labor comtes.

Hansen wants hrg.
close to Mar. 20
roll out date
SC out of town 3/20
tent. promised 3/27 to
Gottlieb for jt. shared
rev. hearing
either 3/27 - forget Gottlieb
or 4/3





PLANNED PARENTHOOD ADVOCATES OF WISCONSIN

Date ?

Fact Sheet

Support the Pay Equity Act SB 165 (Sen. Hansen) & AB 310 (Rep. Sinicki)

For decades now, women have consistently earned less per dollar than men for the same or similar work. In 2004 among full-time workers, women earned only 76.5 cents for every dollar that men earned. Add to this the undeniable fact that health care costs are skyrocketing *and* women that pay a disproportionately greater amount for health care. Women inevitably face a system that pits disparity against disparity. It is therefore crucial that the state take steps to address this problem that devastates many Wisconsin women and their families.

The Pay Equity Act, among other protections, directs the state to undertake a study of wage disparities. This is a crucial first step to closing the gap in the wage and health care inequalities that women face.

Working women have trouble affording much needed health care.

- A 2007 study from the Journal of General Internal Medicine found that the median health care costs for women ages 18-44 were almost triple what men had to pay: the women's median 18-44 was \$1,266 and the men's was \$463.
- According to the Commonwealth Fund's April 2007 report, Women and Health Care Coverage: The Affordability Gap, women have greater problems accessing health care because they cannot afford it, regardless of whether they are insured or uninsured:
 - Women's greater health care needs and lower incomes lead them to have higher out-of-pocket health care costs than men.
 - Women are much more likely than men to avoid needed health care because of costs. The study found the difference greatest among young women (19-29), where 50% said they had not filled a prescription or skipped a follow-up appointment or had a medical problem but did not see a physician due to prohibitive costs. Only 33% of men reported the same barrier.
 - Women are more likely to have medical bills and debt problems. According to the study, nearly 38% of women (as opposed to 29% of men) report having troubles paying medical bills.

Women often need more health care services than men.

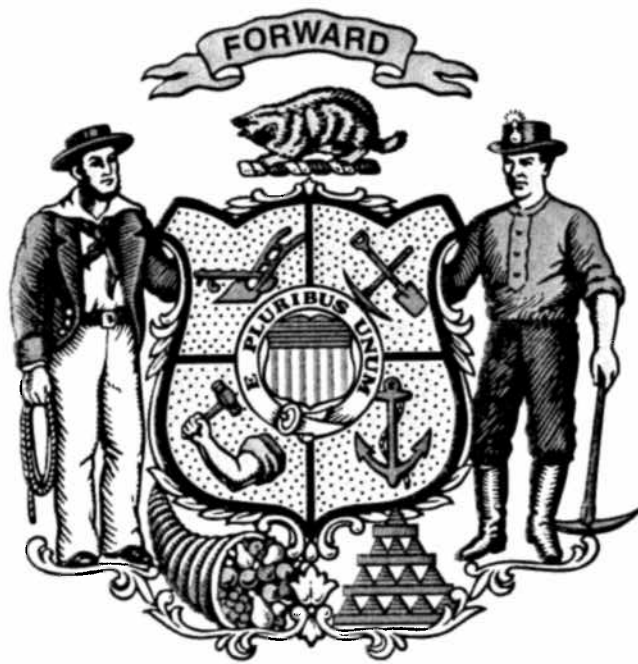
- Women live longer, are more likely to have chronic health problems and in general use more health care services than men. (National Council on Jewish Women, 2006).
- Women's health care costs are higher because they have more complicated preventative needs than men.

- Women need mammograms, cervical cancer screens and vaccines, prescription birth control and prenatal related services that men do not.
- Undoubtedly, women need more health care services for pregnancy, labor and delivery services. Even a healthy, uncomplicated pregnancy and birth are increasingly expensive.
 - According to a 2007 report from the Georgetown University Health Policy Institute and Kaiser Family Foundation, the average costs for an uncomplicated birth are about \$9,660.
 - For many low-income women, Medicaid will resume this cost. However, for the growing population of uninsured or underinsured who do not qualify for the shrinking Medicaid program, this financial burden is a heavy toll.

When Women's health suffers, the health of our communities suffer

When women lack access to health care services, or adequate health care services, the health of our communities suffers. Inadequate prenatal care and limited access to family planning services results in high infant mortality rates. A report just issued by the U.S. Center for Disease Control finding the highest infant mortality in the U.S. in decades should alarm us all. It is imperative that Wisconsin take this opportunity to address the inequalities women face as wage earners and as health care consumers. The Pay Equity Act is a much needed first step in meeting these challenges in Wisconsin.

Please support the Pay Equity Act, SB 165 and AB 310.





STATE OF WISCONSIN

Wisconsin Women's Council

101 EAST WILSON STREET, 8TH FLOOR, MADISON, WISCONSIN 53702 • VOICE (608) 266-2219 • FAX (608) 267-0626

SB 165
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FOR IMMEDIATE RELEASE

Date?

CONTACT: Christine Lidbury, 608/266-2219 (christine.lidbury@wisconsin.gov)

EQUAL PAY DAY: STILL NO POGRESS IN CLOSING THE WAGE GAP

April 24, 2007 (Madison). Equal Pay Day is held annually to signify the point into the current year that a woman, working full-time, year-round, must continue to work to earn what a man made in the previous year.

Nationwide, women earn 77 cents, on average, for very dollar paid to their male counterparts. In Wisconsin, the gap is higher with women earning only 73 cents on the dollar, on average, compared to men. As a result, WI remains in the bottom third of all states for its gender wage gap and its inflation adjusted gender gap actually grew from 2000 to 2005, even as the national gap closed. Wisconsin women's median wage of \$12.62 is also 25 percent below the men's median. Black women's earnings were even lower, at \$10.89 an hour, while Hispanic women's median wage was \$8.89.

Women are an important and powerful economic force in Wisconsin. They remain among the most likely in the nation to be in the workforce and have achieved gains overall in earnings, business ownership and educational attainment. Yet, state and national data also show that persistent wage disparity and its follow on effects in savings and pensions, as well as extreme racial inequality, continue to challenge the women of Wisconsin.

"Backsliding on the gender wage gap is a call to action for policymakers and business leaders," said Christine Lidbury, Women's Council Executive Director. "Wisconsin women face substantial economic barriers to equality. As a state we must reverse the trend and ensure our economy helps, not hinders, working women. Our future depends on ensuring that all citizens are able to make their best contribution to Wisconsin's economy."

For more information, see: *Wisconsin Women & Economic Opportunity*, March 2007, Center on Wisconsin Strategy and the Wisconsin Women's Council, Madison, WI (<http://womenscouncil.wi.gov>); and *The Best and Worst State Economies for Women*, December 2006, Institute for Women's Policy Research, Washington, D.C. (www.iwpr.org).

<p>What's Promising for WI Women?</p> <ul style="list-style-type: none"> WI women's median annual earnings have increased slightly, increasing WI's ranking from 28th to 24th among all states. <p>What's Disappointing?</p> <ul style="list-style-type: none"> WI remains in the bottom third of all states for its gender wage gap and its inflation adjusted gender gap actually grew from 2000 to 2005, even as the national gap closed. A women living in Wisconsin is 35% more likely to live in poverty than a man. The percent of WI women in (often higher-paying) managerial and professional occupations remained unchanged between 2002 and 2006; however, WI's position compared to other states has decreased markedly, from 37th in 2002 to a dismal 46th in 2006.

THE WISCONSIN WOMEN'S COUNCIL IDENTIFIES BARRIERS THAT PREVENT WOMEN IN WISCONSIN FROM PARTICIPATING FULLY AND EQUALLY IN ALL ASPECTS OF LIFE AND WORKS CLOSELY WITH PUBLIC, PRIVATE AND NOT-FOR-PROFIT GROUPS TO DEVELOP LONG-TERM SOLUTIONS TO BARRIERS AND INEQUITIES.

VISIT OUR WEBSITE AT: WWW.WOMENSCOUNCIL.WI.GOV





Business and
Professional
Women of
Wisconsin

WISCONSIN

PUBLIC POLICY RESOLUTION

SB 165
Folder

Equal Pay Enforcement Act

WHEREAS, the Wisconsin Federation of Business and Professional Women's Organization has as part of its Legislative Platform gender pay equity, and;

WHEREAS, nationally the pay gap is \$.77 to a man's dollar, and:

WHEREAS, women of color are even more adversely affected with African American women at \$.66 and Latino women at \$.55, and;

WHEREAS, Wisconsin is below the national average with a gender gap of \$.25, and;

WHEREAS, the wage gap costs the average American full-time woman worker between \$700,000 and \$2,000,000 over the course of her lifetime, and;

WHEREAS, the gap may appear in the form of salary, promotions or perks, and

WHEREAS, women's choices may play a part in the gap, but it does not account for the full discrepancy; therefore be it

RESOLVED THAT the Legislation Committee requests the members of the Wisconsin Federation of Business and Professional Women to support and encourage their elected officials to pass the Equal Pay Enforcement Act, and

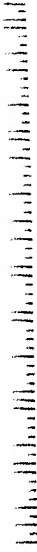
RESOLVED FURTHER THAT copies of this resolution be sent to all of the Wisconsin State Senate and Assembly elected officials for their consideration.

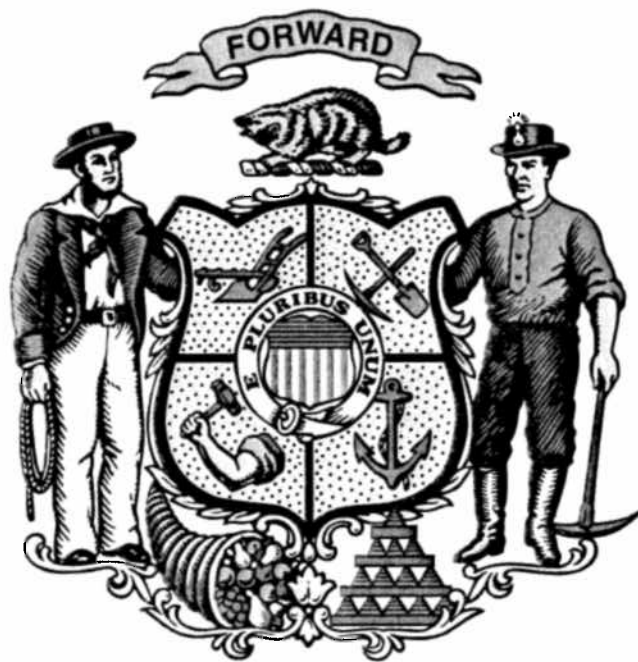
Passed by the State Convention Body
05/19/07

Gert Bloedorn
BPW/WI President 2006-07
4750 Vista Road
Manitowoc, WI 54220

SENATOR SPENCER COGGS
STATE CAPITOL
P O BOX 7882
MADISON WI 53707-7882

5370797562 8007





LEGAL AND LEGISLATIVE UPDATE ON EMPLOYMENT LAW

September 2007

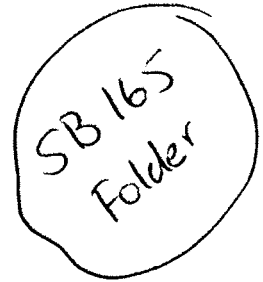
by

Bob Gregg

rgregg@boardmanlawfirm.com

Boardman Law Firm

www.boardmanlawfirm.com



LEGISLATION AND ADMINISTRATIVE ACTION

Wisconsin Legislature considers adding punitive damages to Wisconsin Fair Employment Act (WFEA). The Senate Labor Committee is holding hearings on SB-165, a proposal to add unlimited punitive damage awards to cases brought under the state's anti-discrimination laws. If passed, this would result in greater damage awards than are given by federal courts. The current state law provides "make whole" relief (back pay, attorney fees and benefits). The Wisconsin Society for Human Resource Management and several business groups have opposed the bill. It will certainly add to business costs. Unlike federal law, the state law covers very small employers; it is likely that some of these will be bankrupted simply by the extra defense costs. The proposed changes could also backfire on plaintiffs. The WFEA was intended to be a less formal process than federal court—to give a useable and sensible process to the average person. Many parties use it successfully without an attorney. A punitive damage provision will add a much greater level of complexity, and no employer will dare proceed without legal counsel. This means no plaintiff would be likely to endure in the process without also getting legal counsel. This is all well and good for the "big cases." However, many, many plaintiffs with "run of the mill" claims, who will not be able to afford or attract an attorney, may drop through the cracks. They will be overwhelmed by the more complex process and the greater number of defense attorneys. Wisconsin may turn its easy-to-use, less formal process into another federal court-type proceeding where the regular person simply gets shut out.

LITIGATION

CONSTITUTION

Local illegal alien laws violate Constitutional preemption clause. In the wake of Congress' lack of action on immigration, many local governments have passed ordinances barring illegal aliens from employment, etc. Fines and penalties are imposed on any employer who knowingly, or, in some instances, unknowingly, has illegal workers. In *Lozano v. Hazleton, PA* (M.D. Pa., 2007), a federal circuit court has struck down these local laws. Under the Constitution, the

federal government has authority for foreign affairs, including immigration, and federal law “preempts” and nullifies any other state or local laws on this matter.

PRIVACY

Criminal background check violates FCRA notice provisions. A group of railway workers has filed an administrative suit alleging that several rail industry contractors and service providers violated their Fair Credit Reporting Act rights when doing criminal background checks. *In re H&M International Transportation, Inc.* (Fed. Trade Commission, 2007), the FCRA applies to employment screening or investigation conducted by a third party (credit agencies, security firms, placement agencies, consultants, etc.). The law requires written notice of the background search and the opportunity to know of and dispute any findings that result in employment decisions (hiring, firing, non-assignment, etc.). The complaint alleges that: (1) Many employees received no notice; (2) When notices were given, they were incomprehensible to non-English readers; (3) Employees were fired due to the checks, but not told why and not given a chance to refute the findings; and (4) Many of the findings were wrong. People were fired based on misspelled names, typos, identity theft, criminals with similar names, yet never given the chance to know of and correct the record. [For more information on the FCRA and background checks, request the Boardman articles *Use and Abuse of References* or Boardman’s seminar, *The Murderer Has the Room Keys—Pre-Employment Background Checks.*]

FAMILY AND MEDICAL LEAVE ACT

Settlements: Department of Labor disagrees with its own rules. The Fourth Circuit Federal Court has joined others in holding that employees may not sign a release of FMLA rights. So any layoff severance agreement or private settlement of dispute of current or possible FMLA rights is *invalid*, unless the DOL gives formal approval. *Taylor v. Progressive Energy, Inc.* (4th Cir., 2007). This decision is based on the language of 29 Code of Federal Regs. 825.220(d) which clearly states a preclusion of “prospective and retrospective waiver” of FMLA rights. This, of course, creates a major problem for any employer wishing to give a severance agreement or get a settlement of a dispute in exchange for a release. You can pay the severance, but the employee still has the right to sue you under the FMLA. The DOL is now stating that it really didn’t mean what the rule seems to say. It does not want to discourage settlements or severance pay. The rule was intended to keep employers from pressuring workers into signing away FMLA rights when they take a job or prior to taking a leave—before they exercised their rights. It was not supposed to discourage negotiations and settlement of disputes or hamper exit incentives. DOL filed an *amicus brief* in the *Taylor* case trying to explain its position. However, the court stuck to the apparent clear language of the rule and ignored what DOL said it “really meant.” Now the avenue for fixing the issue is either to make an appeal to the Supreme Court or amend the rule. Given DOL’s slow action on amending rules (see July 2007 *Legal Update*), the Supreme Court may be faster.

DISCRIMINATION

Sex

Hotbed of office affairs and hostile husband defenses win case. A federal circuit court reversed a sex discrimination verdict, finding the employer's defenses valid. A female employee was fired following an affair with a company salesman. He was retained. The woman's husband had made threats of violence toward the salesman. The evidence showed that out of the company's 17 employees, 12 had engaged in workplace affairs and not one, male or female, had ever been fired. So it was unlikely gender was involved this time. The company's claim that it fired the woman because it feared violence by her husband and did not want to have a continuing threatening situation was credible. She stood out not due to gender, but due to the threats "associated with" her continuing presence in the workplace. *Hossack v. Floor Covering Assoc.* (7th Cir., 2007).

Harassment

Use the policy, not self-help. An employee thought a gay co-worker was making unwelcome advances, staring at him in the restroom. He reacted by sending anonymous, intimidating electronic messages to the gay co-worker. The sender was fired when the messages were traced to him. He then filed a harassment suit. The case was dismissed because the plaintiff had failed to use the company's anti-harassment policy to allow the company to solve any problem. His self-help remedy was not protected by the law. *Bernier v. Morningstar, Inc.* (7th Cir., 2007).

National Origin

Comments about accent. An Hispanic employee for FedEx was in a management training program and was qualified for, but denied, three supervisory openings. The evidence showed that a manager had made comments about the employee's accent and speech patterns, including that the way he speaks will harm "his ability to rise through the company." The employee complained about these comments and denial of promotion, but the company took no corrective action. He then sued. The court ruled that the comments were direct evidence of national origin discrimination. *In re Rodriguez* (6th Cir., 2007). Employers should also be aware that under Title VII, hiring should be done on qualifications for the *current* job. Only in special circumstances can a hiring decision be based on what might happen in the future (ability to rise through the company). Hiring for "future potential" would require the employer to show a concrete "progression plan" or strategic plan linked to that job category.

Disability

Split of opinion: no personal liability for ADA employment retaliation. A federal circuit court has ruled that individual corporate officers are not personally liable for employment retaliation under the ADA. *Albra v. Advan, Inc.* (11th Cir., 2007). The ADA does not include personal liability for general disability discrimination, but the anti-retaliation provisions have different

wording, and courts have made individual managers and business owners pay damages. Now, the 11th Circuit has found differently. This is not the end of the issue. An important purpose of the Supreme Court is to eventually address splits of opinion between lower level courts and reach a “law of the land” decision. So, we will wait to see. Also, this was an employment case. The 11th Circuit distinguished its decision from earlier cases finding personal liability for ADA retaliation against non-employees (contractors, citizens, parents of disabled students, service recipients). So those rulings are still very much in effect.

Employers must provide job-related medical information. The ADA requires an “interactive process” in which the employee and employer must communicate, cooperate and share information to explore accommodations. The employee must provide reasonable medical information to explore accommodations. The employee must provide reasonable medical verification of the disability, its effects on work, as well as documentation of the need for any accommodations or leaves of absence. In *Yeager v. TSA* (W.D. Wash., 2007), the employee refused to provide medical evidence to support a disability leave. He claimed that the information request violated his privacy rights. When he was then fired, he sued under the ADA, alleging retaliation for having exercised his rights. The court ruled against him, finding that the employee had violated his obligation to engage in the interactive process. What did the employer do right? The request for medical information was narrow. It asked for only information on the specific condition at issue, and it specified that only information relevant to the job and the leave of absence was needed. A too-broad request for medical records would violate the ADA and privacy rights.

A similar result was reached in *Talley v. Family Dollar Stores* (N.D. Ohio, 2007), in which an employee failed to provide medical documentation of the need for a stool to accommodate a back/leg condition.

Request for flexible arrival time is unreasonable accommodation for school bus driver. A school bus driver’s attention deficit disorder caused frequent lateness. She requested a reasonable accommodation of “flexible arrival times,” meaning the okay to be late to work on an ongoing basis. The school district stated that it could accept a five-minute flexibility. However, the driver wanted no time limit on lateness and could not predict how late or how frequent these incidents would be. She wanted an open-ended flexibility. The district declined and then soon fired the driver for continued late arrival. She sued. The court dismissed. It found her request was for an unreasonable accommodation. Being on time is an essential function of a school bus driver. Late students disrupt the classes, and consistent lateness harms the students’ education. Lateness interferes with the daily bus safety check prior to going out, and students’ health and safety is jeopardized standing out in the weather waiting for the unpredictable arrival of the bus. *Simon v Bellville School District* (W.D. Wash., 2007).

NATIONAL LABOR RELATIONS ACT

Graduate research assistants can unionize; teaching assistants still cannot. The National Labor Relations Board has ruled that graduate research assistants working on university affiliated projects but paid by university affiliated research foundations and subcontractors may form unions, bargain and strike. *In re Research Foundation of the State University of New York*

(NLRB 2007) and *Research Foundation of the City University of New York* (NLRB 2007). This is a very different decision than *In re Brown v. University* (NLRB 2004) in which the Board held that teaching assistants may not unionize. In *Brown*, the Board decided that teaching assistants were paid, but the teaching was furtherance of their university education, rather than a “purely economic” relationship. In the current New York cases, the Board sees a different relationship. The foundations and grant contractors are NOT the university. They are separate corporations, which often do licensing, sales and other business. The graduate researchers were in more of a “work relationship.” They were not “enrolled” at the foundations or contractors; they were employed.



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SB 165
Folder

[Back](#)

Advertisement

CORRECTION

Group uses Labor Day to decry wage gap

Women still lagging behind men in pay

[This story has been corrected. Click here to read correction.](#)

By **Karen Lincoln Michel**

Press-Gazette Madison bureau September 3, 2007

Elaine Capelle was in charge of a \$200,000 budget when she discovered maintenance men in her building earned more than she did.

"The fellas that were sweeping the floor and washing the windows, right outside my door, were making more money than I," said Capelle, who was then working as a program assistant at the University of Wisconsin-Green Bay more than a decade ago.

She joined the union and signed onto a lawsuit that resulted in requiring the state to institute "comparable worth" standards to address pay disparities between job classifications.

Now serving as legislative co-chair of the Green Bay-De Pere chapter of Business and Professional Women, Capelle said that Labor Day should serve as a time to reflect on pay equity issues facing female workers.

"On Labor Day, we should not forget the second group of the work force, and that's working women," said Capelle.

Marlyce Kaiser, president of the organization, said the group supports state Senate Bill 165, which would allow the state Department of Workforce Development to order payment or damages in cases of wage discrimination, and would call for a study on wage disparity.

She said the group also advocates the passage of the federal Paycheck Fairness Act, which would close loopholes and provide tools to enforce the rules.

Kaiser said it is discouraging that women nationally make 77 cents for every dollar that a man earns. She said women are viewed as having more family obligations, and perceived as having other barriers

Equal pay

Equal Pay legislation introduced in 2007:

- Alabama HB 718-establishes a commission to study lower wages for women and minorities.
 - Delaware HCR 21-resolution encouraging equal pay.
 - Indiana SB 178, SB 362-prohibits wage discrimination.
 - Louisiana HB 158 establishes the equal pay act.
 - Michigan HB 4627 establishes a commission on pay equity.
 - Minnesota SF 1061/HF 1440 requires businesses to hold certificates of pay equity to receive certain state contracts.
 - Mississippi HB 339 establishes the Fair Pay Act of 2007.
 - Missouri HB 1137/SB 336 establishes an equal pay commission.
 - Montana HJR 51 requests an interim study on the pay gap.
 - New York A 3188, A 7407, A 8240, S 2661, S 3358 establishes a policy of equal pay for comparable work to compensate for lower wages in jobs traditionally segregated by sex, race, or national origin.
 - Pennsylvania SR 50/HR 281 requests a study on equal pay.
 - Tennessee HB 65/SB 949 establishes the Pay Equity Act of 2007.
 - Washington HJR 4210 amends the Constitution to require equal pay.
- Source: Center for Policy Alternatives

that prevent them from performing jobs as well as men.

"There still isn't equality," said Kaiser. "Some women may get equal pay, but we have to work harder to achieve it."

State Sen. Dave Hansen, D-Green Bay, co-sponsor of the SB 165, said he is encouraged that the bill got a hearing last week in the Senate, but does not know how it will fare in the Republican-controlled Assembly.

"It's something that is significant and should be studied," said Hansen, adding that Wisconsin women make 75 cents for every dollar a man makes. "If there's not a problem out there, we'll find that out. But if there is, the wages should be made based on what you do for your job: working hard, doing the same work and getting paid the same way."

Correction

Elaine Capelle was in charge of a \$200,000 budget when she discovered maintenance men in her building earned more than she did. An article on the wage gap between men and women on page A-1 in Monday's Press-Gazette had an incorrect amount.