



State of Wisconsin
2021 - 2022 LEGISLATURE

LRB-2026/P1
JAM/MIM/TJD:emw&kjf

DOA:.....Kirschbaum, BB0186, BB0284 - Family and medical leave, FMLA
for caregiving

FOR 2021-2023 BUDGET -- NOT READY FOR INTRODUCTION

AN ACT ...; relating to: the budget.

Analysis by the Legislative Reference Bureau

EMPLOYMENT

Family and medical leave expansion

Under the current family and medical leave law, an employer that employs at least 50 individuals on a permanent basis 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 family leave to care for a child, spouse, domestic partner, or parent of the employee who has a serious health condition. An employer covered by the law must also permit an employee to take up to two weeks of medical leave in a 12-month period when the employee has a serious health condition. An employee may file a complaint with DWD regarding an alleged violation of the family and medical leave law within 30 days after either the violation occurs or the employee should reasonably have known that the violation occurred, whichever is later.

This bill makes the following changes to the family and medical leave law:

1. Requires employers that employ 25 or more employees on a permanent basis to comply with the family and medical leave law.
2. Decreases the number of hours an employee is required to work before qualifying for family and medical leave to 680 hours during the preceding 52 weeks.

3. Extends the time period in which an employee may file a complaint with DWD to 300 days after either the violation occurs or the employee should reasonably have known that the violation occurred, whichever is later.

4. Requires employers covered under the law to permit employees to take family leave to provide care for a grandparent, grandchild, or sibling who has a serious health condition.

5. Removes the age restriction from the definition of “child” for various purposes under the family and medical leave law.

6. Requires employers to permit employees to take family leave to care for the employee’s child, spouse, domestic partner, parent, grandparent, grandchild, or sibling of the employee who is in medical isolation and requires employers to permit employees to take medical leave when the employee is in medical isolation. The bill defines “medical isolation” to include when a local health officer or DHS advises that an individual isolate or quarantine; when a health care professional, a local health officer, or DHS advises that the individual seclude herself or himself when awaiting the result of a diagnostic test for a communicable disease or when the individual is infected with a communicable disease; and when an individual’s employer advises that an individual not come to the workplace due to a concern that the individual may have been exposed to or infected with a communicable disease.

7. Requires employers to permit employees to take family leave in the instance of the unexpected closure of the child care provider or school that the employee’s child, grandchild, or sibling attends or because of a qualifying exigency as to be determined by DWD related to covered active duty, as defined in the bill, or notification of an impending call or order to covered active duty of a child, spouse, domestic partner, parent, grandparent, grandchild, or sibling who is a member of the U.S. armed forces.

8. Requires employers to permit employees to take family leave to provide caregiving services to a child, spouse, domestic partner, sibling, parent, grandparent, or grandchild of the employee if the child, spouse, domestic partner, sibling, parent, grandparent, or grandchild suffers from a chronic condition. The bill defines “chronic condition” as a health condition, illness, impairment, or physical or mental condition that involves any of the following: a) a condition or disease that is persistent or otherwise long-lasting in its effects; b) a condition or disease that lasts for at least three months; c) a condition or disease that requires the individual to have assistance with one or more essential daily activities; or d) outpatient care that requires continuing treatment or supervision by a health care provider. The bill also includes adult children who suffer from a chronic condition in the definition of “child” for the purposes of taking family leave for caregiving.

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:

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

103.10 (1) (a) “Child” means a natural, adopted, or foster child, a stepchild, or a legal ward ~~to whom any of the following applies:~~

SECTION 2. 103.10 (1) (a) 1. of the statutes is repealed.

SECTION 3. 103.10 (1) (a) 2. of the statutes is repealed.

SECTION 4. 103.10 (1) (a) 3. of the statutes is created to read:

103.10 (1) (a) 3. The individual is 18 years of age or older, suffers from a chronic condition, and requires family caregiving.

SECTION 5. 103.10 (1) (ao) of the statutes is created to read:

103.10 (1) (ao) “Chronic condition” means a health condition, illness, impairment, or physical or mental condition that involves any of the following:

1. A condition or disease that is persistent or otherwise long-lasting in its effects.
2. A condition or disease that lasts for at least 3 months.
3. A condition or disease that requires the individual to have assistance with one or more essential daily activities.
4. Outpatient care that requires continuing treatment or supervision by a health care provider.

SECTION 6. 103.10 (1) (ap) of the statutes is created to read:

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

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

under a call or order to active duty under a provision of law specified in [10 USC 101](#)

(a) (13) (B).

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

103.10 (1) (b) Except as provided in sub. ~~(1m) (b) 2.~~ and s. 452.38, “employee” means an individual employed in this state by an employer, except the employer’s parent, child, spouse, domestic partner, ~~or child parent, grandparent, grandchild, or sibling.~~

SECTION 8. 103.10 (1) (c) of the statutes is amended to read:

103.10 (1) (c) Except as provided in sub. (1m) (b) 3., “employer” means a person engaging in any activity, enterprise or business in this state employing at least 50 25 individuals on a permanent basis. “Employer” includes the state and any office, department, independent agency, authority, institution, association, society or other body in state government created or authorized to be created by the constitution or any law, including the legislature and the courts.

SECTION 9. 103.10 (1) (dg) of the statutes is created to read:

103.10 (1) (dg) “Family caregiving” means providing care or assistance without remuneration to a family member who suffers from a chronic condition and includes all of the following:

1. Providing direct treatment to an individual with a chronic condition.
2. Attending training and educational courses on duties and responsibilities for caring for an individual with a chronic condition.
3. Attending discharge planning meetings for an individual with a chronic condition.
4. Attending care planning meetings for an individual with a chronic condition.

5. Attending appointments with health care providers for an individual with a chronic condition.

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

103.10 (1) (dr) “Grandchild” means the child of a child.

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

103.10 (1) (dt) “Grandparent” means the parent of a parent.

SECTION 12. 103.10 (1) (em) of the statutes is created to read:

103.10 (1) (em) “Medical isolation” means any of the following:

1. When a health care professional, a local health officer, or the department of health services advises that the individual seclude herself or himself from others when the individual is awaiting the result of a diagnostic test for a communicable disease or when the individual is infected with a communicable disease.

2. When a local health officer or the department of health services advises that an individual isolate or quarantine under s. 252.06.

3. When an individual’s employer advises that the individual not come to the workplace due to a concern that the individual may have been exposed to or infected with a communicable disease.

SECTION 13. 103.10 (1) (gm) of the statutes is created to read:

103.10 (1) (gm) “Sibling” means a brother, sister, half brother, half sister, stepbrother, or stepsister, whether by blood, marriage, or adoption.

SECTION 14. 103.10 (2) (c) of the statutes is amended to read:

103.10 (2) (c) This section only applies to an employee who has been employed by the same employer for more than 52 consecutive weeks and who worked for the employer for at least ~~1,000~~ 680 hours during the preceding 52-week period.

SECTION 15. 103.10 (3) (a) 1. of the statutes is amended to read:

103.10 (3) (a) 1. In a 12-month period no employee may take more than 6 weeks of family leave under par. (b) 1. and, 2., 4., 4m., and 5.

SECTION 16. 103.10 (3) (a) 2m. of the statutes is created to read:

103.10 (3) (a) 2m. In a 12-month period no employee may take more than 2 weeks of family leave for the reasons specified under par. (b) 6.

SECTION 17. 103.10 (3) (b) 3. of the statutes is amended to read:

103.10 (3) (b) 3. To care for the employee's child, spouse, domestic partner, ~~or parent, grandparent, grandchild, or sibling,~~ if the child, spouse, domestic partner, ~~or parent, grandparent, grandchild, or sibling~~ has a serious health condition.

SECTION 18. 103.10 (3) (b) 4. of the statutes is created to read:

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

SECTION 19. 103.10 (3) (b) 4m. of the statutes is created to read:

103.10 (3) (b) 4m. For family caregiving for the employee's child, spouse, domestic partner, sibling, parent, grandparent, or grandchild, if the child, spouse, domestic partner, sibling, parent, grandparent, or grandchild has a chronic condition.

SECTION 20. 103.10 (3) (b) 5. of the statutes is created to read:

103.10 (3) (b) 5. Because a child care center, child care provider, or school that the employee's child, grandchild, or sibling attends is experiencing an unforeseen or unexpected short-term closure.

SECTION 21. 103.10 (3) (b) 6. of the statutes is created to read:

103.10 (3) (b) 6. To care for the employee's child, spouse, domestic partner, parent, grandparent, grandchild, or sibling, if the child, spouse, domestic partner, parent, grandparent, grandchild, or sibling is in medical isolation.

SECTION 22. 103.10 (4) (a) of the statutes is amended to read:

103.10 (4) (a) Subject to pars. (b) and (c), an employee who is in medical isolation or has a serious health condition which makes the employee unable to perform his or her employment duties may take medical leave for the period during which he or she is unable to perform those duties.

SECTION 23. 103.10 (6) (b) of the statutes is amended to read:

103.10 (6) (b) If an employee intends to take family leave because of the planned medical treatment ~~or~~, supervision, or family caregiving of a child, spouse, domestic partner, sibling, or parent, grandparent, or grandchild, or intends to take medical leave because of the planned medical treatment or supervision of the employee, the employee shall do all of the following:

1. Make a reasonable effort to schedule the medical treatment ~~or~~, supervision, or family caregiving so that it does not unduly disrupt the employer's operations, subject to the approval of the health care provider of the child, spouse, domestic partner, sibling, parent, grandparent, grandchild, or employee.

2. Give the employer advance notice of the medical treatment ~~or~~, supervision, or family caregiving in a reasonable and practicable manner.

SECTION 24. 103.10 (6) (c) of the statutes is created to read:

103.10 (6) (c) If the employee intends to take family leave under sub. (3) (b) 4. that is foreseeable because the spouse, child, domestic partner, parent, grandparent, grandchild, or sibling of the employee is on covered active duty or has been notified

of an impending call or order to covered active duty, the employee shall provide notice of that intention to the employer in a reasonable and practicable manner.

SECTION 25. 103.10 (7) (a) of the statutes is amended to read:

103.10 (7) (a) If an employee requests family leave for a reason described in sub. (3) (b) 3. or 4m. or requests medical leave due to a serious health condition, the employer may require the employee to provide certification, as described in par. (b), issued by the health care provider or Christian Science practitioner of the child, spouse, domestic partner, sibling, parent, grandparent, grandchild, or employee, whichever is appropriate.

SECTION 26. 103.10 (7) (b) (intro.) of the statutes is amended to read:

103.10 (7) (b) (intro.) No employer may require certification under this paragraph stating more than the following:

SECTION 27. 103.10 (7) (b) 1. of the statutes is amended to read:

103.10 (7) (b) 1. That the child, spouse, domestic partner, sibling, parent, grandparent, grandchild, or employee has a serious health condition or a chronic condition.

SECTION 28. 103.10 (7) (b) 2. of the statutes is amended to read:

103.10 (7) (b) 2. The date the serious health condition or chronic condition commenced and its probable duration.

SECTION 29. 103.10 (7) (b) 3. of the statutes is amended to read:

103.10 (7) (b) 3. Within the knowledge of the health care provider or Christian Science practitioner, the medical facts regarding the serious health condition or chronic condition.

SECTION 30. 103.10 (7) (d) of the statutes is created to read:

103.10 (7) (d) If an employee requests family leave under sub. (3) (b) 4., the employer may require the employee to provide certification that the spouse, child, domestic partner, parent, grandparent, grandchild, or sibling of the employee is on covered active duty or has been notified of an impending call or order to covered active duty issued at such time and in such manner as the department may prescribe by rule, and the employee shall provide a copy of that certification to the employer in a timely manner.

SECTION 31. 103.10 (7) (e) of the statutes is created to read:

103.10 (7) (e) If an employee requests family leave under sub. (3) (b) 5., the employer may require the employee to provide certification that the child care center, child care provider, or school that the employee's child attends is experiencing an unforeseen or unexpected short-term closure. The department may prescribe by rule the form and content of the certification.

SECTION 32. 103.10 (7) (f) of the statutes is created to read:

103.10 (7) (f) If an employee requests family leave under sub. (3) (b) 6., or medical leave due to medical isolation, the employer may require the employee to provide certification issued by a local public health official, the department of health services, or a health care provider or Christian Science practitioner of the child, spouse, domestic partner, parent, grandparent, grandchild, sibling, or employee, whichever is appropriate, except that no employer may require certification under this paragraph if the sole reason for the medical isolation is due to the employer's request under sub. (1) (em) 3. No employer may require certification under this paragraph stating more than the following:

1. That the child, spouse, domestic partner, parent, grandparent, grandchild, sibling, or employee is is medical isolation.

2. The date the medical isolation commenced and its probable duration.

SECTION 33. 103.10 (10) of the statutes is amended to read:

103.10 **(10)** ALTERNATIVE EMPLOYMENT. Nothing in this section prohibits an employer and an employee with a serious health condition or in medical isolation from mutually agreeing to alternative employment for the employee while the serious health condition or medical isolation lasts. No period of alternative employment, with the same employer, reduces the employee's right to family leave or medical leave.

SECTION 34. 103.10 (12) (b) of the statutes is amended to read:

103.10 **(12)** (b) An employee who believes his or her employer has violated sub. (11) (a) or (b) may, within ~~30~~ 300 days after the violation occurs or the employee should reasonably have known that the violation occurred, whichever is later, file a complaint with the department alleging the violation. Except as provided in s. 230.45 (1m), the department shall investigate the complaint and shall attempt to resolve the complaint by conference, conciliation or persuasion. If the complaint is not resolved and the department finds probable cause to believe a violation has occurred, the department shall proceed with notice and a hearing on the complaint as provided in ch. 227. The hearing shall be held within 60 days after the department receives the complaint.

SECTION 35. 103.10 (12) (c) of the statutes is amended to read:

103.10 **(12)** (c) If 2 or more health care providers disagree about any of the information required to be certified under sub. (7) (b), the department may appoint another health care provider to examine the child, spouse, domestic partner, parent, grandparent, grandchild, sibling, or employee and render an opinion as soon as possible. The department shall promptly notify the employee and the employer of

the appointment. The employer and the employee shall each pay 50 percent of the cost of the examination and opinion.

SECTION 36. 103.10 (14) (a) of the statutes is renumbered 103.10 (14).

SECTION 37. 103.10 (14) (b) of the statutes is repealed.

SECTION 9150. Nonstatutory provisions; Workforce Development.

(1) EMERGENCY RULE-MAKING AUTHORITY; FAMILY AND MEDICAL LEAVE. The department of workforce development may use the procedure under s. 227.24 to promulgate rules to implement s. 103.10 (3) (b) 4. and to revise ch. DWD 225 of the administrative code as needed to implement the changes made by this act's treatment of s. 103.10 (1) (a) (intro.), 1., 2., and 3., (ao), (ap), (b), (c), (dg), (dr), (dt), (em), and (gm), (2) (c), (3) (a) 1. and 2m. and (b) 3., 4., 4m., 5., and 6., (4) (a), (6) (b) and (c), (7) (a), (b) (intro.), 1., 2., and 3., (d), (e), and (f), (10), (12) (b) and (c), and (14) (a) and (b). Notwithstanding s. 227.24 (1) (c) and (2), emergency rules promulgated under this subsection remain in effect until July 1, 2022, or the date on which permanent rules take effect, whichever is sooner. Notwithstanding s. 227.24 (1) (a) and (3), the department is not required to provide evidence that promulgating a rule under this subsection as an emergency rule is necessary for the preservation of the public peace, health, safety, or welfare and is not required to provide a finding of emergency for a rule promulgated under this subsection.

SECTION 9350. Initial applicability; Workforce Development.

(1) FAMILY AND MEDICAL LEAVE. The treatment of s. 103.10 (12) (b) first applies to a violation that occurs, or that an employee should reasonably have known occurred, on the effective date of this subsection.

(END)