

State Legislation Permits Compensatory and Punitive Damages for Discrimination

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On June 8, 2009, Governor Doyle signed into law Senate Bill 20 (2009 Wis. Act 20) which permits a person or the Department of Workforce Development (“DWD”) to bring a claim in circuit court to recover compensatory and punitive damages caused by discriminatory employer actions.

Before this law, the Department of Workforce Development could order the employer to take action, such as reinstating the employee, providing back pay, and paying costs and attorney’s fees. However, the law did not permit DWD to order payment of compensatory or punitive damages.

Under the new law, if an employer is found to have engaged in discrimination, unfair honesty testing, or unfair genetic testing, upon the completion of the administrative proceedings, the employee or DWD may bring an action in circuit court against the employer or employment agency that engaged in discrimination, unfair honesty testing or unfair genetic testing to recover compensatory and punitive damages caused by the violation, plus reasonable costs and attorney’s fees.

When the employee brings an action in circuit court, the Court (or a jury) may order the employer to pay the person discriminated against, compensatory damages (this includes future economic losses, pain and suffering, emotional distress, mental anguish, loss of enjoyment of life, and other non-economic losses) and punitive damages (allowed if the employer acted maliciously toward the employee or acted with intentional disregard of the rights of the employee). Those damages are in addition to any back pay or any other amounts awarded.

Compensatory and punitive damages are capped based on the size of the employer as determined by the number of employees on each working day in each of 20 or more calendar weeks in the current or preceding year. They are as follows:

15 - 100 employees:	\$50,000
101 - 200 employees	\$100,000
201 - 500 employees	\$200,000
501 + employees	\$300,000

The new law does not apply to any local governmental unit as defined in § 19.42(7u) or employers with fewer than 15 employees. Also, if payment is ordered because of a violation by an individual employed by an employer, the employer is liable for the payment.

While the caps above mirror the caps applicable to federal claims under Title VII, the new law has broad implications for Wisconsin employers, as the list of protected classes to which the law applies is much greater. Punitive damages are now potentially available, for example, if an employer discriminates on the basis of marital status, sexual orientation, arrest or conviction record, or use or nonuse of a lawful product off the employer’s premises during nonworking hours.

This article should not be construed as legal advice and is intended for general informational purposes only. If you have any questions regarding this article, you should consult your legal counsel.