



2009 SENATE BILL 308

September 24, 2009 - Introduced by Senators VINEHOUT, DARLING, HANSEN, HARSDDORF, LASSA, LEHMAN, MILLER, OLSEN, PLALE, SCHULTZ, TAYLOR, WIRCH and ROBSON, cosponsored by Representatives GUNDERSON, BERCEAU, BIES, CLARK, DANOU, DEXTER, GARTHWAITE, GOTTLIEB, HEBL, HINTZ, HRAYCHUCK, HUEBSCH, KERKMAN, LEMAHIEU, LOTHIAN, MEYER, MILROY, MOLEPSKE JR., MURSAU, MURTHA, NERISON, NYGREN, A. OTT, PETERSEN, PETROWSKI, PRIDEMORE, RIPP, SCHNEIDER, SHERMAN, SINICKI, SMITH, SPANBAUER, STEINBRINK, SUDER, TOWNSEND, VOS, VRUWINK, ZIGMUNT and BROOKS. Referred to Committee on Small Business, Emergency Preparedness, Technical Colleges, and Consumer Protection.

1 **AN ACT to create** 103.88, 106.54 (8) and 111.91 (2) (gr) of the statutes; **relating**
2 **to:** a requirement that an employer permit an employee who is a volunteer fire
3 fighter, emergency medical technician, first responder, or ambulance driver for
4 a volunteer fire department or fire company, a public agency, or a nonprofit
5 corporation to be late for or absent from work if the lateness or absence is due
6 to the employee responding to an emergency that begins before the employee
7 is required to report to work.

Analysis by the Legislative Reference Bureau

Current law requires an employer to grant to an employee a leave of absence from employment without pay for certain purposes, including to vote, serve as an election official, serve on a jury, and testify in a criminal proceeding. Current law also requires a state agency to grant to a state employee a leave of absence with pay for certain purposes, including to serve as a bone marrow or organ donor, attend national guard or military reserves training, report for a preinduction physical for military service, serve on a jury, and compete in promotional examinations or interviews. In addition, current law permits a state agency to grant to a state employee a leave of absence with pay to allow the state employee to participate in providing specialized disaster relief services for the American Red Cross.

This bill requires an employer, other than a paid fire department or ambulance service provider, to permit an employee who is a volunteer fire fighter, emergency

SENATE BILL 308

medical technician, first responder, or ambulance driver for a volunteer fire department or fire company, a public agency, or a nonprofit corporation to be late for or absent from work, without pay, if the lateness or absence is due to the employee responding to an emergency that begins before the employee is required to report to work and if the employee does all of the following:

1. By no later than 30 days after becoming a member of a volunteer fire department or becoming affiliated with an ambulance service provider, submits to the employer a written statement signed by the chief of the volunteer fire department or by the person in charge of the ambulance service provider notifying the employer that the employee is a volunteer fire fighter, emergency medical technician, first responder, or ambulance driver for a volunteer fire department or fire company, a public agency, or a nonprofit corporation.

2. When dispatched to an emergency, makes every effort to notify the employer that the employee may be late for or absent from work due to the employee's responding to the emergency or, if prior notification cannot be made due to the extreme circumstances of the emergency or the inability of the employee to contact the employer, submits to the employer a written statement from the chief of the volunteer fire department or from the person in charge of the ambulance service provider explaining why prior notification could not be made.

3. When late for or absent from work due to responding to an emergency, provides, on the request of the employer, a written statement from the chief of the volunteer fire department or from the person in charge of the ambulance service provider certifying that the employee was responding to an emergency at the time of the lateness or absence and indicating the date and time of the response to the emergency.

The bill prohibits an employer from interfering with, restraining, or denying the exercise of the right of an employee who is a fire fighter, emergency medical technician, first responder, or ambulance driver for a volunteer fire department or fire company, a public agency, or a nonprofit corporation to respond to an emergency as provided in the bill. The bill also prohibits an employer from discharging or discriminating against such an employee in promotion, in compensation, or in the terms, conditions, or privileges of employment for: 1) responding to an emergency as provided in the bill; 2) opposing a discharge or discrimination in violation of the bill; 3) filing a complaint or attempting to enforce a right under the bill; or 4) testifying or assisting in any action or proceeding to enforce a right under the bill.

An employee whose right to respond to an emergency as provided in the bill is interfered with, restrained, or denied or who is discharged or discriminated against in violation of the bill may file a complaint with the Department of Workforce Development (DWD), and DWD must process the complaint in the same manner that employment discrimination complaints are processed under current law. If DWD finds that an employer has interfered with, restrained, or denied the right of an employee to respond to an emergency as provided in the bill or has discharged or discriminated against an employee in violation of the bill, DWD may order the employer to take action to remedy the violation, including reinstating the employee, providing compensation in lieu of reinstatement, providing back pay accrued not

SENATE BILL 308

more than two years before the complaint was filed, and paying reasonable actual costs and attorney fees to the complainant.

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:

1 **SECTION 1.** 103.88 of the statutes is created to read:

2 **103.88 Absence from work of volunteer fire fighter, emergency**
3 **medical technician, first responder, or ambulance driver. (1) DEFINITIONS.**

4 In this section:

5 (a) “Ambulance service provider” means an ambulance service provider, as
6 defined in s. 256.01 (3), that is a volunteer fire department or fire company, a public
7 agency, or a nonprofit corporation.

8 (b) “Emergency” means a fire, hazardous substance release, medical condition,
9 or any other situation that poses a clear and immediate danger to life or health or
10 a significant loss of property.

11 (c) “Emergency medical technician” has the meaning given in s. 256.01 (5).

12 (d) “Employee” means an individual employed in this state by an employer.

13 (e) “Employer” means a person engaging in any activity, enterprise, or business
14 in this state. “Employer” includes the state and any office, department, independent
15 agency, authority, institution, association, society, or other body in state government
16 created or authorized to be created by the constitution or any law, including the
17 legislature and the courts. “Employer” does not include a paid fire department or an
18 ambulance service provider, as defined in s. 256.01 (3).

19 (f) “First responder” has the meaning given in s. 256.01 (9).

20 (g) “Nonprofit corporation” has the meaning given in s. 256.01 (12).

SENATE BILL 308

1 (h) "Public agency" has the meaning given in s. 256.15 (1) (n).

2 (i) "Responding to an emergency" includes going to, attending to, and returning
3 from an emergency.

4 **(2) ABSENCE FROM WORK PERMITTED.** An employer shall permit an employee who
5 is a volunteer fire fighter, emergency medical technician, first responder, or
6 ambulance driver for a volunteer fire department or fire company, a public agency,
7 or a nonprofit corporation to be late for or absent from work if the lateness or absence
8 is due to the employee responding to an emergency that begins before the employee
9 is required to report to work and if the employee complies with sub. (3) (a). This
10 subsection does not entitle an employee to receive wages or salary for the time the
11 employee is absent from work due to responding to an emergency as provided in this
12 subsection.

13 **(3) RESPONSIBILITIES OF EMPLOYEE.** (a) An employee may be late for or absent
14 from work under sub. (2) if the employee does all of the following:

15 1. By no later than 30 days after becoming a member of a volunteer fire
16 department or fire company or becoming affiliated with an ambulance service
17 provider, submits to the employee's employer a written statement signed by the chief
18 of the volunteer fire department or fire company or by the person in charge of the
19 ambulance service provider notifying the employer that the employee is a volunteer
20 fire fighter, emergency medical technician, first responder, or ambulance driver for
21 a volunteer fire department or fire company, a public agency, or a nonprofit
22 corporation.

23 2. When dispatched to an emergency, makes every effort to notify the
24 employee's employer that the employee may be late for or absent from work due to
25 the employee's responding to the emergency or, if prior notification cannot be made

SENATE BILL 308

1 due to the extreme circumstances of the emergency or the inability of the employee
2 to contact the employer, submits to the employer a written statement from the chief
3 of the volunteer fire department or fire company or from the person in charge of the
4 ambulance service provider explaining why prior notification could not be made.

5 3. When late for or absent from work due to responding to an emergency,
6 provides, on the request of the employee's employer, a written statement from the
7 chief of the volunteer fire department or fire company or from the person in charge
8 of the ambulance service provider certifying that the employee was responding to an
9 emergency at the time of the lateness or absence and indicating the date and time
10 of the response to the emergency.

11 (b) When the status of an employee under sub. (2) as a member of a volunteer
12 fire department or fire company or as an affiliate of an ambulance service provider
13 changes, including termination of that status, the employee shall notify the
14 employee's employer of that change in status.

15 **(4) PROHIBITED ACTS.** (a) No person may interfere with, restrain, or deny the
16 exercise of the right of an employee to respond to an emergency as provided in sub.
17 (2).

18 (b) No person may discharge or discriminate against an employee in promotion,
19 in compensation, or in the terms, conditions, or privileges of employment for
20 responding to an emergency as provided in sub. (2), opposing a practice prohibited
21 under this section, filing a complaint or attempting to enforce any right under this
22 section, or testifying or assisting in any action or proceeding to enforce any right
23 under this section.

24 **(5) ENFORCEMENT.** An employee whose right to respond to an emergency under
25 sub. (2) is interfered with, restrained, or denied in violation of sub. (4) (a) or who is

SENATE BILL 308

1 discharged or discriminated against in violation of sub. (4) (b) may file a complaint
2 with the department, and the department shall process the complaint in the same
3 manner that employment discrimination complaints are processed under s. 111.39.
4 If the department finds that an employer has violated sub. (4) (a) or (b), it may order
5 the employer to take action to remedy the violation, including reinstating the
6 employee, providing compensation in lieu of reinstatement, providing back pay
7 accrued not more than 2 years before the complaint was filed, and paying reasonable
8 actual costs and attorney fees to the complainant.

9 **SECTION 2.** 106.54 (8) of the statutes is created to read:

10 106.54 (8) The division shall receive complaints under s. 103.88 (5) and shall
11 process the complaints in the same manner that employment discrimination
12 complaints are processed under s. 111.39.

13 **SECTION 3.** 111.91 (2) (gr) of the statutes is created to read:

14 111.91 (2) (gr) The right of an employee, as defined in s. 103.88 (1) (d), who is
15 a fire fighter, emergency medical technician, first responder, or ambulance driver for
16 a volunteer fire department or fire company, a public agency, as defined in s. 256.15
17 (1) (n), or a nonprofit corporation, as defined in s. 256.01 (12), to respond to an
18 emergency as provided under s. 103.88 (2).

19 **SECTION 4. Initial applicability.**

20 (1) This act first applies to an employee who is affected by a collective
21 bargaining agreement that contains provisions inconsistent with this act on the day
22 on which the collective bargaining agreement expires or is extended, modified, or
23 renewed, whichever occurs first.

24

(END)