



State of Wisconsin  
2023 - 2024 LEGISLATURE

LRB-1814/P9  
MED/MDE/MIM:all

DOA:.....Kirschbaum, BB0325 and BB0010 - Expanded FMLA and Paid  
Leave Benefits Insurance Program

**FOR 2023-2025 BUDGET -- NOT READY FOR INTRODUCTION**

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

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*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 the employee's child, spouse, domestic partner, or parent who has a serious health condition. Employers covered under the law must also permit an employee covered under the law to take up to two weeks of medical leave in a 12-month period when that 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 covered under the law to permit employees covered under the law to take family leave to provide for a grandparent, grandchild, or sibling who has a serious health condition.

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. Increases the amount of weeks an employee is able to take in family and medical leave for any eligible reason to 12 weeks.

4. 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.

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 in the instance of an unforeseen or unexpected gap in childcare for an employee’s child, grandchild, or sibling 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 an employee’s child, spouse, domestic partner, parent, grandparent, grandchild, or sibling who is a member of the U.S. armed forces.

7. Requires employers to permit employees to take family leave to address issues related to the employee or the employee’s child, spouse, domestic partner, parent, grandparent, grandchild, or sibling being the victim of domestic abuse, sexual abuse, or stalking.

8. Requires employers to permit employees to take family leave to care for a child, spouse, domestic partner, parent, grandparent, grandchild, or sibling of an employee who is in medical isolation and requires employers to permit employees to take medical leave when an 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 an individual seclude herself or himself when awaiting the results 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 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.

### ***Family and medical leave benefits insurance program***

This bill creates a family and medical leave benefits insurance program, to be administered by DWD, under which a covered individual who is on certain family or medical leave is eligible, beginning on January 1, 2025, to receive up to 12 weeks of family or medical leave insurance benefits as specified in the bill from the family and medical leave benefits insurance trust fund created under the bill. For purposes of the bill, the following definitions apply:

1. A “covered individual” is an individual who worked for the same employer for at least 680 hours in the calendar year prior to the year in which the covered individual claims family or medical leave insurance benefits (application year) or a self-employed individual who elects coverage under the program.

2. “Family leave” means leave from employment, self-employment, or availability for employment for the birth or adoptive placement of a new child; to care for a family member who has a serious health condition or is in medical isolation; for covered active duty; or to address issues related to being the victim of domestic abuse, sexual abuse, or stalking.

3. “Medical leave” means leave from employment, self-employment, or availability for employment when a covered individual is in medical isolation or has a serious health condition that makes the employee unable to perform his or her employment duties.

Under the bill, the amount of family or medical leave insurance benefits for a week for which those benefits are payable is as follows:

1. For the amount of the covered individual’s average weekly earnings that are less than 50 percent of the state annual median wage in the calendar year before the individual’s application year, 90 percent of that individual’s average weekly earnings.

2. For the amount of the covered individual’s average weekly earnings that are more than 50 percent of the state annual median wage in the calendar year before the individual’s application year, 50 percent of that individual’s average weekly earnings.

Beginning on January 1, 2025, the bill requires each individual employed in this state by an employer that regularly employs at least 50 individuals, including an individual employed by the state, and any self-employed individual who elects coverage under the family and medical leave benefits insurance program to contribute to the trust fund a percentage of his or her wages from employment or income from self-employment. Under the bill, each employer must contribute the same amount as an employee. The bill requires DWD to collect those contributions in the same manner as DWD collects contributions to the unemployment reserve fund under current law.

The bill provides that an employer that provides paid family and medical leave benefits that are identical to or more generous than those provided under the program may request an exemption from participation in the program. The bill requires DWD to promulgate rules to provide exemptions from participation in the program.

The bill further does the following:

1. Requires DWD to promulgate rules providing for a right to a hearing in cases of disputes involving an individual’s eligibility for benefits or status as a covered individual under the program.

2. Requires DWD to promulgate rules providing for a right to a hearing in cases involving the liability of employers for contributions under the program.

3. Allows DWD to seek repayment of family or medical leave insurance benefits that are paid erroneously or as a result of willful misrepresentation. The bill allows DWD to establish other procedures for recovering overpayments and allows DWD to utilize procedures under the unemployment insurance law.

For further information see the state and local fiscal estimate, which will be printed as an appendix to this bill.

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

**SECTION 1.** 20.445 (6) (q) of the statutes is created to read:

20.445 (6) (q) *Payment of benefits; family and medical leave benefits insurance trust fund.* From the family and medical leave benefits insurance trust fund, a sum sufficient to pay for the payment of benefits under s. 103.105 (3) and to refund moneys erroneously paid into the fund.

\*\*\*\*NOTE: This SECTION involves a change in an appropriation that must be reflected in the revised schedule in s. 20.005, stats.

**SECTION 2.** 20.445 (6) (r) of the statutes is created to read:

20.445 (6) (r) *Administrative expenses; family and medical leave benefits insurance trust fund.* Biennially, from the family and medical leave benefits insurance trust fund, the amounts in the schedule for the administrative expenses of the family and medical leave benefits insurance program.

\*\*\*\*NOTE: This SECTION involves a change in an appropriation that must be reflected in the revised schedule in s. 20.005, stats.

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

25.17 (1) (er) Family and medical leave benefits insurance trust fund (s. 25.52);

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

**25.52 Family and medical leave benefits insurance trust fund.** There is created a separate nonlapsible trust fund designated as the family and medical leave benefits insurance trust fund, to consist of all moneys deposited in that fund under s. 103.105 (8).

**SECTION 5.** 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 6.** 103.10 (1) (a) 1. of the statutes is repealed.

**SECTION 7.** 103.10 (1) (a) 2. of the statutes is repealed.

**SECTION 8.** 103.10 (1) (ap) of the statutes is created to read:

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

1. For 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. For 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 9.** 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 10.** 103.10 (1) (dm) of the statutes is created to read:

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

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

103.10 (1) (dp) “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 an 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 (1m) (b) 1. of the statutes is renumbered 103.10 (1) (an).

**SECTION 15.** 103.10 (1m) (b) 6. of the statutes is renumbered 103.10 (1) (gd).

**SECTION 16.** 103.10 (1m) (b) 7. of the statutes is renumbered 103.10 (1) (m).

**SECTION 17.** 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 18.** 103.10 (3) (a) of the statutes is repealed.

**SECTION 19.** 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 20.** 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 21.** 103.10 (3) (b) 5. of the statutes is created to read:

103.10 (3) (b) 5. Because there is an unforeseen or unexpected short-term gap in childcare for the employee's child, grandchild, or sibling that the employee must fill. The department may define by rule "unforeseen or unexpected short-term gap in childcare."

**SECTION 22.** 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 23.** 103.10 (3) (b) 7. of the statutes is created to read:

103.10 (3) (b) 7. To address issues of the employee or the employee's child, spouse, domestic partner, parent, grandparent, grandchild, or sibling related to being the victim of domestic abuse, sexual abuse, or stalking.

**SECTION 24.** 103.10 (4) (a) of the statutes is amended to read:

103.10 (4) (a) Subject to ~~pars. (b) and par. (c)~~ and sub. (4m), 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 25.** 103.10 (4) (b) of the statutes is repealed.

**SECTION 26.** 103.10 (4m) of the statutes is created to read:

103.10 (4m) DURATION OF LEAVE. In a 12-month period, no employee may take more than 12 weeks of family leave for any combination of reasons specified under sub. (3) or (4).

**SECTION 27.** 103.10 (6) (b) (intro.) of the statutes is amended to read:

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

**SECTION 28.** 103.10 (6) (b) 1. of the statutes is amended to read:

103.10 (6) (b) 1. Make a reasonable effort to schedule the medical treatment or supervision 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, parent, grandparent, grandchild, sibling, or employee.

**SECTION 29.** 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 30.** 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 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, parent, grandparent, grandchild, sibling, or employee, whichever is appropriate.

**SECTION 31.** 103.10 (7) (b) (intro.) of the statutes is amended to read:



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

**SECTION 32.** 103.10 (7) (b) 1. of the statutes is amended to read:

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

**SECTION 33.** 103.10 (7) (cm) of the statutes is created to read:

103.10 (7) (cm) If an employee requests family leave for a reason described in sub. (3) (b) 3., the employer may require the employee to provide certification that the employee is responsible for the care of a child, spouse, domestic partner, parent, grandparent, grandchild, or sibling with a serious health condition.

**SECTION 34.** 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. The certification under this paragraph shall be 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 35.** 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 there is an unforeseen or unexpected short-term gap in childcare, as defined in rule by the department, for the employee's child, grandchild, or sibling that the employee must fill. The department may prescribe by rule the form and content of the certification.

**SECTION 36.** 103.10 (7) (f) of the statutes is created to read:

103.10 (7) (f) 1. 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 subdivision stating more than that the child, spouse, domestic partner, parent, grandparent, grandchild, sibling, or employee is in medical isolation.

2. If an employee requests family leave under sub. (3) (b) 6., the employer may require the employee to provide certification that the employee is responsible for the care of a child, spouse, domestic partner, parent, grandparent, grandchild, sibling, or employee who is in medical isolation.

**SECTION 37.** 103.10 (7) (g) of the statutes is created to read:

103.10 (7) (g) If an employee requests family leave under sub. (3) (b) 7., the employer may require the employee to provide certification that the employee is addressing issues of the employee or the employee's child, spouse, domestic partner, parent, grandparent, grandchild, or sibling related to being the victim of domestic abuse, sexual abuse, or stalking.

**SECTION 38.** 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 39.** 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 40.** 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 41.** 103.10 (14) (a) of the statutes is renumbered 103.10 (14).

**SECTION 42.** 103.10 (14) (b) of the statutes is repealed.

**SECTION 43.** 103.105 of the statutes is created to read:

**103.105 Family and medical leave benefits insurance program. (1)**

DEFINITIONS. In this section:

(a) “Application year” means the 12-month period beginning on the first day of the first calendar week for which family or medical leave insurance benefits are claimed by a covered individual.

(b) “Average weekly earnings” means one-thirteenth of the wages paid to an employee during the last completed calendar quarter prior to the covered individual’s date of eligibility for benefits under this section and includes all sick, holiday, vacation, and termination pay that is paid directly by an employer to an employee at the employee’s usual rate of pay during his or her last completed calendar quarter as a result of employment for an employer and any total or partial disability payments under ch. 102 or a federal law that provides for payments on account of a work-related injury or illness. For self-employed individuals, “average weekly earnings” means one fifty-second of the gross income reported as income to the federal internal revenue service in the most recent tax year in which the individual filed taxes prior to the individual’s date of eligibility for benefits under this section.

(c) “Covered individual” means an employee who satisfies s. 103.10 (2) (c), or a self-employed individual who elects coverage under sub. (2), regardless of whether the individual is employed or unemployed at the time the individual files an application for family or medical leave insurance benefits.

(d) “Employee” has the meaning given in s. 103.10 (1) (b).

(e) “Employer” has the meaning given in s. 103.10 (1) (c).

(f) “Family leave” means an individual’s leave from employment, self-employment, or availability for employment for a reason specified in s. 103.10 (3) (b) 1. to 7. or 103.11 (4).

(g) “Family or medical leave insurance benefits” means benefits payable under this section from the family and medical leave benefits insurance trust fund.

(h) “Medical leave” means leave from employment, self-employment, or availability for employment for any of the reasons in s. 103.10 (4).

(i) “Self-employed individual” means a sole proprietor, partner of a partnership, member of a limited liability company, or other individual engaged in a vocation, profession, or business for himself or herself and not for an employer.

(j) “State annual median wage” means the median hourly wage for all occupations in this state in a calendar year, as determined by the bureau of labor statistics of the U.S. department of labor, multiplied by 2,080.

**(2) ELECTION BY SELF-EMPLOYED INDIVIDUAL.** A self-employed individual may elect to be covered under this section by filing a written notice of election with the department in a form and manner prescribed by the department by rule. An initial election under this subsection becomes effective on the date on which the notice of election is filed, shall be for a period of not less than 3 years, and may be renewed for subsequent one-year periods by the filing of a written notice with the department that the self-employed individual intends to continue his or her coverage under this section. A self-employed individual who elects coverage under this section may withdraw that election no earlier than 3 years after the date of the initial election or at such other times as the department may prescribe by rule by providing notice of that withdrawal to the department not less than 30 days before the expiration date of the election.

**(3) ELIGIBILITY FOR BENEFITS.** (a) Except as otherwise provided in sub. (6), a covered individual who is on family leave or medical leave is eligible to receive family or medical leave insurance benefits in the amount specified in sub. (4) and for the duration specified in sub. (5).

(b) To receive family or medical leave insurance benefits, a covered individual shall file a claim for those benefits within the time and in the manner that the department prescribes by rule. On receipt of a claim for family or medical leave insurance benefits, the department may request from the individual's employer or from the self-employed individual any information necessary for the department to determine the individual's eligibility for those benefits and the amount and duration of those benefits. The employer or self-employed individual shall provide that information to the department within the time and in the manner that the department prescribes by rule. If the department determines that a covered individual is eligible to receive family or medical leave insurance benefits, the department shall provide those benefits to the individual as provided in subs. (4) and (5).

**(4) AMOUNT OF BENEFITS.** Except as provided in sub. (6), the amount of family or medical leave insurance benefits payable for a week shall be based upon the covered individual's average weekly earnings, as follows:

(a) For the amount of the covered individual's average weekly earnings that are less than 50 percent of the state annual median wage in the calendar year before the covered individual's application year, 90 percent of the covered individual's average weekly earnings.

(b) For the amount of the covered individual's average weekly earnings that are more than or equal to 50 percent of the state annual median wage in the calendar

year before the covered individual's application year, 50 percent of the covered individual's average weekly earnings.

**(5) DURATION OF BENEFITS.** The maximum number of weeks for which family or medical leave insurance benefits are payable in an application year is 12 weeks. A covered individual may be paid family or medical leave insurance benefits continuously, or at the option of the covered individual, intermittently.

**(6) EMPLOYER EXEMPTION FROM PARTICIPATION IN PAID FAMILY AND MEDICAL LEAVE BENEFITS INSURANCE PROGRAM.** (a) If an employer provides family and medical leave benefits that are identical to or more generous than benefits provided under this section, the employer may elect to not participate in the paid family and medical leave benefits insurance program under this section. If the department grants an exemption under this subsection, the employer shall pay benefits that are at least identical to benefits under this section, and an employee is entitled to be paid those benefits.

(b) An employer that elects to not participate in the paid family and medical leave benefits insurance program under this section shall request an exemption from the department in writing, in the manner prescribed by the department. An exemption from participation is not effective until approved by the department in writing.

(c) The department may grant a written exemption from participation to an employer who complies with this subsection and all rules promulgated by the department under par. (g).

(d) The department may withdraw its written exemption order granted under par. (c) if the department determines that an employer is not providing paid family

and medical leave benefits to employees that are at least identical to those provided under this section.

(e) If an employee believes that his or her employer that has an exemption under this subsection has violated the employee's right to paid family and medical leave benefits identical to those provided under this section, the employee may file a complaint with the department alleging the violation, and the department shall process the complaint in the same manner as complaints filed under s. 103.10 (12) (b) are processed. If the department finds that an employer has violated this subsection, the department may order the employer to take action to remedy the violation, including providing the paid family and medical leave benefits, and, notwithstanding s. 814.04 (1), paying reasonable actual attorney fees to the employee.

(f) After the completion of an administrative proceeding under par. (e), including judicial review, an employee or the department may bring an action in circuit court against an employer to recover damages caused by a violation of this subsection. Section 103.10 (13) (b) applies to the commencement of an action under this paragraph.

(g) The department shall promulgate rules to implement this subsection.

**(7) FEDERAL TAX TREATMENT OF BENEFITS.** With respect to the federal income taxation of family or medical leave insurance benefits, the department shall do all of the following:

(a) At the time an individual files a claim for those benefits, advise the individual that those benefits may be subject to federal income taxation, that requirements exist under federal law pertaining to estimated tax payments, and that the individual may elect to have federal income taxes withheld from the



individual's benefit payments and may change that election not more than one time in an application year.

(b) Allow the individual to elect to have federal income tax deducted and withheld from the individual's benefit payments, allow the individual to change that election not more than one time in an application year, and deduct and withhold that tax in accordance with the individual's election as provided under [26 USC 3402](#).

(c) Upon making a deduction under par. (b), transfer the amount deducted from the family and medical leave insurance trust fund to the federal internal revenue service.

(d) In deducting and withholding federal income taxes from an individual's benefit payments, follow all procedures specified by the federal internal revenue service pertaining to the deducting and withholding of federal income tax.

**(8) FAMILY AND MEDICAL LEAVE INSURANCE TRUST FUND.** (a) The department shall determine the amount of the required contribution by each employee, self-employed individual who elects coverage under sub. (2), and each employer. The required contribution shall be based on the employee's wages or the self-employed individual's earnings. The required contribution for an employee shall be equally shared between each employee and the employee's employer.

(b) Each employer shall withhold from the wages of its employees the amount determined by the department under this subsection.

(c) The department shall promulgate rules to establish procedures for filing wage reports and collecting the contributions withheld by employers and employer-required contributions under par. (a). The department may utilize the quarterly wage reports submitted under s. 108.205 in lieu of separate contribution

reports and may utilize the procedures for collecting contributions that apply to the collection of contributions to the unemployment reserve fund under s. 108.17.

(cm) The department shall promulgate rules providing for a right to a hearing in cases involving the liability of employers for contributions under this subsection. The department's decisions shall be subject to the rights and procedures for contested cases under ch. 227.

(d) The department shall collect contributions from self-employed individuals pursuant to procedures established by the department under sub. (12) (b).

(e) The department shall deposit contributions received under this subsection in the family and medical leave benefits insurance trust fund.

(f) The department shall use moneys deposited in the family and medical leave benefits insurance trust fund to pay benefits under sub. (3), to refund amounts erroneously paid by employers, and to pay for the administration of the family and medical leave benefits insurance program under this section and for no other purpose.

**(9) DENIAL OF CLAIMS; OVERPAYMENTS.** (a) The department shall promulgate rules providing for a right to a hearing in cases of disputes involving an individual's eligibility for benefits or status as a covered individual under this section. The department's decisions shall be subject to the rights and procedures for contested cases under ch. 227. To the extent necessary and practical, the department may prescribe procedures in conjunction with any rules promulgated for administrative proceedings under ss. 103.10 (12) and 103.11 (12).

(b) 1. If the department pays family or medical leave insurance benefits to an individual erroneously or as a result of willful misrepresentation, the individual's liability to reimburse the fund for the overpayment may be set forth in a

determination that is subject to review under par. (a). The department may prescribe procedures for waiver of overpayments.

2. To recover any overpayment to a covered individual that is not otherwise repaid or the recovery of which has not been waived, the department may recoup the amount of the overpayment by, in addition to its other remedies, deducting the amount of the overpayment from benefits the individual would otherwise be eligible to receive.

3. The department may establish other procedures for recovering overpayments and may utilize procedures under ch. 108, including the department's remedies for collecting overpayments under ss. 108.22 and 108.225, subject to rules promulgated by the department.

4. The department may not collect any interest on any benefit overpayment.

**(10) PROHIBITED ACTS.** (a) No person may interfere with, restrain, or deny the exercise of any right provided under this section.

(b) No person may discharge or otherwise discriminate against any person for exercising any right provided under this section, opposing a practice prohibited under this section, filing a complaint or attempting to enforce any right provided under this section, or testifying or assisting in any action or proceeding to enforce any right provided under this section.

(c) No collective bargaining agreement or employer policy may diminish or abridge an employee's rights under this section. Any agreement purporting to waive or modify an employee's rights under this section is void as against public policy and unenforceable.

**(11) ENFORCEMENT.** (a) Any person who believes that his or her rights under this section have been interfered with, restrained, or denied in violation of sub. (10)

(a) or that he or she has been discharged or otherwise discriminated against in violation of sub. (10) (b) may, within 30 days after the violation occurs or the person should reasonably have known that the violation occurred, whichever is later, file a complaint with the department alleging the violation, and the department shall process the complaint in the same manner as complaints filed under s. 103.10 (12) (b) are processed. If the department finds that an employer has violated sub. (10) (a) to (c), the department may order the employer to take action to remedy the violation, including providing the requested family leave or medical leave, reinstating an employee, providing back pay accrued not more than 2 years before the complaint was filed, and, notwithstanding s. 814.04 (1), paying reasonable actual attorney fees to the complainant.

(b) After the completion of an administrative proceeding under par. (a), including judicial review, an employee or the department may bring an action in circuit court against an employer to recover damages caused by a violation of sub. (10) (a) to (c). Section 103.10 (13) (b) applies to the commencement of an action under this paragraph.

**(12) ADMINISTRATION.** The department shall administer the family and medical leave benefits insurance program under this section. In administering the program, the department shall do all of the following:

(a) Establish procedures and forms for the filing of claims for benefits under this section.

(b) Establish procedures and forms for collecting contributions from self-employed individuals.

(c) Promulgate rules to implement this section.

(d) Use information sharing and integration technology to facilitate the exchange of information as necessary for the department to perform its duties under this section.

(e) By September 1 of each year, submit a report to the governor, the joint committee on finance, and the appropriate standing committees of the legislature under s. 13.172 (3) on the family and medical leave benefits insurance program under this section. The report shall include the projected and actual rates of participation in the program, the premium rates for coverage under the program, and the balance in the family and medical leave benefits insurance trust fund under s. 25.52.

**(13) RECORDS.** (a) The records made or maintained by the department in connection with the administration of this section are confidential and shall be open to public inspection or disclosure only to the extent that the department allows in the interest of the family and medical leave benefits insurance program. No person may allow inspection or disclosure of any record provided by the department unless the department authorizes the inspection or disclosure.

(b) The department may provide records made or maintained by the department in connection with the administration of this section to any governmental unit, corresponding unit in the government of another state, or any unit of the federal government. No such unit may allow inspection or disclosure of any record provided by the department unless the department authorizes the inspection or disclosure.

(c) Upon request of the department of revenue, the department may provide information, including social security numbers, concerning covered individuals to the department of revenue for the purpose of administering state taxes, identifying fraudulent tax returns, providing information for tax-related prosecutions, or

locating persons or the assets of persons who have failed to file tax returns, who have underreported their taxable income, or who are delinquent debtors. The department of revenue shall adhere to the limitation on inspection and disclosure of the information under par. (b).

**(14) BENEFIT AMOUNT ADJUSTMENT.** On April 1 of each year, the department may adjust the maximum weekly benefit payment to 90 percent of the state average weekly earnings, which becomes effective on October 1 of that year. The department shall annually have the adjusted amount of the maximum weekly benefit payment published in the Wisconsin Administrative Register.

**(15) NOTICE POSTED.** Each employer shall post, on its website and in one or more conspicuous places where notices to employees are customarily posted, a notice in a form approved by the department setting forth employees' rights under this section and any adjustment to benefits as provided in sub. (14). Any employer that violates this subsection shall forfeit not more than \$100 for each violation.

**SECTION 44.** 111.322 (2m) (a) of the statutes is amended to read:

111.322 **(2m)** (a) The individual files a complaint or attempts to enforce any right under s. 103.02, 103.10, 103.105, 103.11, 103.13, 103.28, 103.32, 103.34, 103.455, 103.50, 104.12, 109.03, 109.07, 109.075, 146.997, or 995.55, or ss. 101.58 to 101.599 or 103.64 to 103.82.

\*\*\*\*NOTE: This is reconciled s. 111.322 (2m) (a). This SECTION has been affected by drafts with the following LRB numbers: -1395/P1 and -1814/P8.

**SECTION 45.** 111.322 (2m) (b) of the statutes is amended to read:

111.322 **(2m)** (b) The individual testifies or assists in any action or proceeding held under or to enforce any right under s. 103.02, 103.10, 103.105, 103.11, 103.13,

103.28, 103.32, 103.34, 103.455, 103.50, 104.12, 109.03, 109.07, 109.075, 146.997, or 995.55, or ss. 101.58 to 101.599 or 103.64 to 103.82.

\*\*\*\*NOTE: This is reconciled s. 111.322 (2m) (b). This SECTION has been affected by drafts with the following LRB numbers: -1395/P1 and -1814/P8.

**SECTION 46.** 165.68 (1) (a) 3. of the statutes is amended to read:

165.68 (1) (a) 3. Sexual abuse, as defined in s. 103.10 (1m) (b) 6 (1) (gd).

**SECTION 9150. Nonstatutory provisions; Workforce Development.**

(1) PROPOSED PERMANENT RULES. The department of workforce development shall submit in proposed form the rules required under s. 103.105 (8) (c) and (cm), (9) (a) and (b) 3., and (12) (c) to the legislative council staff under s. 227.15 (1) no later than the first day of the 4th month beginning after the effective date of this subsection.

(2) RULE-MAKING EXCEPTIONS FOR PERMANENT RULES.

(a) Notwithstanding s. 227.135 (2), the department of workforce development is not required to present the statement of the scope of the rules required under s. 103.105 (8) (c) and (cm), (9) (a) and (b) 3., and (12) (c) to the department of administration for review by the department of administration and approval by the governor.

(b) Notwithstanding s. 227.185, the department of workforce development is not required to present the rules required under s. 103.105 (8) (c) and (cm), (9) (a) and (b) 3., and (12) (c) in final draft form to the governor for approval.

(c) Notwithstanding s. 227.137 (2), the department of workforce development is not required to prepare an economic impact analysis for the rules required under s. 103.105 (8) (c) and (cm), (9) (a) and (b) 3., and (12) (c).

(d) Notwithstanding ss. 227.14 (2g) and 227.19 (3) (e), the department of workforce development is not required to submit the proposed rules required under s. 103.105 (8) (c) and (cm), (9) (a) and (b) 3., and (12) (c) to the small business regulatory review board and is not required to prepare a final regulatory flexibility analysis for those rules.

(3) **EMERGENCY RULES.** Using the procedure under s. 227.24, the department of workforce development shall promulgate the rules required under s. 103.105 (8) (c) and (cm), (9) (a) and (b) 3., and (12) (c) for the period before the effective date of the permanent rules promulgated under s. 103.105 (8) (c) and (cm), (9) (a) and (b) 3., and (12) (c) but not to exceed the period authorized under s. 227.24 (1) (c), subject to extension under s. 227.24 (2). Notwithstanding s. 227.24 (1) (a), (2) (b), 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 public peace, health, safety, or welfare and is not required to provide a finding of an emergency for a rule promulgated under this subsection. Notwithstanding s. 227.24 (1) (e) 1d. and 1g., the department is not required to prepare a statement of the scope of the rules promulgated under this subsection or present the rules to the governor for approval.

**SECTION 9250. Fiscal changes; Workforce Development.**

(1) **TRANSFERS TO FAMILY AND MEDICAL LEAVE BENEFITS INSURANCE TRUST FUND.** There is transferred from the general fund to the family and medical leave benefits insurance trust fund created under s. 25.52 \$243,413,400 in the 2023-25 fiscal biennium.

**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.

(2) **PAID FAMILY AND MEDICAL LEAVE INSURANCE BENEFITS.**

(a) *Family and medical leave benefits insurance trust fund contributions.* Except as provided in par. (c), the treatment of s. 103.105 (8) first applies to wages earned on January 1, 2025.

(b) *Family or medical leave insurance benefits eligibility.* Except as provided in par. (c), the treatment of s. 103.105 (3) first applies to a period of family leave, as defined in s. 103.105 (1) (f), or a period of medical leave, as defined in s. 103.105 (1) (h), commencing on January 1, 2025.

(c) *Collective bargaining agreements.* The treatment of ss. 20.445 (6), 25.17 (1) (er), 25.52, 103.105, and 111.322 (2m) (a) (by SECTION 44, with respect to rights to family and medical leave insurance benefits) and (b) (by SECTION 45, with respect to rights to family and medical leave insurance benefits) and SECTION 9150 (1), (2), and (3) of this act first apply to an employee who is affected by a collective bargaining agreement that contains provisions inconsistent with the treatment of ss. 20.445 (6), 25.17 (1) (er), 25.52, 103.105, and 111.322 (2m) (a) (by SECTION 44, with respect to rights to family and medical leave insurance benefits) and (b) (by SECTION 45, with respect to rights to family and medical leave insurance benefits) and SECTION 9150 (1), (2), and (3) of this act on the day on which the collective bargaining agreement expires or is extended, modified, or renewed.

\*\*\*\*NOTE: This is reconciled SECTION 9350 (2) (c). This SECTION has been affected by drafts with the following LRB numbers: -1395/P1 and -1814/P8.

**SECTION 9350**

(3) **PREVAILING WAGE.** The treatment of ss. 19.36 (12), 66.0129 (5), 66.0903 (1) (a), (am), (b), (c), (cm), (dr), (em), (f), (g), (hm), (im), and (j), (1m) (b), and (2) to (12), 84.41 (3), 84.54, 86.51, 103.005 (12) (a), 103.49, 103.50, 103.503 (1) (a), (e), and (g), (2), and (3) (a) 2., 104.001 (4), 106.04, 109.09 (1), 111.322 (2m) (a) (by SECTION 44, with respect to rights to prevailing wages and hours of labor), (b) (by SECTION 45, with respect to rights to prevailing wages and hours of labor), and (c), 227.01 (13) (t), 229.682 (2), 229.8275, 946.15, and 978.05 (6) (a) first apply, with respect to a project of public works that is subject to bidding, to a project for which the request for bids is issued on the effective date of this subsection and, with respect to a project of public works that is not subject to bidding, to a project the contract for which is entered into on the effective date of this subsection.

\*\*\*\*NOTE: This is reconciled SECTION 9350 (3). This SECTION has been affected by drafts with the following LRB numbers: -1395/P1 and -1814/P8.

**(END)**