



2013 SENATE BILL 401

November 11, 2013 – Introduced by Senators HARRIS, L. TAYLOR, SCHULTZ, MILLER, LEHMAN, LASSA, C. LARSON and HANSEN, cosponsored by Representatives GENRICH, JACQUE, BARNES, BERCEAU, BILLINGS, GOYKE, HEBL, HESSELBEIN, HINTZ, HULSEY, JOHNSON, JORGENSEN, KAHL, KESSLER, MASON, MILROY, OHNSTAD, PASCH, RIEMER, RINGHAND, SARGENT, SHANKLAND, SINICKI, C. TAYLOR, VRUWINK, WACHS, WRIGHT, YOUNG and ZAMARRIPA. Referred to Committee on Judiciary and Labor.

1 **AN ACT** *to renumber and amend* 111.36 (1) (c); and *to create* 111.36 (1) (c) 2.,
2 111.36 (1) (c) 3. and 111.36 (4) of the statutes; **relating to:** reasonable
3 accommodation of any condition of an employee that is related to pregnancy or
4 childbirth and of an employee's inability to adequately undertake the
5 job-related responsibilities of a particular job because of pregnancy, childbirth,
6 or a related condition.

Analysis by the Legislative Reference Bureau

Current law prohibits employment discrimination on the basis of sex, including discrimination against any woman on the basis of pregnancy or a related medical condition. Current law also prohibits employment discrimination on the basis of disability, including refusing to reasonably accommodate an employee's disability, but the Labor and Industry Review Commission (LIRC) has held that pregnancy and pregnancy-related medical conditions are covered under the sex discrimination, and not the disability discrimination, provisions of the Fair Employment Law. *Goodrich v. Duro Paper Bag Mfg. Co, Inc.* (LIRC 02/14/92).

This bill provides that employment discrimination on the basis of sex includes all of the following:

1. Refusing to reasonably accommodate any condition, including a medical condition of an employee that is related to pregnancy or childbirth, or to reasonably accommodate an employee's inability to adequately undertake the job-related

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responsibilities of a particular job because of pregnancy, childbirth, or a related condition that is known to the employer, including the need to express breast milk for a nursing child (lactation), unless the employer can demonstrate that the accommodation would pose a hardship on the employer's program, enterprise, or business.

2. Requiring an employee to take family, medical, or any other type of leave as a reasonable accommodation of an employee's inability to adequately undertake the job-related responsibilities of a particular job because of pregnancy, childbirth, or a related condition that is known to the employer, including lactation, unless the employer can demonstrate that permitting the employee to remain at work would pose a hardship on the employer's program, enterprise, or business.

Specifically, the bill requires an employer to explore with an employee who requests a reasonable accommodation because of pregnancy, childbirth, or a related condition that is known to the employer, including lactation (reasonable accommodation), all possible means of providing the reasonable accommodation, including changing the employee's job responsibilities, changing the employee's work hours, relocating the employee's work area, providing mechanical or electronic aids to the employee, transferring the employee to a less strenuous or less hazardous job, or, subject to the prohibition against requiring an employee to take leave, providing family, medical, or any other type of leave to the employee.

Further, the bill requires an employer, on the request of an employee for a transfer to a less strenuous or less hazardous job as a reasonable accommodation, to transfer the employee for a period up to the duration of the employee's inability to adequately undertake the job-related responsibilities of a particular job if: 1) the employer has a policy or practice, or is subject to a collective bargaining agreement, authorizing or requiring the transfer of an employee with a temporary disability to a less strenuous or less hazardous job for the duration of the disability; or 2) the employer can provide the transfer without having to create additional employment that the employer would not have created otherwise, discharge any employee, transfer any other employee with more seniority than the employee requesting the transfer, or promote to a particular job any employee who is not qualified to perform the job.

Finally, the bill requires an employer, on the request of an employee for a reasonable accommodation due to the need to express breast milk for a nursing child, to explore with the employee all of the following possible means of providing that reasonable accommodation: 1) providing the employee with a reasonable break time to express breast milk; 2) providing a private place, other than a bathroom, that is shielded from view and free from intrusion by coworkers and the public where the employee may express breast milk; and 3) providing the employee with access to an electrical outlet, running water, and a refrigerator for the storage of breast milk.

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

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1 **SECTION 1.** 111.36 (1) (c) of the statutes is renumbered 111.36 (1) (c) (intro.) and
2 amended to read:

3 111.36 (1) (c) (intro.) Discriminating against any woman on the basis of
4 pregnancy, childbirth, maternity leave, or a related medical conditions by engaging
5 condition by doing any of the following:

6 1. Engaging in any of the actions prohibited under s. 111.322, including, ~~but~~
7 ~~not limited to, actions~~ any action concerning fringe benefit programs covering
8 illnesses and disability.

9 **SECTION 2.** 111.36 (1) (c) 2. of the statutes is created to read:

10 111.36 (1) (c) 2. Refusing to reasonably accommodate any condition, including
11 a medical condition, of an employee that is related to pregnancy or childbirth, or to
12 reasonably accommodate an employee's inability to adequately undertake the
13 job-related responsibilities of a particular job because of pregnancy, childbirth, or a
14 related condition that is known to the employer, including the need to express breast
15 milk for a nursing child, as provided in sub. (4), unless the employer can demonstrate
16 that the accommodation would pose a hardship on the employer's program,
17 enterprise, or business.

18 **SECTION 3.** 111.36 (1) (c) 3. of the statutes is created to read:

19 111.36 (1) (c) 3. Requiring an employee to take family or medical leave under
20 s. 103.10 or 29 USC 2612 or any other type of leave provided by the employer as a
21 reasonable accommodation under subd. 2., unless the employer can demonstrate
22 that permitting the employee to remain at work would pose a hardship on the
23 employer's program, enterprise, or business.

24 **SECTION 4.** 111.36 (4) of the statutes is created to read:

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1 111.36 (4) (a) If an employee requests a reasonable accommodation under sub.
2 (1) (c) 2., the employer shall explore with the employee all possible means of
3 providing the reasonable accommodation, including changing the employee's job
4 responsibilities, changing the employee's work hours, relocating the employee's work
5 area, providing mechanical or electronic aids to the employee, transferring the
6 employee to a less strenuous or less hazardous job as provided in par. (b), providing
7 any or all of the accommodations specified in par. (c), if applicable, or, subject to sub.
8 (1) (c) 3., providing family, medical, or any other type of leave to the employee.

9 (b) If an employee requests transfer to a less strenuous or less hazardous job
10 as a reasonable accommodation under sub. (1) (c) 2., the employer shall transfer the
11 employee as requested for a period up to the duration of the employee's inability to
12 adequately undertake the job-related responsibilities of a particular job for a reason
13 described in sub. (1) (c) 2. if any of the following apply:

14 1. The employer has a policy or practice, or is subject to a collective bargaining
15 agreement, authorizing or requiring the transfer of an employee with a temporary
16 disability to a less strenuous or less hazardous job for the duration of the disability.

17 2. The employer can provide the transfer without having to create additional
18 employment that the employer would not have created otherwise, discharge any
19 employee, transfer any other employee with more seniority than the employee
20 requesting the transfer, or promote to a particular job any employee who is not
21 qualified to perform the job.

22 (c) If an employee requests a reasonable accommodation due to the need to
23 express breast milk for a nursing child, the employer shall explore with the employee
24 all of the following possible means of providing that reasonable accommodation:

