

The Family and Medical Leave Laws

Issue	Wisconsin Provision	Federal Provision
Length of Leave	<ul style="list-style-type: none"> • 6 weeks per year for birth or adoption • 2 weeks per year for serious health condition of parent, child or spouse <i>or domestic partner</i> • 2 weeks for employee's serious health condition. 	12 weeks per year in total for birth or adoption, serious health condition of parent, child or spouse and employee's own serious health conditions.
Employers Covered	Employer of at least 50 permanent employees during at least 6 of the preceding 12 full or partial calendar months.	Employer of a least 50 permanent employees during each of the 20 preceding or current calendar weeks. <u>Excepted</u> are worksites where less than 50 employees work within a 75-mile radius.
Employees Covered	Must have worked for employer for at least 1,000 hours in preceding 52 weeks and for at least 52 consecutive weeks.	Must have worked for employer for at least 1,250 hours in preceding 52 weeks and for at least 52 weeks.
Prior Notification	Notice of a "reasonable and practicable" manner that does not unduly disrupt the employer's operation. No notice of emergency.	30 days' notice before taking leave for a child's birth or adoption, or other feasible, non-emergency leave, otherwise as soon as practicable.
Key Employee Exemption	No such exemption.	Exempts highest paid 10% if restoration to job would lead to grievous economic harm to employer.
Substitution of Paid Leave	Allows employee to substitute paid or unpaid leave of any type provided by employer. Employer <u>may not</u> require substitution.	Allows substitution of accrued paid vacation, personal leave or family leave. Employer <u>may</u> require substitution of such leave.
Partial Leave	Allows an employee to take family or medical leave in the smallest increment the employer otherwise allows leave to be taken.	Allows partial leave for serious health condition when medically necessary. Does not allow for partial leave for birth or adoption unless employer agrees.
Enforcement	Complainant must file with Department of Work Force Development within 30 days of the event or when employee should have known; no private cause of action until after administrative proceeding.	Private cause of action within 2 years of the event or 3 years if it is a willful violation. Department of Labor has same authority to investigate, resolve and bring action as under FLSA.
Remedy	Reinstatement, backpay and benefits for up to 2 years, attorney fees to Complainant.	Reinstatement, backpay and benefits with interest, plus compensatory damages up to double amount plus attorney fees.
Continuing Coverage for Health Benefits	Health insurance must be continued under same conditions as prior to leave.	Same
Reinstatement Rights	Must be restored to same or equivalent position in all terms and conditions.	Same

EMPLOYEE RIGHTS AND RESPONSIBILITIES UNDER THE FAMILY AND MEDICAL LEAVE ACT

Basic Leave Entitlement

FMLA requires covered employers to provide up to 12 weeks of unpaid, job-protected leave to eligible employees for the following reasons:

- For incapacity due to pregnancy, prenatal medical care or child birth;
- To care for the employee's child after birth, or placement for adoption or foster care;
- To care for the employee's spouse, son or daughter, or parent, who has a serious health condition; or
- For a serious health condition that makes the employee unable to perform the employee's job.

Military Family Leave Entitlements

Eligible employees with a spouse, son, daughter, or parent on active duty or call to active duty status in the National Guard or Reserves in support of a contingency operation may use their 12-week leave entitlement to address certain qualifying exigencies. Qualifying exigencies may include attending certain military events, arranging for alternative childcare, addressing certain financial and legal arrangements, attending certain counseling sessions, and attending post-deployment reintegration briefings.

FMLA also includes a special leave entitlement that permits eligible employees to take up to 26 weeks of leave to care for a covered servicemember during a single 12-month period. A covered servicemember is a current member of the Armed Forces, including a member of the National Guard or Reserves, who has a serious injury or illness incurred in the line of duty on active duty that may render the servicemember medically unfit to perform his or her duties for which the servicemember is undergoing medical treatment, recuperation, or therapy; or is in outpatient status; or is on the temporary disability retired list.

Benefits and Protections

During FMLA leave, the employer must maintain the employee's health coverage under any "group health plan" on the same terms as if the employee had continued to work. Upon return from FMLA leave, most employees must be restored to their original or equivalent positions with equivalent pay, benefits, and other employment terms.

Use of FMLA leave cannot result in the loss of any employment benefit that accrued prior to the start of an employee's leave.

Eligibility Requirements

Employees are eligible if they have worked for a covered employer for at least one year, for 1,250 hours over the previous 12 months, and if at least 50 employees are employed by the employer within 75 miles.

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 either prevents the employee from performing the functions of the employee's job, 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.

Use of Leave

An employee does not need to use this leave entitlement in one block. Leave can be taken intermittently or on a reduced leave schedule when medically necessary. Employees must make reasonable efforts to schedule leave for planned medical treatment so as not to unduly disrupt the employer's operations. Leave due to qualifying exigencies may also be taken on an intermittent basis.

Substitution of Paid Leave for Unpaid Leave

Employees may choose or employers may require use of accrued paid leave while taking FMLA leave. In order to use paid leave for FMLA leave, employees must comply with the employer's normal paid leave policies.

Employee Responsibilities

Employees must provide 30 days advance notice of the need to take FMLA leave when the need is foreseeable. When 30 days notice is not possible, the employee must provide notice as soon as practicable and generally must comply with an employer's normal call-in procedures.

Employees must provide sufficient information for the employer to determine if the leave may qualify for FMLA protection and the anticipated timing and duration of the leave. Sufficient information may include that the employee is unable to perform job functions, the family member is unable to perform daily activities, the need for hospitalization or continuing treatment by a health care provider, or circumstances supporting the need for military family leave. Employees also must inform the employer if the requested leave is for a reason for which FMLA leave was previously taken or certified. Employees also may be required to provide a certification and periodic recertification supporting the need for leave.

Employer Responsibilities

Covered employers must inform employees requesting leave whether they are eligible under FMLA. If they are, the notice must specify any additional information required as well as the employees' rights and responsibilities. If they are not eligible, the employer must provide a reason for the ineligibility.

Covered employers must inform employees if leave will be designated as FMLA-protected and the amount of leave counted against the employee's leave entitlement. If the employer determines that the leave is not FMLA-protected, the employer must notify the employee.

Unlawful Acts by Employers

FMLA makes it unlawful for any employer to:

- 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.

FMLA section 109 (29 U.S.C. § 2619) requires FMLA covered employers to post the text of this notice. Regulations 29 C.F.R. § 825.300(a) may require additional disclosures.



For additional information:
1-866-4US-WAGE (1-866-487-9243) TTY: 1-877-889-5627
WWW.WAGEHOUR.DOL.GOV



U.S. Wage and Hour Division

Wisconsin Family and Medical Leave Act

Section 103.10, Wisconsin Statutes, requires that all employers with 50 or more employees display a copy of this poster in the workplace. Employers with 25 or more employees are required to post their particular leave policy

Under state law all employers with 50 or more permanent employees must allow employees of either sex:

- Up to six (6) weeks leave in a calendar year for the birth or adoption of the employee's child, providing the leave begins within sixteen (16) weeks of the birth or placement of that child.
- Up to two (2) weeks of leave in a calendar year for the care of a child, spouse, domestic partner or parent with a serious health condition.
- Up to two (2) weeks leave in a calendar year for the employee's own serious health condition.

This law only applies to an employee who has worked for the employer more than 52 consecutive weeks and for at least 1000 hours during that 52-week period. The law also requires that employees be allowed to substitute paid or unpaid leave provided by the employer for Wisconsin Family and Medical Leave. Employers may have leave policies, which are more generous than leaves required by the law.

A complaint concerning a denial of rights under this law **must be filed within 30 days** after the violation occurs or the employee should have reasonably known that the violation occurred, whichever is later.

For answers to questions about the law, a complete copy of the law, or to make a complaint about a denial of rights under the law contact:

**STATE OF WISCONSIN
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