

2007 DRAFTING REQUEST

Senate Substitute Amendment (SSA-SB75)

Received: **03/13/2007**

Received By: **gmalaise**

Wanted: **Soon**

Identical to LRB:

For: **Julie Lassa (608) 266-3123**

By/Representing: **Gordon M. Malaise, LRB**

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

Drafter: **gmalaise**

May Contact:

Addl. Drafters:

Subject: **Discrimination**

Extra Copies:

Submit via email: **YES**

Requester's email: **Sen.Lassa@legis.wisconsin.gov**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Reasonable accommodation of pregnant or breast-feeding employee

Instructions:

See Attached--place reasonable accommodation of pregnant or breast-feeding employee in sex discrimination provisions of Fair Employment Law instead of in separate provision in ch. 103

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>
/?	gmalaise 03/13/2007	jdye 03/14/2007		_____			
/1			jfrantze 03/14/2007	_____	cduerst 03/14/2007	cduerst 03/14/2007	

FE Sent For:

<END>

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See Attached--place reasonable accommodation of pregnant or breast-feeding employee in sex discrimination provisions of Fair Employment Law instead of in separate provision in ch. 103

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FE Sent For:

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Memorandum

DATE: March 12, 2007
TO: Legislative Reference Bureau
FROM: LeAnna Ware, Director Civil Rights Bureau

The current language in this bill adds reasonable accommodation requirements for pregnant and breast-feeding women to Chapter 103 and specifies that complaints will be processed by the Equal Rights Division in the same manner as complaints under the Fair Employment Law (§ 111.31-111.395).

The Fair Employment Law includes language at § 111.36 (1) (c) that prohibits discriminating on the basis of pregnancy, childbirth or related medical conditions. Since this protection is already included in the Fair Employment Law, employers and employees would be better able to access the reasonable accommodation requirements related to pregnancy and breast-feeding if they were included in the same section of the law as the other pregnancy protections.

2007 SB 75 (LRB-1600)

=> AM 111.36 (1) (c)

Failure to reas. accommodate employee who is pg or
breast feeding unless undue hardship

DNOTE

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0037 / 1

2007 - 2008 LEGISLATURE

LRB-1600/A
GMM/jld/jf

stays

SENATE SUBSTITUTE AMENDMENT
TO 2007 SENATE BILL 75

~~February 27, 2007 - Introduced by Senators LASSA, LEHMAN, RISSER and PLALE, cosponsored by Representatives CULLEN, ZEPNICK, SHERIDAN, BOYLE, BLACK, YOUNG, TURNER, BERCEAU, MASON and SINICKI. Referred to Committee on Economic Development, Job Creation, Family Prosperity and Housing.~~

Regenerate

1 AN ACT to create 103.12 and 106.54 (8) of the statutes; relating to: requiring
2 an employer to reasonably accommodate an employee who is pregnant or who
3 is breast-feeding her child.

Analysis by the Legislative Reference Bureau

Current law prohibits certain bases of employment discrimination including discrimination based on an employee's sex or handicap. Under current law, discrimination based on sex includes discriminating against any woman on the basis of pregnancy, childbirth, or related medical conditions and discrimination based on handicap includes refusing to reasonably accommodate an employee's handicap unless the employer can demonstrate that the accommodation would pose a hardship on the employer's program, enterprise, or business. ~~Currently, the Department of Workforce Development (DWD) may order an employer that has discriminated against an employee to take such action as will effectuate the purpose of the fair employment law, including the payment of back pay, reinstatement of the employee, or the payment of compensation in lieu of reinstatement.~~

~~This bill permits an employee who is pregnant or who is breast-feeding her child to request her employer to reasonably accommodate her condition, if the employee believes that the duties or environment of her employment pose a substantial hazard to the present or future health of the employee or of her child or unborn child. The bill requires an employer that receives such a request to reasonably accommodate the employee's condition, unless the employer can demonstrate that the accommodation would pose an undue hardship on the~~

substitute amendment provides that
it is employment discrimination
based on sex for an employer to
refuse to reasonably accommodate the condition of

SENATE BILL 75

✓ ~~Under the bill, an employer may not discharge or otherwise discriminate against an employee who requests a reasonable accommodation under the bill, opposes a practice prohibited under the bill, files a complaint or attempts to enforce any right granted under the bill, or testifies or assists in any action or proceeding to enforce any right under the bill. Finally, under the bill, an employee whose request for a reasonable accommodation under the bill is denied (unless the employer can demonstrate that the accommodation would pose an undue hardship) or who is discharged or discriminated against in violation of the bill may file a complaint with DWD and DWD must process the complaint in the same manner as employment discrimination complaints are processed under current law, which processing may include the ordering of back pay, reinstatement, or compensation in lieu of reinstatement.~~

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

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 103.12 of the statutes is created to read:

2 **103.12 Reasonable accommodation of pregnant or breast-feeding**
 3 **employees.** (1) Any employee who is pregnant or who is breast-feeding her child
 4 may request her employer to reasonably accommodate her condition, if the employee
 5 believes that the duties or environment of her employment pose a substantial hazard
 6 to the present or future health of the employee or of her child or unborn child.

7 (2) An employer that receives a request under sub. (1) shall reasonably
 8 accommodate the employee's condition unless the employer can demonstrate that
 9 the accommodation would pose an undue hardship on the employer's program,
 10 enterprise, or business.

11 (3) No employer may discharge or otherwise discriminate against any person
 12 for requesting a reasonable accommodation under sub. (1), opposing a practice
 13 prohibited under this section, filing a complaint or attempting to enforce any right

SENATE BILL 75

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~~under this section, or testifying or assisting in any action or proceeding to enforce any right under this section.~~

~~(4) An employee whose request for a reasonable accommodation under sub. (1) is denied in violation of sub. (2) or who is discharged or otherwise discriminated against in violation of sub. (3) may file a complaint with the department, and the department shall process the complaint in the same manner as employment discrimination complaints are processed under s. 111.39.~~

~~SECTION 2. 106.54 (8) of the statutes is created to read:~~

~~106.54 (8) The division shall receive complaints under s. 103.12 (4) and shall process the complaints in the same manner as employment discrimination complaints are processed under s. 111.39.~~

✓

Insert
3-11

SECTION 3. Initial applicability.

111.36 (1) (c) 1. ✓

(1) This act first applies to an employee who, on the day before the effective date of this subsection, is covered by a collective bargaining agreement that contains provisions inconsistent with section ~~103.12~~ of the statutes, as created by this act, on the day on which the collective bargaining agreement expires or is extended, modified, or renewed, whichever occurs first.

(END)

d-note
↓

2007-2008 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRBs0037/1ins
GMM.....

(INSERT 3-11)

SECTION 1. 111.322 (3) of the statutes is amended to read:

111.322 (3) To discharge or otherwise discriminate against any individual because he or she has opposed any discriminatory practice under this subchapter or because he or she has, made a complaint, or attempted to enforce any right under this subchapter, or testified or assisted in any proceeding under this subchapter.

History: 1981 c. 334; 1989 a. 228, 359; 1997 a. 237; 1999 a. 150, 672; 1999 a. 167, 176.

SECTION 2. 111.36 (1) (c) of the statutes is renumbered 111.36 (1) (c) (intro.) and amended to read:

111.36 (1) (c) (intro.) Discriminating against any woman on the basis of pregnancy, childbirth, maternity leave, or related medical conditions by engaging doing any of the following:

2. Engaging in any of the actions prohibited under s. 111.322, including, but not limited to, actions concerning fringe benefit programs covering illnesses and disability.

History: 1981 c. 334 ss. 7m, 22; 1981 c. 391; 1993 a. 427.

SECTION 3. 111.36 (1) (c) 1. of the statutes is created to read:

111.36 (1) (c) 1. Refusing to reasonably accommodate the condition of an employee who is pregnant or who is breast-feeding her child, if the employee believes that the duties or environment of her employment pose a substantial hazard to the present or future health of the employee or of her child or unborn child, unless the employer can demonstrate that the accommodation would pose an undue hardship on the employer's program, enterprise, or business.

(END OF INSERT)

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRBs0037/1dn

GMM:an:...

date

JLD

Senator Lassa:

This substitute amendment addresses the issue raised by LeAnna Ware, Director of the Civil Rights Bureau of the Equal Rights Division of DWD, in her March 12, 2007, technical memorandum by including reasonable accommodation of a pregnant or breast-feeding employee in the prohibition against employment discrimination based on sex under the Fair Employment Law rather than in a separate provision in ch. 103.

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

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRBs0037/1dn
GMM:jld:jf

March 14, 2007

Senator Lassa:

This substitute amendment addresses the issue raised by LeAnna Ware, Director of the Civil Rights Bureau of the Equal Rights Division of DWD, in her March 12, 2007, technical memorandum by including reasonable accommodation of a pregnant or breast-feeding employee in the prohibition against employment discrimination based on sex under the Fair Employment Law rather than in a separate provision in ch. 103.

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