

State of Wisconsin



2015 Senate Bill 517

Date of enactment: April 1, 2016
Date of publication*: April 2, 2016

2015 WISCONSIN ACT 345

AN ACT *to amend* 111.322 (2m) (a), 111.322 (2m) (b) and 632.897 (6); and *to create* 103.11 and 893.965 of the statutes; **relating to:** leave from employment for the purpose of serving as a bone marrow or organ donor and providing a penalty.

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

SECTION 1. 103.11 of the statutes is created to read:

103.11 Bone marrow and organ donation leave. (1)

DEFINITIONS. In this section:

(a) "Bone marrow" has the meaning given in s. 146.34 (1) (a).

(b) Except as provided in subs. (2) (b) 1. and (15), "employee" means an individual employed in this state by an employer.

(c) Except as provided in sub. (2) (b) 2., "employer" means a person engaging in any activity, enterprise, or business in this state employing at least 50 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.

(d) "Employment benefit" has the meaning given in s. 103.10 (1) (d).

(e) "Health care provider" has the meaning given in s. 103.10 (1) (e).

(f) "Organ" has the meaning given for "human organ" in s. 230.35 (2d) (a) 2.

(g) "Serious health condition" has the meaning given in s. 103.10 (1) (g).

(2) STATEWIDE CONCERN; UNIFORMITY. (a) The legislature finds that the provision of bone marrow donation leave and organ donation leave that is uniform throughout the state is a matter of statewide concern and that the enactment of an ordinance by a city, village, town, or county that requires employers to provide employees with leave from employment, paid or unpaid, for any of the reasons specified in par. (c) would be logically inconsistent with, would defeat the purpose of, and would go against the spirit of this section. Therefore, this section shall be construed as an enactment of statewide concern for the purpose of providing bone marrow donation leave and organ donation leave that is uniform throughout the state.

(b) In this subsection:

1. "Employee" has the meaning given in s. 104.01 (2) (a).

2. "Employer" has the meaning given in s. 104.01 (3) (a).

(c) Subject to par. (d), a city, village, town, or county may not enact and administer an ordinance requiring an employer to provide an employee with leave from employment, paid or unpaid, because the employee's absence from work is necessary in order for the employee

* Section 991.11, WISCONSIN STATUTES: Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication."

to donate his or her bone marrow or organ to another person.

(d) This subsection does not affect an ordinance affecting leave from employment of an employee of a city, village, town, or county.

(e) Any city, village, town, or county ordinance requiring an employer to provide an employee with leave from employment, paid or unpaid, for any of the reasons specified in par. (c) that is in effect on the effective date of this paragraph [LRB inserts date], is void.

(3) SCOPE. (a) Nothing in this section prohibits an employer from providing employees with rights to bone marrow donation leave or organ donation leave that are more generous to the employees than the rights provided under this section.

(b) 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 hours during the preceding 52-week period.

(4) BONE MARROW AND ORGAN DONATION LEAVE. An employee may take bone marrow and organ donation leave as provided in this subsection for the purpose of serving as a bone marrow or organ donor if the employee provides his or her employer with written verification that the employee is to serve as a bone marrow or organ donor. No more than 6 weeks of leave in a 12-month period may be taken under this subsection, and leave may be taken under this subsection only for the period necessary for the employee to undergo the bone marrow or organ donation procedure and to recover from the procedure.

(5) PAYMENT FOR AND RESTRICTIONS UPON LEAVE. (a) This section does not entitle an employee to receive wages or salary while taking bone marrow and organ donation leave.

(b) An employee may substitute, for portions of bone marrow and organ donation leave, paid or unpaid leave of any other type provided by the employer.

(6) NOTICE TO EMPLOYER. If an employee intends to take leave for the purpose of serving as a bone marrow or organ donor, the employee shall do all of the following:

(a) Make a reasonable effort to schedule the bone marrow or organ donation procedure so that it does not unduly disrupt the employer's operations, subject to the approval of the health care provider of the bone marrow or organ donee.

(b) Give the employer advance notice of the bone marrow or organ donation in a reasonable and practicable manner.

(7) CERTIFICATION. If an employee requests bone marrow and organ donation leave, the employer may require the employee to provide certification issued by the health care provider of the bone marrow or organ donee or of the employee, whichever is appropriate, of any of the following:

(a) That the donee has a serious health condition that necessitates a bone marrow or organ transplant.

(b) That the employee is eligible and has agreed to serve as a bone marrow or organ donor for the donee.

(c) The amount of time expected to be necessary for the employee to recover from the bone marrow or organ donation procedure.

(8) POSITION UPON RETURN FROM LEAVE. (a) Subject to par. (c), when an employee returns from bone marrow and organ donation leave, his or her employer shall immediately place the employee in an employment position as follows:

1. If the employment position that the employee held immediately before the bone marrow and organ donation leave began is vacant when the employee returns, in that position.

2. If the employment position that the employee held immediately before the bone marrow and organ donation leave began is not vacant when the employee returns, in an equivalent employment position having equivalent compensation, benefits, working shift, hours of employment, and other terms and conditions of employment.

(b) No employer may, because an employee received bone marrow and organ donation leave, reduce or deny an employment benefit that accrued to the employee before his or her leave began or, consistent with sub. (9), accrued after his or her leave began.

(c) Notwithstanding par. (a), if an employee on bone marrow and organ donation leave wishes to return to work before the end of the leave as scheduled, the employer shall place the employee in an employment position of the type described in par. (a) 1. or 2. within a reasonable time not exceeding the duration of the leave as scheduled.

(9) EMPLOYMENT RIGHT, BENEFIT, OR POSITION. (a) Except as provided in par. (b), nothing in this section entitles a returning employee to a right, employment benefit, or employment position to which the employee would not have been entitled had he or she not taken bone marrow and organ donation leave or to the accrual of any seniority or employment benefit during a period of bone marrow and organ donation leave.

(b) Subject to par. (c), during a period an employee takes bone marrow and organ donation leave, his or her employer shall maintain group health insurance coverage under the conditions that applied immediately before the bone marrow and organ donation leave began. If the employee continues making any contribution required for participation in the group health insurance plan, the employer shall continue making group health insurance premium contributions as if the employee had not taken the bone marrow and organ donation leave.

(c) 1. An employer may require an employee to have in escrow with the employer an amount equal to the entire premium or similar expense for 8 weeks of the employ-

ee's group health insurance coverage, if coverage is required under par. (b).

2. An employee may pay the amount required under subd. 1. in equal installments at regular intervals over at least a 12-month period. An employer shall deposit the payments at a financial institution in an interest-bearing account.

3. Subject to subd. 4., an employer shall return to the employee any payments made under subd. 1., plus interest, when the employee ends his or her employment with the employer.

4. If an employee ends his or her employment with an employer during or within 30 days after a period of bone marrow and organ donation leave, the employer may deduct from the amount returned to the employee under subd. 3. any premium or similar expense paid by the employer for the employee's group health insurance coverage while the employee was on bone marrow and organ donation leave.

(d) If an employee ends his or her employment with an employer during or at the end of a period of bone marrow and organ donation leave, the period for conversion to individual coverage under s. 632.897 (6) shall be calculated as beginning on the day on which the employee began the period of bone marrow and organ donation leave.

(10) ALTERNATIVE EMPLOYMENT. Nothing in this section prohibits an employer and an employee who is serving as a bone marrow or organ donor from mutually agreeing to alternative employment for the employee while the employee recovers from the bone marrow or organ donation procedure. No period of alternative employment, with the same employer, reduces the employee's right to bone marrow and organ donation leave.

(11) 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 in any other manner discriminate against any individual for opposing a practice prohibited under this section.

(c) Section 111.322 (2m) applies to discharge or other discriminatory acts arising in connection with any proceeding under this section.

(12) ADMINISTRATIVE PROCEEDING. (a) An employee who believes his or her employer has violated sub. (11) (a) or (b) may, within 30 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. 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.

(b) The department shall issue its decision and order within 30 days after the hearing. If the department finds that an employer violated sub. (11) (a) or (b), it may order the employer to take action to remedy the violation, including providing the requested bone marrow and organ donation leave, reinstating an employee, providing back pay accrued not more than 2 years before the complaint was filed, and paying reasonable actual attorney fees to the complainant.

(13) CIVIL ACTION. (a) An employee or the department may bring an action in circuit court against an employer to recover damages caused by a violation of sub. (11) after the completion of an administrative proceeding, including judicial review, concerning the same violation.

(b) An action under par. (a) shall be commenced within the later of the following periods, or be barred:

1. Within 60 days from the completion of an administrative proceeding, including judicial review, concerning the same violation.

2. Twelve months after the violation occurred, or the department or employee should reasonably have known that the violation occurred.

(14) NOTICE POSTED. (a) Each employer shall post, 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. Any employer who violates this subsection shall forfeit not more than \$100 for each offense.

(b) Any person employing at least 25 individuals shall post, in one or more conspicuous places where notices to employees are customarily posted, a notice describing the person's policy with respect to leave for the reasons described in sub. (4).

(15) NONAPPLICABILITY. This section does not apply to employees, as defined in s. 230.03 (10h), who are allowed to take a leave of absence under s. 230.35 (2d) (b) or (c) for the purpose of serving as bone marrow or organ donors.

SECTION 2. 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, 103.11, 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.

SECTION 3. 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, 103.11, 103.13, 103.28, 103.32, 103.34, 103.455, 103.50, 104.12, 109.03,

2015 Wisconsin Act 345

2015 Senate Bill 517

109.07, 109.075, 146.997, or 995.55, or ss. 101.58 to 101.599 or 103.64 to 103.82.

SECTION 4. 632.897 (6) of the statutes is amended to read:

632.897 (6) If the terminated insured elects to continue group coverage as provided in this section, the insurer may require conversion to individual coverage by the terminated insured and his or her spouse and dependents 18 months after the terminated insured elects the group coverage except as provided in ~~ss.~~ 103.10 (9) (d) and 103.11 (9) (d). The conditions, rights and procedures governing conversion under sub. (4) (a) apply to this conversion.

SECTION 5. 893.965 of the statutes is created to read:

893.965 Bone marrow and organ donation leave; civil remedies. Any civil action arising under s. 103.11 (13) (a) is subject to the limitations of s. 103.11 (13) (b).

SECTION 6. Initial applicability.

(1) This act first applies to an employee, as defined in section 103.11 (1) (b) of the statutes, as created by this act, who is affected by a collective bargaining agreement that contains provisions that are inconsistent with this act on the day on which the collective bargaining agreement expires or is extended, modified, or renewed, whichever occurs first.

SECTION 7. Effective date.

(1) This act takes effect on the first day of the 3rd month beginning after publication.