



2013 ASSEMBLY BILL 611

January 9, 2014 - Introduced by Representatives KLEEFISCH, STROEBEL, CRAIG, JACQUE, SANFELIPPO, BIES, MURTHA and KAUFERT, cosponsored by Senator GROTHMAN. Referred to Committee on Labor.

1 **AN ACT to amend** 20.923 (16), 62.13 (7n), 62.57, 97.42 (4) (f), 103.025 (2), 109.09
2 (1), 111.322 (2m) (a) and 111.322 (2m) (b); and **to create** 103.025 (1) (title),
3 103.025 (3) and 106.54 (10) of the statutes; **relating to:** the provision of
4 compensatory time off in lieu of overtime compensation by private employers.

Analysis by the Legislative Reference Bureau

Current law, subject to certain exceptions, requires an employer to pay an employee 1.5 times the employee's regular rate of pay for all hours worked in excess of 40 hours per week (overtime compensation). Current law, however, permits the state or a local governmental unit to provide an employee, in lieu of overtime compensation, paid time off at a rate of not less than 1.5 hours for each hour of employment for which overtime compensation is otherwise required (compensatory time off), if such an arrangement is authorized by a collective bargaining agreement or other agreement arrived at before the work is performed.

This bill permits an employer other than the state or a local governmental unit (private employer) to provide compensatory time off in lieu of overtime compensation, if such an arrangement is authorized by a collective bargaining agreement or other agreement arrived at before the work is performed, is entered into by the employee knowingly and voluntarily and not as a condition of employment, and is affirmed by a written record maintained by the employer. The bill permits an employee to accrue not more than 160 hours of compensatory time and provides that if an employee who has accrued 160 hours of compensatory time works additional hours during periods for which overtime compensation is payable, the

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employer must provide the employee overtime compensation for those additional hours worked. The bill requires an employer to permit an employee who requests the use of compensatory time that the employee has accrued to use that compensatory time within a reasonable period after the employee makes the request if the use of that compensatory time does not unduly disrupt the employer's operations.

In addition, the bill requires or permits an employer to pay monetary compensation instead of provide compensatory time off as follows:

1. By January 31 of each year or by the 31st day after any other 12-month period designated by the employer, the employer must provide monetary compensation to an employee for any compensatory time accrued by the employee and not used during the preceding year or other 12-month period.

2. An employer may at any time provide monetary compensation to an employee for any unused compensatory time accrued by the employee in excess of 80 hours.

3. An employee may at any time request in writing that the employer provide the employee with monetary compensation for any unused compensatory time accrued by the employee.

4. On termination of employment, the employer must provide monetary compensation to the employee for any unused compensatory time accrued by the employee.

Finally, the bill permits an employer that has adopted a policy of offering compensatory time to discontinue that policy upon giving its employees 30 days' notice of the employer's intent to discontinue that policy, except as otherwise provided in a collective bargaining agreement. The bill also permits an employee who has entered into an agreement to take compensatory time off in lieu of overtime compensation to withdraw from that agreement at any time.

For further information see the *state* 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.** 20.923 (16) of the statutes, as affected by 2011 Wisconsin Act 32,
2 is amended to read:

3 **20.923 (16) OVERTIME AND COMPENSATORY TIME EXCLUSION.** The salary paid to
4 any person whose position is included under subs. (2), (4), (7), and (8) to (12) is
5 deemed to compensate that person for all work hours. No overtime compensation
6 may be paid, and no compensatory time under s. 103.025 (2) may be provided, to any

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1 such person for hours worked in any workweek in excess of the standard basis of
2 employment as specified in s. 230.35 (5) (a).

3 **SECTION 2.** 62.13 (7n) of the statutes is amended to read:

4 62.13 (7n) HOURS OF LABOR. Except when a labor agreement under subch. IV
5 of ch. 111 that governs hours of employment exists, the council of every 2nd, 3rd, or
6 4th class city shall provide for a working day of not more than 8 hours in each 24
7 except in cases of positive necessity by some sudden and serious emergency, which,
8 in the judgment of the chief of police, the fire chief, or the chief of the combined
9 protective services department, demands that such workday shall be extended
10 beyond the 8-hour period at such time; and, when such emergency ceases to exist,
11 all overtime given during such emergency shall be placed to the credit of such
12 subordinate police officer, or each subordinate designated as primarily a police
13 officer under sub. (2e) (b), and compensatory time under s. 103.025 (2) given therefor.

14 **SECTION 3.** 62.57 of the statutes is amended to read:

15 **62.57 Uniform salaries in 1st class cities.** The common council of a 1st class
16 city may at any regular or special meeting adopt a uniform and comprehensive salary
17 or wage ordinance, or both, based on a classification of officers, employments and
18 positions in the city service, whether previously so classified or not, if provision has
19 been made in the budget of the current year for the total sum of money required for
20 the payment of the salaries and wages and a tax levied to fund the wages and
21 salaries. Wages under this section may be fixed by resolution. The common council
22 may, at any time, determine a cost-of-living increment or deduction, to be paid in
23 addition to wages or salaries under this section, based on a proper finding of the
24 United States bureau of labor statistics. The common council may provide for

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1 overtime pay and compensatory time under s. 103.025 (2) for employees who work
2 in excess of 40 hours per week.

3 **SECTION 4.** 97.42 (4) (f) of the statutes is amended to read:

4 97.42 (4) (f) Overtime agreements with the department whereby the operator
5 of any establishment subject to a license under sub. (2), agrees to pay the cost for
6 salaries, at overtime rates, and other expenses of department inspectors whenever
7 slaughtering, carcass preparation, or the processing of meat or poultry products or
8 meat food products is conducted beyond hours or days limited under par. (e), or on
9 Saturdays, Sundays, or holidays for state employees under s. 230.35 (4), or before 6
10 a.m. or after 6 p.m., or in excess of 40 hours in any week. Overtime charges for
11 periodic inspections under sub. (3) (e) shall, insofar as possible, be limited to the
12 minimum number of hours reasonably required for the conduct of such inspections.
13 The department may assess overtime charges under this paragraph even though the
14 department provides compensatory time in lieu of overtime compensation under s.
15 103.025 (2).

16 **SECTION 5.** 103.025 (1) (title) of the statutes is created to read:

17 103.025 (1) (title) DEFINITIONS.

18 **SECTION 6.** 103.025 (2) of the statutes is amended to read:

19 103.025 (2) PUBLIC EMPLOYERS. An employer described in s. ~~103.01 (1) (b)~~ 104.01
20 (3) (b) may provide an employee, in lieu of overtime compensation, compensatory
21 time off as permitted under 29 USC 207 (o), as amended to April 15, 1986.

22 **SECTION 7.** 103.025 (3) of the statutes is created to read:

23 103.025 (3) PRIVATE EMPLOYERS. (a) *Definition.* In this subsection, “employer”
24 has the meaning given in s. 104.01 (3) (a), but does not include an employer described
25 in s. 104.01 (3) (b).

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1 (b) *Compensatory time off permitted.* Subject to pars. (c) and (d), an employer
2 may provide an employee, in lieu of overtime compensation, compensatory time off
3 at a rate of not less than 1.5 hours for each hour of employment for which overtime
4 compensation is required to be paid.

5 (c) *Agreement required.* An employer may provide compensatory time off to an
6 employee under par. (b) only if that time off is provided in accordance with any of the
7 following:

8 1. The applicable provisions of a collective bargaining agreement between the
9 employer and a labor organization that has been certified or recognized as the
10 representative of the employee.

11 2. In the case of an employee who is not represented by a labor organization
12 described in subd. 1., an agreement between the employer and the employee arrived
13 at before the performance of the work, entered into by the employee knowingly and
14 voluntarily and not as a condition of employment, and affirmed by a written record
15 maintained by the employer in accordance with s. 104.09.

16 (d) *Hour limit.* An employee may accrue not more than 160 hours of
17 compensatory time under par. (b). If an employee who has accrued 160 hours of
18 compensatory time works additional hours during periods for which overtime
19 compensation is payable, the employer shall provide the employee overtime
20 compensation for those additional hours worked.

21 (e) *Use of compensatory time.* An employer shall permit an employee who
22 requests the use of compensatory time that the employee has accrued to use that
23 compensatory time within a reasonable period after the employee makes the request
24 if the use of that compensatory time does not unduly disrupt the employer's
25 operations.

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1 (f) *Monetary compensation.* 1. By January 31 of each year or by the 31st day
2 after the end of any other 12-month period designated by an employer, the employer
3 shall provide monetary compensation to an employee for any compensatory time
4 accrued by the employee and not used during the preceding year or other 12-month
5 period at the rate prescribed in subd. 5.

6 2. Notwithstanding subd. 1., an employer may at any time provide monetary
7 compensation to an employee for any unused compensatory time accrued by the
8 employee in excess of 80 hours after first giving the employee 30 days' notice of the
9 employer's intent to provide that compensation. The employer shall provide that
10 compensation at the rate prescribed in subd. 5.

11 3. An employee may at any time request in writing that his or her employer
12 provide the employee with monetary compensation for any unused compensatory
13 time accrued by the employee. Within 30 days after receiving such a request, the
14 employer shall provide the employee with that monetary compensation at the rate
15 prescribed in subd. 5.

16 4. On termination of an employee's employment with an employer, the
17 employer shall provide monetary compensation to the employee for any unused
18 compensatory time accrued by the employee at the rate prescribed in subd. 5.

19 5. An employer shall pay any monetary compensation provided under subd. 1.,
20 2., 3., or 4. at the regular rate of pay of the employee at the time the compensatory
21 time was earned or at the final regular rate of pay of the employee, whichever is
22 greater. In this subdivision, "final regular rate of pay" means the regular rate of pay
23 of an employee at the end of the preceding year or other 12-month period specified
24 in subd. 1., at the time of a notice under subd. 2., at the time of a request under subd.
25 3., or at the time of termination of the employee's employment under subd. 4.

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1 6. Any payment owed to an employee under subd. 1., 2., 3., or 4. shall be
2 considered unpaid overtime compensation.

3 (g) *Discontinuance or withdrawal.* 1. Except when a collective bargaining
4 agreement provides otherwise, an employer that has adopted a policy of offering
5 compensatory time to employees may discontinue that policy upon giving its
6 employees 30 days' notice of the employer's intent to discontinue that policy.

7 2. An employee who has entered into an agreement under par. (c) 2. may
8 withdraw from that agreement at any time.

9 (h) *Actions prohibited.* No employer may do any of the following:

10 1. Interfere with, restrain, or deny an employee's right under this subsection
11 to agree or not to agree to the provision of compensatory time in lieu of overtime
12 compensation, to request or not to request compensatory time off in lieu of being paid
13 overtime compensation, or to use or not to use compensatory time off in lieu of being
14 paid overtime compensation.

15 2. Discharge or otherwise discriminate against an employee for exercising a
16 right specified in subd. 1., opposing a practice prohibited under subd. 1., filing a
17 complaint or attempting to enforce any right under subd. 1., or testifying or assisting
18 in any action or proceeding to enforce any right under subd. 1.

19 (i) *Enforcement.* 1. An employee who is discharged or otherwise discriminated
20 against in violation of par. (h) 2. may file a complaint with the department, and the
21 department shall process the complaint in the same manner as employment
22 discrimination complaints are processed under s. 111.39. If the department finds
23 that a violation of par. (h) 2. has been committed, the department may order the
24 employer to take such action authorized under s. 111.39 as will remedy the violation.

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1 Section 111.322 (2m) applies to a discharge or other discriminatory act arising in
2 connection with any proceeding under this subdivision.

3 2. An employee who is owed monetary compensation under par. (f) 1., 2., 3., or
4 4. may file a wage claim with the department under s. 109.09 (1) or may bring an
5 action under s. 109.03 (5) without first filing a wage claim with the department.

6 **SECTION 8.** 106.54 (10) of the statutes is created to read:

7 106.54 (10) The division shall receive complaints under s. 103.025 (3) (i) 1. and
8 shall process the complaints in the same manner as employment discrimination
9 complaints are processed under s. 111.39.

10 **SECTION 9.** 109.09 (1) of the statutes is amended to read:

11 109.09 (1) The department shall investigate and attempt equitably to adjust
12 controversies between employers and employees as to alleged wage claims. The
13 department may receive and investigate any wage claim which is filed with the
14 department, or received by the department under s. 109.10 (4), no later than 2 years
15 after the date the wages are due. The department may, after receiving a wage claim,
16 investigate any wages due from the employer against whom the claim is filed to any
17 employee during the period commencing 2 years before the date the claim is filed.
18 The department shall enforce this chapter and ss. 66.0903, 103.02, 103.025, 103.49,
19 103.82, 104.12, and 229.8275. In pursuance of this duty, the department may sue the
20 employer on behalf of the employee to collect any wage claim or wage deficiency and
21 ss. 109.03 (6) and 109.11 (2) and (3) shall apply to such actions. Except for actions
22 under s. 109.10, the department may refer such an action to the district attorney of
23 the county in which the violation occurs for prosecution and collection and the
24 district attorney shall commence an action in the circuit court having appropriate
25 jurisdiction. Any number of wage claims or wage deficiencies against the same

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1 employer may be joined in a single proceeding, but the court may order separate
2 trials or hearings. In actions that are referred to a district attorney under this
3 subsection, any taxable costs recovered by the district attorney shall be paid into the
4 general fund of the county in which the violation occurs and used by that county to
5 meet its financial responsibility under s. 978.13 (2) (b) for the operation of the office
6 of the district attorney who prosecuted the action.

7 **SECTION 10.** 111.322 (2m) (a) of the statutes is amended to read:

8 111.322 (2m) (a) The individual files a complaint or attempts to enforce any
9 right under s. 103.02, 103.025, 103.10, 103.13, 103.28, 103.32, 103.34, 103.455,
10 103.50, 104.12, ~~106.04~~, 109.03, 109.07, 109.075, or 146.997 or ss. 101.58 to 101.599
11 or 103.64 to 103.82.

12 **SECTION 11.** 111.322 (2m) (b) of the statutes is amended to read:

13 111.322 (2m) (b) The individual testifies or assists in any action or proceeding
14 held under or to enforce any right under s. 103.02, 103.025, 103.10, 103.13, 103.28,
15 103.32, 103.34, 103.455, 103.50, 104.12, ~~106.04~~, 109.03, 109.07, 109.075, or 146.997
16 or ss. 101.58 to 101.599 or 103.64 to 103.82.

17 **SECTION 12. Initial applicability.**

18 (1) COLLECTIVE BARGAINING AGREEMENTS. This act first applies to hours worked
19 on the effective date of this subsection, except that in the case of an employee who
20 on that date is covered by a collective bargaining agreement containing provisions
21 that are inconsistent with this act, this act first applies to hours worked on the day
22 on which the collective bargaining agreement expires, or is extended, modified, or
23 renewed, which occurs first.

24 (END)