

Sally A. Piefer, Esq., The Schroeder Group S.C., Attorneys at Law, sap@tsqlaw.com



MILWAUKEE SICK LEAVE ORDINANCE DECLARED UNCONSTITUTIONAL

This morning the Milwaukee Circuit Court has been reported to have issued a decision in the lawsuit filed by the MMAC in December of 2008. The decision has concluded that the Sick Leave Ordinance, passed in November, is unconstitutional. Once we have further details, we will provide clients with an updated newsletter.

WISCONSIN'S GOVERNOR SIGNS LEGISLATION ALLOWING COMPENSATORY/PUNITIVE DAMAGES IN EMPLOYMENT DISCRIMINATION CLAIMS

On Monday, June 8, 2009, the Governor signed 2009 Wisconsin Act 20, which amends the Wisconsin Fair Employment Act (WFEA) to allow employees who file complaints of discrimination with the Wisconsin Department of Workforce Development (DWD) to recover compensatory and punitive damages. Those damages are subject to the following caps:

- Not applicable to employers with fewer than 15 employees (or local governmental units).
- \$50,000 for employers with between 15 and 100 employees.
- \$100,000 for employers with 101-200 employees.
- \$200,000 for employers with 201-500 employees.
- \$300,000 for employers with more than 500 employees.

In addition, the new legislation permits complainants to pursue their claims in circuit court rather than through the State's administrative process, and permits jury trials.

Although the damage caps parallel those provided under federal law, the Act allows a court to impose a "surcharge" equal to 10% of the amount of compensatory and punitive damages on the employer. The surcharge would be deposited into the general fund and credited to an appropriation account of DWD.



**The Schroeder Group, S.C.
Attorneys at Law**
Crossroads Corporate Center
20800 Swenson Drive
Suite 475
Waukesha, WI 53186


Main Phone
(262) 798-8220
(800) 372-3020

Facsimile
(262) 798-8232

Direct Phone
(262) 754-1325

E-Mail
sap@tsqlaw.com

www.tsqglaw.com



Employers should also be aware that the WFEA provides protections to employers beyond those which are provided for under federal law. For example, under the WFEA, an employee may bring a claim of discrimination based on marital status, sexual orientation and arrest/conviction record, and for the use of lawful products during non-work time.

The Act will be effective once the 2009-11 Biennial Budget Act is approved – likely sometime **this summer**. Thankfully, the Act will not apply retroactively – it will only apply to discrimination complaints filed with the DWD after the effective date.

With this new legislation, employers should be ever more vigilant in making employment decisions and should seek assistance from a lawyer when questions or concerns arise.

The Schroeder Group, S.C., Attorneys at Law provides comprehensive services covering all aspects of employment, employee benefits and labor relations law to closely-held businesses and companies. Through aggressive representation and sound advice, we help our clients achieve their business objectives. We are regularly in direct and ongoing communication with labor relations, human resources and employee benefits managers, as well as business owners and senior executives, and are also sensitive to their business, cost management and relationship needs. Our priority is counseling and problem avoidance.

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