

STATEMENT OF SCOPE

Department of Workforce Development

Rule No.

DWD 226

Relating to

Bone marrow donation leave and organ donation leave

Rule Type

Permanent

Detailed Description of the Objective of the Proposed Rule

The proposed permanent rule will create ch. DWD 226 relating to bone marrow donation leave and organ donation leave. Chapter DWD 226 will implement procedures and requirements necessary to implement 2015 Wis. Act 345 (Act 345). Act 345 allows leave from employment for the purpose of services as a bone marrow or organ donor.

Description of Existing Policies Relevant to the Rule, New Policies Proposed to be Included in the Rule, and an Analysis of Policy Alternatives

Section 230.35, Stats. provides that an employee employed by a Wisconsin state agency shall be granted a leave of absence of 30 workdays to serve as a human organ donor and 5 workdays to an employee who requests a leave of absence to serve as a bone marrow donor, if the employee provides written verifications that they are to serve as a bone marrow donor or organ donor.

Under Act 345, the proposed rule will establish procedures and requirements for employers with 50 or more permanent employees to provide all employees leave from employment, paid or unpaid, to serve as a bone marrow or organ donor to another person if all of the following apply:

- The employee has been employed by the same employer for 52 consecutive weeks and worked at least 1,000 hours during that preceding 52-week period.
- The employee provides the employer with written verification that the employee is to serve as a bone marrow donor or organ donor.
- Leave does not exceed six weeks leave in a 12-month period.
- The amount of leave taken is for a period necessary for the employee to undergo the donation procedure and to recover from the procedure.

The policy alternative is to do nothing. If the department does not promulgate the proposed permanent rule, employers and employees will lack a clear procedure in determining an employee's use of bone marrow donation leave and organ donation leave.

Detailed Explanation of Statutory Authority for the Rule (Including the Statutory Citation and Language)

Section 103.005 (1), Stats.

"The department shall adopt reasonable and proper rules and regulations relative to the exercise of its powers and authorities and proper rules to govern its proceedings and to regulate the mode and manner of all investigations and hearings."

Estimate of Amount of Time that State Employees Will Spend Developing the Rule and of Other Resources Necessary to Develop the Rule

The estimated time is 60 hours.

List with Description of All Entities that May Be Affected by the Proposed Rule

The proposed permanent rule will affect individuals who elect to serve as a bone marrow donor or organ donor to another individual and the employers of these employees. The proposed rule will also affect recipients of the bone marrow or organ.

Summary and Preliminary Comparison with Any Existing or Proposed Federal Regulation that is Intended to Address the Activities to be Regulated by the Proposed Rule

The Family and Medical Leave Act of 1993, as amended, entitles eligible employees who work for covered employers to take unpaid, job-protected leave for specified family and medical reasons with continuation of group health insurance coverage. Although not specific to bone marrow and organ donation, the recovery time from donation would likely qualify as a "serious health condition" and be covered under FMLA.

5 U.S.C. 6327 provides that an employee in or under and Executive agency is entitled to leave without loss of or reduction in pay, leave to which otherwise entitled, credit for time and service or performance or efficiency rate, for the time necessary to permit an employee to serve as a bone-marrow or organ donor. An employee may not exceed 7 days for bone marrow donation and 30 days of leave to serve as an organ donor.

Anticipated Economic Impact of Implementing the Rule (Note if the Rule is Likely to Have a Significant Economic Impact on Small Businesses)

Because this rule only pertains to employers with 50 or more employees, it is not anticipated to impact small businesses. The proposed rule is anticipated to have an economic impact on employers with 50 or more employees if an employee serves as a bone marrow or organ donor.

Contact Person: Larry Jakubowski, DWD Equal Rights Division (414) 227-4396,
Larry.Jakubowski@dwd.wisconsin.gov

Approval by signature of the agency head or authorized individual



Karl Dahlen, Chief Legal Counsel
Authorized Signature

Jan. 10, 2017

Date Submitted