

## 2007 ASSEMBLY BILL 812

February 15, 2008 – Introduced by Representative NELSON. Referred to Committee on Judiciary and Ethics.

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 for not  
4             more than 10 hours per year for the purpose of responding to an emergency call  
5             as a volunteer fire fighter, emergency medical technician, first responder, or  
6             ambulance driver.

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### ***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 for not more than ten hours per year for the purpose of responding to an emergency call as a volunteer fire fighter, emergency medical technician, first

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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 bill specifies that employment discrimination on that basis includes refusing to reasonably accommodate the temporary absence of an employee or prospective employee from work for not more than ten hours per year for the purpose of 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 not more than ten hours per year 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 percent 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, as affected by 2007 Wisconsin Act ...  
2           (Assembly Bill 32), is amended to read:  
3           111.31 **(1)** The legislature finds that the practice of unfair discrimination in  
4           employment against properly qualified individuals by reason of their age, race,  
5           creed, color, disability, marital status, sex, national origin, ancestry, sexual  
6           orientation, arrest record, conviction record, military status, ~~or~~ use or nonuse of  
7           lawful products off the employer's premises during nonworking hours, or temporary  
8           absence from work for not more than 10 hours per year for the purpose of responding

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1 to an emergency call as a volunteer fire fighter, emergency medical technician, first  
2 responder, or ambulance driver substantially and adversely affects the general  
3 welfare of the state. Employers, labor organizations, employment agencies, and  
4 licensing agencies that deny employment opportunities and discriminate in  
5 employment against properly qualified individuals solely because of their age, race,  
6 creed, color, disability, marital status, sex, national origin, ancestry, sexual  
7 orientation, arrest record, conviction record, military status, ~~or~~ use or nonuse of  
8 lawful products off the employer's premises during nonworking hours, or temporary  
9 absence from work for not more than 10 hours per year for the purpose of responding  
10 to an emergency call as a volunteer fire fighter, emergency medical technician, first  
11 responder, or ambulance driver deprive those individuals of the earnings that are  
12 necessary to maintain a just and decent standard of living.

13 **SECTION 2.** 111.31 (2) of the statutes, as affected by 2007 Wisconsin Act ...  
14 (Assembly Bill 32), is amended to read:

15 111.31 **(2)** It is the intent of the legislature to protect by law the rights of all  
16 individuals to obtain gainful employment and to enjoy privileges free from  
17 employment discrimination because of age, race, creed, color, disability, marital  
18 status, sex, national origin, ancestry, sexual orientation, arrest record, conviction  
19 record, military status, ~~or~~ use or nonuse of lawful products off the employer's  
20 premises during nonworking hours, or temporary absence from work for not more  
21 than 10 hours per year for the purpose of responding to an emergency call as a  
22 volunteer fire fighter, emergency medical technician, first responder, or ambulance  
23 driver and to encourage the full, nondiscriminatory utilization of the productive  
24 resources of the state to the benefit of the state, the family, and all the people of the  
25 state. It is the intent of the legislature in promulgating this subchapter to encourage

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1 employers to evaluate an employee or applicant for employment based upon the  
2 employee's ~~or applicant's~~ individual qualifications of the employee or applicant  
3 rather than upon a particular class to which the individual may belong.

4 **SECTION 3.** 111.31 (3) of the statutes, as affected by 2007 Wisconsin Act ...  
5 (Assembly Bill 32), is amended to read:

6 111.31 **(3)** In the interpretation and application of this subchapter, and  
7 otherwise, it is declared to be the public policy of the state to encourage and foster  
8 to the fullest extent practicable the employment of all properly qualified individuals  
9 regardless of age, race, creed, color, disability, marital status, sex, national origin,  
10 ancestry, sexual orientation, arrest record, conviction record, military status, ~~or~~ use  
11 or nonuse of lawful products off the employer's premises during nonworking hours,  
12 or temporary absence from work for not more than 10 hours per year for the purpose  
13 of responding to an emergency call as a volunteer fire fighter, emergency medical  
14 technician, first responder, or ambulance driver. Nothing in this subsection requires  
15 an affirmative action program to correct an imbalance in the work force. This  
16 subchapter shall be liberally construed for the accomplishment of this purpose.

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

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

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

21 111.32 **(7g)** "First responder" has the meaning given in s. 146.50 (1) (hm).

22 **SECTION 6.** 111.321 of the statutes, as affected by 2007 Wisconsin Act ...  
23 (Assembly Bill 32), is amended to read:

24 **111.321 Prohibited bases of discrimination.** Subject to ss. 111.33 to ~~111.36~~  
25 111.365, no employer, labor organization, employment agency, licensing agency, or

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1 other person may engage in any act of employment discrimination as specified in s.  
2 111.322 against any individual on the basis of age, race, creed, color, disability,  
3 marital status, sex, national origin, ancestry, arrest record, conviction record,  
4 military status, ~~or~~ use or nonuse of lawful products off the employer's premises  
5 during nonworking hours, or temporary absence from work for not more than 10  
6 hours per year for the purpose of responding to an emergency call as a volunteer fire  
7 fighter, emergency medical technician, first responder, or ambulance driver.

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

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

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

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

17 1. The nature and cost of the accommodation.

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

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

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1           4. The type of operation of the employer, including the composition, structure,  
2 and functions of the employer's work force, the geographic separateness from the  
3 employer of the facility involved in providing the accommodation, and the  
4 administrative and financial relationship of that facility to the employer.

5           (b) Employment discrimination because of temporary absence from work for  
6 not more than 10 hours per year for the purpose of responding to an emergency call  
7 as a volunteer fire fighter, emergency medical technician, first responder, or  
8 ambulance driver includes refusing to reasonably accommodate the temporary  
9 absence of an employee or prospective employee from work for not more than 10  
10 hours per year for the purpose of responding to an emergency call as a volunteer fire  
11 fighter, emergency medical technician, first responder, or ambulance driver unless  
12 the employer can demonstrate that the accommodation would pose an undue  
13 hardship on the employer's program, enterprise, or business. If providing the  
14 accommodation would result in more than 25 percent of the persons normally on duty  
15 in any particular function or operation at the time of the accommodation being  
16 temporarily absent from work, it is presumed that the accommodation would pose  
17 an undue hardship on the employer's program, enterprise, or business. An employer  
18 may reasonably accommodate the temporary absence of an employee or prospective  
19 employee from work for not more than 10 hours per year for the purpose of  
20 responding to an emergency call as a volunteer fire fighter, emergency medical  
21 technician, first responder, or ambulance driver by temporarily reallocating job  
22 duties, adjusting or modifying the employer's attendance policies, or making other,  
23 similar accommodations for the employee or prospective employee.

24           (2) Notwithstanding s. 111.322, it is not employment discrimination because  
25 of absence from work for not more than 10 hours per year for the purpose of

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1 responding to an emergency call as a volunteer fire fighter, emergency medical  
2 technician, first responder, or ambulance driver for a political subdivision of this  
3 state that operates a full-time, paid fire department or a full-time, paid rescue  
4 squad to refuse to hire or employ an individual, to suspend or terminate the  
5 employment of an individual, or to discriminate against an individual in promotion,  
6 in compensation, or in terms, conditions, or privileges of employment, because of the  
7 individual's absence from work for not more than 10 hours per year for the purpose  
8 of responding to an emergency call as a volunteer fire fighter, emergency medical  
9 technician, first responder, or ambulance driver.

**SECTION 9. Initial applicability.**

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

15 (END)