



## LEGAL SERVICES DEPARTMENT

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TO: Kathleen Plank, Chair  
Members of the Finance Committee

FROM: James P. Walsh, City Attorney *JPW*

DATE: June 6, 2018

RE: Resolution #6-R-18  
Contractor Non-Discrimination Policies

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Resolution #6-R-18 was referred to our office for research and comment. The resolution calls for the City of Appleton establishing a policy asking potential contractors to provide the City with a copy of the contractor's non-discrimination policy.

Employment discrimination is addressed in both federal and state law. Title VII of the Civil Rights Act of 1964 prohibits covered employers from engaging in discrimination based on race, color, religion, sex, or national origin with respect to compensation, terms, conditions or privileges of employment. Subsequent additions to Title VII provided additional protections including discrimination based on age or disabilities. These federal laws apply to employers with 15 or more employees. The State of Wisconsin also has its own body of law prohibiting employment discrimination. This law is known as the Wisconsin Fair Employment Act (WFEA). The WFEA prohibits employers from discriminating against employees based upon 18 different categories. Seven of those categories overlap prohibitions under the federal law and including race, color, religious observance, sex, national origin, age, and disability. In addition, the WFEA prohibits discrimination based upon creed, marital status, ancestry, arrest record, conviction record, military service, unfair honesty testing, sexual orientation, sexual harassment, use of lawful products, and declining to attend a meeting or participate in communications about political or religious issues. The WFEA is not only more comprehensive in the types of discrimination prohibited (compared to federal law) but it is also broader in its applicability. In particular, the WFEA is applicable to all employers with more than one employee.

Summarizing the above, Wisconsin employers are subject to both Federal and even broader State anti-discrimination laws. These anti-discrimination laws apply to employers regardless of whether or not they have a policy enumerating the same federal and state law mandates. Additionally, if an employer engages in discriminatory practices, charges of discrimination may be filed with the Equal Employment Opportunity Commission (EEOC) in the case of federal violations or with the Wisconsin Equal Rights Division (ERD) in the case of state law violations. An individual may file a complaint with either of these agencies regardless of whether or not the employer also has its own anti-discrimination policy.

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"...meeting community needs...enhancing quality of life."

Kathleen Plank, Chair  
Members of the Finance Committee

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The resolution proposes that the City of Appleton have a policy requiring the collection of non-discrimination policies from contractors who wish to do business with the City. As noted previously, the WFEA applies to all employers employing at least one individual. Accordingly, most, if not all, of the contractors that the City of Appleton engages are subject to both federal and state anti-discrimination laws or, at the very least, subject to Wisconsin's law. Whether an employer has a policy or not does not change the employer's obligation to follow these laws.

The challenge that staff will face if the proposed policy is adopted is how contractors who do not have a formal non-discrimination policy will be treated. If a non-discrimination policy is requested from a potential contractor, and the contractor does not have the policy or does not submit one, the assumption is that they would no longer be eligible for participation in the contracting process. Also to be considered is what City staff will be charged with reviewing and maintaining submitted policies as well as what criteria would be in place for determining whether a policy is in fact acceptable. For example, would a policy that simply states "this employer will not engage in any discriminatory practices in violation of federal or state laws" be acceptable? When evaluating this resolution, consideration must be given to whether the proposed policy requiring the collection of non-discrimination policies from contractors is necessary considering established federal and state non-discrimination laws.

As always, our office is available to answer additional questions or provide additional assistance as needed.

JPW;jlg  
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