



State of Wisconsin  
2011 - 2012 LEGISLATURE



LRB-0678/1

GMM #A...

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- 1 AN ACT ...; relating to: conforming the state family and medical leave law to the
- 2 federal family and medical leave law and granting rule-making authority.

*Analysis by the Legislative Reference Bureau*

**Introduction**

This bill makes various changes to the Wisconsin family and medical leave law to conform that law to the federal family and medical leave law.

**Leave requirement**

\* **Coverage of leave requirement.** Under current law, an employer, including the state, that employs 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 weeks to take six weeks of family leave in a 12-month period for the birth or adoptive placement of a child or to care for a child, spouse, parent, or domestic partner of the employee or a parent of the spouse of the employee who has a serious health condition and two weeks of medical leave in a 12-month period when the employee has a serious health condition that makes the employee unable to perform the employee's employment duties.

(;)

This bill requires an employer that employs at least 50 individuals for each working day for 20 or more weeks in the current or preceding year and the state or a political subdivision of the state, regardless of the number of employees employed, (employer) to permit an employee who has been employed by the employer for at least 12 months and who has worked at least 1,250 hours for that employer during the preceding 12-months (employee) to take 12 weeks of family or medical leave in a 12-month period. The bill, however, excludes from coverage under the family or medical leave law an employee who works at a worksite with fewer than 50

employees if the employer employs fewer than 50 employees within 75 miles of the worksite.

**Service member family leave.** The bill requires an employer to permit an employee who is the spouse, child, parent, or next of kin of a member of the U.S. armed forces or veteran who is undergoing medical treatment, recuperation, or therapy for a serious injury or illness that was incurred or aggravated in the line of duty (covered service member) to take 26 weeks of leave in a single 12-month period to care for the covered service member (service member family leave).

**Family leave for active duty of family member.** The bill also requires an employer to permit an employee to take family leave because of any qualifying exigency, as determined by the Department of Workforce Development (DWD) by rule, arising out of the fact that the spouse, child, or parent of the employee is on deployment with the U.S. armed forces to a foreign country (covered active duty) or has been notified of an impending call or order to covered active duty (family leave for the active duty of a family member).

**Family leave for birth or placement of child.** Under current law, family leave for the birth or adoptive placement of a child must begin within 16 weeks after the birth or placement of the child. This bill eliminates the requirement as to when family leave for that purpose must begin and instead requires family leave for that purpose to end within 12 months after the birth or placement of a child. The bill also permits family leave for a foster care placement of a child and requires family leave for the birth of a child to be taken to care for the child.

**Family or medical leave for serious health condition.** This bill eliminates family leave to care for a domestic partner or spouse's parent who has a serious health condition, but permits family leave to care for an individual for whom the employee stands in the place of a parent or an individual who stood in the place of a parent of the employee when the employee was a child, without the employee having formally adopted or assumed guardianship of that individual or the individual having formally adopted or assumed guardianship of the employee. The bill also permits an employee to take medical leave when the employee has a serious health condition that makes the employee unable to perform the functions of his or her employment rather than the duties of that employment as under current law.

**Intermittent leave or leave on reduced schedule.** Under current law, an employee may take family leave as partial absence from employment, but must schedule that leave so that it does not unduly disrupt the employer's operations. This bill permits an employee to take family leave intermittently or on a reduced-leave schedule, that is, a schedule under which the employee's hours per day or per week are reduced, for the birth or adoptive placement of a child only if agreed to by the employer. The bill also permits an employee to take family, medical, or service member family leave intermittently or on a reduced-leave schedule when medically necessary due to a serious health condition of the employee or of a child, spouse, or parent or due to a serious injury or illness of a covered service member. In addition the bill permits an employee to take family leave for the active duty of a family member intermittently or on a reduced-leave schedule.

leave

Under current law, an employee with a serious health condition and the employer may agree to alternative employment for the employee while that condition lasts. This bill permits an employer to require an employee who requests intermittent leave or leave on a reduced-leave schedule that is foreseeable for planned medical treatment for the employee or for a child, spouse, parent, or covered service member to transfer temporarily to an alternative position that has equivalent pay and benefits and that better accommodates the employee's intermittent leave or leave on a reduced-leave schedule. \*

**Substitution of leave.** Under current law, an employee is not entitled to pay while on family or medical leave, but may substitute paid or unpaid leave of other types provided by the employer. This bill specifies that an employee may elect, or an employer may require the employee to substitute leave of other types for family, medical, or service member family leave as follows: \*

1. For family leave for the birth or placement of a child or to care for a child, spouse, or parent who has a serious health condition and for family leave for the active duty of a family member, paid vacation, personal, or family leave provided by the employer that the employee has accrued. ✓

2. For family leave to care for a child, spouse, or parent who has a serious health condition or for medical leave, paid vacation, personal, or sick leave provided by the employer that the employee has accrued, except that the employer is not required to provide paid sick leave when the employer does not normally provide that leave. ✓

3. For service member family leave, paid vacation, personal, family, or sick leave provided by the employer that the employee has accrued, except that the employer is not required to provide paid sick leave when the employer does not normally provide that leave. ✓

### **Notification and certification** ✓

**Notice to employer.** Under current law, an employee who intends to take family or medical leave for the birth or placement of a child or for planned medical treatment must give the employer advance notice of the birth or placement or planned medical treatment in a manner that is reasonable and practicable. This bill requires an employee to give the employer notice of the employee's intent to take that leave not less than 30 days before the leave is to begin in those situations that are foreseeable, except that if the date of the birth or placement or the planned medical treatment requires the leave to begin in less than 30 days, the employee must provide notice to the employer in a reasonable and practicable manner. \*

**Certification.** Under current law, if an employee requests leave due to a serious health condition of the employee, of a child, spouse, parent, or domestic partner of the employee, or of a parent of the spouse of the employee, the employer may require certification from a health care provider or a Christian Science practitioner stating that: 1) the child, spouse, parent, domestic partner, or employee has a serious health condition; 2) the date the serious health conditions commenced and its probable duration; 3) the medical facts regarding the serious health condition; and 4) if applicable, the extent to which the employee is unable to perform his or her employment duties. The employer may also require an employee to obtain \*

a <sup>second</sup> 2nd opinion, at the employer's expense, concerning the certification provided by the employee's health care provider. \*

This bill permits a certification to state, in addition to the information permitted under current law, all of the following: ✓

1. If the employee requests leave to care for a child, spouse, or parent who has a serious health condition, that the employee is needed to care for the child, spouse, or parent and an estimate of the amount of time that the employee is needed to provide that care. ✓

2. If the employee requests intermittent leave or leave on a reduced-leave schedule for planned medical treatment of the employee, or of a child, spouse, or parent of the employee, the dates on which that treatment is expected to be given and the duration of that treatment. ✓

3. If the employee requests intermittent leave or leave on a reduced-leave schedule to care for a child, spouse, or parent who has a serious health condition, that such leave is necessary for that care or will assist in the recovery of the child, spouse, or parent and the expected duration and schedule of that leave. ✓

4. If the employee requests intermittent leave or leave on a reduced-leave schedule for the employee's serious health condition, the medical necessity for that leave and the expected duration of that leave. ✓

5. If the employee requests medical leave for the employee's serious health condition, that the employee is unable to perform the functions of the employee's position, rather than a statement of the extent to which the employee is unable to perform his or her employment duties as under current law. ✓

The bill also specifies that a health care provider or Christian Science practitioner designated to provide a 2nd opinion may not be employed on a regular basis by the employer. In addition, the bill permits the employer to require the employee to obtain the opinion of a 3rd health care provider or Christian Science practitioner, designated or approved by the employee and employer jointly and paid for by the employer, if the original certification and 2nd opinion differ, and to obtain recertifications on a reasonable basis. The employer and employee must accept the 3rd opinion as binding upon them. \*

Finally, with respect to certification, the bill permits an employer to require an employee who requests family leave for the active duty of a family member to provide certification that the family member is on covered active duty at such time and in such manner as DWD may prescribe by rule.

**Employment and benefits protection** ✓

**Position on return to employment.** Under current law, when an employee returns from family or medical leave the employer must place the employee in the position the employee held immediately before that leave began, if the position is vacant, or, if the position is not vacant, in an equivalent employment position having equivalent pay, benefits, and other terms and conditions of employment. ✓

This bill permits an employer to place a returning employee either in the employee's old position or in an equivalent position without regard to whether the old position is vacant. The bill specifies that to be reinstated, the employee must have actually taken the leave for the purpose for which it was intended. The bill also

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permits an employer to require an employee who is on leave to report to the employer periodically on the employee's status and intention of returning to work and to adopt a uniform policy requiring an employee who is returning from medical leave to obtain a certification from the employee's health care provider or Christian Science practitioner that the employee is able to return to work.

\* **Maintenance of health care coverage.** Under current law, an employer must maintain for an employee who is on family or medical leave group health insurance coverage under the conditions that applied immediately before the leave began. This bill requires an employer to maintain that coverage at the level and under the conditions that the employer would have provided coverage if the employee had continued in employment.

Under current law, an employer may require an employee to place in escrow with the employer the premium for eight weeks of group health insurance coverage and the employer may keep from that escrow account the amount that the employer paid for that coverage if the employee does not return from leave. This bill eliminates the escrow requirement, but permits an employer to recover those premiums if an employee does not return to work for reasons other than the recurrence, onset, or continuation of a serious health condition of the employee or of a child, spouse, or parent of the employee, a serious injury or illness of a covered service member, or other circumstances beyond the employee's control.

### **Enforcement**

**Administrative proceedings.** Under current law, an employee who believes that his or her employer has denied any right provided under the family or medical leave law or has retaliated against the employee for opposing a practice prohibited under that law may file a complaint with DWD within 30 days after the employee knew or should have known of the violation, and an employee who believes that his or her employer has retaliated against the employee for initiating, testifying in, or assisting in a proceeding under that law may file a complaint with DWD within 300 days after the alleged retaliation occurred. This bill extends those time limits to two years after the date of the last event constituting the alleged violation or, if the violation was willful, to three years after that event.

Under current law, if DWD finds that an employer has violated the family or medical leave law, DWD may order the employer to take action to remedy the violation, including providing the requested leave, reinstating the employee, providing back pay accrued not more than two years before the complaint was filed, and paying reasonable actual attorney fees. This bill eliminates that 2-year limit on back pay and includes among the remedies that DWD may order promotion of the employee and the provision of benefits to the employee.

Under current law, a determination by DWD on the issue of whether an employee has been denied any right provided under the family and medical leave law or has been retaliated against for opposing a practice prohibited under that law may be appealed directly to the circuit court (judicial review), while a determination by DWD on the issue of whether an employee has been retaliated against for initiating, testifying in, or assisting in a proceeding under that law must be appealed to the Labor and Industry Review Commission (LIRC) prior to judicial review. This bill

permits a determination by DWD on the issue of whether an employee has been denied any right provided under the family and medical leave law or has been retaliated against for opposing a practice prohibited under that law to be appealed to LIRC in the same manner as an appeal of a determination by DWD on the issue of whether an employee has been retaliated against for initiating, testifying in, or assisting in a proceeding under the family and medical leave law.

**Civil action for damages.** Under current law, an employee or DWD may bring a civil action in circuit court against an employer to recover damages caused by a violation of the family or medical leave law. Currently, a civil action under the family or medical leave law is barred unless commenced within the later of 60 days after the completion of an administrative proceeding, including judicial review, for the violation or 12 months after the violation occurred or the employee or DWD reasonably should have known that the violation occurred.

This bill permits an employee or DWD to bring an action for damages on behalf of the employee, or on behalf of the employee and other employees similarly situated. The bill also permits an action to be commenced within 60 days after the completion of administrative proceedings or within two years after the date of the last event constituting the alleged violation or, if the violation was willful, within three years after that event, whichever is later. Finally, the bill specifies that the circuit court may award damages, plus costs and reasonable attorney fees, for a violation in the following amounts:

1. An amount equal to the amount of compensation that the employee lost because of the violation or, if the employee did not lose any compensation, any actual monetary loss sustained as a direct result of the violation up to a sum equal to 12 weeks of wages or salary or, in a case involving service member family leave, 26 weeks of wages or salary.

2. As liquidated damages, an amount equal to the damages awarded for lost compensation or other monetary loss, except that the court may reduce the amount of damages to the amount awarded for lost compensation or other monetary loss if the court finds that the violation was committed in good faith and that the employer had reasonable grounds to believe that his or her act or omission was not a violation of the law.

### **Special provisions**

Finally, the bill makes special provisions for certain classes of employees. Specifically:

1. If a husband and wife both work for the same employer, the employer may limit their combined family leave for the birth or placement of a child or to care for a child, spouse, or parent to 12 weeks in a 12-month period and their combined service member family leave to 26 weeks in a 12-month period.

2. If a teacher requests intermittent leave or leave on a reduce-leave schedule that is foreseeable for planned medical treatment and would be on leave for greater than 20 percent of the working days during the leave, the educational agency employing the teacher (educational agency) may require the teacher to take leave for period of a particular duration or to transfer temporarily to an alternative employment position. An educational agency may also require a teacher to continue

taking leave until the end of the semester under certain circumstances, depending on the duration of the leave and how close to the end of the semester the leave ends.

3. If an employee is among the highest-paid 10 percent of the employer's employees, if denying reinstatement of the employee is necessary to prevent substantial and grievous economic injury to the employer, and if the employer so notifies the employee at the time the employer determines that the injury will occur, the employer may deny reinstatement of the employee following leave, except that if the employee receives that notice during the leave, the employee must agree not to return to employment with the employer.

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

2 103.10 (title) **Family or, medical, or service member family leave.**

History: 1987 a. 287; 1989 a. 228; 1991 a. 39; 1993 a. 446; 1995 a. 27 s. 9130 (4); 1997 a. 3, 156; 2001 a. 74; 2003 a. 33; 2009 a. 28.

3 SECTION 2. 103.10 (1) (a) (intro.) of the statutes is amended to read:

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NOTE: NOTE: Par. (b) (intro.) as amended by 2009 Wis. Act 28 eff. the date stated in the notice provided by the secretary of children and families and published in the Wisconsin Administrative Register under s. 98.62 (9) to read: NOTE:

4 103.10 (1) (a) (intro.) "Child" means a natural biological adopted, or foster child, a stepchild, or a legal ward, or an individual for whom an employee stands in the place of a parent to whom any of the following applies:

History: 1987 a. 287; 1989 a. 228; 1991 a. 39; 1993 a. 446; 1995 a. 27 s. 9130 (4); 1997 a. 3, 156; 2001 a. 74; 2003 a. 33; 2009 a. 28.

7 SECTION 3. 103.10 (1) (a) 2. of the statutes is amended to read:

8 103.10 (1) (a) 2. The individual is 18 years of age or older and cannot care for  
9 himself or herself is incapable of self-care because of a serious health condition  
10 mental or physical disability.

History: 1987 a. 287; 1989 a. 228; 1991 a. 39; 1993 a. 446; 1995 a. 27 s. 9130 (4); 1997 a. 3, 156; 2001 a. 74; 2003 a. 33; 2009 a. 28.

11 SECTION 4. 103.10 (1) (ap) of the statutes is created to read:

12

103.10 (1) (ap) "Covered active duty" means any of the following:

13 1. In the case of a member of a regular component of the U.S. armed forces, duty  
14 during the deployment of the member with the U.S. armed forces to a foreign country.

15 2. In the case of a member of a reserve component of the U.S. armed forces, duty  
16 during the deployment of the member with the U.S. armed forces to a foreign country.

1 under a call or order to active duty<sup>✓</sup> under a provision of law specified in 10 USC 101  
2 (a) (13) (B).

3 SECTION 5. 103.10 (1) (aq)<sup>x</sup> of the statutes is created to read:

4 103.10 (1) (aq) "Covered service member"<sup>✓</sup> means any of the following:

5 1. A member of the U.S. armed forces<sup>✓</sup>, including a member of the national guard  
6 or a reserve component of the U.S. armed forces<sup>✓</sup>, who is undergoing medical  
7 treatment, recuperation, or therapy, who is otherwise in outpatient status, or who  
8 is otherwise on the temporary disability retired list maintained under 10 USC 1376,  
9 for a serious injury or illness.<sup>✓</sup>

10 2. A veteran who is undergoing medical treatment, recuperation, or therapy,  
11 for a serious injury or illness and who was a member of the<sup>✓</sup> U.S. armed forces,  
12 including a member of the national guard or a reserve component of the U.S. armed  
13 forces, at any time during the 5<sup>✓</sup> years preceding the date on which the veteran  
14 undergoes that medical treatment, recuperation, or therapy.<sup>✓</sup>

15 SECTION 6. 103.10 (1) (ar)<sup>x</sup> of the statutes is repealed.

16 SECTION 7. 103.10 (1) (b)<sup>x</sup> of the statutes is amended to read:

17 103.10 (1) (b) "Employee" means an individual employed, or suffered or  
18 permitted to work, in this state by an employer, ~~except other than~~ the employer's  
19 parent, spouse, ~~domestic partner~~<sup>✓</sup>, or child or an individual described in 29 USC 203  
20 (e) (2) (C) (i) and (ii), (4), or (5), as amended to August 7, 1998.<sup>✓</sup>

21  
22

History: 1987 a. 287; 1989 a. 228; 1991 a. 39; 1993 a. 446; 1995 a. 27 s. 9130 (4); 1997 a. 3, 156; 2001 a. 74; 2003 a. 33; 2009 a. 28.  
Fix → SECTION 8. 103.10 (1) (c) of the statutes is amended to read:

renumbered 103.10 (1) (c)  
(intro.) and

103.10 (1) (c) ~~Except as provided in sub. (14) (b),~~<sup>(intro.)</sup> "employer"<sup>✓</sup> "Employer"<sup>✓</sup> means  
23 a person engaging in any activity, enterprise, or business in this state employing at  
24 least 50 individuals on a permanent basis for each working day during each of 20 or



1 more calendar weeks in the current or preceding year. ✓ “Employer” includes any  
 2 person who acts, directly or indirectly, in the interest of an employer with respect to  
 3 an employee and any successor in interest of an employer. “Employer” also includes  
 4 the, without regard to the number of employees employed by the employer, all of the  
 5 following: ✓

6 1. The ✓ state and any office, department, independent agency, authority,  
 7 institution, association, society, or other body in state government created or  
 8 authorized to be created by the constitution or any law, including the legislature and  
 9 the courts.

History: 1987 a. 287; 1989 a. 228; 1991 a. 39; 1993 a. 446; 1995 a. 27 ✓, 9130 (4); 1997 a. 3, 156; 2001 a. 74; 2003 a. 33; 2009 a. 28.

10 **SECTION 9.** 103.10 (1) (c) 2. of the statutes is created to read:

11 103.10 (1) (c) 2. A political subdivision of this state, ✓ a special purpose district  
 12 in this state, an instrumentality or corporation of such a political subdivision or  
 13 special purpose district, a combination or subunit of any of the foregoing or an  
 14 instrumentality of the state and any of the foregoing. ✓

15 **SECTION 10.** 103.10 (1) (d) of the statutes is amended to read:

16 103.10 (1) (d) “Employment benefit” means ~~an insurance, leave or retirement~~  
 17 a benefit which that ✓ an employer makes available to an employee, including group  
 18 life insurance, health insurance, disability insurance, sick leave, annual leave,  
 19 educational benefits, and pensions, regardless of whether those benefits are  
 20 provided by a practice or policy of the employer or through an employee benefit plan. ✓

History: 1987 a. 287; 1989 a. 228; 1991 a. 39; 1993 a. 446; 1995 a. 27 s. 9130 (4); 1997 a. 3, 156; 2001 a. 74; 2003 a. 33; 2009 a. 28.

21 **SECTION 11.** 103.10 (1) (er) of the statutes is created to read:

22 103.10 (1) (er) “Next of kin” ✓ means the closest blood relative of an individual.

23 **SECTION 12.** 103.10 (1) (et) of the statutes is created to read:

1 103.10 (1) (et) "Outpatient status" means the status of a covered service  
2 member who is a member of the U.S. armed forces being assigned to a military  
3 medical treatment facility as an outpatient or to a unit established for the purpose  
4 of providing command and control of members of the U.S. armed forces receiving  
5 medical care as outpatients.

6 SECTION 13. 103.10 (1) (f) of the statutes is amended to read:

NOTE: NOTE: Par. (f) is amended by 2009 Wis. Act 28 eff. the date stated in the notice provided by the secretary of children and families and published in the Wisconsin Administrative Register under s. 18.62 (9) to read: NOTE:

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7 103.10 (1) (f) "Parent" means a natural biological parent, foster parent, adoptive parent, stepparent,  
8 or legal guardian of an employee or of an employee's spouse or domestic partner a person who stood  
9 in the place of a parent of the employee when the employee was a child.

History: 1987 a. 287; 1989 a. 228; 1991 a. 39; 1993 a. 446; 1995 a. 27 s. 9130 (4); 1997 a. 3, 156; 2001 a. 74; 2003 a. 33; 2009 a. 28.

10 SECTION 14. 103.10 (1) (fm) of the statutes is created to read:

11 103.10 (1) (fm) "Reduced-leave schedule" means a leave schedule that reduces  
12 the usual number of hours that an employee works per day or per week.

13 SECTION 15. 103.10 (1) (g) (intro.) of the statutes is amended to read: LPS-

14 103.10 (1) (g) (intro.) "Serious health condition" means a disabling physical or  
15 mental an illness, injury, impairment, or physical or mental condition involving any  
16 of the following:

STRIKE AN EXTRA SPACE

History: 1987 a. 287; 1989 a. 228; 1991 a. 39; 1993 a. 446; 1995 a. 27 s. 9130 (4); 1997 a. 3, 156; 2001 a. 74; 2003 a. 33; 2009 a. 28.

17 SECTION 16. 103.10 (1) (g) 2. of the statutes is amended to read:

18 103.10 (1) (g) 2. ~~Outpatient care that requires continuing~~ Continuing  
19 ~~treatment or supervision~~ by a health care provider.

History: 1987 a. 287; 1989 a. 228; 1991 a. 39; 1993 a. 446; 1995 a. 27 s. 9130 (4); 1997 a. 3, 156; 2001 a. 74; 2003 a. 33; 2009 a. 28.

20 SECTION 17. 103.10 (1) (gd) of the statutes is created to read:

21 103.10 (1) (gd) "Serious injury or illness" means any of the following:

- 22 1. In the case of a member of the U.S. armed forces, including a member of the  
23 national guard or a reserve component of the U.S. armed forces, an injury or illness  
24 that was incurred by the member in the line of duty while on active duty in the U.S.

1 armed forces, or that existed before the beginning of the member's active duty and  
2 was aggravated by service in the line of duty while on active duty<sup>✓</sup> in the U.S. armed  
3 forces, and that may render the member medically unfit to perform the duties of the  
4 member's office, grade, rank, or rating.<sup>✓</sup>

5 2. In the case of a veteran who was a member of the U.S. armed forces, including  
6 a member of the national guard or a reserve component of the U.S. armed forces, at  
7 any time during the 5<sup>✓</sup> years preceding the date on which the veteran undergoes  
8 medical treatment, recuperation, or therapy<sup>✓</sup> for an injury or illness that was incurred  
9 by the veteran in the line of duty while on active duty in the U.S. armed forces, or  
10 that existed before the beginning of the veteran's active duty and was aggravated by  
11 service in the line of duty while on active duty in the U.S. armed forces,<sup>✓</sup> a qualifying  
12 illness or injury, as determined by the department,<sup>✓</sup> that was so incurred or  
13 aggravated, whether the illness or injury manifested itself before or after the end of  
14 the veteran's active duty.

15 **SECTION 18.** 103.10 (1) (h) of the statutes is amended to read:<sup>x</sup>

16 103.10 (1) (h) "Spouse" means an employee's legal husband or wife.

17 History: 1987 a. 287; 1989 a. 228; 1991 a. 39; 1993 a. 446; 1995 a. 27 s. 9130 (4); 1997 a. 3, 156; 2001 a. 74; 2003 a. 33; 2009 a. 28.

18 **SECTION 19.** 103.10 (1) (i) of the statutes is created to read:<sup>✓</sup>

19 103.10 (1) (i) "Veteran"<sup>✓</sup> has the meaning given in 38 USC 101 (2).

20 **SECTION 20.** 103.10 (2) (a) of the statutes is amended to read:<sup>x</sup>

21 103.10 (2) (a) Nothing in this section prohibits an employer from providing  
22 employees with rights to family leave ~~or~~, medical leave ~~which~~, or service member  
23 family leave<sup>✓</sup> that are more generous to the employee than the rights provided under  
24 this section.

24 History: 1987 a. 287; 1989 a. 228; 1991 a. 39; 1993 a. 446; 1995 a. 27 s. 9130 (4); 1997 a. 3, 156; 2001 a. 74; 2003 a. 33; 2009 a. 28.

**SECTION 21.** 103.10 (2) (am) of the statutes is created to read:

1 103.10 (2) (am) 1. Nothing in this section diminishes the obligation of an  
2 employer to comply with a collective bargaining agreement or employee benefit  
3 program or plan under which the employer provides employees with rights to family  
4 leave, medical leave, or service member family leave that are more generous to the  
5 employe<sup>e</sup> than the rights provided under this section.

6 2. A collective bargaining agreement or employe<sup>e</sup> benefit program or plan may  
7 not limit or diminish any rights to family leave, medical leave, or service member  
8 family leave provided under this section.

9 SECTION 22. 103.10 (2) (c) of the statutes is amended to read:

10 103.10 (2) (c) This section only applies to an employee who has been employed  
11 for at least 12 months by the same employer for more than 52 consecutive weeks from  
12 which leave under sub. (3) is requested and who worked for the that employer for at  
13 least 1,000 1,250 hours during the preceding 52-week 12-month period. This section  
14 does not apply to an employee who is employed at a worksite at which the employer  
15 employs less than 50 employees if the total number of employees employed by the  
16 employer within 75 miles of that worksite is less than 50.

*repealed and recreated*

History: 1987 a. 287; 1989 a. 228; 1991 a. 39; 1993 a. 446; 1995 a. 27 s. 9130 (4); 1997 a. 3, 156; 2001 a. 74; 2003 a. 33; 2009 a. 28.

17 Fix *component* → SECTION 23. 103.10 (3) (title) of the statutes is amended to read:

18 103.10 (3) (title) FAMILY LEAVE LEAVE REQUIREMENT

*plain*

History: 1987 a. 287; 1989 a. 228; 1991 a. 39; 1993 a. 446; 1995 a. 27 s. 9130 (4); 1997 a. 3, 156; 2001 a. 74; 2003 a. 33; 2009 a. 28.

19 SECTION 24. 103.10 (3) (a) 1. of the statutes is renumbered 103.10 (3) (a) (intro.)

20 and amended to read:

21 103.10 (3) (a) *(intro.)* In a 12-month period ~~no an~~ employe<sup>e</sup> may take ~~more than 6~~ 12  
22 weeks of family leave under par. (b) 1. and 2. for any one or more of the following  
23 reasons:

History: 1987 a. 287; 1989 a. 228; 1991 a. 39; 1993 a. 446; 1995 a. 27 s. 9130 (4); 1997 a. 3, 156; 2001 a. 74; 2003 a. 33; 2009 a. 28.

24 SECTION 25. 103.10 (3) (a) 2. of the statutes is repealed.

1           **SECTION 26.** 103.10 (3) (a) 3. of the statutes is repealed.

2           **SECTION 27.** 103.10 (3) (a) 5. of the statutes is created to read:

3           103.10 (3) (a) 5. Because of any qualifying exigency, as determined by the  
4 department by rule, arising out of the fact that the spouse, child, or parent of the  
5 employee is on covered active duty or has been notified of an impending call or order  
6 to covered active duty.

7           **SECTION 28.** 103.10 (3) (am) of the statutes is created to read:

8           103.10 (3) (am) In a 12-month period an employee who is the spouse, child,  
9 parent, or next of kin of a covered service member may take 26 weeks of leave to care  
10 for the covered service member. Leave under this paragraph may be taken only  
11 during a single 12-month period. In a 12-month period in which leave is taken  
12 under this paragraph, an employee may take a combined total of 26 weeks of leave  
13 under this paragraph and par. (a). This paragraph does not limit the amount of leave  
14 that an employee may take under par. (a) in any other 12-month period.

15           **SECTION 29.** 103.10 (3) (b) (intro.) of the statutes is repealed.

16           **SECTION 30.** 103.10 (3) (b) 1. of the statutes is renumbered 103.10 (3) (a) 1m.  
17 and amended to read:

18           103.10 (3) (a) 1m. The Because of the birth of the employee's natural biological  
19 child, if the leave begins is taken to care for the child and the leave ends within 16  
20 weeks of 12 months after the child's birth.

History: 1987 a. 287; 1989 a. 228; 1991 a. 39; 1993 a. 446; 1995 a. 27 s. 91.10 (4); 1997 a. 3, 156; 2001 a. 74; 2003 a. 33; 2009 a. 28

21           **SECTION 31.** 103.10 (3) (b) 2. of the statutes is renumbered 103.10 (3) (a) 2m.  
22 and amended to read:

23           103.10 (3) (a) 2m. The Because of the placement of a child with the employee  
24 for adoption or as a precondition to adoption under s. 48.90 (2), but not both, or for

1 ~~foster care~~, if the leave ~~begins ends~~ within ~~16 weeks of~~ 12 months after the child's  
2 placement.

History: 1987 a. 287; 1989 a. 228; 1991 a. 39; 1993 a. 446; 1995 a. 27 s. 9130 (4); 1997 a. 3, 156; 2001 a. 74; 2003 a. 33; 2009 a. 28.

3 **SECTION 32.** 103.10 (3) (b) 3. of the statutes is renumbered 103.10 (3) (a) 3m.  
4 and amended to read:

5 103.10 (3) (a) 3m. To care for the employee's child, spouse, ~~domestic partner~~,  
6 or parent, if the child, spouse, ~~domestic partner~~, or parent has a serious health  
7 condition.

History: 1987 a. 287; 1989 a. 228; 1991 a. 39; 1993 a. 446; 1995 a. 27 s. 9130 (4); 1997 a. 3, 156; 2001 a. 74; 2003 a. 33; 2009 a. 28.

8 **SECTION 33.** 103.10 (3) (c) of the statutes is repealed.

9 **SECTION 34.** 103.10 (3) (cm) of the statutes is created to read:

10 103.10 (3) (cm) 1. If a husband and wife are entitled to leave under par. (a) and  
11 are employed by the same employer, the employer may limit the aggregate number  
12 of weeks of leave that the husband and wife may take for the birth or placement of  
13 a child under par. (a) 1m. or 2m. or to care for a parent who has a serious health  
14 condition under par. (a) 3m. to 12 weeks during any 12-month period.

15 2. If a husband and wife are entitled to leave under par. (am) and are employed  
16 by the same employer, the employer may limit the aggregate number of weeks of  
17 leave that the husband and wife may take under par. (am) or under par. (am) and  
18 under par. (a) for the reasons specified in subd. 1. combined, to 26 weeks during the  
19 12-month period in which the leave under par. (am) is taken. If the leave taken by  
20 a husband and wife includes leave under par. (a) for the reasons specified in subd.  
21 1., the limitation under subd. 1. applies to that leave.

22 **SECTION 35.** 103.10 (3) (d) of the statutes is repealed.

23 **SECTION 36.** 103.10 (3) (dm) of the statutes is created to read:

1           103.10 (3) (dm) 1. An employee may not take leave under par. (a) 1m. or 2m.  
2           intermittently or on a reduced-leave schedule unless agreed to by the employer.  
3           Subject to subd. 2 and subs. (6) (b) and (7) (b) 5. or 7., whichever is applicable, an  
4           employee may take leave under par. (a) 3m. or 4. or (am) intermittently or on a  
5           reduced-leave schedule when medically necessary. Subject to sub. (6) (c) and (7) (f),  
6           an employee may take leave under par. (a) 5. intermittently or on a reduced-leave  
7           schedule. If an employee takes leave intermittently or on a reduced-leave schedule,  
8           the employee's employer may not reduce the amount of leave under par. (a) to which  
9           the employee is entitled by an amount that is beyond the amount of leave actually  
10          taken.

11          2. If an employee requests intermittent leave or leave on a reduced-work  
12          schedule under par. (a) 3m. or 4. or (am) that is foreseeable for planned medical  
13          treatment, the employer may require the employee to transfer temporarily to an  
14          alternative position offered by the employer for which the employee is qualified if  
15          that alternative position has equivalent pay and employment benefits and if that  
16          alternative position accommodates intermittent periods of leave or leave on a  
17          reduced-leave schedule better than the employee's regular position does.

18          SECTION 37. 103.10 (4) (title) of the statutes is repealed.

19          SECTION 38. 103.10 (4) (a) of the statutes is renumbered 103.10 (3) (a) 4. and  
20          amended to read:

21          103.10 (3) (a) 4. Subject to pars. (b) and (c), an employee who has Because of  
22          a serious health condition which that makes the employee unable to perform his or  
23          her employment duties may take medical leave for the period during which he or she  
24          is unable to perform those duties the functions of the employee's position.

1           **SECTION 39.** 103.10 (4) (b) of the statutes is repealed.

2           **SECTION 40.** 103.10 (4) (c) of the statutes is repealed.

3           **SECTION 41.** 103.10 (5) (a) of the statutes is amended to read:

4           103.10 (5) (a) This Except as provided in pars. (b) to (d), this section does not  
5           entitle an employee to receive wages or salary while taking family leave or medical  
6           leave under sub. (3) (a) or (am).

7           History: 1987 a. 287; 1989 a. 228; 1991 a. 39; 1993 a. 446; 1995 a. 276; 9130 (4); 1997 a. 3, 156; 2001 a. 74; 2003 a. 33; 2009 a. 28.

7           **SECTION 42.** 103.10 (5) (b) of the statutes is amended to read:

8           103.10 (5) (b) An employee may elect, or an employer may require an employee,  
9           to substitute, for portions of family leave or medical leave, paid or unpaid leave of any  
10           other type for any part of the leave provided under sub. (3) (a) 1m., 2m., 3m., or 5.,  
11           any paid vacation leave, paid personal leave, or paid family leave provided by the  
12           employer that the employee has accrued.

13           History: 1987 a. 287; 1989 a. 228; 1991 a. 39; 1993 a. 446; 1995 a. 276; 9130 (4); 1997 a. 3, 156; 2001 a. 74; 2003 a. 33; 2009 a. 28.

13           **SECTION 43.** 103.10 (5) (c) of the statutes is created to read:

14           103.10 (5) (c) An employee may elect, or an employer may require an employee,  
15           to substitute, for any part of the leave provided under sub. (3) (a) 3m. or 4., any paid  
16           vacation leave, paid personal leave, or paid sick leave provided by the employer that  
17           the employee has accrued, except that an employer is not required to provide paid  
18           sick leave in any situation in which the employer would not normally provide paid  
19           sick leave.

20           **SECTION 44.** 103.10 (5) (d) of the statutes is created to read:

21           103.10 (5) (d) An employee may elect, or an employer may require an employee,  
22           to substitute, for any part of the leave provided under sub. (3) (am), any paid vacation  
23           leave, paid personal leave, paid family leave, or paid sick leave provided by the  
24           employer that the employee has accrued, except that an employer is not required to



1 provide paid sick leave in any situation in which the employer would not normally  
2 provide paid sick leave.

3 **SECTION 45.** 103.10 (6) (a) of the statutes is amended to read:

4 103.10 (6) (a) If an employee intends to take family leave for the reasons in  
5 under sub. (3) (b) 1. or 2. (a) 1m. or 2m. that is foreseeable because of the expected  
6 birth or placement of a child, the employee shall, in a reasonable and practicable  
7 manner, give the employer advance notice of the expected birth or placement  
8 employee's intention to take that leave not less than 30 days before the date on which  
9 the leave is to begin, except that if the date of the birth or placement requires the  
10 leave to begin in less than 30 days, the employee shall provide that notice to the  
11 employer in a reasonable and practicable manner.

12 History: 1987 a. 287; 1989 a. 228; 1991 a. 39; 1993 a. 446; 1995 a. 27 s. 9130 (4); 1997 a. 3, 156; 2001 a. 74; 2003 a. 33; 2009 a. 28.

12 **SECTION 46.** 103.10 (6) (b) (intro.) of the statutes is amended to read:

13 103.10 (6) (b) (intro.) If an employee intends to take family leave under sub.  
14 (3) (a) 3m. or 4. or (am) that is foreseeable because of the planned medical treatment  
15 or supervision of the employee or of a child, spouse, domestic partner, or parent, or  
16 intends to take medical leave because of the planned medical treatment or  
17 supervision covered service member of the employee, the employee shall do all of the  
18 following:

19 History: 1987 a. 287; 1989 a. 228; 1991 a. 39; 1993 a. 446; 1995 a. 27 s. 9130 (4); 1997 a. 3, 156; 2001 a. 74; 2003 a. 33; 2009 a. 28.

19 **SECTION 47.** 103.10 (6) (b) 1. of the statutes is amended to read:

20 103.10 (6) (b) 1. Make a reasonable effort to schedule the medical treatment  
21 or supervision so that it does not unduly disrupt the employer's operations, subject  
22 to the approval of the health care provider of the child, spouse, domestic partner,  
23 parent, covered service member, or employee.

24 History: 1987 a. 287; 1989 a. 228; 1991 a. 39; 1993 a. 446; 1995 a. 27 s. 9130 (4); 1997 a. 3, 156; 2001 a. 74; 2003 a. 33; 2009 a. 28.

24 **SECTION 48.** 103.10 (6) (b) 2. of the statutes is amended to read:

1           103.10 (6) (b) 2. Give the employer advance notice of the medical treatment or  
 2 ~~supervision~~ employee's intention to take that leave not less than 30 days before the  
 3 leave is to begin, except that if the date of the treatment requires the leave to begin  
 4 in less than 30 days, the employee shall provide that notice to the employer in a  
 5 reasonable and practicable manner.

6 History: 1987 a. 287; 1989 a. 228; 1991 a. 39; 1993 a. 446; 1995 a. 27 s. 9130 (4); 1997 a. 3, 156; 2001 a. 74; 2003 a. 33; 2009 a. 28.

6           **SECTION 49.** 103.10 (6) (c) of the statutes is created to read:

7           103.10 (6) (c) If the employee intends to take leave under sub. (3) (a) 5., that  
 8 is foreseeable because the spouse, child, or parent of the employee is on covered active  
 9 duty or has been notified of an impending call or order to covered active duty, the  
 10 employee shall provide notice of that intention to the employer in a reasonable and  
 11 practicable manner.

12           **SECTION 50.** 103.10 (7) (a) of the statutes is amended to read:

13           103.10 (7) (a) If an employee requests family leave for a reason described in  
 14 under sub. (3) (b) 3. or requests medical leave (a) 3m. or 4. or (am), the employer may  
 15 require the employee to provide certification, as described in par. (b), issued by the  
 16 health care provider or Christian Science practitioner of the child, spouse, domestic  
 17 partner, parent, covered service member, or employee, whichever is appropriate, and  
 18 the employee shall provide a copy of that certification to the employer in a timely  
 19 manner.

20 History: 1987 a. 287; 1989 a. 228; 1991 a. 39; 1993 a. 446; 1995 a. 27 s. 9130 (4); 1997 a. 3, 156; 2001 a. 74; 2003 a. 33; 2009 a. 28.

20           **SECTION 51.** 103.10 (7) (b) 3m. of the statutes is created to read:

21           103.10 (7) (b) 3m. If the employee requests leave under sub. (3) (a) 3m., a  
 22 statement that the employee is needed to care for a child, spouse, or parent who has  
 23 a serious health condition and an estimate of the amount of time that the employee  
 24 is needed to care for the child, spouse, or parent.

1 SECTION 52. 103.10 (7) (b) 4. of the statutes is amended to read:

2 103.10 (7) (b) 4. If the employee requests ~~medical leave, an explanation of the~~  
3 ~~extent to which~~ under sub. (3) (a) 4., a statement that the employee is unable to  
4 perform ~~his or her employment duties~~ the functions of the employee's position.

History: 1987 a. 287; 1989 a. 228; 1991 a. 39; 1993 a. 446; 1995 a. 27 s. 30 (4); 1997 a. 3, 156; 2001 a. 74; 2003 a. 33; 2009 a. 28.

5 SECTION 53. 103.10 (7) (b) 5. of the statutes is created to read:

6 103.10 (7) (b) 5. If the employee requests intermittent leave or leave on a  
7 reduced-leave schedule under sub. (3) (a) 3m. or 4. for planned medical treatment,  
8 the dates on which that treatment is expected to be given and the duration of that  
9 treatment.

10 SECTION 54. 103.10 (7) (b) 6. of the statutes is created to read:

11 103.10 (7) (b) 6. If the employee requests intermittent leave or leave on a  
12 reduced-leave schedule under sub. (3) (a) 3m., a statement that the intermittent  
13 leave or leave on a reduced-leave schedule is necessary for the care of a child, spouse,  
14 or parent who has a serious health condition or will assist in the recovery of the child,  
15 spouse, or parent, and the expected duration and schedule of the intermittent leave  
16 or leave on a reduced-leave schedule.

17 SECTION 55. 103.10 (7) (b) 7. of the statutes is created to read:

18 103.10 (7) (b) 7. If the employee requests intermittent leave or leave on a  
19 reduced-leave schedule under sub. (3) (a) 4., a statement of the medical necessity for  
20 the intermittent leave or leave on a reduced-leave schedule, and the expected  
21 duration of the intermittent leave or leave on a reduced-leave schedule.

22 SECTION 56. 103.10 (7) (c) of the statutes is amended to read:

23 103.10 (7) (c) The If the employer has reason to doubt the validity of a  
24 certification provided under par. (a) for leave under sub. (3) (a) 3m. or 4., the employer

1 may require the employee to obtain the opinion of a 2nd health care provider, chosen  
 2 or Christian Science practitioner, designated or approved and paid for by the  
 3 employer, concerning any information certified under par. (b). A health care provider  
 4 or Christian Science practitioner designated or approved under this paragraph may  
 5 not be employed on a regular basis by the employer.

6 History: 1987 a. 287; 1989 a. 228; 1991 a. 39; 1993 a. 446; 1995 a. 27 s. 9130 (4); 1997 a. 3, 156; 2001 a. 74; 2003 a. 33; 2009 a. 28.

6 **SECTION 57.** 103.10 (7) (d) of the statutes is created to read:

7 103.10 (7) (d) If a 2nd opinion obtained under par. (c) differs from the opinion  
 8 in the certification provided under par. (a), the employer may require the employee  
 9 to obtain the opinion of a 3rd health care provider or Christian Science practitioner,  
 10 designated or approved by the employer and employee jointly and paid for by the  
 11 employer, concerning any information certified under par. (b). The employer and  
 12 employee shall accept the 3rd opinion obtained under this paragraph as final and  
 13 binding upon them.

14 **SECTION 58.** 103.10 (7) (e) of the statutes is created to read:

15 103.10 (7) (e) The employer may require that an employee obtain  
 16 recertifications after the original certification under par. (b) on a reasonable basis.

17 **SECTION 59.** 103.10 (7) (f) of the statutes is created to read:

18 103.10 (7) (f) If an employee requests leave under sub. (3) (a) 5., the employer  
 19 may require the employee to provide certification that the spouse, child, or parent  
 20 of the employee is on covered active duty or has been notified of an impending call  
 21 or order to covered active duty issued at such time and in such manner as the  
 22 department may prescribe by rule, and the employee shall provide a copy of that  
 23 certification to the employer in a timely manner.

24 **SECTION 60.** 103.10 (8) (a) (intro.) of the statutes is amended to read:

1           103.10 (8) (a) (intro.) ~~Subject to~~ Except as provided in par. (e) (e), when an  
 2           employee ~~returns from family leave or medical leave who takes leave under sub. (3)~~  
 3           (a) or (am) for the purpose for which that leave is intended returns from that leave,  
 4           his or her employer shall immediately place the employee in an employment position  
 5           as follows:

6           History: 1987 a. 287; 1989 a. 228; 1991 a. 39; 1993 a. 446; 1995 a. 27 s. 9130 (4); 1997 a. 3, 156; 2001 a. 74; 2003 a. 33; 2009 a. 28.

6           **SECTION 61.** 103.10 (8) (a) 1. of the statutes is amended to read:

7           103.10 (8) (a) 1. ~~If~~ In the employment position ~~which that~~ the employee held  
 8           ~~immediately before when the family leave or medical leave began is vacant when the~~  
 9           ~~employee returns, in that position.~~

10          History: 1987 a. 287; 1989 a. 228; 1991 a. 39; 1993 a. 446; 1995 a. 27 s. 9130 (4); 1997 a. 3, 156; 2001 a. 74; 2003 a. 33; 2009 a. 28.

10          **SECTION 62.** 103.10 (8) (a) 2. of the statutes is amended to read:

11          103.10 (8) (a) 2. ~~If the employment position which the employee held~~  
 12          ~~immediately before the family leave or medical leave began is not vacant when the~~  
 13          ~~employee returns, in~~ In an equivalent employment position having equivalent  
 14          compensation, employment benefits, ~~working shift, hours of employment~~ and other  
 15          terms and conditions of employment.

16          History: 1987 a. 287; 1989 a. 228; 1991 a. 39; 1993 a. 446; 1995 a. 27 s. 9130 (4); 1997 a. 3, 156; 2001 a. 74; 2003 a. 33; 2009 a. 28.

16          **SECTION 63.** 103.10 (8) (b) of the statutes is amended to read:

17          103.10 (8) (b) No employer may, because an employee received ~~family leave or~~  
 18          ~~medical leave under sub. (3) (a) or (am),~~ reduce or deny an employment benefit ~~which~~  
 19          ~~that accrued to the employee before his or her the~~ leave began ~~or, consistent with sub.~~  
 20          (9), ~~accrued after his or her leave began.~~

21          History: 1987 a. 287; 1989 a. 228; 1991 a. 39; 1993 a. 446; 1995 a. 27 s. 9130 (4); 1997 a. 3, 156; 2001 a. 74; 2003 a. 33; 2009 a. 28.

21          **SECTION 64.** 103.10 (8) (c) of the statutes is repealed.

22          **SECTION 65.** 103.10 (8) (d) of the statutes is created to read:

1           103.10 (8) (d) An employer may require an employee who is on leave under sub.  
2           (3) (a) or (am) to report periodically to the employer on the employee's status and  
3           intention of returning to work.

4           **SECTION 66.** 103.10 (8) (e) of the statutes is created to read:

5           103.10 (8) (e) Subject to any collective bargaining agreement that governs the  
6           return to work of an employee who has taken leave under sub. (3) (a) 4., an employer  
7           may adopt a uniformly applied practice or policy that requires an employee who is  
8           returning from leave under sub. (3) (a) 4. to obtain a certification from the employee's  
9           health care provider or Christian Science practitioner that the employee is able to  
10          return to work.

11          **SECTION 67.** 103.10 (8) (f) of the statutes is created to read:

12          103.10 (8) (f) An employer may deny placement in an employment position  
13          described in par. (a) 1. and 2. to an employee who returns from leave under sub. (3)  
14          (a) or (am) if all of the following apply:

15           1. The employee is a salaried employee who before the leave was among the  
16           highest-paid 10 percent of the employees employed by the employer within 75 miles  
17           of the worksite at which the employee is employed.

18           2. That denial is necessary to prevent substantial and grievous economic injury  
19           to the operations of the employer.

20           3. The employer notifies the employee of the employer's intent to deny that  
21           placement based on the conditions specified in subs. 1. and 2. at the time the  
22           employer determines that the injury described in subd. 2. would occur.

23           4. In the case of an employee who receives the notice under subd. 3. after the  
24           leave has begun, the employee elects not to return to employment with the employer.

25          **SECTION 68.** 103.10 (9) (a) of the statutes is amended to read:

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1 103.10 (9) (a) Except as provided in par. (b), nothing in this section entitles a  
2 returning an employee to a right, employment benefit, or employment position to  
3 which the employee would not have been entitled had he or she not taken family  
4 ~~leave or medical leave~~ under sub. (3) (a) or (am) or to the accrual of any seniority or  
5 employment benefit during a period of ~~family leave or medical~~ such leave.

History: 1987 a. 287; 1989 a. 228; 1991 a. 39; 1993 a. 446; 1995 a. 236, 9130 (4); 1997 a. 3, 156; 2001 a. 74; 2003 a. 33; 2009 a. 28.

6 SECTION 69. 103.10 (9) (b) of the statutes is amended to read:

7 103.10 (9) (b) Subject to par. (c), during a period that an employee takes family  
8 ~~leave or medical leave~~ under sub. (3) (a) or (am), his or her employer shall maintain  
9 group health insurance coverage at the level and under the conditions that applied  
10 ~~immediately before the family leave or medical leave began.~~ If the employee  
11 ~~continues making any contribution required for participation in the group health~~  
12 ~~insurance plan, the employer shall continue making group health insurance~~  
13 ~~premium contributions as if the employee had not taken the family leave or medical~~  
14 the employer would have provided coverage if the employee had continued in  
15 employment continuously during that leave.

History: 1987 a. 287; 1989 a. 228; 1991 a. 39; 1993 a. 446; 1995 a. 236, 9130 (4); 1997 a. 3, 156; 2001 a. 74; 2003 a. 33; 2009 a. 28.

16 SECTION 70. 103.10 (9) (c) of the statutes is repealed and recreated to read:

17 103.10 (9) (c) An employer may recover from an employee the premium paid  
18 by the employer to maintain group health insurance coverage for the employee  
19 during a period of unpaid leave under sub. (3) (a) or (am) if the employee fails to  
20 return from that leave after the period of leave to which the employee is entitled has  
21 expired for a reason other than the continuation, recurrence, or onset of a serious  
22 health condition that entitles the employee to leave under sub. (3) (a) 3m. or 4. or of  
23 a serious injury or illness that entitles the employee to leave under sub. (3) (am) or  
24 other circumstances beyond the control of the employee.

1           **SECTION 71.** 103.10 (9) (d) <sup>x</sup> of the statutes is repealed and recreated to read:

2           103.10 (9) (d) If an employee claims that he or she is unable to return to work  
3 because of the continuation, recurrence, or onset of a <sup>✓</sup>serious health condition or  
4 serious injury or illness <sup>✓</sup>as described in par. (c), <sup>✓</sup>the employer may require the  
5 employee to provide in a timely manner one of the following:

6           1. Certification issued by the health care provider or Christian Science  
7 practitioner <sup>✓</sup>of the child, spouse, or parent being cared for by the employee that the  
8 employee was needed to care for that child, spouse, or parent on the day on which the  
9 employee's leave under sub. (3) (a) 3m. <sup>✓</sup>expired.

10           2. Certification issued by the health care provider or Christian Science  
11 practitioner of the employee that a serious health condition <sup>✓</sup>prevented the employee <sup>e</sup>  
12 from being able to perform the functions <sup>✓</sup>of the employee's position on the day on  
13 which the <sup>✓</sup>employee's leave under sub. (3) (a) 4. <sup>✓</sup>expired.

14           3. Certification issued by the health care provider or Christian Science  
15 practitioner of the covered service member being cared for by the employee that the  
16 employee was needed to care for that covered service member on the day on which  
17 the employee's leave under sub. (3) (am) <sup>✓</sup>expired.

18           **SECTION 72.** 103.10 (10) <sup>x</sup> of the statutes is repealed and recreated to read:

19           103.10 (10) INSTRUCTIONAL EMPLOYEES. <sup>✓</sup>(a) In this <sup>✓</sup>subsection, "educational  
20 agency" means a local educational agency, as defined in 20 USC 7801 (26), or a  
21 private elementary or secondary school.

22           (b) If an employee who is employed principally in an instructional capacity by  
23 an educational agency <sup>✓</sup>requests intermittent leave or leave on a reduced-leave  
24 schedule under sub. (3) (a) 3 <sup>✓</sup>or 4. <sup>✓</sup>or (am) <sup>✓</sup>that is foreseeable for planned medical  
25 treatment, complies with the requirements under sub. (6) (b) <sup>✓</sup>and would be on leave



1 for greater than 20<sup>e</sup> percent of the total number of working days during the period in which  
 2 the leave would extend, the educational agency may require that employe<sup>e</sup> to elect to  
 3 do one of the following:

4 1. To take leave for periods of a particular duration, not to exceed the duration  
 5 of the planned medical treatment.

6 2. To transfer temporarily to an alternative employment position offered by the  
 7 educational agency for which the employee is qualified if that alternative position  
 8 has equivalent pay and employment benefits and if that alternative position  
 9 accommodates intermittent periods of leave or leave on a reduced-leave schedule  
 10 better than the employee's regular position does.

11 (c) 1. If an employee who is employed principally in an instructional capacity  
 12 by an educational agency begins leave under sub. (3) (a) or (am) more than 5 weeks  
 13 before the end of a semester, the educational agency may require the employee to  
 14 continue taking leave until the end of the semester if the leave is for at least 3 weeks  
 15 in duration and the return to employment would occur during the 3 weeks before the  
 16 end of the semester.

17 2. Subject to subd. 3., if an employee who is employed principally in an  
 18 instructional capacity by an educational agency begins leave under sub. (3) (a) 1m.,  
 19 2m., or 3m. or (am) during the period that begins 5 weeks before the end of a semester,  
 20 the educational agency may require the employee to continue taking leave until the  
 21 end of the semester if the leave is for more than 2 weeks in duration and the return  
 22 to employment would occur during the 2 weeks before the end of the semester.

23 3. If an employe who is employed principally in an instructional capacity by an  
 24 educational agency begins leave under sub. (3) (a) 1m., 2m., or 3m. or (am) during  
 25 the period that begins 3 weeks before the end of a semester and the leave is for more

19 than 5 working days, the educational agency may require the employe<sup>e</sup> to continue  
2 taking leave until the end of the semester.

3 (d) An educational agency shall determine what is an equivalent employment  
4 position under sub. (8) (a) 2. based on policies and practices established by the  
5 educational agency and on any applicable collective bargaining agreement to which  
6 the educational agency is a party.

7 SECTION 73. 103.10 (11) (c) of the statutes is repealed and recreated to read:

8 103.10 (11) (c) 1. No person may discharge or in any manner discriminate  
9 against any individual for filing a complaint or attempting to enforce any right under  
10 this section or for testifying or assisting in any action or proceeding to enforce any  
11 right under this section.

12 2. No person may discharge or in any manner discriminate against any  
13 individual because that person believes that the individual has engaged or may  
14 engage in an activity described in subd. 1.

15 SECTION 74. 103.10 (12) (b) of the statutes is amended to read:

16 103.10 (12) (b) An employee who believes his or her employer has violated sub.  
17 (11) (a) or (b) may, within 30 days after the violation occurs or the employee should  
18 reasonably have known that the violation occurred, whichever is later, on his or her  
19 own behalf and on behalf of other employees similarly situated, file a complaint with  
20 the department alleging the violation. A complaint under this paragraph may be  
21 filed no later than 2 years after the date of the last event constituting the alleged  
22 violation for which the complaint is brought, unless the violation is alleged to be  
23 willful, in which case the complaint may be filed no later than 3 years after the date  
24 of the last event constituting the alleged violation. Except as provided in s. 230.45  
25 (1m), the department shall investigate the complaint and shall attempt to resolve the

1 complaint by conference, conciliation, or persuasion. If the complaint is not resolved  
2 and the department finds probable cause to believe a violation has occurred, the  
3 department shall proceed with notice and a hearing on the complaint as provided in  
4 ch. 227. The hearing shall be held within 60 days after the department receives the  
5 complaint.

6 **History:** 1987 a. 287; 1989 a. 228; 1991 a. 39; 1993 a. 446; 1995 a. 27<sup>X</sup>; 9130 (4); 1997 a. 3, 156; 2001 a. 74; 2003 a. 33; 2009 a. 28.

6 **SECTION 75.** 103.10 (12) (c) of the statutes is repealed.

7 **SECTION 76.** 103.10 (12) (d) of the statutes is amended to read:

8 103.10 (12) (d) The department shall issue its decision and order within 30 days  
9 after the hearing. If the department finds that an employer violated sub. (11)<sup>✓</sup> (a) or  
10 (b), it may order the employer to take action to remedy the violation, including  
11 providing the requested ~~family leave or medical~~ leave, reinstating an employee,  
12 promoting an employee<sup>✓</sup>, providing back pay accrued not more than 2 years before the  
13 ~~complaint was filed~~ and paying reasonable actual attorney fees to the complainant.

14 **History:** 1987 a. 287; 1989 a. 228; 1991 a. 39; 1993 a. 446; 1995 a. 27 s. 9130 (4); 1997 a. 3, 156; 2001 a. 74; 2003 a. 33; 2009 a. 28.

14 **SECTION 77.** 103.10 (12) (e) of the statutes is created to read:

15 103.10 (12) (e) Any respondent or complainant<sup>✓</sup> who is dissatisfied with the  
16 findings and order of the examiner may file a written petition with the<sup>✓</sup> department  
17 for review by the<sup>✓</sup> commission of the findings and order.

18 **SECTION 78.** 103.10 (12) (f)<sup>✓X</sup> of the statutes is created to read:

19 103.10 (12) (f) If no petition is filed within 21<sup>✓</sup> days after the date on which a  
20 copy of the findings and order of the examiner is mailed to the last-known<sup>✓</sup> address  
21 of the respondent, the findings and order shall be considered final. If a timely  
22 petition is filed, the commission<sup>✓</sup>, on review, may either affirm, reverse, or modify the  
23 findings or order in whole or in part, or set aside the findings and order and remand  
24 to the department for further proceedings<sup>✓</sup>. Such actions shall be based on a review

1 of the evidence submitted. If the commission is satisfied that a respondent or  
2 complainant has been prejudiced because of exceptional delay in the receipt of a copy  
3 of any findings and orders it may extend the time another 21<sup>✓</sup> days for filing the  
4 petition with the department.<sup>✓</sup>

5 **SECTION 79.** 103.10 (12) (g)<sup>✓</sup> of the statutes is created to read:

6 103.10 (12) (g) On motion, the commission may set aside, modify, or change any  
7 decision made by the commission, at any time within 28<sup>✓</sup> days after the date of the  
8 decision if the commission discovers any mistake in the decision, or upon the grounds  
9 of newly discovered evidence. The commission may on its own motion, for reasons  
10 it considers sufficient, set aside any final decision of the commission within<sup>✓</sup> one year  
11 after the date of the decision upon grounds of mistake or newly discovered evidence,  
12 and remand the case to the department for further proceedings.

13 **SECTION 80.** 103.10 (13) (a) of the statutes is amended to read:

14 103.10 (13) (a) An employee or the department may bring an action in circuit  
15 court against an employer, on behalf of the employee or on behalf of the employee and  
16 other employees similarly situated,<sup>✓</sup> to recover damages, as specified under par.<sup>✓</sup>(c),  
17 caused by a violation of sub. (11) after the completion of an administrative  
18 proceeding, including judicial review, concerning the same violation.

19 History: 1987 a. 287; 1989 a. 228; 1991 a. 39; 1993 a. 446; 1995 a. 27 s. 9130 (4); 1997 a. 3, 156; 2001 a. 74; 2003 a. 33; 2009 a. 28.

19 **SECTION 81.** 103.10 (13) (b) 2. of the statutes is repealed and recreated to read:

20 103.10 (13) (b) 2. Within 2<sup>✓</sup> years after the date of the last event constituting  
21 the alleged violation, unless the violation is alleged to be willful,<sup>✓</sup> in which case the  
22 action must be brought no later than 3<sup>✓</sup> years after the date of the last event  
23 constituting the alleged violation.

24 **SECTION 82.** 103.10 (13) (c)<sup>✓</sup> of the statutes is created to read:

1 103.10 (13) (c) If a circuit court finds that an employer has violated<sup>✓</sup> sub. (11),  
2 it may order the employer to pay to the affected employee all of the following:

3 1. Damages equal to the amount of any wages, salary, employment benefits, or  
4 other compensation that was denied to or lost by the employee because of the  
5 violation or, if the employee has not lost or been denied any wages, salary,  
6 employment benefits, or other compensation, any actual monetary losses sustained  
7 by the employee as a direct result of the violation up to a sum equal to<sup>✓</sup> 12 weeks or,  
8 in a case involving leave under sub. (3) (am),<sup>✓</sup> 26 weeks of wages or salary for the  
9 employee, plus interest on the amount of those damages.<sup>✓</sup>

10 2. As liquidated damages, an amount equal to the damages and interest  
11 described in subd. 1, <sup>✓</sup> except that the court may reduce the amount of damages and  
12 interest for which the employer is liable to the amount described in<sup>✓</sup> subd. 1, <sup>✓</sup> if the  
13 employer shows that the act or omission that was in violation of sub. (11) was in good  
14 faith and that the employer had reasonable grounds to believe that the act or  
15 omission was not a violation of sub. (11).<sup>✓</sup>

16 3. Costs and, notwithstanding s. 814.04 (1),<sup>✓</sup> reasonable actual attorney fees.<sup>✓</sup>

17 SECTION 83. 103.10 (14) (a) of the statutes is renumbered 103.10<sup>✓</sup> (14) and  
18 amended to read:

19 103.10 (14) <sup>✓</sup> Each employer shall post, in one or more conspicuous places on the  
20 employer's premises where notices to employees<sup>✓</sup> and applicants for employment are  
21 customarily posted, a notice in a form prepared or approved by the department  
22 setting forth employees' rights under this section excerpts from, or summaries of, the  
23 pertinent provisions of this section<sup>✓</sup> and information relating to the filing of a

NOTICE POSTED. ← (CS)

1 complaint under sub. (12).<sup>✓</sup> Any employer who willfully violates this subsection shall  
2 forfeit not more than \$100 for each offense.

3 History: 1987 a. 287; 1989 a. 228; 1991 a. 39; 1993 a. 446; 1995 a. 273; 1995 a. 130 (4); 1997 a. 3, 156; 2001 a. 74; 2003 a. 33; 2009 a. 28.

3 **SECTION 84.** 103.10 (14) (b) of the statutes is repealed.

4 **SECTION 85.** 103.10 (15) of the statutes is created to read:

5 103.10 (15) LOCAL ORDINANCES.<sup>✓</sup> A county, city, village, or town may enact an  
6 ordinance that provides employees with rights to family, medical, or service member  
7 family leave that are more generous to the <sup>e</sup>employee<sub>^</sub> than the rights provided under  
8 this section.<sup>✓</sup>

9 **SECTION 86.** 103.10 (16) of the statutes is created to read:

10 103.10 (16) RULES.<sup>✓</sup> The department shall promulgate rules to implement this  
11 section. Those rules shall substantially conform to 29 CFR 825.<sup>g</sup>

12 **SECTION 87.** 111.322 (2m) (a) of the statutes is amended to read:

13 111.322 (2m) (a) The individual files a complaint or attempts to enforce any  
14 right under s. 103.02, ~~103.10~~,<sup>✓</sup> 103.13, 103.28, 103.32, 103.34, 103.455, 103.50,  
15 104.12, 106.04, 109.03, 109.07, 109.075, or 146.997 or ss. 101.58 to 101.599 or 103.64  
16 to 103.82.

17 History: 1981 c. 334; 1989 a. 228, 359; 1997 a. 237; 1999 a. 150 s. 672; 1999 a. 167, 176; 2009 a. 3, 28, 76, 182, 290.

17 **SECTION 88.** 111.322 (2m) (b) of the statutes is amended to read:

18 111.322 (2m) (b) The individual testifies or assists in any action or proceeding  
19 held under or to enforce any right under s. 103.02,<sup>✓</sup> ~~103.10~~, 103.13, 103.28, 103.32,  
20 103.34, 103.455, 103.50, 104.12, 106.04, 109.03, 109.07, 109.075, or 146.997 or ss.  
21 101.58 to 101.599 or 103.64 to 103.82.

22 History: 1981 c. 334; 1989 a. 228, 359; 1997 a. 237; 1999 a. 150 s. 672; 1999 a. 167, 176; 2009 a. 3, 28, 76, 182, 290.

22 **SECTION 89.** 111.91 (2) (f) of the statutes is amended to read:

23 111.91 (2) (f) Family leave ~~and~~, medical, and service member family leave<sup>✓</sup>  
24 rights below the minimum afforded under s. 103.10. Nothing in this paragraph

1 prohibits the employer from bargaining on rights to family leave ~~or~~, medical, or  
2 service member family leave ~~which that~~ are more generous to the employee than the  
3 rights provided under s. 103.10.

History: 1971 c. 270; 1975 c. 39, 224; 1977 c. 196; 1979 c. 221; 1983 a. 27; 1985 a. 42; 1987 a. 27, 287, 331; 1989 a. 13, 31, 323; 1991 a. 269, 289; 1995 a. 27, 289; 1995 a. 302 s. 48; 1997 a. 27, 35, 155, 237; 1999 a. 9, 95, 115, 155; 2001 a. 16, 26; 2003 a. 33; 2007 a. 36; 2009 a. 14, 28, 56, 140, 218, 276, 346; s. 13.92 (1) (bm) 2.

4 **SECTION 90.** 111.998 (2) (c) of the statutes is amended to read:

5 111.998 (2) (c) Family leave ~~and~~, medical, and service member family leave  
6 rights below the minimum afforded under s. 103.10. Nothing in this paragraph  
7 prohibits the board from bargaining on rights to family leave ~~or~~, medical, or service  
8 member family leave ~~which that~~ are more generous to the employee than the rights  
9 provided under s. 103.10.

History: 2009 a. 28.

10 **SECTION 91.** 230.35 (2m) of the statutes is amended to read:

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

History: 1971 c. 91, 125, 183, 211, 226; 1971 c. 270 ss. 70, 71, 83, 104; Stats. 1971 s. 16.30; 1973 c. 51, 243; 1975 c. 28, 39, 41; 1975 c. 147 s. 54; 1975 c. 189, 199, 421, 422; 1977 c. 44; 1977 c. 187 s. 135; 1977 c. 196 ss. 56, 118, 130 (3), (5), (12), 131; 1977 c. 273; 1977 c. 418 ss. 726, 727, 924 (13m); Stats. 1977 s. 230.35; 1979 c. 34, 89; 1979 c. 110 s. 60 (11); 1979 c. 221; 1981 c. 20, 96, 140; 1983 a. 27 s. 2200 (15); 1983 a. 30 ss. 4 to 11, 14; 1983 a. 71, 140; 1983 a. 192 ss. 220, 221, 304; 1985 a. 119; 1987 a. 63, 287, 340, 399, 403; 1989 a. 56 s. 259; 1991 a. 39; 1993 a. 12, 47; 1995 a. 37, 178; 1997 a. 118, 307; 1999 a. 42, 85, 101, 125; 2001 a. 16, 109; 2003 a. 22, 33, 117; 2005 a. 21; 2007 a. 106, 142; 2009 a. 28.

17 **SECTION 92.** 252.17 (3) (i) of the statutes is repealed.

18 **SECTION 93.** 252.17 (4) (a) of the statutes is amended to read:

19 252.17 (4) (a) Except as provided in pars. (b), ~~(e)~~, and (d), if an individual  
20 satisfies sub. (3), the department shall pay the amount of each premium payment for  
21 coverage under the group health plan under sub. (3) (d) that is due from the  
22 individual on or after the date on which the individual becomes eligible for a subsidy

1 under sub. (3). The department may not refuse to pay the full amount of the  
2 individual's contribution to each premium payment because the coverage that is  
3 provided to the individual who satisfies sub. (3) includes coverage of the individual's  
4 spouse or domestic partner under ch. 770 and dependents. Except as provided in par.  
5 (b), the department shall terminate the payments under this section when the  
6 individual's unpaid medical leave ends, when the individual no longer satisfies sub.  
7 (3) or upon the expiration of 29 months after the unpaid medical leave began,  
8 whichever occurs first.

9 **History:** 1991 a. 269; 1993 a. 16 ss. 2589, 2590; 1993 a. 27 ss. 390, 394; Stats. 1993 s. 252.17; 1993 a. 491; 1997 a. 27; 1999 a. 103; 2005 a. 187; 2009 a. 28.

9 **SECTION 94.** 252.17 (4) (c) of the statutes is repealed.

10 **SECTION 95.** 253.10 (3) (d) 1. of the statutes is amended to read:

11 253.10 (3) (d) 1. Geographically indexed materials that are designed to inform  
12 a woman about public and private agencies, including adoption agencies, and  
13 services that are available to provide information on family planning, as defined in  
14 s. 253.07 (1) (a), including natural family planning information, to provide  
15 ultrasound imaging services, to assist her if she has received a diagnosis that her  
16 unborn child has a disability or if her pregnancy is the result of sexual assault or  
17 incest and to assist her through pregnancy, upon childbirth and while the child is  
18 dependent. The materials shall include a comprehensive list of the agencies  
19 available, a description of the services that they offer and a description of the manner  
20 in which they may be contacted, including telephone numbers and addresses, or, at  
21 the option of the department, the materials shall include a toll-free, 24-hour  
22 telephone number that may be called to obtain an oral listing of available agencies  
23 and services in the locality of the caller and a description of the services that the  
24 agencies offer and the manner in which they may be contacted. The materials shall



1 provide information on the availability of governmentally funded programs that  
2 serve pregnant women and children. Services identified for the woman shall include  
3 medical assistance for pregnant women and children under s. 49.47 (4) (am) and  
4 49.471, the availability of family ~~or~~, medical, or service member family <sup>✓</sup> leave under  
5 s. 103.10, the Wisconsin works program under ss. 49.141 to 49.161, child care  
6 services, child support laws and programs and the credit for expenses for household  
7 and dependent care and services necessary for gainful employment under section 21  
8 of the internal revenue code. The materials shall state that it is unlawful to perform  
9 an abortion for which consent has been coerced, that any physician who performs or  
10 induces an abortion without obtaining the woman's voluntary and informed consent  
11 is liable to her for damages in a civil action and is subject to a civil penalty, that the  
12 father of a child is liable for assistance in the support of the child, even in instances  
13 in which the father has offered to pay for an abortion, and that adoptive parents may  
14 pay the costs of prenatal care, childbirth and neonatal care. The materials shall  
15 include information, for a woman whose pregnancy is the result of sexual assault or  
16 incest, on legal protections available to the woman and her child if she wishes to  
17 oppose establishment of paternity or to terminate the father's parental rights. The  
18 materials shall state that fetal ultrasound imaging and auscultation of fetal heart  
19 tone services are obtainable by pregnant women who wish to use them and shall  
20 describe the services.

History: 1985 a. 56, 176; 1991 a. 263; 1993 a. 27 s. 378; Stats. ~~1973~~ <sup>1973</sup> s. 253.10; 1995 a. 309; 1997 a. 27; 1999 a. 9; 2005 a. 155, 277, 387; 2007 a. 20; 2009 a. 28.

21 **SECTION 96.** 632.897 (6) of the statutes is amended to read:

22 632.897 (6) If the terminated insured elects to continue group coverage as  
23 provided in this section, the insurer may require conversion to individual coverage  
24 by the terminated insured and his or her spouse and dependents 18 months after the

1 terminated insured elects the group coverage ~~except as provided in s. 103.10 (9) (d).~~ ✓  
2 The conditions, rights and procedures governing conversion under sub. (4) (a) apply  
3 to this conversion.

History: 1979 c. 285, 355; 1981 c. 41; 1983 a. 27, 274; 1985 a. 29; 1987 a. 287, 413; 1989 a. 31; 1993 a. 481; 1995 a. 27 s. 9126 (19); 1995 a. 201; 1997 a. 27, 191, 237; 1999 a. 9; 2005 a. 443 s. 265; 2007 a. 20 ss. 3689, 9121 (6) (a); 2009 a. 32.

4 **SECTION 97.** 893.96 (title) of the statutes is amended to read:

5 **893.96** <sup>(title)</sup> ~~Family leave and, medical, and service member family leave;~~  
6 **civil remedies.**

History: 1987 a. 287.

7 **SECTION 98. Initial applicability.**

8 (1) FAMILY, MEDICAL, AND SERVICE MEMBER FAMILY LEAVE. ✓ This act first applies to  
9 an employee who is affected by a collective bargaining agreement that contains  
10 provisions <sup>inconsistent</sup> with this act on the day on which the collective bargaining agreement  
11 expires or is extended, modified, or renewed, whichever occurs first. ✓

12 **SECTION 99. Effective date.**

13 (1) FAMILY, MEDICAL, AND SERVICE MEMBER FAMILY LEAVE. ✓ This act takes effect on  
14 the first day of the <sup>6th</sup> month beginning after publication. ✓

15 (END)

STATE OF WISCONSIN - LEGISLATIVE REFERENCE BUREAU

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11/8/11

Tara

Restore rights to domestic partners

& m-laws