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Myths v. Facts

SB 202: Eliminating Punitive and Compensatory Damages

FOR IMMEDIATE RELEASE

March 1, 2012

Contact Information:

Bill G. Smith – (608) 255-6083
Andrew Cook – (608) 258-9506

Madison – The Assembly recently passed SB 202, which eliminates punitive and compensatory damages under the Wisconsin Fair Employment Act (WFEA). Senate Bill 202 repeals 2009 Wisconsin Act 20.

Unfortunately, opponents of SB 202 have issued a number of misstatements about SB 202. Below are facts that correct those misstatements.

Myth 1: SB 202 Repeals the “Equal Pay Enforcement Act”

FACT – There is no official Act with this title. This is what the proponents have chosen to unofficially name 2009 Act 20, which added punitive and compensatory damages to the Wisconsin Fair Employment Act. (Wis. Stat. §§ 111.31 - .397).

2009 Wisconsin Act 20 did nothing to enhance “equal pay,” but instead padded the pockets of plaintiff attorneys through higher damage awards.

Myth 2: SB 202 Negatively Affects Women

FACT – SB 202 does not negatively affect, or single out, women. Senate Bill 202 simply repeals punitive and compensatory damages from the WFEA. Once SB 202 goes into effect, any person (including women) will still have the right to sue for alleged workplace discrimination. Moreover, women can still seek punitive and compensatory damages under federal law.

Myth 3: No Lawsuits Seeking Punitive and Compensatory Damages Have Been Filed Since Act 20 Became Law

FACT – Numerous discrimination complaints have been filed since Act 20 became law seeking punitive and compensatory damages. However, none have made it all the way through the administrative law process and court system. This is because of the length of time it takes for one of these cases to go through the entire legal process.

In fact, businesses have been forced to pay higher damages as a result of Act 20. Since Act 20 went into effect, businesses have settled out of court for much higher amounts because of the potential of punitive damages threatened by plaintiff attorneys, even if no discrimination actually has occurred.

Myth 4: The 2009 Law Created a New Private Cause of Action and SB 202 Takes Away this Right

FACT – 2009 Act 20 did **NOT** create a new cause of action for women, or for any other protected class. Long before Act 20, an individual could sue for alleged workplace discrimination. Prior to Act 20, if the Department of Workforce Development (DWD) determined that an employer discriminated against an employee or a job applicant, the person could seek the following remedies:

- Reinstatement;
- Back pay up to two years before the complaint;
- Court costs, attorney fees, and other expenses related to the proceedings available for victims of discrimination.
- **Under SB 202, these same remedies are still in place.**

MORE FACTS ABOUT SB 202

FACT – 2009 Act 20 is duplicative, unnecessary and unduly burdensome on Wisconsin employers as federal employment laws already provide the same potential punitive and compensatory damages. **This is why the Legislature passed SB 202.**

FACT – Prior to enactment of 2009 Act 20, Wisconsin employers were already forced to defend workplace discrimination claims before the DWD, and against simultaneously cross-filed claims under federal laws based on the same facts and alleged types of claims before federal agencies, and then in state or federal court under federal law.

FACT – After enactment of 2009 Act 20, Wisconsin employers were forced to not only defend workplace discrimination claims in the administrative hearing process before the DWD, but also then re-litigate the same case in state court in a full jury trial (or in a new trial to the court) in defense of potential punitive and compensatory damages, and additional costs and attorney fees.

FACT – At the same time, Wisconsin employers were forced to defend simultaneously cross-filed claims under federal laws based on the same facts and alleged types of claims before federal agencies, and then in state or federal court under federal law.

FACT – Potential punitive and compensatory damages are already available under, for example:

- The federal Title VII of the Civil Rights Act of 1964 (employers with 15 or more employees);
- The federal Americans with Disabilities Act of 1990 (employers with 15 or more employees);
- The federal Genetic Information Nondiscrimination Act of 2008 (employers with 15 or more employees);
- The federal Employee Polygraph Protection Act of 1988 (employers with one or more employees).

Conclusion

Based on these facts, SB 202 is good public policy. WCJC therefore looks forward to Gov. Walker signing SB 202 into law. For more information about SB 202, visit [Wisconsin Civil Justice Council's website](#).

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