

WISCONSIN

EMPLOYMENT LAW

Family and Medical Leave



The federal Family and Medical Leave Act (FMLA), which applies to employers with 50 or more employees, provides eligible employees with up to 12 weeks of unpaid leave in any 12-month period for certain family and medical reasons. The FMLA also requires covered employers to provide up to 26 weeks of unpaid military caregiver leave in a single 12-month period.

In addition to the federal family and medical leave protections provided by the FMLA, many states have enacted their own family and medical leave laws. In many cases, state family and medical leave laws provide greater protections than the FMLA and may apply to employers not covered by the FMLA. Wisconsin has its own family and medical leave law, the Wisconsin Family and Medical Leave Act (WFMLA).

STATE RESOURCES

Wisconsin Department of Workforce Development (DWD)

www.dwd.wisconsin.gov

FAQs

The DWD has published these [answers](#) to frequently asked questions.

Poster

Employers can use this model [poster](#) to satisfy their posting requirements.

OVERVIEW OF FAMILY AND MEDICAL LEAVE

Wisconsin's family and medical leave law includes the following major provisions:

- Employers with **50 or more employees** are covered by the WFMLA;
- Eligible employees include those who have been employed by the same employer for more than 52 consecutive weeks and worked at least 1,000 hours during the preceding 52-week period;
- Employees may take up to **six weeks** of family leave for the **birth of the employee's natural child or the placement of a child** with the employee for adoption or as a precondition to adoption;
- Employees may take **two weeks** of family leave to care for the employee's child, spouse, domestic partner or parent with a serious health condition;
- Employees may take **eight weeks** of family leave for any combination of birth or placement of a child, or to care for the employee's child, spouse, domestic partner or parent with a serious health condition;
- An eligible employee may take up to **two weeks** of medical leave during a 12-month period for the **employee's own serious health condition**.

COVERED EMPLOYERS

The WFMLA applies to employers with **50 or more permanent employees** during at least six of the preceding 12 months.

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ELIGIBLE EMPLOYEES

To be eligible for leave under the WFMLA, an employee must have been employed by the same employer for **more than 52 consecutive weeks**, and must have worked for the employer for at least **1,000 hours** during the preceding 52-week period.

REASONS FOR LEAVE

Under the WFMLA, eligible employees may take family or medical leave for any of the following reasons:

- The birth of the employee's natural child, if the leave begins within 16 weeks of the child's birth;
- The placement of a child with the employee for adoption or as a precondition to adoption, but not both, if the leave begins within 16 weeks of the child's placement;
- The serious health condition of the employee's child, spouse, domestic partner or parent; or
- The employee's own serious health condition which makes the employee unable to perform his or her employment duties.

"Parent" means a natural parent, foster parent, adoptive parent, stepparent or legal guardian of an employee or of an employee's spouse or domestic partner.

"Serious health condition" means a disabling physical or mental illness, injury, impairment or condition involving:

- Inpatient care in a hospital, nursing home or hospice; or
- Outpatient care that requires continuing treatment or supervision of a health care provider.

"Domestic partner" means an individual in a registered domestic partnership. The 2017-2019 Wisconsin state budget eliminated Wisconsin's domestic partnership registry, effective April 1, 2018. Due to the legalization of same-sex marriage, same-sex couples will no longer be allowed to register as domestic partners under state law. This does **not** affect an eligible employee's right to take WFMLA leave for a registered domestic partner.

"Child" means a natural, adopted or foster child, stepchild or a legal ward who is less than 18 years of age, or is older than 18 years of age but cannot care for himself or herself because of a serious health condition.

AMOUNT OF LEAVE

In a 12-month period, eligible employees may take up to:

- Six weeks of family leave for the birth of the employee's natural child or the placement of a child with the employee for adoption or as a precondition to adoption;
- Two weeks of family leave to care for the employee's child, spouse, domestic partner or parent with a serious health condition; or
- Eight weeks of family leave for any combination of reasons described above.

In addition, an eligible employee may take up to two weeks of medical leave during a 12-month period for the employee's own serious health condition. A "12-month period" means a calendar year beginning on January 1 and ending on December 31 of each year.

PAYMENT ON LEAVE

The WFMLA does not require an employer to pay wages or salary to an employee taking family or medical leave.

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OTHER AVAILABLE LEAVE

An employee may substitute any other paid or unpaid leave available to the employee (for example, personal, vacation or sick leave) for family or medical leave available under the WFMLA. An employer cannot require an employee to substitute any other paid or unpaid leave available to the employee for family or medical leave.

An employee taking family or medical leave cannot extend his or her leave by adding leave of any other type provided by the employer, unless the employee meets the requirements for taking the other leave or the employer consents to the extension of leave.

LEAVE SCHEDULE

An employee may take intermittent family or medical leave in amounts equal to the shortest increment allowed by the employer for any other non-emergency leave.

An employee must consider the needs of his or her employer before scheduling family leave. An employee who takes a partial absence for family leave must schedule his or her absence so that it does not unduly disrupt the employer's operations. An employee may schedule medical leave as medically necessary.

If an employee intends to take family or medical leave because of a planned medical treatment or supervision, the employee must make a reasonable effort to schedule the treatment so that it does not unduly disrupt the employer's operations, subject to the health care provider's approval.

NOTICE AND CERTIFICATION REQUIREMENTS

Under certain circumstances, employees must provide advance notice of their intent to take WFMLA leave. In addition, employers may require employees requesting WFMLA leave to provide a certification substantiating the need for a family or medical leave.

NOTICE OF LEAVE

If an employee plans to take family leave for the birth or adoption of a child, the employee must give his or her employer advance notice of the expected birth or placement in a reasonable and practicable manner.

Also, if an employee plans to take medical or family leave for a planned medical treatment or supervision, the employee must give the employer advance notice of the planned treatment or supervision in a reasonable and practicable manner.

EMPLOYEE CERTIFICATION

If an employee requests medical leave, or family leave to care for the employee's child, spouse, domestic partner or parent with a serious health condition, the employer may require the employee to provide a certification issued by the health care provider or Christian Science practitioner of the employee or family member.

The certification may require the following information:

- A statement that the employee, child, spouse, domestic partner or parent has a serious health condition;
- The date the serious health condition began and its probable duration;
- The medical facts regarding the serious health condition, within the knowledge of the health care provider or Christian Science practitioner; and



- An explanation of the extent to which the employee is unable to perform his or her duties, if the employee requests medical leave.

An employer may require the employee to obtain a second opinion of a health care provider, selected and paid for by the employer, to verify any of the information in the certification.

Except where emergency health care consultation or treatment is required, an employer may deny a requested leave if the employer requests a certification for the leave and the employee fails or refuses to substantially comply with the certification request.

MAINTENANCE OF EMPLOYEE BENEFITS

An employer may not, because of an employee's family or medical leave, reduce or deny an employment benefit which accrued before or after the family or medical leave began.

However, the WFMLA does not entitle a returning employee to a right, benefit or position to which he or she would not have been entitled had the employee not taken a family or medical leave. Likewise, the WFMLA does not entitle a returning employee to the accrual of any seniority or employment benefit during a period of family or medical leave.

GROUP HEALTH BENEFITS

An employer must maintain group health insurance coverage for an employee while he or she takes family or medical leave under the conditions that applied immediately before the leave began. Thus, if the employee continues paying his or her share of the health plan premiums, the employer must continue to make its premium contributions as if the employee had not taken family or medical leave.

The employer cannot require the employee to pay his or her premium contributions more frequently or in greater amounts than was required before the family or medical leave began, except as described below for an escrow arrangement.

An employer may require an employee to have in escrow with the employer an amount equal to the entire premium for eight weeks of the employee's group health insurance coverage. An employee may pay the required escrow amount in equal installments at regular intervals over at least a 12-month period, and the employer must deposit the payments at a financial institution in an interest-bearing account.

When an employee takes a family or medical leave, the employer may pay the amount of the employee's health insurance contribution from the escrow account. An employer may not deny WFMLA leave to an eligible employee because the employee did not pay the required amount into the escrow account.

When an employee's employment ends, the employer must return any escrow payments made by the employee, plus interest. However, if an employee ends his or her employment **within 30 days** of returning from a family or medical leave, the employer may deduct from the escrow amount any premium or similar expense paid by the employer for the employee's health insurance coverage while the employee was on leave.

EMPLOYEE PROTECTIONS

Employees who take WFMLA leave are entitled to the following employment protections.



JOB RESTORATION

When an employee returns from family or medical leave, the employer must immediately place the employee in the position he or she held immediately before the leave began, if that position is vacant.

If the employee's prior position has been filled, the employer must place the returning employee in an equivalent employment position. The equivalent employment position must have equal compensation, benefits, working shifts, hours of employment and other terms and conditions of employment.

If an employee on a family or medical leave decides to return to work before the end of the scheduled leave, the employer must place the employee in the same position he or she held immediately before the leave began or in an equivalent position within a reasonable period of time not exceeding the duration of the scheduled leave.

NONDISCRIMINATION

An employer may not interfere with, restrain or deny an employee's right to take a family or medical leave under the WFMLA. In addition, an employer may not discharge or discriminate against an individual for opposing a practice that violates the WFMLA's requirements.

ENFORCEMENT

Employees may file complaints of WFMLA leave violations with the [Wisconsin Department of Workforce Development](#) (DWD). The DWD investigates complaints and attempts to resolve issues between employers and employees. If the DWD determines that an employer has violated the WFMLA, it may order the employer to remedy the violation. Remedies for violations may include providing the requested family or medical leave, reinstating the employee, providing back pay accrued not more than two years before the complaint was filed and paying the employee's reasonable and actual attorney fees. An employee or the DWD may bring a civil action against an employer to recover damages after the completion of the administrative proceeding.

REQUIRED POSTERS

Employers with **25 or more employees** must post a notice describing the employer's own policies for family and medical leave. Employers with **50 or more permanent employees** must post, in one or more conspicuous places where employee notices are customarily posted, a notice developed by the DWD describing employees' rights under the WFMLA. The DWD has provided [model posters](#) for employers to use. The penalty for not posting the required notices is \$100 for each offense.

FMLA AND WFMLA

Although the FMLA and the WFMLA both apply to employers with 50 or more employees, there are many differences between the two laws. For example, the FMLA and WFMLA have different rules for employee eligibility, types of available leave and amount of leave.

When evaluating employee leave rights, employers should first determine what laws apply to the leave. When an employee is eligible for leave under just one law, either the FMLA or the WFMLA, the provisions of that law apply. If an employee's leave is covered under one law, but not the other, the employee will retain his or her eligibility for the other type of leave. This is sometimes called leave "stacking."

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When an employee is eligible for leave under both the FMLA and the WFMLA, an employer must apply the provisions of the law that are most favorable to the employee. In these instances, leave under the FMLA and WFMLA runs concurrently.