



State of Wisconsin
2021 - 2022 LEGISLATURE

LRB-3794/1
JAM:kjf

2021 SENATE BILL 493

August 5, 2021 - Introduced by Senators BALLWEG, JOHNSON, AGARD, COWLES, CARPENTER, JACQUE, LARSON, ROYS, SMITH, L. TAYLOR and WIRCH, cosponsored by Representatives SUBECK, TUSLER, ANDERSON, ANDRACA, ARMSTRONG, BILLINGS, BOWEN, BROSTOFF, CABRERA, CONLEY, CONSIDINE, DRAKE, HEBL, HESSELBEIN, MILROY, L. MYERS, RAMTHUN, RIEMER, S. RODRIGUEZ, SHANKLAND, SHELTON, SINICKI, SNODGRASS, SPREITZER, STUBBS, VINING and VRUWINK. Referred to Committee on Labor and Regulatory Reform.

1 **AN ACT** *to amend* 111.322 (2m) (a) and 111.322 (2m) (b); and *to create* 103.09,
2 106.54 (11) and 111.91 (2) (gp) of the statutes; **relating to:** requiring an
3 employer to provide reasonable break time and accommodation for an employee
4 who is breast-feeding the employee's child to express breast milk for the child.

Analysis by the Legislative Reference Bureau

This bill requires an employer, including the state, to provide the following for an employee who is breast-feeding the employee's child under one year of age: 1) a reasonable break time to express breast milk for the child; 2) a private place, other than a bathroom, for the employee to express breast milk; and 3) access to an electrical outlet, running water, and a refrigerator for the storage of breast milk. The bill permits that break time to be unpaid but requires an employer to treat such unpaid break time as paid work time for purposes of determining eligibility for health care coverage.

The federal Fair Labor Standards Act (FLSA) requires an employer engaged in interstate commerce, which is generally defined as an employer having an annual dollar volume of sales of \$500,000 or more, to provide the following: 1) a reasonable break time for an employee to express breast milk for the employee's nursing child for one year after the child's birth each time the employee needs to express that milk; and 2) a place, other than a bathroom, that is shielded from view and free from intrusion from coworkers and the public that may be used by an employee to express breast milk. In addition, the FLSA permits that break time to be unpaid and provides that an employer that employs fewer than 50 employees is not subject to

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those requirements if those requirements would impose an undue hardship by causing the employer significant difficulty or expense when considered in relation to the size, financial resources, nature, or structure of the employer's business.

This bill codifies into the laws of this state the requirements of the FLSA with respect to reasonable break time for employees to express breast milk for their children under one year of age, applying those requirements to all employers, including the state, employing at least one individual. In addition, the bill 1) requires an employer to provide access to an electrical outlet, running water, and a refrigerator for the storage of breast milk; and 2) provides that if an employee's eligibility for an employer contribution towards the employee's health care coverage is dependent on the number of hours that the employee works, the employer must treat any unpaid break time taken by the employee to express breast milk as paid work time for purposes of determining that eligibility.

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.** 103.09 of the statutes is created to read:

2 **103.09 Reasonable break time for nursing mothers. (1) DEFINITION.** In
3 this section, "employer" means any person engaging in any activity, enterprise, or
4 business employing at least one individual. "Employer" includes the state, its
5 political subdivisions, and any office, department, independent agency, authority,
6 institution, association, society, or other body in state or local government created or
7 authorized to be created by the constitution or any law, including the legislature and
8 the courts.

9 **(2) REASONABLE BREAK TIME REQUIRED.** Subject to sub. (4), an employer shall
10 provide all of the following for an employee who is breast-feeding the employee's
11 child under one year of age:

12 (a) A reasonable break time to express breast milk for the child each time the
13 employee has a need to express that milk.

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1 (b) A place, other than a bathroom, that is shielded from view and free from
2 intrusion from coworkers and the public for the employee to express breast milk.

3 (c) Access to an electrical outlet, running water, and a refrigerator for the
4 storage of breast milk.

5 **(3) UNPAID BREAK TIME; MAINTENANCE OF HEALTH CARE COVERAGE.** (a) Subject to
6 par. (b), an employer that provides break time under sub. (2) (a) for an employee to
7 express breast milk is not required to compensate the employee for any work time
8 spent for that purpose.

9 (b) If an employee's eligibility for an employer contribution towards the
10 employee's health care coverage is dependent on the number of hours that the
11 employee works, the employer shall treat any unpaid break time taken by the
12 employee to express breast milk as paid work time for purposes of determining that
13 eligibility.

14 **(4) UNDUE HARDSHIP EXCEPTION.** An employer that employs fewer than 50
15 employees on a permanent basis in this state is not subject to the requirements under
16 sub. (2) if the employer can demonstrate that compliance with those requirements
17 would pose an undue hardship on the employer's program, enterprise, or business
18 by causing the employer significant difficulty or expense when considered in light of
19 the size, financial resources, nature, or structure of the employer's business.

20 **(5) PROHIBITED ACTS.** (a) No person may interfere with, restrain, or deny the
21 exercise of the right of an employee who is breast-feeding the employee's child under
22 one year of age to take reasonable break time to express that milk as provided under
23 sub. (2).

24 (b) No person may discharge or discriminate against an employee in promotion,
25 in compensation, or in the terms, conditions, or privileges of employment for taking

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1 reasonable break time to express breast milk for the employee's child under one year
2 of age as provided in sub. (2), opposing a practice prohibited under this section, filing
3 a complaint or attempting to enforce any right under this section, or testifying or
4 assisting in any action or proceeding to enforce any right under this section.

5 **(6) ENFORCEMENT.** An employee whose right to take reasonable break time to
6 express breast milk for the employee's child under one year of age as provided under
7 sub. (2) is interfered with, restrained, or denied in violation of sub. (5) (a) or who is
8 discharged or discriminated against in violation of sub. (5) (b) may file a complaint
9 with the department, and the department shall process the complaint in the same
10 manner that employment discrimination complaints are processed under s. 111.39.
11 If the department finds that an employer has violated sub. (5) (a) or (b), the
12 department may order the employer to take action to remedy the violation, including
13 reinstating the employee, providing compensation in lieu of reinstatement,
14 providing back pay accrued not more than 2 years before the complaint was filed, and
15 paying reasonable actual costs and attorney fees to the complainant.

16 **SECTION 2.** 106.54 (11) of the statutes is created to read:

17 106.54 (11) The division shall receive complaints under s. 103.09 (6) and shall
18 process the complaints in the same manner as employment discrimination
19 complaints are processed under s. 111.39.

20 **SECTION 3.** 111.322 (2m) (a) of the statutes is amended to read:

21 111.322 (2m) (a) The individual files a complaint or attempts to enforce any
22 right under s. 103.02, 103.09, 103.10, 103.11, 103.13, 103.28, 103.32, 103.34,
23 103.455, 104.12, 109.03, 109.07, 109.075, 146.997, or 995.55, or ss. 101.58 to 101.599
24 or 103.64 to 103.82.

25 **SECTION 4.** 111.322 (2m) (b) of the statutes is amended to read:

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1 111.322 **(2m)** (b) The individual testifies or assists in any action or proceeding
2 held under or to enforce any right under s. 103.02, 103.09, 103.10, 103.11, 103.13,
3 103.28, 103.32, 103.34, 103.455, 104.12, 109.03, 109.07, 109.075, 146.997, or 995.55,
4 or ss. 101.58 to 101.599 or 103.64 to 103.82.

5 **SECTION 5.** 111.91 (2) (gp) of the statutes is created to read:

6 111.91 **(2)** (gp) The right of an employee who is breast-feeding the employee's
7 child under one year of age to take reasonable break time to express breast milk for
8 the child as provided in s. 103.09 (2).

9 **SECTION 6. Initial applicability.**

10 (1) REASONABLE BREAK TIME FOR NURSING MOTHERS. This act first applies to an
11 employee who is covered by a collective bargaining agreement that contains
12 provisions inconsistent with s. 103.09 on the day on which the collective bargaining
13 agreement expires or is extended, modified, or renewed, whichever occurs first.

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(END)