

# Family and Medical Leave Acts

Rights and Responsibilities

# Information on HR Website

- [http://www4.uwm.edu/hr/toolkits/fmla\\_toolkit/index.cfm](http://www4.uwm.edu/hr/toolkits/fmla_toolkit/index.cfm)
- <http://www.uwsa.edu/hr/benefits/leave/fmla.htm>

# What are the Family and Medical Leave Acts?

- State law administered by the Wisconsin DWD's Equal Rights Division. Federal law administered by US Department of Labor's Wage and Hour Division.
- State law is different than the federal law.
- WFMLA and FMLA provide unpaid "job-protected" leave of absence.

# What are the Family and Medical Leave Acts?

- Laws provide maintenance of employer's share of group health benefits while employee is out on "job-protected" leave.
- Leave is unpaid under both laws, but accrued sick, vacation and personal holiday may be used.
- If eligible for both, FMLA and WFMLA run concurrently.

# Wisconsin Family and Medical Leave (WFMLA)

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- Enacted prior to the federal FMLA.
- Has different eligibility rules and regulations than federal law.
- Length of leave is reason specific.

# WFMLA Eligibility

- Employee needs to have been employed with the employer for more than 52 weeks.
- Employee needs to have logged 1,000 paid hours.
- Amount of leave available is specific to the reason for the leave.

# Reasons for leave and length of leave available under WFMLA

- Birth/adoption of a child = Six weeks
- Employee's own serious health condition = Two weeks
- Care of an eligible family member with a serious health condition = Two weeks

# **WFMLA: Birth/adoption of a child**

- Under WFMLA, leave must begin within 16 weeks of birth or date of adoption.
- Six weeks of leave is available for placement for purposes of adoption or as a precondition to adoption but not both.
- If incremental, all non-continuous increments of leave must begin within 16 weeks of birth/adoption.

# Who is an eligible family member for WFMLA purposes?

- Biological child, adopted child, stepchild, legal ward, foster child, under the age of 18 years.
- Adult child unable to care for self because of a serious health condition.
- More restrictive definition than found in UPG 10.01(2), “Immediate Family Member”.

# Who is an eligible family member for WFMLA purposes?

- Husband or wife.
- Biological parent, adoptive or foster parent, step-parent or legal guardian of the employee or the employee's spouse.
- In-laws qualify as an “eligible family member” under WFMLA.

# **WFMLA: Serious Health Condition**

- Inpatient care in a hospital, nursing home or hospice.
- Outpatient care for a serious medical condition that requires continuing treatment or supervision by a health care provider.
- Health Care Provider certification may be required to verify the need for leave.

# **WFMLA: Notice of the need for leave**

- It is the employee's responsibility to provide advance notice in a "reasonable and practicable manner" for purposes of birth or adoption.
- For planned medical treatment of employee or family member, employee is required to provide advance notice and to make a reasonable effort to schedule treatment so that it does not unduly disrupt the employer's schedule.

# **WFMLA: Failure to provide adequate notice**

- Leave may be denied if the employee fails to provide the employer with sufficient notice for the need for leave.

# WFMLA and Intermittent Leave

- In order to be eligible for intermittent leave under WFMLA, the employee needs to propose a schedule that is sufficiently definite so that the employer may find replacement employees, if needed.

# **Federal Family and Medical Leave Act (FMLA)**

# Federal Family and Medical Leave Act (FMLA)

- Permits 12 weeks of unpaid job-protected leave for ALL reasons an employee may be eligible.
- Eligible unclassified employees out of the workplace for a qualifying reason are permitted 12 weeks per **fiscal** year.
- Eligible classified employees permitted 12 weeks per **calendar** year.

# FMLA Jan. 09 Amendments

Recent change for 2009:

- Family members of covered service members will be able to take up to 26 weeks in a 12 month period to care for an ill or injured service member who is undergoing treatment, recuperation or therapy, or is otherwise in outpatient status and was injured in the line of duty on active duty.

# FMLA Jan. 09 Amendments

Recent change for 2009:

- 12 weeks of FMLA leave for a “qualifying exigency” arising out of the fact that a spouse, child, or parent of the employee is on active duty or has been notified of an impending call or order to active duty.
- For Reserves and Guards only
- Intended to assist family members with short-notice deployment issues.

# FMLA Eligibility

- Employee needs to have worked at least 12 months (does not need to be consecutive); AND
- Needs to have worked 1,250 hours in the 12-month period immediately preceding the time the leave will begin
- 1,250 means **actual hours worked** and does not include any paid time off.

# FMLA: Notice Required

- 30 days notice of the need for leave if the reason for leave is foreseeable.
- Sufficient information near the beginning of an unplanned absence for the employer to designate the leave as FMLA.
- Employer may require compliance with all other usual and customary notice and procedural requirements for requesting a leave.

# FMLA and Length of Leave

- The federal law provides a combined 12 weeks of unpaid, job-protected leave per fiscal or calendar year for ANY and ALL of FMLA-qualifying leave.

# **FMLA: Birth/Adoption or Foster Placement**

- For birth of a child and to care for the newborn.
- For adoption and/or placement for the purposes of adoption.
- For placement for purposes of foster care.
- Last increment of leave must conclude within one year of event.

# **FMLA: Serious Health Condition**

- Employee can take leave to provide care for an eligible family member; or,
- An employee can take leave because his or her own serious health condition makes the employee incapable of doing the functions of the job.

# Who is an eligible family member under FMLA?

- Natural born child under the age of 18;
- Adopted child, foster-care child, or child where the employee stands *in loco parentis*\*, under the age of 18;

*\*A biological or legal relationship is not necessary; but the employee must be responsible for the daily care of child.*

# Who is an eligible family member under FMLA?

- Adult-aged child who is incapable of self-care in accordance with the definition as outlined by the American with Disabilities Act.

*ADA-qualifying means “substantially-limited” in one or more “major life activities.”*

# Who is an eligible family member under FMLA?

- A husband or wife;
- A parent of the employee, or a person who stood in place of the employee's parent because the parent was not available; but
- Unlike WFMLA, the term "in-law" is not included.

# **Eligible Family Member under FMLA is not the same as UPG**

- FMLA has a more restrictive definition than found in UPG 10.01(2) “Immediate Family Member”.
- UPG 10.04 permits use of sick leave for care of immediate family member who may not be covered by either state or federal FMLA.

# **FMLA: Serious Health Condition**

- Illness, injury or condition involving inpatient care or continuing treatment
  - Incapacity for 3 consecutive days and
  - Treatment twice in 30 days, or
  - In-person visit to health care provider w/in 7 days of incapacity, plus continuing treatment
  - Chronic condition which requires visits twice per year

# FMLA: Medical Certification

- Health Care Provider certification is typically required for a serious health condition of employee or serious health condition of employee's family member.
- Employee has 15 days from date of employer's request for certification for leave to provide it.

# FMLA: Certification

- Name of medical provider
- Date condition commenced and probable duration
- Description of appropriate medical facts, sufficient to support the need for the leave (symptoms, diagnosis, whether medication prescribed, etc.)

# FMLA: Certification

- Information to establish that employee is unable to perform the functions of his or her position; and,
- If for a family member, information to establish that family member is in need of care; and the likely duration and frequency of episodes of the needed leave.

# FMLA: Certification

- <http://www.uwsa.edu/hr/benefits/leave/uws82.pdf> or
- <http://www.uwsa.edu/hr/benefits/leave/uws83.pdf>

# FMLA: Certification

- If intermittent or reduced schedule leave is being requested, information sufficient to establish the medical necessity for the leave and the dates and duration of treatment.

# FMLA: Recertification

- When the medical provider specifies a duration, the employer must wait until duration expires to ask for recertification.
- Unless the frequency and duration of the absences change.
- For a lifetime condition, employer may ask for recertification every 6 months.

# Certification and the Health Care Provider

- Licensed physician, chiropractor (limited to spinal manipulations), clinical psychiatrist, optometrist, podiatrist, dentist, nurse practitioner, clinical social worker, Christian Science practitioner or

# Certification and the Health Care Provider

- Any health care provider from whom the employer's health care plan will accept certification of a serious health condition to substantiate a claim for benefits;

# Certification and the Health Care Provider

- Nurse practitioner, nurse mid-wife, and a clinical social worker licensed and authorized to practice in Wisconsin (e.g. he or she is authorized to diagnose and treat a physical or mental condition without the supervision of a doctor or another health care provider); and

# Certification and the Health Care Provider

- A health care provider who practices in another country, who is authorized to practice in accordance with the law of that country, and who is performing within the scope of his or her practice.
- Christian Science practitioners, listed with the First Church of Christ, Scientist in Boston, MA.

# FMLA and Intermittent Leave

- When it is medically necessary for employee's own serious health condition; and
- When it is medically necessary for employee to care for an eligible family member; but
- May be available for birth/adoption or foster care **with Employer's agreement only.**

# Substitution of Paid Leave

- In order to receive pay during WFMLA/FMLA leave, employee must use accrued annual leave, such as sick leave or vacation pay.
- **New for 2009: Employer may force substitution of accrued leave balances during period of FMLA leave.**

# Continuation of Benefits

- Employer's share of group health premiums are paid during the duration of leave under FMLA.
- Employee must pay his/her portion of the group health premium.
- Other benefits that are paid solely by the employee continue to be paid by the employee (ICI, life insurance, dental coverage).

# Continuation of Benefits

- Continuous Service for seniority purposes shall not be adjusted for periods of approved absences, including unpaid WFMLA/FMLA leave.

# Fitness for Duty

- If an employee has been out on continuous leave, employer may require that the employee have the health care provider complete a “Fitness-For-Duty” form indicating that it is safe for the employee to return to regular duties.
- [http://www4.uwm.edu/hr/forms/benefits/leave/upload/fitness\\_for\\_duty.pdf](http://www4.uwm.edu/hr/forms/benefits/leave/upload/fitness_for_duty.pdf)
- Not necessary if employee is taking intermittent leave.

# FORMS

All forms are available on the Department of Human Resources web site:

[http://www4.uwm.edu/hr/toolkits/fmla\\_toolkit/index.cfm](http://www4.uwm.edu/hr/toolkits/fmla_toolkit/index.cfm)

# Additional Resources

- U.S. Department of Labor's website on FMLA: <http://www.dol.gov/esa/whd/fmla/>
- Wisconsin's Department of Workforce Development's website on FMLA: [http://www.dwd.state.wi.us/er/family\\_and\\_medical\\_leave/default.htm](http://www.dwd.state.wi.us/er/family_and_medical_leave/default.htm)

