

2001 DRAFTING REQUEST

Bill

Received: 01/11/2001

Received By: malaigm

Wanted: As time permits

Identical to LRB:

For: Jon Richards (608) 266-0650

By/Representing: Tara Vasby

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 procedures

Instructions:

Redraft 199 AB 475

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 01/16/2001	jdye 01/17/2001		_____			S&L
/1			pgreensl 01/19/2001	_____	lrb_docadmin 01/19/2001	lrb_docadmin 01/25/2001	

FE Sent For:

<END>

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1?	malaigm	1/10 jld	1/9 DG	1/9 DG/SUD			

FE Sent For:

<END>

Malaise, Gordon

From: Vasby, Tara
Sent: Thursday, January 11, 2001 10:53 AM
To: Malaise, Gordon
Subject: Redraft of LRB 2988/2

Gordon,
Could you please redraft LRB 2988/2 regarding family & medical leave for this session? I believe it was 1999 AB 475.

If you have any questions, please let me know. Thanks!

Sincerely,
Tara J. Vasby
Legislative Assistant
Rep. Jon Richards

(-1986/1)
Jld

1999 ASSEMBLY BILL 475

September 20, 1999 - Introduced by Representatives ~~RICHARDS, BOCK, BERCEAU, COLON, HASENOHRL, PLALE, PLOUFFE, POEAN and RYBA~~, cosponsored by Senators ~~GROBSCHMIDT, ERPENBACH and PLACHE~~. Referred to ~~Committee on Labor and Employment~~.

Regen

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. employee

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.

employee

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

ASSEMBLY BILL 475

an ^{employee} 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.

Under current law, an employe 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 employe or DWD reasonably should have known that the violation occurred. This bill permits an employe or DWD to bring an action for a violation of the family and medical 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.

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:

SECTION 1. 103.10 (12) (b) of the statutes is amended to read:

103.10 (12) (b) An ^{employee} employe who believes that his or her employer has violated sub. (11) (a) or (b) 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. A complaint under this paragraph may be filed no later than 300 days after the date of the last event constituting the alleged violation for which the complaint is brought. Except as provided in s. 230.45 (1m), 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

employee

employee

employee

employees

employee (plan)

RUF
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ASSEMBLY BILL 475

PWF { 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) ^X 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) ^X 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 ² reverse ² 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) ^X of the statutes is created to read: ²

19 ² 103.10 (12) (g) On motion, the commission may set aside, modify ² 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 ^X to the department for further proceedings.

ASSEMBLY BILL 475

employees

employee (plain)

employee

RWF

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SECTION 5. 103.10 (13) (a) of the statutes is amended to read:

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

SECTION 6. 103.10 (13) (b) (intro.) and 1. of the statutes are consolidated, renumbered 103.10 (13) (b) and amended to read:

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

SECTION 7. 103.10 (13) (b) 2. of the statutes is repealed.

SECTION 8. Initial applicability.

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

(END)



State of Wisconsin

LEGISLATIVE REFERENCE BUREAU

100 NORTH HAMILTON STREET
5TH FLOOR
MADISON, WI 53701-2037

STEPHEN R. MILLER
CHIEF

LEGAL SECTION: (608) 266-3561
LEGAL FAX: (608) 264-6948

January 19, 2001

MEMORANDUM

To: Representative Richards

From: Gordon M. Malaise, Senior Legislative Attorney

Re: LRB-1986 Family and medical leave procedures

The attached draft was prepared at your request. Please review it carefully to ensure that it is accurate and satisfies your intent. If it does and you would like it jacketed for introduction, please indicate below for which house you would like the draft jacketed and return this memorandum to our office. If you have any questions about jacketing, please call our program assistants at 266-3561. Please allow one day for jacketing.

JACKET FOR ASSEMBLY JACKET FOR SENATE

If you have any questions concerning the attached draft, or would like to have it redrafted, please contact me at (608) 266-9738 or at the address indicated at the top of this memorandum.

If the last paragraph of the analysis states that a fiscal estimate will be prepared, the LRB will request that it be prepared after the draft is introduced. You may obtain a fiscal estimate on the attached draft before it is introduced by calling our program assistants at 266-3561. Please note that if you have previously requested that a fiscal estimate be prepared on an earlier version of this draft, you will need to call our program assistants in order to obtain a fiscal estimate on this version before it is introduced.

Please call our program assistants at 266-3561 if you have any questions regarding this memorandum.