



1997 SENATE BILL 97

February 26, 1997 – Introduced by Senators GROBSCHMIDT, MOEN, WIRCH, CLAUSING, RISSER and WINEKE, cosponsored by Representatives R. YOUNG, VANDER LOOP, MORRIS-TATUM, BALDWIN, BLACK, BOCK, BOYLE, CARPENTER, CULLEN, KRUSICK, NOTESTEIN, PLALE, RILEY, RYBA and L. YOUNG. Referred to Committee on Labor, Transportation and Financial Institutions.

1 **AN ACT to repeal** 103.10 (1) (a) 1. and 2., 103.10 (3) (a) 2., 103.10 (3) (a) 3., 103.10
2 (3) (b) (intro.), 103.10 (3) (c), 103.10 (4) (title), 103.10 (4) (b), 103.10 (12) (c),
3 103.10 (13) (b) 2., 103.10 (14) (b), 252.17 (3) (i) and 252.17 (4) (c); **to renumber**
4 103.10 (3) (b) 3., 103.10 (3) (d) and 103.10 (4) (c); **to renumber and amend**
5 103.10 (1) (a) (intro.), 103.10 (3) (a) 1., 103.10 (3) (b) 1., 103.10 (3) (b) 2., 103.10
6 (4) (a), 103.10 (5) (b), 103.10 (7) (c) and 103.10 (14) (a); **to consolidate,**
7 **renumber and amend** 103.10 (13) (b) (intro.) and 1.; **to amend** 103.10 (title),
8 103.10 (1) (c), 103.10 (1) (d), 103.10 (1) (f), 103.10 (1) (g) (intro.), 103.10 (1) (g)
9 2., 103.10 (2) (a), 103.10 (2) (c), 103.10 (3) (title), 103.10 (5) (a), 103.10 (6) (a),
10 103.10 (6) (b) (intro.), 103.10 (6) (b) 1., 103.10 (6) (b) 2., 103.10 (7) (a), 103.10 (7)
11 (b) 4., 103.10 (8) (a), 103.10 (8) (b), 103.10 (9) (a), 103.10 (9) (b), 103.10 (10),
12 103.10 (12) (b), 103.10 (12) (d), 103.10 (13) (a), 108.04 (1) (b) 3. (intro.), 111.322
13 (2m) (a), 111.322 (2m) (b), 111.91 (2) (f), 230.35 (2m), 252.17 (4) (a) and 632.897
14 (6); **to repeal and recreate** 103.10 (8) (c), 103.10 (9) (c), 103.10 (9) (d), 103.10

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1 (11) (c) and 893.96 (title); and **to create** 103.10 (1) (fr), 103.10 (4g) (title), 103.10
2 (4m), 103.10 (5) (b) 2., 103.10 (6) (c), 103.10 (7) (c) 2., 103.10 (7) (d), 103.10 (7)
3 (e), 103.10 (8) (d), 103.10 (11) (d), 103.10 (12) (e), 103.10 (12) (f), 103.10 (12) (g),
4 103.10 (13) (c), 103.10 (15), 103.10 (16) and 230.35 (2n) of the statutes; **relating**
5 **to:** various changes to the family and medical leave law, leave for school
6 conferences and activities and granting rule-making authority.

Analysis by the Legislative Reference Bureau

This bill makes various changes to the Wisconsin family and medical leave law to conform that law in certain respects to the federal family and medical leave law. The bill also allows an employee to take school conference and activities leave.

Family or medical leave

Under current law, an employer, including the state, that employs at least 50 individuals on a permanent basis must permit an employee to take 6 weeks of family leave in a 12-month period and 2 weeks of medical leave in a 12-month period. This bill requires an employer, including the state, that employs at least 35 individuals for each working day during each of 20 or more weeks in the current or preceding year to permit an employee to take 12 weeks of family or medical leave in a 12-month period.

Under current law, an employee may take family or medical leave only if the employee has been employed by the same employer for more than 52 consecutive weeks. Under the bill, an employee may take family or medical leave only if the employee has been employed for more than 52 consecutive weeks by the employer from whom the leave is requested.

Under current law, an employee may take family leave for the birth or adoptive placement of the employee's child, if the leave begins within 16 weeks after the birth or placement. This bill permits an employee to begin family leave within 12 months before or after the birth or placement of a child and permits family leave for a foster care placement as well.

Under current law, an employee may also take family leave to care for a child, spouse or parent, including a spouse's parent, who has a serious health condition. This bill expands the definition of "child" to include an individual for whom the employee stands in the place of a parent without having formally adopted or assumed guardianship of that individual. The bill also expands the definition of "parent" to include an individual who stood in the place of a parent of the employee or the employee's spouse, when the employee or spouse was a child, without having formally adopted or assumed guardianship of that individual.

Under current law, an employee may take medical leave if the employee has a serious health condition that makes the employee unable to perform his or her

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employment *duties*. Under the bill, an employe may take medical leave if the employe has a serious health condition that makes the employe unable to perform the *functions* of his or her employment.

Under current law, if an employe intends to take leave for the birth or placement of a child or for planned medical treatment, the employe must give notice to the employer in a manner that is reasonable and practicable. This bill requires the employe to give 30 days' notice in those situations that are foreseeable, unless the birth or placement will take place, or the medical treatment will begin, within 30 days, in which case the bill permits reasonable and practicable notice.

School conference and activities leave

The bill allows any employe of an employer employing at least 35 individuals to take no more than 16 hours of school conference and activities leave in a 12-month period. School conference and activities leave may be taken to attend school conferences or classroom activities relating to the employe's child that cannot be scheduled during nonwork hours. In addition, if the employe's child is in day care or is attending preschool or prekindergarten, the employe may also take school conference and activities leave to observe and monitor the services or programming received by the child, if that observation and monitoring cannot be scheduled during nonwork hours. An employe is not entitled to receive wages or salary while taking school activities leave, but may substitute, for portions of school conference and activities leave, other types of paid or unpaid leave provided by the employer, except that an employe may not substitute paid leave for school conference and activities leave for attending a school conference or activity for less than one hour. An employe who intends to take leave to attend a school conference or activity must give the employer advance notice of the leave and make a reasonable effort to schedule the leave so that it does not unduly disrupt the operations of the employer. For purposes of school conference and activities leave, "child" includes a person 18 years of age or over who is a biological, adopted or foster child, a stepchild or a legal ward of an employe or who is a person for whom the employe stands in the place of a parent; and "school" means a day care center licensed by the department of health and family services, a day care provider certified for funding by a county department of human services or social services, a day care program established or contracted for by a school board, a public, parochial or private preschool or prekindergarten or a public, parochial or private school that provides an educational program for one or more grades between kindergarten and 12.

Certification of health condition

Under current law, an employer may require an employe to obtain a 2nd opinion, at the employer's expense, concerning the certification provided by the employe's health care provider. Also under current law, if the employe has commenced an administrative proceeding regarding the alleged denial of leave due to a serious health condition of the employe or of a child, spouse or parent, and if the original certification and 2nd opinion differ, the department of industry, labor and job development (DILJD) may appoint a health care provider to render a 3rd opinion, with the expense of obtaining that opinion to be shared equally by the employer and employe. This bill permits the employer to require the employe, prior to any

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administrative proceedings, to obtain a 3rd opinion at the employer's expense if the original certification and 2nd opinion differ. The employer and employe must jointly designate the 3rd opinion provider.

Also, under the bill, the employer may require an employe to obtain recertification of the original certification on a regular basis, to report periodically on the employe's status and intention of returning to work and to obtain certification that the employe is able to return to work. If the employe is not able to return to work as planned, the bill permits the employer to require the employe to provide certification that the employe's serious health condition prevented the employe from performing the functions of his or her position on the day on which the leave expired.

Employment and benefits protection

Under current law, upon the return of an employe from family or medical leave, an employer must place the employe in the position that the employe held immediately before that leave began, if the position is vacant, or, if the position is not vacant, in an equivalent employment position having equivalent pay, benefits, and other terms and conditions of employment. This bill permits the employer to place an employe who is returning from family, medical or school conference and activities leave either in the employe's old position or in an equivalent position without regard to whether the old position is vacant.

Under current law, an employer must maintain group health insurance coverage for an employe on leave under the conditions that applied immediately before the leave. This bill requires an employer to maintain that coverage for an employe who is on family, medical or school conference and activities leave at the level and under the conditions that the employer would have provided coverage if the employe had continued in employment.

Under current law, an employer may require an employe to place in escrow with the employer the premium for 8 weeks of group health insurance coverage and the employer may keep from that escrow account the amount that the employer paid for that coverage if the employe does not return from leave. This bill eliminates the escrow requirement, but permits the employer to recover those premiums if the employe does not return to work from family, medical or school conference and activities leave for reasons other than the recurrence, onset or continuation of a serious health condition or other circumstances beyond the employe's control.

Enforcement

Under current law, an employe who believes that his or her employer has violated the family or medical leave law may file a complaint with DILJD within 30 days after the employe knew or should have known of the violation. This bill extends that time limit to 300 days after the date of the last event constituting the alleged violation of the family, medical or school conference and activities leave law.

Under current law, if DILJD finds that an employer has violated the family or medical leave law, DILJD may order the employer to take action to remedy the violation, including providing the requested leave, reinstating the employe, providing back pay accrued not more than 2 years before the complaint was filed and paying reasonable actual attorney fees. This bill eliminates the 2-year limit on back pay for a violation of the family, medical or school conference and activities leave law

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and includes among the remedies that DILJD may order for such a violation the promotion of the employe and the provision of benefits to the employe.

Under current law, an employe or DILJD may bring a civil action in circuit court against an employer to recover damages caused by a violation of the family or medical leave law. Currently, a civil action under the family or medical leave law is barred unless commenced within the later of 60 days after the completion of an administrative proceeding, including judicial review, for the violation or 12 months after the violation occurred or the employe or DILJD reasonably should have known that the violation occurred. This bill permits an employe or DILJD to bring an action for a violation of the family, medical or school conference and activities leave law on behalf of the employe, or on behalf of the employe and other employes similarly situated. The bill also eliminates the 12-month period within which an action must be commenced so that an action must be commenced within 60 days after the completion of administrative proceedings. Finally, the bill specifies that, if the circuit court finds that an employer has violated the family, medical or school conference and activities leave law, the circuit court may order the employer to take action to remedy the violation and to pay the following damages:

1. Damages equal to the amount of compensation that the employe lost because of the violation or, if the employe did not lose any compensation, any actual monetary loss sustained as a direct result of the violation up to a sum equal to 12 weeks of wages or salary.

2. As liquidated damages, an amount equal to the damages described in paragraph 1., except that the court may reduce the amount of damages to the amount described in paragraph 1. if the court finds that the violation was committed in good faith and that the employer had reasonable grounds to believe that his or her act or omission was not a violation of the family, medical or school conference and activities leave law.

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.** 103.10 (title) of the statutes is amended to read:

2 **103.10 (title) Family ~~or~~, medical and school conference and activities**
3 **leave.**

4 **SECTION 2.** 103.10 (1) (a) (intro.) of the statutes is renumbered 103.10 (1) (a) and
5 amended to read:

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1 103.10 (1) (a) “Child” means a ~~natural~~ biological, adopted, foster or treatment
2 foster child, a stepchild or a legal ward ~~to whom any of the following applies: of an~~
3 employe or a person for whom an employe stands in the place of a parent and includes
4 a person 18 years of age or over who is a biological, adopted, foster or treatment foster
5 child, a stepchild or a legal ward of an employe or who is a person for whom an
6 employe stands in the place of a parent.

7 **SECTION 3.** 103.10 (1) (a) 1. and 2. of the statutes are repealed.

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

9 103.10 (1) (c) ~~Except as provided in sub. (14) (b), “employer”~~ “Employer” means
10 a person engaging in any activity, enterprise or business in this state employing at
11 least ~~50~~ 35 individuals ~~on a permanent basis for each working day during each of 20~~
12 or more calendar weeks in the current or preceding year. “Employer” includes the
13 state, its political subdivisions and any office, department, independent agency,
14 authority, institution, association, society or other body in state or local government
15 created or authorized to be created by the constitution or any law, including the
16 legislature and the courts. “Employer” also includes any person who acts, directly
17 or indirectly, in the interest of an employer with respect to an employe and any
18 successor in interest of an employer.

19 **SECTION 5.** 103.10 (1) (d) of the statutes is amended to read:

20 103.10 (1) (d) “Employment benefit” means ~~an insurance, leave or retirement~~
21 a benefit which that an employer provides or makes available to an employe,
22 including group life insurance, health insurance, disability insurance, sick leave,
23 annual leave, educational benefits and pensions, regardless of whether those
24 benefits are provided by a practice or policy of the employer or through an employe
25 benefit plan, as defined in 29 USC 1002 (3).

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1 **SECTION 6.** 103.10 (1) (f) of the statutes is amended to read:

2 103.10 (1) (f) “Parent” means a natural biological parent, foster parent,
3 treatment foster parent, adoptive parent, stepparent or legal guardian of an employe
4 or an employe’s spouse or a person who stood in the place of a parent of the employe
5 or the employe’s spouse when the employe or spouse was a child.

6 **SECTION 7.** 103.10 (1) (fr) of the statutes is created to read:

7 103.10 (1) (fr) “School” means a child care provider as defined in s. 49.001 (1),
8 a public, parochial or private preschool or prekindergarten or a public, parochial or
9 private school which provides an educational program for one or more grades
10 between kindergarten and 12 and which is commonly known as a kindergarten,
11 elementary school, middle school, junior high school, senior high school or high
12 school.

13 **SECTION 8.** 103.10 (1) (g) (intro.) of the statutes is amended to read:

14 103.10 (1) (g) (intro.) “Serious health condition” means ~~a disabling physical or~~
15 ~~mental~~ an illness, injury, impairment or physical or mental condition involving any
16 of the following:

17 **SECTION 9.** 103.10 (1) (g) 2. of the statutes is amended to read:

18 103.10 (1) (g) 2. ~~Outpatient care that requires continuing~~ Continuing
19 ~~treatment or supervision~~ by a health care provider.

20 **SECTION 10.** 103.10 (2) (a) of the statutes is amended to read:

21 103.10 (2) (a) Nothing in this section prohibits an employer from providing
22 employes with rights to family leave ~~or~~, medical leave ~~which~~ or school conference and
23 activities leave that are more generous to the employe than the rights provided under
24 this section.

25 **SECTION 11.** 103.10 (2) (c) of the statutes is amended to read:

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1 103.10 (2) (c) This section only applies to an employe who has been employed
2 for more than 52 consecutive weeks by the same employer for ~~more than 52~~
3 consecutive weeks from whom leave under sub. (3) is requested and who worked for
4 the that employer for at least 1,000 hours during the preceding 52-week period,
5 except that for purposes of school conference and activities leave under sub. (4m) this
6 section applies to any employe of an employer.

7 **SECTION 12.** 103.10 (3) (title) of the statutes is amended to read:

8 103.10 (3) (title) FAMILY OR MEDICAL LEAVE.

9 **SECTION 13.** 103.10 (3) (a) 1. of the statutes is renumbered 103.10 (3) (intro.)
10 and amended to read:

11 103.10 (3) (intro.) In a 12-month period ~~no an~~ employe may take ~~more than 6~~
12 12 weeks of family leave under par. (b) 1. and 2. for any one or more of the following
13 reasons:

14 **SECTION 14.** 103.10 (3) (a) 2. of the statutes is repealed.

15 **SECTION 15.** 103.10 (3) (a) 3. of the statutes is repealed.

16 **SECTION 16.** 103.10 (3) (b) (intro.) of the statutes is repealed.

17 **SECTION 17.** 103.10 (3) (b) 1. of the statutes is renumbered 103.10 (3) (a) and
18 amended to read:

19 103.10 (3) (a) The birth of the employe's ~~natural~~ biological child, if the leave
20 begins within ~~16 weeks of~~ 12 months before or after the child's birth.

21 **SECTION 18.** 103.10 (3) (b) 2. of the statutes is renumbered 103.10 (3) (b) and
22 amended to read:

23 103.10 (3) (b) The placement of a child under 18 years of age with the employe
24 for adoption or as a precondition to adoption under s. 48.90 (2), but not both, or for

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1 foster care, if the leave begins within ~~16 weeks of~~ 12 months before or after the child's
2 placement.

3 **SECTION 19.** 103.10 (3) (b) 3. of the statutes is renumbered 103.10 (3) (c).

4 **SECTION 20.** 103.10 (3) (c) of the statutes is repealed.

5 **SECTION 21.** 103.10 (3) (d) of the statutes is renumbered 103.10 (4g) (a).

6 **SECTION 22.** 103.10 (4) (title) of the statutes is repealed.

7 **SECTION 23.** 103.10 (4) (a) of the statutes is renumbered 103.10 (3) (d) and
8 amended to read:

9 103.10 (3) (d) ~~Subject to pars. (b) and (c), an employe who has a A serious health~~
10 ~~condition which that makes the employe unable to perform his or her employment~~
11 ~~duties may take medical leave for the period during which he or she is unable to~~
12 ~~perform those duties the functions of the employe's position.~~

13 **SECTION 24.** 103.10 (4) (b) of the statutes is repealed.

14 **SECTION 25.** 103.10 (4) (c) of the statutes is renumbered 103.10 (4g) (b).

15 **SECTION 26.** 103.10 (4g) (title) of the statutes is created to read:

16 103.10 (4g) (title) SCHEDULING OF FAMILY OR MEDICAL LEAVE.

17 **SECTION 27.** 103.10 (4m) of the statutes is created to read:

18 103.10 (4m) SCHOOL CONFERENCE AND ACTIVITIES LEAVE. Subject to sub. (6) (c),
19 an employe may take no more than 16 hours of school conference and activities leave
20 in a 12-month period for the purpose of attending school conferences or classroom
21 activities relating to the employe's child that cannot be scheduled during nonwork
22 hours. If the employe's child is receiving care from a child care provider, as defined
23 in s. 49.001 (1), or is attending a public, private or parochial preschool or
24 prekindergarten, the employe may also use the school conference and activities leave
25 provided under this subsection to observe and monitor the services or programming

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1 received by the child, if that observation and monitoring cannot be scheduled during
2 nonwork hours.

3 **SECTION 28.** 103.10 (5) (a) of the statutes is amended to read:

4 103.10 (5) (a) This section does not entitle an employe to receive wages or salary
5 while taking family leave ~~or~~, medical leave or school conference and activities leave.

6 **SECTION 29.** 103.10 (5) (b) of the statutes is renumbered 103.10 (5) (b) 1. and
7 amended to read:

8 103.10 (5) (b) 1. An Subject to subd. 2., an employe may substitute, for portions
9 of family leave ~~or~~, medical leave or school conference and activities leave, paid or
10 unpaid leave of any other type provided by the employer.

11 **SECTION 30.** 103.10 (5) (b) 2. of the statutes is created to read:

12 103.10 (5) (b) 2. Notwithstanding subd. 1., an employe may not substitute paid
13 leave for school conference and activities leave for attending a school conference or
14 activity for less than one hour.

15 **SECTION 31.** 103.10 (6) (a) of the statutes is amended to read:

16 103.10 (6) (a) If an employe intends to take ~~family leave for the reasons in under~~
17 sub. (3) (b) 1. or 2. (a) or (b) that is foreseeable because of the expected birth or
18 placement of a child, the employe shall, ~~in a reasonable and practicable manner~~, give
19 the employer advance notice of the ~~expected birth or placement~~ employe's intention
20 to take that leave not less than 30 days before the date the leave is to begin, except
21 that, if the date of the birth or placement requires the leave to begin in less than 30
22 days, the employe shall provide notice to the employer in a reasonable and
23 practicable manner.

24 **SECTION 32.** 103.10 (6) (b) (intro.) of the statutes is amended to read:

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1 103.10 (6) (b) (intro.) If an employe intends to take family leave because of
2 under sub. (3) (c) or (d) that is foreseeable based on the planned medical treatment
3 ~~or supervision of the employe or of a child, spouse or parent or intends to take medical~~
4 ~~leave because of the planned medical treatment or supervision of the employe, the~~
5 employe shall do all of the following:

6 **SECTION 33.** 103.10 (6) (b) 1. of the statutes is amended to read:

7 103.10 (6) (b) 1. Make a reasonable effort to schedule the medical treatment
8 ~~or supervision~~ so that it does not unduly disrupt the employer's operations, subject
9 to the approval of the health care provider of the child, spouse, parent or employe.

10 **SECTION 34.** 103.10 (6) (b) 2. of the statutes is amended to read:

11 103.10 (6) (b) 2. Give the employer advance notice of the ~~medical treatment or~~
12 ~~supervision~~ employe's intention to take that leave not less than 30 days before the
13 leave is to begin, except that, if the date of the treatment requires the leave to begin
14 in less than 30 days, the employe shall provide notice to the employer in a reasonable
15 and practicable manner.

16 **SECTION 35.** 103.10 (6) (c) of the statutes is created to read:

17 103.10 (6) (c) If an employe intends to take leave under sub. (4m) for the
18 purpose of attending a school conference or activity, the employe shall do all of the
19 following:

20 1. Make a reasonable effort to schedule the leave so that it does not unduly
21 disrupt the employer's operations.

22 2. Give the employer advance notice of the leave in a reasonable and practicable
23 manner.

24 **SECTION 36.** 103.10 (7) (a) of the statutes is amended to read:

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1 103.10 (7) (a) If an employe requests family leave for a reason described in
2 under sub. (3) (b) 3. or requests medical leave (c) or (d), the employer may require the
3 employe to provide certification, as described in par. (b), issued by the health care
4 provider or Christian Science practitioner of the child, spouse, parent or employe,
5 whichever is appropriate, and the employe shall provide a copy of that certification
6 to the employer in a timely manner.

7 **SECTION 37.** 103.10 (7) (b) 4. of the statutes is amended to read:

8 103.10 (7) (b) 4. If the employe requests medical leave, ~~an explanation of the~~
9 ~~extent to which~~ under sub. (3) (d), a statement that the employe is unable to perform
10 ~~his or her employment duties~~ the functions of the employe's position.

11 **SECTION 38.** 103.10 (7) (c) of the statutes is renumbered 103.10 (7) (c) 1. and
12 amended to read:

13 103.10 (7) (c) 1. ~~The~~ If the employer has reason to doubt the validity of a
14 certification provided under par. (a), the employer may require the employe to obtain
15 the opinion of a 2nd health care provider, chosen designated or approved and paid
16 for by the employer, concerning any information certified under par. (b).

17 **SECTION 39.** 103.10 (7) (c) 2. of the statutes is created to read:

18 103.10 (7) (c) 2. A health care provider designated or approved under subd. 1.
19 may not be employed on a regular basis by the employer.

20 **SECTION 40.** 103.10 (7) (d) of the statutes is created to read:

21 103.10 (7) (d) If a 2nd opinion obtained under par. (c) 1. differs from the opinion
22 in the certification provided under par. (a), the employer may require the employe
23 to obtain the opinion of a 3rd health care provider, designated or approved by the
24 employer and employe jointly and paid for by the employer, concerning any

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1 information certified under par. (b). The employer and employe shall accept the 3rd
2 opinion obtained under this paragraph as final and binding upon them.

3 **SECTION 41.** 103.10 (7) (e) of the statutes is created to read:

4 103.10 (7) (e) The employer may require that an employe obtain
5 recertifications after the original certification under par. (b) on a reasonable basis.

6 **SECTION 42.** 103.10 (8) (a) of the statutes is amended to read:

7 103.10 (8) (a) Subject to par. ~~(e)~~ (d), when an employe ~~returns from~~ who takes
8 family leave or, medical leave or school conference and activities leave returns from
9 that leave, his or her employer shall immediately place the employe in an
10 employment position as follows:

11 1. If In the employment position which the employe held ~~immediately before~~
12 when the family leave or, medical leave or school conference and activities leave
13 ~~began is vacant when the employe returns, in that position.~~

14 2. ~~If the employment position which the employe held immediately before the~~
15 ~~family leave or medical leave began is not vacant when the employe returns, in In~~
16 ~~an equivalent employment position having equivalent compensation, employment~~
17 ~~benefits, working shift, hours of employment and other terms and conditions of~~
18 ~~employment.~~

19 **SECTION 43.** 103.10 (8) (b) of the statutes is amended to read:

20 103.10 (8) (b) No employer may, because an employe received family leave or,
21 medical leave or school conference and activities leave, reduce or deny an
22 employment benefit which accrued to the employe before his or her leave began or,
23 ~~consistent with sub. (9), accrued after his or her leave began.~~

24 **SECTION 44.** 103.10 (8) (c) of the statutes is repealed and recreated to read:

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1 103.10 (8) (c) An employer may require an employe who is on family or medical
2 leave to report periodically to the employer on the employe's status and intention of
3 returning to work.

4 **SECTION 45.** 103.10 (8) (d) of the statutes is created to read:

5 103.10 (8) (d) Notwithstanding par. (a), an employer may adopt a uniformly
6 applied practice or policy that requires an employe who is returning from leave under
7 sub. (3) (d) to obtain a certification from the employe's health care provider that the
8 employe is able to return to work.

9 **SECTION 46.** 103.10 (9) (a) of the statutes is amended to read:

10 103.10 (9) (a) Except as provided in par. (b), nothing in this section entitles a
11 returning employe to a right, employment benefit or employment position to which
12 the employe would not have been entitled had he or she not taken family leave ~~or,~~
13 medical leave or school conference and activities leave or to the accrual of any
14 seniority or employment benefit during a period of family leave ~~or,~~ medical leave or
15 school conference and activities leave.

16 **SECTION 47.** 103.10 (9) (b) of the statutes is amended to read:

17 103.10 (9) (b) Subject to par. (c), during a period that an employe takes family
18 leave ~~or,~~ medical leave or school conference and activities leave, his or her employer
19 shall maintain group health insurance coverage at the level and under the conditions
20 that ~~applied immediately before the family leave or medical leave began.~~ If the
21 employe continues making any contribution required for participation in the group
22 health insurance plan, ~~the employer shall continue making group health insurance~~
23 ~~premium contributions as if the employe had not taken the family leave or medical~~
24 the employer would have provided coverage if the employe had continued in
25 employment continuously during that leave.

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1 **SECTION 48.** 103.10 (9) (c) of the statutes is repealed and recreated to read:

2 103.10 (9) (c) An employer may recover from an employe the premium paid by
3 the employer to maintain group health insurance coverage for the employe during
4 a period of unpaid family leave, medical leave or school conference and activities
5 leave if the employe fails to return from that leave after the period of leave to which
6 the employe is entitled has expired for a reason other than the continuation,
7 recurrence or onset of a serious health condition that entitles the employe to leave
8 under sub. (3) (c) or (d) or other circumstances beyond the control of the employe.

9 **SECTION 49.** 103.10 (9) (d) of the statutes is repealed and recreated to read:

10 103.10 (9) (d) If an employe claims that he or she is unable to return to work
11 because of the continuation, recurrence or onset of a serious health condition that
12 entitles the employe to leave under sub. (3) (d), the employer may require the
13 employe to provide certification issued by the health care provider or Christian
14 Science practitioner that a serious health condition prevented the employe from
15 being able to perform the functions of the employe's position on the day that the
16 employe's leave expired. The employe shall provide a copy of the certification under
17 this paragraph to the employer in a timely manner.

18 **SECTION 50.** 103.10 (10) of the statutes is amended to read:

19 103.10 (10) ALTERNATIVE EMPLOYMENT. Nothing in this section prohibits an
20 employer and an employe with a serious health condition from mutually agreeing to
21 alternative employment for the employe while the serious health condition lasts. No
22 period of alternative employment, with the same employer, reduces the employe's
23 right to family leave ~~or~~, medical leave or school conference and activities leave.

24 **SECTION 51.** 103.10 (11) (c) of the statutes is repealed and recreated to read:

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1 103.10 (11) (c) 1. No person may discharge or in any manner discriminate
2 against any individual for filing a complaint or attempting to enforce any right under
3 this section or for testifying or assisting in any action or proceeding to enforce any
4 right under this section.

5 2. No person may discharge or in any manner discriminate against any
6 individual because that person believes that the individual has engaged or may
7 engage in an activity described in subd. 1.

8 **SECTION 52.** 103.10 (11) (d) of the statutes is created to read:

9 103.10 (11) (d) Notwithstanding pars. (a) to (c), any action taken by an
10 employer to comply with 29 USC 2601 to 2654 is not considered to be a violation of
11 this section.

12 **SECTION 53.** 103.10 (12) (b) of the statutes is amended to read:

13 103.10 (12) (b) An employe who believes that his or her employer has violated
14 sub. (11) (a) or (b) may, ~~within 30 days after the violation occurs or the employe should~~
15 ~~reasonably have known that the violation occurred, whichever is later,~~ file a
16 complaint with the department alleging the violation. A complaint under this
17 subsection may be filed no later than 300 days after the date of the last event
18 constituting the alleged violation for which the complaint is brought. Except as
19 provided in s. 230.45 (1m), the department shall investigate the complaint and shall
20 attempt to resolve the complaint by conference, conciliation or persuasion. If the
21 complaint is not resolved and the department finds probable cause to believe a
22 violation has occurred, the department shall proceed with notice and a hearing on
23 the complaint as provided in ch. 227. The hearing shall be held within 60 days after
24 the department receives the complaint.

25 **SECTION 54.** 103.10 (12) (c) of the statutes is repealed.

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1 **SECTION 55.** 103.10 (12) (d) of the statutes is amended to read:

2 103.10 **(12)** (d) The department shall issue its decision and order within 30 days
3 after the hearing. If the department finds that an employer violated sub. (11) ~~(a) or~~
4 ~~(b)~~, it may order the employer to take action to remedy the violation, including
5 providing requested family leave ~~or~~, medical leave or school conference and activities
6 leave, reinstating an employe, promoting an employe, providing back pay accrued
7 ~~not more than 2 years before the complaint was filed~~ and employment benefits to an
8 employe and paying reasonable actual attorney fees to the complainant.

9 **SECTION 56.** 103.10 (12) (e) of the statutes is created to read:

10 103.10 **(12)** (e) Any respondent or complainant who is dissatisfied with the
11 findings and order of the examiner may file a written petition with the department
12 for review by the commission of the findings and order.

13 **SECTION 57.** 103.10 (12) (f) of the statutes is created to read:

14 103.10 **(12)** (f) If no petition is filed within 21 days from the date that a copy
15 of the findings and order of the examiner is mailed to the last-known address of the
16 respondent, the findings and order shall be considered final. If a timely petition is
17 filed, the commission, on review, may either affirm, reverse or modify the findings
18 or order in whole or in part, or set aside the findings and order and remand to the
19 department for further proceedings. Such actions shall be based on a review of the
20 evidence submitted. If the commission is satisfied that a respondent or complainant
21 has been prejudiced because of exceptional delay in the receipt of a copy of any
22 findings and orders it may extend the time another 21 days for filing the petition with
23 the department.

24 **SECTION 58.** 103.10 (12) (g) of the statutes is created to read:

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1 103.10 (12) (g) On motion, the commission may set aside, modify or change any
2 decision made by the commission, at any time within 28 days from the date thereof
3 if it discovers any mistake therein, or upon the grounds of newly discovered evidence.
4 The commission may on its own motion, for reasons it considers sufficient, set aside
5 any final decision of the commission within one year after the date thereof upon
6 grounds of mistake or newly discovered evidence, and remand the case to the
7 department for further proceedings.

8 **SECTION 59.** 103.10 (13) (a) of the statutes is amended to read:

9 103.10 (13) (a) An employe or the department may bring an action in circuit
10 court against an employer on behalf of the employe, or on behalf of the employe and
11 other employes similarly situated, to recover damages, as described in par. (c),
12 caused by a violation of sub. (11) after the completion of an administrative
13 proceeding, including judicial review, concerning the same violation.

14 **SECTION 60.** 103.10 (13) (b) (intro.) and 1. of the statutes are consolidated,
15 renumbered 103.10 (13) (b) and amended to read:

16 103.10 (13) (b) An action under par. (a) shall be commenced within ~~the later~~
17 ~~of the following periods, or be barred: 1. Within 60 days from~~ after the completion
18 of an administrative proceeding, including judicial review, concerning the same
19 violation, or be barred.

20 **SECTION 61.** 103.10 (13) (b) 2. of the statutes is repealed.

21 **SECTION 62.** 103.10 (13) (c) of the statutes is created to read:

22 103.10 (13) (c) If a circuit court finds that an employer has violated sub. (11),
23 it may order the employer to take action to remedy the violation, including providing
24 requested family leave, medical leave or school conference and activities leave,
25 reinstating an employe, promoting an employe and paying reasonable actual

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1 attorney fees to the complainant, notwithstanding s. 814.04 (1), and to pay all of the
2 following damages to the affected employee:

3 1. Damages equal to the amount of any wages, salary, employment benefits or
4 other compensation that was denied to or lost by the employee because of the violation
5 or, if the employee has not lost or been denied any wages, salary, employment benefits
6 or other compensation, any actual monetary losses sustained by the employee as a
7 direct result of the violation up to a sum equal to 12 weeks of wages or salary for the
8 employe.

9 2. As liquidated damages, an amount equal to the damages described in subd.
10 1., except that the court may reduce the amount of damages that the employer is
11 liable for to the amount described in subd. 1. if the employer shows that the act or
12 omission that was in violation of sub. (11) was in good faith and that the employer
13 had reasonable grounds to believe that the act or omission was not a violation of sub.
14 (11).

15 **SECTION 63.** 103.10 (14) (a) of the statutes is renumbered 103.10 (14) and
16 amended to read:

17 103.10 (14) NOTICE POSTED. Each employer shall post, in ~~one or more~~
18 conspicuous places on the employer's premises where notices to employes and
19 applicants for employment are customarily posted, a notice in a form prepared or
20 approved by the department setting forth employes' rights ~~under this section~~
21 excerpted from, or summaries of, the pertinent provisions of this section and
22 information relating to the filing of a complaint under sub. (12) or a civil action under
23 sub. (13). Any employer who wilfully violates this subsection shall forfeit not more
24 than \$100 for each offense.

25 **SECTION 64.** 103.10 (14) (b) of the statutes is repealed.

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1 **SECTION 65.** 103.10 (15) of the statutes is created to read:

2 103.10 **(15)** LOCAL ORDINANCES. A county, city, village or town may enact an
3 ordinance that provides employees with rights to family leave, medical leave or school
4 conference and activities leave that are more generous to the employe than the rights
5 provided under this section.

6 **SECTION 66.** 103.10 (16) of the statutes is created to read:

7 103.10 **(16)** RULES. The department shall promulgate rules to implement this
8 section. Those rules shall conform to 29 CFR 825 to the extent that 29 CFR 825 is
9 consistent with this section.

10 **SECTION 67.** 108.04 (1) (b) 3. (intro.) of the statutes is amended to read:

11 108.04 **(1)** (b) 3. (intro.) While the employe is on family or medical leave under
12 the federal family and medical leave act of 1993 (~~P.L. 103-3~~), 29 USC 2601 to 2654,
13 or s. 103.10 or school conference and activities leave under s. 103.10, until whichever
14 of the following occurs first:

15 **SECTION 68.** 111.322 (2m) (a) of the statutes is amended to read:

16 111.322 **(2m)** (a) The individual files a complaint or attempts to enforce any
17 right under s. 103.02, ~~103.10~~, 103.13, 103.28, 103.32, 103.455, 103.50, 104.12, 109.03
18 or 109.07 or ss. 101.58 to 101.599 or 103.64 to 103.82.

19 **SECTION 69.** 111.322 (2m) (b) of the statutes is amended to read:

20 111.322 **(2m)** (b) The individual testifies or assists in any action or proceeding
21 held under or to enforce any right under s. 103.02, ~~103.10~~, 103.13, 103.28, 103.32,
22 103.455, 103.50, 104.12, 109.03 or 109.07 or ss. 101.58 to 101.599 or 103.64 to 103.82.

23 **SECTION 70.** 111.91 (2) (f) of the statutes is amended to read:

24 111.91 **(2)** (f) Family leave and medical leave rights below the minimum
25 afforded under the federal family and medical leave act of 1993, 29 USC 2601 to 2654,

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1 and s. 103.10 and school conference and activities leave rights below the minimum
2 afforded under s. 103.10. Nothing in this paragraph prohibits the employer from
3 bargaining on rights to family leave or medical leave which are more generous to the
4 employe than the rights provided under the federal family and medical leave act of
5 1993, 29 USC 2601 to 2654 and s. 103.10 and on rights to school conference and
6 activities leave which are more generous to the employe than the rights provided
7 under s. 103.10.

8 **SECTION 71.** 230.35 (2m) of the statutes is amended to read:

9 230.35 (2m) An employe shall be eligible for medical or family leave under s.
10 103.10 upon the expiration, extension or renewal of any collective bargaining
11 agreement in effect on April 26, 1988, which covers the employe. An employe shall
12 be eligible for medical or family leave under the federal family and medical leave act
13 of 1993, 29 USC 2601 to 2654, upon the expiration, extension or renewal of any
14 collective bargaining agreement in effect on August 5, 1993, which covers the
15 employe or on February 5, 1994, whichever is earlier.

16 **SECTION 72.** 230.35 (2n) of the statutes is created to read:

17 230.35 (2n) An employe shall be eligible for school conference and activities
18 leave under s. 103.10 upon the expiration, extension or renewal of any collective
19 bargaining agreement in effect on the effective date of this subsection ... [revisor
20 inserts date], which covers the employe.

21 **SECTION 73.** 252.17 (3) (i) of the statutes is repealed.

22 **SECTION 74.** 252.17 (4) (a) of the statutes is amended to read:

23 252.17 (4) (a) Except as provided in ~~pars. (b) and (e)~~ par. (b), if an individual
24 satisfies sub. (3), the department shall pay the amount of each premium payment for
25 coverage under the group health plan under sub. (3) (d) that is due from the

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1 individual on or after the date on which the individual becomes eligible for a subsidy
2 under sub. (3). The department may not refuse to pay the full amount of the
3 individual's contribution to each premium payment because the coverage that is
4 provided to the individual who satisfies sub. (3) includes coverage of the individual's
5 spouse and dependents. Except as provided in par. (b), the department shall
6 terminate the payments under this section when the individual's unpaid medical
7 leave ends, when the individual no longer satisfies sub. (3) or upon the expiration of
8 29 months after the unpaid medical leave began, whichever occurs first.

9 **SECTION 75.** 252.17 (4) (c) of the statutes is repealed.

10 **SECTION 76.** 632.897 (6) of the statutes is amended to read:

11 632.897 (6) If the terminated insured elects to continue group coverage as
12 provided in this section, the insurer may require conversion to individual coverage
13 by the terminated insured and his or her spouse and dependents 18 months after the
14 terminated insured elects the group coverage ~~except as provided in s. 103.10 (9) (d).~~
15 The conditions, rights and procedures governing conversion under sub. (4) (a) apply
16 to this conversion.

17 **SECTION 77.** 893.96 (title) of the statutes is repealed and recreated to read:

18 **893.96 (title) Family, medical and school conference and activities**
19 **leave; civil remedies.**

20 **SECTION 78. Initial applicability.**

21 (1) This act first applies to an employe, as defined in section 103.10 (1) (b) of
22 the statutes, who is affected by a collective bargaining agreement that is in effect on
23 the effective date of this subsection on the day after the collective bargaining
24 agreement expires or on the day on which the collective bargaining agreement is
25 extended, modified or renewed, whichever is earlier.

