



2017 ASSEMBLY BILL 772

December 19, 2017 - Introduced by Representatives BALLWEG, ROHRKASTE, BERNIER, BORN, BRANDTJEN, E. BROOKS, HORLACHER, JARCHOW, KATZMA, KNODL, KOOYENGA, LOUDENBECK, NOVAK, NYGREN, SKOWRONSKI, TUSLER and VORPAGEL, cosponsored by Senators DARLING, CRAIG, KAPENGA, LEMAHIEU and MARKLEIN. Referred to Committee on Labor.

AUTHORS SUBJECT TO CHANGE

1 **AN ACT** *to create* 103.10 (15) of the statutes; **relating to:** exempting from the
2 state family and medical leave law an employer that is covered under the
3 federal family and medical leave law.

Analysis by the Legislative Reference Bureau

This bill provides an exemption from state family and medical leave law for an employer that is covered under the federal family and medical leave law.

Under the current state family and medical leave 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 six weeks of family leave in a 12-month period for the birth or adoptive placement of a child or two weeks of family leave in a 12-month period to care for a child, spouse, parent, or domestic partner of the employee or a parent of the spouse or domestic partner of the employee (parent-in-law) who has a serious health condition. Current law also requires an employer to permit an employee to take 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.

Under the current federal family and medical leave law, an employer that employs at least 50 individuals for each working day for 20 or more weeks in the current or preceding year and the state or a political subdivision of the state, regardless of the number of employees employed (employer), must permit an

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employee who has been employed by the employer for at least 12 months and who has worked at least 1,250 hours for that employer during the preceding 12 months (eligible employee) to take 12 weeks of family or medical leave in a 12-month period for the birth or adoptive or foster care placement of a child; to care for a spouse, child, or parent, but not a domestic partner or parent-in-law, who has a serious health condition; or when the employee has a serious health condition that makes the employee unable to perform the functions of his or her position. Federal law, however, excludes from the definition of “eligible employee” an employee who works at a worksite with fewer than 50 employees if the employer employs fewer than 50 employees within 75 miles of the worksite. In addition, the U.S. Supreme Court has held, in *Coleman v. Court of Appeals of Maryland*, 566 U.S. 30 (2012), that, absent a waiver of sovereign immunity, a state may not be sued for damages for a violation of the medical leave provisions of the federal family and medical leave law.

The bill provides that the state family and medical leave law does not apply to any of the following:

1. An employer that is required to provide leave under the federal family and medical leave law.

2. An employer that opts to provide leave under the federal family and medical leave law to an employee who is not an eligible employee, so long as the employer provides leave to such an employee in the same manner as the employer provides leave to an eligible employee.

The bill, however, does not prohibit any of the following:

1. An employee from taking leave under the state family and medical leave law to care for a spouse, child, parent, domestic partner, or parent-in-law who has a serious health condition.

2. An employee of the state who has a serious health condition that makes the employee unable to perform his or her employment duties from taking medical leave under the state family and medical 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 (15) of the statutes is created to read:

2 103.10 **(15)** NONAPPLICABILITY. (a) Subject to par. (b), this section does not apply
3 to any of the following:

4 1. An employer, as defined in 29 USC 2611 (4), that is required to provide leave
5 under 29 USC 2612.

ASSEMBLY BILL 772**SECTION 1**

1 2. An employer, as defined in 29 USC 2611 (4), that opts to provide leave under
2 29 USC 2612 to an employee who is not an eligible employee, as defined in 29 USC
3 2611 (2), so long as the employer provides leave to that employee in the same manner
4 as the employer provides leave to an eligible employee.

5 (b) Paragraph (a) does not prohibit any of the following:

6 1. An employee of an employer, as defined in 29 USC 2611 (4), that is required
7 to provide leave under 29 USC 2612 from taking family leave under this section to
8 care for a person specified in sub. (3) (b) 3.

9 2. An employee of a public agency, as defined in 29 USC 203 (x), that may not
10 be sued for damages under 29 USC 2617 for a violation of 29 USC 2615 relating to
11 the leave specified in 29 USC 2612 (a) (1) (D) who has a serious health condition that
12 makes the employee unable to perform his or her employment duties from taking
13 medical leave under this section for the period during which he or she is unable to
14 perform those duties.

15 **SECTION 2. Initial applicability.**

16 (1) FAMILY AND MEDICAL LEAVE. This act first applies to an employee who is
17 affected by a collective bargaining agreement that contains provisions inconsistent
18 with this act on the day on which the collective bargaining agreement expires or is
19 extended, modified, or renewed, whichever occurs first.

20 **SECTION 3. Effective date.**

21 (1) FAMILY AND MEDICAL LEAVE. This act takes effect on the first day of the 6th
22 month beginning after publication.

23 **(END)**