



## 2023 ASSEMBLY BILL 436

September 19, 2023 - Introduced by Representatives SUBECK, C. ANDERSON, ANDRACA, BALDEH, BARE, BEHNKE, CABRERA, CLANCY, CONLEY, CONSIDINE, DRAKE, EMERSON, JOERS, MYERS, OHNSTAD, PALMERI, RATCLIFF, ROZAR, SHANKLAND, SINICKI, SNODGRASS, STUBBS, TUSLER, VINING, BILLINGS and JACOBSON, cosponsored by Senators BALLWEG, AGARD, CABRAL-GUEVARA, CARPENTER, HESSELBEIN, JACQUE, L. JOHNSON, LARSON, ROYS, SPREITZER, TAYLOR and WIRCH. Referred to Committee on Labor and Integrated Employment.

1     **AN ACT** *to amend* 111.322 (2m) (a) and 111.322 (2m) (b); and *to create* 103.09,  
2     106.54 (11) and 111.91 (2) (gp) of the statutes; **relating to:** requiring an  
3     employer to provide reasonable break time and accommodations for an  
4     employee who is breastfeeding the employee's child to express breast milk for  
5     the child.

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### *Analysis by the Legislative Reference Bureau*

The federal Fair Labor Standards Act (FLSA), as amended by the 2023 Consolidated Appropriations Act, requires an employer to provide the following: 1) a reasonable break time for an employee to express breast milk for the employee's nursing child for one year after the child's birth each time the employee needs to express that milk and 2) a place, other than a bathroom, that is shielded from view and free from intrusion from coworkers and the public that may be used by an employee to express breast milk. In addition, the FLSA permits that break time to be unpaid, unless the employee is not completely relieved from duty during the entirety of the break. The FLSA also provides that an employer that employs fewer than 50 employees is exempt from these requirements if the requirements would impose an undue hardship by causing the employer significant difficulty or expense when considered in relation to the size, financial resources, nature, or structure of the employer's business.

This bill codifies into the laws of this state the requirements of the FLSA with respect to reasonable break time for employees to express breast milk for their

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children under one year of age and applies those requirements to all employers, including the state, employing at least one individual. In addition, the bill 1) requires an employer to provide access to an electrical outlet, running water, and a refrigerator for the storage of breast milk and 2) provides that if an employee's eligibility for an employer contribution towards the employee's health care coverage is dependent on the number of hours that the employee works, the employer must treat any unpaid break time taken by the employee to express breast milk as paid work time for purposes of determining that eligibility. An employer employing fewer than 50 employees is exempt from these requirements if the employer can demonstrate that compliance with the requirements would pose an undue hardship on the employer's business.

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

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

1           **SECTION 1.** 103.09 of the statutes is created to read:

2           **103.09 Reasonable break time for nursing employees. (1) DEFINITION.**

3           In this section, "employer" means any person engaging in any activity, enterprise, or  
4           business employing at least one individual. "Employer" includes the state, its  
5           political subdivisions, and any office, department, independent agency, authority,  
6           institution, association, society, or other body in state or local government created or  
7           authorized to be created by the constitution or any law, including the legislature and  
8           the courts.

9           **(2) REASONABLE BREAK TIME REQUIRED.** Subject to sub. (4), an employer shall  
10          provide all of the following for an employee who is breastfeeding the employee's child  
11          under one year of age:

12               (a) A reasonable break time to express breast milk for the child each time the  
13               employee has a need to express that milk.

14               (b) A place, other than a bathroom, that is shielded from view and free from  
15               intrusion from coworkers and the public for the employee to express breast milk.

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1 (c) Access to an electrical outlet, running water, and a refrigerator for the  
2 storage of breast milk.

3 **(3) UNPAID BREAK TIME; MAINTENANCE OF HEALTH CARE COVERAGE.** (a) Subject to  
4 pars. (b) and (c), an employer that provides break time under sub. (2) (a) for an  
5 employee to express breast milk is not required to compensate the employee for any  
6 work time spent for that purpose.

7 (b) An employer shall consider break time under sub. (2) (a) paid work time if  
8 an employee is not completely relieved from duty during the entirety of such a break.

9 (c) If an employee's eligibility for an employer contribution towards the  
10 employee's health care coverage is dependent on the number of hours that the  
11 employee works, the employer shall treat any unpaid break time taken by the  
12 employee to express breast milk as paid work time for purposes of determining that  
13 eligibility.

14 **(4) UNDUE HARDSHIP EXCEPTION.** An employer that employs fewer than 50  
15 employees on a permanent basis in this state is not subject to the requirements under  
16 sub. (2) if the employer can demonstrate that compliance with those requirements  
17 would pose an undue hardship on the employer's program, enterprise, or business  
18 by causing the employer significant difficulty or expense when considered in light of  
19 the size, financial resources, nature, or structure of the employer's business.

20 **(5) PROHIBITED ACTS.** (a) No person may interfere with, restrain, or deny the  
21 exercise of the right of an employee who is breastfeeding the employee's child under  
22 one year of age to take reasonable break time to express that milk as provided under  
23 sub. (2).

24 (b) No person may discharge or discriminate against an employee in promotion,  
25 in compensation, or in the terms, conditions, or privileges of employment for taking

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1 reasonable break time to express breast milk for the employee's child under one year  
2 of age as provided in sub. (2), opposing a practice prohibited under this section, filing  
3 a complaint or attempting to enforce any right under this section, or testifying or  
4 assisting in any action or proceeding to enforce any right under this section.

5 **(6) ENFORCEMENT.** An employee whose right to take reasonable break time to  
6 express breast milk for the employee's child under one year of age as provided under  
7 sub. (2) is interfered with, restrained, or denied in violation of sub. (5) (a) or who is  
8 discharged or discriminated against in violation of sub. (5) (b) may file a complaint  
9 with the department, and the department shall process the complaint in the same  
10 manner that employment discrimination complaints are processed under s. 111.39.  
11 If the department finds that an employer has violated sub. (5) (a) or (b), the  
12 department may order the employer to take action to remedy the violation, including  
13 reinstating the employee, providing compensation in lieu of reinstatement,  
14 providing back pay accrued not more than 2 years before the complaint was filed, and  
15 paying reasonable actual costs and attorney fees to the complainant.

16 **SECTION 2.** 106.54 (11) of the statutes is created to read:

17 106.54 (11) The division shall receive complaints under s. 103.09 (6) and shall  
18 process the complaints in the same manner as employment discrimination  
19 complaints are processed under s. 111.39.

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

21 111.322 (2m) (a) The individual files a complaint or attempts to enforce any  
22 right under s. 103.02, 103.09, 103.10, 103.11, 103.13, 103.28, 103.32, 103.34,  
23 103.455, 104.12, 109.03, 109.07, 109.075, 146.997, or 995.55, or ss. 101.58 to 101.599  
24 or 103.64 to 103.82.

25 **SECTION 4.** 111.322 (2m) (b) of the statutes is amended to read:

