



ARCHDIOCESE
of MILWAUKEE

Employment Law Overview

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LAWSUIT
SETTLEMENT



HIGH OR LOW?



Willfully making an employee
who works overtime salaried
because they work too many
hours



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SETTLEMENT



\$8000 and 1 month in prison

HIGH OR LOW?



Failing to make reasonable accommodations for employees with serious medical conditions



LAWSUIT
SETTLEMENT



\$200,000 per offense

Title VII of the Civil Rights Act of 1964

Purpose: to protect individuals from discrimination based upon:

Race

Color

National Origin

Religion

Sex*

*Following the decision of *Bostock v. Clayton County* (US Sup. Ct. 2020), sex discrimination also applies to gender identity/transgender status and sexual orientation.

Exception for Religious Organizations

Under Title VII, religious organizations ARE permitted to give employment preference to members of their own religion.

Religious organizations ARE NOT permitted to discriminate in employment on the basis of other protected classes.

Ministerial Exception

Courts have held that "ministers" generally cannot bring claims under the employment discrimination laws, however, you must proceed with caution as this is a highly fact sensitive inquiry.

It is important that you review your job descriptions to determine whether an employee qualifies as a minister.

Sample Ministerial Language

"The duties and requirements of this position are ministerial in nature and include participating in Mass, prayer, and leading others in prayer, as appropriate. These duties are central to our mission as a Catholic parish.

The employee is expected to know and act consistently in accordance with the mission, policies, and tenets of the Catholic Church and the Code of Ethical Standards for Church Leaders. The employee is further expected to perform all duties and responsibilities with an overriding commitment to develop our Catholic Faith Community in accordance with the doctrines, laws, and norms of the Catholic Church."

Wisconsin Fair Employment Act (WFEA)

Protects individuals from discrimination based upon:

Age

Race

Creed

Color

Disability

Sex

Sexual orientation

Pregnancy/maternity

National origin

Military Service

Marital Status

Arrest/Conviction Record

Use or nonuse of lawful products off the employer's premises during nonworking hours

HIGH OR LOW?



Failing to address harassment
complaints made by
employees



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SETTLEMENT



\$500

Pregnancy Discrimination Act

Applies to pregnancy, childbirth, or a medical condition related to pregnancy or childbirth.

The Pregnancy Discrimination Act requires equal treatment as to other persons "not so affected by similar in their ability or inability to work."

Young v. UPS (US Sup. Ct. 2015), pregnant employee of UPS terminated for being pregnant.

Age Discrimination in Employment Act of 1967 (ADEA)

Protects individuals age 40 or older in ALL aspects of employment.

Harassment



Harassment

- Harassment is unwelcome conduct that is based on race, color, religion, sex (including pregnancy) national origin, age (40 or older), disability or genetic information. and it is looked at from the viewpoint of the victim.
 - According to the EEOC, harassment becomes unlawful when:
 - Enduring the offensive conduct becomes a condition of continued employment.
 - The conduct is severe enough to create a working environment, that a "reasonable" person would consider intimidating, hostile or offensive.
- Employer **MUST** act:
 - Educate and share policy.
 - If complaint respond promptly, thoroughly, objectively, and completely.
 - Take effective and appropriate action.
 - **DOCUMENT, DOCUMENT, DOCUMENT!**

Know Where to Look

- Human Resources
- Parish/ School Handbook
- Archdiocese of Milwaukee Code of Ethical Standards
- Archdiocese of Milwaukee Parish and School Policy Manual

HIGH OR LOW?



Failing to post the Federal
FMLA posters according
to Department of
Labor requirements



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SETTLEMENT



\$212

FMLA – Federal and Wisconsin

- IS THE EMPLOYER COVERED?
 - Federal: 50 or more employees in at least 20 weeks or **private elementary or secondary school**
 - Wisconsin: 50 or more permanent employees at least 6 of the preceding 12 calendar months
- IS THE EMPLOYEE ELIGIBLE?
 - Federal: Employee employed for 12 months AND worked for 1250 hours in preceding 12 months AND 50 or more employees within 75 miles
 - Wisconsin: worked at least 1000 hours in preceding 52 weeks AND for at least 52 consecutive weeks

Not Covered? Use Non-FMLA policy!!

Recommended Forms

- Employee Leave Request
- Physician Statement

FMLA – Type and Amount of Leave

FEDERAL LEAVE

- 12 weeks for:
 - Birth or placement of a child for adoption or foster care
 - Care for a spouse, child or parent with a serious health condition, or for an EE's own serious health condition
- 26 weeks:
 - In a 12-month period of care of a service member

WISCONSIN LEAVE

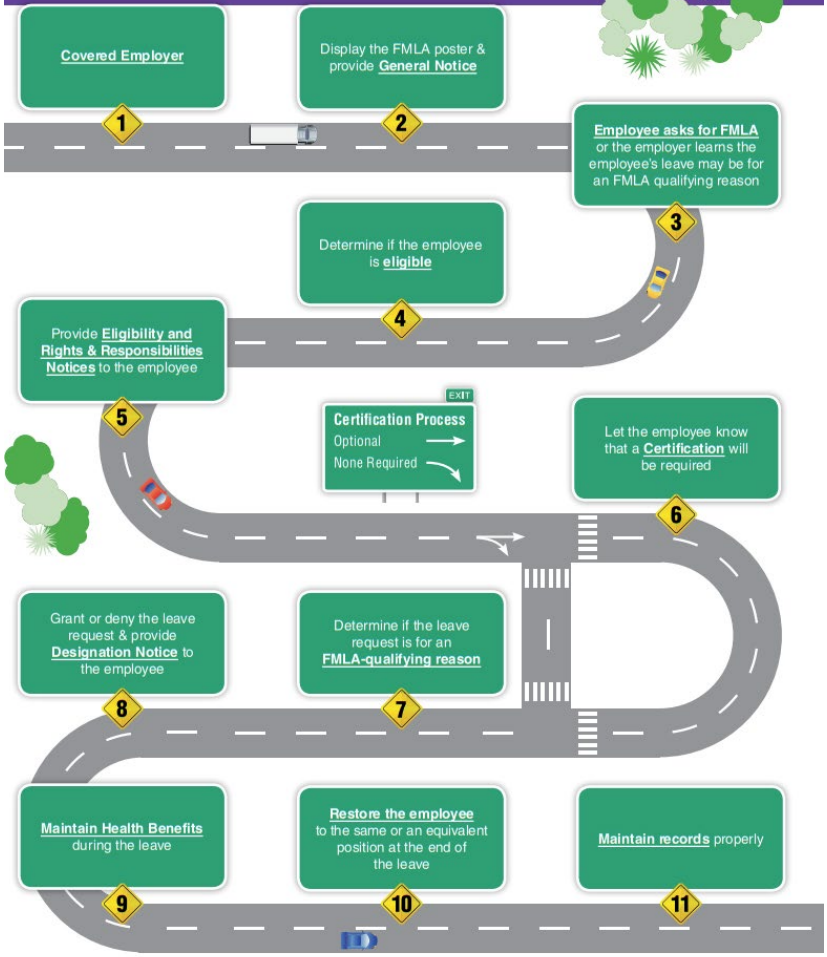
- 6 weeks for:
 - Birth or adoption placement of a child
- 2 weeks for:
 - Seriously ill child, spouse, parent, parent-in-law, and for EE's own serious health condition
- No military caregiver provision

FMLA – Federal and Wisconsin

- Decide the relationship of paid leave with Federal and State of Wisconsin leave because:
 - an employee MAY substitute paid or unpaid leave under WI law
 - an employer may require, or an employee may elect to substitute paid leave for the otherwise unpaid leave under federal law
- Decide the 12-month period:
 - For Federal FMLA, define the 12-month period, i.e., calendar, rolling forward, rolling backward, etc.
 - Wisconsin FMLA is defined by calendar year



THE EMPLOYER'S ROAD MAP TO THE FMLA



<https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/employerguide.pdf>

Americans with Disabilities Act

- **Disability:** *mental or physical impairment that substantially limits a major life activity.*
- Unlike FMLA (which is EE entitlement), the ADA provides RIGHTS to employees:
 - Protection from discrimination (e.g., hiring, employment, etc)
 - Reasonable accommodation

Americans with Disabilities Act

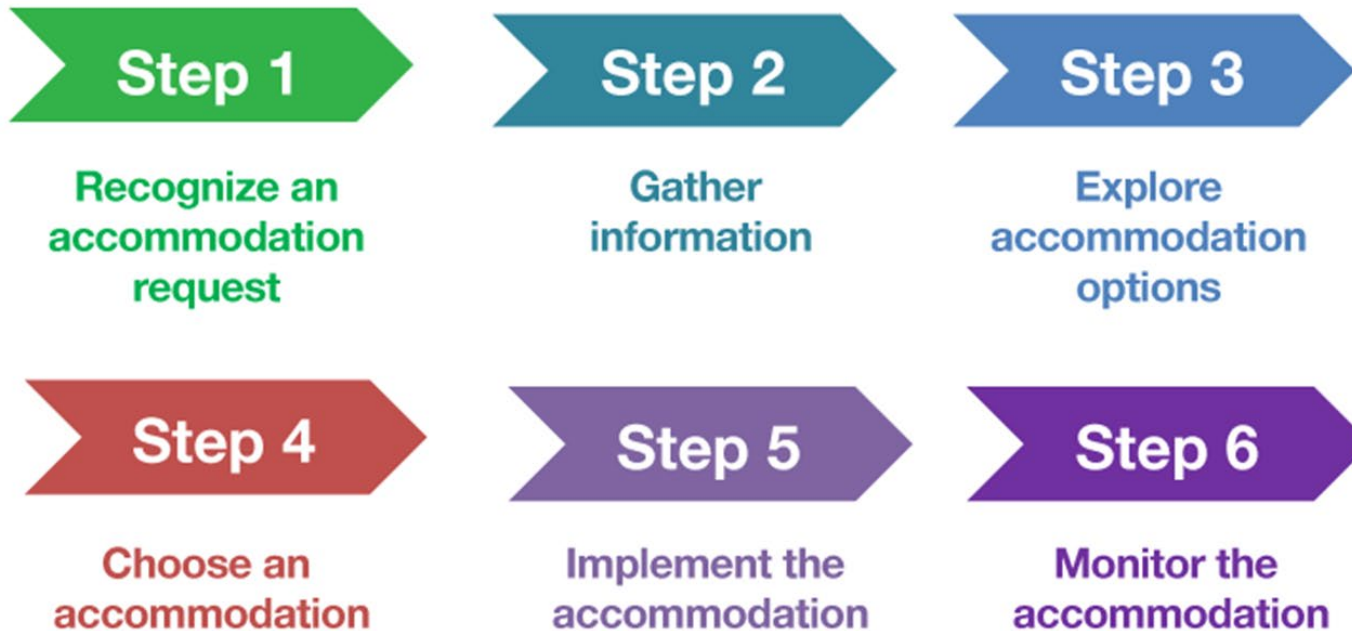
ADA Reasonable Accommodation is...

“Any change in the work environment of in the way things are customarily done that enables an individual with a disability to enjoy equal employment opportunities.”

May include:

- Modifications to existing leave policies
- Leave of absence, even if:
 - ER does not offer leave as an EE benefit
 - EE is not eligible for leave under ER’s policy
 - EE has exhausted the leave ER provides

ADA – Interactive Process



Each step requires careful documentation.

<https://askjan.org/>

Retaliation

Title VII also prohibits retaliation by an employer.

Retaliation is defined as an employer taking an adverse employment action against an individual for filing a complaint.

Once an employee files a complaint, an employer must be careful not to engage in retaliatory behavior.

HIGH OR LOW?



Terminating an employee
without supporting evidence of
poor performance or
misconduct



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\$1,000,000

HIGH OR LOW?



Withholding a paycheck from
an employee who receives
\$2000 per paycheck



LAWSUIT
SETTLEMENT



\$20,000

Performance Evaluations



Performance Evaluations

Why Do Them:

- Creates Career Growth
- Improves Performance
- Increases Employee Engagement
- Helps Determine Training
- Addresses Areas for Improvement
- Refocuses Work
- Clarifies Expectations
- Allows for Conversation
- Evaluates Goals
- Provides Documentation
- Strengthens Team Bonds
- Guides Current Projects

Performance Evaluations

- **Do's and Don'ts:**

- Set a comfortable and neutral meeting place
- Stick to a consistent schedule
- Gather data before meeting
- Get feedback from others (360 review)
- Use concrete criteria when available
- Don't soften hard information

- NO SURPRISES!

Start with the positives

Have frequent check-ins

Use employee input form

Set SMART goals together

Ask and welcome questions

Don't be distracted

Progressive Discipline



Progressive Discipline

- A progressive discipline policy is an approach that informs employees of the actions managers can take when improvement or change is necessary.
- The policy should clearly show employees the steps they can anticipate if they display unsatisfactory performance.
- Employers typically include this policy in the employee handbook to ensure all employees have access to it.
- Example:
 - Verbal Warning
 - Written Warning
 - Final Course of Action – ie. Suspension Pending Investigation, Termination, New Position?

Progressive Discipline

- **Things to Remember:**
- Clearly define steps Investigate before assigning discipline
- Be consistent Check employee improvement (set date to review again)

- DOCUMENT, DOCUMENT, DOCUMENT!

HIGH OR LOW?



Deducting the \$1500
Archdiocese of Milwaukee
teacher contract termination
penalty fee from teacher wages
without receiving written
employee consent



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\$1,500

Deductions from Wages

Employers cannot make any deduction from the wages earned by any employee for faulty workmanship, lost or stolen property, or damage to property, unless:

- The employee authorizes the employer in writing to make that deduction;
- The employer and a representative designated by the employee determine that the loss was due to the employee's negligence, carelessness, or willful and intentional conduct; or
- The employee is found guilty or held liable in a court of law.

If an unauthorized deduction is made, the employer may be liable for twice the amount of the deduction.

Wis. Stats. 103.455



Deductions from Wages

- **May the employer require employees to sign a "blanket" authorization to deduct for loss, theft, damage, or faulty workmanship?**
- No. An employer may not deny an employee the right to disagree with fault for the particular incident of loss.

- **May an employee authorize a deduction from wages by signing a time card, a daily checkout sheet, or by endorsing a payroll check?**
- No. A signature required for any other purpose (to endorse a check, to sign a time sheet) cannot serve the dual purpose of authorizing a deduction.

Source: <https://dwd.wisconsin.gov/er/laborstandards/wagededuction.htm#>

Documentation

What does Documentation need to include?

- Who
- What
- When
- Where
- Why
- How
- Facts only

Documentation Example

NO: John Doe is usually late for work and misses too much work.

BETTER:

- 06/17/22: John Doe called in sick and missed 8 hours of work.
- 06/19/22: John Doe arrived to work at 10:00am, two hours later than his scheduled start time. John failed to call ahead to report that he would be late.
- 06/20/22: John Doe was 45 minutes late to work.
- 06/21/22: John Doe was 25 minutes late to work.
- 06/22/22: John Doe was 45 minutes late to work and missed the mandatory monthly safety meeting.

Prior to taking an action that will result in a dismissal or termination (including a RIF and non-renewal of contract), the employer must have sought and followed the advice of a qualified attorney OR other professional person that Catholic Mutual has approved.

PASTOR SHOULD BE INVOLVED in all disciplinary actions!

Questions?

Office of Parish and School Human Resources

414-389-88HR(47)

ParishandSchoolHR@archmil.org