

2001 DRAFTING REQUEST

Bill

Received: **06/20/2001**

Received By: **champra**

Wanted: **Soon**

Identical to LRB:

For: **Mark Pocan (608) 266-8570**

By/Representing: **Tim**

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

Drafter: **champra**

May Contact:

Addl. Drafters:

Subject: **Employ Pub - civil service**
Employ Pub - employee benefits

Extra Copies:

Submit via email: **NO**

Pre Topic:

No specific pre topic given

Topic:

Fringe benefits for state employees who are limited term employees

Instructions:

See Attached.

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>
/1	champra 07/05/2001	jdyer 07/05/2001	pgreensl 07/06/2001	_____	lrb_docadmin 07/06/2001	lrb_docadminState 10/16/2001	

FE Sent For:

At intro

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1?	champra	1 7/5 ju	7/6 ps	7/6 selb.			

FE Sent For:

<END>



MARK POCAN

WISCONSIN STATE REPRESENTATIVE

BILL DRAFT REQUEST:

Date: June 12, 2001

Requested By: Representative Mark Pocan

Re: Benefits for limited term employees of the State

Contact: Tim O'Brien (266-8570)

Issue:

Currently the state often hires an individual as an LTE but in reality they are full-time employees who work beyond the one-year maximum – the agency simply re-categorizes the position or lays them off for a week or two and then re-hires them.

As a result, LTE's do not qualify for tenure, vacation, paid holidays, sick leave, performance awards or the right to compete in promotional exams.

Solution:

Change state statute to mandate that once any individual who has works a total of 6 or more months for the state in a two-year period, regardless of position, will be considered a permanent employee in relation to benefit compensation purposes so that they automatically become eligible to qualify for tenure, vacation, paid holidays, sick leave, performance awards or the right to compete in promotional exams.

Please do not share this information with others



**WISCONSIN LEGISLATIVE COUNCIL
STAFF MEMORANDUM**

TO: REPRESENTATIVE MARK POCAN

FROM: Robert J. Conlin, Senior Staff Attorney *RJC*

RE: Laws Requiring the Provision of Fringe Benefits for Private Sector Temporary Workers and Limited-Term State Employees

DATE: May 29, 2001

This memorandum, prepared at your request, briefly describes the laws requiring the provision of fringe benefits to private sector temporary employees and limited-term state employees (LTEs). Primarily, this memorandum will focus on worker's compensation, unemployment insurance, retirement benefits, vacation benefits and insurance-related benefits.

EMPLOYEES OF TEMPORARY SERVICE AGENCIES

Generally, persons that a temporary help agency leases to customers to perform services for the customer are considered employees of the temporary help agency. Typically, the temporary help agency is required to provide unemployment insurance coverage and worker's compensation coverage for those employees. [See ss. 102.04 (2m) and 108.065 (1), Stats.]

With respect to other fringe benefits, neither state nor federal law require private sector employers to provide retirement benefits, insurance benefits or vacation benefits. If employers do provide them, certain laws govern how they may be provided. However, such laws are beyond the scope of the memorandum. In short, temporary help agencies need not provide retirement benefits, health insurance or vacation benefits to their employees. A review of various temporary help agency Web sites, however, indicates that many such agencies offer a wide array of fringe benefits. The provision of such benefits, however, appears to be a business decision based on economics and market forces rather than a response to any government-imposed requirements.

LTES

Generally, the statutes recognize two types of LTEs: (1) appointments in the classified service for less than 1,044 hours per year; and (2) provisional appointments which may be made, under certain circumstances and subject to limits on the length of the appointment, if there are urgent reasons for

filling a vacancy in the classified service. The statutes provide that fringe benefits may not be provided to LTEs, with the exception of worker's compensation, unemployment insurance, group insurance, retirement and Social Security coverage. Further, the statutes provide that LTEs are not to be considered permanent employees and *they do not qualify for tenure, vacation, paid holidays, sick leave, performance awards or the right to compete in promotional exams.* [See s. 230.26, Stats.]

With respect to the benefits that are available for LTEs, the remainder of this memorandum discusses those items.

Worker's compensation: Worker's compensation coverage must be provided for LTEs.

Unemployment insurance: Unemployment insurance must be provided for LTEs.

Retirement: Eligibility requirements for participation in the Wisconsin Retirement System (WRS) are established under ch. 40, Stats., which is administered by the Department of Employee Trust Funds (DETF). Generally, under ch. 40, all state employees, including LTEs, participate in the WRS according to criteria established by the DETF. Specifically, any employee in the service of, and receiving earnings from, a state agency must be included within the WRS unless one of the following applies: (1) the employee is not expected to work at least 1/3 of what is considered full-time employment, as determined by DETF rule (currently, 600 hours per year is considered to be 1/3 of full-time employment) or (2) the employee's expected duration of employment is less than one year. [s. 40.22 (1) and (2) (a) and (b), Stats; s. ETF 20.015 (1), Wis. Adm. Code.]

In addition, an employee must participate in the WRS if he or she is not expected to work the amount described above, but is subsequently employed by the state agency or other participating employer for either of the following periods: (1) at least one year for at least 1/3 of what is considered full-time employment; (2) at least 600 hours in the immediately preceding 12 month-period. [s. 40.22 (2m), Stats.] Thus, an LTE who is expected to work, or actually works, for at least 600 hours per year for one or more years must participate in the WRS.

Group health insurance: Any state employee, including an LTE, is eligible for group health insurance if he or she is a participating employee in the WRS. [s. 40.02 (25) (b) 5., Stats.] An LTE who is eligible for WRS participation, as described in the preceding section, is eligible for group health insurance. For most eligible state employees, including eligible LTEs, there is a six-month waiting period from the date of employment for the state's contribution to the health insurance premium. Specifically, an eligible LTE becomes eligible for the employer contribution beginning on the first day of the seventh month beginning after the date on which the employee begins employment. [s. 40.045 (4) (a) 2., Stats.]

For insured LTEs (and other employees who are appointed to work less than 1,044 hours per year, i.e., less than half time), the state contributes 50% of the amount that it contributes for employees who work 1,044 hours per year or more. Currently, for the latter group of employees, the state contributes 90% of the gross premium for the standard health insurance plan offered to state employees, or 105% of the gross premium of the alternative qualifying plan that is the least costly qualifying plan within the county in which the alternate plan is located, whichever is lower, but not more than the total amount of the premium. [s. 40.05 (4) (ag), Stats.]

Group life insurance: LTEs are eligible for basic coverage in a group life insurance program if they have been covered by WRS for six months, and are under age 70 on the day coverage becomes effective. [See "Group Life Insurance Employer Administration Manual," available from DETF.]

Income continuation insurance coverage: Eligibility for income continuation insurance coverage is similar to that for group life insurance coverage. [See "Income Continuation Insurance Employer Administration Manual," available from DETF.]

I hope you find this information useful. If you would like any further information on this subject, please feel free to contact me at the Legislative Council Staff offices.

RJC:rv;jal;ksm



State of Wisconsin
2001 - 2002 LEGISLATURE

LRB-3444/1

RAC:.....

JLD

2001 BILL

Gen

1 AN ACT ...; relating to: fringe benefits for certain limited term appointments in
2 the state civil service system. ✓

Analysis by the Legislative Reference Bureau

Under current law, appointing authorities are able to make limited term appointments in the state civil service system. A limited term appointment is an appointment for less than 1,044 hours per year or is a provisional appointment. Individuals appointed to limited term appointments do not qualify for tenure, vacation, paid holidays, sick leave, performance awards, or the right to compete in promotional examinations. This bill provides that any individual appointed to a limited term appointment, who prior to that appointment had worked for the state for at least six months in the ~~1~~^{two} year period immediately preceding his or her appointment, shall be considered a permanent employee for the purposes of qualifying for tenure, vacation, paid holidays, sick leave, performance awards, and the right to compete in promotional examinations.

For further information see the *state* 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. 230.19 (2) of the statutes is amended to read:

BILL**SECTION 1**

1 230.19 (2) If, in the judgment of the administrator, the group of applicants best
 2 able to meet the requirements for vacancies in positions in the classified service are
 3 available within the classified service, the vacancies shall be filled by competition
 4 limited to persons in the classified service who are not employed under s. 230.26,
 5 other than persons who qualify for the right to compete in promotional examinations
 6 under s. 230.26 (4) (b), or ^{5.}230.27 and persons with the right of restoration resulting
 7 from layoff under s. 230.34 (2), unless it is necessary to go outside the classified
 8 service to be consistent with an approved affirmative action plan or program. The
 9 administrator may also limit competition for promotion to the employees of an
 10 agency or an employing unit within an agency if the resulting group of applicants
 11 would fairly represent the proportion of members of racial and ethnic, gender or
 12 disabled groups in the relevant labor pool for the state.

History: 1971 c. 270 s. 50; 1977 c. 196 ss. 44, 112; 1983 ~~a. 402~~; 1987 a. 32; 1989 a. 31; 1999 a. 87.

13 **SECTION 2.** 230.26 (4) of the statutes is renumbered 230.26 (4) (a) and amended

14 to read:

15 230.26 (4) (a) ~~Fringe~~ Except as provided in par. (b), fringe benefits specifically
 16 authorized by statutes, with the exception of worker's compensation, unemployment
 17 insurance, group insurance, retirement and social security coverage, shall be denied
 18 employees hired under this section. ~~Such~~ Except as provided in par. (b), such
 19 employees may not be considered permanent employees and do not qualify for
 20 tenure, vacation, paid holidays, sick leave, performance awards or the right to
 21 compete in promotional examinations.

History: 1971 c. 270 ss. 54, 55; Stats. 1971 s. 16.21; 1975 c. 147 s. 54; 1977 c. 196 s. 51; Stats. 1977 s. 230.26; 1979 c. 97; 1979 c. 221 ss. 732, 909; 1981 c. 20, 26; 1983 a. 27 ss. 1613, 1614, 2202 (15); 1985 a. 332; 1997 a. 39, 307.

22 **SECTION 3.** 230.26 (4) (b) of the statutes is created to read:

23 230.26 (4) (b) Any person appointed to a limited term appointment, who prior
 24 to that appointment had worked for the state for at least six months in the 2-year

BILL

1 period immediately preceding his or her appointment, shall be considered a
2 permanent employee for the purposes of qualifying for tenure, vacation, paid
3 holidays, sick leave, performance awards, and the right to compete in promotional
4 examinations.

5 **SECTION 4.** 230.35 (1) (a) (intro.) of the statutes is amended to read:

6 230.35 (1) (a) (intro.) Except as provided in subs. (1m) and (1r), appointing
7 authorities shall grant to each person in their employ, except limited-term
8 employees who do not qualify for vacation under s. 230.26 (4) (b), based on
9 accumulated continuous state service, annual leave of absence without loss of pay
10 at the rate of:

History: 1971 c. 91, 125, 183, 211, 226; 1971 c. 270 ss. 70, 71, 83, 104; Stats. 1971 s. 16.30; 1973 c. 51, 243; 1975 c. 28, 39, 41; 1975 c. 147 s. 54; 1975 c. 189, 199, 421, 422; 1977 c. 44; 1977 c. 187 s. 135; 1977 c. 196 ss. 56, 118, 130 (3), (5), (12), 131; 1977 c. 273; 1977 c. 418 ss. 726, 727, 924 (13m); Stats. 1977 s. 230.35; 1979 c. 34, 89; 1979 c. 110 s. 60 (11); 1979 c. 221; 1981 c. 20, 96, 140; 1983 a. 27 s. 2200 (15); 1983 a. 30 ss. 4 to 11, 14; 1983 a. 71, 140; 1983 a. 192 ss. 220, 221, 304; 1985 a. 119; 1987 a. 63, 287, 340, 399, 403; 1989 a. 56 s. 259; 1991 a. 39; 1993 a. 12, 47; 1995 a. 37, 178; 1997 a. 118, 307; 1999 a. 42, 85, 101, 125.

11 **SECTION 5.** 230.35 (1m) (a) 4. of the statutes is amended to read:

12 230.35 (1m) (a) 4. A position designated as an attorney position in which the
13 employee is employed and acts as an attorney, unless the attorney position is a
14 limited term appointment under s. 230.26 and the person in the position does not
15 qualify for vacation under s. 230.26 (4) (b).

History: 1971 c. 91, 125, 183, 211, 226; 1971 c. 270 ss. 70, 71, 83, 104; Stats. 1971 s. 16.30; 1973 c. 51, 243; 1975 c. 28, 39, 41; 1975 c. 147 s. 54; 1975 c. 189, 199, 421, 422; 1977 c. 44; 1977 c. 187 s. 135; 1977 c. 196 ss. 56, 118, 130 (3), (5), (12), 131; 1977 c. 273; 1977 c. 418 ss. 726, 727, 924 (13m); Stats. 1977 s. 230.35; 1979 c. 34, 89; 1979 c. 110 s. 60 (11); 1979 c. 221; 1981 c. 20, 96, 140; 1983 a. 27 s. 2200 (15); 1983 a. 30 ss. 4 to 11, 14; 1983 a. 71, 140; 1983 a. 192 ss. 220, 221, 304; 1985 a. 119; 1987 a. 63, 287, 340, 399, 403; 1989 a. 56 s. 259; 1991 a. 39; 1993 a. 12, 47; 1995 a. 37, 178; 1997 a. 118, 307; 1999 a. 42, 85, 101, 125.

16 **SECTION 6.** 230.35 (4) (c) of the statutes is amended to read:

17 230.35 (4) (c) All employees except limited term employees who do not qualify
18 for paid holidays under s. 230.26 (4) (b) shall receive 9 paid holidays annually in
19 addition to any other authorized paid leave, the time to be at the discretion of the
20 appointing authorities.

History: 1971 c. 91, 125, 183, 211, 226; 1971 c. 270 ss. 70, 71, 83, 104; Stats. 1971 s. 16.30; 1973 c. 51, 243; 1975 c. 28, 39, 41; 1975 c. 147 s. 54; 1975 c. 189, 199, 421, 422; 1977 c. 44; 1977 c. 187 s. 135; 1977 c. 196 ss. 56, 118, 130 (3), (5), (12), 131; 1977 c. 273; 1977 c. 418 ss. 726, 727, 924 (13m); Stats. 1977 s. 230.35; 1979 c. 34, 89; 1979 c. 110 s. 60 (11); 1979 c. 221; 1981 c. 20, 96, 140; 1983 a. 27 s. 2200 (15); 1983 a. 30 ss. 4 to 11, 14; 1983 a. 71, 140; 1983 a. 192 ss. 220, 221, 304; 1985 a. 119; 1987 a. 63, 287, 340, 399, 403; 1989 a. 56 s. 259; 1991 a. 39; 1993 a. 12, 47; 1995 a. 37, 178; 1997 a. 118, 307; 1999 a. 42, 85, 101, 125.

21 **SECTION 7.** 230.35 (4) (d) (intro.) of the statutes is amended to read:



State of Wisconsin

LEGISLATIVE REFERENCE BUREAU

100 NORTH HAMILTON STREET
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STEPHEN R. MILLEH
CHIEF

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

July 6, 2001

MEMORANDUM

To: Representative Pocan

From: Rick A. Champagne, Senior Attorney

Re: LRB-3444/1 Fringe benefits for state employees who are limited term employees

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) 266-9930 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.