

**2007 DRAFTING REQUEST**

**Bill**

Received: **03/09/2007**

Received By: **gmalaise**

Wanted: **Soon**

Identical to LRB:

For: **Kathleen Vinehout (608) 266-8546**

By/Representing: **Linda kleinschmidt**

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

Drafter: **gmalaise**

May Contact:

Addl. Drafters:

Subject: **Employ Priv - family leave**

Extra Copies:

Submit via email: **YES**

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

Carbon copy (CC:) to:

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**Pre Topic:**

No specific pre topic given

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**Topic:**

Family military leave

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**Instructions:**

See Attached--draft up WI version of IL PL 094-0589 requiring employers to grant up to 30 days of leave when an employee's spouse or child is called into active service

---

**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 03/09/2007	kfollett 03/14/2007		_____			S&L
/1			jfrantze 03/15/2007	_____	sbasford 03/15/2007		S&L
/2	gmalaise 03/21/2007	kfollett 03/21/2007	sherritz 03/21/2007	_____	sbasford 03/21/2007	cduerst 04/30/2007	

FE Sent For: AT INTRO.

<END>

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/1		12kjf 3/24	jfrantze 03/15/2007		sbasford 03/15/2007		
			Ah 3/21	Dh/mn 3/21			

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/?	gmalaise	1/1/gjf 3/14		J Self 3/15			

FE Sent For:

<END>

## Malaise, Gordon

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**From:** Nelson, Robert P.  
**Sent:** Friday, March 09, 2007 11:58 AM  
**To:** Malaise, Gordon  
**Subject:** FW: Message for Robert Nelson

**Attachments:** Illinois General Assembly - Full Text of Public Act 094-0589.htm

Here it is.

---

**From:** Duerst, Christina  
**Sent:** Friday, March 09, 2007 11:24 AM  
**To:** Nelson, Robert P.  
**Subject:** FW: Message for Robert Nelson

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**From:** Kleinschmidt, Linda  
**Sent:** Friday, March 09, 2007 11:22 AM  
**To:** LRB.Legal  
**Subject:** Message for Robert Nelson

Hi Robert,

I am not sure if this request should go to you or someone else on staff but I thought I would start with you. Sen. Vinehout would like to have the attached language of the Family Military Leave proposal drafted. This language comes from Illinois and allows employees to take unpaid leave to be with a family member who is called to more than one month of active duty before that individual is shipped out. Please let me know if you have any questions.

Thank you.

**Linda Kleinschmidt**  
**Senior Legislative Aide**  
Office of State Senator Kathleen Vinehout  
104 South State Capitol - PO Box 7882  
Madison, WI 53707-7882  
608-266-8546  
1-877-763-6636



Illinois General  
Assembly - Fu...

**Public Act 094-0589**

SB1627 Enrolled

LRB094 10133 RXD 40395 b

AN ACT concerning employment.

**Be it enacted by the People of the State of Illinois,  
represented in the General Assembly:**

Section 1. Short title. This Act may be cited as the Family Military Leave Act.

Section 5. Definitions. In this Act:

"Employee" means any person who may be permitted, required, or directed by an employer in consideration of direct or indirect gain or profit to engage in any employment. "Employee" does include an independent contractor. "Employee" includes an employee of a covered employer who has been employed by the same employer for at least 12 months, and has been employed for at least 1,250 hours of service during the 12-month period immediately preceding the commencement of the leave.

"Employee benefits" means all benefits, other than salary and wages, provided or made available to employees by an employer and includes group life insurance, health insurance, disability insurance and pensions, regardless of whether benefits are provided by a policy or practice of an employer.

"Employer" means (1) any person, partnership, corporation, association, or other business entity; and (2) the State of Illinois, municipalities and other units of local government.

"Family military leave" means leave requested by an employee who is the spouse or parent of a person called to military service lasting longer than 30 days with the State or United States pursuant to the orders of the Governor or the President of the United States.

Section 10. Family Military Leave Requirement.

(a) Any employer, as defined in Section 5 of this Act, that employs between 15 and 50 employees shall provide up to 15 days of unpaid family military leave to an employee during the time federal or State deployment orders are in effect, subject to the conditions set forth in this Section. Family military leave granted under this Act may consist of unpaid leave.

(b) An employer, as defined in Section 5 of this Act, that employs more than 50 employees shall provide up to 30 days of unpaid family military leave to an employee during the time federal or State deployment orders are in effect, subject to the conditions set forth in this Section. Family military leave granted under this Act may consist of unpaid leave.

(c) The employee shall give at least 14 days notice of the intended date upon which the family military leave will commence if leave will consist of 5 or more consecutive work days. Where able, the employee shall consult with the employer to schedule the leave so as to not unduly disrupt the operations of the employer. Employees taking military family leave for less than 5 consecutive days shall give the employer advanced notice as is practicable. The employer may require certification from the proper military authority to verify the employee's eligibility for the family military leave requested.

(d) An employee shall not take leave as provided under this



Act unless he or she has exhausted all accrued vacation leave, personal leave, compensatory leave, and any other leave that may be granted to the employee, except sick leave and disability leave.

Section 15. Employee benefits protection.

(a) Any employee who exercises the right to family military leave under this Act, upon expiration of the leave, shall be entitled to be restored by the employer to the position held by the employee when the leave commenced or to a position with equivalent seniority status, employee benefits, pay and other terms and conditions of employment. This Section does not apply if the employer proves that the employee was not restored as provided in this Section because of conditions unrelated to the employee's exercise of rights under this Act.

(b) During any family military leave taken under this Act, the employer shall make it possible for employees to continue their benefits at the employee's expense. The employer and employee may negotiate for the employer to maintain benefits at the employer's expense for the duration of the leave.

Section 20. Effect on existing employee benefits.

(a) Taking family military leave under this Act shall not result in the loss of any employee benefit accrued before the date on which the leave commenced.

(b) Nothing in this Act shall be construed to affect an employer's obligation to comply with any collective bargaining agreement or employee benefit plan that provides greater leave rights to employees than the rights provided under this Act.

(c) The family military leave rights provided under this Act shall not be diminished by any collective bargaining agreement or employee benefit plan.

(d) Nothing in this Act shall be construed to affect or diminish the contract rights or seniority status of any other employee of any employer covered under this Act.

Section 25. Prohibited acts.

(a) An employer shall not interfere with, restrain, or deny the exercise or the attempt to exercise any right provided under this Act.

(b) An employer shall not discharge, fine, suspend, expel, discipline or in any other manner discriminate against any employee that exercises any right provided under this Act.

(c) An employer shall not discharge, fine, suspend, expel, discipline or in any other manner discriminate against any employee for opposing any practice made unlawful by this Act.

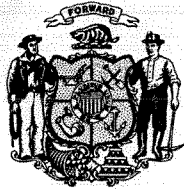
Section 30. Enforcement. A civil action may be brought in the circuit court having jurisdiction by an employee to enforce this Act. The circuit court may enjoin any act or practice that violates or may violate this Act and may order any other equitable relief that is necessary and appropriate to redress the violation or to enforce this Act.

Section 99. Effective date. This Act takes effect upon becoming law.

**Effective Date: 8/15/2005**

Floor Actions

Date	Action
8/15/2005	Public Act .....094-0589



State of Wisconsin  
2007 - 2008 LEGISLATURE

LRB-2195/7

GMM. kf

son

Gen

**AN ACT ...; relating 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 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 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 may not take family military leave unless the employee has first exhausted all vacation leave, personal leave, and compensatory time that the employee has accrued and any other leave that may be granted to the employee, except sick leave and disability leave, and may not 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:***

SECTION 1. 103.10 (title) of the statutes is amended to read:

103.10 (title) **Family ~~or~~, medical, and family military leave.**

SECTION 2. 103.10 (1) (a) of the statutes is renumbered 103.10 (1) (ag).

SECTION 3. 103.10 (1) (ad) of the statutes is created to read:

103.10 (1) (ad) "Active service" means active service for 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.

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

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

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

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

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

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

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

103.10 (2) (a) Nothing in this section prohibits an employer from providing employees with rights to family leave or, medical leave which, or family military leave that are more generous to the employee than the rights provided under this section.

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

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

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

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

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

**SECTION 10.** 103.10 (5) (c) of the statutes is created to read:

103.10 (5) (c) An employee may not take family military leave unless the employee has first exhausted all vacation leave, personal leave, and compensatory time that the employee has accrued and any other leave that may be granted to the employee, except sick leave and disability leave. An employee may not substitute, for portions of family military leave, paid or unpaid leave of any other type provided by the employer.

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

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

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

103.10 (7) (am) If an employee requests family military leave, the employer may require the employee to provide certification issued by the proper military

authority verifying that the spouse or child of the employer is in a period of active service.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

103.10 (9) (b) Subject to par. (c), during a period an employee takes family leave ~~or, medical leave, or family military leave~~, his or her employer shall maintain group health insurance coverage under the conditions that applied immediately before the family leave ~~or, medical leave, or family military leave~~ began. If the employee continues making any contribution required for participation in the group health insurance plan, the employer shall continue making group health insurance premium contributions as if the employee had not taken the family leave ~~or, medical leave, or family military leave~~.

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

103.10 (9) (c) 4. If an employee ends his or her employment with an employer during or within 30 days after a period of family leave ~~or, medical leave, or family military leave~~, the employer may deduct from the amount returned to the employee

under subd. 3. any premium or similar expense paid by the employer for the employee's group health insurance coverage while the employee was on family leave or, medical leave, or family military leave.

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

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

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

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

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

103.10 (12) (d) The department shall issue its decision and order within 30 days after the hearing. If the department finds that an employer violated sub. (11) (a) or (b), it may order the employer to take action to remedy the violation, including providing the requested family leave or, medical leave, or family military leave, reinstating an employee, providing back pay accrued not more than 2 years before the complaint was filed, and paying reasonable actual attorney fees to the complainant.

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



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

**History:** 1971 c. 40, 42, 53, 211; 1973 c. 247; 1975 c. 24, 343; 1977 c. 127, 133, 286, 418; 1979 c. 52, 176; 1981 c. 28, 36, 315, 391; 1983 a. 8, 27, 99, 168; 1983 a. 189 s. 329 (28); 1983 a. 337, 384, 468, 538; 1985 a. 17, 29, 40; 1987 a. 38 ss. 23 to 59, 107, 136; 1987 a. 255, 287, 403; 1989 a. 77; 1991 a. 89; 1993 a. 112, 122, 373, 492; 1995 a. 118, 417, 448; 1997 a. 35, 39; 1999 a. 9, 15, 83; 2001 a. 35; 2003 a. 197; 2005 a. 86.

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

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

**History:** 1971 c. 40, 42, 53, 211; 1973 c. 247; 1975 c. 24, 343; 1977 c. 127, 133, 286, 418; 1979 c. 52, 176; 1981 c. 28, 36, 315, 391; 1983 a. 8, 27, 99, 168; 1983 a. 189 s. 329 (28); 1983 a. 337, 384, 468, 538; 1985 a. 17, 29, 40; 1987 a. 38 ss. 23 to 59, 107, 136; 1987 a. 255, 287, 403; 1989 a. 77; 1991 a. 89; 1993 a. 112, 122, 373, 492; 1995 a. 118, 417, 448; 1997 a. 35, 39; 1999 a. 9, 15, 83; 2001 a. 35; 2003 a. 197; 2005 a. 86.

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

111.91 (2) (f) Family leave and medical leave rights below the minimum afforded under the federal Family and Medical Leave Act of 1993, 29 USC 2601 to 2654, and s. 103.10 and family military leave rights below the minimum afforded

under s. 103.10. Nothing in this paragraph prohibits the employer from bargaining on rights to family leave or medical leave which ~~that~~ are more generous to the employee than the rights provided under the federal Family and Medical Leave Act of 1993, 29 USC 2601 to 2654, and s. 103.10 and on rights to family military leave that are more generous to the employee than the rights provided under s. 103.10.

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

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

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

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

**SECTION 30. Initial applicability.**

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

**SECTION 31. Effective date.**

(1) This act takes effect on the first day of the 6th month beginning after publication.

(END)

3/21 Linda Klenschmidt

① Permit soldier, himself, to take family  
military leave (not just spouse or parent of soldier)

② Take out requirement that employee exhaust all other  
leave

- instead permit substitution, paid or unpaid,

like for family & medical leave