

Budget Bill Modifies Definition of Domestic Partner in Wisconsin FMLA

November 8, 2017

The Wisconsin Budget Bill, 2017 Wisconsin Act 59, recently signed into law by the Governor alters the administration of Wisconsin Family and Medical Leave Act (“WFMLA”) for an employee in a domestic partnership. The changes in the Budget Bill will limit the class of employees who are entitled to WFMLA leave for a domestic partner.

Under the WFMLA, eligible employees are entitled to leave for the serious health condition of a family members, which includes an employee’s domestic partner and the family members of an employee’s domestic partner. The WFMLA defines a “domestic partner” by reference to different two statutes, Wis. Stat. §§ 40.02(21c) and 770.01(1). If the domestic partnership relationship satisfies either of the two statutes cross-referenced in the WFMLA, the employee is entitled to leave for a domestic partner. In essence, WFMLA extended leave to individuals in a registered domestic partnership, which applies only to same-sex relationships, and individuals in an unregistered domestic partnership if the relationship met certain statutory criteria.

The Budget Bill did not directly change the definition of a domestic partner in the WFMLA. Instead, the Budget Bill indirectly modifies the definition of a domestic partner by way of changes to the statutes cross-referenced in the WFMLA.

As modified by the Budget Bill, an individual will be entitled to WFMLA leave for a domestic partner if the employee filed an affidavit with the Department of Employee Trust Funds (“ETF”) by September 23, 2017 stating the relationship met the required statutory criteria. An employee will also be entitled to WFMLA leave for a domestic partner in a registered domestic partnership. Beginning April 1, 2018, Wisconsin will no longer accept domestic partnership registrations.

On its face, the Budget Bill does not seem to effect the administration of WFMLA leave. However, by changing what it means to be a domestic partner under the WFMLA, the Budget Bill limits the group of individuals who can meet the statutory definition of a domestic partner. Employees in an opposite-sex domestic partnership will no longer be entitled to domestic partner WFMLA leave unless the employee timely filed an affidavit with the ETF, which effectively means employees of a

private employer who are in an opposite-sex domestic partnership are not entitled to domestic partner WFMLA leave. Employees in a same-sex domestic partnership will not be entitled to WFMLA leave unless the relationship is registered with the state before April 1, 2018 or, if employed by a public employer, the employee filed a timely affidavit with the ETF. Employers should carefully review their existing FMLA policies to see if any changes are needed as a result of the Budget Bill.

If you have any questions about the changes in the Budget Bill, or an employer's obligations under federal and state FMLA, please contact [Brett Schnepper](mailto:bschnepper@buelowvetter.com) at bschnepper@buelowvetter.com or 262-364-0262, or your Buelow Vetter Attorney.

This Legal Update is intended to provide information only on general compliance issues and should not be construed as legal advice. Please consult an attorney if you have any questions concerning the information discussed in this Legal Update.

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