

GUIDE TO FMLA/WFMLA

**Office of Human
Resources**



COORDINATION OF EMPLOYER OBLIGATIONS:

- Federal FMLA
- Wisconsin FMLA (WFMLA)
- OSER Policies (for classified staff)
- System Leave Policies
- Campus Leave Policies



WHAT IS FMLA AND WFMLA?

- FMLA stands for the “Family and Medical Leave Act”
- WFMLA stands for the “Wisconsin Family and Medical Leave Act”
- Federal and state protection provides **unpaid, job-protected leave for:**
 - Birth, adoption or foster care placement.
 - Care for parent/child/spouse with a serious (certifiable) health condition.
 - Employee’s own serious health condition.
 - Military family leave.
- Leave may be taken all at once, or intermittently as the medical condition requires (only when medically necessary).
- Benefits are continued and protected while you are covered by FMLA/WFMLA.



WHO IS PROTECTED BY FMLA/WFMLA?

STATE EMPLOYEES ARE ELIGIBLE FOR UNPAID LEAVE UNDER
FMLA/WFMLA IF THEY:

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 in a worksite where there are at least 50 state employees employed within 75 miles of the worksite.

WFMLA

- Have worked for the state for more than **52 consecutive weeks**.
- Have worked for the state for at least 1,000 hours during the 52-week period preceding the beginning of the leave.



FMLA – THE BASICS

- All leave entitlements, (except FMLA leave to provide care for an injured or ill military service member) are based on the:
 - Fiscal year for unclassified employees.
 - Calendar year for classified employees.
- Leave runs concurrent with paid leave benefits and Income Continuation coverage.
- 12 weeks is the maximum leave total for all qualifying reasons
 - 12 weeks if used intermittently breaks down to total hours based on FTE.



REASONS FOR LEAVE – NEW CHILD

- 12 weeks total for birth or adoption/foster placement of child AND medical needs of mother
- 12 weeks total for father to care for newborn or child placement AND to care for mother



REASONS FOR LEAVE – SERIOUS HEALTH CONDITION

Illness, injury, impairment or physical or mental condition that involves:

- Inpatient care (overnight stay), or
- Continuing treatment
 - Period of incapacity for more than **three consecutive calendar days** and subsequent treatment involving:
 - At least two visits to a health care provider, or
 - One visit and regimen of continuing treatment
- Any period of incapacity due to chronic serious health condition which:
 - Requires periodic visits for treatment
 - Continues over an extended period of time
 - May cause episodic rather than continuing period of incapacity
- Any period of incapacity due to pregnancy or prenatal care



REASONS FOR LEAVE - FAMILY

- To care for newborn or newly placed child
- To care for spouse, child, or parent with serious health condition
 - Applicable reasons include:
 - Conditions that require an overnight stay in a hospital.
 - Conditions that incapacitate your family member for more than 3 consecutive days and have ongoing medical treatment.
 - Chronic conditions that cause occasional periods when your family member is incapacitated and requires treatment by a health care provider at least twice a year.



Who qualifies as a “child” for FMLA purposes?

- Biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing *in loco parentis*
- Must be under age 18, or if age 18 or older, incapable of self-care because of a mental or physical disability

** In loco parentis- persons with day-to-day responsibilities to care for and financially support a child*

Who qualifies as a “child” for WFMLA purposes?

- Biological, adopted, or foster child, a stepchild or a legal ward
- It is UW System policy to include the *in loco parentis* relationship
- Under age 18, or if age 18 or older but cannot care for self because of a serious health condition



Who qualifies as a “parent” for FMLA purposes?

- Biological parent or individual who stood *in loco parentis* to an employee when that employee was a child.
- Specifically excludes parents “in-law”

Who qualifies as a “parent” for WFMLA purposes?

- Natural parent, foster parent, adoptive parent, stepparent or legal guardian of employee, employee’s spouse, or employee’s domestic partner

** In loco parentis- persons with day-to-day responsibilities to care for and financially support a child, or in the case of an employee, who had such responsibility for the employee when the employee was a child.*



REASONS FOR LEAVE – MILITARY FAMILY LEAVE

- Up to 12 weeks of leave due to “qualifying exigency” arising out of the fact that the spouse, son, daughter, or parent of the employee is on active duty, or has been notified of an impending call to active duty status, in support of a contingency operation
- Up to 26 weeks in a single 12-month period to care for a covered service member with a serious injury or illness sustained in the line of duty (on active duty)



INTERMITTENT LEAVE

- Leave may be taken in separate blocks or on a reduced schedule.
- Intermittent leave after birth of child **only** with employer agreement
- Must be allowed as medically necessary for self or family care



SCHEDULING INTERMITTENT LEAVE

- Employee must advise employer of reasons why intermittent/reduced schedule leave is necessary and the schedule.
- Employer and employee must attempt to work out a schedule, subject to approval/recommendation of health care provider.
- Must show that intermittent leave is required as medically necessary
 - Requires medical certification



HR PROVIDES FMLA NOTICE TO EMPLOYEE

- At time of employee's request for FMLA leave, the employer must notify the employee in writing regarding:
 - Whether leave is counted against annual FMLA entitlement.
 - Whether medical certification is required.
 - Right to substitute paid leave.
 - Any requirement for “fitness for duty” upon return to work.
 - If required written notice not provided to the employee, the leave may not be able to be counted against the employee's 12 week FMLA entitlement .
 - The employer may designate leave as FMLA even if the employee does not specifically request it - must provide written designation.



STARTING THE FMLA PROCESS:

- Contact Human Resources as soon as you are aware of a situation which may require FMLA.
- HR will follow up with the employee to provide documentation including:
 - Notice of Eligibility
 - Employee Request Form
 - Certification by Health Care Provider
- Employee is responsible for completing all paperwork, including their portion of the Certification form, and returning the forms to HR.
- HR reviews paperwork and certifies FMLA designation if appropriate.



YOU MAY BE WONDERING...

- Since the UW and State policies and rules provide leave benefits for employees in most cases, why bother with the WFMLA and FMLA?
- Who cares?
- Why should I care?



REALISTIC ANSWERS FOR EMPLOYEES

- **The FMLA and WFMLA may allow intermittent leave or a reduced schedule when policies may not.**
- **As long as you are able to return to work before you exhaust your FMLA leave, you must be returned to the same job (or one nearly identical to it). This is JOB PROTECTION!**
- **If you take FMLA leave, your employer must continue your health insurance as if you were not on leave.**
- **Time off under FMLA may not be held against you in employment actions such as hiring, promotions or discipline.**



REALISTIC ANSWERS FOR SUPERVISORS

- **The FMLA and WFMLA may allow intermittent leave or a reduced schedule when policies may not.**
- **Failure to designate leave as FMLA may lead to incorrect leave usage reporting – leave needs to be counted toward annual FMLA entitlement.**
- **Time off under FMLA can not be held against an employee in employment actions such as hiring, promotions or discipline.**
- **Failure to comply with FMLA and WFMLA can lead to legal liability, including fines.**



RESOURCES AND CONTACT INFORMATION

<https://www.uwgb.edu/hr/policies/FMLA/>

- Employee FMLA request form
 - Return to work certification form
 - Certification of Health Care provider form
 - Notice to employees requesting leave
 - Employee list of rights under FMLA
 - WFMLA Information
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- **FMLA can be a complicated process, it is imperative to notify HR upon learning of any probable need for FMLA.**
 - **Contact Human Resources at ext. 2390 with any questions!**

