

State of Wisconsin**DOA – DIVISION OF PERSONNEL MANAGEMENT****-- CLASSIFICATION & COMPENSATION BULLETIN --****Date:** July 9, 2025**Locator No:** DPM-0643-CC/POL**Subject:** Requiring Use of Accrued Paid Leave
During Family Medical Leave Act (FMLA)
Leave

The purpose of this bulletin is to provide the Department of Corrections (DOC) with the authority to require employees employed in facilities that operate 24 hours a day, seven days a week ("24/7 facilities") to use accrued paid leave during federal Family Medical Leave Act ("FMLA") leave.

I. BACKGROUND

DOC is responsible for protecting the public, staff, and persons in its care. It is also responsible for providing humane and efficient rehabilitative programming for the people in its care. To meet those responsibilities, it is critical that DOC maintain adequate staffing levels at each of its 24/7 facilities. Adequate staffing levels can only be achieved when the DOC's staff have consistent, regular, and reliable attendance.

DOC is also committed to providing its qualifying employees protected leave under the FMLA and Wisconsin Family Medical Leave Act ("WFMLA"). However, staff who elect to remain unpaid during their protected leave in order to later use accrued paid leave effectively prolong their absences beyond what is otherwise protected. These prolonged periods of leave contribute to high absence rates at DOC's 24/7 facilities, which negatively impacts DOC's ability to provide programming and to protect the public, staff, and persons in its care. High absence rates also result in increased expenditures to pay the overtime wages of other staff who must work additional shifts to cover the absent employees' duties. This, in turn, has broader implications for the State of Wisconsin's budget as a whole.

While DOC would like to afford its staff the ability to elect when to utilize accrued paid leave, given the above obligations, staffing challenges, and fiscal responsibility, the needs of DOC's 24/7 facilities do not allow for the above-mentioned leave use. DOC is therefore requesting authorization to require employees in its 24/7 facilities to substitute paid leave for unpaid leave under the FMLA to the extent that doing so is not otherwise prohibited by law.

II. STATUTORY AUTHORITY

WFMLA is available to eligible employees for a duration of up to two weeks during a 12-month period to care for the employee's child, spouse, domestic partner, or parent with a serious health condition; for a duration of up to six weeks during a 12-month period for the birth of the employee's child or the placement of a child with the employee for adoption or as a precondition to adoption if the leave begins within 16 weeks of the child's birth or placement; and for a duration of up to two weeks during a 12-month period due to a serious health condition which makes the employee unable to perform his or her employment duties. (Wis. Stats., 103.10(3) and 103.10(4).)

While an employee taking WFMLA has the option of substituting accrued paid or unpaid leave for any leave requested under the act, “[t]he employer may not require an employee to substitute any other paid or unpaid leave available to the employee for either family or medical leave under the act.” (Wis. Admin. Code s. DWD 225.03(3).)

Federal law provides as follows: “Generally, FMLA leave is unpaid leave. However...FMLA permits an eligible employee to choose to substitute accrued paid leave for FMLA leave. If an employee does not choose to substitute accrued paid leave, the employer **may require the employee to substitute accrued paid leave for unpaid FMLA leave.** (29 CFR s.825.207, emphasis added.) Because FMLA may last up to 12 weeks in a 12-month period for eligible employees (29 CFR s.825.200(a)), an individual may still be entitled to FMLA even after their WFMLA has been exhausted.

III. AUTHORIZATION FOR THE DEPARTMENT OF CORRECTIONS TO REQUIRE THE USE OF ACCRUED PAID LEAVE DURING FMLA LEAVE

As set forth above, DOC has demonstrated a significant business need for requiring the use of accrued paid leave by 24/7 employees during FMLA leave, i.e., once WFMLA has been exhausted and only federal FMLA still applies.

The current Wisconsin Human Resources Handbook Chapter regarding FMLA currently states as follows: “Although FMLA law allows employers to require that employees use accrued paid leave during FMLA leave, state agencies may not require state employees to substitute accrued paid leave.” *Wisconsin Human Resources Handbook* Chapter 724 Family and Medical Leave, Sec.724.120(2)(e).

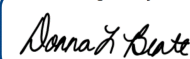
With this bulletin, the Division of Personnel Management Administrator hereby authorizes DOC to require state employees to substitute accrued paid leave while using FMLA, notwithstanding the current handbook chapter language; it is the Division’s intent to update the handbook chapter as soon as possible to remove language prohibiting the required use of accrued paid leave during FMLA leave.

IV. REFERRAL OF QUESTIONS

Employees with questions related to the application of this bulletin should contact their agency Human Resources representative.

Employers with questions related to the administration of this bulletin should be directed to Rachel Martin at rachel2.martin@wisconsin.gov or by phone at (608) 267-5165 or the Bureau of Classification and Compensation at DOADPMCompEmploymentRelGenInfo@wisconsin.gov.

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Donna Bente, Deputy Administrator
Division of Personnel Management