

1989 Senate Bill 60

Date of enactment: **April 12, 1990**  
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## 1989 WISCONSIN ACT 228

AN ACT to repeal 103.10 (11) (b) 2 to 4; to renumber and amend 101.595 (2); to consolidate, renumber and amend 103.10 (11) (b) (intro.) and 1; to amend 66.293 (3) (k), 101.599 (1) and (2), 103.02, 103.10 (12) (b) and (d), 103.10 (13) (a) and (b) 1, 103.455, 103.49 (5), 103.50 (8), 104.12 and 111.39 (4) (c); and to create 101.595 (2) (b), 103.10 (11) (c), 103.13 (7m), 103.33, 103.83, 109.03 (7), 109.07 (8) and 111.322 (2m) of the statutes, relating to: discrimination against employees who enforce or cooperate in the enforcement of certain employment laws.

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

**SECTION 1.** 66.293 (3) (k) of the statutes is amended to read:

66.293 (3) (k) The provisions of s. 101.02 (5) (f), (12), (13) and (14) apply to this subsection. Section 111.322 (2m) applies to discharge or other discriminatory acts arising in connection with any proceeding under this subsection, including proceedings under par. (a).

**SECTION 2.** 101.595 (2) of the statutes is renumbered 101.595 (2) (a) and amended to read:

101.595 (2) (a) No employer or agricultural employer may discharge or otherwise discipline or discriminate against any employe because the employe has exercised any rights under ss. 101.58 to 101.599 ~~or has testified or is about to testify in any proceeding related to those sections.~~

**SECTION 3.** 101.595 (2) (b) of the statutes is created to read:

101.595 (2) (b) Section 111.322 (2m) applies to discharge and other discriminatory acts arising in connection with any proceeding under ss. 101.58 to 101.599.

**SECTION 4.** 101.599 (1) and (2) of the statutes are amended to read:

101.599 (1) COMPLAINT. An employe or employe representative who has not been afforded his or her rights by an employer or agricultural employer in violation of s. 101.583, 101.585, 101.586, 101.595 (1), (2) (a) or (3)

or 101.597 (1) or (2) may, within 30 days after the violation occurs or the employe or employe representative first obtains knowledge of the violation, whichever is later, file a complaint with the department alleging the violation. The department shall investigate the complaint and shall attempt to resolve the complaint by conference, conciliation or persuasion. If the complaint is not resolved and the department finds probable cause to believe a violation has occurred, the department shall proceed with notice and a hearing on the complaint as provided in ch. 227. The hearing shall be held within 60 days after receipt by the department of the complaint.

(2) REMEDIES. The department shall issue its decision and order within 30 days after the hearing. If the department finds that an employer or agricultural employer has violated s. 101.583, 101.585, 101.586, 101.595 (1), (2) (a) or (3) or 101.597 (1) or (2), it may order the employer or agricultural employer to take such action as will remedy the effects of the violation, including instituting an education or training program, providing the requested information, reinstating an employe or providing back pay to an employe.

**SECTION 5.** 103.02 of the statutes is amended to read:  
**103.02 Hours of labor.** No person may be employed or be permitted to work in any place of employment or at any employment for such period of time during any day, night or week, as is dangerous or prejudicial to the person's life, health, safety or welfare. The department shall investigate, ascertain, determine and fix such reasonable

classification, and promulgate rules fixing a period of time, or hours of beginning and ending work during any day, night or week, which shall be necessary to protect the life, health, safety or welfare of any person, or to carry out the purposes of ss. 103.01 to 103.03. The department shall, by rule, classify such periods of time into periods to be paid for at regular rates and periods to be paid for at the rate of at least one and one-half times the regular rates. Such investigations, classifications and orders shall be made pursuant to the proceeding in ss. 101.01 to 101.25 which are hereby made a part hereof, so far as not inconsistent with ss. 103.01 to 103.03, and every order of the department shall have the same force and effect as the orders issued under ss. 101.01 to 101.25 and the penalties therein shall apply to and be imposed for any violation of ss. 103.01 to 103.03. Such orders shall be subject to review in the manner provided in ch. 227. Section 111.322 (2m) applies to discharge or other discriminatory acts arising in connection with any proceeding under this section.

**SECTION 6.** 103.10 (11) (b) (intro.) and 1 of the statutes are consolidated, renumbered 103.10 (11) (b) and amended to read:

103.10 (11) (b) No person may discharge or in any other manner discriminate against any individual for ~~doing any of the following:~~ 1. Opposing ~~opposing~~ a practice prohibited under this section.

**SECTION 7.** 103.10 (11) (b) 2. to 4. of the statutes are repealed.

**SECTION 8.** 103.10 (11) (c) of the statutes is created to read:

103.10 (11) (c) Section 111.322 (2m) applies to discharge or other discriminatory acts arising in connection with any proceeding under this section.

**SECTION 9.** 103.10 (12) (b) and (d) of the statutes are amended to read:

103.10 (12) (b) An employe who believes his or her employer has violated sub. (11) ~~(a) or (b)~~ may, within 30 days after the violation occurs or the employe should reasonably have known that the violation occurred, whichever is later, file a complaint with the department alleging the violation. The department shall investigate the complaint and shall attempt to resolve the complaint by conference, conciliation or persuasion. If the complaint is not resolved and the department finds probable cause to believe a violation has occurred, the department shall proceed with notice and a hearing on the complaint as provided in ch. 227. The hearing shall be held within 60 days after the department receives the complaint.

(d) The department shall issue its decision and order within 30 days after the hearing. If the department finds that an employer violated sub. (11) ~~(a) or (b)~~, it may order the employer to take action to remedy the violation, including providing requested family leave or medical leave, reinstating an employe, providing back pay accrued not more than 2 years before the complaint was

filed and paying reasonable actual attorney fees to the complainant.

**SECTION 10.** 103.10 (13) (a) and (b) 1. of the statutes are amended to read:

103.10 (13) (a) An employe or the department may bring an action in circuit court against an employer to recover damages caused by a violation of sub. (11) after the completion of an administrative proceeding, including judicial review, ~~under sub. (12)~~ concerning the same violation.

(b) 1. Within 60 days from the completion of an administrative proceeding, including judicial review, ~~under sub. (12)~~ concerning the same violation.

**SECTION 11.** 103.13 (7m) of the statutes is created to read:

103.13 (7m) EMPLOYMENT DISCRIMINATION. Section 111.322 (2m) applies to discharge and other discriminatory acts in connection with any proceeding under this section.

**SECTION 12.** 103.33 of the statutes is created to read:  
**103.33 Discriminatory acts; street trades.** Section 111.322 (2m) applies to discharge and other discriminatory acts against an employe arising in connection with any proceeding under s. 103.28 or 103.32.

**SECTION 13.** 103.455 of the statutes is amended to read:

**103.455 Deductions for faulty workmanship, loss, theft or damage.** No employer shall make any deduction from the wages due or earned by any employe, who is not an independent contractor, for defective or faulty workmanship, lost or stolen property or damage to property, unless the employe authorizes the employer in writing to make such deduction or unless the employer and a representative designated by the employe shall determine that such defective or faulty work, loss or theft, or damage is due to worker's negligence, carelessness, or wilful and intentional conduct on the part of such employe, or unless the employe is found guilty or held liable in a court of competent jurisdiction by reason thereof. If any such deduction is made or credit taken by any employer, that is not in accordance with this section, the employer shall be liable for twice the amount of the deduction or credit taken in a civil action brought by said employe. Any agreement entered into between employer and employe contrary to this section shall be void and of no force and effect. In case of a disagreement between the ~~two~~ 2 parties, the department shall be the ~~third~~ 3rd determining party subject to any appeal to the court. Section 111.322 (2m) applies to discharge and other discriminatory acts arising in connection with any proceeding to recover a deduction under this section.

**SECTION 14.** 103.49 (5) of the statutes is amended to read:

103.49 (5) It shall be the duty of the department to enforce this section. To this end it may demand, and it shall be the duty of every contractor and subcontractor to

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furnish to the department, copies of any or all payrolls and may examine all records relating to the wages paid laborers, ~~workmen~~ workers, or mechanics on work to which this section is applicable. Section 111.322 (2m) applies to discharge and other discriminatory acts arising in connection with any proceeding under this section.

**SECTION 15.** 103.50 (8) of the statutes is amended to read:

103.50 (8) ENFORCEMENT AND PROSECUTION. The department of transportation shall require adherence to subs. (2) and (6). The department of transportation may demand, and every contractor and subcontractor shall furnish, copies of payrolls and it may examine all records relating to hours of work and the wages paid laborers and mechanics on the work to which this section is applicable. Upon request of the department of transportation or upon complaint of alleged violation, the district attorney of the county in which the work is located shall make such investigation as necessary and prosecute violations in a court of competent jurisdiction. Section 111.322 (2m) applies to discharge and other discriminatory acts arising in connection with any proceeding under this section.

**SECTION 16.** 103.83 of the statutes is created to read:

**103.83 Discriminatory acts; employment of minors.** Section 111.322 (2m) applies to discharge and other discriminatory acts against an employe arising in connection with any proceeding to enforce ss. 103.64 to 103.82.

**SECTION 17.** 104.12 of the statutes is amended to read:

**104.12 Complaints.** Any person may register with the department a complaint that the wages paid to an employe employes for whom a living-wage has been established, are less than that rate, and the department shall investigate the matter and take all proceedings necessary to enforce the payment of a wage not less than the living-wage. Section 111.322 (2m) applies to discharge and other discriminatory acts arising in connection with any proceeding under this section.

**SECTION 18.** 109.03 (7) of the statutes is created to read:

109.03 (7) PROTECTION OF EMPLOYEES. Section 111.322 (2m) applies to discharge and other discriminatory acts arising in connection with any proceeding under this section.

**SECTION 19.** 109.07 (8) of the statutes is created to read:

109.07 (8) Section 111.322 (2m) applies to discharge and other discriminatory acts arising in connection with any proceeding under this section.

**SECTION 20.** 111.322 (2m) of the statutes is created to read:

111.322 (2m) To discharge or otherwise discriminate against any individual because of any of the following:

(a) The individual files a complaint or attempts to enforce any right under s. 103.02, 103.10, 103.13, 103.28, 103.32, 103.455, 103.50, 104.12, 109.03 or 109.07 or ss. 101.58 to 101.599 or 103.64 to 103.82.

(b) The individual testifies or assists in any action or proceeding held under or to enforce any right under s. 103.02, 103.10, 103.13, 103.50, 104.12, 109.03 or 109.07 or ss. 101.58 to 101.599 or 103.64 to 103.82.

(c) The individual files a complaint or attempts to enforce a right under s. 66.293 or 103.49 or testifies or assists in any action or proceeding under s. 66.293 or 103.49.

(d) The individual's employer believes that the individual engaged or may engage in any activity described in pars. (a) to (c).

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

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

**SECTION 22. Initial applicability.** This act first applies to discharge or other discriminatory acts occurring on the effective date of this SECTION.