

# Index

---

References are to sections, not pages

## A

### ADA

*See* Americans with Disabilities Act

### ADEA

*See* Age Discrimination in Employment Act

### Absence

*See also* Leave

Disability- or handicap-related, 3.45

### Accommodation

Disability or handicap

—ADA requirements, 3.54

—drug abuse, 3.55

—WFEA standard and proof, 3.34, 3.45, App. F

—worker's compensation

exclusivity of remedy, 3.58

Religion, 3.82

### Affirmative Action

Reverse discrimination claims, 3.76

### Age Discrimination

*See also* Age Discrimination in Employment Act

Bona fide occupational

qualification, 3.14

WFEA provisions, 3.2–.11

—ADEA compared, 3.12–.17

—Exceptions

—hazardous employment, 3.10

—inability to perform duties, 3.6

—insurance plans, 3.8

—managerial and executive positions, 3.9

—retirement plans, 3.7

—school-bus drivers, 3.11

### Age Discrimination in

**Employment Act (ADEA)**, 1.15

Enforcement, 6.2–.11

OWBPA amendments, 3.16, 3.17

Waiver, 3.16

WFEA provisions compared, 3.12–.17

### Alcoholism

ADA coverage, 3.55

Disability discrimination, 3.38, 3.55

### Americans with Disabilities Act (ADA), 1.16

Accommodation requirements, 3.54

Coverage, 3.48–.51

—alcoholics and drug users, 3.55

Enforcement, 6.2–.11

Hiring inquiries, 3.56

Medical examination provisions, 3.56

Substantially limits, definition of, 3.48–.50

WFEA disability provisions compared, 3.47–.57

**Ancestry**, 3.65, 3.69  
*See also* National Origin

**Antinepotism**, 3.62, 3.65

**Arrest and Conviction Records**,

3.19–.29, App. C  
 Bondability exception, 3.23, 3.29  
 Caregiver background laws, 3.28  
 Day care employee exception, 3.28  
 Definitions, 3.19  
 Hiring inquiries, 3.29  
 Security-related businesses, 3.24  
 Substantial-relationship exception,  
 3.22  
 Suspension from employment, 3.22

**Attorney Fees**

Madison Equal Opportunities  
 Ordinance, 8.6  
 Milwaukee Fair Housing and  
 Employment Discrimination  
 Ordinance, 8.7  
 Title VII, 8.3  
 WFEA, 7.20–.28, App. L  
 —generally, 7.20–.27  
 —downward adjustments, 7.27  
 —ERD procedures for awarding  
 attorney fees, 7.28  
 —how to calculate, 7.22–.27  
 —upward adjustments, 7.26

**B**

**BFOQ**

*See* Bona Fide Occupational  
 Qualifications

**Back Pay**

Madison Equal Opportunities  
 Ordinance, 8.6  
 Milwaukee Fair Housing and  
 Employment Ordinance, 8.7  
 Title VII, 8.3  
 Unemployment insurance, 7.11

Index-2

Welfare benefits, 7.11  
 WFEA, 1.11, 7.3–.11  
 —generally, 1.11, 7.3–.17  
 —circumstances terminating back  
 pay liability, 7.12–.17  
 —duty to mitigate, 7.10  
 —fringe benefits as element of, 7.7  
 —front pay, 7.18  
 —how to calculate, 7.5–.11  
 —interim earnings, 7.10  
 —liability for, 7.4  
 —prejudgment interest, 7.8

**Benefits**

*See also* Insurance; Leave;  
 Older Workers Benefit  
 Protection Act; Pension Plans  
 ADEA, 1.15

**Bona Fide Occupational  
 Qualifications (BFOQ)**

Age, 3.14  
 National origin, 3.70  
 Religion, 3.80  
 Sex, 3.85

**Bondability**, 3.23, 3.29

**Business**

Effect of closing on back pay  
 liability, 7.17

**C**

**Caregiver Background Laws**,  
 3.28

**Citizenship**, 3.71

**Civil Rights Act of 1964**

*See* Title VII

**Civil Rights Act of 1991**, 8.3

**Collateral Estoppel**

*See* Claim Preclusion; Issue Preclusion

Discrimination claim, 9.3

**Collective Bargaining****Agreements**

*See also* Unions

Genetic testing provision, 4.4

**Color, 3.72–76**

*See also* Race Discrimination

**Compensation**

*See* Wages

**Conciliation, 6.8, 6.18****Constructive Discharge**

WFEA, 1.4

**Conviction Record**

*See* Arrest and Conviction Records

**Costs and Expenses**

*See also* Attorney Fees

WFEA, 7.21

**D****Damages**

Civil Rights Act of 1991, 8.3

Compensatory and punitive damages under Title VII, 8.3, 9.3

Madison Equal Opportunities Ordinance, 8.6

Milwaukee Fair Housing and Employment Discrimination Ordinance, 8.7

Mitigation, 7.10

Title VII, 8.3

WFEA discrimination, 7.4, 7.18

**Day-Care Employees**

Arrest and conviction record, 3.28

**Defamation**

Retaliatory suit, 4.12

**Disability**

*See also* Americans with Disabilities Act; Disability Discrimination Under WFEA; Worker's Compensation

Absences due to, 3.39, 3.45

Definitions, 3.49–51. *See also*

Americans with Disabilities Act, Coverage; Disability Discrimination Under WFEA

Hiring inquiries, 3.56

**Disability Discrimination Under WFEA, 3.30–57, App. F**

*See also* Americans with Disabilities Act; Disability

Accommodation. *See*

Accommodation

ADA provisions compared, 3.47–57

Alcoholism, 3.38, 3.55

Case-by-case evaluation, 3.44

Definition, 3.31, 3.35, 3.49

FMLA (Wisconsin) provisions distinguished, 3.46

Hazardous employment, 3.43, 3.53

Hiring inquiries, 3.56

Job-relatedness defense, 3.52, 3.40–45

Medical examination, 3.56

Proof, 3.32–45

Worker's compensation exclusivity of remedy, 3.58

**Discovery**

Procedures under WFEA

—generally, ch. 5

—disclosure of witnesses and exhibits/10-day rule, 5.35

**Discrimination**

*See also* Bona Fide Occupational Qualifications; Disparate Impact; Equal Rights Division; Fair Employment Laws; Wisconsin Fair Employment Act

Bases, prohibited, 1.3, ch. 3, App. A. *See also individual bases of discrimination (e.g., Age)*

Complaints, dismissal of, 5.21

Choice of forum, 9.3, App. A

Disparate impact theory, 2.8

Disparate treatment theory, 2.4–.7

Enforcement. *See* Equal Employment Opportunity Commission; Equal Rights Division; Madison Equal Opportunities Commission; Milwaukee Fair Housing and Employment Commission

“In part” test, 2.9

Insurance

- age, 3.8, 3.17
- lawful product use, 3.103
- marital status, 3.61
- sex, 3.84

Leave, granting of, 3.86

Medical examination, 3.56

Mixed motive, 2.9

Proof

- McDonnell Douglas* method of, 2.6
- under WFEA, 2.1–.7, 5.46

Reverse, 3.76

Wages, 3.96

**Disparate Impact**, 2.8, 3.75

**Disparate Treatment**, 2.4, 3.75  
*See generally* Discrimination

**Drugs**

ADA coverage, 3.55

**E****EEOC**

*See* Equal Employment Opportunity Commission

**ERD**

*See* Equal Rights Division

**Employment Agency**

WFEA definition, 1.9

**Employment Application**

Falsification, 3.56

**Employment Testing**

Genetic testing, 4.2–.5

Honesty testing, 4.6

**Equal Employment Opportunity Commission (EEOC)**

Generally, 6.3

ADA enforcement, 6.3

ADEA enforcement, 6.3

*Compliance Manual*, 6.5

Conciliation, 6.8

Guidelines

- national origin discrimination, 3.64, 3.69
- religious discrimination, 3.77, 3.81
- sexual harassment, 3.87–.93

Investigation, 6.5, 9.2

Letter of determination, 6.6

Litigation, 6.10, 9.2

Mediation program, 6.7

Right-to-sue letter, 6.6

Title VII enforcement, 6.2–.11

Worksharing agreement with ERD, 6.4, 9.2

**Equal Pay**, 3.96

**Equal Rights Division (ERD)**

Generally, 5.2

Appeal, 5.54-.56  
 —dismissal prior to completion of investigation, 5.21  
 —no-probable-cause determination, 5.25, 5.52  
 —preliminary determination, 5.14  
 Attorney fee award procedure, 7.28  
 Complaint, 5.3-.13, App. H  
 —amendment, 5.12  
 —answer, 5.32, 7.10  
 —dismissal, 5.14, 5.21, 5.25, 5.26, 5.52 5.53  
 —form, App. K  
 —service, 5.17  
 —statute of limitation, generally, 5.7-.12. *See also* Wisconsin Fair Employment Act—Statute of limitation, generally  
 Decision, 5.50-.53  
*Decision Digest*, 3.35, 5.2  
 Determination  
 —evidence, 5.43-.47  
 —initial (probable cause), 5.22-.25, 5.44  
 —preliminary, 5.14  
 Hearing procedures, 5.39-.53  
 —certification to hearing, 5.29  
 —evidence at hearing, 5.43-.47  
 —failure to appear at hearing, 5.48  
 —hearing record, 5.49  
 —notice, 5.30  
 —postponement of hearing, 5.33  
 —record, 5.48  
 Injunctive relief, 7.29-.36  
 Investigation, 5.15-.21, 9.2  
 Judicial review, 5.56  
 Jurisdiction, 3.58, 3.81, 5.14  
 Motions, 5.35  
 Prehearing procedures, 5.28-.38  
 Probable cause  
 —hearing, 5.39-.53  
 —initial determination, 5.22-.25, 5.44  
 —reasonable cause (EEOC) contrasted, 6.7  
 Settlement, private, 5.26

Subpoena, 5.16, 5.36, App. L  
 Worksharing agreement with EEOC, 6.7, 9.2  
 Worksharing agreement with Madison Equal Opportunity Commission, 9.2

**Estoppel**

*See* Claim Preclusion, 9.3

**Evidence**

At ERD hearings, 5.43-.47  
 Hearsay, 5.44  
 Official notice, 5.47  
 Standards of proof, 5.46

**Executives**

Age distinctions, 3.9, 3.15

**F**

**Fair Employment Laws**, 1.1-.20, App. A

*See also* *Discrimination and individual Acts*

Choice of forum, 9.3, App. A  
 Cross-filing, 9.2

**Family and Medical Leave Act (Wisconsin)**

Serious health condition, 3.46  
 WFEA disability provisions distinguished, 3.47-.57

**Firefighters**, 3.10, 3.15, 3.43, 3.104

**Forum**

Discrimination complaint, 8.6, 8.7, App. A

**Front Pay**

Retaliation cases, 4.13  
 WFEA provisions, 5.1, 7.18, 7.35

**G**

**Gender-Based Harassment**, 3.94

**Genetic Information  
Nondiscrimination Act**, 4.2

**Genetic Testing**, 4.2–5

**H**

**Handicap Discrimination Under  
WFEA**

*See* Disability Discrimination  
Under WFEA

**Harassment**

*See also* Sexual Harassment

Ethnic, 3.69

Gender-based, 3.94

Racial, 3.74

**Hazardous Employment**

Age distinctions, 3.10

Disability discrimination defense,  
3.43, 3.53

Special duty of care, 3.43

**Health**

*See also* AIDS, Alcoholism;

Americans with Disabilities

Act; Family and Medical Leave

Act (Wisconsin)

Serious health condition, 3.46

**Health Plans**

Marital status discrimination, 3.61

Sex discrimination, 3.84

**Hearsay**

At ERD hearings, 5.45

**Height and Weight**

**Requirements**, 3.68

**Hiring**

Order, 7.33

**Honesty Testing**

Under WFEA, 4.6

**Hours**

Religious accommodation, 3.82

**I**

**Independent Contractor**

Coverage under WFEA, 1.7

**Injunctive Relief**

Cease and desist orders, 7.32

Order to hire, 7.33

Order to reinstate, 7.33

WFEA discrimination, 7.29–36

**Insurance**

*See also* Health Plans

Age distinctions, 3.8–11

Lawful-product discrimination,  
3.103

Marital status discrimination, 3.61

Sex discrimination, 3.86

**J**

**Job-Relatedness**

Disability discrimination defense,  
3.40–.45

Lawful product discrimination, 3.98

**Jurisdiction**

Under WFEA

—preliminary review of  
jurisdiction, 5.14

—worker’s compensation  
exclusivity, 3.58

**Jury Trial**

Title VII remedies, 8.3

**L**

**Labor and Industry Review**

**Commission (LIRC)**

Generally, 5.2, 5.55

Appeals of ERD decisions to LIRC,  
5.55

Judicial review of LIRC decisions,  
5.56

**Language Requirements**, 3.67

**Law Enforcement Officers**, 3.10

**Lawful Products**, 3.97–.104

**Leave**

*See also* Family and Medical

Leave Act (Wisconsin)

Discrimination, 3.84

Pregnancy-related, 3.86

**Lie Detector Testing**

*See* Honesty Testing

**M**

**Madison Equal Opportunities**

**Commission (MEOC)**, 1.19,

6.13–.20, 8.6, 9.3

**Madison Equal Opportunities**

**Ordinance**, 1.19

Enforcement procedures, 6.13–.20

Remedies, 8.6

**Managers**

Age discrimination, exceptions for  
managerial and executive  
positions, 3.9, 3.17

**Marital Status Discrimination**

Insurance, 3.61

Spousal identity rules, 3.62

WFEA provisions, 3.59–.62

**Mediation**, 6.7–.8

**Medical Examination**

*See also* Genetic Testing

ADA provisions, 3.56

WFEA, 3.56

**Milwaukee Equal Rights**

**Commission (MERC)**, 1.20,

6.21–.25, 8.7

**Milwaukee Fair Housing and**

**Employment Discrimination**

**Ordinance**, 1.20

Enforcement procedures, 6.21–.25

Remedies, 8.7

**Mitigation of Damages**

WFEA requirement, 7.10

**N**

**National Guard**, 3.63

*See also* Reservists

**National Origin**

Bona fide occupational  
qualification, 3.70

WFEA provisions, 3.64–.71

**Nepotism**, 3.62, 3.65

**No-Spouse Rules**

*See* Antinepotism

**Nursing Homes and Hospital**

**Employees**

Arrest and conviction record, 3.28

**O**

**Older Workers Benefit**

**Protection Act (OWBPA)**,

3.16–.17

**P**

**Pay**

*See* Wages

**Pension Plans**

Age distinctions, 3.7, 3.17

**Physical Characteristics**, 3.51, 3.68

**Polygraph**

*See* Honesty Testing

**Pregnancy**, 3.86, App. E

*See also* Family and Medical Leave Act (Wisconsin)

**Prejudgment Interest**, 7.8

**Privacy**

Genetic testing, 4.2–.5

**Professors**

Age discrimination, exception for professors, 3.14

**Public Assistance Benefits**

Back pay award, 7.11

**R**

**Race Discrimination**, 2.8, 3.72–.76

**Racial Harassment**, 3.67, 3.74

**Reemployment**

*See also* Reinstatement

Veterans, 3.63

**References**

Retaliatory, 4.12

**Refusal to Rehire, Unreasonable**, 3.58

**Reinstatement**

After disability leave, 3.45

Order, 7.34

Title VII, 8.3

Unconditional offer of reinstatement and termination of back pay liability under WFEA, 7.14

Veterans, 3.63

Worker's compensation, 3.58

**Religion**

Accommodation, 3.82

Bona fide occupational qualification, 3.80

Hiring, 3.80

WFEA provisions, 3.77–.82

**Remedies**

Under Madison ordinance, 8.6

Under Milwaukee ordinance, 8.7

Under Title VII, 8.3

Under WFEA, 1.11, ch. 7

**Res Judicata**, 9.3

**Reservists**

Discrimination, 3.63

**Retaliation**

WFEA provisions, 4.7–.14

**Retirement**

Mandatory, 3.7, 3.15–.17

**S**

**Salary**

*See* Wages



**Sale of Business**

Discrimination backpay liability,  
7.17

**School Bus Drivers**

Age distinctions, 3.11

**Serious Health Condition**

Disability distinguished, 3.46

**Settlement**

WFEA discrimination, 5.26, App. J

**Sex Discrimination**

*See also* Gender-Based  
Harassment; Sexual  
Harassment; Sexual Orientation  
Bona fide occupational  
qualification, 3.85  
Pregnancy, childbirth, and  
maternity leave, 3.86, App. E  
Wages, 3.96  
WFEA provisions, 3.83–96

**Sexual Favoritism, 3.93****Sexual Harassment**

Generally, 3.87–93  
Employer liability, 3.90–91  
Gender-based harassment, 3.94  
Hostile environment, 3.89  
Policy, 3.90  
Sexual favoritism, 3.93  
Quid pro quo, 3.89  
Worker's compensation  
exclusivity, 3.92

**Sexual Orientation, 3.95****Special Duty of Care, 3.43****Spousal Identity Rules**

*See* Antinepotism

**Supervisors**

Sexual harassment, 3.90–91

**Suspension from Employment**

Arrest record, 3.22

**T****Termination of Employment**

*See also* Constructive  
Discharge; Retaliation  
Unlawful conduct, 3.19. *See also*  
Arrest and Conviction Records

**Testing**

*See* Genetic Testing; Honesty  
Testing; Medical Examination

**Title VII (Civil Rights Act of 1964), 1.14**

*See also* Bona Fide  
Occupational Qualifications  
Enforcement, 6.2–.11  
National origin discrimination  
provisions, 3.66, 3.70–71  
Race discrimination provisions,  
2.8, 3.72–.76  
Religious discrimination  
provisions, 3.78, 3.80, 3.82  
Remedies, 8.3  
Sex discrimination provisions,  
3.84, 3.85, 3.88

**U****Unavailability for Employment**

Termination of back pay liability,  
7.16

**Undue Hardship**

Disability accommodation, 3.54  
Religious accommodation, 3.54

**Unemployment Insurance (UI)**

Back pay award, 7.11

**Unions**

*See also* Collective Bargaining Agreements  
WFEA coverage, 1.8

**Unreasonable Refusal to Rehire, 3.58**

**Use of Lawful Products, 3.97–.104**

**V**

**Veterans**

Reemployment, 3.63

**W**

**WFEA**

*See* Wisconsin Fair Employment Act

**Wages**

*See also* Back Pay; Front Pay  
Sex discrimination, equal pay, 3.96

**Weight, 3.68**

**Welfare Benefits (Public Assistance)**

Back pay award, 7.11

**Wisconsin Fair Employment Act (WFEA)**

*See also* Discrimination

Generally, 1.2–.11

Anonymity provision, 5.17

Bases of discrimination, prohibited, 1.3, ch. 3, App. A. *See also individual bases of discrimination (e.g., Age)*

Coverage, 1.5–.10

Enforcement procedures, generally ch. 5; *See also* Equal Rights Division—Hearing procedures

Genetic testing provisions, 4.2–.5

Honesty testing provisions, 4.6

Jurisdiction. *See* Equal Rights Division

Marital status provisions, 3.59–.62

Proof of discrimination, 2.2–.9, 5.46

Remedies, 1.11, ch. 7

Retaliation provisions, 4.7–.14

Statute of limitation, generally, 5.7–.12

—continuing violation, 5.11

—triggering date, 5.9

—waiver and tolling, 5.10

**Wisconsin Family and Medical Leave Act**

*See* Family and Medical Leave Act (Wisconsin)

**Worker’s Compensation**

Exclusivity of remedy

—disability discrimination, 3.58

—sexual harassment, 3.92

Reinstatement right, 3.58

Unreasonable refusal to rehire, 3.58