

2001 DRAFTING REQUEST

Bill

Received: **09/20/2001**

Received By: **malaigm**

Wanted: **As time permits**

Identical to LRB:

For: **Spencer Black (608) 266-7521**

By/Representing: **Susan**

This file may be shown to any legislator: **NO**

Drafter: **malaigm**

May Contact:

Addl. Drafters:

Subject: **Employ Priv - miscellaneous**

Extra Copies:

Submit via email: **NO**

Pre Topic:

No specific pre topic given

Topic:

Display of American flag by employees at workplace

Instructions:

Require employers to permit employees to display American flag at workplace

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>
/?	mliel 09/21/2001 malaigm 09/25/2001	gilfokm 09/26/2001		_____			S&L
/1			kfollet 09/26/2001	_____	lrb_docadmin 09/26/2001 lrb_docadmin 10/01/2001	lrb_docadminS&L 10/01/2001	
/2	malaigm 10/02/2001	gilfokm 10/04/2001	kfollet 10/04/2001	_____	lrb_docadmin 10/04/2001	lrb_docadmin 10/04/2001	

Vers. Drafted Reviewed Typed Proofed Submitted Jacketed Required

FE Sent For:

<END>

→ At Intro.

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1?	mliel 09/21/2001 malaigm	1-9/26 kmg	Kjl 9/26	self 9/26			

FE Sent For:

<END>



State of Wisconsin
2001 - 2002 LEGISLATURE

LRB-3836/70
GMM.....
King

Sen
~~Fri Noon~~
~~9/28~~
Today
9/26

Sen. Cook

1 AN ACT...; relating to: displaying the U.S. flag at the workplace.

Analysis by the Legislative Reference Bureau

Current law requires every polling place to display the U.S. flag during all hours that the polls are open and every public and private school to display the U.S. flag in the schoolroom or from a flagstaff on the school ground during the school hours of each school day. Current law also permits the governor to urge the people and organizations to display the U.S. flag on Mother's Day and on Gold Star Mother's Day and requires the adjutant general of the Wisconsin national guard to provide a U.S. flag to the next of kin of each national guard member who dies as a result of active service. In addition, current law, both state and federal, prohibits flag desecration, although the state flag desecration statute was held unconstitutional in *State v. Janssen*, 219 Wis. 2d 362 (1998), and the federal flag desecration statute was held unconstitutional in *U.S. v. Eichman*, 496 U.S. 310 (1990). Moreover, current state law prohibits the improper use of the U.S. flag and current federal law codifies nonbinding rules and customs concerning the display of, and respect for, the U.S. flag by civilians.

This bill, subject to certain exceptions, requires employers, including the state, to permit their employees to display the U.S. flag, including a copy, picture, or representation of the U. S. flag, at the workplace. The bill does not apply to a religious association if displaying the U.S. flag is in conflict with the religious doctrine of the association. Also, the bill does not require an employer to permit an employee to do any of the following:

1. Desecrate the U.S. flag, for example, by mutilating, defacing, defiling, burning, maintaining on the floor or ground, trampling on, or otherwise casting contempt on, the U.S. flag, or to display a U.S. flag that has been so desecrated.
2. Display a U.S. flag improperly or disrespectfully, for example, by displaying the flag at night or in inclement weather, upside down except as a signal of distress,

or for commercial advertising purposes, by placing on or attaching to the U.S. flag any word, mark, design, picture, or drawing not properly part of the U.S. flag, or by displaying a U.S. flag on which has been placed or attached such a word, mark, design, picture, or drawing.

3. Display a U.S. flag in a manner that causes a safety hazard, violates the employer’s dress code, or otherwise poses an undue hardship on the employer’s program, enterprise, or business.

Under the bill, an employer may not discharge or otherwise discriminate against an employee who displays a U.S. flag at the workplace, files a complaint or attempts to enforce the right to display the U.S. flag at the workplace, or testifies or assists in any action or proceeding to enforce the right to display the U.S. flag at the workplace, unless the U.S. flag is displayed in a manner that the employer is not required to permit under the bill. An employee who is discharged or discriminated against for displaying the U.S. flag at the workplace may file a complaint with the department of workforce development (DWD), and DWD must process the complaint in the same manner as employment discrimination complaints are processed under current law, which processing may include the ordering of back pay and reinstatement.

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.** 103.165 of the statutes is created to read:

2 **103.165 Display of U.S. flag at workplace. (1) DEFINITIONS.** In this section:

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

8 (b) “U.S. flag” means anything that is or that purports to be the Stars and
9 Stripes or a copy, picture, or representation of the Stars and Stripes.

1 **(2) DISPLAY OF U.S. FLAG AT WORKPLACE; EMPLOYER MUST PERMIT.** Subject to subs.
2 (3) and (4), an employer shall permit an employee to display the U.S. flag at the
3 workplace.

4 **(3) NONAPPLICABILITY.** This section does not apply to a religious association or
5 to an organization or corporation that is primarily owned or controlled by a religious
6 association if displaying the U.S. flag conflicts with the religious doctrine of the
7 religious association.

8 **(4) EXCEPTIONS.** An employer is not required to permit an employee to do any
9 of the following:

10 (a) Desecrate a U.S. flag in any manner described in s. 946.05 or 18 USC 700
11 or to display a U.S. flag that has been so desecrated.

12 (b) Display a U.S. flag improperly or disrespectfully in any manner described
13 in s. 946.06 or 4 USC 6 to 8.

14 (c) Display a U.S. flag in a manner that causes a safety hazard, violates the
15 employer's dress code, or otherwise poses an undue hardship on the employer's
16 program, enterprise, or business.

17 **(5) RETALIATION PROHIBITED.** An employer may not discharge or otherwise
18 discriminate against any person for displaying the U.S. flag at the workplace, filing
19 a complaint or attempting to enforce the right to display the U.S. flag at the
20 workplace, or testifying or assisting in any action or proceeding to enforce the right
21 to display the U.S. flag at the workplace, unless the U.S. flag is displayed in a manner
22 that the employer is not required to permit under sub. (4).

23 **(6) COMPLAINT.** (a) Subject to par. (b), an employee who is discharged or
24 otherwise discriminated against in violation of sub. (5) may file a complaint with the

department, and the department shall process the complaint in the same manner that employment discrimination complaints are processed under s. 111.39.

(b) Any employee of a state agency, as defined in s. 111.32 (6) (a), who is discharged or otherwise discriminated against in violation of sub. (5) may file a complaint with the personnel commission, and the personnel commission shall process the complaint in the same manner that employment discrimination complaints are processed under s. 111.39.

SECTION 2. 106.54 (7) of the statutes is created to read:

106.54 (7) The division shall receive complaints under s. 103.165 (6) (a) and shall process the complaints in the same manner that employment discrimination complaints are processed under s. 111.39.

SECTION 3. 230.45 (1) (m) of the statutes is created to read:

230.45 (1) (m) Receive complaints under s. 103.165 (6) (b) and, except as provided ~~under~~ ⁱⁿ sub. (1m), process the complaints in the same manner that employment discrimination complaints are processed under s. 111.39.

SECTION 4. Initial applicability.

(1) DISPLAY OF U.S. FLAG AT WORKPLACE. This act first applies to an employee who is affected by a collective bargaining agreement that contains provisions inconsistent with section 103.165 of the statutes, as created by this act, on the day on which the collective bargaining agreement expires ⁽¹⁾ or is extended, modified, or renewed, whichever occurs first.

Basford, Sarah

From: McMurray, Susan
Sent: Monday, October 01, 2001 11:33 AM
To: Basford, Sarah
Subject: LRB 3836/1

Sarah,

Thanks for telling me the procedure to get a jacket for a bill draft.

Please send us a jacket for LRB 3836/1, relating to displaying the US flag at the workplace.

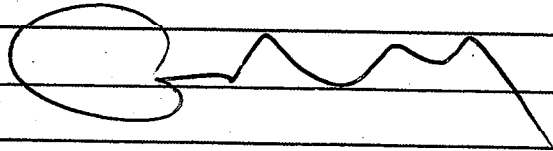
Thank you!

Susan McMurray
Rep. Black's office
266-7521

10/2/01

Sudy

Merlin says delete exceptions

A handwritten signature or scribble consisting of a large, irregular loop on the left, followed by a series of sharp, jagged peaks and valleys extending to the right.



State of Wisconsin
2001 - 2002 LEGISLATURE

LRB-3836/1
GMM:kmg:kjf
2
RNR

2001

2001 BILL

"ASAP"

Today
Th. 10/4

D-Note

Dem. Co.

1 AN ACT to create 103.165, 106.54 (7) and 230.45 (1) (m) of the statutes; relating
2 to: displaying the U.S. flag at the workplace.

Analysis by the Legislative Reference Bureau

Current law requires every polling place to display the U.S. flag during all hours that the polls are open and every public and private school to display the U.S. flag in the schoolroom or from a flagstaff on the school ground during the school hours of each school day. Current law also permits the governor to urge the people and organizations to display the U.S. flag on Mother's Day and on Gold Star Mother's Day and requires the adjutant general of the Wisconsin national guard to provide a U.S. flag to the next of kin of each national guard member who dies as a result of active service. In addition, current law, both state and federal, prohibits flag desecration, although the state flag desecration statute was held unconstitutional in *State v. Janssen*, 219 Wis. 2d 362 (1998), and the federal flag desecration statute was held unconstitutional in *U.S. v. Eichman*, 496 U.S. 310 (1990). Moreover, current state law prohibits the improper use of the U.S. flag and current federal law codifies nonbinding rules and customs concerning the display of, and respect for, the U.S. flag by civilians.

This bill, ~~subject to certain exceptions,~~ ^{however,} requires employers, including the state, to permit their employees to display the U.S. flag, including a copy, picture, or representation of the U. S. flag, at the workplace. The bill does not apply to a religious association if displaying the U.S. flag is in conflict with the religious doctrine of the association. ~~Also, the bill does not require an employer to permit an employee to do any of the following:~~

BILL

~~1. Desecrate the U.S. flag, for example, by mutilating, defacing, defiling, burning, maintaining on the floor or ground, trampling on, or otherwise casting contempt on, the U.S. flag, or to display a U.S. flag that has been so desecrated.~~

~~2. Display a U.S. flag improperly or disrespectfully, for example, by displaying the flag at night or in inclement weather, upside down except as a signal of distress, or for commercial advertising purposes, by placing on or attaching to the U.S. flag any word, mark, design, picture, or drawing not properly part of the U.S. flag, or by displaying a U.S. flag on which has been placed or attached such a word, mark, design, picture, or drawing.~~

~~3. Display a U.S. flag in a manner that causes a safety hazard, violates the employer's dress code, or otherwise poses an undue hardship on the employer's program, enterprise, or business.~~

Under the bill, an employer may not discharge or otherwise discriminate against an employee who displays a U.S. flag at the workplace, files a complaint or attempts to enforce the right to display the U.S. flag at the workplace, or testifies or assists in any action or proceeding to enforce the right to display the U.S. flag at the workplace, ~~unless the U.S. flag is displayed in a manner that the employer is not required to permit under the bill.~~ An employee who is discharged or discriminated against for displaying the U.S. flag at the workplace may file a complaint with the department of workforce development (DWD), and DWD must process the complaint in the same manner as employment discrimination complaints are processed under current law, which processing may include the ordering of back pay and reinstatement.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

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1 SECTION 1. 103.165 of the statutes is created to read:

2 **103.165 Display of U.S. flag at workplace.** (1) DEFINITIONS. In this section:

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

BILL

1 (b) "U.S. flag" means anything that is or that purports to be the Stars and
2 Stripes or a copy, picture, or representation of the Stars and Stripes.

3 (2) **DISPLAY OF U.S. FLAG AT WORKPLACE; EMPLOYER MUST PERMIT.** Subject to ~~sub. 1~~ ^{sub.}

4 (3) ~~and (4)~~ an employer shall permit an employee to display the U.S. flag at the
5 workplace.

6 (3) **NONAPPLICABILITY.** This section does not apply to a religious association or
7 to an organization or corporation that is primarily owned or controlled by a religious
8 association if displaying the U.S. flag conflicts with the religious doctrine of the
9 religious association.

10 ~~(4) **EXCEPTIONS.** An employer is not required to permit an employee to do any~~
11 ~~of the following:~~

12 ~~(a) Desecrate a U.S. flag in any manner described in s. 946.05 or 18 USC 700~~
13 ~~or to display a U.S. flag that has been so desecrated.~~

14 ~~(b) Display a U.S. flag improperly or disrespectfully in any manner described~~
15 ~~in s. 946.06 or 4 USC 6 to 8.~~

16 ~~(c) Display a U.S. flag in a manner that causes a safety hazard, violates the~~
17 ~~employer's dress code, or otherwise poses an undue hardship on the employer's~~
18 ~~program, enterprise, or business.~~

19 ⁽³⁾ ~~(4)~~ ~~(3)~~ **RETALIATION PROHIBITED.** An employer may not discharge or otherwise
20 discriminate against any person for displaying the U.S. flag at the workplace, filing
21 a complaint or attempting to enforce the right to display the U.S. flag at the
22 workplace, or testifying or assisting in any action or proceeding to enforce the right
23 to display the U.S. flag at the workplace, ~~unless the U.S. flag is displayed in a manner~~

24 ~~that the employer is not required to permit under sub. (4)~~

BILL (S)

(4)

1 ~~(S)~~ COMPLAINT. (a) Subject to par. (b), an employee who is discharged or
2 otherwise discriminated against in violation of sub. ~~(S)~~ may file a complaint with the
3 department, and the department shall process the complaint in the same manner
4 that employment discrimination complaints are processed under s. 111.39.

5 (b) Any employee of a state agency, as defined in s. 111.32 (S) (a), who is
6 discharged or otherwise discriminated against in violation of sub. ~~(S)~~ may file a
7 complaint with the personnel commission, and the personnel commission shall
8 process the complaint in the same manner that employment discrimination
9 complaints are processed under s. 111.39.

10 SECTION 2. 106.54 (7) of the statutes is created to read:

(S)

11 106.54 (7) The division shall receive complaints under s. 103.165 ~~(S)~~ (a) and
12 shall process the complaints in the same manner that employment discrimination
13 complaints are processed under s. 111.39.

(S)

14 SECTION 3. 230.45 (1) (m) of the statutes is created to read:

15 230.45 (1) (m) Receive complaints under s. 103.165 ~~(S)~~ (b) and, except as
16 provided in sub. (1m), process the complaints in the same manner that employment
17 discrimination complaints are processed under s. 111.39.

18 SECTION 4. Initial applicability.

19 (1) DISPLAY OF U.S. FLAG AT WORKPLACE. This act first applies to an employee who
20 is affected by a collective bargaining agreement that contains provisions inconsistent
21 with section 103.165 of the statutes, as created by this act, on the day on which the
22 collective bargaining agreement expires, or is extended, modified, or renewed,
23 whichever occurs first.

religious association.
GMM

(END)

NOTE

Representative Black:

On the instructions of Rep. Schneider, this redraft deletes the exceptions provided in the first draft other than the exception for a

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-3836/2dn
GMM:kmg:kjf

October 4, 2001

Representative Black:

On the instructions of Rep. Schneider, this redraft deletes the exceptions provided in the first draft other than the exception for a religious association.

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