



2011 ASSEMBLY BILL 41

March 8, 2011 – Introduced by Representatives KAPENGA, STONE and HONADEL, cosponsored by Senators VUKMIR, DARLING, GROTHMAN and LAZICH. Referred to Committee on Labor and Workforce Development.

1 **AN ACT to amend** 103.10 (1) (b) and 103.10 (1) (c); and **to create** 103.10 (1m) of
2 the statutes; **relating to:** preemption of city, village, town, or county
3 ordinances requiring employers to provide employees with leave from
4 employment to deal with family, medical, or health issues.

Analysis by the Legislative Reference Bureau

Under current law, an employer, including the state, 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 six weeks of family leave in a 12-month period and two weeks of medical 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, or parent who has a serious health condition. Medical leave may be taken when the employee has a serious health condition that makes the employee unable to perform the employee's employment duties. An employee is not entitled to receive wages or salary while taking family or medical leave, but may substitute, for portions of family or medical leave, other types of paid or unpaid leave provided by the employer.

This bill states that the provision of family and medical leave that is uniform throughout the state is a matter of statewide concern and that it would be logically inconsistent with, would defeat the purpose of, and would go against the spirit of the state family and medical leave law for a city, village, town, or county to enact an

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ordinance that requires employers to provide employees with leave from employment for any of the following reasons:

1. Because the employee has a physical or mental illness, injury, impairment, or condition (health condition); is in need of medical diagnosis, care, or treatment of a health condition; or is in need of preventive medical care.

2. To care for a family member who has a health condition; who is in need of medical diagnosis, care, or treatment of a health condition; or who is in need of preventive medical care. The bill defines "family member" as a spouse or domestic partner of the employee; a parent, child, sibling, including a foster sibling, brother-in-law, sister-in-law, grandparent, stepgrandparent, or grandchild of an employee or of an employee's spouse or domestic partner; or any other person who is related by blood, marriage, or adoption to an employee or to an employee's spouse or domestic partner and whose close association with the employee, spouse, or domestic partner makes the person the equivalent of a family member of the employee, spouse, or domestic partner.

3. Because the employee's absence from work is necessary in order for the employee to do any of the following:

a. Seek medical attention or obtain psychological or other counseling for the employee or a family member to recover from any health condition caused by domestic abuse, sexual abuse, or stalking.

b. Obtain services for the employee or a family member from an organization that provides services to victims of domestic abuse, sexual abuse, or stalking.

c. Relocate the residence of the employee or of a family member due to domestic abuse, sexual abuse, or stalking.

d. Initiate, prepare for, or testify, assist, or otherwise participate in any civil or criminal action or proceeding relating to domestic abuse, sexual abuse, or stalking.

4. To deal with any other family, medical, or health issues of the employee or of a family member.

Therefore, the bill requires the state family and medical leave law to be construed as an enactment of statewide concern for the purpose of providing family and medical leave that is uniform throughout the state. As such, the bill prohibits a city, village, town, or county from enacting and administering an ordinance requiring an employer to provide employees with leave from employment, paid or unpaid, for any of the reasons specified in the bill and provides that a city, village, town, or county ordinance requiring leave from employment for those reasons that is in effect on the effective date of the bill is void.

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

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

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

4 **SECTION 2.** 103.10 (1) (c) of the statutes is amended to read:

5 103.10 (1) (c) ~~Except as provided in sub. (14) (1m) (b) 3., “employer”~~ means a
6 person engaging in any activity, enterprise or business in this state employing at
7 least 50 individuals on a permanent basis. “Employer” includes the state and any
8 office, department, independent agency, authority, institution, association, society or
9 other body in state government created or authorized to be created by the
10 constitution or any law, including the legislature and the courts.

11 **SECTION 3.** 103.10 (1m) of the statutes is created to read:

12 103.10 (1m) STATEWIDE CONCERN; UNIFORMITY. (a) The legislature finds that the
13 provision of family and medical leave that is uniform throughout the state is a matter
14 of statewide concern and that the enactment of an ordinance by a city, village, town,
15 or county that requires employers to provide employees with leave from employment,
16 paid or unpaid, for any of the reasons specified in par. (c) would be logically
17 inconsistent with, would defeat the purpose of, and would go against the spirit of this
18 section. Therefore, this section shall be construed as an enactment of statewide
19 concern for the purpose of providing family and medical leave that is uniform
20 throughout the state.

21 (b) In this subsection:

- 22 1. “Domestic abuse” has the meaning given in s. 968.075 (1) (a).
- 23 2. “Employee” has the meaning given in s. 104.01 (2) (a).
- 24 3. “Employer” has the meaning given in s. 104.01 (3) (a).

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1 4. “Family member” means a spouse or domestic partner of an employee; a
2 parent, child, sibling, including a foster sibling, brother-in-law, sister-in-law,
3 grandparent, stepgrandparent, or grandchild of an employee or of an employee’s
4 spouse or domestic partner; or any other person who is related by blood, marriage,
5 or adoption to an employee or to an employee’s spouse or domestic partner and whose
6 close association with the employee, spouse, or domestic partner makes the person
7 the equivalent of a family member of the employee, spouse, or domestic partner.

8 5. “Health condition” means a physical or mental illness, injury, impairment,
9 or condition.

10 6. “Sexual abuse” means conduct that is in violation of s. 940.225, 944.30,
11 948.02, 948.025, 948.05, 948.051, 948.055, 948.06, 948.085, 948.09, or 948.10 or that
12 is in violation of s. 940.302 (2) if s. 940.302 (2) (a) 1. b. applies.

13 7. “Stalking” means to engage in a course of conduct, as defined in s. 940.32 (1)
14 (a), that meets the criteria of s. 940.32 (2) (a).

15 (c) Subject to par. (d), a city, village, town, or county may not enact and
16 administer an ordinance requiring an employer to provide an employee with leave
17 from employment, paid or unpaid, for any of the following reasons:

18 1. Because the employee has a health condition, is in need of medical diagnosis,
19 care, or treatment of a health condition, or is in need of preventive medical care.

20 2. To care for a family member who has a health condition, who is in need of
21 medical diagnosis, care, or treatment of a health condition, or who is in need of
22 preventive medical care.

23 3. Because the employee’s absence from work is necessary in order for the
24 employee to do any of the following:

