



State of Wisconsin
2015 - 2016 LEGISLATURE

LRB-2376/1
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2015 SENATE BILL 517

January 7, 2016 – Introduced by Senators DARLING, BEWLEY, LASEE, WANGGAARD, RINGHAND, VINEHOUT, OLSEN, C. LARSON and LASSA, cosponsored by Representatives MASON, KOoyENGA, JACQUE, STEFFEN, HORLACHER, OHNSTAD, SUBECK, J. OTT, KOLSTE, RIEMER, JOHNSON, JORGENSEN, BERCEAU and BALLWEG. Referred to Committee on Economic Development and Commerce.

1 **AN ACT to amend** 111.322 (2m) (a), 111.322 (2m) (b) and 632.897 (6); and **to**
2 **create** 103.11 and 893.965 of the statutes; **relating to:** leave from employment
3 for the purpose of serving as a bone marrow or organ donor and providing a
4 penalty.

Analysis by the Legislative Reference Bureau

Current law requires employers to provide family and medical leave to their employees. This bill requires employers to also provide leave to their employees for the purpose of donating bone marrow or an organ.

Under current law, an employer, including the state, employing at least 50 individuals on a permanent basis in this state (employer) must permit an employee who has been employed by the employer for more than 52 consecutive weeks and who has worked for the employer for at least 1,000 hours during the preceding 52-week period (employee) to take up to eight weeks of family leave in a 12-month period and up to two weeks of medical leave in a 12-month period. Family leave may be taken for the birth or adoptive placement of a new child or to care for a child, spouse, domestic partner, or parent who has a serious health condition. Medical leave may be taken when the employee has a serious health condition that makes the employee unable to perform the employee's employment duties.

An employee is not entitled to receive wages or salary while taking family or medical leave, but may substitute, for portions of family or medical leave, other types of paid or unpaid leave provided by the employer. When an employee returns from family or medical leave, his or her employer must immediately place the employee

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in the same or an equivalent employment position and may not reduce or deny an employment benefit that accrued to the employee before his or her leave began. An employee who intends to take family or medical leave for the birth or adoptive placement of a child or for planned medical treatment must give the employer advance notice of the birth or adoptive placement or planned medical treatment. In addition, for planned medical treatment, the employee must make a reasonable effort to schedule the medical treatment or supervision so that it does not unduly disrupt the operations of the employer, subject to the approval of the health care provider of the person receiving the medical treatment. Also, if an employee requests family or medical leave due to a serious health condition of the employee or of a child, spouse, domestic partner, or parent, the employer may require certification of that condition from a health care provider or a Christian Science practitioner.

An employee who believes his or her employer has violated the provisions of the family and medical leave law may file a complaint with the Department of Workforce Development (DWD) alleging the violation. If DWD finds that an employer has violated the law, DWD may order the employer to take action to remedy the violation, including providing the requested family leave or medical leave, reinstating an employee, providing back pay, and paying reasonable actual attorney fees to the complainant. An employee or DWD may also bring an action in circuit court against an employer to recover damages concerning the same violation.

This bill allows an employee to take no more than six weeks of leave in a 12-month period for the purpose of serving as a bone marrow or organ donor if the employee provides the employer with written verification that the employee is to serve as a bone marrow or organ donor (bone marrow and organ donation leave). Bone marrow and organ donation leave may only be taken, however, for the period necessary for the employee to undergo the donation procedure and to recover from that procedure. If an employee requests bone marrow and organ donation leave, the employer may require the employee to provide certification issued by the health care provider of the donee that: 1) the donee has a serious health condition that necessitates a bone marrow or organ transplant; and 2) the employee is eligible and has agreed to serve as a bone marrow or organ donor for the donee.

Under the bill, bone marrow and organ donation leave is subject to most of the same provisions that apply to family and medical leave, including those requiring employers to place an employee in the same or an equivalent position upon return from leave, and provisions for administrative proceedings and civil actions for alleged violations. As with family and medical leave, an employee is not entitled to receive wages or salary while taking bone marrow or organ donation leave, but may substitute, for portions of that leave, other types of paid or unpaid leave provided by the employer. An employee who intends to take bone marrow or organ donation leave must give the employer advance notice of the bone marrow or organ donation and must make a reasonable effort to schedule the donation so that the donation does not unduly disrupt the operations of the employer, subject to the approval of the health care provider of the bone marrow or organ donee.

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Finally, current law allows employees in the state civil service system to receive a leave of absence to serve as bone marrow or organ donors. The bill does not apply to those employees.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

- 1 **SECTION 1.** 103.11 of the statutes is created to read:
- 2 **103.11 Bone marrow and organ donation leave.** (1) **DEFINITIONS.** In this
- 3 section:
- 4 (a) “Bone marrow” has the meaning given in s. 146.34 (1) (a).
- 5 (b) Except as provided in subs. (2) (b) 1. and (15), “employee” means an
- 6 individual employed in this state by an employer.
- 7 (c) Except as provided in sub. (2) (b) 2., “employer” means a person engaging
- 8 in any activity, enterprise, or business in this state employing at least 50 individuals
- 9 on a permanent basis. “Employer” includes the state and any office, department,
- 10 independent agency, authority, institution, association, society, or other body in state
- 11 government created or authorized to be created by the constitution or any law,
- 12 including the legislature and the courts.
- 13 (d) “Employment benefit” has the meaning given in s. 103.10 (1) (d).
- 14 (e) “Health care provider” has the meaning given in s. 103.10 (1) (e).
- 15 (f) “Organ” has the meaning given for “human organ” in s. 230.35 (2d) (a) 2.
- 16 (g) “Serious health condition” has the meaning given in s. 103.10 (1) (g).
- 17 **(2) STATEWIDE CONCERN; UNIFORMITY.** (a) The legislature finds that the provision
- 18 of bone marrow donation leave and organ donation leave that is uniform throughout
- 19 the state is a matter of statewide concern and that the enactment of an ordinance by

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1 a city, village, town, or county that requires employers to provide employees with
2 leave from employment, paid or unpaid, for any of the reasons specified in par. (c)
3 would be logically inconsistent with, would defeat the purpose of, and would go
4 against the spirit of this section. Therefore, this section shall be construed as an
5 enactment of statewide concern for the purpose of providing bone marrow donation
6 leave and organ donation leave that is uniform throughout the state.

7 (b) In this subsection:

8 1. “Employee” has the meaning given in s. 104.01 (2) (a).

9 2. “Employer” has the meaning given in s. 104.01 (3) (a).

10 (c) Subject to par. (d), a city, village, town, or county may not enact and
11 administer an ordinance requiring an employer to provide an employee with leave
12 from employment, paid or unpaid, because the employee’s absence from work is
13 necessary in order for the employee to donate his or her bone marrow or organ to
14 another person.

15 (d) This subsection does not affect an ordinance affecting leave from
16 employment of an employee of a city, village, town, or county.

17 (e) Any city, village, town, or county ordinance requiring an employer to provide
18 an employee with leave from employment, paid or unpaid, for any of the reasons
19 specified in par. (c) that is in effect on the effective date of this paragraph [LRB
20 inserts date], is void.

21 **(3) SCOPE.** (a) Nothing in this section prohibits an employer from providing
22 employees with rights to bone marrow donation leave or organ donation leave that
23 are more generous to the employees than the rights provided under this section.

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1 (b) This section only applies to an employee who has been employed by the same
2 employer for more than 52 consecutive weeks and who worked for the employer for
3 at least 1,000 hours during the preceding 52-week period.

4 (4) BONE MARROW AND ORGAN DONATION LEAVE. An employee may take bone
5 marrow and organ donation leave as provided in this subsection for the purpose of
6 serving as a bone marrow or organ donor if the employee provides his or her employer
7 with written verification that the employee is to serve as a bone marrow or organ
8 donor. No more than 6 weeks of leave in a 12-month period may be taken under this
9 subsection, and leave may be taken under this subsection only for the period
10 necessary for the employee to undergo the bone marrow or organ donation procedure
11 and to recover from the procedure.

12 (5) PAYMENT FOR AND RESTRICTIONS UPON LEAVE. (a) This section does not entitle
13 an employee to receive wages or salary while taking bone marrow and organ
14 donation leave.

15 (b) An employee may substitute, for portions of bone marrow and organ
16 donation leave, paid or unpaid leave of any other type provided by the employer.

17 (6) NOTICE TO EMPLOYER. If an employee intends to take leave for the purpose
18 of serving as a bone marrow or organ donor, the employee shall do all of the following:

19 (a) Make a reasonable effort to schedule the bone marrow or organ donation
20 procedure so that it does not unduly disrupt the employer's operations, subject to the
21 approval of the health care provider of the bone marrow or organ donee.

22 (b) Give the employer advance notice of the bone marrow or organ donation in
23 a reasonable and practicable manner.

24 (7) CERTIFICATION. If an employee requests bone marrow and organ donation
25 leave, the employer may require the employee to provide certification issued by the

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1 health care provider of the bone marrow or organ donee or of the employee, whichever
2 is appropriate, of any of the following:

3 (a) That the donee has a serious health condition that necessitates a bone
4 marrow or organ transplant.

5 (b) That the employee is eligible and has agreed to serve as a bone marrow or
6 organ donor for the donee.

7 (c) The amount of time expected to be necessary for the employee to recover
8 from the bone marrow or organ donation procedure.

9 **(8) POSITION UPON RETURN FROM LEAVE.** (a) Subject to par. (c), when an employee
10 returns from bone marrow and organ donation leave, his or her employer shall
11 immediately place the employee in an employment position as follows:

12 1. If the employment position that the employee held immediately before the
13 bone marrow and organ donation leave began is vacant when the employee returns,
14 in that position.

15 2. If the employment position that the employee held immediately before the
16 bone marrow and organ donation leave began is not vacant when the employee
17 returns, in an equivalent employment position having equivalent compensation,
18 benefits, working shift, hours of employment, and other terms and conditions of
19 employment.

20 (b) No employer may, because an employee received bone marrow and organ
21 donation leave, reduce or deny an employment benefit that accrued to the employee
22 before his or her leave began or, consistent with sub. (9), accrued after his or her leave
23 began.

24 (c) Notwithstanding par. (a), if an employee on bone marrow and organ
25 donation leave wishes to return to work before the end of the leave as scheduled, the

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1 employer shall place the employee in an employment position of the type described
2 in par. (a) 1. or 2. within a reasonable time not exceeding the duration of the leave
3 as scheduled.

4 (9) EMPLOYMENT RIGHT, BENEFIT, OR POSITION. (a) Except as provided in par. (b),
5 nothing in this section entitles a returning employee to a right, employment benefit,
6 or employment position to which the employee would not have been entitled had he
7 or she not taken bone marrow and organ donation leave or to the accrual of any
8 seniority or employment benefit during a period of bone marrow and organ donation
9 leave.

10 (b) Subject to par. (c), during a period an employee takes bone marrow and
11 organ donation leave, his or her employer shall maintain group health insurance
12 coverage under the conditions that applied immediately before the bone marrow and
13 organ donation leave began. If the employee continues making any contribution
14 required for participation in the group health insurance plan, the employer shall
15 continue making group health insurance premium contributions as if the employee
16 had not taken the bone marrow and organ donation leave.

17 (c) 1. An employer may require an employee to have in escrow with the
18 employer an amount equal to the entire premium or similar expense for 8 weeks of
19 the employee's group health insurance coverage, if coverage is required under par.
20 (b).

21 2. An employee may pay the amount required under subd. 1. in equal
22 installments at regular intervals over at least a 12-month period. An employer shall
23 deposit the payments at a financial institution in an interest-bearing account.

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1 3. Subject to subd. 4., an employer shall return to the employee any payments
2 made under subd. 1., plus interest, when the employee ends his or her employment
3 with the employer.

4 4. If an employee ends his or her employment with an employer during or
5 within 30 days after a period of bone marrow and organ donation leave, the employer
6 may deduct from the amount returned to the employee under subd. 3. any premium
7 or similar expense paid by the employer for the employee's group health insurance
8 coverage while the employee was on bone marrow and organ donation leave.

9 (d) If an employee ends his or her employment with an employer during or at
10 the end of a period of bone marrow and organ donation leave, the period for
11 conversion to individual coverage under s. 632.897 (6) shall be calculated as
12 beginning on the day on which the employee began the period of bone marrow and
13 organ donation leave.

14 **(10) ALTERNATIVE EMPLOYMENT.** Nothing in this section prohibits an employer
15 and an employee who is serving as a bone marrow or organ donor from mutually
16 agreeing to alternative employment for the employee while the employee recovers
17 from the bone marrow or organ donation procedure. No period of alternative
18 employment, with the same employer, reduces the employee's right to bone marrow
19 and organ donation leave.

20 **(11) PROHIBITED ACTS.** (a) No person may interfere with, restrain, or deny the
21 exercise of any right provided under this section.

22 (b) No person may discharge or in any other manner discriminate against any
23 individual for opposing a practice prohibited under this section.

24 (c) Section 111.322 (2m) applies to discharge or other discriminatory acts
25 arising in connection with any proceeding under this section.

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1 **(12) ADMINISTRATIVE PROCEEDING.** (a) An employee who believes his or her
2 employer has violated sub. (11) (a) or (b) may, within 30 days after the violation
3 occurs or the employee should reasonably have known that the violation occurred,
4 whichever is later, file a complaint with the department alleging the violation. The
5 department shall investigate the complaint and shall attempt to resolve the
6 complaint by conference, conciliation, or persuasion. If the complaint is not resolved
7 and the department finds probable cause to believe a violation has occurred, the
8 department shall proceed with notice and a hearing on the complaint as provided in
9 ch. 227. The hearing shall be held within 60 days after the department receives the
10 complaint.

11 (b) The department shall issue its decision and order within 30 days after the
12 hearing. If the department finds that an employer violated sub. (11) (a) or (b), it may
13 order the employer to take action to remedy the violation, including providing the
14 requested bone marrow and organ donation leave, reinstating an employee,
15 providing back pay accrued not more than 2 years before the complaint was filed, and
16 paying reasonable actual attorney fees to the complainant.

17 **(13) CIVIL ACTION.** (a) An employee or the department may bring an action in
18 circuit court against an employer to recover damages caused by a violation of sub.
19 (11) after the completion of an administrative proceeding, including judicial review,
20 concerning the same violation.

21 (b) An action under par. (a) shall be commenced within the later of the following
22 periods, or be barred:

23 1. Within 60 days from the completion of an administrative proceeding,
24 including judicial review, concerning the same violation.

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1 2. Twelve months after the violation occurred, or the department or employee
2 should reasonably have known that the violation occurred.

3 **(14) NOTICE POSTED.** (a) Each employer shall post, in one or more conspicuous
4 places where notices to employees are customarily posted, a notice in a form
5 approved by the department setting forth employees' rights under this section. Any
6 employer who violates this subsection shall forfeit not more than \$100 for each
7 offense.

8 (b) Any person employing at least 25 individuals shall post, in one or more
9 conspicuous places where notices to employees are customarily posted, a notice
10 describing the person's policy with respect to leave for the reasons described in sub.
11 (4).

12 **(15) NONAPPLICABILITY.** This section does not apply to employees, as defined in
13 s. 230.03 (10h), who are allowed to take a leave of absence under s. 230.35 (2d) (b)
14 or (c) for the purpose of serving as bone marrow or organ donors.

15 **SECTION 2.** 111.322 (2m) (a) of the statutes is amended to read:

16 111.322 **(2m)** (a) The individual files a complaint or attempts to enforce any
17 right under s. 103.02, 103.10, 103.11, 103.13, 103.28, 103.32, 103.34, 103.455,
18 103.50, 104.12, 109.03, 109.07, 109.075, 146.997, or 995.55, or ss. 101.58 to 101.599
19 or 103.64 to 103.82.

20 **SECTION 3.** 111.322 (2m) (b) of the statutes is amended to read:

21 111.322 **(2m)** (b) The individual testifies or assists in any action or proceeding
22 held under or to enforce any right under s. 103.02, 103.10, 103.11, 103.13, 103.28,
23 103.32, 103.34, 103.455, 103.50, 104.12, 109.03, 109.07, 109.075, 146.997, or 995.55,
24 or ss. 101.58 to 101.599 or 103.64 to 103.82.

25 **SECTION 4.** 632.897 (6) of the statutes is amended to read:

