



2013 ASSEMBLY BILL 894

March 27, 2014 – Introduced by Representatives POPE, WRIGHT, JOHNSON, HULSEY, SARGENT, C. TAYLOR, SINICKI, GENRICH, HEBL, OHNSTAD, SHANKLAND and BERCEAU. Referred to Committee on Labor.

1 **AN ACT** *to create* 20.445 (1) (fr), 20.445 (1) (w), 25.17 (1) (er), 25.52 and 103.10
2 (5m) of the statutes; **relating to:** paid family leave, granting rule-making
3 authority, and making appropriations.

Analysis by the Legislative Reference Bureau

Under current law, an employer, including the state, employing at least 50 individuals on a permanent basis in this state (employer) 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-week period (employee) to take six weeks of family leave in a 12-month period. Family leave may be taken for the birth or adoptive placement of a new child or to care for a child, spouse, domestic partner, or parent who has a serious health condition. An employee is not entitled to receive wages or salary while taking family leave, but may substitute, for portions of family leave, other types of paid or unpaid leave provided by the employer.

This bill creates a family leave benefits program, to be administered by the Department of Workforce Development (DWD), under which an employee who is on family leave is eligible to receive family leave benefits from the family leave benefits trust fund created under the bill (fund) in the amount of two-thirds of the employee's average weekly earnings, subject to a maximum of 53 percent of the state's average weekly earnings as of June 30 of the previous year, or, for a fractional week, one-seventh of the employee's weekly benefit amount multiplied by the number of days of family leave taken that week.

ASSEMBLY BILL 894

Under the bill, family leave benefits are payable beginning on the first day of the second week of family leave and are payable for each subsequent day of family leave. If, however, family leave benefits become payable on any day after the first three weeks of an employee's family leave, family leave benefits are also payable with respect to the first week of the employee's family leave. No family leave benefits are payable for any period of family leave in which the employee is substituting paid or unpaid leave of any other type provided by the employer or in which the employee is receiving unemployment benefits or worker's compensation benefits.

The bill requires each employee to contribute to the fund an amount equal to 0.09 percent of the employee's wages in 2015, an amount equal to 0.12 percent of the employee's wages in 2016, and, in 2017 and subsequent years, a percentage of the employee's wages, as determined by DWD, that is sufficient to obtain a total contribution to the fund from all employees equal to 125 percent of the family leave benefits paid during the preceding year plus 100 percent of the cost of administering the payment of those benefits during the preceding year, less the balance in the fund as of December 31 of the preceding year. The bill requires DWD to collect those contributions from the employee's employer in the same manner as DWD collects contributions to the unemployment reserve fund under current law.

Finally, the bill permits an employee whose claim for family leave benefits is denied by DWD to request a hearing on the denial and requires DWD to process the request for a hearing in the same manner that requests for hearing on unemployment insurance claims are processed under current law. If DWD pays family leave benefits to an employee and later discovers that the payment was made in error or pays family leave benefits to a person who made a false statement or representation to obtain benefits that are payable to another person, the bill permits DWD to recover the erroneous payment in the same manner that DWD recovers erroneous payments of unemployment insurance benefits under current law.

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.** 20.445 (1) (fr) of the statutes is created to read:

2 20.445 (1) (fr) *Family leave benefits program; initial costs.* A sum sufficient to
3 be transferred to the family leave benefits trust fund under s. 25.52 for the initial
4 establishment and administration of the family leave benefits program under s.
5 103.10 (5m) and for the payment of family leave benefits under s. 103.10 (5m) (b).

ASSEMBLY BILL 894

1 No moneys may be expended or encumbered from this appropriation after December
2 31, 2015.

3 **SECTION 2.** 20.445 (1) (w) of the statutes is created to read:

4 20.445 (1) (w) *Family leave benefits trust fund.* From the family leave benefits
5 trust fund, all moneys transferred to that fund under par. (fr) for the payment of
6 benefits under s. 103.10 (5m) (b) and for the administration of the family leave
7 benefits program prior to January 1, 2016, and all moneys deposited in that fund
8 under s. 103.10 (5m) (f) 2. for the payment of benefits under s. 103.10 (5m) (b), for the
9 administration of the family leave benefits program beginning on January 1, 2016,
10 and for repayment of the amounts transferred to that fund under par. (fr).

11 **SECTION 3.** 25.17 (1) (er) of the statutes is created to read:

12 25.17 (1) (er) Family leave benefits trust fund (s. 25.52);

13 **SECTION 4.** 25.52 of the statutes is created to read:

14 **25.52 Family leave benefits trust fund.** There is established a separate
15 nonlapsible trust fund designated as the family leave benefits trust fund, to consist
16 of all moneys transferred to that fund under s. 20.445 (1) (fr) and all moneys
17 deposited in that fund under s. 103.10 (5m) (f) 2.

18 **SECTION 5.** 103.10 (5m) of the statutes is created to read:

19 103.10 (5m) FAMILY LEAVE BENEFITS. (a) *Definitions.* In this subsection:

20 1. "Average weekly earnings" means the average weekly earnings of an
21 employee as calculated under s. 102.11.

22 2. "Family leave benefits" means family leave benefits payable under this
23 subsection from the family leave benefits trust fund.

24 (b) *Eligibility for benefits.* An employee who is taking family leave under sub.
25 (3) is eligible to receive family leave benefits in the amount specified in par. (c), for

ASSEMBLY BILL 894

1 the duration specified in par. (d), and subject to the limitations specified in par. (e).
2 To receive family leave benefits, an employee must file a claim for those benefits
3 within such time and in such manner as the department may prescribe by rule. On
4 receipt of a claim for family leave benefits, the department may request from the
5 claimant's employer such information as may be necessary for the department to
6 determine the claimant's eligibility for those benefits and the amount and duration
7 of those benefits, and the employer shall provide that information to the department
8 within such time and in such manner as the department may prescribe by rule. If
9 the department determines that a claimant is eligible to receive family leave
10 benefits, the department shall provide those benefits to the claimant as provided in
11 pars. (c) to (e).

12 (c) *Amount of benefits.* The amount of family leave benefits for a week of family
13 leave for which those benefits are payable is two-thirds of the employee's average
14 weekly earnings, subject to a maximum of 53 percent of the state's average weekly
15 earnings as determined under s. 108.05 as of June 30 of the previous year, rounded
16 down to the nearest dollar. The amount of family leave benefits for a fractional week
17 of family leave for which those benefits are payable is one-seventh of the employee's
18 weekly benefit amount multiplied by the number of days of family leave taken that
19 week, rounded down to the nearest dollar.

20 (d) *Duration of benefits.* Except as provided in this paragraph, no family leave
21 benefits are payable for the first week of an employee's family leave. Family leave
22 benefits are payable beginning on the first day of the 2nd week of family leave and
23 are payable for each subsequent day of family leave. If family leave benefits become
24 payable on any day after the first 3 weeks of an employee's family leave, family leave

ASSEMBLY BILL 894

1 benefits shall also be payable with respect to the first week of the employee's family
2 leave.

3 (e) *Limitations of benefits.* No family leave benefits are payable for any period
4 of family leave in which the employee is substituting paid or unpaid leave of any
5 other type provided by the employer as provided in sub. (5) (b) or in which the
6 employee is receiving unemployment benefits under ch. 108 or worker's
7 compensation benefits under ch. 102.

8 (f) *Family leave benefits trust fund.* 1. Each employee shall contribute to the
9 family leave benefits trust fund an amount equal to 0.09 percent of the employee's
10 wages in 2015, an amount equal to 0.12 percent of the employee's wages in 2016, and,
11 in 2017 and subsequent years, a percentage of the employee's wages, as determined
12 by the department, that is sufficient to obtain a total contribution to that fund from
13 all employees equal to 125 percent of the family leave benefits paid during the
14 preceding year plus 100 percent of the cost of administering the payment of those
15 benefits during the preceding year, less the balance in that fund as of December 31
16 of the preceding year. The department shall collect those contributions from the
17 employee's employer in the same manner as the department collects contributions
18 to the unemployment reserve fund under ss. 108.17 and 108.18.

19 2. Contributions received under subd. 1. shall be deposited in the family leave
20 benefits trust fund and credited to the appropriation account under s. 20.445 (1) (w).
21 From that appropriation, the secretary shall transfer to the general fund an amount
22 equal to the amount expended from the appropriation under s. 20.445 (1) (fr) when
23 the secretary determines that the balance in the family leave benefits trust fund is
24 sufficient to make the transfer. The secretary may transfer that amount in
25 installments.

ASSEMBLY BILL 894**SECTION 5**

1 3. Annually, by June 1, the secretary shall submit a report to the joint
2 committee on finance on the amounts available for transfer under subd. 2., the
3 amounts previously transferred under subd. 2., and the outstanding balance that
4 remains to be transferred under subd. 2.

5 (g) *Denial of claims; overpayments.* 1. An employee whose claim for family
6 leave benefits is denied by the department may request a hearing on the denial, and
7 the department shall process the request for a hearing in the same manner that
8 requests for hearings on unemployment insurance claims are processed under s.
9 108.09.

10 2. If the department pays family leave benefits to an employee and later
11 discovers that the payment was made in error or pays family leave benefits to a
12 person who made a false statement or representation to obtain benefits that are
13 payable to another person, the department may recover the erroneous payment in
14 the same manner that the department recovers erroneous payments of
15 unemployment insurance benefits under ss. 108.095, 108.22 (8), and 108.225.

16 (h) *Rules.* The department shall promulgate rules to implement this
17 subsection.

SECTION 6. Initial applicability.

18 (1) FAMILY LEAVE BENEFITS TRUST FUND CONTRIBUTIONS. Except as provided in
19 subsection (3), the treatment of section 103.10 (5m) (f) 1. of the statutes first applies
20 to wages earned on January 1, 2015.

21 (2) FAMILY LEAVE BENEFITS ELIGIBILITY. Except as provided in subsection (3), the
22 treatment of section 103.10 (5m) (b) of the statutes first applies to a period of family
23 leave under s. 103.10 (3) of the statutes commencing on July 1, 2015.
24

ASSEMBLY BILL 894

1 (3) COLLECTIVE BARGAINING AGREEMENTS. This act first applies to an employee
2 who is affected by a collective bargaining agreement that contains provisions
3 inconsistent with this act on the day on which the collective bargaining agreement
4 expires or is extended, modified, or renewed.

5

(END)