

1999 DRAFTING REQUEST

Bill

Received: 04/27/1999

Received By: malaigm

Wanted: As time permits

Identical to LRB:

For: Jon Richards (608) 266-0650

By/Representing: Himself

This file may be shown to any legislator: NO

Drafter: malaigm

May Contact:

Alt. Drafters:

Subject: Employ Priv - family leave

Extra Copies:

Pre Topic:

No specific pre topic given

Topic:

Family and medical leave; time limit within which to file complaint

Instructions:

Increase time limit within which to file a complaint under the family and medical leave act to 300 days

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	malaigm 04/27/1999	jgeller 04/27/1999		_____			S&L
/1			hhagen 04/28/1999	_____	lrb_docadmin 04/28/1999		S&L
/2	malaigm 05/07/1999	jgeller 05/07/1999	martykr 05/11/1999	_____	lrb_docadmin 05/11/1999	lrb_docadmin 09/13/1999	

FE Sent For:

9/20/99

11/11

<END>

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1/?	malaigm	1 4/27 jcg	all 4/28	all JF 4/28			S&L

FE Sent For:

<END>



State of Wisconsin
1999 - 2000 LEGISLATURE

LRB-2988/1
...GMM:.....
1
JG

gen cat

1 AN ACT ...; relating to: the time within a complaint under the family and medical
2 leave law must be filed.

Analysis by the Legislative Reference Bureau

Under current law, an employer, including the state, that employs at least 50 individuals on a permanent basis must permit an employe to take six weeks of family leave in a 12-month period and two weeks of medical leave in a 12-month period (family and medical leave law). Currently, an employe who believes that his or her employer has violated the family and medical leave law may file a complaint with the department of workforce development ~~within 30 days~~ within 30 days after the employe knew or should have known of the violation. This bill extends that time limit to 300 days after the date of the last event constituting the alleged violation of the family and medical leave law.

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:

3 SECTION 1. 103.10 (12) (b) of the statutes is amended to read:
4 103.10 (12) (b) An employe who believes that his or her employer has violated
5 sub. (11) (a) or (b) may, ~~within 30 days after the violation occurs or the employe should~~
6 ~~reasonably have known that the violation occurred, whichever is later,~~ file a

1 complaint with the department alleging the violation. A complaint under this
2 paragraph[✓] may be filed no later than 300[✓] days after the date of the last event
3 constituting the alleged violation for which the complaint is brought. Except as
4 provided in s. 230.45 (1m), the department shall investigate the complaint and shall
5 attempt to resolve the complaint by conference, conciliation or persuasion. If the
6 complaint is not resolved and the department finds probable cause to believe a
7 violation has occurred, the department shall proceed with notice and a hearing on
8 the complaint as provided in ch. 227. The hearing shall be held within 60 days after
9 the department receives the complaint.

10 History: 1987 a. 287; 1989 a. 228; 1991 a. 39; 1993 a. 446; 1995 a. 27 s. 9130 (4); 1997 a. 3, 156.

10 **SECTION 2. Initial applicability.**

11 (1) This act first applies to a violation of section 103.10[✓] of the statutes, as
12 affected by this act, occurring on the effective date of this subsection.[✓]

13 (END)

Malaise, Gordon

From: Vasby, Tara
Sent: Friday, May 07, 1999 11:26 AM
To: Malaise, Gordon
Subject: Changes to LRB 2988--Family and Medical Leave

Gordon-

Rep. Richards would like to add the following portion from Rep. Becky Young's 1997 bill AB 166 to his Family and Medical Leave bill.

97AB166--Young

Under current law, an employe or DILJD may bring a civil action in circuit court against an employer to recover damages caused by a violation of the family or medical leave law. Currently, a civil action under the family or medical leave law is barred unless commenced within the later of 60 days after the completion of an administrative proceeding, including judicial review, for the violation or 12 months after the violation occurred or the employe or DILJD reasonably should have known that the violation occurred. This bill permits an employe or DILJD to bring an action for a violation of the family, medical or school conference and activities leave law on behalf of the employe, or on behalf of the employe and other employes similarly situated. The bill also eliminates the 12-month period within which an action must be commenced so that an action must be commenced within 60 days after the completion of administrative proceedings.

Thank you!

Tara Vasby
Legislative Assistant
Rep. Jon Richards
6-0650



DWSt

1999 BILL

the procedures governing administrative proceedings and civil actions

Regen

(DWA)

Regen

1 AN ACT to amend 103.10 (12) (b) of the statutes; relating to: ~~the time within a~~
2 ~~complaint~~ under the family and medical leave law ~~must be filed.~~

Analysis by the Legislative Reference Bureau

Under current law, an employer, including the state, that employs at least 50 individuals on a permanent basis must permit an employe to take six weeks of family leave in a 12-month period and two weeks of medical leave in a 12-month period (family and medical leave law). Currently, an employe who believes that his or her employer has violated the family and medical leave law may file a complaint with the department of workforce development within 30 days after the employe knew or should have known of the violation. This bill extends that time limit to 300 days after the date of the last event constituting the alleged violation of the family and medical leave law.

Insert
A

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:

3 SECTION 1. 103.10 (12) (b) of the statutes is amended to read:
4 103.10 (12) (b) An employe who believes that his or her employer has violated
5 sub. (11) (a) or (b) may, ~~within 30 days after the violation occurs or the employe should~~

BILL

SECTION 1

1 ~~reasonably have known that the violation occurred, whichever is later,~~ file a
 2 complaint with the department alleging the violation. A complaint under this
 3 paragraph may be filed no later than 300 days after the date of the last event
 4 constituting the alleged violation for which the complaint is brought. Except as
 5 provided in s. 230.45 (1m), the department shall investigate the complaint and shall
 6 attempt to resolve the complaint by conference, conciliation or persuasion. If the
 7 complaint is not resolved and the department finds probable cause to believe a
 8 violation has occurred, the department shall proceed with notice and a hearing on
 9 the complaint as provided in ch. 227. The hearing shall be held within 60 days after
 10 the department receives the complaint.

✓
 Insert
 2-10 10
 →

SECTION 2. Initial applicability.

12 (1) This act first applies to a violation of section 103.10 of the statutes, as
 13 affected by this act, occurring on the effective date of this subsection.

(END)

ASSEMBLY BILL 166

Insert 2-10

SECTION 55. ~~103.10 (12) (d) of the statutes is amended to read:~~

~~103.10 (12) (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) (a) or (b), it may order the employer to take action to remedy the violation, including providing requested family leave or, medical leave or school conference and activities leave, reinstating an employe, promoting an employe, providing back pay accrued not more than 2 years before the complaint was filed and employment benefits to an employe and paying reasonable actual attorney fees to the complainant.~~

SECTION 56. ~~103.10 (12) (e)~~ of the statutes is created to read:

103.10 (12) (e) Any respondent or complainant who is dissatisfied with the ~~findings~~ ^{decision} and order of the examiner may file a written petition with the department for review by the commission of the ~~findings~~ ^{decision} and order. on which the department issues its decision and order, the decision

SECTION 57. ~~103.10 (12) (f)~~ of the statutes is created to read:

103.10 (12) (f) If no petition is filed within 21 days ~~from~~ ^{after} the date ~~that a copy of the findings and order of the examiner is mailed to the last known address of the respondent, the findings and order shall be considered final.~~ If a timely petition is filed, the commission, on review, may either affirm, reverse or modify the ~~findings and order~~ ^{decision and} in whole or in part, or set aside the ~~findings and order~~ ^{decision} and remand to the department for further proceedings. ~~Such~~ ^{These} actions shall be based on a review of the evidence submitted. If the commission is satisfied that a respondent or complainant has been prejudiced because of exceptional delay in the receipt of a copy of ~~any findings and orders~~ ^{the decision and order, the commission} ~~it~~ ^{for} may extend the ~~time~~ ^{the time} another 21 days ~~for~~ ^{for} filing the petition with the department.

SECTION 58. ~~103.10 (12) (g)~~ of the statutes is created to read:

↓

ASSEMBLY BILL 166

Insert 2 - 10

1 103.10 (12) (g) On motion, the commission may set aside, modify or change any
2 decision made by the commission, at any time within 28 days ^{after} the date ^{of the decision} thereof
3 if ^{the commission} it discovers any mistake ^{in the decision} therein or upon the grounds of newly discovered evidence.

4 The commission may on its own motion, for reasons it considers sufficient, set aside
5 any final decision of the commission within one year after the date ^{of} ^{of the final decision} thereof upon
6 grounds of mistake or newly discovered evidence and remand the case to the
7 department for further proceedings.

8 SECTION 59. 103.10 (13) (a) ^x of the statutes is amended to read:

9 103.10 (13) (a) An employee or the department may bring an action in circuit
10 court against an employer on behalf of the employee, or on behalf of the employee and
11 other employees similarly situated, to recover damages ~~as described in par. (c),~~
12 caused by a violation of sub. (11) after the completion of an administrative
13 proceeding, including judicial review, concerning the same violation.

14 SECTION 60. 103.10 (13) (b) (intro.) ^x and 1. of the statutes are consolidated,
15 renumbered 103.10 (13) (b) [✓] and amended to read:

16 103.10 (13) (b) An action under par. (a) shall be commenced within the later
17 of the following periods, or be barred: 1. Within 60 days from after the completion
18 of an administrative proceeding, including judicial review, concerning the same
19 violation, or be barred.

20 SECTION 61. 103.10 (13) (b) 2. ^x of the statutes is repealed.

21 ~~SECTION 62. 103.10 (13) (c) of the statutes is created to read:~~

22 103.10 (13) (c) If a circuit court finds that an employer has violated sub. (11),
23 it may order the employer to take action to remedy the violation, including providing
24 requested family leave, medical leave or school conference and activities leave,
25 reinstating an employe, ~~promoting an employe and paying reasonable actual~~

PROOF w/STATS.

(end of rest)

INSERT A

Under current law, a determination by DWD[✓] on the issue of whether an employe has been denied family or medical leave in violation of the family and medical leave law or has been retaliated against for opposing a practice prohibited under the family and medical leave 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 employe has been retaliated against, ^{for initiating} testifying in or assisting ⁱⁿ a proceeding under the family and medical leave law may be appealed to LIRC prior to judicial review. This bill permits a determination by DWD on the issue of whether an employe has been denied family or medical leave in violation of the family and medical leave law or has been retaliated against for opposing a practice prohibited under the family and medical leave law to be appealed to LIRC in the same manner as an appeal of a determination by DWD on the issue of whether an employe has been retaliated against, ^{for initiating} testifying in or assisting ⁱⁿ a proceeding under the family and medical leave law.

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CONTINUED



ASSEMBLY BILL 166

~~and includes among the remedies that DILJD may order for such a violation the preservation of the employe and the provision of benefits to the employe.~~

Under current law, an employe or ~~DILJD~~ may bring a civil action in circuit court against an employer to recover damages caused by a violation of the family or medical leave law. Currently, a civil action under the family or medical leave law is barred unless commenced within the later of 60 days after the completion of an administrative proceeding, including judicial review, for the violation or 12 months after the violation occurred, or the employe or ~~DILJD~~ reasonably should have known that the violation occurred. This bill permits an employe or ~~DILJD~~ to bring an action for a violation of the family, medical or school conference and activities leave law on behalf of the employe, or on behalf of the employe and other employes similarly situated. The bill also eliminates the 12-month period within which an action must be commenced so that an action must be commenced within 60 days after the completion of administrative proceedings. Finally, the bill specifies that, if the circuit court finds that an employer has violated the family, medical or school conference and activities leave law, the circuit court may order the employer to take action to remedy the violation and to pay the following damages:

1. Damages equal to the amount of compensation that the employe lost because of the violation or, if the employe did not lose any compensation, any actual monetary loss sustained as a direct result of the violation up to a sum equal to 12 weeks of wages or salary.
2. As liquidated damages, an amount equal to the damages described in paragraph 1., except that the court may reduce the amount of damages to the amount described in paragraph 1. if the court finds that the violation was committed in good faith and that the employer had reasonable grounds to believe that his or her act or omission was not a violation of the family, medical or school conference and activities leave law.

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 school conference and activities**
- 3 **leave.**
- 4 SECTION 2. 103.10 (1) (a) (intro.) of the statutes is renumbered 103.10 (1) (a) and
- 5 amended to read:

End of insert

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2988/2dn

GMM...:....

JG

Tara:

In addition to clarifying the statute of limitations for bringing a civil action under the family and medical leave law (FMLL) in accordance with 1997 AB 166, this redraft also includes language from 1997 AB 166 clarifying the process for appealing an administrative decision under the FMLL. Specifically, the current appeal process causes confusion because a determination under s. 103.10 (11) (a) or (b), that is, that an employe has been wrongfully denied family or medical leave or that an employe has been retaliated against for *informally* opposing such a wrongful denial, must be appealed directly to the circuit court, while a determination under s. 103.10 (11) (c), that is, that an employe has been retaliated against for instituting *formal* proceedings under the FMLL, may be appealed to the Labor and Industry Review Commission (LIRC). For an example of this confusion, see *Kayler v. Stoughton Trailers*, (LIRC 10/27/97), which you may access by going to the state's home page, then to state agencies, then to the Labor and Industry Review Commission, then to "ER Links," then to "LIRC ER Decisions," then searching for "Kayler". Accordingly, this draft includes language from 1997 AB 166 to permit a determination under s. 103.10 (11) (a) or (b) to be appealed to LIRC in the same manner as a determination under s. 103.10 (11) (c).

Gordon M. Malaise
Senior Legislative Attorney
Phone: (608) 266-9738
E-mail: Gordon.Malaise@legis.state.wi.us

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2988/2dn
GMM:jlg:km

May 11, 1999

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