

2001 ASSEMBLY BILL 146

February 22, 2001 – Introduced by Representatives RICHARDS, CARPENTER, TURNER, JOHNSRUD, BALOW, BLACK, MILLER, RYBA, POCAN, BOCK, BOYLE, WILLIAMS and BERCEAU, cosponsored by Senators GROBSCHMIDT and HANSEN. Referred to Committee on Labor and Workforce Development.

1 **AN ACT to repeal** 103.10 (13) (b) 2.; **to consolidate, renumber and amend**
2 103.10 (13) (b) (intro.) and 1.; **to amend** 103.10 (12) (b) and 103.10 (13) (a); and
3 **to create** 103.10 (12) (e), 103.10 (12) (f) and 103.10 (12) (g) of the statutes;
4 **relating to:** the procedures governing administrative proceedings and civil
5 actions under the family and medical leave law.

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 employee 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 employee 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 (DWD) within 30 days after the employee 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.

Under current law, a determination by DWD on the issue of whether an employee 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

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an employee 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 employee 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 employee has been retaliated against for initiating, testifying in, or assisting in a proceeding under the family and medical leave law.

Under current law, an employee or DWD may bring a civil action in circuit court against an employer to recover damages caused by a violation of the family and medical leave law. Currently, a civil action under the family and 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 employee or DWD reasonably should have known that the violation occurred. This bill permits an employee or DWD to bring an action for a violation of the family and medical leave law on behalf of the employee, or on behalf of the employee and other employees 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.

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 (12) (b) of the statutes is amended to read:

2 103.10 **(12)** (b) An employee who believes that his or her employer has violated
3 sub. (11) (a) or (b) may, ~~within 30 days after the violation occurs or the employee~~
4 ~~should reasonably have known that the violation occurred, whichever is later,~~ file a
5 complaint with the department alleging the violation. A complaint under this
6 paragraph may be filed no later than 300 days after the date of the last event
7 constituting the alleged violation for which the complaint is brought. Except as
8 provided in s. 230.45 (1m), the department shall investigate the complaint and shall
9 attempt to resolve the complaint by conference, conciliation, or persuasion. If the
10 complaint is not resolved and the department finds probable cause to believe a

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1 violation has occurred, the department shall proceed with notice and a hearing on
2 the complaint as provided in ch. 227. The hearing shall be held within 60 days after
3 the department receives the complaint.

4 **SECTION 2.** 103.10 (12) (e) of the statutes is created to read:

5 103.10 (12) (e) Any respondent or complainant who is dissatisfied with the
6 decision and order of the examiner may file a written petition with the department
7 for review by the commission of the decision and order.

8 **SECTION 3.** 103.10 (12) (f) of the statutes is created to read:

9 103.10 (12) (f) If no petition is filed within 21 days after the date on which the
10 department issues its decision and order, the decision and order shall be considered
11 final. If a timely petition is filed, the commission, on review, may either affirm,
12 reverse, or modify the decision and order in whole or in part, or set aside the decision
13 and order and remand to the department for further proceedings. Those actions shall
14 be based on a review of the evidence submitted. If the commission is satisfied that
15 a respondent or complainant has been prejudiced because of exceptional delay in the
16 receipt of a copy of the decision and order, the commission may extend for another
17 21 days the time for filing the petition with the department.

18 **SECTION 4.** 103.10 (12) (g) of the statutes is created to read:

19 103.10 (12) (g) On motion, the commission may set aside, modify, or change any
20 decision made by the commission, at any time within 28 days after the date of the
21 decision if the commission discovers any mistake in the decision, or upon the grounds
22 of newly discovered evidence. The commission may on its own motion, for reasons
23 it considers sufficient, set aside any final decision of the commission within one year
24 after the date of the final decision upon grounds of mistake or newly discovered
25 evidence and remand the case to the department for further proceedings.

