

Fiscal Estimate Narratives

DWD 12/20/2023

LRB Number	23-4902/1	Introduction Number	SB-0578	Estimate Type	Original
Description actions in circuit court alleging discrimination in employment, unfair honesty testing, or unfair genetic testing					

Assumptions Used in Arriving at Fiscal Estimate

The estimated fiscal impact of this bill on the Department of Workforce Development (DWD) is a \$6,000 one-time cost to revise existing online fair employment publications and a modest, but indeterminate, increase in costs for ongoing operations. Both increases are anticipated to be absorbable in the agency's current operating budget.

Under current law, a person alleging discrimination in employment under s. 111.322, alleging a prohibited use of honesty testing defined under s. 111.37 (e.g. a lie detector test), or a prohibited use of genetic testing defined under s. 111.372, may file a complaint with the Department of Workforce Development (DWD) seeking action to effectuate the purpose of the fair employment law. This may include reinstating the employee and providing back pay, in addition to paying costs and attorney fees, but does not include compensatory or punitive damages.

The bill allows DWD or a person who is alleged, or was found, to have been discriminated against or subjected to prohibited honesty or genetic testing to bring an action in circuit court in addition to, or in lieu of, filing an administrative complaint. Under the bill, if a circuit court finds a defendant committed an act of discrimination, prohibited honesty testing or prohibited genetic testing, the court may award back pay, in addition to any relief that could have been awarded through administrative proceedings. Additionally, the bill also requires the courts to order the defendant to pay the person discriminated against compensatory and punitive damages equal to a level deemed appropriate by the court.

Under the bill, punitive and compensatory damages for future economic losses, pain and suffering, emotional distress, mental anguish, loss of enjoyment of life, and other noneconomic losses are capped at amounts between \$50,000 and \$300,000 depending on a count of the defendant's employees as defined in the bill. The bill requires the department to revise these caps upward by the increase in the consumer price index (CPI) if the CPI increased over the prior year. The department then must publish revised caps in the Wisconsin Administrative Register.

The department estimates a one-time cost of \$6,000 to revise and update online materials. These costs are absorbable within the current operating budget.

If the department brought an action in circuit court, as provided under the bill, the costs are estimated to be moderate and absorbable. However, a specific fiscal estimate cannot be determined at this time, as it is difficult to determine how many, if any cases in a year would result in the department pursuing action in circuit court. If the department brought an action in circuit court, DWD would refer the case to the Department of Justice and would, through an agreement, reimburse the Department of Justice for its costs related to the action.

The annual review and recalculation of damage limits as well as the posting of revised limits in the Wisconsin Administrative Register is estimated to result in a moderate indeterminate increase in ongoing operational costs, but these costs are anticipated to be absorbable.

Long-Range Fiscal Implications