State of Wisconsin

DEPARTMENT OF EMPLOYMENT RELATIONS BULLETIN

Date: July 13, 1992

Subject: Attorney General's Opinion Finds Expanded Certification in Light of the 1991 Civil Rights Act to be Permissible

Number: OS-59, MRS-137 and AA-27

On June 26, 1992, Attorney General James Doyle issued a formal opinion on the question of whether secs. 106 or 107 of the Civil Rights Act of 1991 (CRA) preclude the State of Wisconsin from continuing to use the expanded certification program for racial or ethnic groups or gender authorized by sec. 230.25(ln), Wis. Stats. The Attorney General concluded, at page 15 of the opinion, 'that, ". . . it does not appear that secs. 106 or 107 of the CRA [Civil Rights Act of 1991] were intended to prohibit expanded certification authorized by section 230.25." Therefore, the state's expanded certification program appears to be permissible under the CRA, and state agencies should continue to use the program as provided for under the Wisconsin statutes.

(The Attorney General's Opinion is OAG 18-92, June 26, 1992, and is 15 pages long. If your agency has not already received a copy of the opinion, copies may be obtained by contacting the State Law Library.)

It should be noted that the Attorney General's opinion offers several cautionary notes. Since the law in this area is new, unclear and just developing, it will be necessary for the Department of Employment Relations (DER), and all state agencies, to monitor judicial and administrative interpretations of the CRA as they are reported.

The Department of Employment Relations will try to keep agencies and personnel directors apprised of any developments which may affect the conclusions reached in the Attorney General's opinion. In the meantime, DER will continue to use and authorize the use of expanded certification, as provided for by sec. 230.25(ln), Wis. Stats.

If you have any questions about this bulletin, please feel free to call either Mr. Gregory C. Jones, Administrator, Division of Affirmative Action, at 608/266-3017 or Mr. Jesse Garza, Policy Coordinator, Division of Merit

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