

## 2007 SENATE BILL 173

May 3, 2007 – Introduced by Senators VINEHOUT, SULLIVAN, SCHULTZ and HANSEN, cosponsored by Representatives MUSSER, GRONEMUS, BIES, HUBLER, WOOD, BLACK, HINES, BERCEAU, A. OTT, A. WILLIAMS, GRIGSBY, HILGENBERG, NERISON, GUNDERSON, MOLEPSKE, SINICKI, BOYLE, HRAYCHUCK, OWENS, GARTHWAITE, TRAVIS, TURNER, TOWNSEND, KREUSER and MURSAU. Referred to Committee on Economic Development, Job Creation, Family Prosperity and Housing.

1     **AN ACT** *to renumber* 103.10 (1) (a); *to amend* 103.10 (title), 103.10 (1) (c), 103.10  
2           (2) (a), 103.10 (5) (a), 103.10 (5) (b), 103.10 (7) (b) (intro.), 103.10 (8) (a) (intro.),  
3           103.10 (8) (a) 1., 103.10 (8) (a) 2., 103.10 (8) (b), 103.10 (8) (c), 103.10 (9) (a),  
4           103.10 (9) (b), 103.10 (9) (c) 4., 103.10 (9) (d), 103.10 (10), 103.10 (12) (d), 108.04  
5           (1) (b) 3. (intro.), 108.04 (1) (c), 111.91 (2) (f) and 230.35 (2m); *to repeal and*  
6           *recreate* 893.96 (title); and *to create* 103.10 (1) (ad), 103.10 (1) (ag) 3., 103.10  
7           (1) (fd), 103.10 (4m), 103.10 (6) (c) and 103.10 (7) (am) of the statutes; **relating**  
8           **to:** family military leave.

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### *Analysis by the Legislative Reference Bureau*

Under current law, an employer, including the state, employing at least 50 individuals on a permanent basis must permit an employee who has been employed by the employer for more than 52 consecutive weeks and who has worked for the employer for at least 1,000 hours during the preceding 52-week period (employee) to take six weeks of family leave in a 12-month period and two weeks of medical leave in a 12-month period. Family leave may be taken for the birth or adoptive placement of a new child or to care for a child, spouse, or parent who has a serious health condition. Medical leave may be taken when the employee has a serious health condition that makes the employee unable to perform the employee's employment

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duties. An employee is not entitled to receive wages or salary while taking family or medical leave, but may substitute, for portions of family or medical leave, other types of paid or unpaid leave provided by the employer.

When an employee returns from family or medical leave, the employer must immediately place the employee in the employment position that the employee held before the leave began or, if that position is filled, in an equivalent employment position. An employee is not entitled to accrue any seniority or employment benefits while on family or medical leave, but is entitled to have his or her group health insurance coverage maintained under the conditions that applied before the leave began.

This bill permits an employee of an employer that employs at least 15 individuals on a permanent basis to take unpaid family military leave during a period of active service of the employee or of a spouse or child of the employee of 30 days or more in the U.S. armed forces, the national guard of this state or of any other state, or the state defense force under an order of the president of the United States or of the governor of this state or of any other state (period of active service). Specifically, the bill permits an employee of an employer that employs between 15 and 50 individuals on a permanent basis to take no more than 15 working days of unpaid family military leave during a period of active service and an employee of an employer that employs more than 50 individuals on a permanent basis to take no more than 30 working days of unpaid family military leave during a period of active service.

Under the bill, an employee is not entitled to receive wages or salary while taking family military leave, but may substitute, for portions of family military leave, paid or unpaid leave of any other type provided by the employer. When an employee returns from family military leave, the employer must immediately place the employee in the employment position that the employee held before the leave began or, if that position is filled, in an equivalent employment position. An employee is not entitled to accrue any seniority or employment benefits while on family military leave, but is entitled to have his or her group health insurance coverage maintained under the conditions that applied before the leave began.

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

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

- 1           **SECTION 1.** 103.10 (title) of the statutes is amended to read:
- 2           **103.10** (title) **Family or, medical, and family military leave.**
- 3           **SECTION 2.** 103.10 (1) (a) of the statutes is renumbered 103.10 (1) (ag).
- 4           **SECTION 3.** 103.10 (1) (ad) of the statutes is created to read:

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1           103.10 (1) (ad) “Active service” means active service for 30 days or more in the  
2 U.S. armed forces, the national guard of this state or of any other state, or the state  
3 defense force under an order of the president of the United States or of the governor  
4 of this state or of any other state.

5           **SECTION 4.** 103.10 (1) (ag) 3. of the statutes is created to read:

6           103.10 (1) (ag) 3. The individual is 18 years of age or older and is in a period  
7 of active service.

8           **SECTION 5.** 103.10 (1) (c) of the statutes is amended to read:

9           103.10 (1) (c) ~~Except as provided in sub. (14) (b), “employer”~~ “Employer” means  
10 a person engaging in any activity, enterprise, or business in this state employing at  
11 least 50 individuals on a permanent basis, ~~except that for purposes of family military~~  
12 leave, “employer” means a person engaging in any activity, enterprise, or business  
13 in this state employing at least 15 individuals on a permanent basis. “Employer”  
14 includes the state and any office, department, independent agency, authority,  
15 institution, association, society, or other body in state government created or  
16 authorized to be created by the constitution or any law, including the legislature and  
17 the courts.

18           **SECTION 6.** 103.10 (1) (fd) of the statutes is created to read:

19           103.10 (1) (fd) “Period of active service” means the period beginning on the date  
20 on which an employee or a spouse or child of an employee receives an order to enter  
21 active service and ending on the date on which the employee, spouse, or child is  
22 released from active service or dies while in active service.

23           **SECTION 7.** 103.10 (2) (a) of the statutes is amended to read:

24           103.10 (2) (a) Nothing in this section prohibits an employer from providing  
25 employees with rights to family leave or, medical leave ~~which, or family military~~

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1 leave that are more generous to the employee than the rights provided under this  
2 section.

3 **SECTION 8.** 103.10 (4m) of the statutes is created to read:

4 103.10 **(4m)** FAMILY MILITARY LEAVE. (a) An employee of an employer that  
5 employs 50 or fewer employees on a permanent basis may take no more than 15  
6 working days of unpaid family military leave during a period of active service of the  
7 employee or of a spouse or child of the employee.

8 (b) An employee of an employer that employs more than 50 employees on a  
9 permanent basis may take no more than 30 working days of unpaid family military  
10 leave during a period of active service of the employee or of a spouse or child of the  
11 employee.

12 **SECTION 9.** 103.10 (5) (a) of the statutes is amended to read:

13 103.10 **(5)** (a) This section does not entitle an employee to receive wages or  
14 salary while taking family leave ~~or~~, medical leave, or family military leave.

15 **SECTION 10.** 103.10 (5) (b) of the statutes is amended to read:

16 103.10 **(5)** (b) An employee may substitute, for portions of family leave ~~or~~,  
17 medical leave, or family military leave, paid or unpaid leave of any other type  
18 provided by the employer.

19 **SECTION 11.** 103.10 (6) (c) of the statutes is created to read:

20 103.10 **(6)** (c) An employee who intends to take family military leave shall make  
21 a reasonable effort to schedule the leave so that it does not unduly disrupt the  
22 employer's operations. If an employee intends to take family military leave for 5 or  
23 more consecutive working days, the employee shall give the employer at least 14  
24 days' notice of the intended commencement date of the leave. If an employee intends  
25 to take family military leave for less than 5 consecutive working days, the employee

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1 shall give the employer advance notice of the intended commencement date of the  
2 leave in a reasonable and practicable manner.

3 **SECTION 12.** 103.10 (7) (am) of the statutes is created to read:

4 103.10 (7) (am) If an employee requests family military leave, the employer  
5 may require the employee to provide certification issued by the proper military  
6 authority verifying that the employee or the spouse or a child of the employee is in  
7 a period of active service.

8 **SECTION 13.** 103.10 (7) (b) (intro.) of the statutes is amended to read:

9 103.10 (7) (b) (intro.) No employer may require certification under par. (a)  
10 stating more than the following:

11 **SECTION 14.** 103.10 (8) (a) (intro.) of the statutes is amended to read:

12 103.10 (8) (a) (intro.) Subject to par. (c), when an employee returns from family  
13 leave ~~or~~ medical leave, or family military leave, his or her employer shall  
14 immediately place the employee in an employment position as follows:

15 **SECTION 15.** 103.10 (8) (a) 1. of the statutes is amended to read:

16 103.10 (8) (a) 1. If the employment position which the employee held  
17 immediately before the family leave ~~or~~ medical leave, or family military leave began  
18 is vacant when the employee returns, in that position.

19 **SECTION 16.** 103.10 (8) (a) 2. of the statutes is amended to read:

20 103.10 (8) (a) 2. If the employment position which the employee held  
21 immediately before the family leave ~~or~~ medical leave, or family military leave began  
22 is not vacant when the employee returns, in an equivalent employment position  
23 having equivalent compensation, benefits, working shift, hours of employment, and  
24 other terms and conditions of employment.

25 **SECTION 17.** 103.10 (8) (b) of the statutes is amended to read:

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1           103.10 (8) (b) No employer may, because an employee received family leave ~~or,~~  
2           medical leave, or family military leave, reduce or deny an employment benefit which  
3           that accrued to the employee before his or her leave began or, consistent with sub.  
4           (9), accrued after his or her leave began.

5           **SECTION 18.** 103.10 (8) (c) of the statutes is amended to read:

6           103.10 (8) (c) Notwithstanding par. (a), if an employee on ~~a-~~ family leave,  
7           medical ~~or family leave,~~ or family military leave wishes to return to work before the  
8           end of the leave as scheduled, the employer shall place the employee in an  
9           employment position of the type described in par. (a) 1. or 2. within a reasonable time  
10          not exceeding the duration of the leave as scheduled.

11          **SECTION 19.** 103.10 (9) (a) of the statutes is amended to read:

12          103.10 (9) (a) Except as provided in par. (b), nothing in this section entitles a  
13          returning employee to a right, employment benefit, or employment position to which  
14          the employee would not have been entitled had he or she not taken family leave ~~or,~~  
15          medical leave, or family military leave or to the accrual of any seniority or  
16          employment benefit during a period of family leave ~~or,~~ medical leave, or family  
17          military leave.

18          **SECTION 20.** 103.10 (9) (b) of the statutes is amended to read:

19          103.10 (9) (b) Subject to par. (c), during a period an employee takes family leave  
20          ~~or,~~ medical leave, or family military leave, his or her employer shall maintain group  
21          health insurance coverage under the conditions that applied immediately before the  
22          family leave ~~or,~~ medical leave, or family military leave began. If the employee  
23          continues making any contribution required for participation in the group health  
24          insurance plan, the employer shall continue making group health insurance

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1 premium contributions as if the employee had not taken the family leave ~~or~~, medical  
2 leave, or family military leave.

3 **SECTION 21.** 103.10 (9) (c) 4. of the statutes is amended to read:

4 103.10 **(9)** (c) 4. If an employee ends his or her employment with an employer  
5 during or within 30 days after a period of family leave ~~or~~, medical leave, or family  
6 military leave, the employer may deduct from the amount returned to the employee  
7 under subd. 3. any premium or similar expense paid by the employer for the  
8 employee's group health insurance coverage while the employee was on family leave  
9 ~~or~~, medical leave, or family military leave.

10 **SECTION 22.** 103.10 (9) (d) of the statutes is amended to read:

11 103.10 **(9)** (d) If an employee ends his or her employment with an employer  
12 during or at the end of a period of family leave ~~or~~, medical leave, or family military  
13 leave, the time period for conversion to individual coverage under s. 632.897 (6) shall  
14 be calculated as beginning on the day ~~that~~ on which the employee began the period  
15 of family leave ~~or~~, medical leave, or family military leave.

16 **SECTION 23.** 103.10 (10) of the statutes is amended to read:

17 103.10 **(10)** ALTERNATIVE EMPLOYMENT. Nothing in this section prohibits an  
18 employer and an employee with a serious health condition from mutually agreeing  
19 to alternative employment for the employee while the serious health condition lasts.  
20 No period of alternative employment, with the same employer, reduces the  
21 employee's right to family leave ~~or~~, medical leave, or family military leave.

22 **SECTION 24.** 103.10 (12) (d) of the statutes is amended to read:

23 103.10 **(12)** (d) The department shall issue its decision and order within 30 days  
24 after the hearing. If the department finds that an employer violated sub. (11) (a) or  
25 (b), it may order the employer to take action to remedy the violation, including

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1 providing the requested family leave ~~or~~, medical leave, or family military leave,  
2 reinstating an employee, providing back pay accrued not more than 2 years before  
3 the complaint was filed, and paying reasonable actual attorney fees to the  
4 complainant.

5 **SECTION 25.** 108.04 (1) (b) 3. (intro.) of the statutes is amended to read:

6 108.04 (1) (b) 3. (intro.) While the employee is on family or medical leave under  
7 the federal family and medical leave act Family and Medical Leave Act of 1993 (~~P.L.~~  
8 ~~103-3~~), 29 USC 2601 to 2654, or s. 103.10 or family military leave under s. 103.10,  
9 and except as provided in par. (c), until whichever of the following occurs first:

10 **SECTION 26.** 108.04 (1) (c) of the statutes is amended to read:

11 108.04 (1) (c) If a leave of absence under par. (b) 2. or a family ~~or~~, or  
12 family military leave under par. (b) 3. is granted to an employee for a portion of a  
13 week, if an employee is absent for only a portion of the available work in a week due  
14 to a suspension under par. (b) 1., or if an employee is absent for only a portion of the  
15 available work in a week in which a termination under par. (b) 1. occurs, the  
16 employee's eligibility for benefits for that partial week shall be reduced by the  
17 amount of wages that the employee could have earned in his or her work had the  
18 leave not been granted or had the suspension or termination not occurred. For  
19 purposes of this paragraph, the department shall treat the amount the employee  
20 would have earned as wages in that work for that week as wages earned by the  
21 employee and shall apply the method specified in s. 108.05 (3) (a) to compute the  
22 benefits payable to the employee. The department shall estimate the wages that an  
23 employee would have earned for a partial week if it is not possible to compute the  
24 exact amount of wages that the employee would have earned for that partial week.

25 **SECTION 27.** 111.91 (2) (f) of the statutes is amended to read:



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1           111.91 (2) (f) Family leave and medical leave rights below the minimum  
2           afforded under the federal Family and Medical Leave Act of 1993, 29 USC 2601 to  
3           2654, and s. 103.10 and family military leave rights below the minimum afforded  
4           under s. 103.10. Nothing in this paragraph prohibits the employer from bargaining  
5           on rights to family leave or medical leave ~~which~~ that are more generous to the  
6           employee than the rights provided under the federal Family and Medical Leave Act  
7           of 1993, 29 USC 2601 to 2654, and s. 103.10 and on rights to family military leave  
8           that are more generous to the employee than the rights provided under s. 103.10.

9           **SECTION 28.** 230.35 (2m) of the statutes is amended to read:

10           230.35 (2m) An employee shall be eligible for medical or family leave under s.  
11           103.10 upon the expiration, extension, or renewal of any collective bargaining  
12           agreement in effect on April 26, 1988, ~~which~~ that covers the employee. An employee  
13           shall be eligible for family military leave under s. 103.10 upon the expiration,  
14           extension, or renewal of any collective bargaining agreement in effect on the effective  
15           date of this subsection ... [revisor inserts date], that covers the employee.

16           **SECTION 29.** 893.96 (title) of the statutes is repealed and recreated to read:

17           **893.96 (title) Family, medical, and family military leave; civil remedies.**

18           **SECTION 30. Initial applicability.**

19           (1) This act first applies to an employee, as defined in section 103.10 (1) (b) of  
20           the statutes, who is affected by a collective bargaining agreement that contains  
21           provisions inconsistent with this act on the day on which the collective bargaining  
22           agreement expires or is extended, modified, or renewed, whichever occurs first.

23           **SECTION 31. Effective date.**

