

HAWKS QUINDEL, S.C.

Legislation Planned to Eliminate Benefits of Wisconsin Family & Medical Leave Act

On January 13, 2011, Senator Luther Olsen (R) circulated a draft bill to change Wisconsin's Family and Medical Leave Act to conform to the federal FMLA. Such action would significantly change the rights of Wisconsin employees who are currently entitled to the greater benefit of either the state or federal law. Wisconsin FMLA provides some significant greater protections, including:

- **Eligibility**: Under Wisconsin FMLA, you are eligible for FMLA leave after working 1,000 hours in the preceding year; Federal FMLA requires 1250 hours.
- **Family members**: Under Wisconsin FMLA, you can take caregiving leave to care for a parent-in-law, domestic partner or the parent of your domestic partner. Federal FMLA does not cover leave to care for a seriously ill domestic partner or for parents-in-law.
- **Intermittent leave**: Under Wisconsin FMLA, you can take intermittent leave for all family and medical leaves in increments equal to the shortest increment permitted by the employer for any other non-emergency leave. Federal FMLA permits intermittent leave only for serious health condition leaves, not for birth or adoption unless the employer agrees.
- **Substitution of Accrued Time**: Under Wisconsin FMLA, the employee elects whether to substitute accrued paid leave of any type for unpaid leave under the WFMLA. Federal FMLA allows either the employee *or the employer* to substitute paid vacation, personal leave and compensatory time for any type of federal FMLA leave. Federal FMLA allows substitution of accrued sick leave *only* for one's own or family member's serious health condition *only* to the extent allowed by the employer's policies.

The Legislative Reference Bureau analysis of the bill treats this as a trade off, suggesting Wisconsin employees are giving up some benefits under the Wisconsin law, but gaining other benefits under the federal law. But the federal law already covers Wisconsin employees—there is no need to “conform” Wisconsin to the federal law to access those benefits.

Before the passage of the Wisconsin FMLA in 1988, many unionized employees had negotiated a number of the benefits the law provides. But in many significant areas, this law has added to the floor, requiring employers to incorporate its provisions into the contract or their policies. Elimination of Wisconsin provisions that are consistent with the “family values” that our elected representatives espouse will not only take away these benefits from unrepresented employees, but make it significantly harder to bargain them into our contracts.