



State of Wisconsin
2019 - 2020 LEGISLATURE

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2019 SENATE BILL 596

November 27, 2019 - Introduced by Senators RINGHAND, CARPENTER, HANSEN, LARSON, SHILLING, SCHACHTNER, MILLER, SMITH, BEWLEY, JOHNSON, ERPENBACH, WIRCH and RISSER, cosponsored by Representatives POPE, CROWLEY, SARGENT, SHANKLAND, STUCK, ZAMARRIPA, GRUSZYNSKI, NEUBAUER, C. TAYLOR, BILLINGS, HESSELBEIN, VINING, SPREITZER, KOLSTE, EMERSON, CONSIDINE, ANDERSON, SINICKI, RIEMER, FIELDS, MILROY, SUBECK, DOYLE, HEBL, GOYKE and HINTZ. Referred to Committee on Insurance, Financial Services, Government Oversight and Courts.

1 **AN ACT** *to repeal* 103.10 (1) (a) 1., 103.10 (1) (a) 2., 103.10 (1m) and 103.10 (14)
2 (b); *to renumber* 103.10 (14) (a); *to renumber and amend* 103.10 (1) (a)
3 (intro.); *to amend* 103.10 (1) (b), 103.10 (1) (c), 103.10 (3) (a) 1., 103.10 (3) (b)
4 3., 103.10 (6) (b) (intro.), 103.10 (6) (b) 1., 103.10 (7) (a), 103.10 (7) (b) (intro.),
5 103.10 (7) (b) 1., 103.10 (12) (c), 103.12 (2), 103.12 (3), 111.322 (2m) (a), 111.322
6 (2m) (b), 165.68 (1) (a) 3. and 227.03 (2); and *to create* 20.445 (1) (w), 25.17 (1)
7 (er), 25.52, 71.05 (6) (b) 54., 103.10 (1) (ap), 103.10 (1) (dm), 103.10 (1) (dp),
8 103.10 (1) (gm), 103.10 (3) (b) 4., 103.10 (6) (c), 103.10 (7) (d), 103.105 and 103.12
9 (4) of the statutes; **relating to:** the establishment of a family and medical leave
10 insurance program; family leave to care for a grandparent, grandchild, or
11 sibling and for the active duty of a family member; the employers that are
12 required to allow an employee to take family or medical leave; creating an
13 individual income tax deduction for certain family or medical leave insurance
14 benefits; allowing a local government to adopt ordinances requiring employers

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1 to provide leave benefits; providing an exemption from emergency rule
2 procedures; providing an exemption from rule-making procedures; granting
3 rule-making authority; making an appropriation; and providing a penalty.

Analysis by the Legislative Reference Bureau***Introduction***

This bill expands the family and medical leave law to allow an employee covered under that law to take family leave to care for a grandparent, grandchild, or sibling and for the active duty of a family member, lowers the threshold number of employees above which an employer must allow an employee to take family or medical leave, and establishes a family and medical leave insurance program under which certain covered individuals may receive benefits while taking family or medical leave.

Family and medical leave expansion

Under current law, an employer, including the state, that employs at least 50 individuals on a permanent basis in this state must allow 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 weeks to take up to eight weeks of family leave in a 12-month period for the birth or adoptive placement of a child or to care for a child, spouse, parent, or domestic partner of the employee or a parent of the spouse or domestic partner of the employee who has a serious health condition; and up to two weeks of medical leave in a 12-month period when the employee has a serious health condition that makes the employee unable to perform the employee's employment duties.

This bill requires an employer, including the state, to allow an employee to take family or medical leave as provided under current law. The bill also allows an employee to take family leave as provided under current law to care for a grandparent, grandchild, or sibling of the employee who has a serious health condition. In addition, the bill requires an employer to allow an employee to take family leave because of any qualifying exigency, as determined by the Department of Workforce Development by rule, arising out of the fact that the spouse, child, domestic partner, parent, grandparent, grandchild, or sibling of the employee is on deployment with the U.S. armed forces to a foreign country (covered active duty) or has been notified of an impending call or order to covered active duty.

Family and medical leave insurance program

The bill creates a family and medical leave insurance program, to be administered by DWD, under which a covered individual who is on family or medical leave is eligible, beginning on January 1, 2024, to receive up to 12 weeks of family or medical leave insurance benefits as specified in the bill from the family and medical leave insurance trust fund created under the bill (trust fund). For purposes of the bill:

1. A "covered individual" is an individual who worked for any employer for at least 680 hours in the calendar year prior to the year in which the covered individual

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claims family or medical leave insurance benefits (application year) or a self-employed individual who elects coverage under the program, regardless of whether the individual is employed or unemployed at the time the individual files an application for family or medical leave insurance benefits.

2. "Family leave" means leave from employment, self-employment, or availability for employment for the birth or adoptive placement of a new child; to care for a child, spouse, domestic partner, parent, grandparent, grandchild, or sibling who has a serious health condition; or because of any qualifying exigency arising out of the fact that the family member is on covered active duty or has been notified of an impending call or order to covered active duty.

3. "Medical leave" means leave from employment when a covered individual has a serious health condition that makes the individual unable to perform his or her employment duties, leave from self-employment when a covered individual has a serious health condition that makes the individual unable to perform the duties of his or her self-employment, or leave from availability for employment when a covered individual has a serious health condition that makes the individual unable to perform the duties of any suitable employment.

Under the bill, the amount of family or medical leave insurance benefits for a week for which those benefits are payable is as follows:

1. For a covered individual who earned less than 30 percent of the state annual median wage in the calendar year before the individual's application year, 95 percent of that individual's average weekly earnings.

2. For a covered individual who earned at least 30 percent, but less than 50 percent, of the state annual median wage in the calendar year before the individual's application year, 90 percent of that individual's average weekly earnings.

3. For a covered individual who earned at least 50 percent, but less than 80 percent, of the state annual median wage in the calendar year before the individual's application year, 85 percent of that individual's average weekly earnings.

4. For a covered individual who earned at least 80 percent of the state annual median wage in the calendar year before the individual's application year, 66 percent of that individual's average weekly earnings.

In addition, the benefits payable cannot exceed \$1,000 per week, adjusted according to the consumer price index.

In addition, the bill provides that family or medical leave insurance benefits are payable beginning on the sixth day of family or medical leave, except that if a covered individual uses ten or more days of family or medical leave insurance benefits in an application year, those benefits are also payable with respect to the first five days of family or medical leave. The bill also provides that no family or medical leave insurance benefits are payable for any period of family or medical leave in which a covered individual is substituting paid leave of any other type provided by his or her employer or in which a covered individual is receiving unemployment benefits or worker's compensation benefits. Finally, with respect to family or medical leave insurance benefits, the bill provides that those benefits are exempt from state income taxation.

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Beginning on January 1, 2023, the bill requires each individual employed in this state, including an individual employed by the state, and each self-employed individual who elects coverage under the family and medical leave insurance program to contribute to the trust fund a percentage of his or her wages from employment or income from self-employment determined by DWD in consultation with the commissioner of insurance that is sufficient to finance the payments of benefits under the program and the administration of the program. The bill requires DWD to collect those contributions in the same manner as DWD collects contributions to the unemployment reserve fund under current law.

The bill does the following:

1. Allows a covered individual whose claim for family or medical leave insurance benefits is denied by DWD to request a hearing on the denial and requires DWD to process the request for hearing in the same manner that requests for hearings on unemployment insurance claims are processed under current law.

2. Allows DWD to seek repayment of family or medical leave insurance benefits that are paid erroneously or as a result of willful misrepresentation in the same manner that DWD recovers erroneous payments of unemployment insurance benefits under current law or to waive recovery of an erroneous payment of those benefits if the erroneous payment was not the fault of the person who received it and if requiring repayment would be contrary to equity and good conscience.

3. Provides that if an individual willfully makes a false statement or representation, or willfully fails to disclose a material fact, to obtain family or medical leave insurance benefits, the individual is disqualified from receiving those benefits for one year after the date of the disqualification.

Finally, the bill allows a city, village, town, or county to enact and enforce ordinances requiring employers to provide leave from employment to their employees if those ordinances are more generous than those provided under state law.

Because this bill relates to an exemption from state or local taxes, it may be referred to the Joint Survey Committee on Tax Exemptions for a report to be printed as an appendix to the bill.

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.** 20.445 (1) (w) of the statutes is created to read:
- 2 20.445 (1) (w) *Family and medical leave insurance trust fund.* From the family
- 3 and medical leave insurance trust fund, all moneys deposited in that fund under s.
- 4 103.105 (8) for the payments of family or medical leave insurance benefits under s.

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1 103.105 (3) (c) and for the administration of the family or medical leave insurance
2 program under s. 103.105.

3 **SECTION 2.** 25.17 (1) (er) of the statutes is created to read:

4 25.17 (1) (er) Family and medical leave insurance trust fund (s. 25.52);

5 **SECTION 3.** 25.52 of the statutes is created to read:

6 **25.52 Family and medical leave insurance trust fund.** There is created
7 a separate nonlapsible trust fund designated as the family and medical leave
8 insurance trust fund, to consist of all moneys deposited in that fund under s. 103.105
9 (8).

10 **SECTION 4.** 71.05 (6) (b) 54. of the statutes is created to read:

11 71.05 (6) (b) 54. For taxable years beginning after December 31, 2023, any
12 amount of family or medical leave insurance benefits received by a covered
13 individual, as defined in s. 103.105 (1) (d), in the taxable year to which the
14 subtraction relates.

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

17 103.10 (1) (a) "Child" means a natural, adopted, or foster child, a stepchild, or
18 a legal ward to whom any of the following applies:

19 **SECTION 6.** 103.10 (1) (a) 1. of the statutes is repealed.

20 **SECTION 7.** 103.10 (1) (a) 2. of the statutes is repealed.

21 **SECTION 8.** 103.10 (1) (ap) of the statutes is created to read:

22 103.10 (1) (ap) "Covered active duty" means any of the following:

23 1. In the case of a member of a regular component of the U.S. armed forces, duty
24 during the deployment of the member with the U.S. armed forces to a foreign country.

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1 2. In the case of a member of a reserve component of the U.S. armed forces, duty
2 during the deployment of the member with the U.S. armed forces to a foreign country
3 under a call or order to active duty under a provision of law specified in 10 USC 101
4 (a) (13) (B).

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

6 103.10 (1) (b) Except as provided in sub. ~~(1m) (b) 2.~~ and s. 452.38, “employee”
7 means an individual employed in this state by an employer, except the employer’s
8 ~~parent child, spouse, domestic partner, or child parent, grandparent, grandchild, or~~
9 sibling.

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

11 103.10 (1) (c) ~~Except as provided in sub. (1m) (b) 3.,~~ “employer” “Employer”
12 means a person engaging in any activity, enterprise, or business in this state
13 ~~employing at least 50 individuals on a permanent basis.~~ “Employer” includes the
14 state and any office, department, independent agency, authority, institution,
15 association, society, or other body in state government created or authorized to be
16 created by the constitution or any law, including the legislature and the courts.

17 **SECTION 11.** 103.10 (1) (dm) of the statutes is created to read:

18 103.10 (1) (dm) “Grandchild” means the child of a child.

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

20 103.10 (1) (dp) “Grandparent” means the parent of a parent.

21 **SECTION 13.** 103.10 (1) (gm) of the statutes is created to read:

22 103.10 (1) (gm) “Sibling” means a brother, sister, half brother, half sister,
23 stepbrother, or stepsister, whether by blood, marriage, or adoption.

24 **SECTION 14.** 103.10 (1m) of the statutes is repealed.

25 **SECTION 15.** 103.10 (3) (a) 1. of the statutes is amended to read:

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1 103.10 (3) (a) 1. In a 12-month period no employee may take more than 6 weeks
2 of family leave under par. (b) 1. ~~and, 2., and 4.~~

3 **SECTION 16.** 103.10 (3) (b) 3. of the statutes is amended to read:

4 103.10 (3) (b) 3. To care for the employee's child, spouse, domestic partner, ~~or~~
5 parent, grandparent, grandchild, or sibling, if the child, spouse, domestic partner, ~~or~~
6 parent, grandparent, grandchild, or sibling has a serious health condition.

7 **SECTION 17.** 103.10 (3) (b) 4. of the statutes is created to read:

8 103.10 (3) (b) 4. Because of any qualifying exigency, as determined by the
9 department by rule, arising out of the fact that the spouse, child, domestic partner,
10 parent, grandparent, grandchild, or sibling of the employee is on covered active duty
11 or has been notified of an impending call or order to covered active duty.

12 **SECTION 18.** 103.10 (6) (b) (intro.) of the statutes is amended to read:

13 103.10 (6) (b) (intro.) If an employee intends to take family leave because of the
14 planned medical treatment or supervision of a child, spouse, domestic partner, ~~or~~
15 parent, grandparent, grandchild, or sibling or intends to take medical leave because
16 of the planned medical treatment or supervision of the employee, the employee shall
17 do all of the following:

18 **SECTION 19.** 103.10 (6) (b) 1. of the statutes is amended to read:

19 103.10 (6) (b) 1. Make a reasonable effort to schedule the medical treatment
20 or supervision so that it does not unduly disrupt the employer's operations, subject
21 to the approval of the health care provider of the child, spouse, domestic partner,
22 parent, grandparent, grandchild, sibling, or employee.

23 **SECTION 20.** 103.10 (6) (c) of the statutes is created to read:

24 103.10 (6) (c) If an employee intends to take leave under sub. (3) (b) 4. that is
25 foreseeable because the spouse, child, domestic partner, parent, grandparent,

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1 grandchild, or sibling of the employee is on covered active duty or has been notified
2 of an impending call or order to covered active duty, the employee shall provide notice
3 of that intention to the employer in a reasonable and practicable manner.

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

5 103.10 (7) (a) If an employee requests family leave for a reason described in sub.
6 (3) (b) 3. or requests medical leave, the employer may require the employee to provide
7 certification, as described in par. (b), issued by the health care provider or Christian
8 Science practitioner of the child, spouse, domestic partner, parent, grandparent,
9 grandchild, sibling, or employee, whichever is appropriate.

10 **SECTION 22.** 103.10 (7) (b) (intro.) of the statutes is amended to read:

11 103.10 (7) (b) (intro.) No employer may require certification under par. (a)
12 stating more than the following:

13 **SECTION 23.** 103.10 (7) (b) 1. of the statutes is amended to read:

14 103.10 (7) (b) 1. That the child, spouse, domestic partner, parent, grandparent,
15 grandchild, sibling, or employee has a serious health condition.

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

17 103.10 (7) (d) If an employee requests leave under sub. (3) (b) 4., the employer
18 may require the employee to provide certification that the spouse, child, domestic
19 partner, parent, grandparent, grandchild, or sibling of the employee is on covered
20 active duty or has been notified of an impending call or order to covered active duty
21 issued at such time and in such manner as the department may prescribe by rule,
22 and the employee shall provide a copy of that certification to the employer in a timely
23 manner.

24 **SECTION 25.** 103.10 (12) (c) of the statutes is amended to read:

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1 103.10 (12) (c) If 2 or more health care providers disagree about any of the
2 information required to be certified under sub. (7) (b), the department may appoint
3 another health care provider to examine the child, spouse, domestic partner, parent,
4 grandparent, grandchild, sibling, or employee and render an opinion as soon as
5 possible. The department shall promptly notify the employee and the employer of
6 the appointment. The employer and the employee shall each pay 50 percent of the
7 cost of the examination and opinion.

8 **SECTION 26.** 103.10 (14) (a) of the statutes is renumbered 103.10 (14).

9 **SECTION 27.** 103.10 (14) (b) of the statutes is repealed.

10 **SECTION 28.** 103.105 of the statutes is created to read:

11 **103.105 Family and medical leave insurance program. (1) DEFINITIONS.**

12 In this section:

13 (a) “Application year” means the 12-month period beginning on the first day
14 of the first calendar week for which family or medical leave insurance benefits are
15 claimed by a covered individual.

16 (b) “Average weekly earnings” means the average weekly earnings of a covered
17 individual as calculated under s. 102.11 (1) (a) to (e).

18 (c) “Child” means a natural, adopted, or foster child, a stepchild, or a legal ward.

19 (d) “Covered individual” means an individual who worked for any employer or
20 employers for at least 680 hours in the calendar year prior to the individual’s
21 application year or a self-employed individual who elects coverage under sub. (2),
22 regardless of whether the individual is employed or unemployed at the time the
23 individual files an application for family or medical leave insurance benefits.

24 (e) “Domestic partner” has the meaning given in s. 40.02 (21c) or 770.01 (1).

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1 (f) "Employee" means an individual employed in this state by an employer,
2 except the employer's child, spouse, domestic partner, parent, grandparent,
3 grandchild, or sibling.

4 (g) "Employer" means a person engaging in any activity, enterprise, or business
5 in this state. "Employer" includes the state and any office, department, independent
6 agency, authority, institution, association, society, or other body in state government
7 created or authorized to be created by the constitution or any law, including the
8 legislature and the courts.

9 (h) "Family leave" means leave from employment, self-employment, or
10 availability for employment for a reason specified in ss. 103.10 (3) (b) 1. to 4. or 103.11
11 (4).

12 (i) "Family or medical leave insurance benefits" means family or medical leave
13 insurance benefits payable under this section from the family and medical leave
14 insurance trust fund.

15 (j) "Grandchild" means the child of a child.

16 (k) "Grandparent" means the parent of a parent.

17 (L) "Medical leave" means leave from employment, self-employment, or
18 availability for employment when a covered individual has a serious health condition
19 that makes the individual unable to perform his or her employment or
20 self-employment duties, or makes the individual unable to perform the duties of any
21 suitable employment.

22 (m) "Parent" means a natural parent, foster parent, adoptive parent,
23 stepparent, or legal guardian of an employee or of an employee's spouse or domestic
24 partner.

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1 (n) "Self-employed individual" means a sole proprietor, partner of a
2 partnership, member of a limited liability company, or other self-employed
3 individual engaged in a vocation, profession, or business in this state.

4 (o) "Serious health condition" has the meaning given in s. 103.10 (1) (g).

5 (p) "Sibling" means a brother, sister, half brother, half sister, stepbrother, or
6 stepsister, whether by blood, marriage, or adoption.

7 (q) "Spouse" means an employee's legal husband or wife.

8 (r) "State annual median wage" means the median hourly wage for all
9 occupations in this state, as determined by the bureau of labor statistics of the U.S.
10 department of labor, multiplied by 2,080.

11 (s) "Waiting period" means the period under sub. (5) (b) 1. for which no family
12 or medical leave insurance benefits are payable.

13 **(2) ELECTION BY SELF-EMPLOYED INDIVIDUAL.** A self-employed individual may
14 elect to be covered under this section by filing a written notice of election with the
15 department in a form and manner prescribed by the department by rule. An initial
16 election under this subsection becomes effective on the date on which the notice of
17 election is filed, shall be for a period of not less than 3 years, and may be renewed for
18 subsequent one-year periods by the filing of a written notice with the department
19 that the self-employed individual intends to continue his or her coverage under this
20 section. A self-employed individual who elects coverage under this section may
21 withdraw that election no earlier than 3 years after the date of the initial election or
22 at such other times as the department may prescribe by rule by providing notice of
23 that withdrawal to the department not less than 30 days before the expiration date
24 of the election. A self-employed individual who elects coverage under this section

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1 must have worked at least 680 hours in self-employment in the calendar year prior
2 to the individual's application year.

3 **(3) ELIGIBILITY FOR BENEFITS.** (a) A covered individual who is on family or
4 medical leave is eligible to receive family or medical leave insurance benefits in the
5 amount specified in sub. (4) and for the duration specified in sub. (5). No family or
6 medical leave insurance benefits are payable for any period of family or medical leave
7 for which a covered individual is substituting paid leave of any other type provided
8 by his or her employer or for which a covered individual is receiving unemployment
9 insurance benefits under ch. 108 or worker's compensation benefits under ch. 102.

10 (b) To receive family or medical leave insurance benefits, a covered individual
11 shall file a claim for those benefits within the time and in the manner that the
12 department prescribes by rule. On receipt of a claim for family or medical leave
13 insurance benefits, the department may request from the individual's employer or
14 from the self-employed individual any information necessary for the department to
15 determine the individual's eligibility for those benefits and the amount and duration
16 of those benefits. The employer or self-employed individual shall provide that
17 information to the department within the time and in the manner that the
18 department prescribes by rule. If the department determines that a covered
19 individual is eligible to receive family or medical leave insurance benefits, the
20 department shall provide those benefits to the individual as provided in subs. (4) to
21 (6).

22 **(4) AMOUNT OF BENEFITS.** (a) Subject to pars. (b) and (c), the amount of family
23 or medical leave insurance benefits for a week of leave for which those benefits are
24 payable is as follows:

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1 1. For a covered individual who earned less than 30 percent of the state annual
2 median wage in the calendar year before the individual's application year, 95 percent
3 of that individual's average weekly earnings.

4 2. For a covered individual who earned at least 30 percent, but less than 50
5 percent, of the state annual median wage in the calendar year before the individual's
6 application year, 90 percent of that individual's average weekly earnings.

7 3. For a covered individual who earned at least 50 percent, but less than 80
8 percent, of the state annual median wage in the calendar year before the individual's
9 application year, 85 percent of that individual's average weekly earnings.

10 4. For a covered individual who earned at least 80 percent of the state annual
11 median wage in the calendar year before the individual's application year, 66 percent
12 of that individual's average weekly earnings.

13 (b) The amount of family or medical leave insurance benefits for a fractional
14 week of leave for which those benefits are payable is one-seventh of the covered
15 individual's weekly benefit amount under par. (a) multiplied by the number of days
16 of leave taken that week. Family or medical leave insurance benefits are not payable
17 for a period of leave of less than one day in duration.

18 (c) The weekly benefit amount of a covered individual's family or medical leave
19 insurance benefits may not exceed \$1,000. On April 1 of each year, the department
20 shall adjust the maximum daily payment under this paragraph by a percentage
21 equal to the average annual percentage change in the U.S. consumer price index for
22 all urban consumers, U.S. city average, as determined by the U.S. department of
23 labor, for the 12 months ending on December 31 of each calendar year. The
24 department shall make pro rata payment of benefits to covered individuals who are
25 receiving benefits on the date the consumer price index was adjusted, retroactive to

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1 the date of the adjustment. The department shall annually have the maximum
2 amount of the weekly benefit published in the Wisconsin Administrative Register.

3 **(5) DURATION OF BENEFITS.** (a) The maximum number of weeks for which family
4 or medical leave insurance benefits are payable in an application year is 12 weeks.
5 A covered individual may be paid family or medical leave insurance benefits
6 continuously, or at the option of the covered individual, intermittently.

7 (b) 1. Except as provided in subd. 2., no family or medical leave insurance
8 benefits are payable for the first 5 calendar days in an application year for which a
9 covered individual is eligible for those benefits. Except as provided in subd. 2., family
10 or medical leave insurance benefits are payable beginning on the 6th calendar day
11 in an application year for which a covered individual is eligible for those benefits.
12 The first payment of family or medical leave insurance benefits shall be made no
13 later than 2 weeks after a covered individual files a claim for those benefits and
14 subsequent payments shall be made no less often than semimonthly.

15 2. If a covered individual uses 10 or more days of family or medical leave
16 insurance benefits in an application year, those benefits shall also be payable with
17 respect to the covered individual's waiting period. An employer may not require a
18 covered individual to use paid or unpaid leave of any other type provided by the
19 employer during the covered individual's waiting period.

20 **(6) EMPLOYER-PROVIDED BENEFITS.** Nothing in this section prohibits an
21 employer from providing employees with rights to family or medical leave insurance
22 benefits that are more generous to the employee than the rights provided under this
23 section.

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1 **(7) TAX TREATMENT OF BENEFITS.** With respect to the federal income taxation of
2 family or medical leave insurance benefits, the department shall do all of the
3 following:

4 (a) At the time an individual files a claim for those benefits, advise the
5 individual that those benefits may be subject to federal income taxation, that
6 requirements exist under federal law pertaining to estimated tax payments, and
7 that the individual may elect to have federal income taxes withheld from the
8 individual's benefit payments and may change that election not more than one time
9 in an application year.

10 (b) Allow the individual to elect to have federal income tax deducted and
11 withheld from the individual's benefit payments, allow the individual to change that
12 election not more than one time in an application year, and deduct and withhold that
13 tax in accordance with the individual's election as provided under 26 USC 3402.

14 (c) Upon making a deduction under par. (b), transfer the amount deducted from
15 the family and medical leave insurance trust fund to the federal internal revenue
16 service.

17 (d) In deducting and withholding federal income taxes from an individual's
18 benefit payments, follow all procedures specified by the federal internal revenue
19 service pertaining to the deducting and withholding of federal income tax.

20 **(8) FAMILY AND MEDICAL LEAVE INSURANCE TRUST FUND.** (a) Each employee and
21 each self-employed individual who elects coverage under sub. (2) shall contribute to
22 the family and medical leave insurance trust fund a percentage of his or her wages
23 from employment or income from self-employment.

24 (b) The department shall determine the amount of the contribution required
25 under par. (a). In determining that percentage, the department shall consult with

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1 the commissioner of insurance, who shall recommend a percentage that is sufficient
2 to pay the benefits under sub. (3) (b) and to pay for the administration of the family
3 and medical leave insurance program under this section but does not exceed the
4 amount necessary to ensure the solvency of the family and medical leave insurance
5 trust fund.

6 (c) Each employer shall withhold from the wages of its employees the amount
7 determined by the department under this subsection.

8 (d) The department shall collect the contributions withheld by employers in the
9 same manner as the department collects contributions to the unemployment reserve
10 fund under s. 108.17. Section 108.10 applies to issues regarding liability of
11 employers for contributions under this subsection.

12 (d) The department shall collect contributions from self-employed individuals
13 pursuant to procedures established by the department under sub. (12) (b).

14 (e) The department shall deposit contributions received under this subsection
15 in the family and medical leave insurance trust fund and credit them to the
16 appropriation account under s. 20.445 (1) (w).

17 (f) The department shall use moneys deposited in the family and medical leave
18 insurance trust fund to pay benefits under sub. (3) and to pay for the administration
19 of the family and medical leave insurance program under this section and for no
20 other purpose.

21 **(9) DENIAL OF CLAIMS; OVERPAYMENTS.** (a) A covered individual whose claim for
22 family or medical leave insurance benefits is denied by the department may request
23 a hearing on the denial, and the department shall process the request for a hearing
24 in the same manner that requests for hearings on unemployment insurance claims
25 are processed under s. 108.09.

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1 (b) If the department pays family or medical leave insurance benefits
2 erroneously or as a result of willful misrepresentation, the department may seek
3 repayment of those benefits in the same manner that the department recovers
4 erroneous payments of unemployment insurance benefits under ss. 108.095, 108.22
5 (8), and 108.225. The department may waive recovery of an erroneous payment of
6 family or medical leave insurance benefits if the erroneous payment was not the fault
7 of the person who received it and if requiring repayment would be contrary to equity
8 and good conscience. If an individual willfully makes a false statement or
9 representation, or willfully fails to disclose a material fact, to obtain family or
10 medical leave insurance benefits under this section, the individual is disqualified
11 from receiving those benefits for one year after the date of the disqualification.

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

14 (b) No person may discharge or otherwise discriminate against any person for
15 exercising any right provided under this section, opposing a practice prohibited
16 under this section, filing a complaint or attempting to enforce any right provided
17 under this section, or testifying or assisting in any action or proceeding to enforce any
18 right provided under this section.

19 (c) No collective bargaining agreement or employer policy may diminish or
20 abridge an employee's rights under this section. Any agreement purporting to waive
21 or modify an employee's rights under this section is void as against public policy and
22 unenforceable.

23 **(11) ENFORCEMENT.** (a) Any person who believes that his or her rights under
24 this section have been interfered with, restrained, or denied in violation of sub. (10)
25 (a) or that he or she has been discharged or otherwise discriminated against in

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1 violation of sub. (10) (b) may, within 30 days after the violation occurs or the person
2 should reasonably have known that the violation occurred, whichever is later, file a
3 complaint with the department alleging the violation, and the department shall
4 process the complaint in the same manner as complaints filed under s. 103.10 (12)
5 (b) are processed. If the department finds that an employer has violated sub. (10) (a)
6 to (c), the department may order the employer to take action to remedy the violation,
7 including providing the requested family or medical leave, reinstating an employee,
8 providing back pay accrued not more than 2 years before the complaint was filed,
9 and, notwithstanding s. 814.04 (1), paying reasonable actual attorney fees to the
10 complainant.

11 (b) After the completion of an administrative proceeding under par. (a),
12 including judicial review, an employee or the department may bring an action in
13 circuit court against an employer to recover damages caused by a violation of sub.
14 (10) (a) to (c). Section 103.10 (13) (b) applies to the commencement of an action under
15 this paragraph.

16 **(12) ADMINISTRATION.** The department shall administer the family and medical
17 leave insurance program under this section. In administering that program, the
18 department shall do all of the following:

19 (a) Establish procedures and forms for the filing of claims for benefits under
20 this section.

21 (b) Establish procedures and forms for collecting contributions from
22 self-employed individuals.

23 (c) Promulgate rules to implement this section.

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1 (d) Use information sharing and integration technology to facilitate the
2 exchange of information as necessary for the department to perform its duties under
3 this section.

4 (e) Conduct a public outreach campaign to inform employers, employees,
5 self-employed individuals, and other covered individuals regarding the family and
6 medical leave insurance program under this section. Information provided under
7 this paragraph shall be provided in English and in any other language customarily
8 spoken by more than 20 percent of the population of this state.

9 (f) By September 1 of each year, submit a report to the governor, the joint
10 committee on finance, and the appropriate standing committees of the legislature
11 under s. 13.172 (3) on the family and medical leave insurance program under this
12 section. The report shall include the projected and actual rates of participation in
13 the program, the premium rates for coverage under the program, the balance in the
14 family and medical leave insurance trust fund under s. 25.52, and a description of
15 the department's outreach efforts under par. (e).

16 **(13) RECORDS.** Notwithstanding s. 19.35 (1), individual personal information
17 maintained by the department under this section is confidential and not open to
18 public inspection and copying and may be disclosed only as follows:

19 (a) On the request of the individual who is the subject of the information or the
20 individual's authorized representative, to the individual or representative.

21 (b) With the written permission of the individual who is the subject of the
22 information or the individual's authorized representative, to a person named in the
23 permission.

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1 (c) To a public employee for use in the performance of the public employee's
2 official duties in the administration of the family and medical leave insurance
3 program under this section.

4 (d) Under a court order or an order of a hearing examiner that is obtained upon
5 prior notice to the department and a showing to the court or hearing examiner that
6 the information is relevant to a pending court or administrative action.

7 **(14) NOTICE POSTED.** Each employer shall post, on its Internet site and in one
8 or more conspicuous places where notices to employees are customarily posted, a
9 notice in a form approved by the department setting forth employees' rights under
10 this section. Any employer that violates this subsection shall forfeit not more than
11 \$100 for each violation.

12 **SECTION 29.** 103.12 (2) of the statutes is amended to read:

13 103.12 (2) In this section, "employment benefit" means anything of value, other
14 than wages and salary, that an employer makes available to an employee, including
15 a retirement, benefit, a pension, benefit, a profit sharing, benefit, or an insurance,
16 or leave benefit. The term does not include a leave benefit.

17 **SECTION 30.** 103.12 (3) of the statutes is amended to read:

18 103.12 (3) (a) Except as provided in ~~ss. 103.10 (1m) (d) and s. 103.11 (2) (d)~~, no
19 city, village, town, or county may enact or enforce an ordinance requiring an
20 employer to provide certain employment benefits to its employees, to provide a
21 minimum level of employment benefits to its employees, or to prescribe the terms or
22 conditions of employment benefits provided to its employees.

23 (b) Except as provided in ~~ss. 103.10 (1m) (d) and s. 103.11 (2) (d)~~, if a city, village,
24 town, or county has in effect on April 18, 2018, an ordinance requiring an employer

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1 to provide certain employment benefits or to provide a minimum level of employment
2 benefits to its employees, the ordinance does not apply and may not be enforced.

3 **SECTION 31.** 103.12 (4) of the statutes is created to read:

4 103.12 (4) A city, village, town, or county may enact or enforce an ordinance
5 requiring an employer to provide leave benefits to its employees, if those benefits are
6 more generous than the leave benefits provided under state law.

7 **SECTION 32.** 111.322 (2m) (a) of the statutes is amended to read:

8 111.322 (2m) (a) The individual files a complaint or attempts to enforce any
9 right under s. 103.02, 103.10, 103.105, 103.11, 103.13, 103.28, 103.32, 103.34,
10 103.455, 104.12, 109.03, 109.07, 109.075, 146.997, or 995.55, or ss. 101.58 to 101.599
11 or 103.64 to 103.82.

12 **SECTION 33.** 111.322 (2m) (b) of the statutes is amended to read:

13 111.322 (2m) (b) The individual testifies or assists in any action or proceeding
14 held under or to enforce any right under s. 103.02, 103.10, 103.105, 103.11, 103.13,
15 103.28, 103.32, 103.34, 103.455, 104.12, 109.03, 109.07, 109.075, 146.997, or 995.55,
16 or ss. 101.58 to 101.599 or 103.64 to 103.82.

17 **SECTION 34.** 165.68 (1) (a) 3. of the statutes is amended to read:

18 165.68 (1) (a) 3. Sexual abuse, ~~as defined in s. 103.10 (1m) (b) 6. which means~~
19 conduct that is in violation of s. 940.225, 944.30 (1m), 948.02, 948.025, 948.05,
20 948.051, 948.055, 948.06, 948.085, 948.09, or 948.10 or that is in violation of s.
21 940.302 (2) if s. 940.302 (2) (a) 1. b. applies.

22 **SECTION 31.** 227.03 (2) of the statutes is amended to read:

23 227.03 (2) Except as provided in s. ss. 103.105 (8) and (9) and 108.105, only the
24 provisions of this chapter relating to rules are applicable to matters arising out of s.

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1 66.191, 1981 stats., s. 40.65 (2), 289.33, 303.07 (7) or 303.21 or subch. II of ch. 107
2 or ch. 102, 108 or 949.

3 **SECTION 35. Nonstatutory provisions.**

4 (1) PROPOSED PERMANENT RULES. The department of workforce development
5 shall submit in proposed form the rules required under s. 103.105 (12) (c) to the
6 legislative council staff under s. 227.15 (1) no later than the first day of the 4th month
7 beginning after the effective date of this subsection.

8 (2) RULE-MAKING EXCEPTIONS FOR PERMANENT RULES.

9 (a) Notwithstanding s. 227.135 (2), the department of workforce development
10 is not required to present the statement of the scope of the rules required under s.
11 103.105 (12) (c) to the department of administration for review by the department
12 of administration and approval by the governor.

13 (b) Notwithstanding s. 227.185, the department of workforce development is
14 not required to present the rules required under s. 103.105 (12) (c) in final draft form
15 to the governor for approval.

16 (c) Notwithstanding s. 227.137 (2), the department of workforce development
17 is not required to prepare an economic impact analysis for the rules required under
18 s. 103.105 (12) (c).

19 (d) Notwithstanding ss. 227.14 (2g) and 227.19 (3) (e), the department of
20 workforce development is not required to submit the proposed rules required under
21 s. 103.105 (12) (c) to the small business regulatory review board and is not required
22 to prepare a final regulatory flexibility analysis for those rules.

23 (3) EMERGENCY RULES. Using the procedure under s. 227.24, the department of
24 workforce development shall promulgate the rules required under s. 103.105 (12) (c)
25 for the period before the effective date of the permanent rules promulgated under s.

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1 103.105 (12) (c) but not to exceed the period authorized under s. 227.24 (1) (c), subject
2 to extension under s. 227.24 (2). Notwithstanding s. 227.24 (1) (a), (2) (b), and (3),
3 the department is not required to provide evidence that promulgating a rule under
4 this subsection as an emergency rule is necessary for the preservation of public
5 peace, health, safety, or welfare and is not required to provide a finding of an
6 emergency for a rule promulgated under this subsection. Notwithstanding s. 227.24
7 (1) (e) 1d. and 1g., the department is not required to prepare a statement of the scope
8 of the rules promulgated under this subsection or present the rules to the governor
9 for approval.

SECTION 36. Initial applicability.

10
11 (1) FAMILY AND MEDICAL LEAVE INSURANCE TRUST FUND CONTRIBUTIONS. Except as
12 provided in sub. (3), the treatment of s. 103.105 (8) first applies to wages earned on
13 January 1, 2023.

14 (2) FAMILY OR MEDICAL LEAVE INSURANCE BENEFITS ELIGIBILITY. Except as provided
15 in sub. (3), the treatment of s. 103.105 (3) first applies to a period of family leave, as
16 defined in s. 103.105 (1) (h), or a period of medical leave, as defined in s. 103.105 (1)
17 (L), commencing on January 1, 2024.

18 (3) COLLECTIVE BARGAINING AGREEMENTS. This act first applies to an employee
19 who is affected by a collective bargaining agreement that contains provisions
20 inconsistent with this act on the day on which the collective bargaining agreement
21 expires or is extended, modified, or renewed.

22 (END)