



WISCONSIN LEGISLATIVE COUNCIL ACT MEMO

2011 Wisconsin Act 10
[January 2011 Special Session
Assembly Bill 11]

Budget Adjustment Act

This Act Memo describes 2011 Wisconsin Act 10, relating to state finances, collective bargaining for public employees, compensation and fringe benefits of public employees, the State Civil Service System, and the Medical Assistance (MA) program.

COLLECTIVE BARGAINING

Municipal Employment Relations

Subjects of Collective Bargaining

Under *current law*, municipal employees have the right to collectively bargain with respect to wages, hours, and conditions of employment. In a school district, the employer is also required to bargain collectively with respect to the development of or any changes to a teacher evaluation plan and with respect to time spent during the school day, separate from pupil contact time, to prepare lessons, labs, or educational materials; to confer or collaborate with other staff; or to complete administrative duties.

Act 10 continues to allow collective bargaining with respect to wages, hours, and conditions of employment for public safety employees. A “public safety employee” is a municipal employee who is employed in a position that is classified as a protective occupation participant under: (1) the Wisconsin Retirement System (WRS) and who is a police officer, fire fighter, deputy sheriff, county traffic police officer, or person employed by a village to perform police and fire protection duties; or (2) a provision that is comparable to the provision in (1) that is in a county or city retirement system.

However, *Act 10* eliminates collective bargaining with respect to hours and conditions of employment for general municipal employees (municipal employees who are not public safety employees) and repeals the provisions, described above, that specifically apply to school districts. *Act 10* maintains the right of municipal employees to collectively bargain with respect to wages. Wages

This memo provides a brief description of the Act. For more detailed information, consult the text of the law and related legislative documents at the Legislature’s Web site at: <http://www.legis.state.wi.us/>.

include only total base wages and excludes any other compensation, including overtime, premium pay, merit pay, performance pay, supplemental compensation, pay schedules, and automatic pay progressions.

Under *Act 10*, a municipal employer may not bargain collectively with general municipal employees with respect to a proposal that does any of the following:

- If there is an increase in the consumer price index (CPI) change, provides for total base wages for authorized positions in the proposed collective bargaining agreement that exceeds the total base wages for authorized positions 180 days before the expiration of the previous collective bargaining agreement by a greater percentage than the CPI change.
- If there is a decrease in the CPI change, provides for total base wages for authorized positions in the proposed collective bargaining agreement that exceeds the total base wages for authorized positions 180 days before the expiration of the previous collective bargaining agreement decreased by a percentage of that expenditure that is equal to the decrease in the CPI change.

Act 10 defines “consumer price index change” as the average annual percentage change in the CPI for all urban consumers, U.S. city average, as determined by the federal Department of Labor, for the 12 months immediately preceding the current date.

Further, *Act 10* provides that if a local governmental unit, defined as any city, village, town, county, metropolitan sewerage district, long-term care district, transit authority, local cultural arts district, or any other political subdivision of the state, or instrumentality of one or more political subdivisions of the state, wishes to increase the total base wages of its general municipal employees in an amount that exceeds the above limit, the governing body of the local governmental unit must adopt a resolution to that effect. The resolution must specify the amount by which the proposed total base wages increase will exceed the limit. The resolution may not take effect unless it is approved in a referendum, which must occur in November for collective bargaining agreements that begin the following January 1. The referendum results apply to the total base wages only in the next collective bargaining agreement. The referendum question is substantially as follows: “Shall the ... [general municipal employees] in the ... [local governmental unit] receive a total increase in wages from \$... [current total base wages] to \$... [proposed total base wages], which is a percentage wage increase that is ... [x] percent higher than the percent of the consumer price index increase, for a total percentage increase in wages of ... [x]?” The referendum requirement also applies to school districts, except that the referendum must occur in April for collective bargaining agreements that begin in July.

Act 10 requires that each local governmental unit that is collectively bargaining with its employees determine the maximum total base wages expenditure that is subject to collective bargaining, calculating the CPI change using the method used by the Department of Revenue (DOR). In addition, if a school board is collectively bargaining with school district employees, the school board must determine the maximum total base wages expenditure that is subject to collective bargaining, calculating the CPI change using the method used by DOR.

Lastly, *Act 10* provides that no local governmental unit or school board may collectively bargain with its employees, except as provided under the Municipal Employment Relations Act (MERA). On the effective date of the Act, if a local governmental unit has in effect an ordinance or resolution that is inconsistent with this prohibition, the ordinance or resolution does not apply and may not be enforced.

Collective Bargaining Unit

Act 10 provides that a collective bargaining unit may not include both public safety employees and general municipal employees.

Certification of Representative of Collective Bargaining Unit

Under **current law**, a representative chosen by a *majority of the municipal employees voting* in a collective bargaining unit is the exclusive representative of all employees in the unit for the purpose of collective bargaining. The representative remains in place unless the representative is decertified in a method provided under current law.

Act 10 provides that the Wisconsin Employment Relations Commission (WERC) must annually conduct an election to certify the representative of a collective bargaining unit that contains a general municipal employee. The election must occur no later than December 1 for a collective bargaining unit containing school district employees and no later than May 1 for a collective bargaining unit containing general municipal employees who are not school district employees. WERC must certify any representative that receives at least *51% of the votes of all of the general municipal employees* in the collective bargaining unit. If no representative receives at least 51% of the votes, at the expiration of the collective bargaining agreement, WERC must decertify the current representative and the general municipal employees will be nonrepresented. If a representative is decertified, the affected general municipal employees may not be included in a substantially similar collective bargaining unit for 12 months from the date of decertification.

Notwithstanding the above provision, **Act 10** provides that each collective bargaining unit containing general municipal employees must vote to certify or decertify its representative in April 2011.

Labor Organization Dues

Under **current law**, municipal employees may be required to pay labor organization dues in the manner provided in a fair-share agreement. A “fair-share agreement” is an agreement between a municipal employer and a labor organization under which all or any of the employees in the collective bargaining unit are required to pay their proportionate share of the cost of the collective bargaining process and contract administration measured by the amount of dues uniformly required of all members.

Act 10 eliminates fair-share agreements for general municipal employees but continues to allow fair-share agreements for public safety employees.

In addition, **Act 10** provides that a general municipal employee has the right to refrain from paying dues while remaining a member of a collective bargaining unit, except that a public safety employee may be required to pay dues in the manner provided in a fair-share agreement.

Under **current law**, it is a prohibited practice for a municipal employer to deduct dues from an employee’s or supervisor’s earnings, unless the employer has been presented with an individual order therefor, signed by the municipal employee personally, and terminable by at least the end of any year of its life or earlier by the municipal employee giving at least 30 days’ written notice of such termination to the municipal employer and to the representative organization, except where there is a fair-share agreement in effect. **Act 10** limits this provision to public safety employees.

Further, *Act 10* prohibits a municipal employer from deducting dues from the earnings of a general municipal employee or supervisor.

Term of Collective Bargaining Agreement

Under *current law*, the term of a collective bargaining agreement covering municipal employees who are not school district employees may not exceed three years. The term of a collective bargaining agreement covering school district employees may not exceed four years.

Act 10 provides that every collective bargaining agreement covering general municipal employees must be for a term of one year and may not be extended. Further, *Act 10* provides that no collective bargaining agreement covering general municipal employees may be reopened for negotiations unless both parties agree to reopen the agreement.

Settlement of Disputes

Current law contains provisions relating to the settlement of disputes involving law enforcement and fire fighting personnel. *Act 10* specifies that these provisions apply to public safety employees.

In addition, *current law* contains the following provisions relating to the settlement of disputes involving general municipal employees:

- **Mediation**: WERC or its designee must function as mediator in labor disputes involving municipal employees upon request of one or both of the parties or upon initiation of WERC. The function of the mediator is to encourage voluntary settlement by the parties, and no mediator has the power of compulsion.
- **Grievance arbitration**: Parties to a dispute pertaining to the meaning or application of the terms of a written collective bargaining agreement may agree in writing to have WERC or any other appropriate agency serve as arbitrator or may designate any other competent, impartial, and disinterested person to so serve.
- **Voluntary impasse resolution procedures**: A municipal employer and labor organization may agree in writing to a dispute settlement procedure, including authorization for a strike by municipal employees or binding interest arbitration, which is acceptable to the parties for resolving an impasse over terms of a collective bargaining agreement.
- **Interest arbitration**: If a dispute relating to one or more issues has not been settled after a reasonable period of negotiation and after mediation by WERC and other settlement procedures, if any, established by the parties have been exhausted, and the parties are deadlocked with respect to any dispute between them over wages, hours, and conditions of employment to be included in a new collective bargaining agreement, either party or the parties jointly may petition WERC, in writing, to initiate compulsory, final, and binding arbitration.
- **Factor given greatest weight**: In making any decision under arbitration, except for any decision involving school district employees, the arbitrator or arbitration panel must consider and give the greatest weight to any state law or directive lawfully issued by a state legislative or administrative officer, body, or agency that places limitations on expenditures that may be made or revenues that may be collected by a municipal employer.

- Factor given greater weight: In making any decision under arbitration, except for any decision involving school district employees, the arbitrator or arbitrator panel must consider and give greater weight to economic conditions in the jurisdiction of the municipal employer than to the factors described in the next bullet point.
- Other factors considered: In making any decision under arbitration, the arbitrator or arbitration panel must give weight to multiple factors, including the lawful authority of the municipal employer; stipulations of the parties; and interests and welfare of the public and the financial ability of the unit of government to meet the costs of any proposed settlement.

Act 10 repeals the above provisions, *except* the provisions relating to mediation and grievance arbitration.

Strikes

Under *current law*, strikes by municipal employees or labor organizations are expressly prohibited, except under the following circumstances:

- A municipal employer and labor organization may agree in writing to a dispute settlement procedure, including authorization for a strike by municipal employees or binding interest arbitration, which is acceptable to the parties for resolving an impasse over terms of a collective bargaining agreement.
- Prior to an arbitration hearing, if both parties withdraw their final offers and mutually agreed upon modifications, the labor organization, after giving 10 days' advance notice, in writing, to the municipal employer and WERC, may strike.

Act 10 repeals these provisions and provides that strikes by municipal employees or labor organizations are expressly prohibited.

Declarations of Policy

Current law provides that the public policy of the state as to labor disputes arising in municipal employment is to encourage voluntary settlement through the procedures of collective bargaining. Further, current law states that it is in the public interest that municipal employees so desiring be given an opportunity to bargain collectively with the municipal employer through a labor organization or other representatives of the employees' own choice, and, if such procedures fail, the parties should have available to them a fair, speedy, effective, and peaceful procedure for settlement.

In addition, *current law* provides that the Legislature recognizes that the municipal employer must exercise its powers and responsibilities to act for the government and good order of the jurisdiction which it serves, its commercial benefit, and the health, safety, and welfare of the public to assure orderly operations and functions within its jurisdiction, subject to those rights secured to municipal employees by the Wisconsin Constitution and U.S. Constitution and by MERA.

Act 10 repeals these provisions.

Termination of Collective Bargaining Agreements

Act 10 provides that each collective bargaining unit containing general municipal employees who are subject to an extension of their collective bargaining agreement must have their agreement terminated as soon as legally possible.

State Employment Labor Relations

Covered Employees

Act 10 adds research assistants of the University of Wisconsin (UW)-Madison, UW-Extension, UW-Milwaukee, UW-Eau Claire, UW-Green Bay, UW-La Crosse, UW-Oshkosh, UW-Parkside, UW-Platteville, UW-River Falls, UW-Stevens Point, UW-Stout, UW-Superior, and UW-Whitewater to the list of employees covered under the State Employment Labor Relations Act (SELRA).

Subjects of Collective Bargaining

Under **current law**, state employees generally have the right to collectively bargain with respect to wage rates, the assignment and reassignment of classifications to pay ranges, determination of an incumbent's pay status resulting from position reallocation or reclassification, and pay adjustments upon temporary assignment of classified employees to duties of a higher classification or downward reallocations of a classified employee's position; fringe benefits; and hours and conditions of employment. One exception to this requirement is that an employer is not required to bargain on matters related to employee occupancy of houses or other lodging provided by the state.

Act 10 continues to allow collective bargaining with respect to the above matters for public safety employees. A "public safety employee" is a member of the state traffic patrol or a state motor vehicle inspector. In addition, **Act 10** repeals the exception relating to employee occupancy of houses or other lodging.

However, **Act 10** eliminates collective bargaining with respect to the above matters for general employees (employees who are not public safety employees). **Act 10** maintains the right of employees to collectively bargain with respect to wages. Wages include only total base wages and excludes any other compensation, including overtime, premium pay, merit pay, performance pay, supplemental compensation, pay schedules, and automatic pay progressions.

Under **Act 10**, the employer (State of Wisconsin) may not bargain collectively with general employees with respect to a proposal that does any of the following, unless the electors in a statewide referendum approve a total base wages increase that exceeds the total base wages expenditure described below:

- If there is an increase in the CPI change, provides for total base wages for authorized positions in the proposed collective bargaining agreement that exceeds the total base wages for authorized positions 180 days before the expiration of the previous collective bargaining agreement by a greater percentage than the CPI change.
- If there is a decrease in the CPI change, provides for total base wages for authorized positions in the proposed collective bargaining agreement that exceeds the total base wages for authorized positions 180 days before the expiration of the previous collective bargaining

agreement decreased by a percentage of that expenditure that is equal to the decrease in the CPI change.

Lastly, *Act 10* requires that WERC provide, upon request, to the employer or any representative of a collective bargaining unit containing a general employee, the CPI change during any 12-month period. The WERC may get the information from DOR. At the request of WERC, DOR must determine the CPI change, based on the 12 months immediately preceding the request from WERC.

Collective Bargaining Unit

Act 10 creates a statewide collective bargaining unit for public safety employees.

Certification of Representative of Collective Bargaining Unit

Under *current law*, a representative chosen by a *majority of the employees voting* in a collective bargaining unit is the exclusive representative of all employees in the unit for the purpose of collective bargaining. The representative remains in place unless the representative is decertified in a method provided under current law.

Act 10 provides that WERC must annually conduct an election, no later than December 1, to certify the representative of a collective bargaining unit that contains a general employee. The ballot must include the names of all labor organizations having an interest in representing the general employees participating in the election. WERC may exclude from the ballot one who, at the time of the election, stands deprived of his or her having engaged in an unfair labor practice. WERC must certify any representative that receives at least *51% of the votes of all of the general employees* in the collective bargaining unit. If no representative receives at least 51% of the votes, at the expiration of the collective bargaining agreement, WERC must decertify the current representative and the general employees will be nonrepresented. If a representative is decertified, the affected general employees may not be included in a substantially similar collective bargaining unit for 12 months from the date of decertification. WERC's certification of the results of any election is conclusive unless reviewed under ch. 227, Stats.

Notwithstanding the above provision, *Act 10* provides that each collective bargaining unit containing general employees must vote to certify or decertify its representative in April 2011.

Labor Organization Dues

Under *current law*, employees may be required to pay labor organization dues in the manner provided in a fair-share agreement. A "fair-share agreement" is an agreement between the employer and a labor organization representing employees or supervisors under which all of the employees or supervisors in a collective bargaining unit are required to pay their proportionate share of the cost of the collective bargaining process and contract administration measured by the amount of dues uniformly required of all members.

Act 10 eliminates fair-share agreements for general employees and supervisors but continues to allow fair-share agreements for public safety employees.

Under *current law*, employees may be required to pay dues in the manner provided in a maintenance of membership agreement. A "maintenance of membership agreement" is an agreement between the employer and a labor organization representing employees or supervisors which requires

that all of the employees or supervisors whose dues are being deducted from earnings at the time the agreement takes effect continue to have dues deducted for the duration of the agreement and that dues be deducted from the earnings of all employees or supervisors who are hired on or after the effective date of the agreement.

Act 10 eliminates maintenance of membership agreements for general employees and supervisors, but continues to allow maintenance of membership agreements for public safety employees.

In addition, *Act 10* provides that a general employee has the right to refrain from paying dues while remaining a member of a collective bargaining unit.

Under *current law*, it is an unfair labor practice for an employer to deduct dues from an employee's earnings, unless the employer has been presented with an individual order therefor, signed by the employee personally, and terminable by at least the end of any year of its life or earlier by the employee giving at least 30 but not more than 120 days' written notice of such termination to the employer and to the representative labor organization, except if there is a fair-share or maintenance of membership agreement in effect. *Act 10* limits this provision to public safety employees.

Further, *Act 10* prohibits an employer from deducting dues from the earnings of a general employee.

Term of Collective Bargaining Agreement

Under *current law*, collective bargaining agreements must coincide with the fiscal year or biennium.

Act 10 provides that no agreements covering a collective bargaining unit containing a general employee may be for a period that exceeds one year, and each agreement must coincide with the fiscal year. Agreements covering a collective bargaining unit containing a general employee may not be extended. *Act 10* retains current law for agreements covering public safety employees.

Declaration of Policy

Under *current law*, SELRA provides that the public policy of the state as to labor relations and collective bargaining in state employment includes: (1) recognition of the interests of the public, employee, and employer; (2) orderly and constructive employment relations for employees and the efficient administration of state government; (3) negotiations of terms and conditions of state employment that result from voluntary agreement between the state and its employees, who may organize and bargain collectively through representatives; and (4) encouragement of the practices and procedures of collective bargaining in state employment by establishing standards of fair conduct in state employment relations and by providing a convenient, expeditious, and impartial tribunal in which these interests may have their respective rights determined.

Act 10 repeals this provision.

Termination of Collective Bargaining Agreements

Act 10 provides that, upon termination of any collective bargaining agreement between the state and a labor organization, the Director of the Office of State Employment Relations (OSER) may continue to administer those provisions of the agreements that the Director determines necessary for the

orderly administration of the State Civil Service System until the compensation plan is established for the 2011-13 Fiscal Biennium.

UW System Faculty and Academic Staff Labor Relations

Under *current law*, UW System faculty and academic staff have the right to collectively bargain with the state.

Act 10 eliminates collective bargaining for UW System faculty and academic staff.

UW Hospitals and Clinics Authority, Child Care Providers, Home Care Providers, and Local Cultural Arts Districts

Under *current law*, certified or licensed child care providers who provide care and supervision for not more than eight children who are not related to the provider, employees of the UW Hospitals and Clinics Authority, and home care providers have the right to collectively bargain with their employers.

Act 10 eliminates collective bargaining for child care providers, employees of the UW Hospitals and Clinics Authority, and home care providers. Further, *Act 10* eliminates the Wisconsin Quality Home Care Authority and transfers its assets, liabilities, tangible personal property, and contracts to the Department of Health Services (DHS).

In addition, *current law* provides that employees of local cultural arts districts have the right to collectively bargain with local cultural arts districts under subch. I of ch. 111, Stats. *Act 10* transfers the collective bargaining rights of employees of local cultural arts districts to MERA, thus such an employee would be a general municipal employee for purposes of MERA.

Initial Applicability

The provisions of *Act 10* relating to collective bargaining first apply to employees who are covered by a collective bargaining agreement that contains provisions inconsistent with the Act's provisions on the day on which the agreement expires or is terminated, extended, modified, or renewed, whichever occurs first.

WERC

Act 10 requires that the Department of Administration (DOA) evaluate the staffing requirements of WERC and submit the report of the evaluation to the Joint Committee on Finance.

LOCAL GOVERNMENT CIVIL SERVICE

Act 10 requires that a local governmental unit (a political subdivision of this state, a special purpose district in this state, an agency or corporation of a political subdivision or special purpose district, or a combination or subunit of any of the foregoing) that does not have a civil service system on the effective date of this provision must establish a grievance system no later than the first day of the fourth month beginning after the effective date of this provision. To comply with this requirement, a local governmental unit may establish either a civil service system or a grievance procedure.

Further, *Act 10* provides that any civil service system, and any grievance procedure, must contain at least the following provisions: (1) a grievance procedure that addresses employee

terminations; (2) employee discipline; and (3) workplace safety. If a local governmental unit creates a grievance procedure, the procedure must contain at least the following elements: (1) a written document specifying the process that a grievant and an employer must follow; (2) a hearing before an impartial hearing officer; and (3) an appeal process in which the highest level of appeal is the governing body of the local governmental unit.

Act 10 provides that if an employee of a local governmental unit is covered by a civil service system on the effective date of this provision, and if that system contains the provisions described above, the provisions that apply to the employee under his or her civil service system continue to apply to that employee.

The above provisions first apply on the first day of the fourth month beginning after the Act's effective date.

PUBLIC SECTOR RETIREMENT SYSTEMS

Modifications to the Employee and Employer Retirement Contributions to the WRS

Under current law, the Employee Trust Funds (ETF) Board, in consultation with actuaries, annually determines the total actuarial contribution required to fund the WRS. This total contribution is the sum of three components: the employee rate; the employer rate; and the benefit adjustment contribution (BAC). Employer contributions to the WRS vary depending upon the type of position held by the employee. Employee contributions are currently required as follows:

1. For general employees, 5 % of earnings;
2. For elected officials and executive employees, 5.5% of earnings;
3. For protective occupations covered by Social Security, 6% of earnings; and
4. For protective occupations not covered by Social Security, 8% of earnings.

Employer contributions (currently 5.1%) are generally paid by the employer, except that any contribution increase after 1989 is required to be distributed between the employer and the employee, with one-half of the increase paid by the employer and the other half of the increase added to the BAC portion of the total contribution. The BAC was created to fund WRS retirement improvements established under 1983 Wisconsin Act 141. The employee is responsible for paying BAC contributions unless the employer agrees to cover the cost (generally through collective bargaining). Currently, state employers are responsible for 1.3% of the BAC and general employees, .2%. A BAC is not necessary for the protective or elected official and executive categories.

While current law requires an employer to pay the full employer contribution, it also provides that an employer may pay all or part of the employee required contributions. This is generally derived through bargaining or the compensation plan. At this time, most state employers have agreed to pay the employee contribution (up to 5%) and 1.3% of the BAC for general employees. Protective occupations pay the portion of the employee contribution that exceeds 5%.

Act 10 eliminates the BAC as a separate contribution, instead incorporating the BAC costs into the total actuarially defined contribution. *Act 10* requires that the contribution rate for general employees and elected officials and executive employees must equal one-half of all actuarially required

contributions, as approved by the ETF Board. Protective occupation employees are required to pay a contribution that is equal to the percentage of earnings paid by the general employees.

Act 10 prohibits an employer from paying, on behalf of any employee, any of the employee's share of the actuarially required contributions under the WRS or any of the employee contribution under an employee retirement system of a 1st class city or of a county having a population of 500,000 or more (Milwaukee County and City Employees Retirement Systems), except as otherwise provided in a collective bargaining agreement. *Act 10* also prohibits any local governmental unit from establishing a defined benefit pension plan for its employees unless the plan requires the employees to pay half of all actuarially required contributions for funding plan benefits. It also prohibits the local governmental unit from paying, on behalf of an employee, any of the employee's share of the actuarially required contributions.

These provisions take effect on the first pay period following March 13, 2011, for nonrepresented employees, elected officials, and judges and justices, and on the expiration, termination, extension, modification, or renewal of the collective bargaining agreement, whichever occurs first, for represented employees.

Reduction in the Retirement Formula Multiplier for Elected Officials and Executive Employee Participants

Under current law, when a WRS participant becomes eligible to receive a retirement annuity, assuming the participant is not planning to receive a money purchase annuity, the amount of the annuity is determined by multiplying the participant's final average earnings by the participant's years of creditable service by a percentage multiplier. The multiplier is currently 1.6% for general employees, 2% for elected officials and executive employees, 2% for protective occupation participants covered by Social Security, and 2.5% for protective occupation participants not covered by Social Security.

Act 10 decreases the multiplier for elected officials and executive employees from 2% to 1.6%, the equivalent of the current general employee formula.

This provision takes effect, for elected officials, on the first day of the term of office beginning after the effective date of the Act; and for judges and justices, on the day on which the next judge or justice assumes office following the effective date of the Act.

PUBLIC SECTOR GROUP INSURANCE

Health Insurance Premiums for State Employees

Under *current law*, the employer generally must pay not less than 80% of the average premium cost of plans offered in the tier with the lowest employee premium cost, except as provided in a collective bargaining agreement, unless a different amount is recommended by the OSER Director and approved by the Joint Committee on Employment Relations (JCOER).

Act 10 requires that the employer generally pay an amount not more than 88% of the average premium cost of plans offered in the tier with the lowest employee premium cost, except as otherwise provided in a collective bargaining agreement. The OSER Director must annually establish the amount that the employer is required to pay.

However, **Act 10** specifies health insurance premium amounts to be paid by state employees in 2011. Beginning with health insurance premiums paid in April 2011, and ending with coverage for December 2011, most state employees must pay \$84 a month for individual coverage and \$208 a month for family coverage under any plan offered in the tier with the lowest employee premium cost; \$122 a month for individual coverage and \$307 a month for family coverage under any plan offered in the tier with the next lowest employee premium cost; and \$226 a month for individual coverage and \$567 a month for family coverage under any plan offered in the tier with the highest employee premium cost. However, any person employed as a teaching assistant or graduate assistant and other employees-in-training as designated by the UW Board of Regents, who are employed on at least a one-third full-time basis, must pay 50% of the amount described above. Further, insured part-time employees who are appointed to work less than 1,566 hours per year and craft employees must pay the same amounts that they are required to pay on the day before Act 10's effective date.

Health Insurance Premiums for Municipal Employees

Current law provides that any employer, other than the state, may offer to all of its employees a health care coverage plan through a program offered by the Group Insurance Board.

Act 10 provides that, beginning on January 1, 2012, except as otherwise provided in a collective bargaining agreement, an employer may not offer a health care coverage plan to its employees under this provision if the employer pays more than 88% of the average premium cost of plans offered in any tier with the lowest employee premium cost.

Health Care Coverage Plans for 2012-13

Act 10 requires that the Group Insurance Board design health care coverage plans for the 2012 calendar year that, after adjusting for any inflationary increase in health benefit costs, reduces the average premium cost of plans offered in the tier with the lowest employee premium cost by at least 5% from the cost of such plans offered during the 2011 calendar year. The Group Insurance Board must include copayments in the plans for the 2012 calendar year and may require health risk assessments for state employees and participation in wellness or disease management programs.

Current law provides that the Group Insurance Board may not enter into any agreements to modify or expand group insurance coverage in a manner that conflicts with ch. 40, Stats., or DETF rules or materially affects the level of premiums required to be paid by the state or its employees, or the level of benefits to be provided, under any group insurance coverage. **Act 10** provides that this provision does not apply to any agreements entered into by the Group Insurance Board to modify group insurance coverage for the 2012 and 2013 calendar years.

Eligible Employees

Under **current law**, any person employed as a graduate assistant and other employees-in-training as designated by the UW Board of Regents, who are employed on at least a one-third full-time basis, are eligible for group health insurance coverage. **Act 10** adds teaching assistants to this provision.

Initial Applicability

The provisions of **Act 10** relating to health care coverage premiums first apply to employees who are covered by a collective bargaining agreement that contains provisions inconsistent with the Act's

provisions on the day on which the agreement expires or is terminated, extended, modified, or renewed, whichever occurs first.

STATE CIVIL SERVICE

Compensation Plan

Act 10 provides that if an employee is covered under a collective bargaining agreement under SELRA, the compensation plan applies to that employee, except for those provisions relating to matters that are subject to bargaining.

Unexcused Absences

Act 10 provides that during a state of emergency declared by the Governor under s. 323.10, Stats., an appointing authority may discharge an employee who does any of the following:

- Fails to report to work as scheduled for any three working days during the state of emergency and the employee's absences from work are not approved leaves of absence.
- Participates in a strike, work stoppage, sit-down, stay-in, slowdown, or other concerted activities to interrupt the operations or services of state government, including specifically participation in purported mass resignations or sick calls.

Further, *Act 10* provides that engaging in the above activity constitutes just cause for discharge. Before discharging an employee, the appointing authority must provide the employee notice of the action and furnish to the employee, in writing, the reasons for the action. The appointing authority must provide the employee an opportunity to respond to the reasons for the discharge.

Career Executive Program

Act 10 provides that an appointing authority may reassign an employee in a career executive position to a career executive position in any agency if the appointing authority in the agency to which the employee is to be reassigned approves of the reassignment.

Unclassified Division Administrators

Act 10 increases the number of unclassified division administrator positions that are authorized in the statutes by 37 positions. *Act 10* also creates 39 unclassified division administrator positions and decreases the number of positions in executive branch agencies by 38 positions, which are to be identified by the DOA Secretary.

Current law provides that division administrators include all administrator positions specifically authorized by law to be employed outside the classified service in each department, board, or commission and the historical society. *Act 10* provides that division administrators also include any other managerial position determined by an appointing authority.

Act 10 allows the OSER Director to appoint a deputy director outside the classified service.

Contracts for Contractual Services

Under *current law*, the OSER Director, prior to award, under conditions established by DOA rule, must review contracts for contractual services in order to ensure that agencies properly utilize the services of state employees; evaluate the feasibility of using limited-term appointments prior to entering into a contract; and do not enter into any contract in conflict with any collective bargaining agreement. *Act 10* repeals this provision.

HEALTH AND HUMAN SERVICES

MA and Public Assistance

The MA Program

Act 10 requires DHS to study potential changes to the MA state plan and to waivers of federal law relating to MA obtained from the federal Department of Health and Human Services (DHHS) for all of the following purposes:

- Increasing the cost effectiveness and efficiency of care and the care delivery system for MA programs.
- Limiting switching from private health insurance to MA programs.
- Ensuring the long-term viability and sustainability of MA programs.
- Advancing the accuracy and reliability of eligibility for MA programs and claims determinations and payments.
- Improving the health status of individuals who receive benefits under a MA program.
- Aligning MA program benefit recipient and service provider incentives with health care outcomes.
- Supporting responsibility and choice of MA recipients.

If DHS determines, as a result of the study that revision of existing statutes or rules would be necessary to advance a purpose described above, DHS may promulgate rules that do any of the following related to MA programs:

- Require cost sharing from program benefit recipients up to the maximum allowed by federal law or a waiver of federal law.
- Authorize providers to deny care or services if a program benefit recipient is unable to share costs, to the extent allowed by federal law or waiver.
- Modify existing benefits or establish various benefit packages and offer different packages to different groups of recipients.
- Revise provider reimbursement models for particular services.
- Mandate that program benefit recipients enroll in managed care.

- Restrict or eliminate presumptive eligibility.
- To the extent permitted by federal law, impose restrictions on providing benefits to individuals who are not citizens of the United States.
- Set standards for establishing and verifying eligibility requirements.
- Develop standards and methodologies to assure accurate eligibility determinations and redetermine continuing eligibility.
- Reduce income levels for purposes of determining eligibility to the extent allowed by federal law or waiver and subject to the ability of the state DHS to obtain a waiver from provisions of the federal health care reform law.

DHS must submit an amendment to the state MA plan or request a waiver of federal laws related to MA, if necessary, to the extent necessary to implement any rule promulgated above. If the federal DHHS does not allow the amendment or does not grant the waiver, the DHS may not put the rule into effect or implement the action described in the rule.

DHS must request a waiver from the Secretary of the federal DHHS to permit the department to have in effect eligibility standards, methodologies, and procedures under the state MA plan or waivers of federal laws related to MA that are more restrictive than those in place under the federal Patient Protection and Affordable Care Act (PPACA). If the waiver request does not receive federal approval before December 31, 2011, the department shall reduce income levels on July 1, 2012, for the purposes of determining eligibility to 133% of the federal poverty line for adults who are not pregnant and not disabled, to the extent permitted under federal law.

Act 10 provides that the provisions in the Act relating to the study of potential changes to the MA state plan, waivers of federal MA law obtained from the federal DHHS, and ability to promulgate rules to implement the MA program changes will sunset on January 1, 2015. To the extent that MA rules, waivers to federal law, and state plan changes put into effect during this time period conflict with state law, those rules and plans would terminate as of January 1, 2015.

Memorandum of Understanding With Milwaukee County Employees

Current law provides that DHS may enter into a memorandum of understanding with the certified representative of Milwaukee County employees performing services for the administration of enrollment services for various public assistance programs. If there is a dispute as to hours or conditions of employment that remains between DHS and the certified representative after a good faith effort to resolve it, DHS may unilaterally resolve the dispute.

Current law also provides DHS may enter into a memorandum of understanding with the certified representative of Milwaukee County employees performing child care services in the county. If there is a dispute as to hours or conditions of employment that remains between DHS and the certified representative after a good faith effort to resolve it, DHS may unilaterally resolve the dispute.

Act 10 repeals these provisions.

FISCAL CHANGES

Health Services

Act 10 reduces funding for Family Care aging and disability resource centers (ADRCs) by \$3,100,000 GPR in fiscal year 2010-2011 to reflect estimates of cost savings that DHS will realize because some ADRCs began operating later in the 2009-2011 biennium than anticipated.

In addition, \$4,500,000 is lapsed to the general fund from the appropriation account to the Department of Health Services in the second fiscal year of the fiscal biennium.

Children and Families

\$2,011,200 is lapsed to the general fund from the appropriation account to the Department of Children and Families in the second fiscal year of the fiscal biennium.

Joint Committee on Finance

The appropriation to the Joint Committee of Finance to supplement general fund appropriations due to emergencies is decreased by \$4,590,400 for fiscal year 2011-12.

Lapses

Act 10 requires lapses from the executive, judicial, and legislative branches of government to capture employers' savings that are expected to result from an increase in employee health insurance premium and retirement contributions.

EARNED INCOME TAX CREDIT

Act 10 increases the statutory Temporary Assistance for Needy Families allocation for the earned income tax credit by \$37,000,000 for fiscal year 2011-2012, and decreases the Joint Committee on Finance's general program supplement appropriation by \$37,000,000.

UW HOSPITALS AND CLINICS BOARD AND UW HOSPITALS AND CLINICS AUTHORITY

Act 10 eliminates the UW Hospitals and Clinics Board. Any contractual services agreement between the Board and the UW Hospitals and Clinics Authority is terminated on the effective date of the Act. Also on that date, all employees of the Board are transferred to the Authority, which must adhere to the terms of any collective bargaining agreement covering the employees that is in force at that time. Upon termination of the collective bargaining agreement, the Authority must establish the compensation and benefits of the employees.

Current law requires that the board of directors for the UW Hospitals and Clinics Authority include two nonvoting members appointed by the Governor, one of whom must be an employee or a representative of a labor organization recognized or certified to represent employees of the Authority and one of whom must be an employee or a representative of a labor organization recognized or certified to represent employees of the UW Hospitals and Clinics Board. *Act 10* repeals this provision.

BUILDING COMMISSION

Act 10 authorizes the Building Commission to determine and make payments to the federal government so as to avoid an adverse effect on any exclusion of interest from gross income for federal income tax purposes on public debt, revenue obligations, operating notes, master lease obligations, and appropriation obligations and to make any payments to advisors that assist in making that determination.

TECHNICAL CORRECTION TO JOB CREATION TAX BENEFITS (2011 WISCONSIN ACT 5)

2011 Wisconsin Act 5 created an income and franchise tax deduction for job creation. Generally, under Act 5, businesses with gross receipts of \$5,000,000 or less in a taxable year may claim a deduction equal to \$4,000 for each new FTE employee employed in the taxable year. Businesses with gross receipts of more than \$5,000,000 may claim a deduction equal to \$2,000 for each new FTE employee employed in the taxable year. The increase in FTE employees is calculated based on unemployment data reported to the DOR. However, Act 5 specifies that no person may claim the tax deduction for job creation if the person may claim a tax credit based on the person relocating the person's business from another state to this state and in an amount equal to the person's tax liability.

Generally, the limitation described above correlates to the relocation tax credit created by 2011 Wisconsin Act 3 (January 2011 Special Session Assembly Bill 3). As originally introduced, Special Session Assembly Bill 3 provided a relocation tax credit for both individual and corporate taxpayers. However, Special Session Assembly Bill 3 was amended during the legislative process by Assembly Substitute Amendment 2 to Special Session Assembly Bill 3. Substitute Amendment 2 and subsequently, 2011 Wisconsin Act 3, provided a relocation tax *deduction* for business income earned by an individual, and a relocation tax *credit* for corporate income taxpayers.

Act 10 modifies the limitation created under Act 5 to recognize the presence of a relocation tax deduction for individual taxpayers rather than a relocation tax credit, as created under Act 3.

AREAS IDENTIFIED AS WETLANDS IN TAX INCREMENTAL DISTRICTS

In the tax incremental law under s. 66.1105, Stats., the definition of "tax incremental district" excludes any area identified on a wetlands map prepared under s. 23.32, Stats. **Act 10** modifies this definition to include "an area identified on such a map that has been converted in compliance with state law so that it is no longer a wetland." **Act 10** also provides that for an area that is identified as a wetland on a map under s. 23.32, Stats., and that is within the boundaries of a tax incremental district or is part of a tax incremental district parcel, the area shall be considered part of the tax incremental district for determining the applicability of exemptions from or compliance with water quality standards that are applicable to wetlands.

Effective date: Act 10 takes effect on the day after publication. As of the date of this Act Memo, Act 10 has not been published and therefore has not taken effect, pursuant to an order granting a motion for a temporary restraining order dated March 31, 2011, in the case of *State of Wisconsin ex rel. Ozanne v. Fitzgerald, et al.*, Dane County Circuit Court Case No. 11 CV 1244.

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