



1995 ASSEMBLY BILL 200

March 13, 1995 - Introduced by Representatives KLUSMAN, GOETSCH, GARD, VRAKAS, WALKER, PROSSER, AINSWORTH, BRANCEL, DUFF, GREEN, GROTHMAN, HOVEN, HUEBSCH, JENSEN, KREIBICH, LADWIG, F. LASEE, LEHMAN, NASS, OLSEN, OTT, OWENS and WARD, cosponsored by Senators LEEAN, ROSENZWEIG, BUETTNER, DRZEWIECKI, FARROW, PETAK and SCHULTZ. Referred to Committee on Labor and Employment.

1 **AN ACT to repeal** 103.10 (3) (a) 2., 103.10 (3) (a) 3., 103.10 (3) (b) (intro.), 103.10
2 (3) (c), 103.10 (3) (d), 103.10 (4) (title), 103.10 (4) (b), 103.10 (4) (c), 103.10 (12)
3 (c), 103.10 (13), 103.10 (14) (b), 252.17 (3) (i), 252.17 (4) (c) and 893.96; **to**
4 **renumber** 103.10 (3) (b) 3.; **to renumber and amend** 103.10 (3) (a) 1., 103.10
5 (3) (b) 1., 103.10 (3) (b) 2., 103.10 (4) (a), 103.10 (7) (c) and 103.10 (14) (a); **to**
6 **amend** 103.10 (1) (a) (intro.), 103.10 (1) (a) 2., 103.10 (1) (b), 103.10 (1) (c),
7 103.10 (1) (d), 103.10 (1) (f), 103.10 (1) (g) (intro.), 103.10 (1) (g) 2., 103.10 (2)
8 (c), 103.10 (3) (title), 103.10 (5) (a) and (b), 103.10 (6) (a), 103.10 (6) (b) (intro.),
9 103.10 (6) (b) 1., 103.10 (6) (b) 2., 103.10 (7) (a), 103.10 (7) (b) 4., 103.10 (8) (a),
10 103.10 (8) (b), 103.10 (9) (b), 103.10 (12) (b), 103.10 (12) (d), 111.322 (2m) (a),
11 111.322 (2m) (b), 252.17 (4) (a) and 632.897 (6); **to repeal and recreate** 103.10
12 (8) (c), 103.10 (9) (c), 103.10 (9) (d), 103.10 (10) and 103.10 (11) (c); and **to create**
13 103.10 (1) (fm), 103.10 (3m), 103.10 (4g), 103.10 (5) (c), 103.10 (7) (b) 3m., 103.10
14 (7) (b) 5., 103.10 (7) (b) 6., 103.10 (7) (b) 7., 103.10 (7) (c) 2., 103.10 (7) (d), 103.10
15 (7) (e), 103.10 (8) (d), 103.10 (8) (e), 103.10 (11) (d), 103.10 (12) (e), 103.10 (12)
16 (f), 103.10 (12) (g), 103.10 (15) and 103.10 (16) of the statutes; **relating to:**

1 various changes to the family and medical leave law and granting rule-making
2 authority.

Analysis by the Legislative Reference Bureau

This bill makes various changes to the Wisconsin family and medical leave law to conform that law to the recently enacted federal family and medical leave law.

Leave requirement

Under current law, an employer, including the state, that employs at least 50 individuals on a permanent basis must permit an employee to take 6 weeks of family leave in a 12-month period and 2 weeks of medical leave in a 12-month period. This bill requires an employer, including the state, that employs at least 50 individuals for each working day for 20 or more weeks in the current or preceding year to permit an employee to take 12 weeks of family or medical leave in a 12-month period.

Under current law, to be eligible to take family or medical leave, an employee, other than a parent, spouse or child of the employer, must have been employed by the same employer for more than 52 consecutive weeks and have worked at least 1,000 hours for that employer during the preceding 52-week period. Under the bill, to be eligible to take family or medical leave, an employee, including a parent, spouse or child of the employer, must have been employed by the employer from whom the leave is requested for at least 12 months and have worked at least 1,250 hours for that employer during the preceding 12-month period. The bill excludes from coverage under the family or medical leave law an employee who works at a worksite with fewer than 50 employees if the employer employs fewer than 50 employees within 75 miles of the worksite. The bill also specifies that the leave must be taken to care for the child.

Under current law, an employee may take family leave for the birth or adoptive placement of the employee's child, if the leave begins within 16 weeks after the birth or placement. This bill permits an employee to begin family leave within 12 months after the birth or placement of a child and permits family leave for a foster care placement as well.

Under current law, an employee may also take family leave to care for a child, spouse or parent, including a spouse's parent, who has a serious health condition. This bill eliminates family leave to care for a spouse's parent, but expands the definition of "child" to include an individual for whom the employee stands in the place of a parent without having formally adopted or assumed guardianship of that individual.

Under current law, an employee may take family leave as partial absence from employment, but must schedule that leave so that it does not unduly disrupt the employer's operations. This bill permits an employee to take leave intermittently or on a reduced-leave schedule, that is, a schedule under which the employee's hours per day or per week are reduced, for the birth or adoptive placement of a child only if agreed to by the employer. The bill also permits an employee to take leave

intermittently or on a reduced-leave schedule when medically necessary due to a serious health condition of the employe or of a child, spouse or parent.

Under current law, an employe with a serious health condition and the employer may agree to alternative employment for the employe while that condition lasts. This bill permits an employer to require an employe who requests intermittent leave or leave on a reduced-leave schedule that is foreseeable for planned medical treatment for the employe or for a child, spouse or parent to transfer temporarily to an alternative position that has equivalent pay and benefits and that better accommodates the employe's intermittent leave or leave on a reduced-leave schedule.

Under current law, an employe is not entitled to pay while on family or medical leave. An employe may, however, substitute paid or unpaid leave of other types provided by the employer for family or medical leave guaranteed under current law. This bill specifies that an employe may elect, or an employer may require an employe, to substitute for family leave guaranteed by the bill paid vacation leave, paid personal leave or paid family leave provided by the employer that the employe has accrued. The bill also specifies that an employe may elect, or an employer may require the employe, to substitute for leave due to a serious health condition of the employe or of a child, spouse or parent paid vacation leave, paid personal leave or paid sick leave provided by the employer that the employe has accrued. An employer is not required, however, to provide paid sick leave when the employer does not normally provide that leave; that is, if an employer does not normally provide paid sick leave to care for a child, spouse or parent, the bill does not require an employer to provide that leave in that situation.

Under current law, if an employe intends to take leave for the birth or placement of a child or for planned medical treatment, the employe must give notice to the employer in a manner that is reasonable and practicable. This bill requires the employe to give 30 days' notice in those situations that are foreseeable, unless the birth or placement will take place, or the medical treatment will begin, within 30 days, in which case the bill permits reasonable and practicable notice.

Certification

Under current law, an employer may require an employe to obtain a 2nd opinion, at the employer's expense, concerning the certification provided by the employe's health care provider. Also under current law, if the employe has commenced an administrative proceeding regarding the alleged denial of leave due to a serious health condition of the employe or of a child, spouse or parent, and if the original certification and 2nd opinion differ, the department of industry, labor and human relations (DILHR) may appoint a health care provider to render a 3rd opinion, with the expense of obtaining that opinion to be shared equally by the employer and employe. This bill permits the employer to require the employe, prior to any administrative proceedings, to obtain a 3rd opinion, at the employer's expense, if the original certification and 2nd opinion differ. The employer and employe must jointly designate the 3rd opinion provider.

Employment and benefits protection

Under current law, upon the return of an employe from family or medical leave, an employer must place the employe in the position the employe held immediately before that leave began, if the position is vacant, or, if the position is not vacant, in an equivalent employment position having equivalent pay, benefits, and other terms and conditions of employment. This bill permits the employer to place a returning employe either in the employe's old position or in an equivalent position without regard to whether the old position is vacant. The bill specifies that to be reinstated, the employe must have actually taken the leave for the purpose for which it was intended. The bill also permits an employer to require an employe who is on leave to report to the employer periodically on the employe's status and intention of returning to work.

Under current law, an employer must maintain group health insurance coverage for an employe on leave under the conditions that applied immediately before the leave. This bill requires an employer to maintain that coverage at the level and under the conditions that the employer would have provided coverage if the employe had continued in employment.

Under current law, an employer may require an employe to place in escrow with the employer the premium for 8 weeks of group health insurance coverage and the employer may keep from that escrow account the amount that the employer paid for that coverage if the employe does not return from leave. This bill eliminates the escrow requirement, but permits the employer to recover those premiums if the employe does not return to work for reasons other than the recurrence, onset or continuation of a serious health condition or other circumstances beyond the employe's control.

Enforcement

Under current law, an employe who believes that his or her employer has violated the family or medical leave law may file a complaint with DILHR within 30 days after the employe knew or should have known of the violation. This bill extends that time limit to 300 days after the date of the last event constituting the alleged violation.

Under current law, an employe or DILHR may commence a civil action in circuit court to collect damages from an employer for a violation of the family or medical leave law. This bill eliminates civil actions for violations of the family and medical leave law.

Special provisions

Finally, the bill makes special provisions for certain classes of employes. If a husband and wife both work for the same employer, the employer may limit their combined leave to 12 weeks in a 12-month period. If a teacher begins leave within 5 weeks of the end of the semester, and the leave is of a certain duration depending on how close to the end of the semester the teacher would return to work, the teacher's employer may require the teacher to continue taking leave until the end of the semester. The bill also permits an employer to deny reinstatement following leave to an employe who is among the highest-paid 10% of the employer's employes if that denial is necessary to prevent substantial and grievous economic injury to the

employer and if the employer so notifies the employe at the time the employer determines that the injury will occur, except that if the employe receives notice during the leave, the employe must agree not to return to work.

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.** 103.10 (1) (a) (intro.) of the statutes is amended to read:

2 103.10 (1) (a) (intro.) “Child” means a natural, adopted, foster or treatment
3 foster child, a stepchild or a legal ward, or an individual for whom an employe stands
4 in the place of a parent, to whom any of the following applies:

5 **SECTION 2.** 103.10 (1) (a) 2. of the statutes is amended to read:

6 103.10 (1) (a) 2. The individual is 18 years of age or older and ~~cannot care for~~
7 ~~himself or herself~~ is incapable of self-care because of a ~~serious health condition~~
8 mental or physical disability.

9 **SECTION 3.** 103.10 (1) (b) of the statutes is amended to read:

10 103.10 (1) (b) “Employe” means an individual employed in this state by an
11 employer, ~~except the employer’s parent, spouse or child~~ other than an individual
12 described in 29 USC 203 (e) (2) (C) (i) and (ii) and (4), as amended to April 15, 1986.

13 **SECTION 4.** 103.10 (1) (c) of the statutes is amended to read:

14 103.10 (1) (c) ~~Except as provided in sub. (14) (b), “employer”~~ “Employer” means
15 a person engaging in any activity, enterprise or business in this state employing at
16 least 50 individuals ~~on a permanent basis~~ for each working day during each of 20 or
17 more calendar weeks in the current or preceding year. “Employer” includes the state
18 and any office, department, independent agency, authority, institution, association,
19 society or other body in state government created or authorized to be created by the
20 constitution or any law, including the legislature and the courts. “Employer” also

1 includes any person who acts, directly or indirectly, in the interest of an employer
2 with respect to an employe and any successor in interest of an employer.

3 **SECTION 5.** 103.10 (1) (d) of the statutes is amended to read:

4 103.10 (1) (d) “Employment benefit” means ~~an insurance, leave or retirement~~
5 a benefit which that an employer provides or makes available to an employe,
6 including group life insurance, health insurance, disability insurance, sick leave,
7 annual leave, educational benefits and pensions, regardless of whether those
8 benefits are provided by a practice or policy of the employer or through an employe
9 benefit plan, as defined in 29 USC 1002 (3).

10 **SECTION 6.** 103.10 (1) (f) of the statutes is amended to read:

11 103.10 (1) (f) “Parent” means a natural parent, foster parent, treatment foster
12 parent, adoptive parent, stepparent or legal guardian of an employe or ~~an employe’s~~
13 spouse a person who stood in the place of a parent of the employe when the employe
14 was a child.

15 **SECTION 7.** 103.10 (1) (fm) of the statutes is created to read:

16 103.10 (1) (fm) “Reduced-leave schedule” means a leave schedule that reduces
17 the usual number of hours that an employe works per day or per week.

18 **SECTION 8.** 103.10 (1) (g) (intro.) of the statutes is amended to read:

19 103.10 (1) (g) (intro.) “Serious health condition” means ~~a disabling physical or~~
20 ~~mental~~ an illness, injury, impairment or physical or mental condition involving any
21 of the following:

22 **SECTION 9.** 103.10 (1) (g) 2. of the statutes is amended to read:

23 103.10 (1) (g) 2. ~~Outpatient care that requires continuing~~ Continuing
24 ~~treatment or supervision~~ by a health care provider.

25 **SECTION 10.** 103.10 (2) (c) of the statutes is amended to read:

1 103.10 (2) (c) This section only applies to an employe who has been employed
2 for at least 12 months by the same employer for more than 52 consecutive weeks from
3 whom leave under sub. (3) is requested and who worked for ~~the~~ that employer for at
4 least 1,000 1,250 hours during the preceding ~~52-week~~ 12-month period. This section
5 does not apply to an employe who is employed at a worksite at which the employer
6 employs less than 50 employes if the total number of employes employed by the
7 employer within 75 miles of that worksite is less than 50.

8 **SECTION 11.** 103.10 (3) (title) of the statutes is amended to read:

9 103.10 (3) (title) ~~FAMILY~~ ENTITLEMENT TO LEAVE.

10 **SECTION 12.** 103.10 (3) (a) 1. of the statutes is renumbered 103.10 (3) (intro.)
11 and amended to read:

12 103.10 (3) (intro.) In a 12-month period ~~no~~ an employe may take ~~more than 6~~
13 12 weeks of family leave under par. (b) 1. and 2. for any one or more of the following
14 reasons:

15 **SECTION 13.** 103.10 (3) (a) 2. of the statutes is repealed.

16 **SECTION 14.** 103.10 (3) (a) 3. of the statutes is repealed.

17 **SECTION 15.** 103.10 (3) (b) (intro.) of the statutes is repealed.

18 **SECTION 16.** 103.10 (3) (b) 1. of the statutes is renumbered 103.10 (3) (a) and
19 amended to read:

20 103.10 (3) (a) ~~The~~ Because of the birth of the employe's natural child, if the
21 leave is taken to care for the child and if the leave begins within ~~16 weeks of 12~~
22 months after the child's birth.

23 **SECTION 17.** 103.10 (3) (b) 2. of the statutes is renumbered 103.10 (3) (b) and
24 amended to read:

1 103.10 (3) (b) ~~The Because of the placement of a child with the employe for~~
2 adoption or as a precondition to adoption under s. 48.90 (2), but not both, or for foster
3 care, if the leave is taken to care for the child and if the leave begins within 16 weeks
4 of 12 months after the child's placement.

5 **SECTION 18.** 103.10 (3) (b) 3. of the statutes is renumbered 103.10 (3) (c).

6 **SECTION 19.** 103.10 (3) (c) of the statutes is repealed.

7 **SECTION 20.** 103.10 (3) (d) of the statutes is repealed.

8 **SECTION 21.** 103.10 (3m) of the statutes is created to read:

9 103.10 (3m) SPOUSES EMPLOYED BY SAME EMPLOYER. If a husband and wife are
10 entitled to leave under sub. (3) and are employed by the same employer, the employer
11 may limit to 12 weeks during any 12-month period the aggregate number of weeks
12 of leave that the husband and wife may take for the birth or placement of a child
13 under sub. (3) (a) or (b) or to care for a parent who has a serious health condition
14 under sub. (3) (c).

15 **SECTION 22.** 103.10 (4) (title) of the statutes is repealed.

16 **SECTION 23.** 103.10 (4) (a) of the statutes is renumbered 103.10 (3) (d) and
17 amended to read:

18 103.10 (3) (d) ~~Subject to pars. (b) and (c), an employe who has Because of a~~
19 serious health condition ~~which that makes the employe unable to perform his or her~~
20 ~~employment duties may take medical leave for the period during which he or she is~~
21 ~~unable to perform those the duties of the employe's position.~~

22 **SECTION 24.** 103.10 (4) (b) of the statutes is repealed.

23 **SECTION 25.** 103.10 (4) (c) of the statutes is repealed.

24 **SECTION 26.** 103.10 (4g) of the statutes is created to read:

1 103.10 (4g) LEAVE TAKEN INTERMITTENTLY OR ON A REDUCED-LEAVE SCHEDULE. (a)
2 An employe may not take leave under sub. (3) (a) or (b) intermittently or on a
3 reduced-leave schedule unless agreed to by the employer. Subject to par. (b) and
4 subs. (6) (b) and (7) (b) 5., an employe may take leave under sub. (3) (c) or (d)
5 intermittently or on a reduced-leave schedule when medically necessary. If an
6 employe takes leave intermittently or on a reduced-leave schedule, the employe's
7 employer may not reduce the amount of leave under sub. (3) to which the employe
8 is entitled by an amount that is beyond the amount of leave actually taken.

9 (b) If an employe requests intermittent leave or leave on a reduced-work
10 schedule under sub. (3) (c) or (d) that is foreseeable for planned medical treatment,
11 the employer may require the employe to transfer temporarily to an alternative
12 position offered by the employer for which the employe is qualified if that alternative
13 position has equivalent pay and employment benefits and if that alternative position
14 accommodates intermittent periods of leave or leave on a reduced-leave schedule
15 better than the employe's regular position does.

16 **SECTION 27.** 103.10 (5) (a) and (b) of the statutes are amended to read:

17 103.10 (5) (a) This Except as provided in pars. (b) and (c), this section does not
18 entitle an employe to receive wages or salary while taking family leave or medical
19 leave.

20 (b) An employe may elect, or an employer may require an employe, to
21 substitute, for portions of family leave or medical leave, paid or unpaid leave of any
22 other type for any part of the leave provided under sub. (3) (a), (b) or (c), any paid
23 vacation leave, paid personal leave or paid family leave provided by the employer
24 that the employe has accrued.

25 **SECTION 28.** 103.10 (5) (c) of the statutes is created to read:

1 103.10 (5) (c) An employe may elect, or an employer may require an employe,
2 to substitute, for any part of the leave provided under sub. (3) (c) or (d), any paid
3 vacation leave, paid personal leave or paid sick leave provided by the employer that
4 the employe has accrued, except that an employer is not required to provide paid sick
5 leave in any situation in which the employer would not normally provide paid sick
6 leave.

7 **SECTION 29.** 103.10 (6) (a) of the statutes is amended to read:

8 103.10 (6) (a) If an employe intends to take ~~family leave for the reasons in~~ under
9 sub. (3) (b) 1. or 2. (a) or (b) that is foreseeable because of the expected birth or
10 placement of a child, the employe shall, ~~in a reasonable and practicable manner~~, give
11 the employer ~~advance~~ notice of the ~~expected birth or placement~~ employe's intention
12 to take that leave not less than 30 days before the date the leave is to begin, except
13 that if the date of the birth or placement requires the leave to begin in less than 30
14 days, the employe shall provide notice to the employer in a reasonable and
15 practicable manner.

16 **SECTION 30.** 103.10 (6) (b) (intro.) of the statutes is amended to read:

17 103.10 (6) (b) (intro.) If an employe intends to take family leave under sub. (3)
18 (c) or (d) because of the planned medical treatment ~~or supervision of~~ the employe or
19 of a child, spouse or parent or intends to take medical leave because of the planned
20 ~~medical treatment or supervision~~ of the employe, the employe shall do all of the
21 following:

22 **SECTION 31.** 103.10 (6) (b) 1. of the statutes is amended to read:

23 103.10 (6) (b) 1. Make a reasonable effort to schedule the medical treatment
24 ~~or supervision~~ so that it does not unduly disrupt the employer's operations, subject
25 to the approval of the health care provider of the child, spouse, parent or employe.

1 **SECTION 32.** 103.10 (6) (b) 2. of the statutes is amended to read:

2 103.10 **(6)** (b) 2. Give the employer ~~advance~~ notice of the medical treatment or
3 ~~supervision~~ employee's intention to take that leave not less than 30 days before the
4 leave is to begin, except that if the date of the treatment requires the leave to begin
5 in less than 30 days, the employe shall provide notice to the employer in a reasonable
6 and practicable manner.

7 **SECTION 33.** 103.10 (7) (a) of the statutes is amended to read:

8 103.10 **(7)** (a) If an employe requests ~~family leave for a reason described in~~
9 under sub. (3) (b) 3. or requests medical leave (c) or (d), the employer may require the
10 employe to provide certification, as described in par. (b), issued by the health care
11 provider or Christian Science practitioner of the child, spouse, parent or employe,
12 whichever is appropriate, and the employe shall provide a copy of that certification
13 to the employer in a timely manner.

14 **SECTION 34.** 103.10 (7) (b) 3m. of the statutes is created to read:

15 103.10 **(7)** (b) 3m. If the employe requests leave under sub. (3) (c), a statement
16 that the employe is needed to care for a child, spouse or parent who has a serious
17 health condition and an estimate of the amount of time that the employe is needed
18 to care for the child, spouse or parent.

19 **SECTION 35.** 103.10 (7) (b) 4. of the statutes is amended to read:

20 103.10 **(7)** (b) 4. If the employe requests ~~medical leave, an explanation of the~~
21 extent to which under sub. (3) (d), a statement that the employe is unable to perform
22 his or her employment the duties of the employe's position.

23 **SECTION 36.** 103.10 (7) (b) 5. of the statutes is created to read:

24 103.10 **(7)** (b) 5. If the employe requests intermittent leave or leave on a
25 ~~reduced-leave~~ schedule under sub. (3) (c) or (d) for planned medical treatment, the

1 dates on which that treatment is expected to be given and the duration of that
2 treatment.

3 **SECTION 37.** 103.10 (7) (b) 6. of the statutes is created to read:

4 103.10 (7) (b) 6. If the employe requests intermittent leave or leave on a
5 reduced-leave schedule under sub. (3) (c), a statement that the intermittent leave
6 or leave on a reduced-leave schedule is necessary for the care of a child, spouse or
7 parent who has a serious health condition or will assist in the recovery of the child,
8 spouse or parent, and the expected duration and schedule of the intermittent leave
9 or leave on a reduced-leave schedule.

10 **SECTION 38.** 103.10 (7) (b) 7. of the statutes is created to read:

11 103.10 (7) (b) 7. If the employe requests intermittent leave or leave on a
12 reduced-leave schedule under sub. (3) (d), a statement of the medical necessity for
13 the intermittent leave or leave on a reduced-leave schedule, and the expected
14 duration of the intermittent leave or leave on a reduced-leave schedule.

15 **SECTION 39.** 103.10 (7) (c) of the statutes is renumbered 103.10 (7) (c) 1. and
16 amended to read:

17 103.10 (7) (c) 1. ~~The~~ If the employer has reason to doubt the validity of a
18 certification provided under par. (a), the employer may require the employe to obtain
19 the opinion of a 2nd health care provider, chosen ~~chosen~~ designated, or approved, and paid
20 for by the employer, concerning any information certified under par. (b).

21 **SECTION 40.** 103.10 (7) (c) 2. of the statutes is created to read:

22 103.10 (7) (c) 2. A health care provider designated or approved under subd. 1.
23 may not be employed on a regular basis by the employer.

24 **SECTION 41.** 103.10 (7) (d) of the statutes is created to read:

1 103.10 (7) (d) If a 2nd opinion obtained under par. (c) 1. differs from the opinion
2 in the certification provided under par. (a), the employer may require the employe
3 to obtain the opinion of a 3rd health care provider, designated, or approved, by the
4 employer and employe jointly and paid for by the employer, concerning any
5 information certified under par. (b). The employer and employe shall accept the 3rd
6 opinion obtained under this paragraph as final and binding upon them.

7 **SECTION 42.** 103.10 (7) (e) of the statutes is created to read:

8 103.10 (7) (e) The employer may require that an employe obtain
9 recertifications after the original certification under par. (b) on a reasonable basis.

10 **SECTION 43.** 103.10 (8) (a) of the statutes is amended to read:

11 103.10 (8) (a) Subject to ~~par. (e)~~ pars. (d) and (e), when an employe ~~returns from~~
12 who takes family leave or medical leave for the purpose for which that leave is
13 intended returns from that leave, his or her employer shall immediately place the
14 employe in an employment position as follows:

15 1. If In the employment position which the employe held immediately before
16 ~~when~~ the family leave or medical leave began ~~is vacant when the employe returns,~~
17 ~~in that position.~~

18 2. If the employment position which the employe held immediately before the
19 ~~family leave or medical leave began is not vacant when the employe returns, in~~ In
20 an equivalent employment position having equivalent compensation, employment
21 ~~benefits, working shift, hours of employment~~ and other terms and conditions of
22 employment.

23 **SECTION 44.** 103.10 (8) (b) of the statutes is amended to read:

24 103.10 (8) (b) No employer may, because an employe received family leave or
25 medical leave, reduce or deny an employment benefit which accrued to the employe

1 before his or her leave began ~~or, consistent with sub. (9), accrued after his or her leave~~
2 began.

3 **SECTION 45.** 103.10 (8) (c) of the statutes is repealed and recreated to read:

4 103.10 (8) (c) An employer may require an employe who is on family or medical
5 leave to report periodically to the employer on the employe's status and intention of
6 returning to work.

7 **SECTION 46.** 103.10 (8) (d) of the statutes is created to read:

8 103.10 (8) (d) Notwithstanding par. (a), an employer may adopt a uniformly
9 applied practice or policy that requires an employe who is returning from leave under
10 sub. (3) (d) to obtain a certification from the employe's health care provider that the
11 employe is able to return to work.

12 **SECTION 47.** 103.10 (8) (e) of the statutes is created to read:

13 103.10 (8) (e) Notwithstanding par. (a), an employer may deny placement in
14 an employment position described in par. (a) 1. and 2. to an employe who returns from
15 family leave or medical leave if all of the following apply:

16 1. The employe is a salaried employe who before the leave was among the
17 highest-paid 10% of the employes employed by the employer within 75 miles of the
18 worksite at which the employe is employed.

19 2. That denial is necessary to prevent substantial and grievous economic injury
20 to the operations of the employer.

21 3. The employer notifies the employe of the employer's intent to deny that
22 placement based on the conditions specified in subds. 1. and 2. at the time the
23 employer determines that the injury described in subd. 2. would occur.

24 4. In the case of an employe who receives the notice under subd. 3. after the
25 leave has begun, the employe elects not to return to employment with the employer.

1 **SECTION 48.** 103.10 (9) (b) of the statutes is amended to read:

2 103.10 (9) (b) Subject to par. (c), during a period that an employe takes family
3 leave or medical leave, his or her employer shall maintain group health insurance
4 coverage at the level and under the conditions that ~~applied immediately before the~~
5 ~~family leave or medical leave began.~~ If the employe continues making any
6 ~~contribution required for participation in the group health insurance plan, the~~
7 ~~employer shall continue making group health insurance premium contributions as~~
8 ~~if the employe had not taken the family leave or medical~~ the employer would have
9 provided coverage if the employe had continued in employment continuously during
10 that leave.

11 **SECTION 49.** 103.10 (9) (c) of the statutes is repealed and recreated to read:

12 103.10 (9) (c) An employer may recover from an employe the premium paid by
13 the employer to maintain group health insurance coverage for the employe during
14 a period of unpaid family leave or medical leave if the employe fails to return from
15 that leave after the period of leave to which the employe is entitled has expired for
16 a reason other than the continuation, recurrence or onset of a serious health
17 condition that entitles the employe to leave under sub. (3) (c) or (d) or other
18 circumstances beyond the control of the employe.

19 **SECTION 50.** 103.10 (9) (d) of the statutes is repealed and recreated to read:

20 103.10 (9) (d) If an employe claims that he or she is unable to return to work
21 because of the continuation, recurrence or onset of a serious health condition as
22 described in par. (c), the employer may require the employe to provide certification
23 issued by the health care provider or Christian Science practitioner of the child,
24 spouse, parent or employe, whichever is appropriate, that the employe was needed
25 to care for his or her child, spouse or parent on the day that the employe's leave

1 expired or that a serious health condition prevented the employe from being able to
2 perform the duties of the employe’s position on the day that the employe’s leave
3 expired. The employe shall provide a copy of the certification under this paragraph
4 to the employer in a timely manner.

5 **SECTION 51.** 103.10 (10) of the statutes is repealed and recreated to read:

6 103.10 (10) INSTRUCTIONAL EMPLOYES. (a) In this subsection, “educational
7 agency” has the meaning given in s. 115.31 (1) (b).

8 (b) If an employe who is employed principally in an instructional capacity by
9 an educational agency requests intermittent leave or leave on a reduced-leave
10 schedule under sub. (3) (c) or (d) that is foreseeable for planned medical treatment,
11 complies with the requirements under sub. (6) (b) and would be on leave for greater
12 than 20% of the total number of working days during the period in which the leave
13 would extend, the educational agency may require that employe to elect to do one of
14 the following:

15 1. To take leave for periods of a particular duration, not to exceed the duration
16 of the planned medical treatment.

17 2. To transfer temporarily to an alternative employment position as provided
18 in sub. (4g) (b).

19 (c) 1. If an employe who is employed principally in an instructional capacity by
20 an educational agency begins family leave or medical leave more than 5 weeks before
21 the end of a semester, the educational agency may require the employe to continue
22 taking leave until the end of the semester if the family leave or medical leave is for
23 a period of at least 3 weeks in duration and the return to employment would occur
24 during the 3-week period before the end of the semester.

1 2. If an employe who is employed principally in an instructional capacity by an
2 educational agency begins leave under sub. (3) (a), (b) or (c) during the period that
3 begins 5 weeks before the end of a semester and ends 3 weeks before the end of a
4 semester, the educational agency may require the employe to continue taking leave
5 until the end of the semester if the leave under sub. (3) (a), (b) or (c) is for a period
6 of more than 2 weeks in duration and the return to employment would occur during
7 the 2-week period before the end of the semester.

8 3. If an employe who is employed principally in an instructional capacity by an
9 educational agency begins leave under sub. (3) (a), (b) or (c) less than 3 weeks before
10 the end of a semester and the leave is for a period of more than 5 working days, the
11 educational agency may require the employe to continue taking leave until the end
12 of the semester.

13 (d) An educational agency shall determine what is an equivalent employment
14 position under sub. (8) (a) 2. based on policies and practices established by the
15 educational agency and on any applicable collective bargaining agreement to which
16 the educational agency is a party.

17 **SECTION 52.** 103.10 (11) (c) of the statutes is repealed and recreated to read:

18 103.10 (11) (c) 1. No person may discharge or in any manner discriminate
19 against any individual for filing a complaint or attempting to enforce any right under
20 this section or for testifying or assisting in any action or proceeding to enforce any
21 right under this section.

22 2. No person may discharge or in any manner discriminate against any
23 individual because that person believes that the individual has engaged or may
24 engage in an activity described in subd. 1.

25 **SECTION 53.** 103.10 (11) (d) of the statutes is created to read:

1 103.10 (11) (d) Notwithstanding pars. (a) to (c), any action taken by an
2 employer to comply with 29 USC 2601 to 2654 is not considered to be a violation of
3 this section.

4 **SECTION 54.** 103.10 (12) (b) of the statutes is amended to read:

5 103.10 (12) (b) An employe who believes that his or her employe has violated
6 sub. (11) (a) ~~or (b)~~ may, ~~within 30 days after the violation occurs or the employe should~~
7 ~~reasonably have known that the violation occurred, whichever is later,~~ file a
8 complaint with the department alleging the violation. A complaint under this
9 subsection may be filed no later than 300 days after the date of the last event
10 constituting the alleged violation for which the complaint is brought. Except as
11 provided in s. 230.45 (1m), the department shall investigate the complaint and shall
12 attempt to resolve the complaint by conference, conciliation or persuasion. If the
13 complaint is not resolved and the department finds probable cause to believe a
14 violation has occurred, the department shall proceed with notice and a hearing on
15 the complaint as provided in ch. 227. The hearing shall be held within 60 days after
16 the department receives the complaint.

17 **SECTION 55.** 103.10 (12) (c) of the statutes is repealed.

18 **SECTION 56.** 103.10 (12) (d) of the statutes is amended to read:

19 103.10 (12) (d) The department shall issue its decision and order ~~within 30 days~~
20 ~~after the hearing.~~ If the department finds that an employe violated sub. (11) (a) ~~or~~
21 (b), it may order the employe to take action to remedy the violation, including
22 providing requested family leave or medical leave, reinstating an employe, and
23 providing back pay accrued not more than 2 years before the complaint was filed ~~and~~
24 ~~paying reasonable actual attorney fees to the complainant.~~

25 **SECTION 57.** 103.10 (12) (e) of the statutes is created to read:

1 103.10 (12) (e) Any respondent or complainant who is dissatisfied with the
2 findings and order of the examiner may file a written petition with the department
3 for review by the commission of the findings and order.

4 **SECTION 58.** 103.10 (12) (f) of the statutes is created to read:

5 103.10 (12) (f) If no petition is filed within 21 days from the date that a copy
6 of the findings and order of the examiner is mailed to the last-known address of the
7 respondent, the findings and order shall be considered final. If a timely petition is
8 filed, the commission, on review, may either affirm, reverse or modify the findings
9 or order in whole or in part, or set aside the findings and order and remand to the
10 department for further proceedings. Such actions shall be based on a review of the
11 evidence submitted. If the commission is satisfied that a respondent or complainant
12 has been prejudiced because of exceptional delay in the receipt of a copy of any
13 findings and orders it may extend the time another 21 days for filing the petition with
14 the department.

15 **SECTION 59.** 103.10 (12) (g) of the statutes is created to read:

16 103.10 (12) (g) On motion, the commission may set aside, modify or change any
17 decision made by the commission, at any time within 28 days from the date thereof
18 if it discovers any mistake therein, or upon the grounds of newly discovered evidence.
19 The commission may on its own motion, for reasons it considers sufficient, set aside
20 any final decision of the commission within one year after the date thereof upon
21 grounds of mistake or newly discovered evidence, and remand the case to the
22 department for further proceedings.

23 **SECTION 60.** 103.10 (13) of the statutes is repealed.

24 **SECTION 61.** 103.10 (14) (a) of the statutes is renumbered 103.10 (14) and
25 amended to read:

1 103.10 (14) NOTICE POSTED. Each employer shall post, in ~~one or more~~
2 conspicuous places on the employer's premises where notices to employes and
3 applicants for employment are customarily posted, a notice in a form prepared or
4 approved by the department setting forth employes' rights ~~under this section~~
5 excerpts from, or summaries of, the pertinent provisions of this section and
6 information relating to the filing of a complaint under sub. (12). Any employer who
7 wilfully violates this subsection shall forfeit not more than \$100 for each offense.

8 **SECTION 62.** 103.10 (14) (b) of the statutes is repealed.

9 **SECTION 63.** 103.10 (15) of the statutes is created to read:

10 103.10 (15) LOCAL ORDINANCES. A county, city, village or town may enact an
11 ordinance that provides employes with rights to family leave or medical leave that
12 are more generous to the employe than the rights provided under this section.

13 **SECTION 64.** 103.10 (16) of the statutes is created to read:

14 103.10 (16) RULES. The department shall promulgate rules to implement this
15 section. Those rules shall conform to 29 CFR 825 to the extent that 29 CFR 825 is
16 consistent with this section.

17 **SECTION 65.** 111.322 (2m) (a) of the statutes is amended to read:

18 111.322 (2m) (a) The individual files a complaint or attempts to enforce any
19 right under s. 103.02, ~~103.10~~, 103.13, 103.28, 103.32, 103.455, 103.50, 104.12, 109.03
20 or 109.07 or ss. 101.58 to 101.599 or 103.64 to 103.82.

21 **SECTION 66.** 111.322 (2m) (b) of the statutes is amended to read:

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

25 **SECTION 67.** 252.17 (3) (i) of the statutes is repealed.

1 **SECTION 68.** 252.17 (4) (a) of the statutes is amended to read:

2 252.17 (4) (a) Except as provided in ~~pars. (b) and (c)~~ par. (b), if an individual
3 satisfies sub. (3), the department shall pay the amount of each premium payment for
4 coverage under the group health plan under sub. (3) (d) that is due from the
5 individual on or after the date on which the individual becomes eligible for a subsidy
6 under sub. (3). The department may not refuse to pay the full amount of the
7 individual's contribution to each premium payment because the coverage that is
8 provided to the individual who satisfies sub. (3) includes coverage of the individual's
9 spouse and dependents. Except as provided in par. (b), the department shall
10 terminate the payments under this section when the individual's unpaid medical
11 leave ends, when the individual no longer satisfies sub. (3) or upon the expiration of
12 29 months after the unpaid medical leave began, whichever occurs first.

13 **SECTION 69.** 252.17 (4) (c) of the statutes is repealed.

14 **SECTION 70.** 632.897 (6) of the statutes is amended to read:

15 632.897 (6) If the terminated insured elects to continue group coverage as
16 provided in this section, the insurer may require conversion to individual coverage
17 by the terminated insured and his or her spouse and dependents 18 months after the
18 terminated insured elects the group coverage ~~except as provided in s. 103.10 (9) (d)~~.
19 The conditions, rights and procedures governing conversion under sub. (4) (a) apply
20 to this conversion.

21 **SECTION 71.** 893.96 of the statutes is repealed.

22 **SECTION 72. Initial applicability.**

23 (1) This act first applies to an employe, as defined in section 103.10 (1) (b) of
24 the statutes, as affected by this act, who is covered under a collective bargaining
25 agreement on the effective date of this subsection on the day after the collective

1 bargaining agreement expires or on the day that the collective bargaining agreement
2 is extended, modified or renewed.

3 **SECTION 73. Effective date.**

4 (1) This act takes effect on the first day of the 6th month beginning after
5 publication.

6 (END)