



# FMLA Wisconsin

## Federal vs. Wisconsin Family & Medical Leave Laws

	FEDERAL ELEMENTS	STATE ELEMENTS
<b>Employers Covered</b>	<p>Private employers with 50 or more employees in at least 20 weeks of the current or preceding year.</p> <p>Public agencies, including state, local and federal employers.</p> <p>Local education agencies covered under special provisions.</p>	<p>In addition to the federal FMLA, Wisconsin has laws requiring family and medical leave and bone marrow and organ donation leave.</p> <p><b>Family and medical leave:</b> Employers with at least 50 permanent employees. Includes public employers.</p> <p><b>Bone marrow and organ donation:</b> Employers with 50 or more permanent employees.</p>
<b>Employees Eligible</b>	<p>Worked for employer for at least 12 months (which need not be consecutive); worked at least 1,250 hours for employer during 12 months preceding leave; and employed at a worksite with 50 or more employees within 75 miles of worksite.</p>	<p><b>Family and medical leave:</b> Worked for employer for more than 52 consecutive weeks and worked at least 1,000 hours during the 12 months preceding leave.</p> <p><b>Bone marrow and organ donation:</b> Same as WI family and medical leave.</p>
<b>Leave Amount</b>	<p>Generally, up to a total of 12 weeks during a 12-month period.</p> <p>Up to 26 weeks during a single 12-month period to care for</p>	<p><b>Family and medical leave:</b> During a 12-month period, up to:</p> <ul style="list-style-type: none"> <li>• Six weeks for a birth or adoption;</li> <li>• Two weeks for the serious health condition of child, spouse, domestic</li> </ul>

	<p>spouse, child, parent or next of kin who is a covered service member with a serious injury or illness.</p> <p>However, leave for birth, adoption, foster care, care for a parent with a serious health condition or care for a covered service member with a serious injury or illness must be shared by spouses working for same employer.</p>	<p>partner* or parent (including parents of a spouse or domestic partner); and</p> <ul style="list-style-type: none"> <li>Two weeks for the employee's own serious health condition.</li> </ul> <p>Leave for a birth or adoption must begin within 16 weeks of the birth or adoption. No provision regarding spousal sharing of leave.</p> <p>No employee may take more than eight weeks of family leave in a 12-month period for any combination of the above reasons.</p> <p><b>Bone marrow and organ donation:</b> Up to six weeks of unpaid leave in a 12-month period for bone marrow or organ donation.</p>
<p><b>Type of Leave</b></p>	<p>Unpaid leave for:</p> <ul style="list-style-type: none"> <li>Birth of employee's newborn child;</li> <li>Placement of child with employee for adoption or foster care;</li> <li>Providing care for employee's parent, child or spouse with serious health condition;</li> <li>Employee's own serious health condition;</li> <li>Any qualifying exigency when employee's spouse, child or parent is on active duty or is notified of impending call or order to active duty in Armed Forces; or</li> <li>Caring for a spouse, child, parent or next of kin who is a covered service member with a serious injury or illness.</li> </ul>	<p><b>Family and medical leave:</b> Similar to federal FMLA, except no military leave provisions.</p> <p><b>Bone marrow and organ donation:</b> Leave for bone marrow or organ donation.</p>
<p><b>Serious Health Condition/Serious Injury or Illness</b></p>	<p><b>Serious Health Condition:</b> Illness, injury, impairment, or physical or mental condition involving incapacity or</p>	<p><b>Serious Health Condition:</b> A disabling physical or mental illness, injury, impairment or condition involving:</p>

	<p>treatment connected with inpatient care in hospital, hospice, or residential medical-care facility, or continuing treatment by a health care provider involving a period of incapacity due to:</p> <ul style="list-style-type: none"> <li>• A health condition lasting more than three consecutive full calendar days and involving a certain level of treatment;</li> <li>• A chronic serious health condition or a permanent or long-term condition for which treatment may be ineffective;</li> <li>• Absences to receive multiple treatments (including recovery periods) for a restorative surgery or for a condition that if left untreated likely would result in incapacity of more than three days; or</li> <li>• Any incapacity related to pregnancy or for prenatal care.</li> </ul> <p><b>Serious Injury or Illness:</b></p> <p>In the case of a member of the Armed Forces, including a member of the National Guard or Reserves, an injury or illness incurred by the member in line of duty on active duty in the Armed Forces (or which existed before the beginning of active duty and was aggravated by service in the line of duty on active duty) that may render the member medically unfit to perform the duties of the member's office, grade, rank or rating.</p>	<ul style="list-style-type: none"> <li>• Inpatient care in a hospital, nursing home or hospice; or</li> <li>• Outpatient care that requires continuing treatment or supervision by a health care provider.</li> </ul> <p>No provision regarding serious injury or illness.</p> <p><b>Bone marrow and organ donation:</b> Same as WI family and medical leave.</p>
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	<p>For a veteran of the Armed Forces, including a veteran of the National Guard or Reserves, an injury or illness incurred by the member in the line of duty on active duty in the Armed Forces (or which existed before the beginning of active duty and was aggravated by service in the line of duty on active duty) and that manifested itself either before or after the member became a veteran.</p>	
<p><b>Health Care Provider</b></p>	<p>Doctors of medicine or osteopathy authorized to practice medicine or surgery; podiatrists, dentists, clinical psychologists, clinical social workers, physician assistants, optometrists, chiropractors (limited to manual manipulation of spine to correct subluxation shown to exist by x-ray), nurse practitioners, and nurse-midwives, if authorized to practice under state law and consistent with the scope of their authorization; Christian Science practitioners listed with the First Church of Christ, Scientist in Boston, MA; any provider so recognized by the employer or its group health plan's benefits manager; and any health provider listed above who practices and is authorized to practice in a country other than the United States.</p>	<p><b>Family and medical leave:</b> Licensed nurse, chiropractor, dentist, physician, physician assistant, perfusionist, respiratory care practitioner, physical therapist, podiatrist, athletic trainer, occupational therapist, optometrist, pharmacist, acupuncturist, psychologist, social worker, marriage and family therapist, professional counselor, speech-language pathologist or audiologist.</p> <p><b>Bone marrow and organ donation:</b> Same as WI family and medical leave.</p>
<p><b>Intermittent Leave</b></p>	<p>Permitted for serious health condition, for care of covered service member when medically necessary and for active duty leave.</p> <p>Not permitted for care of newborn or new placement by</p>	<p><b>Family and medical leave:</b> Permitted in amounts equal to the shortest increment allowed by the employer for any other nonemergency leave.</p> <p><b>Bone marrow and organ donation:</b> Permitted in amounts equal to the shortest</p>

	adoption or foster care, unless employer agrees.	increment allowed by the employer for any other nonemergency leave. .
<b>Substitution of Paid Leave</b>	Employees may elect, or employers may require, accrued paid leave to be substituted in some cases. Employee must follow terms and conditions of employer's normal paid leave policies.	<b>Family and medical leave:</b> Employee may elect to substitute accrued paid leave. Employers may not require substitution of other types of leave. <b>Bone marrow and organ donation:</b> Employee may choose to substitute available paid leave provided by the employer for the otherwise unpaid leave.
<b>Reinstatement Rights</b>	Must be restored to same position or one equivalent to it in all benefits and other terms and conditions of employment.	<b>Family and medical leave:</b> Similar to federal FMLA <b>Bone marrow and organ donation:</b> Similar to WI family and medical leave.
<b>Key Employee Exception to Reinstatement Rights</b>	Limited exception for salaried employees if among highest paid 10 percent of workforce within 75 miles of worksite, restoration would lead to grievous economic harm to employer and other conditions met.	No specific provision
<b>Maintenance of Health Benefits During Leave</b>	Health insurance must be continued under same conditions as prior to leave.	<b>Family and medical leave:</b> Similar to federal FMLA. <b>Bone marrow and organ donation:</b> Similar to federal FMLA.

<p><b>Leave Requests</b></p>	<p>To be made by employee at least 30 days prior to date leave is to begin where need is known in advance or, where not foreseeable, as soon as practicable.</p> <p>If due to a planned medical treatment or for intermittent leave, the employee, subject to health care provider's approval, shall make a reasonable effort to schedule it in a way that does not unduly disrupt employer's operations.</p> <p>If due to foreseeable active duty of family member, notice must be made as soon as practicable.</p>	<p><b>Family and medical leave:</b> For the birth or adoption of a child or for a planned medical treatment or supervision, the employee must provide advance notice in a reasonable and practicable manner.</p> <p>For planned medical treatment, the employee must make a reasonable effort to schedule the leave so it does not unduly disrupt the employer's operations, subject to the health care provider's approval.</p> <p>For a partial absence for family leave, the employee must schedule the absence so that it does not unduly disrupt the employer's operations.</p> <p><b>Bone marrow and organ donation:</b> An employee seeking leave must try to schedule the bone marrow or organ donation procedure to avoid undue disruption of the employer's operations. In addition, the employee must give their employer advance notice of the leave.</p>
<p><b>Certification Requirement</b></p>	<p>Employer may require certification for the following:</p> <p>Request for leave because of serious health condition or to care for covered service member with a serious illness or injury.</p> <p>Request for qualifying exigency leave because of family member's active duty or call to active duty in the Armed Forces.</p> <p>To demonstrate employee's fitness to return to work from medical leave where employer has a uniformly applied practice or policy requiring such certification.</p>	<p><b>Family and medical leave:</b> Employer may request certification for leave due to a serious health condition. No provision for certification of fitness to return to work.</p> <p><b>Bone marrow and organ donation:</b> An employer may require a certification completed by a health care provider to verify the employee's leave request, including the anticipated length of leave.</p>
<p><b>Executive, Administrative, and</b></p>	<p>These individuals are entitled to FMLA benefits. However, their use of FMLA leave does not</p>	<p>No specific provision</p>

<p><b>Professional Employees</b></p>	<p>change their status under the Fair Labor Standards Act (FLSA), i.e., an employer does not lose its exemption from the FLSA's minimum wage and overtime requirements.</p>	
<p><b>Statutes</b></p>	<p>29 USC 2601</p>	<p>WI ST § 103.10 (family and medical leave); W.S.A. § 103.11 (bone marrow and organ donation leave).</p>

\* 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 are no longer allowed to register as domestic partners under state law. Therefore, employees may take Wisconsin family and medical leave to care for a domestic partner with a serious health condition only if the domestic partnership was registered before April 1, 2018. This change does **not** affect the rights of employees to take family and medical leave to care for a registered domestic partner.

**Department of Workforce Development**

201 E. Washington Avenue, Room A100

P.O. Box 8928

Madison, WI 53708

PH: (608) 266-6860

[http://dwd.wisconsin.gov/er/family\\_and\\_medical\\_leave/default.htm](http://dwd.wisconsin.gov/er/family_and_medical_leave/default.htm)