



2009 ASSEMBLY BILL 132

March 9, 2009 – Introduced by Representatives HUEBSCH, MURTHA, PASCH, SUDER, SCHNEIDER, MURSAU, PETERSEN, GUNDERSON, TOWNSEND, KESSLER, SPANBAUER, VOS and LOTHIAN, cosponsored by Senators KAPANKE, VINEHOUT, TAYLOR and KEDZIE. Referred to Committee on State Affairs and Homeland Security.

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

Analysis by the Legislative Reference Bureau

Current law requires an employer to grant to an employee a leave of absence from employment without pay for certain purposes, including to vote, serve as an election official, serve on a jury, and testify in a criminal proceeding. Current law also requires a state agency to grant to a state employee a leave of absence with pay for certain purposes, including to serve as a bone marrow or organ donor, attend national guard or military reserves training, report for a preinduction physical for military service, serve on a jury, and compete in promotional examinations or interviews. In addition, current law permits a state agency to grant to a state employee a leave of absence with pay to allow the state employee to participate in providing specialized disaster relief services for the American Red Cross.

Moreover, current law prohibits discrimination in employment on the basis of military service, which includes refusing to hire or employ an individual, terminating an individual from employment, or discriminating 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 U.S. armed

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forces, the state defense force, the national guard, or any reserve component of the U.S. armed forces or because the individual performs, has performed, applies to perform, or has an obligation to perform service in the U.S. armed forces, the state defense force, the national guard, or any reserve component of the U.S. armed forces.

This bill requires an employer employing at least 11 individuals on a permanent basis to grant a leave of absence without pay of not more than five consecutive workdays or more than 15 workdays in a year to an employee to allow the employee to participate in an emergency service operation of the Civil Air Patrol, that is, a search and rescue mission, an operation to provide disaster relief or humanitarian services, or an operation in support of the U.S. air force, if all of the following apply:

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 from the employee's commander certifying that the employee was participating in an emergency service operation at the time of the leave of absence, 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 that written statement 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.

In addition, the bill prohibits discrimination in employment on the basis of membership in the Civil Air Patrol. Specifically, the bill prohibits an employer or any other person from: 1) refusing to hire or employ an individual, terminating an individual from employment, or discriminating 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; and 2) printing or circulating any statement, advertisement, or publication, or using any form or application for employment or making 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.

The bill also prohibits an employer or other person from interfering with, restraining, or denying the exercise of the right of an employee to take a leave of absence to participate in an emergency service operation of the Civil Air Patrol and from discharging or discriminating against an employee in promotion, in compensation, or in the terms, conditions, or privileges of employment for taking such a leave of absence; opposing a discharge or discrimination in violation of the bill;

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filing a complaint or attempting to enforce a right under the bill; or testifying or assisting in any action or proceeding to enforce a right under the bill.

An employee whose right to take a leave of absence to participate in an emergency service operation of the Civil Air Patrol is interfered with, restrained, or denied or who is refused employment, terminated, discharged, or discriminated against in violation of the bill may file a complaint with the Department of Workforce Development (DWD), and DWD must process the complaint in the same manner that employment discrimination complaints are processed under current law. If DWD finds that an employer or other person has interfered with, restrained, or denied the right of an employee to take a leave of absence to participate in an emergency service operation of the Civil Air Patrol or has refused employment to, terminated, discharged, or discriminated against an employee in violation of the bill, DWD may order the employer or other person to take action to remedy the violation, including granting that leave of absence, reinstating the employee, providing compensation in lieu of reinstatement, providing back pay accrued not more than two years before the complaint was filed, and paying reasonable actual costs and attorney fees to the complainant.

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

2 106.54 **(8)** The division shall receive complaints under s. 321.66 (5) and shall
3 process the complaints in the same manner that employment discrimination
4 complaints are processed under s. 111.39.

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

6 111.91 **(2)** (gr) The right of an employee to take leave to participate in an
7 emergency service operation of the Civil Air Patrol under s. 321.66 (2) (a).

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

9 **321.66 Leave for Civil Air Patrol service. (1) DEFINITIONS.** In this section:

10 (a) “Emergency service operation” means any of the following operations of the
11 Civil Air Patrol:

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

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

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

17 (b) “Employee” means an individual employed in this state by an employer.

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

23 (d) “Employer” means a person engaging in any activity, enterprise, or business
24 in this state employing at least 11 individuals on a permanent basis. “Employer”
25 includes the state and any office, department, independent agency, authority,

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1 institution, association, society, or other body in state government created or
2 authorized to be created by the constitution or any law, including the legislature and
3 the courts.

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

8 1. The employee is a member of the Civil Air Patrol.

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

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

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

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

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

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

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

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

7 (a) Refuse to hire or employ an individual, terminate an individual from
8 employment, or discriminate against an individual in promotion, in compensation,
9 or in the terms, conditions, or privileges of employment because the individual is or
10 applies to be a member of the Civil Air Patrol or because the individual performs, has
11 performed, applies to perform, or has an obligation to perform service in the Civil Air
12 Patrol.

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

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

24 (b) No employer or other person may discharge or discriminate against an
25 employee in promotion, in compensation, or in the terms, conditions, or privileges of

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1 employment for taking a leave of absence as provided in sub. (2) (a), opposing a
2 practice prohibited under this section, filing a complaint or attempting to enforce any
3 right under this section, or testifying or assisting in any action or proceeding to
4 enforce any right under this section.

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

17 **SECTION 4. Initial applicability.**

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

22 (END)