



State of Wisconsin
2015 - 2016 LEGISLATURE

LRB-3864/1
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2015 SENATE BILL 424

December 3, 2015 - Introduced by Senators LASSA, LASEE, BEWLEY, L. TAYLOR, C. LARSON, RINGHAND, HARRIS DODD and HANSEN, cosponsored by Representatives MASON, JACQUE, OHNSTAD, JOHNSON, MILROY, BALLWEG, HORLACHER, SUBECK, C. TAYLOR, SINICKI, SPREITZER, KOLSTE, CONSIDINE and RIEMER. Referred to Committee on Labor and Government Reform.

1 **AN ACT** *to renumber and amend* 103.10 (1m) (d); *to amend* 103.10 (title),
2 103.10 (1m) (title), 103.10 (1m) (a), 103.10 (2) (a), 103.10 (2) (c), 103.10 (5) (a),
3 103.10 (5) (b), 103.10 (8) (a) (intro.), 103.10 (8) (a) 1., 103.10 (8) (a) 2., 103.10 (8)
4 (b), 103.10 (8) (c), 103.10 (9) (a), 103.10 (9) (b), 103.10 (9) (c) 4., 103.10 (9) (d),
5 103.10 (10), 103.10 (12) (d) and 103.10 (14) (b); *to repeal and recreate* 893.96
6 (title); and *to create* 103.10 (1) (er), 103.10 (1m) (d) 2., 103.10 (2) (d), 103.10
7 (4m) and 103.10 (6) (c) of the statutes; **relating to:** leave from employment for
8 the purpose of serving as an organ donor.

Analysis by the Legislative Reference Bureau

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.

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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. 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.

This bill allows an employee of an employer to take no more than six weeks of leave in a 12-month period for the purpose of serving as a donor of an organ that requires the continuous circulation of blood to remain useful for purposes of transplantation (organ) if the employee provides the employer with written verification that the employee is to serve as an organ donor (organ donation leave). The bill applies to any employee of an employer regardless of the number of weeks and hours that the employee has worked for the employer, except that the bill does not apply to a state employee who under current law is already permitted to take a leave of absence of 30 workdays for the purpose of serving as an organ donor.

An employee is not entitled to receive wages or salary while taking 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 organ donation leave must give the employer advance notice of the organ donation and must make a reasonable effort to schedule the organ donation so that the organ donation does not unduly disrupt the operations of the employer, subject to the approval of the health care provider of the organ donee.

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 (title) of the statutes is amended to read:

2 **103.10** (title) **Family ~~or~~, medical, and organ donation** leave.

3 **SECTION 2.** 103.10 (1) (er) of the statutes is created to read:

4 **103.10 (1)** (er) "Organ" has the meaning given for "human organ" in s. 230.35

5 (2d) (a) 2.

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

2 103.10 **(1m)** (title) ~~STATEWIDE~~ FAMILY AND MEDICAL LEAVE; STATEWIDE CONCERN;
3 UNIFORMITY.

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

5 103.10 **(1m)** (a) The legislature finds that the provision of family and medical
6 leave that is uniform throughout the state is a matter of statewide concern and that
7 the enactment of an ordinance by a city, village, town, or county that requires
8 employers to provide employees with leave from employment, paid or unpaid, for any
9 of the reasons specified in par. (c) would be logically inconsistent with, would defeat
10 the purpose of, and would go against the spirit of this section. Therefore, with respect
11 to family and medical leave, this section shall be construed as an enactment of
12 statewide concern for the purpose of providing family and medical leave that is
13 uniform throughout the state.

14 **SECTION 5.** 103.10 (1m) (d) of the statutes is renumbered 103.10 (1m) (d) (intro.)
15 and amended to read:

16 103.10 **(1m)** (d) (intro.) This subsection does not affect an ordinance affecting
17 leave any of the following:

18 1. Leave from employment of an employee of a city, village, town, or county.

19 **SECTION 6.** 103.10 (1m) (d) 2. of the statutes is created to read:

20 103.10 **(1m)** (d) 2. Organ donation leave.

21 **SECTION 7.** 103.10 (2) (a) of the statutes is amended to read:

22 103.10 **(2)** (a) Nothing in this section prohibits an employer from providing
23 employees with rights to family leave ~~or~~, medical leave which, or organ donation
24 leave that are more generous to the employee than the rights provided under this
25 section.

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1 **SECTION 8.** 103.10 (2) (c) of the statutes is amended to read:

2 103.10 (2) (c) ~~This~~ Subject to sub. (4m), this section only applies to an employee
3 who has been employed by the same employer for more than 52 consecutive weeks
4 and who worked for the employer for at least 1,000 hours during the preceding
5 52-week period.

6 **SECTION 9.** 103.10 (2) (d) of the statutes is created to read:

7 103.10 (2) (d) This section does not apply to an employee, as defined in s. 230.03
8 (10h), who requests a leave of absence under s. 230.35 (2d) (c) for the purpose of
9 serving as an organ donor.

10 **SECTION 10.** 103.10 (4m) of the statutes is created to read:

11 103.10 (4m) **ORGAN DONATION LEAVE.** Subject to subs. (2) (d) and (6) (c), an
12 employee may take no more than 6 weeks of organ donation leave in a 12-month
13 period for the purpose of serving as an organ donor if the employee provides his or
14 her employer with written verification that the employee is to serve as an organ
15 donor. Notwithstanding sub. (2) (c), this subsection applies to any employee of an
16 employer.

17 **SECTION 11.** 103.10 (5) (a) of the statutes is amended to read:

18 103.10 (5) (a) This section does not entitle an employee to receive wages or
19 salary while taking family leave ~~or~~, medical leave, or organ donation leave.

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

21 103.10 (5) (b) An employee may substitute, for portions of family leave ~~or~~,
22 medical leave, or organ donation leave, paid or unpaid leave of any other type
23 provided by the employer.

24 **SECTION 13.** 103.10 (6) (c) of the statutes is created to read:

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1 103.10 (6) (c) If an employee intends to take leave under sub. (4m) for the
2 purpose of serving as an organ donor, the employee shall do all of the following:

3 1. Make a reasonable effort to schedule the organ donation so that the organ
4 donation does not unduly disrupt the employer's operations, subject to the approval
5 of the health care provider of the organ donee.

6 2. Give the employer advance notice of the organ donation in a reasonable and
7 practicable manner.

8 **SECTION 14.** 103.10 (8) (a) (intro.) of the statutes is amended to read:

9 103.10 (8) (a) (intro.) Subject to par. (c), when an employee returns from family
10 leave ~~or~~, medical leave, or organ donation leave, his or her employer shall
11 immediately place the employee in an employment position as follows:

12 **SECTION 15.** 103.10 (8) (a) 1. of the statutes is amended to read:

13 103.10 (8) (a) 1. If the employment position ~~which~~ that the employee held
14 immediately before the family leave ~~or~~, medical leave, or organ donation leave began
15 is vacant when the employee returns, in that position.

16 **SECTION 16.** 103.10 (8) (a) 2. of the statutes is amended to read:

17 103.10 (8) (a) 2. If the employment position ~~which~~ that the employee held
18 immediately before the family leave ~~or~~, medical leave, or organ donation leave began
19 is not vacant when the employee returns, in an equivalent employment position
20 having equivalent compensation, benefits, working shift, hours of employment, and
21 other terms and conditions of employment.

22 **SECTION 17.** 103.10 (8) (b) of the statutes is amended to read:

23 103.10 (8) (b) No employer may, because an employee received family leave ~~or~~,
24 medical leave, or organ donation leave, reduce or deny an employment benefit ~~which~~

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1 that accrued to the employee before his or her leave began or, consistent with sub.
2 (9), accrued after his or her leave began.

3 **SECTION 18.** 103.10 (8) (c) of the statutes is amended to read:

4 103.10 (8) (c) Notwithstanding par. (a), if an employee on ~~a~~ family leave,
5 medical or family leave, or organ donation leave wishes to return to work before the
6 end of the leave as scheduled, the employer shall place the employee in an
7 employment position of the type described in par. (a) 1. or 2. within a reasonable time
8 not exceeding the duration of the leave as scheduled.

9 **SECTION 19.** 103.10 (9) (a) of the statutes is amended to read:

10 103.10 (9) (a) Except as provided in par. (b), nothing in this section entitles a
11 returning employee to a right, employment benefit, or employment position to which
12 the employee would not have been entitled had he or she not taken family leave ~~or,~~
13 medical leave, or organ donation leave or to the accrual of any seniority or
14 employment benefit during a period of family leave ~~or,~~ medical leave, or organ
15 donation leave.

16 **SECTION 20.** 103.10 (9) (b) of the statutes is amended to read:

17 103.10 (9) (b) Subject to par. (c), during a period an employee takes family leave
18 ~~or,~~ medical leave, or organ donation leave, his or her employer shall maintain group
19 health insurance coverage under the conditions that applied immediately before the
20 family leave ~~or,~~ medical leave, or organ donation leave began. If the employee
21 continues making any contribution required for participation in the group health
22 insurance plan, the employer shall continue making group health insurance
23 premium contributions as if the employee had not taken the family leave ~~or,~~ medical
24 leave, or organ donation leave.

25 **SECTION 21.** 103.10 (9) (c) 4. of the statutes is amended to read:

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1 103.10 (9) (c) 4. If an employee ends his or her employment with an employer
2 during or within 30 days after a period of family leave ~~or~~, medical leave, or organ
3 donation leave, the employer may deduct from the amount returned to the employee
4 under subd. 3. any premium or similar expense paid by the employer for the
5 employee's group health insurance coverage while the employee was on family leave
6 ~~or~~, medical leave, or organ donation leave.

7 **SECTION 22.** 103.10 (9) (d) of the statutes is amended to read:

8 103.10 (9) (d) If an employee ends his or her employment with an employer
9 during or at the end of a period of family leave ~~or~~, medical leave, or organ donation
10 leave, the ~~time~~ period for conversion to individual coverage under s. 632.897 (6) shall
11 be calculated as beginning on the day ~~that~~ on which the employee began the period
12 of family leave ~~or~~, medical leave, or organ donation leave.

13 **SECTION 23.** 103.10 (10) of the statutes is amended to read:

14 103.10 (10) ALTERNATIVE EMPLOYMENT. Nothing in this section prohibits an
15 employer and an employee with a serious health condition from mutually agreeing
16 to alternative employment for the employee while the serious health condition lasts.
17 No period of alternative employment, with the same employer, reduces the
18 employee's right to family leave ~~or~~, medical leave, or organ donation leave.

19 **SECTION 24.** 103.10 (12) (d) of the statutes is amended to read:

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

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1 the complaint was filed, and paying reasonable actual attorney fees to the
2 complainant.

3 **SECTION 25.** 103.10 (14) (b) of the statutes is amended to read:

4 103.10 (14) (b) Any person employing at least 25 individuals shall post, in one
5 or more conspicuous places where notices to employees are customarily posted, a
6 notice describing the person's policy with respect to leave for the reasons described
7 in subs. (3) (b) and, (4) (a), and (4m).

8 **SECTION 30.** 893.96 (title) of the statutes is repealed and recreated to read:

9 **893.96 (title) Family, medical, and organ donation leave; civil remedies.**

10 **SECTION 31. Initial applicability.**

11 (1) This act first applies to an employee, as defined in section 103.10 (1) (b) of
12 the statutes, who is affected by a collective bargaining agreement that contains
13 provisions that are inconsistent with this act on the day on which the collective
14 bargaining agreement expires or is extended, modified, or renewed, whichever
15 occurs first.

16 **SECTION 32. Effective date.**

17 (1) This act takes effect on the first day of the 3rd month beginning after
18 publication.

19 (END)