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LEGAL ALERT



Legal Alert: Wisconsin Increases Its Penalties for Employment Discrimination

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Wisconsin employers face significantly greater penalties for employment discrimination under new legislation signed June 8, 2009, by Wisconsin Governor Jim Doyle. The provisions now added to the Wisconsin Fair Employment Act ("WFEA" or "the Act") will give a complainant or the Department of Workforce Development ("DWD") the ability to pursue compensatory and punitive damages, previously not authorized under the Act, upon a finding of job discrimination by an administrative hearing.

Background

Discriminatory acts prohibited by Wisconsin state law remain unchanged by the new legislation. The WFEA prohibits employment discrimination against an individual on the basis of age, race, creed, color, disability, marital status, sex, national origin, ancestry, arrest record, conviction record, military service, or use or nonuse of lawful products off the employer's premises during nonworking hours. In order to bring a claim of workplace discrimination, a person must file a complaint with the DWD and go through an administrative process. If the department finds a violation of the WFEA, it may order the employer to take such action as will effectuate the purpose of the fair employment law, including reinstatement of the employee, awarding back pay for up to two years prior to the filing of the complaint, costs, and attorney's fees.

The New Law

The new legislation gives either the complainant or the DWD the ability to go beyond the administrative process to bring an action for damages in circuit court. If the circuit court makes an independent determination that the employer discriminated against the complainant, the circuit court must order the defendant to pay appropriate compensatory and punitive damages to the complainant, and to pay an additional surcharge to the circuit court of ten percent of the total damage award. Under the WFEA, compensatory damages are meant to compensate the complainant for actual injuries such as future economic losses. However, compensatory damages can also include potential damages that are much more difficult to measure, such as pain and suffering, emotional distress, and inconvenience. An award of punitive damages can only be assessed if the defendant is found to have acted maliciously or with reckless disregard for the complainant's rights. Proceeds from the surcharge will be transmitted to the DWD to be used in administering the fair employment law. The changes take effect on the day

after the publication of the statutes, or on the 2nd day after the publication of the 2009-11 biennial budget act, whichever is later.

What This Means for Employers The new damage provisions of the WFEA will substantially increase the potential liability for employment discrimination in Wisconsin. In addition, employers will face the increased costs associated with litigating claims in circuit court in addition to the initial administrative proceedings. To protect themselves from increased liability and costs, companies doing business in Wisconsin should bolster their safeguards against discrimination complaints by seeking advice on process improvements and personnel training. For more information about the legislation and to discuss new challenges facing employers in discrimination complaints, contact attorneys John Bowen, jbowen@fordharrison.com or Jeremy Sosna jsosna@fordharrison.com in our Minneapolis office (612-486-1700) or contact the Ford & Harrison attorney with whom you usually work.