



State of Wisconsin  
2015 - 2016 LEGISLATURE

LRB-3297/1  
MED&GMM:emw

## 2015 SENATE BILL 385

November 12, 2015 - Introduced by Senators RINGHAND, LASSA, HANSEN, WIRCH, CARPENTER, ERPENBACH, C. LARSON, MILLER, RISSER and SHILLING, cosponsored by Representatives POPE, GENRICH, STUCK, ZEPNICK, BARNES, BERCEAU, BILLINGS, BOWEN, BROSTOFF, CONSIDINE, GOYKE, HEBL, HESSELBEIN, HINTZ, JOHNSON, JORGENSEN, KOLSTE, MASON, OHNSTAD, RIEMER, SARGENT, SHANKLAND, SPREITZER, SUBECK, C. TAYLOR and ZAMARRIPA. Referred to Committee on Labor and Government Reform.

1     **AN ACT** *to repeal* 103.10 (1) (a) 1., 103.10 (1) (a) 2. and 103.10 (14) (b); *to*  
2     *renumber* 103.10 (14) (a); *to renumber and amend* 103.10 (1) (a) (intro.); *to*  
3     *amend* 103.10 (1) (b), 103.10 (1) (c), 103.10 (1m) (b) 4., 103.10 (3) (a) 1., 103.10  
4     (3) (b) 3., 103.10 (6) (b) (intro.), 103.10 (6) (b) 1., 103.10 (7) (a), 103.10 (7) (b)  
5     (intro.), 103.10 (7) (b) 1., 103.10 (12) (c), 111.322 (2m) (a) and 111.322 (2m) (b);  
6     and *to create* 20.445 (1) (w), 25.17 (1) (er), 25.52, 71.05 (6) (b) 53., 103.10 (1)  
7     (ap), 103.10 (1) (dm), 103.10 (1) (dp), 103.10 (1) (gm), 103.10 (3) (b) 4., 103.10  
8     (6) (c), 103.10 (7) (d) and 103.11 of the statutes; **relating to:** the establishment  
9     of a family and medical leave insurance program; family leave to care for a  
10    grandparent, grandchild, or sibling and for the active duty of a family member;  
11    the employers that are required to permit an employee to take family or medical

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1 leave; granting rule-making authority; making an appropriation; and  
2 providing a penalty.

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***Analysis by the Legislative Reference Bureau******Introduction***

This bill expands the family and medical leave law to permit an employee covered under that law to take family leave to care for a grandparent, grandchild, or sibling, lowers the threshold number of employees above which an employer must permit an employee to take family or medical leave, and establishes a family and medical leave insurance program under which certain covered individuals may receive benefits while taking family or medical leave.

***Family and medical leave expansion***

Under current law, an employer, including the state, that employs at least 50 individuals on a permanent basis in this state must permit an employee who has been employed by the employer for more than 52 consecutive weeks and who has worked for the employer for at least 1,000 hours during the preceding 52 weeks to take up to eight weeks of family leave in a 12-month period for the birth or adoptive placement of a child or to care for a child, spouse, parent, or domestic partner of the employee or a parent of the spouse of the employee who has a serious health condition; and up to two weeks of medical leave in a 12-month period when the employee has a serious health condition that makes the employee unable to perform the employee's employment duties.

This bill requires an employer, including the state, that employs at least 25 employees on a permanent basis in this state to permit an employee to take family or medical leave as provided under current law. The bill also permits an employee to take family leave as provided under current law to care for a grandparent, grandchild, or sibling of the employee who has a serious health condition. In addition, the bill requires an employer to permit an employee to take family leave because of any qualifying exigency, as determined by the Department of Workforce Development (DWD) by rule, arising out of the fact that the spouse, child, domestic partner, parent, grandparent, grandchild, or sibling of the employee is on deployment with the U.S. armed forces to a foreign country (covered active duty) or has been notified of an impending call or order to covered active duty.

***Family and medical leave insurance program***

The bill creates a family and medical leave insurance program, to be administered by DWD, under which a covered individual who is on family or medical leave is eligible, beginning on January 1, 2020, to receive up to 12 weeks of family or medical leave insurance benefits as specified in the bill from the family and medical leave insurance trust fund created under the bill (trust fund). For purposes of the bill:

1. A "covered individual" is an individual who worked for an employer for at least 680 hours in the calendar year prior to the year in which the covered individual

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claims family or medical leave insurance benefits (application year) or a self-employed individual who elects coverage under the program, regardless of whether the individual is employed or unemployed at the time the individual files an application for family or medical leave insurance benefits.

2. "Family leave" means leave from employment, self-employment, or availability for employment for the birth or adoptive placement of a new child or to care for a child, spouse, domestic partner, parent, grandparent, grandchild, or sibling who has a serious health condition.

3. "Medical leave" means leave from employment when a covered individual has a serious health condition that makes the individual unable to perform his or her employment duties, leave from self-employment when a covered individual has a serious health condition that makes the individual unable to perform the duties of his or her self-employment, or leave from availability for employment when a covered individual has a serious health condition that makes the individual unable to perform the duties of any suitable employment.

Under the bill, the amount of family or medical leave insurance benefits for a week for which those benefits are payable is as follows:

1. For a covered individual who earned less than 30 percent of the state annual median wage in the calendar year before the individual's application year, 95 percent of that individual's average weekly earnings.

2. For a covered individual who earned at least 30 percent, but less than 50 percent, of the state annual median wage in the calendar year before the individual's application year, 90 percent of that individual's average weekly earnings.

3. For a covered individual who earned at least 50 percent, but less than 80 percent, of the state annual median wage in the calendar year before the individual's application year, 85 percent of that individual's average weekly earnings.

4. For a covered individual who earned at least 80 percent of the state annual median wage in the calendar year before the individual's application year, 66 percent of that individual's average weekly earnings.

In addition, the bill provides that family or medical leave insurance benefits are payable beginning on the sixth day of family or medical leave, except that if a covered individual uses ten or more days of family or medical leave insurance benefits in an application year, those benefits are also payable with respect to the first five days of family or medical leave. The bill also provides that no family or medical leave insurance benefits are payable for any period of family or medical leave in which a covered individual is substituting paid leave of any other type provided by his or her employer or in which a covered individual is receiving unemployment benefits or worker's compensation benefits. Finally, with respect to family or medical leave insurance benefits, the bill provides that those benefits are exempt from state income taxation.

Beginning on January 1, 2019, the bill requires each individual employed in this state, including an individual employed by the state, and each self-employed individual who elects coverage under the family and medical leave insurance program to contribute to the trust fund a percentage of his or her wages from employment or income from self-employment determined by DWD in consultation

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with the commissioner of insurance that is sufficient to finance the payments of benefits under the program and the administration of the program. The bill requires DWD to collect those contributions in the same manner as DWD collects contributions to the unemployment reserve fund under current law.

Finally, the bill:

1. Permits a covered individual whose claim for family or medical leave insurance benefits is denied by DWD to request a hearing on the denial and requires DWD to process the request for hearing in the same manner that requests for hearings on unemployment insurance claims are processed under current law.

2. Permits DWD to seek repayment of family or medical leave insurance benefits that are paid erroneously or as a result of willful misrepresentation in the same manner that DWD recovers erroneous payments of unemployment insurance benefits under current law or to waive recovery of an erroneous payment of those benefits if the erroneous payment was not the fault of the person who received it and if requiring repayment would be contrary to equity and good conscience.

3. Provides that if an individual willfully makes a false statement or representation, or willfully fails to disclose a material fact, to obtain family or medical leave insurance benefits, the individual is disqualified from receiving those benefits for one year after the date of the disqualification.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

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

1           **SECTION 1.** 20.445 (1) (w) of the statutes is created to read:

2           20.445 (1) (w) *Family and medical leave insurance trust fund.* From the family  
3 and medical leave insurance trust fund, all moneys deposited in that fund under s.  
4 103.11 (7) for the payments of family or medical leave insurance benefits under s.  
5 103.11 (2) (c) and for the administration of the family or medical leave insurance  
6 program under s. 103.11.

7           **SECTION 2.** 25.17 (1) (er) of the statutes is created to read:

8           25.17 (1) (er) Family and medical leave insurance trust fund (s. 25.52);

9           **SECTION 3.** 25.52 of the statutes is created to read:

10           **25.52 Family and medical leave insurance trust fund.** There is created  
11 a separate nonlapsible trust fund designated as the family and medical leave

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1 insurance trust fund, to consist of all moneys deposited in that fund under s. 103.11  
2 (7).

3 **SECTION 4.** 71.05 (6) (b) 53. of the statutes is created to read:

4 71.05 (6) (b) 53. For taxable years beginning after December 31, 2019, any  
5 amount of family or medical leave insurance benefits received by a covered  
6 individual, as defined in s. 103.11 (1) (d), in the taxable year to which the subtraction  
7 relates.

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

10 103.10 (1) (a) “Child” means a natural, adopted, or foster child, a stepchild, or  
11 a legal ward ~~to whom any of the following applies:~~

12 **SECTION 6.** 103.10 (1) (a) 1. of the statutes is repealed.

13 **SECTION 7.** 103.10 (1) (a) 2. of the statutes is repealed.

14 **SECTION 8.** 103.10 (1) (ap) of the statutes is created to read:

15 103.10 (1) (ap) “Covered active duty” means any of the following:

16 1. In the case of a member of a regular component of the U.S. armed forces, duty  
17 during the deployment of the member with the U.S. armed forces to a foreign country.

18 2. In the case of a member of a reserve component of the U.S. armed forces, duty  
19 during the deployment of the member with the U.S. armed forces to a foreign country  
20 under a call or order to active duty under a provision of law specified in 10 USC 101  
21 (a) (13) (B).

22 **SECTION 9.** 103.10 (1) (b) of the statutes is amended to read:

23 103.10 (1) (b) Except as provided in sub. (1m) (b) 2., “employee” means an  
24 individual employed in this state by an employer, except the employer’s ~~parent, child,~~  
25 spouse, domestic partner, ~~or child parent, grandparent, grandchild, or sibling.~~

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1           **SECTION 10.** 103.10 (1) (c) of the statutes is amended to read:

2           103.10 (1) (c) Except as provided in sub. (1m) (b) 3., “employer” means a person  
3 engaging in any activity, enterprise, or business in this state employing at least 50  
4 25 individuals on a permanent basis. “Employer” includes the state and any office,  
5 department, independent agency, authority, institution, association, society, or other  
6 body in state government created or authorized to be created by the constitution or  
7 any law, including the legislature and the courts.

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

9           103.10 (1) (dm) “Grandchild” means the child of a child.

10          **SECTION 12.** 103.10 (1) (dp) of the statutes is created to read:

11          103.10 (1) (dp) “Grandparent” means the parent of a parent.

12          **SECTION 13.** 103.10 (1) (gm) of the statutes is created to read:

13          103.10 (1) (gm) “Sibling” means a brother, sister, half brother, half sister,  
14 stepbrother, or stepsister, whether by blood, marriage, or adoption.

15          **SECTION 14.** 103.10 (1m) (b) 4. of the statutes is amended to read:

16          103.10 (1m) (b) 4. “Family member” means a spouse or domestic partner of an  
17 employee; a parent, child, sibling, including a foster sibling, brother-in-law,  
18 sister-in-law, grandparent, ~~stepgrandparent~~, or grandchild of an employee or of an  
19 employee’s spouse or domestic partner; or any other person who is related by blood,  
20 marriage, or adoption to an employee or to an employee’s spouse or domestic partner  
21 and whose close association with the employee, spouse, or domestic partner makes  
22 the person the equivalent of a family member of the employee, spouse, or domestic  
23 partner.

24          **SECTION 15.** 103.10 (3) (a) 1. of the statutes is amended to read:

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1           103.10 (3) (a) 1. In a 12-month period no employee may take more than 6 weeks  
2 of family leave under par. (b) 1. ~~and, 2., and 4.~~

3           **SECTION 16.** 103.10 (3) (b) 3. of the statutes is amended to read:

4           103.10 (3) (b) 3. To care for the employee's child, spouse, domestic partner, ~~or~~  
5 parent, grandparent, grandchild, or sibling, if the child, spouse, domestic partner, ~~or~~  
6 parent, grandparent, grandchild, or sibling has a serious health condition.

7           **SECTION 17.** 103.10 (3) (b) 4. of the statutes is created to read:

8           103.10 (3) (b) 4. Because of any qualifying exigency, as determined by the  
9 department by rule, arising out of the fact that the spouse, child, domestic partner,  
10 parent, grandparent, grandchild, or sibling of the employee is on covered active duty  
11 or has been notified of an impending call or order to covered active duty.

12          **SECTION 18.** 103.10 (6) (b) (intro.) of the statutes is amended to read:

13          103.10 (6) (b) (intro.) If an employee intends to take family leave because of the  
14 planned medical treatment or supervision of a child, spouse, domestic partner, ~~or~~  
15 parent, grandparent, grandchild, or sibling or intends to take medical leave because  
16 of the planned medical treatment or supervision of the employee, the employee shall  
17 do all of the following:

18          **SECTION 19.** 103.10 (6) (b) 1. of the statutes is amended to read:

19          103.10 (6) (b) 1. Make a reasonable effort to schedule the medical treatment  
20 or supervision so that it does not unduly disrupt the employer's operations, subject  
21 to the approval of the health care provider of the child, spouse, domestic partner,  
22 parent, grandparent, grandchild, sibling, or employee.

23          **SECTION 20.** 103.10 (6) (c) of the statutes is created to read:

24          103.10 (6) (c) If the employee intends to take leave under sub. (3) (b) 4. that is  
25 foreseeable because the spouse, child, domestic partner, parent, grandparent,

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1 grandchild, or sibling of the employee is on covered active duty or has been notified  
2 of an impending call or order to covered active duty, the employee shall provide notice  
3 of that intention to the employer in a reasonable and practicable manner.

4 **SECTION 21.** 103.10 (7) (a) of the statutes is amended to read:

5 103.10 (7) (a) If an employee requests family leave for a reason described in sub.  
6 (3) (b) 3. or requests medical leave, the employer may require the employee to provide  
7 certification, as described in par. (b), issued by the health care provider or Christian  
8 Science practitioner of the child, spouse, domestic partner, parent, grandparent,  
9 grandchild, sibling, or employee, whichever is appropriate.

10 **SECTION 22.** 103.10 (7) (b) (intro.) of the statutes is amended to read:

11 103.10 (7) (b) (intro.) No employer may require certification under par. (a)  
12 stating more than the following:

13 **SECTION 23.** 103.10 (7) (b) 1. of the statutes is amended to read:

14 103.10 (7) (b) 1. That the child, spouse, domestic partner, parent, grandparent,  
15 grandchild, sibling, or employee has a serious health condition.

16 **SECTION 24.** 103.10 (7) (d) of the statutes is created to read:

17 103.10 (7) (d) If an employee requests leave under sub. (3) (b) 4., the employer  
18 may require the employee to provide certification that the spouse, child, domestic  
19 partner, parent, grandparent, grandchild, or sibling of the employee is on covered  
20 active duty or has been notified of an impending call or order to covered active duty  
21 issued at such time and in such manner as the department may prescribe by rule,  
22 and the employee shall provide a copy of that certification to the employer in a timely  
23 manner.

24 **SECTION 25.** 103.10 (12) (c) of the statutes is amended to read:

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1           103.10 (12) (c) If 2 or more health care providers disagree about any of the  
2 information required to be certified under sub. (7) (b), the department may appoint  
3 another health care provider to examine the child, spouse, domestic partner, parent,  
4 grandparent, grandchild, sibling, or employee and render an opinion as soon as  
5 possible. The department shall promptly notify the employee and the employer of  
6 the appointment. The employer and the employee shall each pay ~~50%~~ 50 percent of  
7 the cost of the examination and opinion.

8           **SECTION 26.** 103.10 (14) (a) of the statutes is renumbered 103.10 (14).

9           **SECTION 27.** 103.10 (14) (b) of the statutes is repealed.

10          **SECTION 28.** 103.11 of the statutes is created to read:

11          **103.11 Family and medical leave insurance program. (1) DEFINITIONS.**

12          In this section:

13           (a) “Application year” means the 12-month period beginning on the first day  
14 of the first calendar week for which family or medical leave insurance benefits are  
15 claimed by a covered individual.

16           (b) “Average weekly earnings” means the average weekly earnings of a covered  
17 individual as calculated under s. 102.11 (1) (a) to (e).

18           (c) “Child” means a natural, adopted, or foster child, a stepchild, or a legal ward.

19           (d) “Covered individual” means an individual who worked for an employer for  
20 at least 680 hours in the calendar year prior to the individual’s application year or  
21 a self-employed individual who elects coverage under sub. (2) (b), regardless of  
22 whether the individual is employed or unemployed at the time the individual files  
23 an application for family or medical leave insurance benefits.

24           (e) “Domestic partner” has the meaning given in s. 40.02 (21c) or 770.01 (1).

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1 (f) "Employee" means an individual employed in this state by an employer,  
2 except the employer's child, spouse, domestic partner, parent, grandparent,  
3 grandchild, or sibling.

4 (g) "Employer" means a person engaging in any activity, enterprise, or business  
5 in this state. "Employer" includes the state and any office, department, independent  
6 agency, authority, institution, association, society, or other body in state government  
7 created or authorized to be created by the constitution or any law, including the  
8 legislature and the courts.

9 (h) "Family leave" means leave from employment, self-employment, or  
10 availability for employment for a reason specified in s. 103.10 (3) (b) 1., 2., 3., or 4.

11 (i) "Family or medical leave insurance benefits" means family or medical leave  
12 insurance benefits payable under this section from the family and medical leave  
13 insurance trust fund.

14 (j) "Grandchild" means the child of a child.

15 (k) "Grandparent" means the parent of a parent.

16 (L) "Medical leave" means leave from employment when a covered individual  
17 has a serious health condition that makes the individual unable to perform his or her  
18 employment duties, leave from self-employment when a covered individual has a  
19 serious health condition that makes the individual unable to perform the duties of  
20 his or her self-employment, or leave from availability for employment when a  
21 covered individual has a serious health condition that makes the individual unable  
22 to perform the duties of any suitable employment.

23 (m) "Parent" means a natural parent, foster parent, adoptive parent,  
24 stepparent, or legal guardian of an employee or of an employee's spouse or domestic  
25 partner.

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

2 (o) "Sibling" means a brother, sister, half brother, half sister, stepbrother, or  
3 stepsister, whether by blood, marriage, or adoption.

4 (p) "Spouse" means an employee's legal husband or wife.

5 (q) "State annual median wage" means the median hourly wage for all  
6 occupations in this state, as determined by the bureau of labor statistics of the U.S.  
7 department of labor, multiplied by 2,080.

8 (r) "Waiting period" means the period under sub. (4) (b) 1. for which no family  
9 or medical leave insurance benefits are payable.

10 **(2) ELIGIBILITY FOR BENEFITS.** (a) A covered individual who is on family or  
11 medical leave is eligible to receive family or medical leave insurance benefits in the  
12 amount specified in sub. (3) and for the duration specified in sub. (4). No family or  
13 medical leave insurance benefits are payable for any period of family or medical leave  
14 for which a covered individual is substituting paid leave of any other type provided  
15 by his or her employer or for which a covered individual is receiving unemployment  
16 benefits under ch. 108 or worker's compensation benefits under ch. 102.

17 (b) Any sole proprietor, partner of a partnership, member of a limited liability  
18 company, or other self-employed individual engaged in a vocation, profession, or  
19 business in this state on a substantially full-time basis may elect to be covered under  
20 this section by filing a written notice of election with the department in a form and  
21 manner prescribed by the department by rule. An initial election under this  
22 paragraph becomes effective on the date on which the notice of election is filed, shall  
23 be for a period of not less than 3 years, and may be renewed for subsequent one-year  
24 periods by the filing of a written notice with the department that the self-employed  
25 individual intends to continue his or her coverage under this section. A

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1 self-employed individual that elects coverage under this section may withdraw that  
2 election no earlier than 3 years after the date of the initial election or at such other  
3 times as the department may prescribe by rule by providing notice of that  
4 withdrawal to the department not less than 30 days before the expiration date of the  
5 election.

6 (c) To receive family or medical leave insurance benefits, a covered individual  
7 shall file a claim for those benefits within such time and in such manner as the  
8 department may prescribe by rule. On receipt of a claim for family or medical leave  
9 insurance benefits, the department may request from the claimant's employer such  
10 information as may be necessary for the department to determine the claimant's  
11 eligibility for those benefits and the amount and duration of those benefits, and the  
12 employer shall provide that information to the department within such time and in  
13 such manner as the department may prescribe by rule. If the department determines  
14 that a claimant is eligible to receive family or medical leave insurance benefits, the  
15 department shall provide those benefits to the claimant as provided in subs. (3) to  
16 (5).

17 **(3) AMOUNT OF BENEFITS.** (a) Subject to par. (b), the amount of family or medical  
18 leave insurance benefits for a week of leave for which those benefits are payable is  
19 as follows:

20 1. For a covered individual who earned less than 30 percent of the state annual  
21 median wage in the calendar year before the individual's application year, 95 percent  
22 of that individual's average weekly earnings.

23 2. For a covered individual who earned at least 30 percent, but less than 50  
24 percent, of the state annual median wage in the calendar year before the individual's  
25 application year, 90 percent of that individual's average weekly earnings.

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1           3. For a covered individual who earned at least 50 percent, but less than 80  
2 percent, of the state annual median wage in the calendar year before the individual's  
3 application year, 85 percent of that individual's average weekly earnings.

4           4. For a covered individual who earned at least 80 percent of the state annual  
5 median wage in the calendar year before the individual's application year, 66 percent  
6 of that individual's average weekly earnings.

7           (b) The amount of family or medical leave insurance benefits for a fractional  
8 week of leave for which those benefits are payable is one-seventh of the covered  
9 individual's weekly benefit amount under par. (a) multiplied by the number of days  
10 of leave taken that week. Family or medical leave insurance benefits are not payable  
11 for a period of leave of less than one day in duration.

12           **(4) DURATION OF BENEFITS.** (a) The maximum number of weeks for which family  
13 or medical leave insurance benefits are payable in an application year is 12 weeks.  
14 A covered individual may take family or medical leave continuously or, at the option  
15 of the covered individual, intermittently or on a reduced leave schedule, except that  
16 a covered individual may not take family or medical leave intermittently or on a  
17 reduced leave schedule for more than 24 consecutive weeks unless the leave is for a  
18 reason specified in sub. (1) (L) or s. 103.10 (3) (b) 3. and the covered individual shows  
19 that the leave is medically necessary. If a covered individual who is employed intends  
20 to take family or medical leave intermittently or on a reduced leave schedule, the  
21 covered individual shall make a reasonable effort to schedule that leave so as not to  
22 unduly disrupt the operations of his or her employer and shall provide the employer  
23 with prior notice of that leave in a reasonable and practicable manner.

24           (b) 1. Except as provided in subd. 2., no family or medical leave insurance  
25 benefits are payable for the first 5 calendar days in an application year for which a

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1 covered individual is eligible for those benefits. Except as provided in subd. 2., family  
2 or medical leave insurance benefits are payable beginning on the 6th calendar day  
3 in an application year for which a covered individual is eligible for those benefits.  
4 The first payment of family or medical leave insurance benefits shall be made no  
5 later than 2 weeks after a covered individual files a claim for those benefits and  
6 subsequent payments shall be made no less often than semimonthly.

7 2. If a covered individual uses 10 or more days of family or medical leave  
8 insurance benefits in an application year, those benefits shall also be payable with  
9 respect to the covered individual's waiting period. An employer may not require a  
10 covered individual to use paid or unpaid leave of any other type provided by the  
11 employer during the covered individual's waiting period.

12 **(5) COORDINATION OF BENEFITS.** (a) If family or medical leave for which benefits  
13 are payable under this section also qualifies as family or medical leave under s.  
14 103.10 (3) (b) or (4) (a) or 29 USC 2612 (a) (1), the family or medical leave for which  
15 those benefits are payable shall run concurrently with the family or medical leave  
16 under s. 103.10 (3) (b) or (4) (a) or 29 USC 2612 (a) (1).

17 (b) No collective bargaining agreement or employer policy may diminish or  
18 abridge an employee's rights under this section. Any agreement purporting to waive  
19 or modify an employee's rights under this section is void as against public policy and  
20 unenforceable.

21 (c) Nothing in this section prohibits an employer from providing employees  
22 with rights to family or medical leave insurance benefits that are more generous to  
23 the employee than the rights provided under this section.

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1           **(6) TAX TREATMENT OF BENEFITS.** (a) *State income tax.* Family or medical leave  
2 insurance benefits received under this section are exempt from state income taxation  
3 under s. 71.05 (6) (b) 53.

4           (b) *Federal income tax.* With respect to the federal income taxation of family  
5 or medical leave insurance benefits, the department shall do all of the following:

6           1. At the time an individual files a claim for those benefits, advise the  
7 individual that those benefits are subject to federal income taxation, that  
8 requirements exist under federal law pertaining to estimated tax payments, and  
9 that the individual may elect to have federal income taxes withheld from the  
10 individual's benefit payments and may change that election not more than one time  
11 in an application year.

12           2. Permit the individual to elect to have federal income tax deducted and  
13 withheld from the individual's benefit payments, permit the individual to change  
14 that election not more than one time in an application year, and deduct and withhold  
15 that tax in accordance with the individual's election as provided under 26 USC 3402.

16           3. Upon making a deduction under subd. 2., transfer the amount deducted from  
17 the family and medical leave insurance trust fund to the federal internal revenue  
18 service.

19           4. In deducting and withholding federal income taxes from an individual's  
20 benefit payments, follow all procedures specified by the federal internal revenue  
21 service pertaining to the deducting and withholding of federal income tax.

22           **(7) FAMILY AND MEDICAL LEAVE INSURANCE TRUST FUND.** Each employee and each  
23 self-employed individual who elects coverage under sub. (2) (b) shall contribute to  
24 the family and medical leave insurance trust fund a percentage of his or her wages  
25 from employment or income from self-employment determined by the department

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1 under this subsection. In determining that percentage, the department shall consult  
2 with the commissioner of insurance, who shall recommend a percentage that is  
3 sufficient to finance the payment of benefits under sub. (2) (c) and the administration  
4 of the family and medical leave insurance program under this section. The  
5 department shall collect those contributions from employers and self-employed  
6 individuals who elect coverage under sub. (2) (b) in the same manner as the  
7 department collects contributions to the unemployment reserve fund under ss.  
8 108.17 and 108.18. Section 108.10 applies to issues regarding liability of employers  
9 for contributions under this subsection. Contributions received under this  
10 subsection shall be deposited in the family and medical leave insurance trust fund  
11 and credited to the appropriation account under s. 20.445 (1) (w).

12 **(8) DENIAL OF CLAIMS; OVERPAYMENTS.** (a) An individual whose claim for family  
13 or medical leave insurance benefits is denied by the department may request a  
14 hearing on the denial, and the department shall process the request for a hearing in  
15 the same manner that requests for hearings on unemployment insurance claims are  
16 processed under s. 108.09.

17 (b) If the department pays family or medical leave insurance benefits  
18 erroneously or as a result of willful misrepresentation, the department may seek  
19 repayment of those benefits in the same manner that the department recovers  
20 erroneous payments of unemployment insurance benefits under ss. 108.095, 108.22  
21 (8), and 108.225. The department may waive recovery of an erroneous payment of  
22 family or medical leave insurance benefits if the erroneous payment was not the fault  
23 of the person who received it and if requiring repayment would be contrary to equity  
24 and good conscience. If an individual willfully makes a false statement or  
25 representation, or willfully fails to disclose a material fact, to obtain family or

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1 medical leave insurance benefits under this section, the individual is disqualified  
2 from receiving those benefits for one year after the date of the disqualification.

3 **(9) PROHIBITED ACTS.** (a) No person may interfere with, restrain, or deny the  
4 exercise of any right provided under this section.

5 (b) No person may discharge or otherwise discriminate against any person for  
6 exercising any right provided under this section, opposing a practice prohibited  
7 under this section, filing a complaint or attempting to enforce any right provided  
8 under this section, or testifying or assisting in any action or proceeding to enforce any  
9 right provided under this section.

10 **(10) ENFORCEMENT.** (a) Any person who believes that his or her rights under  
11 this section have been interfered with, restrained, or denied in violation of sub. (9)  
12 (a) or that he or she has been discharged or otherwise discriminated against in  
13 violation of sub. (9) (b) may, within 30 days after the violation occurs or the person  
14 should reasonably have known that the violation occurred, whichever is later, file a  
15 complaint with the department alleging the violation, and the department shall  
16 process the complaint in the same manner as complaints filed under s. 103.10 (12)  
17 (b) are processed. If the department finds that an employer has violated sub. (9) (a)  
18 or (b), the department may order the employer to take action to remedy the violation,  
19 including providing the requested family or medical leave, reinstating an employee,  
20 providing back pay accrued not more than 2 years before the complaint was filed, and  
21 paying reasonable actual attorney fees to the complainant. Section 111.322 (2m)  
22 applies to a discharge or other discriminatory act arising in connection with any  
23 proceeding under this paragraph.

24 (b) After the completion of an administrative proceeding under par. (a),  
25 including judicial review, an employee or the department may bring an action in

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1 circuit court against an employer to recover damages caused by a violation of sub. (9)  
2 (a) or (b). Section 103.10 (13) (b) applies to the commencement of an action under this  
3 paragraph.

4 (11) ADMINISTRATION. The department shall administer the family and medical  
5 leave insurance program under this section. In administering that program, the  
6 department shall do all of the following:

7 (a) Establish procedures and forms for the filing of claims for benefits under  
8 this section.

9 (b) Promulgate rules to implement this section. Those rules shall maintain  
10 consistency with the regulations specified in 29 CFR Part 825 and the rules  
11 promulgated by the department to implement s. 103.10 to the extent that those  
12 regulations and rules do not conflict with this section.

13 (c) Use information sharing and integration technology to facilitate the  
14 exchange of information as necessary for the department to perform its duties under  
15 this section. Notwithstanding s. 19.35 (1), individual personal information  
16 maintained by the department under this section is confidential and not open to  
17 public inspection and copying and may be disclosed only as follows:

18 1. On the request of the individual who is the subject of the information or the  
19 individual's authorized representative, to the individual or representative.

20 2. With the written permission of the individual who is the subject of the  
21 information or the individual's authorized representative, to a person named in the  
22 permission.

23 3. To a public employee for use in the performance of the public employee's  
24 official duties.

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1           4. Under a court order or an order of a hearing examiner that is obtained upon  
2 prior notice to the department and a showing to the court or hearing examiner that  
3 the information is relevant to a pending court or administrative action.

4           (d) Conduct a public outreach campaign to inform employers, employees,  
5 self-employed individuals, and other covered individuals regarding the family and  
6 medical leave insurance program under this section. Information provided under  
7 this paragraph shall be provided in English and in any other language customarily  
8 spoken by more than 20 percent of the population of this state.

9           (e) By September 1 of each year, submit a report to the governor, the joint  
10 committee on finance, and the appropriate standing committees of the legislature  
11 under s. 13.172 (3) on the family and medical leave insurance program under this  
12 section. The report shall include the projected and actual rates of participation in  
13 the program, the premium rates for coverage under the program, the balance in the  
14 family and medical leave insurance trust fund under s. 25.52, and a description of  
15 the department's outreach efforts under par. (d).

16           **(12) NOTICE POSTED.** Each employer shall post, on its Internet site and in one  
17 or more conspicuous places where notices to employees are customarily posted, a  
18 notice in a form approved by the department setting forth employees' rights under  
19 this section. Any employer that violates this subsection shall forfeit not more than  
20 \$100 for each violation.

21           **SECTION 29.** 111.322 (2m) (a) of the statutes is amended to read:

22           111.322 **(2m)** (a) The individual files a complaint or attempts to enforce any  
23 right under s. 103.02, 103.10, 103.11, 103.13, 103.28, 103.32, 103.34, 103.455,  
24 103.50, 104.12, 109.03, 109.07, 109.075, 146.997, or 995.55, or ss. 101.58 to 101.599  
25 or 103.64 to 103.82.

**SENATE BILL 385****SECTION 30**

1           **SECTION 30.** 111.322 (2m) (b) of the statutes is amended to read:

2           111.322 **(2m)** (b) The individual testifies or assists in any action or proceeding  
3 held under or to enforce any right under s. 103.02, 103.10, 103.11, 103.13, 103.28,  
4 103.32, 103.34, 103.455, 103.50, 104.12, 109.03, 109.07, 109.075, 146.997, or 995.55,  
5 or ss. 101.58 to 101.599 or 103.64 to 103.82.

6           **SECTION 31. Nonstatutory provisions.**

7           (1) PROPOSED PERMANENT RULES. The department of workforce development  
8 shall submit in proposed form the rules required under section 103.11 (11) (b) of the  
9 statutes, as created by this act, to the legislative council staff under section 227.15  
10 (1) of the statutes no later than the first day of the 4th month beginning after the  
11 effective date of this subsection.

12           (2) RULE-MAKING EXCEPTIONS FOR PERMANENT RULES.

13           (a) Notwithstanding section 227.135 (2) of the statutes, the department of  
14 workforce development is not required to present the statement of the scope of the  
15 rules required under section 103.11 (11) (b) of the statutes, as created by this act, to  
16 the governor for approval.

17           (b) Notwithstanding section 227.185 of the statutes, the department of  
18 workforce development is not required to present the rules required under section  
19 103.11 (11) (b) of the statutes, as created by this act, in final draft form to the governor  
20 for approval.

21           (c) Notwithstanding section 227.137 (2) of the statutes, the department of  
22 workforce development is not required to prepare an economic impact analysis for  
23 the rules required under section 103.11 (11) (b) of the statutes, as created by this act.

24           (d) Notwithstanding sections 227.14 (2g) and 227.19 (3) (e) of the statutes, the  
25 department of workforce development is not required to submit the proposed rules

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1 required under section 103.11 (11) (b) of the statutes, as created by this act, to the  
2 small business regulatory review board and is not required to prepare a final  
3 regulatory flexibility analysis for those rules.

4 (3) EMERGENCY RULES. Using the procedure under section 227.24 of the statutes,  
5 the department of workforce development shall promulgate the rules required under  
6 section 103.11 (11) (b) of the statutes, as created by this act, for the period before the  
7 effective date of the permanent rules promulgated under section 103.11 (11) (b) of the  
8 statutes, as created by this act, but not to exceed the period authorized under section  
9 227.24 (1) (c) of the statutes, subject to extension under section 227.24 (2) of the  
10 statutes. Notwithstanding section 227.24 (1) (a), (2) (b), and (3) of the statutes, the  
11 department is not required to provide evidence that promulgating a rule under this  
12 subsection as an emergency rule is necessary for the preservation of public peace,  
13 health, safety, or welfare and is not required to provide a finding of an emergency for  
14 a rule promulgated under this subsection. Notwithstanding section 227.24 (1) (e) 1d.  
15 and 1g. of the statutes, the department is not required to prepare a statement of the  
16 scope of the rules promulgated under this subsection or present the rules to the  
17 governor for approval.

**SECTION 32. Initial applicability.**

18 (1) FAMILY AND MEDICAL LEAVE INSURANCE TRUST FUND CONTRIBUTIONS. Except as  
19 provided in subsection (3), the treatment of section 103.11 (7) of the statutes first  
20 applies to wages earned on January 1, 2019.

21 (2) FAMILY OR MEDICAL LEAVE INSURANCE BENEFITS ELIGIBILITY. Except as provided  
22 in subsection (3), the treatment of section 103.11 (2) (a) and (c) of the statutes first  
23 applies to a period of family leave, as defined in section 103.11 (1) (h) of the statutes,  
24

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1 as created by this act, or a period of medical leave, as defined in section 103.11 (1) (L)  
2 of the statutes, as created by this act, commencing on January 1, 2020.

3 (3) COLLECTIVE BARGAINING AGREEMENTS. This act first applies to an employee  
4 who is affected by a collective bargaining agreement that contains provisions  
5 inconsistent with this act on the day on which the collective bargaining agreement  
6 expires or is extended, modified, or renewed.

7 (END)