
Report From Agency

DATE: February 15, 2022

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FROM: Amy Pechacek, Secretary-designee
Department of Workforce Development

SUBJECT: **Notice and Report for Final Draft Form of Proposed Rule
Bone Marrow and Organ Donation Leave
Clearinghouse Rule 21-097**

Pursuant to s. 227.19 (2), Stats., the Department of Workforce Development is submitting for legislative review the attached proposed rule in final draft form for Clearinghouse Rule 21-097. The governor approved this proposed rule on February 10, 2022. The analysis required under s. 227.14 (2), Stats., is included in the proposed rule. Also attached is the Fiscal Estimate & Economic Impact Analysis and the Rules Clearinghouse report and comments.

Basis and Purpose

The rule implements s. 103.11, Stats., which was created by 2015 Wisconsin Act 345. Section 103.11, Stats., does all of the following: 1) requires employers with 50 or more permanent employees to allow eligible employees up to 6 weeks leave in a 12-month period for the purpose of serving as a bone marrow or organ donor; 2) imposes requirements on employers and employees regarding the leave; and 3) requires the Department to investigate and take other actions regarding complaints filed by employees about employer compliance with the requirements.

The rule includes requirements for determining whether an employer is subject to s. 103.11, Stats., and whether an employee is eligible for bone marrow or organ donor leave under that statute. The rule specifies

how and when eligible employees may take the leave and includes requirements for scheduling, providing notice, and denying requests for the leave, as well as for substituting other paid or unpaid leave for bone marrow or organ donor leave and for extending bone marrow or organ donor leave with other paid or unpaid leave. The rule also includes requirements regarding employee complaints.

Public Hearings

The Department did not hold a preliminary public hearing and comment period on the proposed rule. The Department is promulgating the rule without a public hearing under the 30-day notice procedure under s. 227.16 (2) (e), Stats. On November 29, 2021, the Department published in Administrative Register 791B a notice of its intent to promulgate the proposed rule under that procedure. No petition for a public hearing was received and no comments were filed.

Changes to the Analysis or Fiscal Estimate

The Department revised the analysis to indicate that no comments were filed. The Department made no other changes to the analysis or fiscal estimate.

Responses to Rules Clearinghouse

The Rules Clearinghouse made recommendations and comments related to the following:

Form, Style and Placement in the Administrative Code. The Department revised the proposed rule as recommended by the Rules Clearinghouse.

Clarity, Grammar, Punctuation and Use of Plain Language. In response to comment 5. a., the Department added Notes following s. DWD 226.01 (1) (a) and (b), as recommended by the Rules Clearinghouse. In addition, the Department added s. DWD 226.02 (9) to the proposed rule to provide the additional clarity requested by the Rules Clearinghouse. Section DWD 226.02 (9) ensures that the timing of an employee's leave does not affect the amount of leave that the employee may take. In response to comments 5. b., 5. c., and 5. d., the Department revised the rule as recommended by the Rules Clearinghouse.

Potential Conflicts With, and Comparability to, Related Federal Regulations. In response to the Rule Clearinghouse's first question, it is not the Department's intent to align with practices under the federal Family and Medical Leave Act (FMLA). Instead, the Department intends for s. DWD 226.01 (1) (a) to align with s. DWD 225.01 (1) (m) under the Wisconsin FMLA. Consistency between the Wisconsin leave laws avoids confusion for employers, particularly for those employer who may qualify for FMLA protections under Wisconsin, but not federal, law. Therefore, no revisions to the proposed rule are necessary regarding the Rules Clearinghouse's first question. In response to the Rule Clearinghouse's second question, the Department has added a Note following s. DWD 226.02 (8) to provide the clarification requested by the Rules Clearinghouse.

Final Regulatory Flexibility Analysis and Response to SBRRB

The proposed rule does not have an effect on small businesses, as defined in s. 227.114 (1), Stats. Therefore, the Department did not submit the proposed rule to the Small Business Regulatory Review Board (SBRRB) and a final regulatory analysis is not required.