

1987 Senate Bill 235

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## 1987 Wisconsin Act 287

AN ACT to amend 36.11 (17) (b), 108.04 (1) (b) 1 and 2, 230.35 (2) and 632.897 (6); and to create 103.10, 108.04 (1) (b) 3, 111.91 (2) (f), 230.35 (2m) and 893.96 of the statutes, relating to providing family leave and medical leave to employes in this state and providing a penalty.

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

SECTION 1. 36.11 (17) (b) of the statutes is amended to read:

36.11 (17) (b) Only one sabbatical leave may be granted for each 6 years of full-time instructional service in the system with preference given to those who have been making significant contributions to teaching and have not had a leave of absence except under s. 103.10, regardless of source of funding, in the previous 4 years.

SECTION 2. 103.10 of the statutes is created to read:

**103.10 Family or medical leave.** (1) DEFINITIONS. In this section:

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

1. The individual is less than 18 years of age.
2. The individual is 18 years of age or older and cannot care for himself or herself because of a serious health condition.

(am) "Christian Science practitioner" means a Christian Science practitioner residing in this state who is listed as a practitioner in the Christian Science journal.

(b) "Employe" means an individual employed in this state by an employer, except the employer's parent, spouse or child.

(c) Except as provided in sub. (14) (b), "employer" means a person engaging in any activity, enterprise or

business in this state employing at least 50 individuals on a permanent basis. "Employer" includes the state and any office, department, independent agency, authority, institution, association, society or other body in state government created or authorized to be created by the constitution or any law, including the legislature and the courts.

(d) "Employment benefit" means an insurance, leave or retirement benefit which an employer makes available to an employe.

(e) "Health care provider" means a person described under s. 146.81 (1).

(f) "Parent" means a natural parent, foster parent, adoptive parent, stepparent or legal guardian of an employe or an employe's spouse.

(g) "Serious health condition" means a disabling physical or mental illness, injury, impairment or condition involving any of the following:

1. Inpatient care in a hospital, as defined in s. 50.33 (2), nursing home, as defined in s. 50.01 (3), or hospice.

2. Outpatient care that requires continuing treatment or supervision by a health care provider.

(h) "Spouse" means an employe's legal husband or wife.

(2) SCOPE. (a) Nothing in this section prohibits an employer from providing employes with rights to family leave or medical leave which are more generous to the employe than the rights provided under this section.

(b) This section does not limit or diminish an employe's rights or benefits under ch. 102.

(c) This section only applies to an employe who has been employed by the same employer for more than 52 consecutive weeks and who worked for the employer for at least 1,000 hours during the preceding 52-week period.

(3) FAMILY LEAVE. (a) 1. In a 12-month period no employe may take more than 6 weeks of family leave under par. (b) 1 and 2.

2. In a 12-month period no employe may take more than 2 weeks of family leave for the reasons specified under par. (b) 3.

3. In a 12-month period no employe may take more than 8 weeks of family leave for any combination of reasons specified under par. (b).

(b) An employe may take family leave for any of the following reasons:

1. The birth of the employe's natural child, if the leave begins within 16 weeks of the child's birth.

2. The placement of a child with the employe for adoption or as a precondition to adoption under s. 48.90 (2), but not both, if the leave begins within 16 weeks of the child's placement.

3. To care for the employe's child, spouse or parent, if the child, spouse or parent has a serious health condition.

(c) Except as provided in par. (d), an employe shall schedule family leave after reasonably considering the needs of his or her employer.

(d) An employe may take family leave as partial absence from employment. An employe who does so shall schedule all partial absence so it does not unduly disrupt the employer's operations.

(4) MEDICAL LEAVE. (a) Subject to pars. (b) and (c), an employe who has a serious health condition which makes the employe unable to perform his or her employment duties may take medical leave for the period during which he or she is unable to perform those duties.

(b) No employe may take more than 2 weeks of medical leave during a 12-month period.

(c) An employe may schedule medical leave as medically necessary.

(5) PAYMENT FOR AND RESTRICTIONS UPON LEAVE.

(a) This section does not entitle an employe to receive wages or salary while taking family leave or medical leave.

(b) An employe may substitute, for portions of family leave or medical leave, paid or unpaid leave of any other type provided by the employer.

(6) NOTICE TO EMPLOYER. (a) If an employe intends to take family leave for the reasons in sub. (3) (b) 1 or 2, the employe shall, in a reasonable and practicable manner, give the employer advance notice of the expected birth or placement.

(b) If an employe intends to take family leave because of the planned medical treatment or supervision of a child, spouse or parent or intends to take medical leave because of the planned medical treat-

ment or supervision of the employe, the employe shall do all of the following:

1. Make a reasonable effort to schedule the medical treatment or supervision so that it does not unduly disrupt the employer's operations, subject to the approval of the health care provider of the child, spouse, parent or employe.

2. Give the employer advance notice of the medical treatment or supervision in a reasonable and practicable manner.

(7) CERTIFICATION. (a) If an employe requests family leave for a reason described in sub. (3) (b) 3 or requests medical leave, the employer may require the employe to provide certification, as described in par. (b), issued by the health care provider or Christian Science practitioner of the child, spouse, parent or employe, whichever is appropriate.

(b) No employer may require certification stating more than the following:

1. That the child, spouse, parent or employe has a serious health condition.

2. The date the serious health condition commenced and its probable duration.

3. Within the knowledge of the health care provider or Christian Science practitioner, the medical facts regarding the serious health condition.

4. If the employe requests medical leave, an explanation of the extent to which the employe is unable to perform his or her employment duties.

(c) The employer may require the employe to obtain the opinion of a 2nd health care provider, chosen and paid for by the employer, concerning any information certified under par. (b).

(8) POSITION UPON RETURN FROM LEAVE. (a) Subject to par. (c), when an employe returns from family leave or medical leave, his or her employer shall immediately place the employe in an employment position as follows:

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

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

(b) No employer may, because an employe received family leave or medical leave, reduce or deny an employment benefit which accrued to the employe before his or her leave began or, consistent with sub. (9), accrued after his or her leave began.

(c) Notwithstanding par. (a), if an employe on a medical or family leave wishes to return to work before the end of the leave as scheduled, the employer shall place the employe in an employment position of

the type described in par. (a) 1 or 2 within a reasonable time not exceeding the duration of the leave as scheduled.

(9) **EMPLOYMENT RIGHT, BENEFIT OR POSITION.** (a) Except as provided in par. (b), nothing in this section entitles a returning employe to a right, employment benefit or employment position to which the employe would not have been entitled had he or she not taken family leave or medical leave or to the accrual of any seniority or employment benefit during a period of family leave or medical leave.

(b) Subject to par. (c), during a period an employe takes family leave or medical leave, his or her employer shall maintain group health insurance coverage under the conditions that applied immediately before the family leave or medical leave began. If the employe continues making any contribution required for participation in the group health insurance plan, the employer shall continue making group health insurance premium contributions as if the employe had not taken the family leave or medical leave.

(c) 1. An employer may require an employe to have in escrow with the employer an amount equal to the entire premium or similar expense for 8 weeks of the employe's group health insurance coverage, if coverage is required under par. (b).

2. An employe may pay the amount required under subd. 1 in equal instalments at regular intervals over at least a 12-month period. An employer shall deposit the payments at a financial institution in an interest-bearing account.

3. Subject to subd. 4, an employer shall return to the employe any payments made under subd. 1, plus interest, when the employe ends his or her employment with the employer.

4. If an employe ends his or her employment with an employer during or within 30 days after a period of family leave or medical leave, the employer may deduct from the amount returned to the employe under subd. 3 any premium or similar expense paid by the employer for the employe's group health insurance coverage while the employe was on family leave or medical leave.

(d) If an employe ends his or her employment with an employer during or at the end of a period of family leave or medical leave, the time period for conversion to individual coverage under s. 632.897 (6) shall be calculated as beginning on the day that the employe began the period of family leave or medical leave.

(10) **ALTERNATIVE EMPLOYMENT.** Nothing in this section prohibits an employer and an employe with a serious health condition from mutually agreeing to alternative employment for the employe while the serious health condition lasts. No period of alternative employment, with the same employer, reduces the employe's right to family leave or medical leave.

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

(b) No person may discharge or in any other manner discriminate against any individual for doing any of the following:

1. Opposing a practice prohibited under this section.

2. Filing a charge or instituting or causing to be instituted any proceeding under or related to this section.

3. Assisting or intending to assist in an investigation or proceeding relating to a right under this section.

4. Testifying or intending to testify in an investigation or proceeding relating to a right under this section.

(12) **ADMINISTRATIVE PROCEEDING.** (a) In this subsection, "department" means:

1. The personnel commission, if the employe is employed by the state or any office, department, independent agency, authority, institution, association, society or other body in state government created or authorized to be created by the constitution or any law, including the legislature and the courts.

2. The department of industry, labor and human relations, if the employe is employed by an employer other than one described in subd. 1.

(b) An employe who believes his or her employer has violated sub. (11) may, within 30 days after the violation occurs or the employe should reasonably have known that the violation occurred, whichever is later, file a complaint with the department alleging the violation. The department shall investigate the complaint and shall attempt to resolve the complaint by conference, conciliation or persuasion. If the complaint is not resolved and the department finds probable cause to believe a violation has occurred, the department shall proceed with notice and a hearing on the complaint as provided in ch. 227. The hearing shall be held within 60 days after the department receives the complaint.

(c) If 2 or more health care providers disagree about any of the information required to be certified under sub. (7) (b), the department may appoint another health care provider to examine the child, spouse, parent or employe and render an opinion as soon as possible. The department shall promptly notify the employe and the employer of the appointment. The employer and the employe shall each pay 50% of the cost of the examination and opinion.

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

(13) **CIVIL ACTION.** (a) An employe or the department may bring an action in circuit court against an

employer to recover damages caused by a violation of sub. (11) after the completion of an administrative proceeding, including judicial review, under sub. (12) concerning the same violation.

(b) An action under par. (a) shall be commenced within the later of the following periods, or be barred:

1. Within 60 days from the completion of an administrative proceeding, including judicial review, under sub. (12) concerning the same violation.

2. Twelve months after the violation occurred, or the department or employe should reasonably have known that the violation occurred.

(14) NOTICE POSTED. (a) Each employer shall post, in one or more conspicuous places where notices to employes are customarily posted, a notice in a form approved by the department setting forth employes' rights under this section. Any employer who violates this subsection shall forfeit not more than \$100 for each offense.

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

SECTION 3. 108.04 (1) (b) 1 and 2 of the statutes are amended to read:

108.04 (1) (b) 1. While the employe is physically unable to work, or substantially unavailable for work, if his or her employment with an employer was suspended by the employe or by the employer or was terminated by the employer because the employe was physically unable to do, or unavailable for, work otherwise available with the employer; or

2. While the employe is on a voluntary leave of absence granted for a definite period, until the period ends or until the employe returns to work, whichever occurs first; or

SECTION 4. 108.04 (1) (b) 3 of the statutes is created to read:

108.04 (1) (b) 3. While the employe is on medical or family leave under s. 103.10, until whichever of the following occurs first:

- a. The leave is exhausted.
- b. The employer is required to reinstate the employe under s. 103.10 (8).
- c. The employe returns to work.

SECTION 5. 111.91 (2) (f) of the statutes is created to read:

111.91 (2) (f) Family leave and medical leave rights below the minimum afforded under s. 103.10. Noth-

ing in this paragraph prohibits the employer from bargaining on rights to family leave or medical leave which are more generous to the employe than the rights provided under s. 103.10.

SECTION 6. 230.35 (2) of the statutes is amended to read:

230.35 (2) Leave of absence with pay owing to sickness and leave of absence without pay, other than annual leave and leave under s. 103.10, shall be regulated by rules of the secretary, except that unused sick leave shall accumulate from year to year. After July 1, 1973, employes appointed to career executive positions under the program established under s. 230.24 or positions designated in s. 20.923 (4), (8) and (9) shall have any unused sick leave credits restored if they are reemployed in a career executive position or in a position under s. 20.923 (4), (8) and (9), regardless of the duration of their absence. Restoration of unused sick leave credits if reemployment is to a position other than those specified above shall be in accordance with rules of the secretary.

SECTION 7. 230.35 (2m) of the statutes is created to read:

230.35 (2m) An employe shall be eligible for medical or family leave under s. 103.10 upon the expiration, extension or renewal of any collective bargaining agreement in effect on the effective date of this subsection .... [revisor inserts date], which covers the employe.

SECTION 8. 632.897 (6) of the statutes is amended to read:

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

SECTION 9. 893.96 of the statutes is created to read:

**893.96 Family leave and medical leave; civil remedies.** Any civil action arising under s. 103.10 (13) (a) is subject to the limitations of s. 103.10 (13) (b).

SECTION 10. **Initial applicability.** This act first applies, with respect to any employe covered by a collective bargaining agreement on the effective date of this SECTION, on the day after that collective bargaining agreement expires or is extended or renewed.