



# Family & Medical Leave

The federal **Family & Medical Leave Act (FMLA)** and **Wisconsin Family & Medical Leave Act (WFMLA)** are leave entitlements that enable an eligible employee to balance work and family responsibilities by taking job-protected unpaid leave for specified family and/or medical reasons. Employees can choose to be paid during an approved FMLA leave and use sick leave or other accrued paid leave.

## Amount of Leave

<p><b>FMLA is administered on the calendar year, January 1 to December 31.</b></p> <p><b>FMLA allows:</b></p> <p><b>12 workweeks of leave</b> (480 hours, prorated for part-time employees)</p> <p>Leave may be used continuously, intermittently, or on a reduced work schedule or any combination.</p> <p><b>26 workweeks during a single 12 month period</b></p> <p>To care for a covered service member with a serious injury or illness incurred in the line of duty.</p> <p>Leave may be used continuously, intermittently, or on a reduced work schedule or any combination as medically necessary. An employee is not entitled to take intermittent leave for the birth and care of a newborn child or for the placement with an employee of a child for adoption or foster care unless the employer agrees to the arrangement.</p>	<p><b>WFMLA is administered on the calendar year, January 1 to December 31.</b></p> <p><b>WFMLA allows:</b></p> <p><b>2 workweeks of leave</b> for employee’s serious health condition (80 hours, prorated for part-time employees)</p> <p><b>2 workweeks of leave to provide care</b> (80 hours, prorated for part-time employees) Please see “covered reasons” below.</p> <p><b>6 workweeks</b> for childbirth/adoption (240 hours, prorated for part-time employees)</p> <p>Leave may be used continuously, intermittently, or on a reduced work schedule or a combination</p>
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## Eligibility

<p><b>FMLA Criteria for Eligibility (825.110)</b></p> <p>Employee has:</p> <ul style="list-style-type: none"> <li>• Been employed by the State of Wisconsin for at least 12 months (need not be consecutive)</li> </ul> <p><b>AND</b></p> <ul style="list-style-type: none"> <li>• Worked for the State of Wisconsin for at least 1250 hours (excluding paid leave time used) in the 12 months immediately preceding the beginning of the requested leave</li> </ul> <p><b>AND</b></p> <ul style="list-style-type: none"> <li>• Not exhausted FMLA entitlement</li> </ul> <p><b>Notes:</b></p> <p>Time spent fulfilling an employee’s military service obligations is counted toward the employee’s 1250 hour and 12 month requirements.</p> <p>Employment periods prior to a break in service of seven years or more need not be counted.</p>	<p><b>WFMLA Criteria for Eligibility</b></p> <p>Employee has:</p> <ul style="list-style-type: none"> <li>• Been employed by the State of Wisconsin for more than 52 consecutive weeks</li> </ul> <p><b>AND</b></p> <ul style="list-style-type: none"> <li>• Worked for the State of Wisconsin for at least 1000 hours (including paid leave time used) during the preceding 52 week period</li> </ul> <p><b>AND</b></p> <ul style="list-style-type: none"> <li>• Not exhausted WFMLA entitlement</li> </ul>
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## Covered Reasons for Leave

<b>Reasons for Leave Covered by FMLA (825.112)</b>	<b>Reasons for leave covered by WFMLA</b>
<ul style="list-style-type: none"> <li>• Serious health condition makes the employee unable to perform functions of his or her job</li> <li>• To care for employee’s spouse (includes same-sex), son, daughter, or parent with a serious health condition</li> <li>• Birth of son or daughter; care for newborn child (leave must be used within 12 months of birth)</li> <li>• Placement with employee of son or daughter for adoption or foster care (leave must be used within 12 months of adoption or placement)</li> <li>• Any qualifying exigency arising out of the fact that the employee’s own spouse, son, daughter or parent is a covered service member on active duty, or has been notified of an impending call/order to active duty</li> <li>• To care for employee’s spouse, son, daughter, parent, or next of kin who is a covered service member with a serious injury or illness incurred in the line of duty</li> </ul>	<ul style="list-style-type: none"> <li>• Employee’s serious health condition (<i>2 weeks, 80 hours, prorated for part-time employees</i>)</li> <li>• To care for an employee’s spouse or domestic partner (includes same-sex), child, parent, spouse or domestic partner’s parent who has a serious health condition requiring the employee’s care (<i>2 weeks, 80 hours, prorated for part-time employees</i>)</li> <li>• Childbirth or adoption (<i>6 weeks, 240 hours, prorated for part-time employees</i>). Must commence within 16 weeks before or after the birth or adoption.</li> </ul>

## Serious Health Condition-Definition

<b>Defined by FMLA</b>	<b>Defined by WFMLA</b>
<ul style="list-style-type: none"> <li>• Illness, injury, impairment, or physical or mental condition that involves inpatient care or continuing treatment by a health care provider.</li> <li>• Inpatient care includes:               <ul style="list-style-type: none"> <li>○ An overnight stay in a hospital, hospice, or residential medical care facility</li> <li>○ Any period of incapacity or any subsequent treatment in connection with the overnight stay</li> </ul> </li> <li>• Continuing treatment by a health care provider involving:               <ul style="list-style-type: none"> <li>○ Incapacity or absence of more than 3 consecutive, full days from work, school, or other activities</li> <li>○ Chronic or long term condition incurable or so serious if not treated would result in incapacity of more than 3 days</li> <li>○ Prenatal care</li> </ul> </li> </ul>	<p>A disabling physical or mental illness, injury, impairment or condition involving inpatient care in a hospital, nursing home or hospice, or out-patient care that requires continuing treatment or supervision by a health care provider</p>

## Key Points

### Communication Timeline

- Employer has **5 business days** to respond to an employee when they become aware an employee needs an FMLA leave
- Employee has **up to 15 calendar days** to complete and return their medical certification form
- If certification forms are returned incomplete or with insufficient information, employer must notify the employee of the clarification needed and allow the employee **7 calendar days** to correct any deficiencies
- Employer must approve or deny WFMLA/FMLA leave request within **5 business days** of receiving completed medical certification form

### Clarification: Obtaining the information needed to designate leave under FMLA

- By giving the employee a letter to take to their treating specialist when medical certification is incomplete or insufficient. Employee has **7 calendar days** to correct any deficiencies.
- By contacting the treating specialist to understand handwriting on the medical certification or to understand the meaning of a response. No additional medical information may be requested.

**Authentication:** Providing a copy of the medical certification and asking for verification that information contained on the certification form was completed and/or authorized by the treating specialist who signed. The employee's permission is not required. No additional medical information may be requested.

**Under no circumstances may an employee's direct supervisor contact the employee's treating specialist.**

**Designation:** Employer is responsible for notifying employee within **5 business days** of receiving completed medical certification form when FMLA leave is designated and when FMLA leave cannot be designated. Note: An employer can designate FMLA without the employee's approval or submittal of medical certification. This can occur when the employer knows that an eligible employee is going to be out of work, and the employer has sufficient information to know that it is for an FMLA covered reason.

**Retroactive Designation:** Provided it does not cause harm or injury to the employee, with appropriate notice an employer may designate an earlier, qualifying leave as FMLA leave

**Leave without Pay (LWOP):** If some or all of the FMLA leave will be unpaid, the employee should complete a leave without pay request form. An employee may complete the form found at <https://hr.wisc.edu/benefits/leave/unpaid-leave/>.

**Medical Release to Return to Work:** Requiring receipt of a medical release, prior to the employee returning to work, is recommended. If required, the employee must be notified of this requirement in writing when FMLA leave is designated, and the employee's position description or a list of essential functions of the employee's position must be included.

### Recertification:

A. More than 30 days:

- Every six months in connection with an absence (even if medical certification indicates that the employee will need intermittent or reduced schedule leave for a longer period -- e.g., for a lifetime condition)
- If the medical certification indicates the minimum duration of the condition is more than 30 days, an employer must wait until that minimum duration expires before requesting a recertification, unless Section B applies.

B. Less than 30 days:

- Circumstances described by the previous certification have changed significantly (e.g., duration or frequency of absences, nature or severity of the illness, complications, etc.)
- Employer receives information that casts doubt upon the employee's stated reason for the absence or the continuing validity of the certification.
- Employee requests an extension of the leave

C. 30 days:

- No more often than every 30 days and only in conjunction with an absence, unless A or B apply.

## Areas of Overlap

### Comparison of FMLA & WFMLA

<https://dwd.wisconsin.gov/er/civilrights/fmla/>

Count WFMLA and FMLA leave concurrently when the reason for leave is covered under both acts.

**Reasonable Accommodation:** When an employee requests medical leave, consider whether reasonable accommodation can be offered as a (voluntary) alternative to FMLA. Medical documentation may indicate restrictions during intermittent or reduced schedule leave, or at the end of a continuous leave. Initiate the reasonable accommodation process to determine whether reasonable accommodation(s) can be made.

**Worker's Compensation (WC):** Employee or employer may choose to have employee's FMLA 12-week entitlement run concurrently with a WC absence when the injury meets criteria for a serious health condition.

**ICI:** During an FMLA leave for the employee's own serious health condition, ICI may replace a portion of an enrolled employee's wages. Contact Benefits Services for more information [benefits@ohr.wisc.edu](mailto:benefits@ohr.wisc.edu)

**Faculty/Academic Staff/Limited Medical Certification Policy:** An employee with approved FMLA leave is not required to provide additional medical certification for absences > 5 consecutive full working days. Intermittent leave under FMLA/WFMLA should be reported in number of actual hours absent from work and not in typical 4 or 8 hour increments.

**Paid Leave:** FMLA and WFMLA allow for unpaid leave. Employees may choose to use sick leave or other accrued paid leave while taking FMLA/WFMLA. UW-Madison does not have a policy requiring employees to use paid leave during an approved leave under FMLA/WFMLA if he or she wishes to take the leave unpaid.

**6 Month Unpaid Leave:** Count the 6 month leave without pay simultaneously with continuous leave and leave on a reduced schedule ([www.ohr.wisc.edu/polproced/CPPP/cppp\\_chapter16-03.pdf](http://www.ohr.wisc.edu/polproced/CPPP/cppp_chapter16-03.pdf))

## **Certification Forms**

U.S. Department of Labor Certification for Family & Medical Leave Form for Employee's Serious Health Condition

<https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/WH-380-E.pdf>

U.S. Department of Labor Certification for Family & Medical Leave Form for Family Member's Serious Health Condition

<https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/WH-380-F.pdf>

U.S. Department of Labor Certification for Serious Injury or Illness of a Current Servicemember for Military Caregiver Leave

<https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/WH-385.pdf>

U.S. Department of Labor Certification Military Family Leave for Qualifying Exigency

<https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/WH-384.pdf>

U.S. Department of Labor Certification for Serious Injury or Illness of a Veteran for Military Caregiver Leave

<https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/wh-385-V.pdf>

## **Resources**

United States Department of Labor – Family & Medical Leave Act of 1993

<https://www.dol.gov/general/topic/benefits-leave/fmla>

The US DOL: Employer's Guide to The FMLA

<https://www.dol.gov/whd/fmla/employerguide.pdf>

The US DOL: Employee's Guide to The FMLA

<https://www.dol.gov/whd/fmla/employeeeguide.pdf>

The Department of Workforce Development: WFMLA Information and Comparison of FMLA and WFMLA

<https://dwd.wisconsin.gov/er/civilrights/fmla/>

Wisconsin Human Resources Handbook, Chapter 724

[https://dpm.wi.gov/Hand%20Book%20Chapters/WHRH\\_Ch\\_724.pdf](https://dpm.wi.gov/Hand%20Book%20Chapters/WHRH_Ch_724.pdf)

UWS Human Resources & Workforce Diversity – Employee Benefits: FMLA & WFMLA

<https://www.wisconsin.edu/ohrwd/benefits/leave/fmla/>

UW-Madison Sick Leave Policy

<https://policy.wisc.edu/library/UW-5051>