



State of Wisconsin
2023 - 2024 LEGISLATURE

LRB-1662/P3
MIM:emw&cde

DOA:.....Kirschbaum, BB0454 - Equal Pay

FOR 2023-2025 BUDGET -- NOT READY FOR INTRODUCTION

AN ACT; relating to: the budget.

Analysis by the Legislative Reference Bureau

EMPLOYMENT

GENERAL EMPLOYMENT

Prohibition on solicitation of compensation information and discrimination

This bill prohibits certain employer conduct related to compensation information of current and prospective employees. The bill prohibits an employer from doing any of the following with respect to a prospective employee:

1. Relying on or soliciting information about the prospective employee's current or prior compensation. Under current law, an employer may solicit information about a prospective employee's current or prior compensation. The bill repeals that provision.
2. Requiring that the prospective employee's current or prior compensation meet certain criteria in order for the prospective employee to be considered for employment.
3. Refusing to hire the prospective employee for exercising his or her rights relating to compensation information.

The bill also prohibits an employer from discharging or discriminating against a current employee for disclosing the details of the employee's compensation, discussing the compensation of other employees, asking other employees for details

regarding their compensation, or taking certain actions to enforce an employee's rights under the bill.

The bill requires employers to post notices, where notices to employees are customarily posted and on any electronic job posting, regarding employees' and prospective employees' rights under the bill and provides a penalty for an employer's failure to do so.

For further information see the state fiscal estimate, which will be printed as an appendix to this bill.

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

SECTION 1. 103.135 of the statutes is created to read:

103.135 Compensation information of employees and prospective employees. (1) UNLAWFUL EMPLOYER CONDUCT RELATED TO PROSPECTIVE EMPLOYEE COMPENSATION INFORMATION. (a) No employer may directly or indirectly do any of the following:

1. Rely on or, subject to par. (b), solicit from a prospective employee or a prospective employee's current or former employer information about the prospective employee's current or prior compensation.

2. Require that a prospective employee's current or prior compensation meet certain criteria in order for the prospective employee to be considered for employment.

3. Refuse to hire or employ or otherwise discriminate against a prospective employee in compensation or in the terms, conditions, or privileges of employment for opposing a practice prohibited under this paragraph, filing or indicating an intent to file a complaint or otherwise attempting to enforce any right under this paragraph, or testifying, assisting, or participating in any manner in any investigation, action, or proceeding to enforce any right under this paragraph.

(b) After an employer has offered employment to a prospective employee and the details of compensation have been agreed upon, the employer may obtain the prospective employee's written consent for the employer to solicit information about, or take action to confirm, the prospective employee's current or prior compensation.

(2) DISCLOSURE OF COMPENSATION INFORMATION BY EMPLOYEES. (a) An employee may disclose the details of the employee's compensation to anyone and, subject to par. (d), may discuss the compensation of other employees of the same employer and may ask other employees of the same employer for details regarding their compensation.

(b) Except as provided in par. (d), no employer may interfere with, restrain, or deny the exercise of the right of an employee to disclose, discuss, or inquire about compensation as provided in par. (a).

(c) An employer may not discharge or discriminate against an employee in promotion, in compensation, or in the terms, conditions, or privileges of employment for disclosing, discussing, or inquiring about compensation as provided in par. (a), opposing a practice prohibited under par. (b), filing or indicating an intent to file a complaint or otherwise attempting to enforce any right under par. (a), or testifying, assisting, or participating in any manner in any investigation, action, or proceeding to enforce any right under par. (a).

(d) Subject to s. 19.35, an employer may prohibit a human resources or payroll employee, a supervisor, or any other employee whose job responsibilities require or allow the employee access to other employees' compensation information from disclosing information about any other employee's compensation without that employee's prior written consent.

(3) ENFORCEMENT. Any employee or prospective employee who is refused employment, terminated, discharged, or otherwise discriminated against in

violation of sub. (1) (a) or (2) (a) to (c) may file a complaint with the department, and the department shall process the complaint in the same manner that employment discrimination complaints are processed under s. 111.39. If the department finds that a violation has occurred, the department may order the employer to take action to remedy the violation, including reinstating the employee, providing compensation in lieu of reinstatement, providing back pay accrued not more than 2 years before the complaint was filed, and paying reasonable actual costs and, notwithstanding s. 814.04 (1), reasonable attorney fees to the complainant.

(4) NOTICE POSTED. (a) Each employer shall provide notice to employees and prospective employees of their rights under this section by doing all of the following:

1. Posting, in one or more conspicuous places where notices to employees are customarily posted, a notice in a form approved by the department setting forth employees' and prospective employees' rights under this section.

2. Including, on each listing for a job vacancy or other employment opportunity that is advertised by email, posting on a website, or other electronic means, a notice that includes all of the following information:

a. A statement that the employer is prohibited from relying on a prospective employee's current or former compensation when determining whether to make an offer of employment or setting compensation or when making an offer of employment.

b. A statement that the employer is prohibited from asking about a prospective employee's compensation until after the employer has offered the prospective employee employment and they have agreed upon the details of compensation.

c. A statement that the employer is prohibited from requiring that a prospective employee's current or prior compensation meet certain criteria in order for the prospective employee to be considered for employment.

d. Information, or a hyperlink to information, regarding prohibited bases of discrimination under subch. II of ch. 111.

(b) Any employer that violates par. (a) shall forfeit not more than \$100 for each offense.

SECTION 2. 103.36 of the statutes is repealed.

SECTION 3. 106.54 (11) of the statutes is created to read:

106.54 (11) The division shall receive complaints under s. 103.135 (1) (a) and (2) (a) to (c) and shall process the complaints in the same manner that employment discrimination complaints are processed under s. 111.39.

SECTION 4. 111.322 (2m) (a) of the statutes, as affected by 2023 Wisconsin Act (this act), is amended to read:

111.322 (2m) (a) The individual files a complaint or attempts to enforce any right under s. 103.02, 103.10, 103.105, 103.11, 103.13, 103.135, 103.28, 103.32, 103.34, 103.455, 103.50, 104.12, 109.03, 109.07, 109.075, 146.997, or 995.55, or ss. 101.58 to 101.599 or 103.64 to 103.82.

***NOTE: This is reconciled s. 111.322 (2m) (a). This SECTION has been affected by drafts with the following LRB numbers: -1395/P1, -1662/P1, and -1814/P8.

SECTION 5. 111.322 (2m) (b) of the statutes, as affected by 2023 Wisconsin Act (this act), is amended to read:

111.322 (2m) (b) The individual testifies or assists in any action or proceeding held under or to enforce any right under s. 103.02, 103.10, 103.105, 103.11, 103.13,

103.135, 103.28, 103.32, 103.34, 103.455, 103.50, 104.12, 109.03, 109.07, 109.075, 146.997, or 995.55, or ss. 101.58 to 101.599 or 103.64 to 103.82.

***NOTE: This is reconciled s. 111.322 (2m) (b). This SECTION has been affected by drafts with the following LRB numbers: -1395/P1, -1662/P1, and -1814/P8.

SECTION 6. 814.04 (intro.) of the statutes, as affected by 2023 Wisconsin Act ... (this act), is amended to read:

814.04 Items of costs. (intro.) Except as provided in ss. 93.20, 100.195 (5m) (b), 100.30 (5m), 103.135 (3), 106.50 (6) (i) and (6m) (a), 111.397 (2) (a), 115.80 (9), 767.553 (4) (d), 769.313, 802.05, 814.245, 895.035 (4), 895.044, 895.443 (3), 895.444 (2), 895.445 (3), 895.446 (3), 895.506, 943.212 (2) (b), 943.245 (2) (d), 943.51 (2) (b), and 995.10 (3), when allowed costs shall be as follows:

***NOTE: This is reconciled s. 814.04 (intro). This SECTION has been affected by drafts with the following LRB numbers: -1397/P1 and -1662/P1.

SECTION 9350. Initial applicability; Workforce Development.

(1) COLLECTIVE BARGAINING AGREEMENT. The treatment of ss. 103.135, 103.36, 106.54 (11), 111.322 (2m) (a) (by SECTION 4) and (b) (by SECTION 5), and 814.04 (intro.) (by SECTION 6) first applies to an employee who is affected by a collective bargaining agreement that contains provisions inconsistent with the treatment of ss. 103.135, 103.36, 106.54 (11), 111.322 (2m) (a) (by SECTION 4) and (b) (by SECTION 5), and 814.04 (intro.) (by SECTION 6) on the day on which the collective bargaining agreement expires or is extended, modified, or renewed, whichever occurs first.

***NOTE: This is reconciled SECTION 9350 (1). This SECTION has been affected by drafts with the following LRB numbers: -1395/P1, -1397/P1, -1662/P1, and -1814/P8.

SECTION 9450. Effective dates; Workforce Development.

(1) EQUAL PAY. The treatment of ss. 103.135, 103.36, 106.54 (11), 111.322 (2m) (a) (by SECTION 4) and (b) (by SECTION 5), and 814.04 (intro.) (by SECTION 6) takes effect on the first day of the 6th month beginning after publication.

***NOTE: This is reconciled SECTION 9450 (1). This SECTION has been affected by drafts with the following LRB numbers: -1395/P1, -1397/P1, -1662/P1, and -1814/P8.

(END)