

Wisconsin Family And Medical Leave Act

Overview

Family Medical Leave is a benefit available by state law to certain employees. The Family Medical Leave Act (FMLA) provides unpaid leave for an employee's serious health condition, the serious health condition of a parent, child or spouse, or for the birth or adoption of a child. A covered employer has at least 50 permanent employees during at least 6 of the last 12 months. Covered employees have worked for the employer for at least 52 consecutive weeks and for at least 1000 hours in the preceding 52 week period.

The statute of limitations for filing a complaint is 30 days from the date the action was taken or the individual was made aware the action was taken.

What is a serious health condition?

Under Wisconsin law, a serious health condition is a disabling physical or mental illness, injury, impairment or condition involving inpatient care or outpatient care that requires continuing treatment or supervision by a health care provider.

What is required of employers?

- An employer must permit the employee to take up to 2 weeks of leave for their own serious health condition in a calendar year, up to 2 weeks for the serious health condition of a parent, child or spouse, and up to 6 weeks for the birth or adoption of a child. This leave may be taken as needed in blocks or intermittently as needed by the employee.
- During the leave, the employee's health insurance must be continued under the same conditions as prior to leave.
- The employee must be allowed to substitute accrued paid or unpaid leave of any other type the employer provides.
- When an employee returns from leave, they must be restored to the same position or an equivalent position in all terms and conditions of employment.

What is required of employees?

- An employer may require an employee to provide medical certification of the need for leave.

- The employee must make requests for planned leave in advance in a reasonable and practicable manner whenever possible.

Frequently Asked Questions

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How do the Wisconsin and Federal FML acts interact? If one law is more favorable than the other, which one applies?

An employee may be covered under both laws. Federal law may provide additional protection.

Does the employee receive pay while they are on leave?

By default, family medical leave is unpaid. However, an employee covered by the Wisconsin Family Medical Leave Act may substitute any other type of paid or unpaid leave offered by the employer.

Does the employee's health insurance continue while they are on leave?

The employer must maintain the same group health insurance coverage for the employee during the leave as existed prior to the leave. The same conditions must apply to coverage during the leave that applied before the leave. (For Example: If an employee contributed part of the health insurance premium, this same arrangement will continue for coverage during the leave. If the employer contributed the entire premium, that must also be the case during the leave.)

If health insurance coverage is provided, the employer may require that the employee pay the full premium for eight (8) weeks of coverage into an interest-bearing escrow account in a financial institution. The employer keeps the account. The premium amount can be paid by the employee at regular intervals over a period of 12 months or longer. The employer must return the amount placed in escrow plus interest to the employee when he or she terminates employment with that employer.

If the employee terminates employment with the employer within 30 days after returning from family or medical leave, the employer may deduct the employer's costs for health insurance coverage during the leave from the escrow account.

What is the 12 month period when an employee's leave may be taken?

The Wisconsin Family Medical Act operates on a calendar year basis. This may differ from federal leave.

What happens if the employee is entitled to both Wisconsin and Federal leave?

The Wisconsin and Federal FMLA leaves run concurrently, with the employee entitled to the protections of whichever law requires more favorable terms. If the federal leave extends beyond the end of the Wisconsin leave, only the terms of the federal FMLA apply to the remaining leave.

Is placement for foster care covered?

Placement for foster care is not covered for family leave unless the placement is as a precondition to adoption. However, a foster parent is entitled to take family leave for the serious medical condition of a foster child.

If an employee qualifies for leave under one of the laws, does the employee automatically qualify for leave under the other law?

An employee must qualify under the federal law to be entitled to the 12 weeks of leave. The employee must qualify under Wisconsin law to be eligible for the Wisconsin leave entitlement. Satisfaction of one law's eligibility requirements does not necessarily mean the employee has satisfied the requirements of the other. However, an employer may use the lower of the federal and state requirements for purposes of leave administration. In such a case, the satisfaction of the lower thresholds for federal and Wisconsin leave will result in employee entitlement to such leaves.

If an employee is entitled to leave under both laws, how is his or her leave charged against the entitlement?

If an employee qualifies for federal family and medical leave and for leave under state law, leave used counts against the employee's entitlement under both laws.

If an employee is entitled to leave under only one law, how is his or her leave accounted for?

If an employee is entitled to leave under only one law, his or her leave used counts against the entitlement under that law.

If an employee is entitled to leave under both laws, which requirements for notice, certification, substitution and intermittent leave apply?

Nothing in the Federal Family and Medical Leave Act supersedes any provision of state or local law which provides greater family and medical leave rights than those provided by the federal law. Therefore, where an employee is entitled to leave under both laws, the notice, certification, substitution and intermittent leave requirements which provide the greater leave rights apply. However, if an employee's leave extends beyond the

period of coverage under one of the laws, an employer may require the employee to comply with the requirements of the continuing law.

If an employee is entitled to leave under only Wisconsin law, what rules apply as to notice, certification and intermittent leave.

When an employee is entitled only to leave under Wisconsin law, then only the Wisconsin rules regarding notice, certification, and intermittent leave apply.

If an employee is only entitled to leave under the federal law, what rules apply concerning notice, certification, substitution, and intermittent leave?

If an employee is only entitled to leave under the federal law, then the federal rules concerning notice, certification, substitution, and intermittent leave apply.

If an employer's policy or collective bargaining agreement provides greater family and medical leave rights than are provided by either federal or state law, which rules apply?

To the extent that an employer's policy or collective bargaining agreement provides leave rights in addition to or greater than those provided by state or federal law, the employer's policy or collective bargaining agreement shall apply to the extent they are more generous.

If an employee takes leave for the birth or adoption of a child and is eligible for leave under Wisconsin and federal laws, how are the leaves coordinated?

For an employee who qualifies under both the federal and Wisconsin laws for leave on a birth or adoption, the six weeks of Wisconsin and federal leave may commence prior to, on or after the birth or adoption. Wisconsin law provides that the six weeks of leave must commence within 16 weeks before or after the birth or adoption. Under federal law, up to 12 weeks of leave is available for the birth or placement for adoption provided the leave is concluded no later than 12 months after the birth or placement. The federal and Wisconsin leaves will run concurrently where an employee is entitled to both.

Example: Following the birth of a child, mother desires to take off 12 weeks and father six weeks. Mother will be on leave for her own serious health condition for a period of six weeks, under her employer's disability plan, concurrently using two weeks of Wisconsin leave for her serious health condition and six weeks of federal leave for her serious health condition. At the end of the six weeks of disability, she may take an additional six weeks of leave for the birth of the child under Wisconsin law, concurrently utilizing the remaining six weeks of her federal leave. The father will take six weeks of leave for the birth of a child. Concurrently using his six weeks for the birth of a child under Wisconsin law and six weeks of his federal entitlement, leaving six weeks of leave under the federal law which may be used for other qualifying purposes later in the year

If an employee is eligible for leave to care for a family member with a serious health condition under Wisconsin and federal law, how are the leaves coordinated?

Under Wisconsin law, an employee is entitled to take up to two weeks per year to care for a parent (including parents-in-law), child, or spouse with a serious health condition. Federal law allows an employee up to 12 weeks per year to care for a parent, child, or spouse with a serious health condition. If the requirements for leave under both laws are met, the leave under both laws run concurrently.

Example: The child of an employee experiences a serious health condition, which has a duration of 12 weeks. The first two weeks are covered by both laws with the next 10 weeks of leave covered only by federal law. If the employee's need for leave should extend beyond 12 weeks, the availability of additional weeks will be governed by the employer's leave policies.

If an employee experiences a serious health condition, how are his or her leave entitlement coordinated under Wisconsin and federal law?

An employee will be entitled to up to two weeks of leave under Wisconsin's law for his or her own serious health condition, and up to 12 weeks of leave under federal law, provided the leave has not been used for other purposes. If the employee is entitled to leave under both laws, then leave use will be counted against both entitlements concurrently.

Example: An employee experiences a serious health condition which renders him or her unable to perform the functions of his or her position. The first weeks of leave are covered by both the Wisconsin and federal laws, concurrently, with any additional leave covered and charged only against the employee's federal entitlement, for up to 10 additional weeks. If the employee's need for leave extends beyond 12 weeks from its commencement, the availability of leave from work will be governed by the employer's leave policies.

Comparison of Federal and State Family Medical Leave Laws

Issues	Federal - Enforced by the U.S. Department of Labor	Wisconsin - Enforced by the Department of Workforce Development	Most Favorable to Employees
Employers Covered	Employers of 50 or more employees in at least 20 weeks of current or preceding year.	Employers of at least 50 permanent employees during at least 6 of the preceding 12 calendar months.	See the Frequently Asked Questions

<p>Employees Eligible</p>	<p>Have worked for employer at least 1,250 hours in preceding 12 months and employed for at least 12 months and employed at worksite by employer with 50 or more employees within 75 miles of that worksite.</p>	<p>Employee has at least 1000 hours of work and paid leave for employer in the preceding 52 weeks and employee worked for employer for at least 52 consecutive weeks.</p>	<p>See the Frequently Asked Questions</p>
<p>Amount of Leave</p>	<p>12 weeks during a 12 month period. Leave for birth, adoption, or to care for sick parent or child must be shared by spouses working for same employer.</p>	<p>During a 12 month period. 6 weeks for birth or adoption 2 weeks for serious health condition of parent, child or spouse. 2 weeks for employees own serious health condition.</p>	<p>See the Frequently Asked Questions</p>
<p>Type of Leave</p>	<p>Contact USDOL @ 608-441-5221 for inquiries.</p>	<p>Birth, placement of child for adoption or foster care, to provide care for parent, child, spouse, domestic partner or parent of domestic partner with serious health condition, or employee's own serious health condition.</p>	<p>Wisconsin</p>
<p>Serious Health Condition</p>	<p>Illness, injury, impairment, or physical or mental condition involving incapacity or treatment connected with inpatient care in hospital or hospice. Residential medical care in hospital, hospice, or residential medical care facility.</p>	<p>Means a disabling physical or mental illness, injury, impairment, or condition involving inpatient care in a hospital, nursing home, hospice, or out patient care that requires continuing treatment or supervision by a health care provider.</p>	<p>Comparable</p>

	<p>continuing treatment by a health care provider involving:</p> <p>Incapacity or absence of more than 3 days from work, school, or other activities.</p> <p>Chronic or long-term condition incurable, or so serious if not treated would result in incapacity of more than 3 days.</p> <p>Prenatal care.</p>		
Health Care Provider	<p>doctors of medicine or osteopathy authorized to practice medicine or surgery in the State;</p> <p>podiatrists, dentists, clinical psychologists, optometrists, chiropractors (for manual manipulation of spine to correct subluxation demonstrated by X-ray)</p> <p>nurse practitioners, and nurse-midwives, if authorized to practice under State law; or,</p> <p>Christian Science practitioners listed with the First Church of Christ Scientist in Boston, Massachusetts.</p>	<p>Means: licensed physician, nurse, chiropractor, dentist, podiatrist, physical therapist, optometrist, psychologist; certified occupational therapist, occupational therapy assistant, respiratory care practitioner, acupuncturist, social worker, marriage and family therapist, professional counselor, speech-language pathologist or audiologist; and Christian Science practitioner.</p>	<p>Varies, as Federal and State laws each include several different types of health care providers.</p>
Intermittent Leave	<p>Permitted for serious health condition when medically necessary. Not permitted for birth or adoption unless employer agrees.</p>	<p>Permitted for all family and medical leaves in increments equal to the shortest increment permitted by employer for any other non-emergency leave</p>	<p>Wisconsin</p>

Substitution of Paid Leave	Employee may elect or employer may require accrued paid leave to be substituted in some cases. No limits on substituting paid vacation or personal leave. Employee may not substitute paid sick leave, medical, or family leave for any situation not covered by employer's leave plan.	Employee may elect to substitute accrued paid or unpaid leave of any other type provided by employer.	Wisconsin
Reinstatement Rights	Must be restored to same or equivalent position in all terms and conditions.	Similar Provision	Comparable
Key Employee Exception	Exempts salaried employees if among highest paid 10% and if restoration would lead to grievous economic harm to employer.	No Similar Provision	Wisconsin
Maintenance of Health Benefits During Leave	Health insurance must be continued under same conditions as prior to leave.	Similar Provision	Comparable
Leave Requests	Made by employee 30 days in advance or as soon as practicable.	Made by employee in advance in a reasonable and practicable manner.	Wisconsin
Medical Certification May be Required By Employer to Support	Request for leave because of serious health condition. Employee's fitness to return to work from medical leave.	Similar Provision No Specific Provision	Comparable Wisconsin
Executive, Administrative and Professional Employees	Salaried executive, administrative and professional employees of covered employers, who meet the Fair Labor Standards Act (FLSA) criteria for exemption from minimum wage and overtime under Regulation 29 CFR part 541, do not	Unpaid leave would not result in loss of exempt status under State minimum wage and overtime law.	

	lose their FLSA-exempt Status by using any unpaid FMLA leave. This special exception to the “salary basis” requirement extends only to “eligible” employees use of leave required by FMLA		
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