



2009 ASSEMBLY BILL 231

April 23, 2009 - Introduced by Representatives MOLEPSKE JR., NASS, MASON, BERCEAU, A. OTT, PARISI, A. WILLIAMS, TOWNSEND and LOTHIAN, cosponsored by Senators LASSA, LEHMAN and TAYLOR. Referred to Committee on Workforce Development.

1 **AN ACT** *to amend* 103.10 (12) (b), 103.10 (12) (d), 103.10 (13) (b) 2., 111.322 (2m)
2 (a) and 111.322 (2m) (b); *to repeal and recreate* 103.10 (11) (c); and *to create*
3 103.10 (12) (bm), 103.10 (12) (e), 103.10 (12) (f), 103.10 (12) (g) and 103.10 (12)
4 (h) of the statutes; **relating to:** the time within which a complaint may be filed
5 or a civil action may be brought alleging a violation of the family and medical
6 leave law and the procedures governing an appeal of a determination of the
7 Department of Workforce Development under that law.

Analysis by the Legislative Reference Bureau

Under current state law, an employer, including the state, that employs at least 50 individuals on a permanent basis must permit an employee to take six weeks of family leave in a 12-month period and two weeks of medical leave in a 12-month period (state family and medical leave law). Similarly, under current federal law, an employer, including a state, that employs at least 50 individuals for each working day for 20 or more weeks in the current or preceding calendar year must permit an employee to take 12 weeks of family or medical leave in a 12-month period (federal family and medical leave law).

Currently, under the state family and medical leave law, an employee who believes that his or her employer has denied any right provided under that law or retaliated against the employee for opposing a practice prohibited under that law

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may file a complaint with the Department of Workforce Development (DWD) within 30 days after the employee knew or should have known of the violation, and an employee who believes that his or her employer has retaliated against the employee for initiating, testifying in, or assisting in a proceeding under that law may file a complaint with DWD within 300 days after the alleged retaliation occurred. Currently, under the federal family and medical leave law, an employee who believes that his or her employer has denied any right provided under that law, retaliated against the employee for opposing a practice prohibited under that law, or retaliated against the employee for initiating, testifying in, or assisting in a proceeding under that law may file a complaint with the federal secretary of labor or bring an action in court within two years after the date of the last event constituting the alleged violation or, if the violation was willful, within three years after that event.

This bill conforms the time limit for filing a complaint under the state family and medical leave law to the time limits for filing a complaint under the federal family and medical leave law. Specifically, the bill extends the time limit for filing a complaint with DWD alleging that an employer has denied any right provided under the state family and medical leave law, retaliated against the employee for opposing a practice prohibited under that law, or retaliated against the employee for initiating, testifying in, or assisting in a proceeding under that law to two years after the date of the last event constituting the alleged violation of the law or, if the violation was willful, three years after that event.

Under current law, a determination by DWD on the issue of whether an employee has been denied family or medical leave in violation of the state family and medical leave law or has been retaliated against for opposing a practice prohibited under that law may not be appealed to the Labor and Industry Review Commission (LIRC), but rather may be appealed directly to the circuit court (judicial review), while a determination by DWD on the issue of whether an employee has been retaliated against for initiating, testifying in, or assisting in a proceeding under that law may be appealed to LIRC prior to judicial review. This bill permits a determination by DWD on the issue of whether an employee has been denied family or medical leave in violation of the state family and medical leave law or has been retaliated against for opposing a practice prohibited under that law to be appealed to LIRC in the same manner as an appeal of a determination by DWD on the issue of whether an employee has been retaliated against for initiating, testifying in, or assisting in a proceeding under the state family and medical leave law.

Under current law, an employee or DWD may bring a civil action in circuit court against an employer to recover damages caused by a violation of the state family and medical leave law. Currently, a civil action under the state family and medical leave law is barred unless commenced within the later of 60 days after the completion of an administrative proceeding, including judicial review, concerning the violation or 12 months after the violation occurred or the employee or DWD reasonably should have known that the violation occurred. This bill provides that such a civil action is barred unless commenced within the later of those 60 days or two years after the date of the last event constituting the alleged violation or, if the violation was willful, three years after that event.

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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 (11) (c) of the statutes is repealed and recreated to read:

2 103.10 (11) (c) 1. No person may discharge or in any manner discriminate
3 against any individual for filing a complaint or attempting to enforce any right under
4 this section or for testifying or assisting in any action or proceeding to enforce any
5 right under this section.

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

9 **SECTION 2.** 103.10 (12) (b) of the statutes is amended to read:

10 103.10 (12) (b) An employee who believes that his or her employer has violated
11 sub. (11) (a) ~~or (b)~~ may, ~~within 30 days after the violation occurs or the employee~~
12 ~~should reasonably have known that the violation occurred, whichever is later,~~ file a
13 complaint with the department alleging the violation. Except as provided in par.
14 (bm), a complaint under this paragraph may be filed no later than 2 years after the
15 date of the last event constituting the alleged violation for which the complaint is
16 brought. Except as provided in s. 230.45 (1m), the department shall investigate the
17 complaint and shall attempt to resolve the complaint by conference, conciliation, or
18 persuasion. If the complaint is not resolved and the department finds probable cause
19 to believe a violation has occurred, the department shall proceed with notice and a
20 hearing on the complaint as provided in ch. 227. The hearing shall be held within
21 60 days after the department receives the complaint.

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1 **SECTION 3.** 103.10 (12) (bm) of the statutes is created to read:

2 103.10 (12) (bm) A complaint under par. (b) alleging a willful violation of sub.
3 (11) may be filed no later than 3 years after the date of the last event constituting the
4 alleged violation for which the complaint is brought.

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

6 103.10 (12) (d) The department shall issue its decision and order within 30 days
7 after the hearing. If the department finds that an employer violated sub. (11) ~~(a) or~~
8 ~~(b)~~, it may order the employer to take action to remedy the violation, including
9 providing requested family leave or medical leave, reinstating an employee,
10 providing back pay accrued ~~not more than 2 years before the complaint was filed from~~
11 the date of the last event constituting the alleged violation for which the complaint
12 is brought, and paying reasonable actual attorney fees to the complainant.

13 **SECTION 5.** 103.10 (12) (e) of the statutes is created to read:

14 103.10 (12) (e) A respondent or complainant who is dissatisfied with the
15 decision and order of the hearing examiner may file a written petition with the
16 department for review by the commission of the decision and order.

17 **SECTION 6.** 103.10 (12) (f) of the statutes is created to read:

18 103.10 (12) (f) If no petition is filed within 21 days after the date on which the
19 department mails a copy of the decision and order to the last-known addresses of the
20 respondent and complainant, the decision and order shall be considered final. If a
21 timely petition is filed, the commission, on review, may either affirm, reverse, or
22 modify the decision and order in whole or in part, or set aside the decision and order
23 and remand the case to the department for further proceedings. Those actions shall
24 be based on a review of the evidence submitted. If the commission is satisfied that
25 a respondent or complainant has been prejudiced because of exceptional delay in the

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1 receipt of a copy of the decision and order, the commission may extend for another
2 21 days the time for filing the petition with the department.

3 **SECTION 7.** 103.10 (12) (g) of the statutes is created to read:

4 103.10 (12) (g) On motion of the respondent or complainant, the commission
5 may set aside, modify, or change any decision made by the commission, at any time
6 within 28 days after the date of the decision if the commission discovers any mistake
7 in the decision, or upon the grounds of newly discovered evidence. The commission
8 may on its own motion, for reasons it considers sufficient, set aside any final decision
9 of the commission within one year after the date of the final decision upon grounds
10 of mistake or newly discovered evidence and remand the case to the department for
11 further proceedings.

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

13 103.10 (12) (h) A respondent or complainant who is dissatisfied with a decision
14 of the commission under par. (f) or (g) may seek judicial review of that decision under
15 ss. 227.52 to 227.58 by filing a petition for review under s. 227.53 within 30 days after
16 the date on which the commission mails a copy of the decision to the last-known
17 addresses of the respondent and complainant.

18 **SECTION 9.** 103.10 (13) (b) 2. of the statutes is amended to read:

19 103.10 (13) (b) 2. ~~Twelve months~~ Two years after the date of the last event
20 constituting the alleged violation occurred, or the department or employee should
21 reasonably have known that the or, if the violation occurred was willful, 3 years after
22 the date of the last event constituting the alleged violation.

23 **SECTION 10.** 111.322 (2m) (a) of the statutes is amended to read:

