

2003 DRAFTING REQUEST

Bill

Received: **12/04/2002**

Received By: **rchampag**

Wanted: **As time permits**

Identical to LRB:

For: **Employment Relations Dept.**

By/Representing:

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

Drafter: **rchampag**

May Contact:

Addl. Drafters:

Subject: **Employ Pub - civil service**

Extra Copies:

Submit via email: **YES**

Requester's email: **bob.vanhoesen@der.state.wi.us**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Vacation leave for certain state 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>
/?							State
/P1	rchampag 12/13/2002	kgilfoy 12/13/2002	chaskett 12/16/2002		amentkow 12/16/2002		State
/1	rchampag 02/11/2003	kgilfoy 02/11/2003	jfrantze 02/11/2003		sbasford 02/11/2003		State

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/2	rchampag 04/15/2003	kgilfoy 04/15/2003	rschluet 04/15/2003	_____	amentkow 04/15/2003		State
/3	rchampag 04/23/2003	kgilfoy 04/23/2003	rschluet 04/23/2003	_____	sbasford 04/23/2003	mbarman 05/05/2003	

FE Sent For: 04/22/2003, 04/24/2003.

<END>

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for Senate
sent to
Leg. Council
Per SRM

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
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FE Sent For: 04/22/2003.

↳ ("2")
↳ 04-24-2003 ("13")
Per Bob at DER

<END>

2003 DRAFTING REQUEST

Bill

Received: 12/04/2002

Received By: rchampag

Wanted: As time permits

Identical to LRB:

For: Employment Relations Dept.

By/Representing: Elizabeth Reinwald

This file may be shown to any legislator: NO

Drafter: rchampag

May Contact:

Addl. Drafters:

Subject: Employ Pub - civil service

Extra Copies:

Submit via email: YES

Requester's email: elizabeth.reinwald@der.state.wi.us

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Vacation leave for certain state 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>
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/1	rchampag 02/11/2003	kgilfoy 02/11/2003	jfrantze 02/11/2003		sbasford 02/11/2003		State

13-4/23
KMG

[Handwritten signatures and dates]
4-23-03

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/2	rchampag 04/15/2003	kgilfoy 04/15/2003	rschluet 04/15/2003	_____	amentkow 04/15/2003		

FE Sent For:

*"1/2" 4/22/03
DER- Bob VanKieser*

<END>

2003 DRAFTING REQUEST

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Received: 12/04/2002

Received By: rchampag

Wanted: As time permits

Identical to LRB:

For: Employment Relations Dept.

By/Representing: Elizabeth Reinwald

This file may be shown to any legislator: NO

Drafter: rchampag

May Contact:

Addl. Drafters:

Subject: Employ Pub - civil service

Extra Copies:

Submit via email: YES

Requester's email: elizabeth.reinwald@der.state.wi.us

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/1	rchampag 02/11/2003	kgilfoy 02/11/2003	jfrantze 02/11/2003		sbasford 02/11/2003		

12-4/15
King

Handwritten initials and dates: 4-15-3

Vers. Drafted Reviewed Typed Proofed Submitted Jacketed Required

FE Sent For:

<END>

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Wanted: As time permits

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For: Employment Relations Dept.

By/Representing: Elizabeth Reinwald

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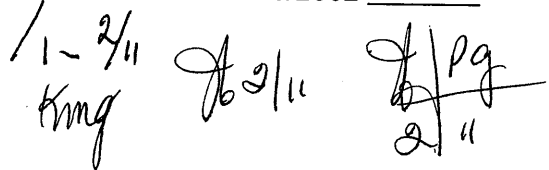
Instructions:

See Attached.

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/P1	rchampag 12/13/2002	kgilfoy 12/13/2002	chaskett 12/16/2002		amentkow 12/16/2002		

FE Sent For:



 kgilfoy 1-2/11
 chaskett 12/16/11
 amentkow 2/11

<END>

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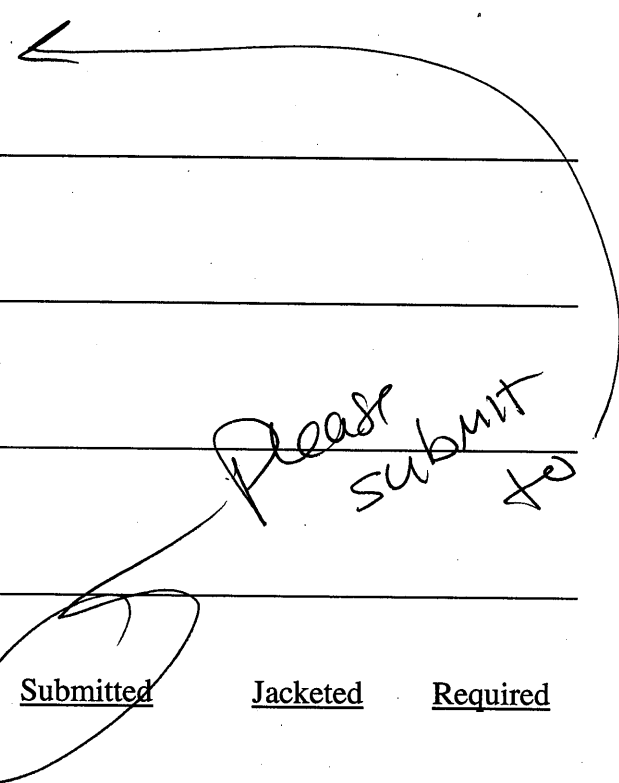
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		1/1-12/13 Kmg	11/12/13 Cph	PS KPH 12/16			
							<END>

Please submit to



Attachment E
Draft Statutory Language for the Annual Leave Changes
December 3, 2002

The following is the annual leave language change that the Department of Employment Relations is proposing. The final bill draft will be provided on the day of the Joint Committee on Employment Relations meeting.

s. 230.35, Wis. Stats.

(1m) (a) ~~Employees appointed to any of the following positions~~ Any of the following employees shall be entitled to annual leave of absence at the rate provided under (bt):

1. A nonrepresented employee who is not subject to the minimum wage and overtime requirements under the federal Fair Labor Standards Act, 29 USC sec. 201-219. ~~A career executive position under the program established under s. 230.24.~~

2. An employee appointed to any of the following:

~~2.~~ (a) A position designated in s. 1942 (10) (L) or 20.923 (4), (8) and (9).

~~3.~~ (b) A position authorized under s. 230.08 (2) (e).

~~4.~~ (c) A position designated as an attorney position in which the employee is employed and acts as an attorney, unless the attorney position is a limited term appointment under s. 230.26.

Champagne, Rick

From: Ostrowski, Paul
Sent: Friday, December 06, 2002 7:46 AM
To: Champagne, Rick
Subject: FW: The Vacation Statute

What do you think about my latest idea, below?

-----Original Message-----

From: Reinwald, Elizabeth
Sent: Friday, December 06, 2002 7:44 AM
To: Ostrowski, Paul; Vincent, John
Subject: RE: The Vacation Statute

Just let Rick know.

-----Original Message-----

From: Ostrowski, Paul
Sent: Friday, December 06, 2002 7:43 AM
To: Reinwald, Elizabeth; Vincent, John
Subject: The Vacation Statute
Importance: High

It's all coming back to me now...

If we get rid of the "permanent classified" phrase, I believe we could get rid of the 3 other types of the employees. I'm pretty sure they would all be exempt too.

Champagne, Rick

From: Ostrowski, Paul
Sent: Wednesday, December 04, 2002 7:42 AM
To: Champagne, Rick
Subject: RE: JCOER Letter Appendix E

At least for now, let's leave "nonrepresented" in. I have asked a few people around here and so far none of them see the word being a problem.

Also, I don't know if Elizabeth or anyone else has mentioned this to you but can you/we put something in the draft bill to make this effective January 1, 2003? Since annual leave is earned by calendar year, it would make it much easier to implement if it was effective on that date. Otherwise, there will be pro-rating involved which would create more work for Payroll and would make it a little more difficult to communicate to the employees affected.

-----Original Message-----

From: Champagne, Rick
Sent: Tuesday, December 03, 2002 9:15 AM
To: Ostrowski, Paul
Subject: RE: JCOER Letter Appendix E

No problem; I can certainly prepare a draft with word "nonrepresented". The only concern I have is if there is some other bargainable benefit, say, that is currently granted to "employees" in ch. 230 that is not currently included in the collective bargaining agreements. A represented employee could try to argue that that benefit should be granted to him even though it is not in his or her collective bargaining agreement, because whenever the legislature wants to grant benefits only to nonrepresented employees it will use the word "nonrepresented." The person could point to the use of the word "nonrepresented" in your proposed draft. I don't know how successful such an argument would be. Whatever you decide, though, I will make clear in the bill's Analysis that the change in law only applies to nonrepresented employees.

-----Original Message-----

From: Ostrowski, Paul
Sent: Tuesday, December 03, 2002 9:00 AM
To: Champagne, Rick
Cc: Reinwald, Elizabeth; Vincent, John
Subject: RE: JCOER Letter Appendix E

Although what you say is all true, we always have represented employees go "crazy" every time something goes into the statutes that has not been bargained for by their union(s). That "nonrepresented" assures that there is no doubt, by represented employees or the legislators that they will call when they don't get the additional vacation. Therefore, can't we make an exception this time and use "nonrepresented?"

-----Original Message-----

From: Champagne, Rick
Sent: Tuesday, December 03, 2002 8:50 AM
To: Ostrowski, Paul
Subject: RE: JCOER Letter Appendix E

Good morning Paul. I was just about to write a quick e-mail to you about a thought I had last night. I wonder if the word "nonrepresented" should be left out, since the representeds will have their vacation leave established in collective bargaining agreements anyway. I mention this only because there are other places in ch. 230 where there are benefits granted nonrepresented employees and only granted to represented employees if their collective bargaining agreements so provide. In these situations, we refer simply to "employees" and not "nonrepresented employees."

-----Original Message-----

From: Ostrowski, Paul
Sent: Tuesday, December 03, 2002 8:43 AM
To: Champagne, Rick
Subject: FW: JCOER Letter Appendix E
Importance: High

This is an appendix to our Comp Plan JCOER letter, giving the members a feeling for what we are doing

regarding the annual leave. We will still want your input as to any changes might be necessary before it is put into the final bill draft.

-----Original Message-----

From: Ostrowski, Paul
Sent: Tuesday, December 03, 2002 8:30 AM
To: Reinwald, Elizabeth
Cc: Vincent, John
Subject: JCOER Letter Appendix E
Importance: High

Could you please review this ASAP. Do you think Rick should review it?

<< File: Attachment E for JCOER letter.doc >>

Champagne, Rick

From: Ostrowski, Paul
Sent: Monday, December 02, 2002 12:06 PM
To: White, Leean; Reinwald, Elizabeth; Champagne, Rick; Vincent, John
Subject: RE: Stat language for accelerated vacation for various parity classifications.

Importance: High

If I have correctly interpreted all of the e-mails and discussions that have been going on, I think that the following should/could be used:

"A nonrepresented employee who is not subject to the minimum wage and overtime requirements under the federal Fair Labor Standards Act, 29 USC sec. 201-219."

This is the same as what Rick previously had suggested, except that it deletes reference to permanent status in class. By deleting the adjectives "permanent" and "classified" we will be allowing exempt projects and unclassified employees to receive it.

Is this OK?

-----Original Message-----

From: White, Leean
Sent: Monday, December 02, 2002 9:53 AM
To: Reinwald, Elizabeth; Champagne, Rick; Ostrowski, Paul; Vincent, John
Subject: RE: Stat language for accelerated vacation for various parity classifications.

It's OK from the FLSA standpoint. I know comp has some concerns about some of the terms with regard to permanent employee and employee with permanent status in class. I leave those nitty, gritty details up to the comp team.

-----Original Message-----

From: Reinwald, Elizabeth
Sent: Monday, December 02, 2002 8:46 AM
To: Champagne, Rick; White, Leean; Ostrowski, Paul; Vincent, John
Subject: RE: Stat language for accelerated vacation for various parity classifications.

Is this okay guys ? Shall we tell Rick to go ahead with the draft bill ?

-----Original Message-----

From: Champagne, Rick
Sent: Monday, December 02, 2002 8:44 AM
To: White, Leean; Reinwald, Elizabeth; Ostrowski, Paul; Vincent, John
Subject: RE: Stat language for accelerated vacation for various parity classifications.

1. We would avoid using the phrase "nonrepresented permanent classified employee" because of the drafting convention not to use three adjectives in succession to modify a noun. Also, that phrase does not appear anywhere in the statutes. To get at that concept we have used the phrase "nonrepresented employee with permanent status in class."

2. The distinction between the phrase "exempt from the...provisions" and the phrase "not subject to the...requirements" is again due to drafting conventions. Generally speaking, laws command, require, or authorize. Hence, if part of a law that requires something, such as time and a half for overtime work, is not to apply to a class of persons, we generally provide that those persons are not subject to the requirements of that part of the law. You can certainly keep the word "exempt" but I would use "requirements" instead of "provisions." Your choice, though.

3. For drafting convention reasons, when we refer to a federal law, we identify its place in the U.S. Code -- hence, the reference to 29 USC secs. 201-219.

4. I would continue to refer to an employee who is not subject to (or exempt from, if you prefer) the "**minimum wage and** overtime" requirements (or provisions, if you prefer) of the FLSA and not simply the

"overtime" requirements, because the employees you are presumably trying to get at are those described under 29 USC sec. 213 (a) and not sec. 213 (b).

Rick

-----Original Message-----

From: White, Leean
Sent: Wednesday, November 27, 2002 12:18 PM
To: Reinwald, Elizabeth; Ostrowski, Paul; Vincent, John; Champagne, Rick
Subject: FW: Stat language for accelerated vacation for various parity classifications.

Please see my suggested edits below.

-----Original Message-----

From: Reinwald, Elizabeth
Sent: Wednesday, November 27, 2002 9:41 AM
To: White, Leean
Cc: Ostrowski, Paul; Vincent, John; Champagne, Rick
Subject: Stat language for accelerated vacation for various parity classifications.

We need your advice on language to implement leave eligibility changes for counterpart classifications to the various contracts. The difficulty is apparently in describing the group.

Here is what Paul suggested:

- s. 230.35(1m)(a) - Any of the following employees shall be entitled to annual leave of absence at the rate provided under par. (bt):
1. A nonrepresented permanent classified employee exempt from the overtime provisions of the federal Fair Labor Standards Act exempt employee.
 2. An employee appointed to any of the following:
 - a. A position designated in s. 19.42(10)(L) or 20.923(4), (7), (8), and (9).
 - b. A position authorized s. 230.08(2)(e).
 - 4c. A position designated as an attorney position in which the employee is employed and acts as an attorney, unless the attorney position is a limited term appointment under s. 230.26.

Here is what Rick Champagne, the LRB drafter suggested:

"A nonrepresented employee with permanent status in class who is not subject to the minimum wage and overtime requirements under the federal Fair Labor Standards Act, 29 USC secs. 201-219."

Paul isn't sure if Rick's version works because:

I don't know because:

- 1) I don't know if exempt employees are not subject to all of the law, or just the overtime provisions. You probably would have to ask Leean to be absolutely sure.
- 2) Most people reading the provision won't know that this means exempt employees. Maybe is you change "who is not subject to " to "who is exempt from", it would be OK.

Rick--any more advice ?

Attachment E
Draft Statutory Language for the Annual Leave Changes
December 10, 2002

The following are the annual leave language changes that the Department of Employment Relations is proposing. The final bill draft will be provided on the day of the Joint Committee on Employment Relations meeting.

s. 230.35, Wis. Stats.

1. (a) Except as provided in subs. (1m) and (1r), appointing authorities shall grant to each person in their employ, except limited-term employees and those excluded from the definition of "employee" in ER 18.01, Adm. Code, based on accumulated continuous state service, annual leave of absence without loss of pay at a rate of:

2. (1m) (a) Any nonrepresented employee who is not subject to the minimum wage and overtime requirements under the federal Fair Labor Standards Act, 29 USC sec. 201-219 ~~Employees appointed to any of the following positions shall be entitled to annual leave of absence at the rate provided under (bt):~~

- ~~1. A career executive position under the program established under s. 230.24.~~
- ~~2. A position designated in s. 1942 (10) (L) or 20.923 (4), (8) and (9).~~
- ~~3. A position authorized under s. 230.08 (2) (e).~~
- ~~4. A position designated as an attorney position in which the employee is employed and acts as an attorney, unless the attorney position is a limited term appointment under s. 230.26.~~

Champagne, Rick

From: Ostrowski, Paul
Sent: Monday, December 09, 2002 4:18 PM
To: Champagne, Rick
Subject: RE: The Vacation Statute

The others think this will be OK.

-----Original Message-----

From: Champagne, Rick
Sent: Monday, December 09, 2002 1:44 PM
To: Ostrowski, Paul
Subject: RE: The Vacation Statute

You're right. There's no need to have the word said twice.

-----Original Message-----

From: Ostrowski, Paul
Sent: Monday, December 09, 2002 1:43 PM
To: Champagne, Rick
Subject: RE: The Vacation Statute

Do we need to repeat the word "except" in the intro? Otherwise I think this looks OK. However, I am going to have a couple other people here look at it.

-----Original Message-----

From: Champagne, Rick
Sent: Monday, December 09, 2002 1:05 PM
To: Ostrowski, Paul
Subject: RE: The Vacation Statute

Paul:

I was not involved in putting (1r) into s. 230.35 (1) (a) (intro.), but I guess I would leave it in just to make clear that state officers are not subject to the vacation provisions in s. 230.35 (1) (a). I can certainly see the argument that there is no need for its inclusion given the language in (1r) and DER rules, but I guess I tend toward leaving current law untouched if it is working.

You should note that (1s) is now included as an exception in s. 230.35 (1) (a) -- that provision was adopted in 2001 Act 16.

Here is how I would amend s. 230.35 (1) (a) and (1m) (a) and (bt) (intro.). It grants (or refers to) DER authority to exclude by rule certain employees from coverage under this vacation provision, which DER is already currently doing in ER 18.01 (2). Also, once you get rid of the list in (1m) (a), there is no need to have a separate (1m) (a). You can simply amend or repeal and recreate (1m) (b) to refer to the exempt FLSA employees.

Section 1. 230.35 (1) (a) (intro.) of the statutes is amended to read:

230.35 (1) (a) (intro.) Except as provided in subs. (1m), (1r), and (1s), appointing authorities shall grant to each person in their employ, except limited-term employees and except employees excluded from coverage under this subsection by the department by rule, based on accumulated continuous state service, annual leave of absence without loss of pay at the rate of:

Section 2. 230.35 (1m) (a) of the statutes is repealed.

Section 3. 230.35 (1m) (bt) (intro.) of the statutes is repealed and recreated to read:

230.35 (1m) (bt) (intro.) A nonrepresented employee under sub. (1) who is not subject to the minimum wage and overtime requirements under the federal Fair Labor Standards Act, 29 USC secs. 201-219 shall be entitled to annual leave of absence without loss of pay based upon accumulated continuous state service at the rate of:

Rick

-----Original Message-----

From: Ostrowski, Paul
Sent: Monday, December 09, 2002 11:33 AM
To: Champagne, Rick
Subject: RE: The Vacation Statute

I noticed that, but we have different definitions for employee, depending on which chapter you are looking at. We need the definition in ER 18. But if you can do it without actually saying ER 18, that would be great.

-----Original Message-----

From: Champagne, Rick
Sent: Monday, December 09, 2002 11:18 AM
To: Ostrowski, Paul
Subject: RE: The Vacation Statute

Sorry, Paul, for not getting back to you. I've got to get a project off my desk before mid-afternoon. I'll get back to you later in the day. One thing, though: we generally don't refer to specific rules in the statutes. Instead, we use the concept of "as provided by rule" or "except as otherwise provided by the department by rule." In other words, we acknowledge in general terms the department's authority to do or decide something by rule. Later today, I'll give you a phrase I would use.

-----Original Message-----

From: Ostrowski, Paul
Sent: Monday, December 09, 2002 11:07 AM
To: Champagne, Rick
Subject: FW: The Vacation Statute
Importance: High

Our legal counsel suggests deleting "and (1r)" from s. 230.35 (1)(a). Do you agree? Also, please tell me if what I put is the correct way to reference the Administrative Code.

Thanks!

-----Original Message-----

From: Ostrowski, Paul
Sent: Monday, December 09, 2002 8:38 AM
To: Champagne, Rick
Cc: Reinwald, Elizabeth; Vincent, John
Subject: FW: The Vacation Statute
Importance: High

Although our legal counsel agrees that has been how we've interpreted the leave provisions, he said he would be much comfortable if we somehow defined "employee" in s. 230.35, Wis. Stats. I suggested that we could change the first sentence of it to reference ER 18.01, and he agreed.

Here's what I've come up with.

<< File: Attachment E for JCOER letter.doc >>

-----Original Message-----

From: Ostrowski, Paul
Sent: Sunday, December 08, 2002 3:03 PM
To: Champagne, Rick
Cc: Reinwald, Elizabeth; Vincent, John
Subject: RE: The Vacation Statute

Now that I've had a chance to really think about this, and I don't believe there is a problem with the language I've proposed.

I was always confused about the fact that the statutes do not define employee until I discussed it with our legal counsel. He says the definition developed by DER in the Admin. Code applies unless the statutes, or specific sections of the Admin. Code, says otherwise. Taking that approach, the definition in ER 18.01 that applies to leave benefits excludes the individuals you are concerned about, and many others. It is because of the definition in ER 18.01 that elected officials do not get any vacation, faculty and academic staff have their own leave schedule, and the others excluded mirror our provisions but don't have to follow them. Therefore, I think that the language I have proposed will not be a problem.

However, I will confirm this with our legal counsel ASAP.

-----Original Message-----

From: Champagne, Rick
Sent: Friday, December 06, 2002 1:28 PM
To: Ostrowski, Paul
Subject: RE: The Vacation Statute

I think that the unintended coverage consequences are mainly going to be an issue with the unclassified employees; perhaps your original thought to have the vacation provision apply only to classifieds will take care of the problem. But if you want to stick with all unrepresented employees, I see no other way other than to have specific exclusions.

-----Original Message-----

From: Ostrowski, Paul
Sent: Friday, December 06, 2002 12:12 PM
To: Champagne, Rick
Cc: Reinwald, Elizabeth; Vincent, John
Subject: RE: The Vacation Statute

I'll have to think about this, especially to make sure that there aren't others that need exclusion. Any suggestions on how we would do this other than listing the exclusions?

-----Original Message-----

From: Champagne, Rick
Sent: Friday, December 06, 2002 12:04 PM
To: Ostrowski, Paul
Subject: RE: The Vacation Statute

While the UW folks have their own annual leave schedule, that schedule must conform to law. Hence, if there is a new provision in law that grants all executive, administrative, and executive employees vacation under 2. 230.35 (1m) (bt), faculty and academic staff, who are professionals, could claim that any academic leave schedule that did not grant them leave under s. 230.35 (1m) (bt) is unlawful.

-----Original Message-----

From: Ostrowski, Paul
Sent: Friday, December 06, 2002 11:55 AM
To: Champagne, Rick
Subject: RE: The Vacation Statute

UW faculty and academic staff have their own annual leave schedule; I will have to check on elected officials. I hope we don't have to show exclusions for either.

-----Original Message-----

From: Champagne, Rick
Sent: Friday, December 06, 2002 10:50 AM
To: Ostrowski, Paul
Subject: RE: The Vacation Statute

It does seem that the positions specified in current law under s. 230.35 (1m) (a) 1. to 5. would be covered under the new language. Hence the new s. 230.35 (1m) (a) could read in its entirety: "A nonrepresented employee who

is not subject to the minimum wage and overtime requirements under the federal Fair Labor Standards Act, 29 USC secs. 201-219."

A question has just occurred to me, though: Those who are exempt from the minimum wage and overtime requirements under the federal Fair Labor Standards Act include "any employee employed in a bona fide executive, administrative, or professional capacity..." 29 USC 213 (a) 1. By using this standard in s. 230.35 (1m) (a) are we inadvertently granting the vacation leave to UW faculty and academic staff and elected officials in the executive branch?

-----Original Message-----

From: Ostrowski, Paul
Sent: Friday, December 06, 2002 7:46 AM
To: Champagne, Rick
Subject: FW: The Vacation Statute

What do you think about my latest idea, below?

-----Original Message-----

From: Reinwald, Elizabeth
Sent: Friday, December 06, 2002 7:44 AM
To: Ostrowski, Paul; Vincent, John
Subject: RE: The Vacation Statute

Just let Rick know.

-----Original Message-----

From: Ostrowski, Paul
Sent: Friday, December 06, 2002 7:43 AM
To: Reinwald, Elizabeth; Vincent, John
Subject: The Vacation Statute
Importance: High

It's all coming back to me now...

If we get rid of the "permanent classified" phrase, I believe we could get rid of the 3 other types of the employees. I'm pretty sure they would all be exempt too.



(D-Note)
State of Wisconsin
2003 - 2004 LEGISLATURE

LRB-1017/P1

RAC: King

Monday

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

Gen. Cal.

1 AN ACT */*; relating to: providing additional paid vacation leave for certain state
2 agency employees.

Analysis by the Legislative Reference Bureau

This bill is introduced under s. 230.12, stats., which requires that it be put on the calendar. The bill accomplishes certain statutory changes necessary to implement the nonrepresented state employee compensation plan, as modified and approved by the joint committee on employment relations.

Under current law, nonrepresented employees of any state agency in the executive branch are entitled to paid vacation based on their years of service, usually beginning with two weeks of paid vacation at the time of their initial employment with the state (general vacation provisions). However, certain nonrepresented employees who are in career executive positions, division administrator positions, attorney positions, professional employee positions at the state investment board, and senior state agency positions are entitled to three weeks of paid vacation at the time of their initial employment with the state (executive vacation provisions). Represented state employees are not subject to either the general vacation provisions or the executive vacation provisions, but have their vacation provisions determined in applicable collective bargaining agreements.

This bill authorizes the Department of Employment Relations to promulgate rules excluding any nonrepresented state agency employee from the general vacation provisions. In addition, the bill changes current law to provide that the executive vacation provisions apply only to nonrepresented employees who are not subject to the minimum wage and overtime requirements under the federal Fair

Labor Standards Act (FLSA). Generally, under FLSA, employees who are not subject to the minimum wage and overtime requirements are those employees holding executive, administrative, or professional positions.

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:

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

2 230.35 (1) (a) (intro.) Except as provided in subs. (1m), (1r), and (1s), appointing
3 authorities shall grant to each person in their employ, except employees excluded
4 from coverage under this subsection by the department by rule and limited-term
5 employees, based on accumulated continuous state service, annual leave of absence
6 without loss of pay 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; 2001 a. 16, 109.

7 SECTION 2. 230.35 (1m) (a) of the statutes is repealed.

8 SECTION 3. 230.35 (1m) (bt) (intro.) of the statutes is amended to read:

9 230.35 (1m) (bt) (intro.) ~~An employee appointed to a position listed under par-~~
10 ~~(a) A nonrepresented employee under sub. (1m) who is not subject to the minimum~~
11 ~~wage and overtime requirements under the federal Fair Labor Standards Act, 29~~
12 ~~USC (secs. 201²⁰ to 219), shall be entitled to annual leave of absence without loss of pay~~
13 based upon accumulated continuous state service 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; 2001 a. 16, 109.

14 SECTION 4. Effective date.

15 (1) This act takes effect on January 1, 2003.

16

(END)

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-1017/P1dn

RAC:.....

Kmg

Per your request, this bill takes effect on January 1, 2003. If the bill is not enacted in a special session before January 1, 2003, then this date will have to be changed — either to a new, later effective date or to specify that it applies retroactively to January 1, 2003.

As you requested, the bill specifically governs paid vacation leave for certain “nonrepresented” employees. Please note that it is not necessary to include the term “nonrepresented” and that it may even result in confusion. Under current law, matters relating to wages, hours, and conditions of employment are subject to collective bargaining under the State Employment Labor Relations Act. Therefore, all provisions of ch. 230 relating to wages, hours, and conditions of employment, unless made by law a prohibited subject of bargaining, apply only to nonrepresented employees and do not apply to represented employees unless so provided in applicable collective bargaining agreements. By specifically mentioning “nonrepresented” employees in the bill, which deals with the mandatory collective bargaining subject of paid vacation time, there is created the implication that other provisions in ch. 230 that deal with other mandatory subjects of bargaining may apply to both nonrepresented and represented employees. The reason is that these provisions are not similarly restricted to “nonrepresented” employees.

Please note that in ch. 230 there is only one reference to nonrepresented employees and that is in s. 230.27 (2m) (intro.) and it is mentioned there only to specify benefits to which a project position employee is entitled. This seems to be a legitimate use of the term. Thus, for the purpose of consistency and to avoid confusion, you may wish to consider leaving out the term “nonrepresented”.

Rick A. Champagne
Senior Legislative Attorney
Phone: (608) 266-9930
E-mail: rick.champagne@legis.state.wi.us

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1017/P1dn
RAC:kmg:cph

December 13, 2002

Per your request, this bill takes effect on January 1, 2003. If the bill is not enacted in a special session before January 1, 2003, then this date will have to be changed — either to a new, later effective date or to specify that it applies retroactively to January 1, 2003.

As you requested, the bill specifically governs paid vacation leave for certain “nonrepresented” employees. Please note that it is not necessary to include the term “nonrepresented” and that it may even result in confusion. Under current law, matters relating to wages, hours, and conditions of employment are subject to collective bargaining under the State Employment Labor Relations Act. Therefore, all provisions of ch. 230 relating to wages, hours, and conditions of employment, unless made by law a prohibited subject of bargaining, apply only to nonrepresented employees and do not apply to represented employees unless so provided in applicable collective bargaining agreements. By specifically mentioning “nonrepresented” employees in the bill, which deals with the mandatory collective bargaining subject of paid vacation time, there is created the implication that other provisions in ch. 230 that deal with other mandatory subjects of bargaining may apply to both nonrepresented and represented employees. The reason is that these provisions are not similarly restricted to “nonrepresented” employees.

Please note that in ch. 230 there is only one reference to nonrepresented employees and that is in s. 230.27 (2m) (intro.) and it is mentioned there only to specify benefits to which a project position employee is entitled. This seems to be a legitimate use of the term. Thus, for the purpose of consistency and to avoid confusion, you may wish to consider leaving out the term “nonrepresented.”

Rick A. Champagne
Senior Legislative Attorney
Phone: (608) 266-9930
E-mail: rick.champagne@legis.state.wi.us

Champagne, Rick

From: Reinwald, Elizabeth
Sent: Tuesday, February 11, 2003 8:31 AM
To: Champagne, Rick
Cc: Ostrowski, Paul; Vincent, John
Subject: Accelerated Vacation Draft Bill

Rick--can you have this ready to go should JCOER meet this week and agree to introduce the parity bill on accelerated vacation.

Can you write in language making the accelerated vacation effective at the start of the next pay period after the effective date of the bill ?



State of Wisconsin
2003 - 2004 LEGISLATURE

LRB-1017/PT 1

RAC:kmg:cph

WED

RMR

~~PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION~~

- 1 AN ACT *to repeal* 230.35 (1m) (a); and *to amend* 230.35 (1) (a) (intro.) and 230.35
2 (1m) (bt) (intro.) of the statutes; **relating to:** providing additional paid vacation
3 leave for certain state agency employees.

Analysis by the Legislative Reference Bureau

This bill is introduced under s. 230.12, stats., which requires that it be put on the calendar. The bill accomplishes certain statutory changes necessary to implement the nonrepresented state employee compensation plan, as modified and approved by the Joint Committee on Employment Relations.

Under current law, nonrepresented employees of any state agency in the executive branch are entitled to paid vacation based on their years of service, usually beginning with two weeks of paid vacation at the time of their initial employment with the state (general vacation provisions). However, certain nonrepresented employees who are in career executive positions, division administrator positions, attorney positions, professional employee positions at the State Investment Board, and senior state agency positions are entitled to three weeks of paid vacation at the time of their initial employment with the state (executive vacation provisions). Represented state employees are not subject to either the general vacation provisions or the executive vacation provisions, but have their vacation provisions determined in applicable collective bargaining agreements.

This bill authorizes the Department of Employment Relations to promulgate rules excluding any nonrepresented state agency employee from the general vacation provisions. In addition, the bill changes current law to provide that the executive vacation provisions apply only to nonrepresented employees who are not

subject to the minimum wage and overtime requirements under the federal Fair Labor Standards Act (FLSA). Generally, under FLSA, employees who are not subject to the minimum wage and overtime requirements are those employees holding executive, administrative, or professional positions.

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:

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

2 230.35 (1) (a) (intro.) Except as provided in subs. (1m), (1r), and (1s), appointing
3 authorities shall grant to each person in their employ, except employees excluded
4 from coverage under this subsection by the department by rule and limited-term
5 employees, based on accumulated continuous state service, annual leave of absence
6 without loss of pay at the rate of:

7 SECTION 2. 230.35 (1m) (a) of the statutes is repealed.

8 SECTION 3. 230.35 (1m) (bt) (intro.) of the statutes is amended to read:

9 230.35 (1m) (bt) (intro.) ^{plain} (An employee appointed to a position listed under par.

10 (a) ~~A nonrepresented employee~~ who is not subject to the minimum wage and
11 overtime requirements under the federal Fair Labor Standards Act, 29 USC 201 to
12 219, shall be entitled to annual leave of absence without loss of pay based upon
13 accumulated continuous state service at the rate of:

14 SECTION 4. Effective date.

15 (1) This act takes effect on January 1, 2003.

(END)

16

Insert
2-16

2-16

the ^{first} ~~15th~~ day of the ~~15th~~ ^{first} biweekly pay period for state employees that first begins after the date of publication

Champagne, Rick

From: Ostrowski, Paul
Sent: Monday, April 14, 2003 11:39 AM
To: Champagne, Rick
Subject: RE: Accelerated Vacation Bill

If Bob Conlin doesn't see a problem with do so.

-----Original Message-----

From: Champagne, Rick
Sent: Monday, April 14, 2003 11:01 AM
To: Ostrowski, Paul
Subject: RE: Accelerated Vacation Bill

I don't see a problem at all. Let me know if you want to redraft LRB 03-1017/1.

-----Original Message-----

From: Ostrowski, Paul
Sent: Monday, April 14, 2003 10:52 AM
To: Champagne, Rick
Cc: Reinwald, Elizabeth; Pankratz, Jim; Vincent, John; Conlin, Robert
Subject: Accelerated Vacation Bill

If we have a JCOER meeting at the end of April as Speaker Gard has hinted, I suggest that we make the effective date of the accelerated vacation July 1, 2003. Among other reasons, it should make it very easier to understand the calculation of this year's additional vacation - it should be exactly one half of what it would be annually.

Is there any problem making that change?



State of Wisconsin
2003 - 2004 LEGISLATURE

LRB-1017/2
RAC:kmg:jf

FRI

RMR

2003 BILL

- 1 AN ACT *Gen. Conf.* to repeal 230.35 (1m) (a); and to amend 230.35 (1) (a) (intro.) and 230.35
2 (1m) (bt) (intro.) of the statutes; relating to: providing additional paid vacation
3 leave for certain state agency employees.

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This bill is introduced under s. 230.12, stats., which requires that it be put on the calendar. The bill accomplishes certain statutory changes necessary to implement the nonrepresented state employee compensation plan, as modified and approved by the Joint Committee on Employment Relations.

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This bill authorizes the Department of Employment Relations to promulgate rules excluding any nonrepresented state agency employee from the general vacation provisions. In addition, the bill changes current law to provide that the

Barman, Mike

From: VanHoesen, Bob
Sent: Monday, April 21, 2003 8:26 AM
To: Schaeffer, Carole; Barman, Mike
Subject: Fiscal Estimate Request

Importance: High

Contacts: Schaeffer, Carole

Would you please add LRB 1017/2 to the Fiscal Estimate system so that we can prepare an estimate.

Thanks.

Bob VH

Bob Van Hoesen, Administrator
Division of Administrative Services
Department of Employment Relations
Voice: (608) 267-1003
Fax: (608) 267-1020
e-mail: <mailto:bob.vanhoesen@der.state.wi.us>
DER Web site: <http://der.state.wi.us>

Fiscal Estimate - 2003 Session

Original Updated Corrected Supplemental

LRB Number 03-1017/2	Introduction Number	
Subject Vacation leave for certain state employees		
Fiscal Effect		
State:		
<input checked="" type="checkbox"/> No State Fiscal Effect <input type="checkbox"/> Indeterminate <input type="checkbox"/> Increase Existing Appropriations <input type="checkbox"/> Increase Existing Revenues <input type="checkbox"/> Increase Costs - May be possible to absorb within agency's budget <input type="checkbox"/> Decrease Existing Appropriations <input type="checkbox"/> Decrease Existing Revenues <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Create New Appropriations <input type="checkbox"/> Decrease Costs		
Local:		
<input type="checkbox"/> No Local Government Costs <input type="checkbox"/> Indeterminate 1. <input type="checkbox"/> Increase Costs 3. <input type="checkbox"/> Increase Revenue 5. Types of Local Government Units Affected <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory <input type="checkbox"/> Towns <input type="checkbox"/> Village <input type="checkbox"/> Cities 2. <input type="checkbox"/> Decrease Costs 4. <input type="checkbox"/> Decrease Revenue <input type="checkbox"/> Counties <input type="checkbox"/> Others <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory <input type="checkbox"/> School Districts <input type="checkbox"/> WTCS Districts		
Fund Sources Affected		Affected Ch. 20 Appropriations
<input type="checkbox"/> GPR <input type="checkbox"/> FED <input type="checkbox"/> PRO <input type="checkbox"/> PRS <input type="checkbox"/> SEG <input type="checkbox"/> SEGS		
Agency/Prepared By	Authorized Signature	Date
DER/ Bob Van Hoesen (608) 267-1003	Bob Van Hoesen (608) 267-1003	8/7/2003

copy sent to Sen. Lasse (8-7-03)

FEIS for old 12" version

Draft is now 2-13"

Intro. 25 SB-152 Act 22

Fiscal Estimate Narratives

DER 8/7/2003

LRB Number 03-1017/2	Introduction Number	Estimate Type Original
Subject Vacation leave for certain state employees		

Assumptions Used in Arriving at Fiscal Estimate

Paid Annual Leave: Extends the accelerated vacation schedule in s. 230.35 (1m)(bt), Wis. Stats., to all nonrepresented employees who are exempt from overtime under the Fair Labor Standards Act (FLSA). This change provides the same annual leave provisions as provided to their counterparts through the 2001-2003 collective bargaining agreements. There is no out-of-pocket cost when an exempt (salaried) employee uses the additional vacation. Generally when an exempt employee takes leave, their essential work is covered by another salaried employee who works additional hours as required (without compensation) or the work accumulates and the work is "caught-up" when the employee returns. There is an intangible value since salary will be paid for hours not worked. There are approximately 4,172 employees covered by this extension.

Long-Range Fiscal Implications

Champagne, Rick

From: Reinwald, Elizabeth
Sent: Tuesday, April 15, 2003 3:35 PM
To: Champagne, Rick
Cc: Ostrowski, Paul
Subject: FW: Draft Bill for your review

-----Original Message-----

From: Ostrowski, Paul
Sent: Tuesday, April 15, 2003 3:18 PM
To: Reinwald, Elizabeth
Subject: FW: Draft Bill for your review

I would delete the word "agency" from the first sentence in the third paragraph of the analysis which says "This bill authorizes the Department of Employment Relations to promulgate rules excluding any nonrepresented state agency employee from the general vacation provisions" In truth, most of the people that we currently exclude in ER 18 are not from agencies (i.e., elected officials, legislative service employees, and staff of the state court system).

It's not a big deal since it's partially true and really doesn't affect the result of the statutory change.

-----Original Message-----

From: Reinwald, Elizabeth
Sent: Tuesday, April 15, 2003 3:00 PM
To: Ostrowski, Paul
Subject: Draft Bill for your review



Draft review LRB
03-10172 Topl...



State of Wisconsin
2003 - 2004 LEGISLATURE

LRB-1017/23
RAC:kmg:rs

FRZ

RMR

2003 BILL

- 1 AN ACT to repeal 230.35 (1m) (a); and to amend 230.35 (1) (a) (intro.) and 230.35
2 (1m) (bt) (intro.) of the statutes; relating to: providing additional paid vacation
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This bill authorizes the Department of Employment Relations to promulgate rules excluding any nonrepresented (state) ~~agency~~ employee from the general vacation provisions. In addition, the bill changes current law to provide that the



skt

Memo

To: Senator Representative **DER** (Bob Van Hoesen) (The Draft's Requester)

Per your request: ... the attached fiscal estimate was prepared for your unIntroduced 2003 draft.

LRB Number: LRB -1017

Version: " / 3 "

Fiscal Estimate Prepared By: (agency abbr.) DER

If you have questions about the enclosed fiscal estimate, you may contact the state agency representative that prepared the fiscal estimate. If you disagree with the enclosed fiscal estimate, please contact the LRB drafter of your proposal to discuss your options under the fiscal estimate procedure.

Entered In Computer And Copy Sent To Requester Via E-Mail: ^{5/12} 05 / 02 / 2003

* * * * *

To: LRB – Legal Section PA's

Subject: *Fiscal Estimate Received For An Unintroduced Draft*

- > **If redrafted** ... please insert this cover sheet and attached early fiscal estimate into the drafting file ... after the draft's old version (the version that this fiscal estimate was based on), and before the markup of the draft on the updated version.
- > **If introduced** ... and the version of the attached fiscal estimate is for a **previous version** ... please insert this cover sheet and attached early fiscal estimate into the drafting file ... after the draft's old version (the version that this fiscal estimate was based on), and before the markup of the draft on the updated version. Have Mike (or Lynn) get the ball rolling on getting a fiscal estimate prepared for the introduced version.
- > **If introduced** ... and the version of the attached fiscal estimate is for the **current version** ... please write the draft's introduction number below and give to Mike (or Lynn) to process.

THIS DRAFT WAS INTRODUCED AS: 2003 SB-152

Barman, Mike

From: Barman, Mike
Sent: Friday, May 02, 2003 9:36 AM
To: VanHoesen, Bob
Subject: LRB-1017/3 (FE by DER - attached - for your review)



FE_DER.pdf