



**SENATE SUBSTITUTE AMENDMENT 1,
TO 2009 ASSEMBLY BILL 116**

April 21, 2010 – Offered by Senator VINEHOUT.

1 **AN ACT** *to amend* 36.11 (17) (b), 111.322 (2m) (a), 111.322 (2m) (b), 111.91 (2) (f),
2 111.998 (2) (c), 230.35 (2), 230.35 (2m) and 253.10 (3) (d) 1.; and *to create* 103.11
3 and 893.963 of the statutes; **relating to:** school activities leave.

Analysis by the Legislative Reference Bureau

Under current law, an employer, including the state, employing at least 50 individuals on a permanent basis in this state 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 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. An employee who intends to take family or medical leave for the birth or adoptive placement of a child or for planned medical treatment must give the employer advance notice of the birth or adoptive placement or planned medical treatment. In addition, for planned medical treatment, the employee must make a reasonable effort to schedule the medical treatment so that it does not unduly disrupt the operations of the employer.

This substitute amendment allows *any* employee of an employer, including the state, employing at least 50 individuals on a permanent basis in this state to take no more than 40 hours of leave in a 12-month period to attend school activities of the employee's child, but allows an employee to take no more than eight of those hours in any given month. Under the substitute amendment, an employee must use accrued vacation leave, personal leave, compensatory time off, or any other leave or time off that may be granted to the employee for purposes of school activities leave, except that an employee may not use sick leave or disability leave for purposes of school activities leave. An employee may also use unpaid leave for purposes of school activities leave, if permitted by his or her employer. An employee who intends to take leave to attend a school activity must give the employer advance notice of the activity and must make a reasonable effort to schedule the activity so that it does not unduly disrupt the operations of the employer. When an employee returns from school activities leave, the employer may require the employee to provide, in a reasonable and practicable manner, documentation from his or her child's school stating no more than that the employee was attending a school activity on a specific date and at a particular time.

For purposes of the substitute amendment, "child" includes, in addition to a natural child, an adopted or foster child, a stepchild, a legal ward, or a grandchild in the legal custody of his or her grandparent, and "school" includes, in addition to a public or private school that provides an educational program for one or more grades between kindergarten and 12, a child care provider or a public or private preschool or prekindergarten.

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

1 **SECTION 1.** 36.11 (17) (b) of the statutes is amended to read:

2 36.11 (17) (b) Only one sabbatical leave may be granted for each 6 years of
3 full-time instructional service in the system with preference given to those who have
4 been making significant contributions to teaching and have not had a leave of
5 absence except under s. 103.10 or 103.11, regardless of source of funding, in the
6 previous 4 years.

7 **SECTION 2.** 103.11 of the statutes is created to read:

8 **103.11 School activities leave. (1) DEFINITIONS.** In this section:

1 (a) “Child” means a natural, adopted, or foster child, a stepchild, a legal ward,
2 or a grandchild in the legal custody of his or her grandparent who is enrolled in a
3 school.

4 (b) “Employee” has the meaning given in s. 103.10 (1) (b).

5 (c) “Employer” has the meaning given in s. 103.10 (1) (c).

6 (d) “School” means a child care provider, as defined in s. 49.001 (1), a public or
7 private preschool or prekindergarten, or a public or private school that provides an
8 educational program for one or more grades between kindergarten and 12 and that
9 is commonly known as a kindergarten, elementary school, middle school, junior high
10 school, senior high school, or high school.

11 **(2) SCOPE.** Nothing in this section prohibits an employer from providing
12 employees with rights to school activities leave that are more generous to the
13 employee than the rights provided under this section.

14 **(3) SCHOOL ACTIVITIES LEAVE.** (a) Subject to pars. (b) to (d) and sub. (4), an
15 employee may take no more than 40 hours of school activities leave in a 12-month
16 period to attend school activities relating to the employee’s child, but may take no
17 more than 8 of those hours in any given month.

18 (b) An employee shall use accrued vacation leave, personal leave,
19 compensatory time off, or any other leave or time off that may be granted to the
20 employee for purposes of school activities leave, except that an employee may not use
21 sick leave or disability leave for purposes of school activities leave. An employee may
22 also use unpaid leave for purposes of school activities leave, if permitted by his or her
23 employer.

24 (c) If more than one employee employed by the same employer at the same
25 worksite is entitled to take school activities leave relating to the same child, only one

1 of those employees may take school activities leave relating to that child at any one
2 time, unless the employer permits otherwise.

3 (d) If an employer provides all of its permanent, full-time employees with
4 vacation leave that occurs at the same time, an employee may not use that accrued
5 vacation leave at any other time for purposes of school activities leave.

6 **(4) NOTICE TO EMPLOYER.** If an employee intends to take leave under sub. (3) for
7 the purpose of attending a school activity, the employee shall do all of the following:

8 (a) Make a reasonable effort to schedule the activity so that it does not unduly
9 disrupt the employer's operations.

10 (b) Give the employer advance notice of the activity in a reasonable and
11 practicable manner.

12 **(5) DOCUMENTATION.** When an employee returns from school activities leave,
13 the employer may require the employee to provide, in a reasonable and practicable
14 manner, documentation from his or her child's school stating no more than that the
15 employee was attending a school activity on a specific date and at a particular time.
16 The documentation shall consist of such written verification of the employee's
17 attendance at the school activity as the school considers to be reasonable and
18 appropriate.

19 **(6) EMPLOYEE BENEFITS.** No employer may reduce or deny an employment
20 benefit, as defined in s. 103.10 (1) (d), that has accrued to an employee because the
21 employee took school activities leave.

22 **(7) PROHIBITED ACTS.** (a) No person may interfere with, restrain, or deny the
23 exercise of any right provided under this section.

24 (b) No person may discharge or in any other manner discriminate against any
25 individual for opposing a practice prohibited under sub. (6).

1 (c) Section 111.322 (2m) applies to discharge or other discriminatory acts
2 arising in connection with any proceeding under this section.

3 **(8) ADMINISTRATIVE PROCEEDING.** (a) An employee who believes his or her
4 employer has violated sub. (7) (a) or (b) may, within 30 days after the violation occurs
5 or the employee should reasonably have known that the violation occurred,
6 whichever is later, file a complaint with the department alleging the violation.
7 Except as provided in par. (b), the department shall investigate the complaint, shall
8 attempt to resolve the complaint by conference, conciliation, or persuasion, and, if
9 the complaint is not resolved, shall determine whether there is probable cause to
10 believe a violation has occurred.

11 (b) The department shall waive the investigation and determination of
12 probable cause of any complaint that is filed by a complainant under par. (a) at the
13 complainant's request. If the department waives the investigation and probable
14 cause determination, the department shall proceed with a hearing on the complaint
15 as provided in par. (c). The department's waiver of an investigation and probable
16 cause determination does not affect the department's right to attempt to resolve the
17 complaint by conference, conciliation, or persuasion.

18 (c) If the complaint is not resolved and the department finds probable cause to
19 believe a violation has occurred or waives the investigation and probable cause
20 determination, the department shall proceed with notice and a hearing on the
21 complaint as provided in ch. 227. The hearing shall be held within 60 days after the
22 department receives the complaint.

23 (d) The department shall issue its decision and order within 30 days after the
24 hearing. If the department finds that an employer violated sub. (7) (a) or (b), the
25 department may order the employer to take action to remedy the violation, including

1 providing the requested school activities leave, reinstating an employee, providing
2 back pay accrued not more than 2 years before the complaint was filed, and paying
3 reasonable actual attorney fees to the complainant.

4 **(9) CIVIL ACTION.** (a) An employee or the department may bring an action in
5 circuit court against an employer to recover damages caused by a violation of sub. (7)
6 after the completion of an administrative proceeding, including judicial review,
7 concerning the same violation.

8 (b) An action under par. (a) shall be commenced within the later of the following
9 periods, or be barred:

10 1. Sixty days after the completion of an administrative proceeding, including
11 judicial review, concerning the same violation.

12 2. Twelve months after the violation occurred or the department or employee
13 should reasonably have known that the violation occurred.

14 **(10) POSTING OF NOTICE.** Each employer shall post, in one or more conspicuous
15 places where notices to employees are customarily posted, a notice in a form
16 approved by the department setting forth employees' rights under this section.

17 **SECTION 3.** 111.322 (2m) (a) of the statutes, as affected by 2009 Wisconsin Act
18 182, section 9, is amended to read:

19 111.322 **(2m)** (a) The individual files a complaint or attempts to enforce any
20 right under s. 103.02, 103.10, 103.11, 103.13, 103.28, 103.32, 103.34, 103.455,
21 103.50, 104.12, ~~106.04~~, 109.03, 109.07, 109.075, or 146.997 or ss. 101.58 to 101.599
22 or 103.64 to 103.82.

23 **SECTION 4.** 111.322 (2m) (b) of the statutes, as affected by 2009 Wisconsin Act
24 182, section 9, is amended to read:

1 111.322 **(2m)** (b) The individual testifies or assists in any action or proceeding
2 held under or to enforce any right under s. 103.02, 103.10, 103.11, 103.13, 103.28,
3 103.32, 103.34, 103.455, 103.50, 104.12, ~~106.04~~, 109.03, 109.07, 109.075, or 146.997
4 or ss. 101.58 to 101.599 or 103.64 to 103.82.

5 **SECTION 5.** 111.91 (2) (f) of the statutes is amended to read:

6 111.91 **(2)** (f) Family leave and medical leave rights below the minimum
7 afforded under s. 103.10 and school activities leave rights below the minimum
8 afforded under s. 103.11. Nothing in this paragraph prohibits the employer from
9 bargaining on rights to family leave or medical leave ~~which~~ that are more generous
10 to the employee than the rights provided under s. 103.10 or from bargaining on rights
11 to school activities leave that are more generous to the employee than the rights
12 provided under s. 103.11.

13 **SECTION 6.** 111.998 (2) (c) of the statutes, as created by 2009 Wisconsin Act 28,
14 is amended to read:

15 111.998 **(2)** (c) Family leave and medical leave rights below the minimum
16 afforded under s. 103.10 and school activities leave rights below the minimum
17 afforded under s. 103.11. Nothing in this paragraph prohibits the board from
18 bargaining on rights to family leave or medical leave ~~which~~ that are more generous
19 to the employee than the rights provided under s. 103.10 or from bargaining on rights
20 to school activities leave that are more generous to the employee than the rights
21 provided under s. 103.11.

22 **SECTION 7.** 230.35 (2) of the statutes is amended to read:

23 230.35 **(2)** Leave of absence with pay owing to sickness and leave of absence
24 without pay, other than annual leave and leave under s. 103.10 or 103.11, shall be
25 regulated by rules of the director, except that unused sick leave shall accumulate

1 from year to year. After July 1, 1973, employees appointed to career executive
2 positions under the program established under s. 230.24 or positions designated in
3 s. 19.42 (10) (L) or 20.923 (4), (7), (8), and (9) or authorized under s. 230.08 (2) (e) shall
4 have any unused sick leave credits restored if they are reemployed in a career
5 executive position or in a position under s. 19.42 (10) (L) or 20.923 (4), (7), (8), and
6 (9) or authorized under s. 230.08 (2) (e), regardless of the duration of their absence.
7 Restoration of unused sick leave credits if reemployment is to a position other than
8 those specified above shall be in accordance with rules of the director.

9 **SECTION 8.** 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 school activities leave under s. 103.11 upon the expiration,
14 extension, or renewal of any collective bargaining agreement in effect on the effective
15 date of this subsection ... [LRB inserts date].

16 **SECTION 9.** 253.10 (3) (d) 1. of the statutes is amended to read:

17 253.10 **(3)** (d) 1. Geographically indexed materials that are designed to inform
18 a woman about public and private agencies, including adoption agencies, and
19 services that are available to provide information on family planning, as defined in
20 s. 253.07 (1) (a), including natural family planning information, to provide
21 ultrasound imaging services, to assist her if she has received a diagnosis that her
22 unborn child has a disability or if her pregnancy is the result of sexual assault or
23 incest and to assist her through pregnancy, upon childbirth and while the child is
24 dependent. The materials shall include a comprehensive list of the agencies
25 available, a description of the services that they offer, and a description of the

1 manner in which they may be contacted, including telephone numbers and
2 addresses, or, at the option of the department, the materials shall include a toll-free,
3 24-hour telephone number that may be called to obtain an oral listing of available
4 agencies and services in the locality of the caller and a description of the services that
5 the agencies offer and the manner in which they may be contacted. The materials
6 shall provide information on the availability of governmentally funded programs
7 that serve pregnant women and children. Services identified for the woman shall
8 include medical assistance for pregnant women and children under s. 49.47 (4) (am)
9 and 49.471, the availability of family or medical leave under s. 103.10 and school
10 activities leave under s. 103.11, the Wisconsin ~~works~~ Works program under ss.
11 49.141 to 49.161, child care services, child support laws and programs, and the credit
12 for expenses for household and dependent care and services necessary for gainful
13 employment under section 21 of the ~~internal revenue code~~ Internal Revenue Code.
14 The materials shall state that it is unlawful to perform an abortion for which consent
15 has been coerced, that any physician who performs or induces an abortion without
16 obtaining the woman's voluntary and informed consent is liable to her for damages
17 in a civil action and is subject to a civil penalty, that the father of a child is liable for
18 assistance in the support of the child, even in instances in which the father has
19 offered to pay for an abortion, and that adoptive parents may pay the costs of
20 prenatal care, childbirth and neonatal care. The materials shall include
21 information, for a woman whose pregnancy is the result of sexual assault or incest,
22 on legal protections available to the woman and her child if she wishes to oppose
23 establishment of paternity or to terminate the father's parental rights. The
24 materials shall state that fetal ultrasound imaging and auscultation of fetal heart

1 tone services are obtainable by pregnant women who wish to use them and shall
2 describe the services.

3 **SECTION 10.** 893.963 of the statutes is created to read:

4 **893.963 School activities leave; civil remedies.** Any civil action arising
5 under s. 103.11 (9) (a) is subject to the limitations of s. 103.11 (9) (b).

6 **SECTION 11. Initial applicability.**

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

11 **SECTION 12. Effective date.**

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

14 (END)