

# Family Medical Leave Act Information for Employees – Rights & Responsibilities

The following policies have been developed by the Division of Personnel Management to ensure statewide compliance with the federal Family and Medical Leave Act (FMLA) of 1993 (as amended) and in accordance with Department of Labor regulations effective March 8, 2013. In addition to the federal FMLA addressed in this notice to employees, state employees are also covered by the Wisconsin Family and Medical Leave Act (WFMLA).

- **Employee Eligibility**

State employees (including limited term and project employees) are eligible for unpaid leave under the FMLA/WFMLA if they:

**Federal Family Medical Leave Act (FMLA)**

- Have been employed by the state for at least 12 months.
- Have worked for the state at least 1,250 hours in the 12-month period immediately preceding the beginning of the requested leave under FMLA.
- Are employed at a worksite where there are at least 50 state employees employed within 75 miles of the worksite.

**Wisconsin Family Medical Leave (WFMLA)**

- You have been employed by the state of more than 52 consecutive weeks.
- You have been in pay status for at least 1,000 hours in the preceding 52-week period.

- **Reason for Leave**

Eligible employees are entitled to use unpaid leave under FMLA when taken for the following purposes:

- The birth of a child, or placement of a child with you for adoption or foster care.
- Your own serious health condition
- Because you are needed to care for your child, spouse, or parent, parent “in-law”, domestic partner, domestic partner’s parent due to his/her serious health condition.
- A qualifying exigency arising out of the fact that your spouse, son or daughter, parent is a member of the regular or reserve Armed Forces and is deployed to a foreign country or has been notified of deployment to a foreign country.
- To care for spouse, son, or daughter, parent, next of kin who is covered servicemember with a serious injury or illness incurred or aggravated in the line of duty.

- **Definition of Serious Health Condition**

- A serious health condition is an illness, injury, impairment, or physical or mental condition that involves either an overnight stay in a medical care facility, or continuing treatment by a health care provider for a condition that prevents the employee from performing the functions of the employee’s position or prevents the qualified family member from participating in school or other daily activities.
- Subject to certain conditions, the continuing treatment requirement may be met by a period of incapacity of more than 3 consecutive calendar days combined with at least two visits to a health care provider or one visit and a regimen of continuing treatment, or incapacity due to pregnancy, or incapacity due to a chronic condition. Other conditions may meet the definition of continuing treatment.

- **Rights and Responsibilities for Taking FMLA/WFMLA Leave**

Employees must provide 30-day notice of the need to take FMLA/WFMLA leave when the need is foreseeable. When 30-day notice is not possible, the employee must provide notice as soon as practicable and comply with normal call-in procedures. Even if you meet the general eligibility requirements for FMLA/WFMLA leave and have FMLA/WFMLA leave time available in the current year, we may need more information before we can determine whether your absence qualifies as Family Medical Leave. If we request that you provide certification that your leave is Family Medical Leave, you have 15 calendar days from receipt of this notice to provide the certification. If a certification within 15 days is not possible or reasonable, you will be allowed additional time to respond. If sufficient information is not provided in a timely manner, your leave may be denied. You must return the following information to your employer.

- Sufficient certification to support your request for FMLA/WFMLA. A certification form that sets forth the information necessary to support your request.
- If requested, sufficient documentation to establish the required relationship between you and your family member.

Once the information is obtained from you as specified above, we will inform you, within 5 business days, whether your leave will be designated as FMLA/WFMLA leave and count towards your federal FMLA or Wisconsin WFMLA leave entitlements.

- **Length of Leave**

- Federal FMLA
  - up to 12 weeks of unpaid leave in the calendar year.
  - You have a right under the federal FMLA for up to 26 weeks of unpaid leave in a single 12-month period to care for a covered servicemember with a serious injury or illness.
- Wisconsin FMLA in each calendar year for up to
  - 2 weeks of unpaid medical leave for your own serious health condition.
  - 2 weeks of unpaid family leave to care for your child, spouse, parent, parent “in-law”, domestic partner, or domestic partner’s parent with a serious health condition
  - 6 weeks of unpaid family leave for the birth of your child or adoption.

- **Substitution of Paid Leave for Unpaid FMLA Leave**

- Employees may substitute unused accumulated paid leave, i.e., annual leave, personal/legal holiday, sabbatical, compensatory time, or a combination thereof, for portions of unpaid FMLA leave. The substitution of such paid vacation leave during FMLA leave is not an absolute right and is subject to the usual workplace policies and procedures for the request and approval of paid vacation leave. Employees may elect to substitute sick leave for unpaid FMLA leave to care for a family member with a serious health condition or for the employee's own serious health condition. However, sick leave may only be substituted under those circumstances for which sick leave is otherwise provided under the administrative rules or applicable collective bargaining agreement.

**Note.** *The restrictions on the substitution of paid leave in the preceding paragraph apply only if the FMLA leave is not simultaneously covered under the Wisconsin Family & Medical Leave Act (WFMLA). The employee may substitute any type of accrued paid leave during any leave that qualifies under the WFMLA.*

- If the use of paid vacation leave or paid sick leave cannot be approved for use during the period of FMLA leave, the employee remains entitled to unpaid FMLA leave.
- Any leave, with or without pay, which is designated as leave under FMLA will count against the employee’s FMLA entitlement. The substitution of paid vacation or sick leave during FMLA leave does not extend the employee’s FMLA entitlement.

- **Intermittent Leave** (Intermittent leave or leave on a reduced work schedule)
  - Must be given when there is a medical need for such leave *and* the medical need can best be accommodated through an intermittent or reduced leave schedule; *and* the leave is being used for the employee's own serious health condition, or to care for a family member with a serious health condition or a covered military servicemember or veteran with a serious injury or illness;
  - Must be given for a qualifying exigency related to a military call to active duty
  - May be given, at the discretion of the appointing authority, when taken for the birth of the employee's child, or placement of a child with the employee for adoption or foster care. *Note. If an employee is simultaneously covered under WFMLA, the employee may take family leave intermittently provided that any portion of intermittent leave begins within 16 weeks before or after the birth or placement of the child.*
  
- **Medical Certification**
  - If requested, employees must provide medical certification for leave under FMLA when taken for a serious health condition of the employee or the employee's family member or to care for a military services member or veteran. Failure to provide timely medical certification may result in the denial of FMLA leave until the required certification is provided.
  
- **Certification of Qualifying Exigency.**
  - Employees must provide a copy of the active duty order or other military documentation to establish the nature and dates of such active duty.
  - If requested employees must provide certification of any particular 'qualifying exigency' for which leave is requested.
  
- **Return from FMLA Leave and Fitness for Duty**
  - Employees must be restored to his/her original or equivalent position with equivalent pay, benefits, and other term and conditions of employment.
  - Exceptions would be layoff, the expiration of a project or fixed-term appointment, or incapacity to perform an essential function of the position. If state law or collective bargaining agreement governs an employee's return to work those provisions shall be applied.
  
- **Benefit Continuation**
  - Your health benefits must be maintained under the same conditions as if you continued to work.
  - Normally, you must be reinstated at the same or equivalent job with the same pay, benefits, and term and conditions of employment when you return from FMLA leave. (If your leave extends beyond your FMLA entitlement, you do not have return rights under FMLA.)
  - If you do not return to work following FMLA leave for a reason other than 1) the continuation, recurrence, or onset of a serious health condition which would entitle you to FMLA leave; 2) the continuation, recurrence, or onset of a covered servicemember's serious injury or illness which would entitle you to FMLA leave; or 3) other circumstances beyond your control, you may be required to reimburse us for our share of health insurance premiums paid on your behalf during your FMLA leave.
  - The agency will advise employees of their individual eligibility for continuation of group health insurance under the provisions of FMLA. Employees are required to pay the employee portion of health insurance premiums during unpaid leave under FMLA. The agency will advise employees as to the cost of coverage and when and where to send the premium payments, if any. **Coverage may be terminated for employees who do not pay their portion of the cost of coverage.**
  
- **Benefits Accrued Prior to Leave**
  - While employees will not accrue additional benefits during leave without pay under FMLA, benefits accrued prior to leave will be retained at the same levels upon return to work. For example, paid annual leave, sick leave, or personal holidays which are not substituted for FMLA leave will be available to the employee upon return from leave.

- **FMLA and Other Leave Benefit Provisions**
  - FMLA entitlement is coordinated with the provisions of the Wisconsin FMLA, as well as leave benefits provided under administrative rules of the DPM Administrator, or an applicable collective bargaining agreement. All qualifying leaves run concurrently. Leave qualifying under both family and medical leave laws will be counted against the employee's entitlement under both laws, as well as toward an employee's leave entitlement under administrative rule or applicable collective bargaining agreement.
- **Unlawful Acts by Agencies**
  - Interfere with, restrain, or deny the exercise of any right provided under FMLA
  - Discharge or discriminate against any person for opposing any practice made unlawful by FMLA or for involvement in any proceeding under or relating to FMLA.
- **Enforcement**
  - An employee may file a complaint with the U.S. Department of Labor or may bring a private lawsuit against an employer.
  - FMLA does not affect any Federal or State law prohibiting discrimination or supersede any State or local law or collective bargaining agreement which provides greater family or medical leave rights.
- **Continuous Service**
  - State Seniority: Employees will continue to accrue continuous service for seniority purposes while on leave under FMLA/WFMLA
  - Retirement System: The time an employee is on FMLA/WFMLA leave (either paid or unpaid) will be treated as continuous service for purposes of vesting and eligibility to participate in the retirement plan.
  - The time an employee is on unpaid FMLA/WFMLA will not be counted as creditable service.
- More information on the federal FMLA may be obtained through the Department of Labor at [www.Wagehour.dol.gov](http://www.Wagehour.dol.gov).
- Questions regarding Family and Medical Leave Act and its interaction with WFMLA, labor agreements, and state and agency policies should be referred to the agency human resources office.