

Medical Leave in Wisconsin | Best Practice Resource Guide

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Many parishes/schools offer time off from work due to a medical event for themselves or a family member. Some illnesses require the individual to seek healing while balancing work with illness and other illnesses require extended focus on the physical ailment. The law requires employers to be alert to situations that may require time off due to a serious health condition.

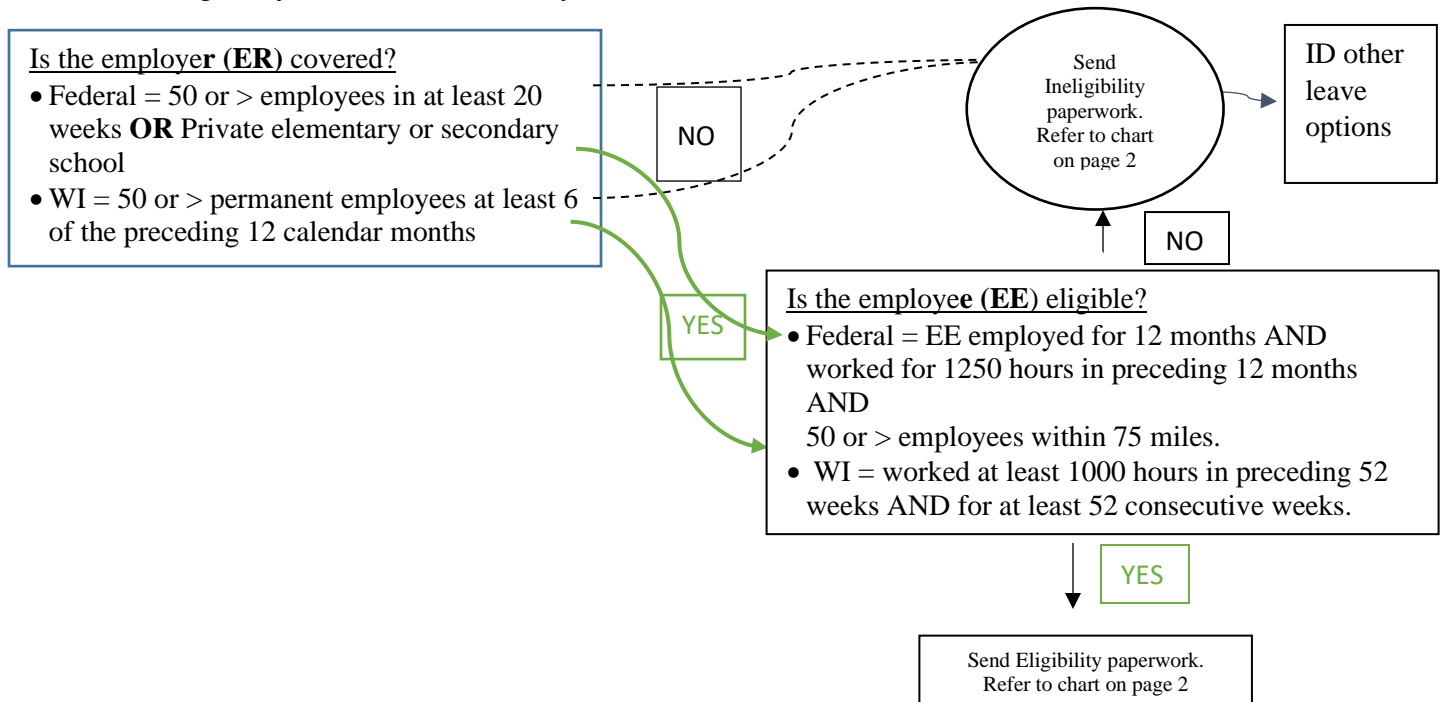
Question, “What does an employer do when becoming aware of such a situation?”

Answer, “Gather more information on the organization’s policies focusing on the employee handbook in the area of attendance, employee leave, sick time/vacation/PTO, personal leave (paid and unpaid), Family Medical Leave (Federal and Wisconsin).”

This Spark Note focuses on Wisconsin **and** Federal Medical Leave. Federal Family and Medical Leave Act (FMLA) and the Wisconsin Family Medical Leave Act (WFMLA) provide an employee the right to take job-protected leave with continued medical benefits when the employee needs time off from work to care for themselves or a family member who is seriously ill, to care for a newborn or newly adopted child, or to attend to the affairs of a family member who is called to active duty in the military.

These two laws are best approached with an eligibility overview:

Determine Eligibility within 5 business days from the time of awareness:



1. Types and Amount of Leave:

Federal Leave	Wisconsin Leave
12 weeks in a 12 month period for birth or placement of a child for adoption or foster care	Within a calendar year, 6 weeks of leave for the birth or placement of adoption of a child (which must begin within 16 weeks before or after the event.
12 weeks in a 12 month period for care for a spouse, child or parent (no parent-in-law) with a serious health condition, or for an employee's own serious health condition	2 weeks to care for seriously ill child, spouse, parent, parent-in-law, and for employee's own serious health condition.
26 weeks in 12 month period for care of service member	No military caregiver provision.

Note Federal Only: Spouses employed by the same employer are limited to a combined total of 12 weeks of leave for the birth or placement of a child, or for the care of a sick parent, in a 12-month period. The spousal limit is 26 weeks total in a single 12-month period when military caregiver leave is involved.

More details on the differences with Federal and Wisconsin Family Leave may be found:

http://doa.wi.gov/Documents/DPM/Document%20Library/Comparison%20of%20US%20and%20WI%20FMLA_7565.pdf

Once it has determined that an employee may be eligible for FMLA the following should be provided to the employee either in person if available or by mail.

2. Written Communication:

a. Paperwork and Forms

Communication	Federal Leave	Wisconsin Leave
Awareness	Formal Employee Request (in Addendum) or Employer Aware	Formal Employee Request (in Addendum), OR ERD-10110 Rev. 1/10 OR Employer Aware
Employer Initial Response to Ineligible Employee	Send EE specific FMLA Denial Letter in Addendum	Send EE specific FMLA Denial Letter in Addendum
Employer Initial Response to Eligible Employee: 1. Cover letter 2. Notice of Eligibility, Rights & Responsibilities 3. Medical Certification WITH Job Description	1. Cover letter specific to EE 2. WH-381 rev. 6/2020 3. WH-380 E Rev. 06/2020 or F Rev. 06/2020 (appropriately) (must do w/i 5 business days of awareness)	1. Cover letter specific to EE 2. WFMLA Notice of Eligibility, Rights and Responsibilities (DOA-15325) 3. Form ERD-10111 (R. 01/2013) (must do w/i 5 business days of awareness)
Medical Certification *	Completed by Provider WH-380 E or F appropriately (must turn in w/i 15 calendar days)	Completed by Provider Form ERD-10111 (R. 01/2013) (must turn in w/i 15 calendar days)
Designation Notice	Form WH-382 Rev. 06/20 (must do w/i 5 business days of receiving Medical Certification)	DOA-15324 WFMLA Designation Notice
Letter to EE at end of Leave	Send letter specific to EE at end of Leave in Addendum	Send letter specific to EE at end of Leave in Addendum
Fitness for Duty	Treating doctor provides	DOA-15336 Fitness for Duty Certification – Return to Work Release

*In the event the certification does not provide enough information to determine what is needed, send it back to the employee with an explanation of what is needed and request it go back to their doctor for the requested clarification. Sample cover letter in addendum to explain what information/clarification is needed. The employee has 7 calendar days to return the updated Certification of Serious Health Condition.

Forms

1. Federal forms are found at: <https://www.dol.gov/whd/fmla/forms.htm>
2. Wisconsin forms are found at: <https://dpm.wi.gov/Pages/FMLA.aspx>
3. Wisconsin Medical Certification may be found at:
<https://dwd.wisconsin.gov/dwd/forms/erd/pdf/erd-10111.pdf>

b. Federal Posting

- i. Employers with 50 or more employees must post FMLA Notice
- ii. Posting can be found at: <http://www.dol.gov/whd/regs/compliance/posters/fmlaen.pdf>

c. Wisconsin Posting

- i. Employers with 25 or more employees must post a notice describing the employer's leave policy.
Posting can be found at: <https://dwd.wisconsin.gov/dwd/publications/erd/pdf/erd-7983-p.pdf>

3. Policy: Sample attached (slightly modified from MRA).

a. Decide the relationship of paid leave with Federal and State of Wisconsin leave Because:

- i. an employee may substitute paid or unpaid leave under Wisconsin law.
- ii. an employer may require or an employee may elect to substitute paid leave for the otherwise unpaid leave under Federal law.

b. Decide the 12 month period:

- i. For Federal Medical Leave define the 12 month period, i.e., calendar, rolling forward, rolling backward, etc.
- ii. Wisconsin Medical Leave is defined by the calendar year.

c. Explain health insurance:

- i. An employee on the St. Raphael Health Plan will maintain coverage of health insurance for the 12 weeks while out on leave, paying their portion of the premiums. If the employee has not returned to work after the 12 weeks of leave, continuation of coverage must be offered to the employee via Insurance Continuation.
- ii. NOTE: If a location is not subject to FMLA, then continuation would begin the first of the month once all sick and vacation time is exhausted.

Employee Request for Family Medical Leave

Date:

To:

From:

I believe I meet the eligibility requirements of the Family and Medical Leave Act (FMLA) and I am therefore requesting a FMLA leave for the following reason:

The birth of my child and/or to bond with the newborn child within one year of birth

The placement of a child with me for adoption or foster care and/or to bond with the newly placed child within one year of placement

My own serious health condition*

To care for my spouse, parent, child who has a serious health condition

My spouse, child, or parent is a covered military member on covered active duty.

To care for a covered service member with a serious injury or illness. I am the service member's spouse, son, daughter, parent, next of kin.

I am requesting leave beginning on: _____ and anticipated end date: _____.

I am requesting my leave as continuous/intermittent/reduced work schedule.

FMLA Denial Letter

[Date]

[Name]

[Address]

[City, State, Zip]

Dear [Employee]:

We recently received and reviewed your paperwork related to your request for a leave of absence. Based on the information provided, it is determined that you are not eligible for leave under the [State and/or](#) Federal Family and Medical Leave Act (FMLA).

OR

[continue with the following]

Family and Medical Leave Act regulations require that an employee provide sufficient details related to an absence. Based on information you have provided as of this date, your absence does not qualify under the [State and/or](#) Federal Family and Medical Leave Act(s). Thus, your recent absences on _____ will be recorded as _____.

If you have any questions regarding this information, or if you believe you may be entitled to protection under the Family and Medical Leave Act, please contact me immediately. I may be reached at [\[telephone number\]](#).

Sincerely,

[Name]

[Title]

Employer Initial Cover Letter

Employer must send this letter within 5 business days of awareness

Date:

To:

From:

Dear *[Employee]*:

Enclosed is information relating to your request for a leave of absence under the Federal and Wisconsin Family and Medical Leave Act (FMLA). FMLA provide an employee specific rights, including job protection.

OR

Recently, you have incurred absences that may be protected by the Federal and Wisconsin Family and Medical Leave Act pending receipt of the enclosed medical certification form.

[continue with the following]

This letter is to notify you of your eligibility for FMLA leave, and your rights and responsibilities while on an FMLA approved leave of absence. Please see the enclosed forms:

- Employee Request for Family Medical Leave
- Family and Medical Leave Notice of Eligibility and Rights & Responsibilities,
- Medical Certification with Job Description, must be returned within 15 calendar days
- FMLA Designation Notice (employer will complete once Medical Certification is completed and returned)
- Fitness for Duty (return to *administration* at the end of the leave but prior to beginning work).

Please have the treating health care provider complete and return the enclosed Certification of Health Care Provider for (*Employee's/Family Member's*) Serious Health Condition. This Certification must be returned within 15 calendar days, or (*insert date*). The designation of your absences as FMLA qualifying will be dependent upon timely receipt of this Certification.

The laws listed above provide you with specific rights, including job protection. In addition, FMLA qualifying absences will not count against you and your attendance record.

If you can, medical appointments should be scheduled before or after your scheduled work, or in a manner that allows you to minimize work disruption. You may be required to submit verification of attendance at your scheduled appointment. You will be expected to return to work to complete your shift if appointment cannot be scheduled outside of your working hours.

If you have specific questions, please do not hesitate to contact me at *[telephone number]*.

Sincerely,

[Name]

[Title]

FMLA - Letter to Employee at End of FMLA

[Date]

[Name]

[Address]

[City, State, Zip]

Dear [Employee]:

Due to _____ you have been off of work and on a [Federal and/or Wisconsin](#) Family and Medical Leave Act (FMLA) leave since _____. The FMLA offers eligible employees time off from work for a period of up to 12 work weeks per [established 12 month time period](#). Your job status, as well as your benefits, have continued for the period of leave.

Our records show that your available FMLA leave time will end on _____. Therefore, you are expected to return to work on _____. If you are not able to return to work as indicated above, you must contact me to discuss the possibility of additional time off.

If your healthcare provider has not released you to return to work, a continuation of medical (Non-FMLA) leave of absence may be granted. In order to be eligible for medical (Non-FMLA) leave of absence, you must provide an updated physician statement explaining the reason and duration for your continued absence from work. Please provide this statement by [date](#). Upon receipt, a determination will be made as to whether an extended leave of absence can be made as a form of reasonable accommodation, in compliance with law.

Upon return from FMLA leave, you will be returned to your previous position, or an equivalent position. If additional leave time is granted beyond the FMLA, upon return to work you may be returned to your previous position or any other position, if available, at the [employer's](#) discretion. This new position may include different duties and responsibilities, pay and/or benefits.

If you have any questions or concerns, please contact me as soon as possible. I may be reached at [phone number](#). I look forward to your return to work.

Sincerely,

[Name]

[Title]

FMLA - Family and Medical Leave Policy (Wisconsin & Federal)

{References in italics need to be modified based on the organization's policy}

Statement of Policy

It is the policy of *{XYZ Company}* to comply with the requirements of the Wisconsin and Federal Family and Medical Leave Acts (FMLA). Generally, an eligible employee will be granted up to 12 weeks of FMLA leave during a 12-month period on a *{i.e. calendar year basis, rolling-forward basis, etc.}*. The leave may be *{paid, unpaid or a combination of paid and unpaid}*, depending on the reason for the leave and the benefits to which the employee may be eligible. This policy will be administered in compliance with the National Defense Authorization Acts of 2008 and Fiscal Year 2010 as they amend the Family and Medical Leave Act of 1993, and the regulations implementing the Family and Medical Leave Act of 1993 effective March 8, 2013.

State and federal laws differ in a number of areas, and the company will comply with both. When an absence qualifies as family leave under either state or federal law or both, the following rules apply:

- The employee is deemed to be exhausting his/her entitlement under both state and federal law concurrently; and
- The law most generous to the employee will apply.

The taking of leave under this policy will not be used against an employee in any employment decision, including the determination of promotions, discipline, compensation, etc.

Eligibility

To be eligible for leave under this policy, an employee must have been employed by the company for at least 12 months. In addition, in the 12 months immediately preceding the commencement of the leave, the employee must have worked at least:

- 1,000 hours to qualify under Wisconsin law; and
- 1,250 hours to qualify under federal law.

Amount of Leave Available

As stated above, an eligible employee is generally eligible for up to a total of 12 weeks of protected leave within a 12-month period on a *{i.e. calendar year basis, rolling-forward basis, etc.}* for any combination of reasons. It is possible that an employee could qualify for leave only based on hours worked under the Wisconsin law, which generally covers shorter periods of time than the 12 weeks provided by federal law. For Wisconsin leave purposes, the 12 month period during which leave must be taken is based on a calendar year. These situations will be discussed on a case-by-case basis with affected employees.

Types of Leave Covered

A. Birth or Placement for Adoption or Foster Care

Family leave will be available to eligible employees for the birth of a child or for placement of a child with the employee for purposes of adoption or foster care. Such leave must generally be completed within 12 months of the birth or placement (16 weeks to commence leave taken only under Wisconsin law).

B. Serious Health Condition of Employee

An eligible employee who experiences a serious health condition, as defined by the state and/or federal law, may take medical leave under this policy. A serious health condition will generally occur when the employee:

- Receives inpatient care in a hospital, hospice or nursing home;
- Suffers a period of incapacity of more than three consecutive full calendar days accompanied by continuing outpatient treatment/care by a health-care provider;
- Is pregnant, including severe morning sickness;
- Has a history of a chronic condition which may cause episodes of incapacity; or
- Has a permanent or long-term condition which requires continuing treatment by a health care provider.

Medical leave may be taken all at once or, when medically necessary, in smaller increments. The need for leave must be documented by the employee's treating health-care provider through the medical certification process.

An employee may be paid for all or part of a medical leave to the extent s/he is eligible for benefits such as short-term disability, if available and enrolled.

A fitness-for-duty statement will be required in order for an employee to return from a medical leave. Failure to provide the statement will result in a delay in the return to work.

C. Serious Health Condition of Immediate Family Member

An eligible employee may take family leave under this policy in order to care for a son, daughter, spouse or parent with a serious health condition (see above section for general definition). The Wisconsin FMLA also covers the serious health condition of an employee's parent-in-law. This leave may be taken all at once or, when medically necessary, in smaller increments. It will be necessary for the family member's treating health-care provider to document the need for leave through the medical certification process.

D. Qualifying Exigency for Military Family Leave

An eligible employee may take family leave under this policy while the employee's spouse, son, daughter, or parent (the "military member") is on covered active duty or call to active duty status for any qualifying exigency under federal law. This leave may be taken all at once or, in smaller increments. It will be necessary to submit a complete and sufficient certification for FMLA leave due to a qualifying exigency. Qualifying exigency leave may be taken by family members of regular armed service members, as well as family members of Reserve and National Guard members, provided the service member is deployed to a foreign country.

E. Military Caregiver Leave

An eligible employee may take up to an additional 14 weeks (not to exceed 26 weeks total) of family leave in a single 12-month period under this policy to care for a current member of the Armed Forces, including a member of the National Guard or Reserves, or, the National Guard or Reserves who is on the temporary disability retired list, who has a serious injury or illness incurred in the line of duty on active duty (or existed before the beginning of the member's active duty and was aggravated by active duty) for which he or she is undergoing medical treatment, recuperation, or therapy; or otherwise in outpatient status; or otherwise on the temporary disability retired list. A covered service member may also be a veteran who is undergoing medical treatment, recuperation, or therapy, for a serious injury or illness and who was a member of the Armed Forces (including a member of the National Guard or Reserves) at any time during the period of 5 years preceding the date on which the veteran undergoes that medical treatment, recuperation, or therapy.

This entitlement will be applied on a per-covered-service member, per-injury basis. The covered service member must be the eligible employee's spouse, son, daughter, or parent, or next of kin. It will be necessary for the covered service member's treating health-care provider, as defined by law, to document the need for leave through the medical certification process.

Notification of the Need for Family or Medical Leave

Generally, an application for leave must be completed for all leave taken under this policy. When the need for leave is foreseeable, the employee should provide notice at least 30 days in advance. When this is not possible, notice should be provided as soon as the employee learns of the need for leave. In cases of emergency, verbal notice should be given as soon as possible (by the employee's representative if the employee is incapacitated), and the application form should be completed as soon as practicable. Failure to provide adequate notice may, in the case of foreseeable leave, result in a delay of the leave. Leave application forms are provided by the administrator.

Calling in "sick" does not qualify as FMLA leave. An employee must provide sufficient information regarding the reason for an absence to know that protection may exist under this policy. Failure to provide this information as requested will result in the employee's forfeiting all rights under the policy. This means the absence may then be counted against the employee for purposes of discipline for attendance, etc.

Medical Certification of a Serious Health Condition

Generally, a medical certification will be required to verify that an employee or family member's illness meets the definition of serious health condition and to determine the nature and duration of the leave. In the case of a family illness, the provider must also verify that the employee is needed to care for the family member.

Periodic recertification to verify that a condition is ongoing may be required as provided by the law.

The appropriate form should be obtained from the administrator and should generally be returned within 15 days. Failure to provide this certification may result in delay or denial of the leave.

Additional Certifications

If there is reason to question the validity of a medical certification, an employee may be required to provide a second certification from a health-care provider selected and paid for by the employer. If the second opinion differs from the first, a third opinion may be required. The health-care provider for the third opinion must be mutually chosen by the employee and the employer and paid by the employer. The third opinion, by law, is binding on all parties.

Use of Paid and Unpaid Leave

Both Wisconsin and federal FMLA mandates that an employer provide unpaid leave to eligible employees. *{However, an employee or employer may elect to substitute a paid benefit for which the employee is eligible in order for the employee to receive pay during the leave. In some cases, the employer may require that benefits, such as vacation, be used before the employee may take unpaid time. When paid benefits are substituted for the otherwise unpaid time, the employee is using the benefits concurrently with FMLA leave, and those benefits will not be available to the employee later. When paid benefits are substituted, the employee may be required to satisfy any procedural requirements of the employer's paid leave policy (for example, advance notice to use paid leave, use of paid leave in established increments, etc.)}*.

In cases where substitution of a paid benefit is not possible, the employee will receive reduced compensation consistent with the number of hours the person actually works.

Intermittent or Reduced Schedule Leave

Intermittent and/or reduced schedule leave will be permitted when it is medically necessary and, *{in some cases, for birth or placement for adoption.}* In all cases, the total amount of leave taken in *{indicate the designated 12-month period}* should not exceed the 12 weeks defined earlier in this policy.

Intermittent and reduced schedule leave must be scheduled with minimal disruption to an employee's job. To the extent an employee has control, medical appointments and treatments related to a serious health condition should be scheduled outside of working hours or at such times that allow for a minimal amount of time away from work.

An employee may be moved to an alternative position, with equivalent pay and benefits, in order to better accommodate the need for intermittent or reduced schedule leave.

Benefit Continuation During Leave

Coverage under group health insurance will continue while on leave, but employees must continue to pay their portion of the premium. *{Other employment benefits, such as group life insurance, AD&D, etc., will also be continued}* during the leave, as long as the employee continues to pay any required contribution. Premiums will be paid through employer's normal payroll deduction method. If the leave is unpaid, the employee must pay for the employee portion of the premium for coverage during the period of leave. All premiums for coverage are due no later than the first day of the month to which coverage relates. Payment arrangements will be discussed with individuals upon their request for leave. If an employee fails to return to work following an approved leave for any reason other than the continuation of a serious health condition, the employer may recover its portion of the premium paid for health plan coverage during the leave.

Additional Certifications

Employer may request that an employee provide additional health care provider certifications from a health care provider chosen, and paid for, by employer. Employer may request that an employee recertify as the continuation of the serious health condition at various points in time, at the expense of the employee.

Employees with chronic health conditions resulting in intermittent need for leave must provide certification regarding the chronic condition and continuing need for intermittent leave and/or unforeseen leave once every six months.

Rights Upon Return From Leave

An employee who takes leave under this policy will be reinstated to the same job or an equivalent position upon completion of the leave. If an individual has exhausted all leave under this policy and is still unable to return to work, the situation will be reviewed on a case-by-case basis to determine what rights and protections might exist under other company policies.

The law provides that an employee has no greater rights upon a return from leave than the individual would have had if s/he had continued to work. Therefore, an employee may be affected by a layoff or other job change if the action would have occurred had the employee remained actively at work. In such cases, the official date of the layoff will mean the end of FMLA leave for the employee. If the employee is recalled, if FMLA leave is still required, it may then continue.

Worker's Compensation Absences

When an employee is absent due to a work-related illness or injury which meets the definition of a serious health condition, the absence will be counted against the employee's allotment of FMLA leave under federal law. In other words, the employee is using Federal FMLA leave concurrently with the worker's compensation absence.

Early Return from Leave

An employee who wishes to return to work earlier than originally anticipated should provide *{at least two days}* notice of such request. A fitness-for-duty certification may be required.