

2003 SENATE BILL 31

February 12, 2003 – Introduced by Senators CHVALA, HANSEN, SCHULTZ and ERPENBACH, cosponsored by Representatives AINSWORTH, BERCEAU, BOYLE, PLOUFF, HINES, MUSSER, BALOW, COLON, GRONEMUS, MILLER, TRAVIS and CULLEN. Referred to Committee on Labor, Small Business Development and Consumer Affairs.

1 **AN ACT** *to amend* 111.31 (1), 111.31 (2), 111.31 (3), 111.321 and 111.322 (intro.);
2 and *to create* 111.32 (4r), 111.32 (7g) and 111.365 of the statutes; **relating to:**
3 employment discrimination because of temporary absence from work while
4 responding to an emergency call as a volunteer fire fighter, emergency medical
5 technician, first responder, or ambulance driver.

Analysis by the Legislative Reference Bureau

Current law prohibits discrimination in employment on the basis of age, race, creed, color, disability, marital status, sex, national origin, ancestry, sexual orientation, arrest record, conviction record, membership in the national guard, state defense force, or military reserves, or use or nonuse of a lawful product off the employer's premises during nonworking hours. Current law also specifies that employment discrimination because of creed or disability includes refusing to reasonably accommodate the religious observance or practice or disability of an employee or prospective employee unless the employer can demonstrate that the accommodation would pose an undue hardship on the employer's program, enterprise, or business.

This bill prohibits discrimination in employment based on temporary absence from work while responding to an emergency call as a volunteer fire fighter, emergency medical technician, first responder, or ambulance driver, except that the bill permits a political subdivision of this state to discriminate on that basis if the political subdivision operates a full-time, paid fire department or rescue squad. The

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bill specifies that employment discrimination on that basis includes refusing to reasonably accommodate the temporary absence of an employee or prospective employee from work while responding to an emergency call as a volunteer fire fighter, emergency medical technician, first responder, or ambulance driver unless the employer can demonstrate that the accommodation would pose an undue hardship on the employer's program, enterprise, or business. Under the bill, an employer may reasonably accommodate a temporary absence from work for that purpose by temporarily reallocating job duties, adjusting or modifying the employer's attendance policies, or making other, similar accommodations for the employee or prospective employee. The bill defines "undue hardship" as significant difficulty or expense, with respect to an accommodation for an employee or prospective employee, when considered in light of various factors such as the nature and cost of the accommodation, the overall financial resources of the employer and of the facility involved in providing the accommodation, the number of persons employed by the employer and by the facility, and the type of operation of the employer. The bill also specifies that, if providing the accommodation would result in more than 25% of the persons normally on duty in any particular function or operation at the time of the accommodation being temporarily absent from work, it is presumed that the accommodation would pose an unreasonable hardship on the employer's program, business, or enterprise.

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.** 111.31 (1) of the statutes is amended to read:

2 111.31 (1) The legislature finds that the practice of unfair discrimination in
3 employment against properly qualified individuals by reason of their age, race,
4 creed, color, disability, marital status, sex, national origin, ancestry, sexual
5 orientation, arrest record, conviction record, membership in the national guard,
6 state defense force, or any other reserve component of the military forces of the
7 United States or this state ~~or~~, use or nonuse of lawful products off the employer's
8 premises during nonworking hours, or temporary absence from work while
9 responding to an emergency call as a volunteer fire fighter, emergency medical
10 technician, first responder, or ambulance driver substantially and adversely affects

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1 the general welfare of the state. Employers, labor organizations, employment
2 agencies, and licensing agencies that deny employment opportunities and
3 discriminate in employment against properly qualified individuals solely because of
4 their age, race, creed, color, disability, marital status, sex, national origin, ancestry,
5 sexual orientation, arrest record, conviction record, membership in the national
6 guard, state defense force, or any other reserve component of the military forces of
7 the United States or this state ~~or~~, use or nonuse of lawful products off the employer's
8 premises during nonworking hours, or temporary absence from work while
9 responding to an emergency call as a volunteer fire fighter, emergency medical
10 technician, first responder, or ambulance driver deprive those individuals of the
11 earnings that are necessary to maintain a just and decent standard of living.

12 **SECTION 2.** 111.31 (2) of the statutes is amended to read:

13 111.31 (2) It is the intent of the legislature to protect by law the rights of all
14 individuals to obtain gainful employment and to enjoy privileges free from
15 employment discrimination because of age, race, creed, color, disability, marital
16 status, sex, national origin, ancestry, sexual orientation, arrest record, conviction
17 record, membership in the national guard, state defense force, or any other reserve
18 component of the military forces of the United States or this state ~~or~~, use or nonuse
19 of lawful products off the employer's premises during nonworking hours, or
20 temporary absence from work while responding to an emergency call as a volunteer
21 fire fighter, emergency medical technician, first responder, or ambulance driver and
22 to encourage the full, nondiscriminatory utilization of the productive resources of the
23 state to the benefit of the state, the family, and all the people of the state. It is the
24 intent of the legislature in promulgating this subchapter to encourage employers to
25 evaluate an employee or applicant for employment based upon the ~~employee's or~~

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1 applicant's individual qualifications of the employee or applicant rather than upon
2 a particular class to which the individual may belong.

3 **SECTION 3.** 111.31 (3) of the statutes is amended to read:

4 111.31 (3) In the interpretation and application of this subchapter, and
5 otherwise, it is declared to be the public policy of the state to encourage and foster
6 to the fullest extent practicable the employment of all properly qualified individuals
7 regardless of age, race, creed, color, disability, marital status, sex, national origin,
8 ancestry, sexual orientation, arrest record, conviction record, membership in the
9 national guard, state defense force, or any other reserve component of the military
10 forces of the United States or this state or, use or nonuse of lawful products off the
11 employer's premises during nonworking hours, or temporary absence from work
12 while responding to an emergency call as a volunteer fire fighter, emergency medical
13 technician, first responder, or ambulance driver. Nothing in this subsection requires
14 an affirmative action program to correct an imbalance in the work force. This
15 subchapter shall be liberally construed for the accomplishment of this purpose.

16 **SECTION 4.** 111.32 (4r) of the statutes is created to read:

17 111.32 (4r) "Emergency medical technician" has the meaning given in s. 146.50
18 (1) (e).

19 **SECTION 5.** 111.32 (7g) of the statutes is created to read:

20 111.32 (7g) "First responder" has the meaning given in s. 146.50 (1) (hm).

21 **SECTION 6.** 111.321 of the statutes is amended to read:

22 **111.321 Prohibited bases of discrimination.** Subject to ss. 111.33 to ~~111.36~~
23 ~~111.365~~, no employer, labor organization, employment agency, licensing agency, or
24 other person may engage in any act of employment discrimination as specified in s.
25 111.322 against any individual on the basis of age, race, creed, color, disability,

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1 marital status, sex, national origin, ancestry, arrest record, conviction record,
2 membership in the national guard, state defense force, or any reserve component of
3 the military forces of the United States or this state or, use or nonuse of lawful
4 products off the employer's premises during nonworking hours, or temporary
5 absence from work while responding to an emergency call as a volunteer fire fighter,
6 emergency medical technician, first responder, or ambulance driver.

7 **SECTION 7.** 111.322 (intro.) of the statutes is amended to read:

8 **111.322 Discriminatory actions prohibited.** (intro.) Subject to ss. 111.33
9 to ~~111.36~~ 111.365, it is an act of employment discrimination to do any of the following:

10 **SECTION 8.** 111.365 of the statutes is created to read:

11 **111.365 Volunteer fire fighters, emergency medical technicians, first**
12 **responders or ambulance drivers; exceptions and special cases. (1)** (a) In
13 this subsection, "undue hardship" means, with respect to an accommodation
14 required under par. (b), significant difficulty or expense, when considered in light of
15 the following factors:

16 1. The nature and cost of the accommodation.

17 2. The overall financial resources of the facility involved in providing the
18 accommodation, the number of persons employed by the facility, the effect of
19 providing the accommodation on the resources and finances of the facility, and any
20 other impact of the accommodation on the operation of the facility.

21 3. The overall financial resources of the employer, the number of persons
22 employed by the employer, and the number, type, and location of the employer's
23 facilities.

24 4. The type of operation of the employer, including the composition, structure,
25 and functions of the employer's work force, the geographic separateness from the

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1 employer of the facility involved in providing the accommodation, and the
2 administrative and financial relationship of that facility to the employer.

3 (b) Employment discrimination because of temporary absence from work while
4 responding to an emergency call as a volunteer fire fighter, emergency medical
5 technician, first responder, or ambulance driver includes refusing to reasonably
6 accommodate the temporary absence of an employee or prospective employee from
7 work while responding to an emergency call as a volunteer fire fighter, emergency
8 medical technician, first responder, or ambulance driver unless the employer can
9 demonstrate that the accommodation would pose an undue hardship on the
10 employer's program, enterprise, or business. If providing the accommodation would
11 result in more than 25% of the persons normally on duty in any particular function
12 or operation at the time of the accommodation being temporarily absent from work,
13 it is presumed that the accommodation would pose an undue hardship on the
14 employer's program, enterprise, or business. An employer may reasonably
15 accommodate the temporary absence of an employee or prospective employee from
16 work while responding to an emergency call as a volunteer fire fighter, emergency
17 medical technician, first responder, or ambulance driver by temporarily reallocating
18 job duties, adjusting or modifying the employer's attendance policies, or making
19 other, similar accommodations for the employee or prospective employee.

20 (2) Notwithstanding s. 111.322, it is not employment discrimination because
21 of absence from work while responding to an emergency call as a volunteer fire
22 fighter, emergency medical technician, first responder, or ambulance driver for a
23 political subdivision of this state that operates a full-time, paid fire department or
24 a full-time, paid rescue squad to refuse to hire or employ an individual, to suspend
25 or terminate the employment of an individual, or to discriminate against an

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1 individual in promotion, in compensation, or in terms, conditions, or privileges of
2 employment, because of the individual's absence from work while responding to an
3 emergency call as a volunteer fire fighter, emergency medical technician, first
4 responder, or ambulance driver.

5 **SECTION 9. Initial applicability.**

6 (1) This act first applies to an employee who is affected by a collective
7 bargaining agreement that contains provisions inconsistent with this act on the day
8 on which the collective bargaining agreement expires or is extended, modified, or
9 renewed, whichever occurs first.

10 (END)