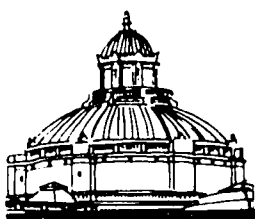


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CRS REPORT FOR CONGRESS

SURVEY OF STATE STATUTES CONCERNING EMPLOYMENT  
DISCRIMINATION OF HANDICAPPED PERSONS



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May 31, 1987

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#### ABSTRACT

This is a report which surveys and discusses the statutes in the fifty states and the District of Columbia which concern employment discrimination of handicapped persons.

## SURVEY OF STATE STATUTES CONCERNING EMPLOYMENT DISCRIMINATION OF HANDICAPPED PERSONS

The statutes of the fifty states and the District of Columbia were searched for provisions concerning employment discrimination of handicapped persons. A large majority of the states (45) prohibit this type of discrimination. The States of Alabama, Arkansas, Idaho, Mississippi, Tennessee and Delaware do not have a general prohibition for employers within the state although five of these states, i.e. Alabama (§21-7-8), Arkansas (§82-2901), Idaho (§56-707), Mississippi (§25-9-149), and Tennessee (§8-50-103), do set forth a policy to employ handicapped persons in the state service.<sup>1/</sup> The prohibition concerning employment discrimination against handicapped persons is generally accompanied by the limitation that the person's handicap does not interfere with job performance. Some statutes such as in Oregon (§659.425(1)(a)), further provide that "with reasonable accommodation by the employer" [the impairment] does not prevent the performance of the work involved.

Of the forty-five states which prohibit employment discrimination of handicapped persons all but six states incorporate this prohibition in their civil rights statute which prohibits job discrimination on the basis of

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<sup>1/</sup> It is interesting to note that Tennessee amended this section in 1986; prior to that year private employers were also prohibited from employment discrimination against handicapped persons.

race, color, religion, nation of origin, sex, and age as well as handicap. These six states, Kentucky, Louisiana, Massachusetts, Michigan, New Jersey, and South Carolina, have set up separate statutes to address this special concern. The method of separate treatment for discrimination of handicapped persons is, in some respects, similar to the method employed by the federal government. Employment discrimination of handicapped persons is prohibited at the federal level by section 504 of the Rehabilitation Act of 1953 (29 USC §794). Section 504 prohibits discrimination against otherwise qualified handicapped individuals solely by reason of their handicap in any program or activity that receives federal financial assistance or in an executive agency or the United States Postal Service. Numerous proposals have been made to incorporate discrimination of handicapped persons in title VII of the Civil Rights Act of 1964<sup>2/</sup>. Title VII, as amended, makes it unlawful for employers, employment agencies and labor organizations to discriminate against employees, applicants or members on the on the basis of race, color, religion, sex or national origin. Expanding coverage of title VII by including discrimination against handicapped persons would align the federal sector treatment of discrimination against handicapped persons in a manner similar to the prevailing practice at the state level.

The employers affected by the anti-discrimination statutes in the forty-five states which prohibit employment discrimination of handicapped persons differ widely. For example, Maine (5 §4553), South Dakota (§20-13-1), Vermont (21 §495d),

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<sup>2/</sup> See, e.g. H.R. 192, 100th Cong.; H.R.370, 99th Cong. For further information on this type of proposal see "Proposed Coverage of Handicapped Persons By Title VII of the Civil Rights Act: An Analysis of H.R. 1294 and H.R. 370," CRS Rept. (May 14, 1985).

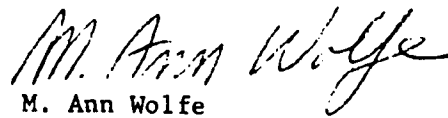
and Wisconsin (§111.32) define employer as any person who employs one or more persons. In Maryland (Art. 49B §15), Nebraska (§48-1102), Nevada (§613.310), North Carolina (§143-422.2), South Carolina (§1-13-20), Oklahoma (25 §1301), Texas (Art. 5221k §2.01) and Utah (§34-35-2) the definition of employer is any person who employs 15 or more persons.

Of the forty-five states which prohibit employment discrimination of handicapped persons, forty-three set out administrative procedures to remedy violations. Two states, Louisiana and Virginia, provide for civil action in the courts only. Generally, the commissions which are set up to address this issue are instructed, in the statutes, to informally investigate the complaint filed and if it is determined that the allegations are supported by substantial evidence, an effort must be made immediately and confidentially to eliminate the discrimination complained of by conference, conciliation and persuasion. If these efforts fail, a hearing must be held and an order issued stating the findings and an order of "appropriate" relief.

All of the forty-five states which prohibit employment discrimination of handicapped persons also provide a statute allowing judicial review. States differ concerning when this appeal may be made within the framework of the administrative and judicial procedures.

Thirty-three states allow "attorneys' fees" to either private or prevailing parties if such a decision is deemed appropriate. Although Wisconsin does not have a statute allowing attorneys' fees there is a case where attorneys' fees were allowed. The Wisconsin Supreme Court stated that awarding attorneys' fees was fairly implied under the Fair Employment Act in fashioning an appropriate remedy for the victim of discrimination to make prevailing party "whole". (See Watkins v. Labor and Industry Review Com'n, 345 N.W.2d 482, 117 Wis.2d 753 (1984)).

The following table of the statutes of the fifty states and the District of Columbia set out the specific sections of each state statute which prohibits employment discrimination of handicapped persons as well as the sections which specify the administrative and judicial remedies available. The statutory citations of those states which specifically include language which allows attorneys' fees to be awarded are also listed.



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May 31, 1987

SURVEY OF STATE STATUTES CONCERNING  
EMPLOYMENT DISCRIMINATION OF HANDICAPPED PERSONS

STATE	PROHIBITS EMPLOYMENT DISCRIMINATION OF HANDICAPPED PERSONS	PROCEDURES TO REMEDY VIOLATIONS		PROVIDES FOR ATTORNEYS' FEES
		ADMINISTRATIVE	JUDICIAL	
Alabama Ala. Code (1986 Supp.)	NPWF <sup>1/</sup>	NPWF	NPWF	NPWF
Alaska Alaska Stat. (1986 Supp.)	§ 18.80.220	§ 18.80.100	§ 18.80.135	§ 18.80.130(e)
Arizona Ariz. Rev. Stat. Ann. (1986-87 Supp.)	§ 41-1463	§ 41.1481 subd. A	§ 41.1481 subd. D	§ 41.1481 subd. J
Arkansas Ark. Stat. Ann. (1985 Supp.)	NPWF	NPWF	NPWF	NPWF
California Cal. Govt. Code (1987 Supp.)	§ 12940(a)	§ 12960	§ 12965(b)	§ 12965(b)
Colorado Colo. Rev. Stat. (1984 Supp.) 1985-1986 Colo. Session Laws	§ 24-34-402	§ 24-34-306	§ 24-34-306(11) and § 24-34-307	NPWF

<sup>1/</sup> NPWF - means No Provision Were Found

STATE	PROHIBITS EMPLOYMENT DISCRIMINATION OF HANDICAPPED PERSONS	PROCEDURES TO REMEDY VIOLATIONS		PROVIDES FOR ATTORNEYS' FEES
		ADMINISTRATIVE	JUDICIAL	
Connecticut - Conn. Gen. Stat. (1987 Supp.)	§ 46a-58 and § 46a-60(a)(1)	§ 46a-82	§ 46a-95(j)	§ 52-251b (suit must be brought under § 46a-58)
Delaware Del. Code Ann. (1986 Supp.)	NPWF	NPWF	NPWF	NPWF
District of Columbia D.C. Code Ann. (1986 Supp.)	§ 1-2512	§ 1-2544	§ 1-2554 and § 1-2556	§ 1-2553
Florida Fla. Stat. Ann. (1987 Supp.)	§ 760.10	§ 760.10(10)	§ 760.10(12)	§ 760.10(13)
Georgia Ga. Code. Ann. (1986 Supp.)	§ 34-6A-4 and § 45-19-29	§ 45-19-36(b)	§ 34-6A-6(a) and § 45-19-39(a)	§ 34-6A-6(b) and § 45-19-39(c)
Hawaii Hawaii Rev. Stats. (1982 Supp.) 1982-1986 Hawaii Sess. Laws	§ 378-2	§ 378-4	§ 378-5(d) and § 378-5(e)	§ 378-5(j)



STATE		PROHIBITS EMPLOYMENT DISCRIMINATION OF HANDICAPPED PERSONS	PROCEDURES TO REMEDY VIOLATIONS		PROVIDES FOR ATTORNEYS' FEES
			ADMINISTRATIVE	JUDICIAL	
Idaho	Idaho Code (1986 Supp.)	NPWF	NPWF	NPWF	NPWF
Illinois	Ill. Ann. Stat. (Smith Hurd 1986 Supp.)	68 § 1-102(A)	68 § 7-102(A)	68 § 8-111	68 § 8-108(G)
Indiana	Ind. Code. Ann. (1986)	§ 22-9-1-2	§ 22-9-1-3(o) and § 22-9-1-6(j) and § 22-9-1(k)(1)	§ 22-9-1-6(k)(2) and § 22-9-1-6(n)	NPWF
Iowa	Iowa Code. Ann. (1987 Supp.)	§ 601A.6	§ 601A.15(1)	§ 601A.16 § 601A.17	§ 601A.15(8)(a)(8) and § 601A.16(5)
Kansas	Kan. Stats. Ann. (1985 Supp.)	§ 44-1001 and § 44-1009	§ 44-1005 and § 44-1010	§ 44-1011	NPWF
Kentucky	Ky. Rev. Stats. Ann. (1986 Supp.)	§ 207.150	§ 207.200 and § 207.210	§ 207.230	§ 207.230(1)

STATE		PROHIBITS EMPLOYMENT DISCRIMINATION OF HANDICAPPED PERSONS	PROCEDURES TO REMEDY VIOLATIONS		PROVIDES FOR ATTORNEYS' FEE
			ADMINISTRATIVE	JUDICIAL	
Louisiana	La. Civ. Code Ann (1987 Supp.)	46 § 2252 and 46 § 2254(C)	NPWF	46 § 2256(A)	46 § 2256(B) and (C)
Maine	Me. Rev. Stats. Ann. (1986 Supp.)	5 § 4571 and 5 § 4572	5 § 4611	5 § 4612 sub. 4 and 5 § 4621	5 § 4614 and 5 § 4622
Maryland	Md. Ann. Code. (1986)	Art. 49B § 14 and Art. 49B § 16	Art. 49B § 9	Art. 49B § 10(d) and Art. 49B § 12	NPWF
Massachusetts	Mass. Gen. Laws Ann. (1986 Supp.)	Chap. 151B § 4 subd. 16	Chap. 151B § 5	Chap. 151B § 6 and Chap. 151B § 9	Chap. 151B § 9
Michigan	Mich. Comp. Laws Ann. (1986 Supp.)	§ 37.1102	§ 37.1605	§ 37.1606 and § 37.1607	§ 37.1606(3)
Minnesota	Minn. Stat. Ann. (1987 Supp.)	§ 363.03 and § 363.12	§ 363.06	§ 363.072 and § 363.14	§ 363.14 subd 3

STATE		PROHIBITS EMPLOYMENT DISCRIMINATION OF HANDICAPPED PERSONS	PROCEDURES TO REMEDY VIOLATIONS		PROVIDES FOR ATTORNEYS' FEES
			ADMINISTRATIVE	JUDICIAL	
Mississippi	Miss. Code. Ann. (1986 Supp.)	NPWF	NPWF	NPWF	NPWF
Missouri	Mo. Ann. Stat. (1987 Supp.)	§ 213.055	§ 213.075	§ 213.085 and § 213.111	§ 213.111(2)
Montana	Mont. Code. Ann. (1983)	§ 49-1-102 and § 49-2-203	§ 49-2-501	§ 49-2-509	§ 49-2-505(4) and § 49-2-509(3)
Nebraska	Neb. Rev. Stat. (1986 Supp.)	§ 48-1101 and § 48-1104	§ 48-1117 and § 48-1118	§ 48-1120	§ 48-1120(6)
Nevada	Nev. Rev. Stat. (1986)	§ 613.330	§ 613.405	§ 613.420	NPWF
New Hampshire	N.H. Rev. Stat. Ann. (1986 Supp.)	§ 354-A:1 and § 354-A:2 § 354-A:8	§ 354-A:9	§ 354-A:10	NPWF

STATE		PROHIBITS EMPLOYMENT DISCRIMINATION OF HANDICAPPED PERSONS	<u>PROCEDURES TO REMEDY VIOLATIONS</u>		PROVIDES FOR ATTORNEYS' FEES
			ADMINISTRATIVE	JUDICIAL	
New Jersey	N.J. Stat. Ann. (1986-87 Supp.)	§ 10:5-4.1	§ 10:5-13	§ 10:5-13	§ 10:5-27.1
New Mexico	N.M. Stat. Ann. (1985 Supp.) 1986 N.M. Laws	§ 28-1-7	§ 28-1-10	§ 28-1-13	§ 28-1-11 sub. E
New York	N.Y. Executive Law Consol. (1987 Supp.)	§ 296	§ 297	§ 297(9) and § 298	NPWF
North Carolina	N.C. Gen. Stat. (1985 Supp.)	§ 143-422.2 and § 168A-2 and § 168A-5	§ 143-422.3	§ 168A-11	§ 168A-11(d)
North Dakota	N.D. Cent. Code. (1985 Supp.)	§ 14-02.4-03	§ 14-02.4-21	§ 14-02.4-19	§ 14-02.4-20
Ohio	Ohio Rev. Ann. (1986 Supp.)	§ 4112.02	§ 4112.05	§ 4112.06	NPWF


STATE	PROHIBITS EMPLOYMENT DISCRIMINATION OF HANDICAPPED PERSONS	PROCEDURES TO REMEDY VIOLATIONS		PROVIDES FOR ATTORNEYS' FEES
		ADMINISTRATIVE	JUDICIAL	
Oklahoma Okla. Stat. Ann. (1987 Supp.)	25 § 1302	25 § 1502	25 § 1506	25 § 1505(c)(8) and 25 § 1506(b)
Oregon Or. Rev. Stat. (1985)	§ 659.425	§ 659.040 and § 659.435	§ 659.085 and § 659.095	§ 659.121(1)
Pennsylvania Pa. Cons. Stat. Ann. (1986 Supp.)	43 § 955	43 § 959	43 § 960	NPWF
Rhode Island R.I. Gen. Laws (1986)	28-5-7	§ 28-5-7	§ 28-5-24.1 and § 28-5-28	§ 28-5-24
South Carolina S.C. Code. Ann. (1986 Supp.)	§ 43-33-520 and § 43-33-530	§ 43-33-550 and § 1-13-90	§ 43-33-540 and § 1-13-90(d)(6)	§ 43-33-540
Tennessee Tenn. Code. Ann. (1986 Supp.)	NPWF	NPWF	NPWF	NPWF

STATE	PROHIBITS EMPLOYMENT DISCRIMINATION OF HANDICAPPED PERSONS	PROCEDURES TO REMEDY VIOLATIONS		PROVIDES FOR ATTORNEYS' FEES
		ADMINISTRATIVE	JUDICIAL	
Utah Utah Code. Ann. (1986 Supp.)	§ 34-35-6	§ 34-35-7.1	§ 34-35-8	§ 34-35-7.1(12)
Vermont Vt. Stat. Ann. (1984 Supp.)	21 § 495	21 § 495b and 9 § 2460	21 § 495b(b)	21 § 495b(b)
Virginia Va. Code. (1986 Supp.)	§ 51.01-41	NPWF	§ 51.01-46	§ 51.01-46
Washington Wash. Rev. Code. Ann. (1987)	§ 49.60.010 and § 49.60.030	§ 49.60.230	§ 49.60.030(2), § 49.60.260 and § 49.60.270	§ 49.60.030(2)
West Virginia W. Va. Code. (1987)	§ 5-11-2 and § 5-11-9	§ 5-11-10	§ 5-11-11 and § 5-11-13	§ 5-11-13(c)
Wisconsin Wis. Stat. Ann. (1986 Supp.)	§ 111.31 § 111.321 and § 111.322	§ 111.39	§ 111.395	NPWF <sup>2/</sup>

<sup>2/</sup> See Watkins v. Labor and Industry Review Com'n, 345 N.W. 2d 482, 117 Wis. 2d 753 (1984). Implication of the Fair Employment Act, to make prevailing party "whole," is to allow the awarding of reasonable attorney's fees.

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STATE	PROHIBITS EMPLOYMENT DISCRIMINATION OF HANDICAPPED PERSONS	<u>PROCEDURES TO REMEDY VIOLATIONS</u>		PROVIDES FOR ATTORNEYS' FEES
		ADMINISTRATIVE	JUDICIAL	
Wyoming Wyo. Stat. (1985 Supp.)	§ 27-9-105	§ 27-9-106	§ 27-9-107 and § 27-9-108	NPWF

  
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