

State of Wisconsin



2009 Assembly Bill 132

Date of enactment: **October 28, 2009**
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2009 WISCONSIN ACT 56

AN ACT to create 106.54 (8), 111.91 (2) (gr) and 321.66 of the statutes; **relating to:** a requirement that an employer grant an unpaid leave of absence to allow an employee to participate in an emergency service operation of the Civil Air Patrol and prohibiting discrimination in employment based on Civil Air Patrol membership.

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

SECTION 1. 106.54 (8) of the statutes is created to read:

106.54 (8) The division shall receive complaints under s. 321.66 (5) and shall process the complaints in the same manner that employment discrimination complaints are processed under s. 111.39.

SECTION 2. 111.91 (2) (gr) of the statutes is created to read:

111.91 (2) (gr) The right of an employee to take leave to participate in an emergency service operation of the Civil Air Patrol under s. 321.66 (2) (a).

SECTION 3. 321.66 of the statutes is created to read:

321.66 Leave for Civil Air Patrol service. (1) DEFINITIONS. In this section:

(a) "Emergency service operation" means any of the following operations of the Civil Air Patrol:

1. A search and rescue mission designated by the U.S. air force rescue coordination center; the governor; the adjutant general; or the governing body, chief or acting chief executive officer, or head of emergency management services of any county, city, village, town, or federally recognized American Indian tribe or band in this state.

2. An operation to provide disaster relief or humanitarian services, when requested by the federal emergency management agency; the first air force of the U.S. air force; the Civil Air Patrol national operations center; the governor; the adjutant general; the governing body, chief or acting chief executive officer, or head of emergency management services of any county, city, village, town, or federally recognized American Indian tribe or band in this state; or, in the case of a public health emergency, as defined in s. 166.02 (7), the department of health services, if that department is designated by the governor under s. 166.03 (1) (b) 1., or a local health department acting under s. 251.05 (3) (e).

3. Operations in support of the U.S. air force designated by the first air force of the U.S. air force or the Civil Air Patrol national operations center.

(b) "Employee" means an individual employed in this state by an employer.

(c) "Employee's commander" means the Civil Air Patrol commanding officer of the flight, squadron, group, wing, or region to which the employee is assigned, the Civil Air Patrol national commander, or the Civil Air Patrol incident commander or agency liaison for the emergency service operation for which the employee has taken a leave of absence under sub. (2) (a).

* Section 991.11, WISCONSIN STATUTES 2007-08 : Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication as designated" by the secretary of state [the date of publication may not be more than 10 working days after the date of enactment].

(d) "Employer" means a person engaging in any activity, enterprise, or business in this state employing at least 11 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.

(2) UNPAID LEAVE REQUIRED. (a) Subject to the limitations specified in par. (b), an employer shall grant a leave of absence without pay to an employee to allow the employee to participate in an emergency service operation if all of the following conditions are met:

1. The employee is a member of the Civil Air Patrol.
2. Prior to the emergency service operation, the employee notifies the employer in writing that the employee is a member of the Civil Air Patrol.

3. For an emergency service operation that begins before the employee is required to report for work, the employee provides a written statement under par. (c) if required by the employer.

4. For an emergency service operation that begins after the employee reports for work, the employee, in addition to providing a written statement under par. (c) if required by the employer, secures authorization from the employer to leave work before leaving to participate in the emergency service operation.

5. The leave of absence does not unduly disrupt the operations of the employer.

(b) No employee may take more than 5 consecutive workdays of leave under par. (a) or more than 15 days of leave under par. (a) in any year.

(c) An employer that grants a leave of absence under par. (a) to an employee may require the employee to provide a written statement from the employee's commander, or the designated representative of the employee's commander, certifying that the employee was participating in an emergency service operation at the time of the leave of absence.

(d) For purposes of determining seniority and pay advancement, and for the receipt of employment benefits that may be affected by a leave of absence, the status of an employee who takes a leave of absence under par. (a) shall be considered to be uninterrupted by the leave of absence.

(3) DISCRIMINATION BASED ON CIVIL AIR PATROL MEMBERSHIP PROHIBITED. No employer or other person may do any of the following:

(a) Refuse to hire or employ an individual, terminate an individual from employment, or discriminate against an individual in promotion, in compensation, or in the

terms, conditions, or privileges of employment because the individual is or applies to be a member of the Civil Air Patrol or because the individual performs, has performed, applies to perform, or has an obligation to perform service in the Civil Air Patrol.

(b) Print or circulate or cause to be printed or circulated any statement, advertisement, or publication, or use any form or application for employment, or make any inquiry in connection with prospective employment, that implies or expresses any limitation, specification, or discrimination with respect to an individual or any intent to make such a limitation, specification, or discrimination because the individual is or applies to be a member of the Civil Air Patrol or because the individual performs, has performed, applies to perform, or has an obligation to perform service in the Civil Air Patrol.

(4) PROHIBITED ACTS. (a) No employer or other person may interfere with, restrain, or deny the exercise of the right of an employee to take a leave of absence as provided in sub. (2) (a).

(b) No employer or other person may discharge or discriminate against an employee in promotion, in compensation, or in the terms, conditions, or privileges of employment for taking a leave of absence as provided in sub. (2) (a), opposing a practice prohibited under this section, filing a complaint or attempting to enforce any right under this section, or testifying or assisting in any action or proceeding to enforce any right under this section.

(5) ENFORCEMENT. An employee whose right to take a leave of absence under sub. (2) (a) is interfered with, restrained, or denied in violation of sub. (4) (a) or who is refused employment, terminated, discharged, or discriminated against in violation of sub. (3) or (4) (b) may file a complaint with the department of workforce development, and that department shall process the complaint in the same manner that employment discrimination complaints are processed under s. 111.39. If that department finds that an employer or other person has violated sub. (3) or (4) (a) or (b), it may order the employer or other person to take action to remedy the violation, including granting the leave of absence under sub. (2) (a), reinstating the employee, providing compensation in lieu of reinstatement, providing back pay accrued not more than 2 years before the complaint was filed, and paying reasonable actual costs and attorney fees to the complainant.

SECTION 4. Initial applicability.

(1) This act first applies to an employee 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.