

ACLU of Wisconsin Opposition to AB 64, §§ 1381-1383, 1457-1459

The ACLU of Wisconsin opposes provisions of the Budget Bill that would deter victims of discrimination in employment from vindicating their rights under the Wisconsin Fair Employment Act and the Wisconsin Family Medical Leave Act. There are already provisions to address frivolous cases in state law. These changes are extreme, and go far beyond anything necessary to deter any such frivolous litigation.

The proposed statutory changes would coerce victims of discrimination who choose to seek relief under state law to accept employers' settlement offers – even offers made before any discovery has been conducted – by making victims of discrimination responsible for paying their employers' attorneys fees and costs if they refuse the offer and it later turns out the offer was “better” than the relief obtained through litigation, even if the employer is found to have discriminated. Moreover, any attorneys' fees the employee obtains would not count in deciding whether the employee received “better” relief.

Because most employees cannot afford to take the risk of having to pay their employers' attorneys' fees, they will simply stop seeking relief under state law, or the change will force them to accept unreasonably low settlement offers before they have had their day in court.

The proposed changes also eliminate attorney fee awards to victims of discrimination who prove their employer discriminated and get an order that the employer cease its discriminatory actions, unless the victim also obtains monetary damages or an order of reinstatement. This will severely reduce the incentives for lawyers to represent employees and act as “private attorneys general” to enforce antidiscrimination laws.

The proposed changes to the WFEA and WFMLA will be most detrimental to employees who are not protected by parallel federal law. This includes employees who work for small employers who are not covered by Title VII and the FMLA, and people experiencing kinds of discrimination not expressly protected by federal nondiscrimination law, such as persons discriminated against because of marital status, arrest records, use or nonuse of lawful products outside of working hours, and declining to attend meetings or participate in communications about religious or political matters. Wis. Stat. § 111.321.

The ACLU urges legislators to preserve meaningful access to relief from employment discrimination by removing this pernicious – and entirely unnecessary - provision from the budget bill.