State of Wisconsin

DEPARTMENT OF EMPLOYMENT RELATIONS

- COMPENSATION & LABOR RELATIONS BULLETIN -

Date: August 20, 1999 **Locator No:** CLR/POL-52	**Subject:** WI Human Resources Handbook Chapter 724: Family and Medical Leave

Attached is a revised Chapter 724 of the Wisconsin Human Resources Handbook: Administration, Classification & Compensation. It replaces the existing Wisconsin Personnel Manual Chapter 724 dated March 1, 1990.

This Chapter has been revised to include information from both the state and federal family and medical leave laws. The provisions of each law are provided in separate paragraphs under each of the subject areas. The information in this Chapter applies to **both represented and nonrepresented** employes.

The information provided in this Chapter should *not* serve as the sole family and medical leave resource. A listing of leave-related statutes and administrative rules has been included in the Chapter. These provisions, as well as the applicable collective bargaining agreement, should also be referred to for leave-related information. Cites for the corresponding federal regulation, statute, administrative rule, or court case have also been provided to facilitate further research.

Questions regarding information contained in this Chapter or interpretation of the family and medical leave laws should be directed to the appropriate DER staff:

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Attachment

Wisconsin Human Resources Handbook

Chapter 724

Family and Medical Leave

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Sec. 724.010 Introduction.

The following handbook chapter was developed to provide information about family and medical leave provisions under the Wisconsin Family and Medical Leave Act (WFMLA) and the federal Family and Medical Leave Act of 1993 (FMLA). Application of these laws must be coordinated with leave benefits provided under administrative rule or the applicable collective bargaining agreement. The provision of the WFMLA, FMLA, administrative rule, or applicable collective bargaining agreement which provides the most generous benefit to the employe must be applied.

Employes may not use benefits provided under WFMLA or FMLA in addition to benefits provided under the administrative rules or applicable collective bargaining agreement. Leave qualifying under both laws (WFMLA and FMLA) will be counted against the employe's entitlement under both laws, as well as against the employe's entitlement under administrative rules or the applicable collective bargaining agreement. *All qualifying leave runs concurrently.*

The information provided in this chapter should *not* serve as the sole family and medical leave resource. Refer to § 724.030, of this chapter, for a listing of leave-related statutory and rule references. These provisions, as well as the applicable collective bargaining agreement, should also be referenced for applicable leave-related information. Cites for the corresponding federal regulation, statute, administrative rule, or court case have been provided in brackets to facilitate further research. As laws may change, always verify chapter information with the corresponding regulations, statutes, etc., to confirm it is still current prior to making FMLA decisions.

An index has been provided as **Attachment 10** for ease in reference location.

Sec. 724.020 Applicability of this Chapter.

The WFMLA and the FMLA leave provisions as explained in this handbook chapter are only applicable to individuals who meet the definition of "employe" under § 724.040(4), of this chapter.

This includes represented *and* nonrepresented employes in the classified and unclassified civil service who are employed on a full-time, part-time, seasonal, or sessional basis in permanent, project, or limited term positions.

Individuals who do *not* meet the definition of "employe" may be covered by WFMLA and FMLA provisions but the Office of State Employment Relations does not have the responsibility or authority to oversee the administration of their leave benefits. Family/medical leave provisions affecting these employes are, therefore, not included in this chapter.

Sec. 724.030 Statutory and Rule Authority.

(1) *Wisconsin Family and Medical Leave Law*

(a) Section 103.10, Wis. Stats., sets forth the provisions for granting family/medical leaves of absence to employes of the State of Wisconsin.

(b) Chapter ILHR 225, Wis. Adm. Code, Rules of the Department of Workforce Development, sets forth the rules to be followed in the administration of the family/medical leave benefits under § 103.10, Wis. Stats.

NOTE: A copy of § 103.10, Wis. Stats., Wisconsin Family and Medical Leave Law, and Chapter ILHR 225, Wis. Adm. Code, Family and Medical Leave, may be obtained by calling the Department of Workforce Development, Equal Rights Division, at 608/266-6860.

(2) *Federal Family and Medical Leave Act of 1993*

(a) Public Law 103-3, Family and Medical Leave Act of 1993, sets forth the provisions for granting family/medical leaves of absence to employes of the State of Wisconsin.

(b) Title 29, Part 825 of the Code of Federal Regulations, sets forth the policies to be followed in the administration of the family leave benefits under P.L. 103-3.

NOTE: Bulletin OS-63/CC-POL-7/CB-76, dated July 25, 1994, and addenda dated October 6, 1994, and September 8, 1995, contain implementation guidelines for the federal Family and Medical Leave Act of 1993. Please refer to these bulletins for information regarding establishing agency FMLA policies.

NOTE: A copy of 29 CFR Part 825, Family and Medical Leave Act of 1993, may be obtained by calling the Madison office of the U.S. Department of Labor, Wage and Hour Division, at 608/264-5221.

(3) *Statutes/Administrative Code*

(a) Section 230.35, Wis. Stats., sets forth the provisions for granting annual leave, holiday, and sick leave benefits to nonrepresented classified and eligible unclassified employes.

(b) Chapter ER 18, Wis. Adm. Code, Rules of the Director, Office of State Employment Relations, sets forth the rules to be followed in the administration of annual leave, holidays, and sick leave benefits under § 230.35, Wis. Stats.

(c) Chapter ER-MRS 16, Wis. Adm. Code, Rules of the Office of State Employment Relations, Division of Merit Recruitment and Selection, sets forth the rules regarding restoration rights of nonrepresented employes upon return from approved leave without pay.

(4) *Other*

(a) Chapter 716 of the Wisconsin Human Resources Handbook provides more specific information regarding the annual leave and holiday policies applicable to employes covered by § 230.35, Wis. Stats.

(b) Collective bargaining agreements contain provisions regarding the accrual and use of annual leave, holidays, and sick leave by represented employes and rights of represented employes upon return from approved leave without pay.

Sec. 724.040 Definitions.

Note: The "Definitions" section has been shaded in order that it may be easily located for reference purposes.

For purposes of this chapter, the following definitions apply:

(1) ***"Child"*** means:

(a) ***WFMLA*** [§ 103.10(1)(a), Wis. Stats.]

A natural, adopted or foster child, a stepchild or a legal ward to whom any of the following applies:

1. The individual is less than 18 years of age;

2. The individual is 18 years of age or older and cannot care for himself or herself because of a serious health condition.

(b) ***FMLA*** [§ 825.113(c)]

A biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing *in loco parentis*, who is either under age 18, or age 18 or older and incapable of self-care because of a mental or physical disability.

(2) ***"Christian Science practitioner"*** means:

(a) ***WFMLA*** [§ 103.10(1)(am), Wis. Stats.]

A Christian Science practitioner residing in this State who is listed as a practitioner in the Christian Science journal.

(b) ***FMLA*** [§ 825.118(b)(3)]

Christian Science practitioners listed with the First Church of Christ, Scientist in Boston, Massachusetts.

(3) ***"Continuing treatment by a health care provider"*** means:

(a) ***WFMLA*** [MPI WI Machining Div. v. DILHR and Schimmel, 159 Wis. 2d 358, 464 N.W.2d 79 (Ct. App. 1990)]

Direct, continuous and first-hand contact by a health care provider subsequent to the initial outpatient contact.

(b) ***FMLA*** [§ 825.114(a)(2)]

Includes any one or more of the following:

1. A period of incapacity (i.e., inability to work, attend school or perform other regular daily activities due to the serious health condition, treatment therefor, or recovery therefrom) of more than three consecutive calendar days, and any subsequent treatment or period of incapacity relating to the same condition, that also involves:

   a. Treatment two or more times by a health care provider, by a nurse or physician's assistant under direct supervision of a health care provider, or by a provider of health care services (e.g., physical therapist) under order of, or on referral by, a health care provider; or

   b. Treatment by a health care provider on at least one occasion which results in a regimen of continuing treatment under the supervision of the health care provider. A regimen of continuing treatment includes, for example, a course of prescription medication or therapy requiring special equipment.

2. Any period of incapacity due to pregnancy, or for prenatal care.

3. Any period of incapacity or treatment for such incapacity due to a chronic serious health condition. A chronic serious health condition is one which:

   a. Requires periodic visits for treatment by a health care provider, or by a nurse or physician's assistant under direct supervision of a health care provider;

   b. Continues over an extended period of time (including recurring episodes of a single underlying condition); and

   c. May cause episodic rather than a continuing period of incapacity (e.g., asthma, diabetes, epilepsy, etc.)

4. A period of incapacity which is permanent or long-term due to a condition for which treatment may not be effective. The employe or family member must be under the continuing supervision of, but need not be receiving active treatment by, a health care provider (e.g., Alzheimer's, a severe stroke, or the terminal stages of a disease).

5. Any period of absence to receive multiple treatments (including any period of recovery therefrom) by a health care provider or by a provider of health care services under orders of, or on referral by, a health care provider, either for restorative surgery after an accident or other injury, or for a condition that would likely result in a period of incapacity of more than three consecutive calendar days in the absence of medical intervention or treatment, such as cancer (chemotherapy, radiation, etc.), severe arthritis (physical therapy), kidney disease (dialysis).

(4) ***"Employe"*** means:

WFMLA & FMLA [§ ER 18.01(2), Wis. Adm. Code]

Any person who receives remuneration for services rendered to the State under an employer-employe relationship in the classified or unclassified civil service, except:

(a) Elected officials;
(b) Unclassified staff of the University of Wisconsin system not identified under § 20.923(4) or (4m), Wis. Stats.;
(c) Unclassified staff of the legislature not identified under § 20.923(4), Wis. Stats.;
(d) Unclassified staff of a legislative service agency under subch. IV of Chapter 13, Wis. Stats.;
(e) One stenographer employed by each elective constitutional officer under § 230.08(2)(g), Wis. Stats.; and
(f) Staff of the state court system.

(5) ***"Employment status"*** means:

WFMLA & FMLA [§ ER 18.01(3), Wis. Adm. Code]

The status of a person in classified civil service and those unclassified employes identified under s. ER 18.01(2), Wis. Adm. Code, or employes covered by a collective bargaining agreement, while in pay status or on:

(a) Approved leave of absence without pay;
(b) Military leave;
(c) Leave to serve in the unclassified service;
(d) Leave of absence due to injury or illness arising out of state employment and covered by workers' compensation under Chapter 102, Wis. Stats., or § 230.36, Wis. Stats.;
(e) Temporary layoff; or
(f) Layoff and subsequent reemployment within three years or as specified in the applicable collective bargaining agreement.

(6) ***"Equivalent position"*** means:

(a) ***WFMLA*** [§ 103.10(8)(a)2., Wis. Stats.]

A position having equivalent compensation, benefits, working shift, hours of employment, and other terms and conditions of employment.

(b) ***FMLA*** [§ 825.215]

A position that is virtually identical to the employe's former position in terms of pay, benefits, and working conditions, including privileges, perquisites, and status. It involves the same or substantially similar duties and responsibilities, which entail substantially equivalent skill, effort, responsibility, and authority.

(7) ***"Family leave"*** means:

(a) ***WFMLA*** [§ 103.10(3)(b), Wis. Stats.]

Absence from employment due to the birth of the employe's natural child, the placement of a child with the employe for adoption or as a precondition to adoption under § 48.90(2), Wis. Stats., but not both, or to care for a family member who has a serious health condition.

(b) ***FMLA*** [§ 825.112(a)]

Absence from employment due to the birth of the employe's natural child, the placement of a child with the employe for adoption or foster care, to care for a family member who has a serious health condition, or due to the employe's own serious health condition which makes the employe unable to perform his or her employment duties.

(8) ***"Family member"*** means:

WFMLA & FMLA

A spouse, parent, or child. Individual definitions of "spouse," "parent," and "child" are provided under (17), (14), and (1), respectively, of this section. (**Note** that the definition of *"family member"* is more restrictive than that of "immediate family" found in collective bargaining agreements and in § ER 18.01(4), Wis. Adm. Code.)

(9) ***"Health care providers"*** means:

(a) ***WFMLA*** [§ 103.10(1)(e), Wis. Stats.]

A person described under § 146.81(1), Wis. Stats. Section 146.81(1), Wis. Stats., includes the following:

1. Nurses licensed under ch. 441, Wis. Stats.;
2. Chiropractors licensed under ch. 446, Wis. Stats.;
3. Dentists licensed under ch. 447, Wis. Stats.;
4. Physicians, podiatrists or physical therapists licensed under ch. 448, Wis. Stats.;
5. Occupational therapists, occupational therapy assistants, physician assistants or respiratory care practitioners certified under ch. 448, Wis. Stats.;
6. Dietitians certified under subch. IV of ch. 448, Wis. Stats. (only applies through June 30, 1999);
7. Optometrists licensed under ch. 449, Wis. Stats.;
8. Pharmacists licensed under ch. 450, Wis. Stats.;
9. Acupuncturists certified under ch. 451, Wis. Stats.
10. Psychologists licensed under ch. 455, Wis. Stats.;
11. Social workers, marriage and family therapists or professional counselors certified under ch. 457, Wis. Stats.;
12. Speech-language pathologists or audiologists licensed under subch. II of ch. 459, Wis. Stats., or speech and language pathologists licensed by the Department of Public Instruction;
13. A partnership of any providers specified under 1. to 12., above;
14. A corporation or limited liability company of any providers specified under 1. to 12., above;
15. An operational cooperative sickness care plan organized under §§ 185.981 to 185.985, Wis. Stats., that directly provides services through salaried employes in its own facility;
16. Hospices licensed under subch. IV of ch. 50, Wis. Stats.
17. Inpatient health care facilities, as defined in § 50.135(1), Wis. Stats.;
18. Community-based residential facilities, as defined in § 50.01(1g), Wis. Stats.
19. Rural medical centers, as defined in § 50.50(11), Wis. Stats.

(b) ***FMLA*** [§ 825.118]

1. Doctors of medicine or osteopathy licensed to practice medicine or surgery in Wisconsin;
2. Podiatrists, dentists, clinical psychologists, optometrists, and chiropractors (limited to manual manipulation of the spine for purposes defined in the FMLA) licensed to practice in Wisconsin and performing within the scope of their practice as defined under State law;
3. Nurse practitioners, nurse-midwives, and clinical social workers who are authorized to practice in Wisconsin and who are performing within the scope of their practice as defined under State law;
4. Christian Science practitioners listed with the First Church of Christ, Scientist in Boston, Mass.;
5. Any health care provider from whom the employer or the employer's group health plan will accept certification of the existence of a serious health condition to substantiate a claim for benefits; and
6. A health care provider listed above who practices in a country other than the United States, 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 as defined under such law.

(10) ***"In loco parentis"*** means:

(a) ***WFMLA***

No definition. This term is not applicable to WFMLA.

(b) ***FMLA*** [§ 825.113(c)(3)]

Persons with day-to-day responsibilities to care for and financially support a child, or in the case of an employe, who had such responsibility for the employe when the employe was a child. A biological or legal relationship is not necessary.

(11) ***"Incapable of self-care"*** means:

(a) ***WFMLA***

No definition. This term is not applicable to WFMLA.

(b) ***FMLA*** [§ 825.113(c)(1)]

The individual requires active assistance or supervision to provide daily self-care in three or more of the activities of daily living (ADLs) or instrumental activities of daily living (IADLs). Activities of daily living include adaptive activities such as caring appropriately for one's grooming and hygiene, bathing, dressing and eating. Instrumental activities of daily living include cooking, cleaning, shopping, taking public transportation, paying bills, maintaining a residence, using telephones and directories, using a post office, etc.

(12) ***"Intermittent leave"*** means:

(a) ***WFMLA*** [§ 103.10(3)(d), Wis. Stats., § ILHR 225.02(1)]

Partial absence from employment; leave taken in non-continuous increments.

(b) ***FMLA*** [§ 825.203(a)]

Leave taken in separate blocks of time due to a single qualifying reason or on a reduced leave schedule.

(13) ***"Medical leave"*** means:

(a) ***WFMLA*** [§ 103.10(4)(a), Wis. Stats.]

Absence from employment due to a serious personal health condition which makes the employe unable to perform his or her employment duties.

(b) ***FMLA***

Does not distinguish from *"family leave"* (see (7), above).

(14) ***"Parent"*** means:

(a) ***WFMLA*** [§ 103.10(1)(f), Wis. Stats.]

A natural parent, foster parent, adoptive parent, stepparent, or legal guardian of an employe or of an employe's spouse.

(b) ***FMLA*** [§ 825.113(b)]

Biological parent or an individual who stands or stood *in loco parentis* to an employe when the employe was a child. This term does ***not*** include parents "in-law."

(15) ***"Reduced leave schedule"*** means:

(a) ***WFMLA***

No definition

(b) ***FMLA*** [§ 825.203(a)]

A leave schedule that reduces an employe's usual number of working hours per workweek, or hours per workday. A reduced leave schedule is a change in the employes' schedule for a period of time, normally from full-time to part-time.

(16) ***"Serious health condition"*** means:

(a) ***WFMLA*** [§ 103.10(1)(g), Wis. Stats.]

A disabling physical or mental illness, injury, impairment or condition involving any of the following:

1. Inpatient care in a hospital, as defined in § 50.33(2), Wis. Stats., nursing home, as defined in § 50.01(3), Wis. Stats., or hospice.

2. Outpatient care that requires continuing treatment or supervision by a health care provider.

(b) ***FMLA*** [§ 825.114(a)-(e)]

An illness, injury, impairment, or physical or mental condition that involves:

1. Inpatient care (i.e., an overnight stay) in a hospital, hospice, or residential medical care facility, including any period of incapacity (defined to mean inability to work, attend school or perform other regular daily activities due to the serious health condition, treatment therefor, or recovery therefrom), or any subsequent treatment in connection with such inpatient care; or

2. Continuing treatment by a health care provider.

3. Treatment for purposes of 1. and 2., above, includes, but is not limited to, examination to determine if a serious heath condition exists and evaluations of the condition. Treatment does not include routine physical exams, eye exams, or dental exams.

4. Conditions for which cosmetic treatments are administered (e.g., most treatments for acne or plastic surgery) are not serious health conditions unless inpatient hospital care is required or unless complications develop.

5. Substance abuse may be a serious health condition if the conditions in 1. through 3., above, are met. Leave may only be taken for treatment for substance abuse and not because of the employe's use of the substance.

6. Absences attributable to pregnancy or to a chronic serious health condition qualify for FMLA leave even though the employe or family member does not receive treatment from a health care provider during the absence, and even if the absence does not last more than three days.

(17) ***"Spouse"*** means:

(a) ***WFMLA*** [§ 103.10(1)(h), Wis. Stats.]

An employe's legal husband or wife.

(b) ***FMLA*** [§ 825.113(a)]

A husband or wife as defined or recognized under Wisconsin law for purposes of marriage.

(18) ***"12-month period"*** means:

(a) ***WFMLA*** [§ ILHR 225.01(m), Wis. Adm. Code]

A calendar year commencing immediately after midnight on January 1 and ending at midnight on December 31 each year.

(b) ***FMLA*** [§ 825.200(b)(1)]

The calendar year.

(19) ***"Week"*** means:

(a) ***WFMLA*** [§ ILHR 225.02(2), Wis. Adm. Code]

Five days of leave which would otherwise be workdays for the requesting employe.

1. For part-time employes, week normally means the employe's budgeted percentage of full-time equivalency (FTE) times 40 hours.

2. For seasonal, sessional, and school year employes, week means the projected average number of hours the employe is scheduled to work each calendar week of the current period of appointment.

(b) ***FMLA*** [§ 825.205]

The employe's normally scheduled workweek.

Sec. 724.050 Effective Date.

(1) ***WFMLA***

(a) *Nonrepresented Employes:* Leave benefit provisions were applicable to eligible nonrepresented employes as of April 26, 1988.

(b) *Represented Employes:* Leave benefit provisions were applicable to eligible represented employes on July 1, 1989, the date upon which the collective bargaining agreements were extended.

(2) ***FMLA***

(a) *Nonrepresented Employes:* Leave benefit provisions were applicable to eligible nonrepresented employes as of August 5, 1993.

(b) *Represented Employes:* For represented state employes for whom a collective bargaining agreement was in effect on August 5, 1993 (including an extension of a previous agreement), leave benefit provisions became effective when the collective bargaining agreement or contract extension terminated, or February 5, 1994, whichever was sooner.

Sec. 724.060 Eligibility Requirements.

(1) *Eligibility:*

(a) ***WFMLA*** [§ 103.10(2)(c), Wis. Stats.]

Employes are eligible for leave provided the employe:

1. Has been employed by the State for more than 52 consecutive weeks; ***and***

2. Has worked for the State for at least 1,000 hours (*including* paid leave) during the preceding 52 week period.

(b) ***FMLA*** [§ 825.110]

Employes are eligible for leave provided the employe:

1. Has been employed by the State for at least 12 months (which need not be 12 consecutive months); ***and***

2. Has worked for the State at least 1,250 hours (***not*** *including* paid leave) during the 12 months immediately preceding the beginning of the requested leave; ***and***

3. Is employed at a worksite where 50 or more employes, employed with any State agency, are employed within 75 miles of that worksite.

Determinations of whether an employe is eligible for leave must be made as of the date leave commences. The employe must be informed of his/her eligibility within two business days of when the Employer makes the eligibility determination. *If the agency fails to advise the employe whether the employe is eligible prior to the date the requested leave is to commence, the employe will be deemed eligible for the leave.* The agency may not, then, deny the leave. Where the employe does not give notice of the need for leave more than two business days prior to commencing leave, the employe will be deemed to be eligible if the agency fails to advise the employe that the employe is not eligible within two business days of receiving the employe's notice.

(2) *"Employed by"* means to be in "employment status," as defined in § 724.040(5), of this chapter.

(a) ***WFMLA*** [§ ILHR 225.01(3), Wis. Adm. Code]

An employe is deemed to have been employed by the State for more than 52 consecutive weeks if the employe has been in employment status with the State during each of those 52 weeks, irrespective of the number of hours worked in each week. The 52 weeks do not necessarily have to be the 52 weeks immediately preceding the requested leave.

(b) ***FMLA*** [§ 825.110(b)]

An employe is deemed to have been employed by the State for at least 12 months if the employe has been in employment status with the State during each of those 12 months, irrespective of the number of hours worked in each month. The 12 months do not have to be consecutive months nor do they necessarily have to be the 12 months immediately preceding the requested leave.

(3) *Minimum number of required hours worked in the preceding 12 months:*

(a) ***WFMLA*** [§ ILHR 225.01(4), Wis. Adm. Code]

1,000 Hours. A person shall be deemed to have "worked for the employer for at least 1,000 hours during the preceding 52-week period" if the number of hours actually ***worked*** in that period ***plus*** the number of hours for which the employe was paid for accrued leave (i.e., sick leave, annual leave, personal/legal holiday, etc.) equals at least 1,000 hours.

(b) ***FMLA*** [§ 825.110(c)]

1,250 Hours. A person shall be deemed to have "worked for the employer for at least 1,250 hours in the 12 month period immediately preceding the beginning of the requested leave" if the number of hours actually ***worked*** in that period, ***not including*** hours for which paid leave was used, equals at least 1,250 hours.

(4) *Other leave benefits:*

WFMLA & FMLA

Employes who do not meet these eligibility requirements may be eligible for other leave benefits under § 230.35, Wis. Stats., Chapter ER 18, Wis. Adm. Code, or the applicable collective bargaining agreement.

Sec. 724.070 Reasons for Leave

(1) *Reasons for leave:*

(a) ***WFMLA*** [§ 103.10(3)&(4), Wis. Stats.]

Eligible employes are entitled to use leave under WFMLA when taken for the following purposes:

1. *Family leave* may be taken for the birth of the employe's natural child, if the leave begins within 16 weeks before or after the child's birth;

2. *Family leave* may be taken for the placement of a child with the employe for adoption or as a precondition to adoption, but not both, if the leave begins within 16 weeks before or after the child's placement;

3. *Family leave* may be taken to care for the employe's child, spouse, or parent with a serious health condition; or

4. *Medical leave* may be taken for the serious health condition of the employe that makes the employe unable to perform the functions of his or her position.

For 1. and 2., above, see § 724.080(2)(a)2., of this chapter, regarding scheduling of leave, for further explanation of the 16 week requirement.

(b) ***FMLA*** [§ 825.201, 825.203(c), & 825.112]

Eligible employes may use leave under FMLA when taken for the following purposes:

1. For the birth of the employe's child *and* to care for the newborn child.

2. For placement of a child with the employe for adoption or foster care.

3. To care for the employe's child, spouse, or parent with a serious health condition, including both physical and psychological care. This also includes situations where the employe may be needed to fill in for others who are caring for the family member, or to make arrangements for changes in care, such as transfer to a nursing home.

4. For the serious health condition of the employe that makes the employe unable to perform any one or more of the essential the functions of the employe's position.

   An employe who must be absent from work to receive medical treatment for a serious health condition is considered to be unable to perform the essential functions of the position during the absence for treatment.

For 1. and 2., above, leave may begin before the actual birth or placement. Leave must be concluded within 12 months following birth or placement.

(2) *Length of leave:*

(a) ***WFMLA*** [§ 103.10(3)&(4), Wis. Stats.]

During a calendar year, eligible employes may not take more than:

1. Six weeks of family leave for purposes specified under (1)(a)1. and 2., above.

2. Two weeks of family leave for purposes specified under (1)(a)3., above.

3. Two weeks of medical leave for the purposes specified in (1)(a)4., above.

(b) ***FMLA*** [§ 825.200]

Eligible employes are entitled to use 12 workweeks of unpaid leave for FMLA-qualifying purposes during each calendar year.

NOTE: Federal regulations provide that a husband and wife who are both eligible for FMLA leave and are both employed with the same employer, are permitted to take only a combined total of 12 weeks of leave during a calendar year under certain circumstances. However, the Department of Justice has determined that denying married state employes their full 12-week FMLA leave entitlement would be a violation of Wisconsin's Fair Employment Law, therefore, this spousal restriction is unavailable to state agencies.

Sec. 724.080 Leave Request and Approval.

(1) *Notice of need for leave:*

(a) ***WFMLA*** [§ 103.10(6), Wis. Stats., § ILHR 225.02(4) & (8), Wis. Adm. Code]

1. If an employe intends to take family leave for the birth or adoption of a child, the employe shall, in a reasonable and practicable manner, give the employing agency advance notice of the expected birth or placement.

2. If an employe intends to take family leave because of the planned medical treatment or supervision of a family member, or medical leave for the planned medical treatment of the employe, the employe shall do all of the following:

   a. Make a reasonable effort to schedule the medical treatment or supervision so that it does not unduly disrupt the agency's operation, subject to the approval of the health care provider of the family member.

      1) The employe shall provide the employing agency with a proposed schedule for the leave with reasonable promptness after the employe learns of the probable necessity of the leave.

      2) Except where precluded by the need for health care consultation or treatment, the proposed schedule shall be sufficiently definite so that the employing agency is able to schedule replacement employes, to the extent replacement employes need to be scheduled, to cover the absence of the employe taking the leave.

   b. Give the employing agency advance notice of the medical treatment or supervision in a reasonable and practicable manner. The notice shall:

      1) Identify the planned dates of the leave; and

      2) Be given to the employing agency by the employe with reasonable promptness after the employe learns of the probable necessity of the leave.

3. If an employing agency has a written policy which requires notice of leave to be in writing, if this policy governs all employes of the employing agency and if the employe has been made aware of this policy, the notice shall be in writing except where precluded by the need for health care consultation or treatment.

4. Family leave requested by an employe may be denied by the employing agency if the employe substantially fails to provide the employing agency with proper notice of that leave.

(b) ***FMLA*** [§ 825.302-.303]

Employes are required to provide agencies at least 30 days advance notice of the need to take leave if the need for leave is foreseeable (e.g., birth of a child). If 30 days notice is not practicable, the employe must provide as much notice as feasible. Should an employe fail to provide timely notice as required, the agency may deny the leave request until at least 30 days after the date notice is actually provided.

Employes should submit an "Employe Request Form" **(Attachment 8)**, which is provided by the agency at the time the employe requests leave. Upon receipt of the employe's request for leave, the agency must provide the employe with a copy of the "Notice to Employes Requesting Leave Under the Family and Medical Leave Act of 1993" **(Attachment 7)** which provides information regarding the employe's rights and obligations under FMLA. The agency must also give the employe a copy of policies the agency has developed in those areas where agency discretion is allowed.

NOTE: See bulletin OS-63/CC-POL-7/CB-76, dated July 25, 1994, for further information regarding areas in which agencies have discretion to set policy under the FMLA.

NOTE: See (5), below, regarding Recordkeeping. Agencies must keep copies of all general and specific notices given to employes as required under FMLA, as well as any documents describing employe benefits or employer policies and practices regarding the taking of paid and unpaid leave.

(2) *Scheduling of leave:*

(a) ***WFMLA*** [§ ILHR 225.02(1), (6), & (7), Wis. Adm. Code]

1. An employe shall schedule family and medical leave pursuant to (1)(a), above.

2. An employe may begin family leave for the purposes specified in § 724.070, of this chapter, no earlier than 16 weeks before the estimated date of birth of a natural child or placement of an adoptive child and no later than 16 weeks after the actual date of birth or placement. If leave for these purposes is taken incrementally, in accordance with 4., below, all non-continuous increments *must* begin within 16 weeks of the actual birth or placement.

EXAMPLE: If an employe's child is born (or placed in the home, in the case of adoption) on April 1, 1998, the employe is eligible to use 6 weeks of family leave beginning between December 10, 1997 (16 weeks prior to the birth) and July 22, 1998 (16 weeks after the birth). If family leave is to be taken intermittently, the last non-continuous increment **must begin on or before** July 22, 1998.

3. Leave available during a calendar year shall be used within that calendar year. No more than one six week period of leave may be used by an employe for the birth or adoption of any one child.

4. An employe may take family or medical leave in non-continuous increments (i.e., partial absence from employment). A partial absence must be in a time increment which is compatible with OSER and agency policies governing absences from employment for purposes other than WFMLA leave. The shortest increment permissible is the shortest increment the employing agency allows to be taken by that employe for any other type of non-emergency leave.

5. *Conclusion of Leave:* Family or medical leave available during the calendar year must be used within that calendar year. If not used, the employe's entitlement to the leave expires at the end of the calendar year in which the leave was earned.

(b) ***FMLA*** [§§ 825.201 & 825.208]

1. *Designation of leave*

a. It is ultimately the agency's responsibility to designate leave as FMLA-qualifying and to give notice of the designation to the employe. Therefore, agencies must obtain enough information to determine if leave should be considered leave under FMLA. Refer to § 724.100 entitled "Certification" for information detailing employer rights and employe obligations regarding certification.

b. Once the agency has acquired knowledge that the leave is being taken for an FMLA qualifying reason and a determination is made that paid leave is to be designated as leave under FMLA, the agency must notify the employe within two business days of such designation. The notice may be orally or in writing. If the notice is oral, it must be confirmed in writing no later than the following payday (unless the payday is less than one week after the oral notice, in which case the notice must be no later than the subsequent payday). The designation must be made before the leave starts unless there is not sufficient information as to the employe's reason for taking the leave until after the leave has commenced.

c. If the agency learns that leave is for an FMLA purpose after leave has begun, the entire or some portion of the paid leave period may be retroactively counted as FMLA leave, to the extent that the leave period qualified as FMLA leave.

d. Leave may not be designated as FMLA leave after the employe has returned to work with two exceptions:

1) If the employe was absent for an FMLA reason and the reason for the absence was not known until the employe's return (e.g., where the employe was absent for only a brief period). In this instance, the agency may promptly (within two business days) designate the leave retroactively with proper notice to the employe.

2) The reason for the leave is known but it has not been confirmed that the leave qualifies under FMLA, or where medical certification has been requested and has not yet been received. In this instance, the agency should make a preliminary designation and notify the employe at the time leave begins, or as soon as the reason for the leave becomes known. If it is found that the leave is not FMLA qualifying, the designation must be withdrawn.

2. *Dispute Resolution:* Agencies must establish a process to resolve any disputes between an employe and the agency regarding leave under FMLA. Employes must be informed of the agency's dispute resolution process at the time FMLA leave is requested. The Office of State Employment Relations, Division of Compensation and Labor Relations, must receive copies of any written correspondence in cases of agency/employe disputes regarding designation of leave under FMLA.

3. *Conclusion of Leave*: Leave available during the calendar year must be used within that calendar year. If not used, the employe's entitlement to the leave expires at the end of the calendar year in which the leave was earned. An employe's entitlement to leave for birth or adoption expires 12 months after the date of birth or placement for adoption.

(3) *Intermittent leave:*

(a) ***WFMLA*** [§ 103.10(3)(d), Wis. Stats., § ILHR 225.02(3), Wis. Adm. Code]

1. An employe who takes intermittent leave shall schedule all absences so as not to unduly disrupt the employing agency's operation.

a. An employe is deemed to have scheduled intermittent leave for birth or adoption in a manner that does not unduly disrupt the employing agency's operations if:

1) The employe provides the employing agency with notice of the employe's proposed schedule of intermittent leave which is at least as much notice as the shortest notice that the employe is required to give the employing agency for the taking of any other non-emergency or non-medical leave, *and*

2) The schedule is sufficiently definite for the employing agency to be able to schedule replacement employes, to the extent replacement employes are required, to cover for the absences.

b. An employe is deemed to have scheduled intermittent leave for purposes other than birth or adoption in a manner that does not unduly disrupt the employing agency operations if:

1) The employe provides the employing agency with a proposed schedule for the intermittent leave with reasonable promptness after the employe learns of the probable necessity for the leave, *and*

2) Except where precluded by the need for health care consultation or treatment, if that proposed schedule is sufficiently definite that the employing agency is able to schedule replacement employes, to the extent replacement employes need to be scheduled, to cover the absence of the employe taking the leave.

2. If an employing agency has a written policy which requires notice of scheduled partial absences for family leave to be in writing, if this policy governs all employes of the employing agency, and if the employe has been made aware of this policy, the employe shall be required to advise the employing agency in writing of scheduled intermittent family leave.

(b) ***FMLA*** [§ 825.203 & 825.205-.206]

1. Intermittent leave or leave on a reduced work schedule:

a. *Must* be granted when medically necessary to care for a family member with a serious health condition;

b. *Must* be granted when medically necessary for the employe's own serious health condition; or

c. *May* be granted, at the discretion of the appointing authority, when taken for the birth of the employe's child or placement of a child with the employe for adoption or foster care. Employes must be informed of the agency's policy regarding intermittent leave at the time FMLA leave is requested.

2. Only the amount of leave actually taken may be counted toward the 12 workweeks of leave. For example, if an employe who normally works five eight-hour days per week takes one day off, the employe would use eight hours of FMLA entitlement.

3. For less than full-time employes, the amount of leave to which they are entitled is determined on a proportional basis by comparing the new schedule with the employe's normal schedule. For example, if an employe who normally works 30 hours per week now works 20 hours per week under a reduced work schedule, the employe would use ten hours of FMLA leave per week.

The normal workweek of an employe whose schedule varies shall be based on a weekly average of the hours worked over the 12 weeks prior to the beginning of the leave period.

4. Leave without pay for any number of hours taken as intermittent leave for documented FMLA-qualifying purposes **will not** affect an eligible employe's FLSA exempt status.

(4) *Alternative employment:*

(a) ***WFMLA*** [§ 103.10(10), Wis. Stats.]

The employing agency and an employe with a serious health condition are not prohibited from mutually agreeing to alternative employment for the employe while the serious health condition lasts. No period of alternative employment with the State reduces the employe's right to family or medical leave.

(b) ***FMLA*** [§ 825.204]

1. If an employe requests intermittent leave or leave on a reduced schedule that is foreseeable based on planned medical treatment or if the agency has approved use of intermittent leave for birth or adoption, the agency may require the employe to transfer temporarily to an available alternative position for which the employe is qualified and which better accommodates recurring periods of leave than does the employe's regular position. The alternative position must have equivalent pay and benefits but it need not have equivalent duties.

2. If the vacant position to which the agency is considering transferring the employe utilizing FMLA leave is a represented position, prior to the actual transfer of the employe, one of the following must have occurred regarding that vacant position:

   a. The vacant position must have been posted and no eligible applicants applied; *or*

   b. DER and the applicable union have agreed to waive the contractual transfer provisions for the purposes of accommodating the employe taking FMLA leave.

3. When the employe no longer needs to continue on leave, he or she must be placed in the same or equivalent job as the job held at the time the leave commenced.

(5) *Recordkeeping:*

(a) ***WFMLA***

No requirements.

(b) ***FMLA*** [§ 825.500]

Agencies are required to keep records of all leave taken under FMLA for at least three years. These records must disclose the following:

1. Basic payroll and identifying employe data, including name, address, and occupation; rate of pay and terms of compensation (i.e., salary vs. hourly); daily and weekly hours worked per pay period; additions to or deductions from wages; and total compensation paid during FMLA leave.

2. Dates FMLA leave is taken by employes. Leave must be designated in records as FMLA leave; leave so designated may not include leave provided under State law or by collective bargaining agreement or administrative code *which does not also qualify under FMLA*.

3. If FMLA leave is taken in increments of less than one full day, the hours of the leave.

4. Copies of employe notices of leave furnished to the agency under FMLA and copies of all general and specific notices given to employes as required under FMLA. These copies may be maintained in the employe's personnel file.

5. Any documents (including written and electronic records) describing employe benefits or agency policies and practices regarding the taking of paid and unpaid leave.

6. Premium payments of employe benefits.

7. Records of any dispute between the agency and an employe regarding designation of leave as FMLA leave, including any written statement from the agency or employe of the reasons for the designation and for the disagreement.

8. Records and documents relating to medical certification, recertifications or medical histories of employes or employes' family members, created for purposes of FMLA, must be maintained as confidential medical records in separate files from the usual personnel files, and if ADA is also applicable, such records must be maintained in conformance with ADA confidentiality requirements, except that:

   a. Supervisors and managers may be informed regarding necessary restrictions on the work or duties of an employe and necessary accommodations;

   b. First aid and safety personnel may be informed, when appropriate, if the employe's physical or medical condition might require emergency treatment; and

   c. Government officials investigating compliance with FMLA shall be provided relevant information upon request.

Sec. 724.090 Substitution.

(1) ***WFMLA*** [§ 103.10(5)(b), Wis. Stats., § ILHR 225.01(6)-(10), 225.03, & 225.031, Wis. Adm. Code]

(a) An employe may substitute, for portions of family leave or medical leave, accrued paid or unpaid leave of any other type provided by the employer.

(b) Employes may use accrued sick leave during absences for which accrued sick leave is otherwise unavailable. For example, an employe's absence due to paternity may result in simultaneous use of family leave and sick leave, to the extent to which the employe chooses to use accrued sick leave.

(c) An employe's use of family leave for purposes of birth or adoption shall result in simultaneous use of parental leave granted under § ER 18.14(2)(d) and (e), Wis. Adm. Code, or the applicable collective bargaining agreement.

> **EXAMPLE:** An employe may not extend a six month paternity leave to seven and one-half months by adding six weeks of family leave to the end of the six month paternity leave. The employe's first six weeks of absence for paternity purposes are counted against the employe's family leave entitlement (i.e., the leaves run concurrently). The employe's total absence from employment for paternity purposes is limited to six months, unless an extension is approved by the appointing authority in accordance with the applicable provisions of Wis. Adm. Code or a collective bargaining agreement.

(d) An employe is eligible to continue using accrued sick leave as long as the employe meets the eligibility requirements of § ER 18.03(4), Wis. Adm. Code, or the applicable collective bargaining agreement.

> **EXAMPLE***:* During a six month maternity leave, an employe may take a two week medical leave following the birth of a child (during which the employe uses accrued sick leave). The employe may then continue using sick leave, in accordance with the provisions of ER 18.03(4), Wis. Adm. Code, or the applicable collective bargaining agreement, for that period during which the employe is physically unable to work. Upon recovery (and within 16 weeks of the birth), the employe may begin up to six weeks of family leave, during which the employe may choose to use accrued sick leave.

(e) The employing agency *may not require* an employe to substitute sick leave, annual leave, personal or legal holidays, or compensatory time off credits for unpaid family/medical leave.

(f) An employe who uses accrued sick leave credits in accordance with § ER 18.03(4), Wis. Adm. Code, or the applicable collective bargaining agreement for the purpose of birth, adoption, to care for a family member, or for the employe's own health shall be deemed to have used WFMLA leave.

(2) ***FMLA*** [§ 825.207]

(a) Generally, FMLA leave is unpaid. However, FMLA permits employes to substitute unused accumulated annual leave, personal/legal holidays, or a combination thereof, for portions of unpaid FMLA leave relating to birth, placement of a child for adoption or foster care, or to care for a family member with a serious health condition.

(b) Employes may substitute sick leave in addition to the leave noted in (a), above, for all or any part of unpaid FMLA leave needed to care for a family member with a serious health condition or for the employe's own serious health condition. Use of sick leave is allowed only to the extent the circumstances meet the requirements for use of sick leave under s. 18.03, Wis. Adm. Code, or the applicable collective bargaining agreement.

(c) No limitations may be placed on substitution of unused accumulated annual leave or personal/legal holidays for FMLA leave, and the agency may not limit the timing during the year in which paid leave may be substituted for FMLA qualifying absences or impose other limitations.

(d) Agencies *may not require* the use of unused accumulated annual leave, personal/legal holidays, sick leave, or a combination thereof, for portions of unpaid FMLA leave prior to use of leave without pay.

(e) Under no circumstances will employes be entitled to additional family and/or medical leave as a result of the substitution of paid leave for unpaid leave under FMLA.

(f) Any leave, with or without pay, that is designated as leave under FMLA will count against the employe's FMLA entitlement.

(g) Use of paid leave under circumstances which do *not* qualify as FMLA leave will not count against the 12 weeks of FMLA leave to which the employe is entitled. For example, paid sick leave used for a medical condition which is not a serious health condition does not count against the 12 weeks of FMLA leave entitlement.

(h) Compensatory time off is *not* a form of accrued paid leave that an employe will be allowed to substitute for unpaid FMLA leave. If an employe requests and the agency approves use of compensatory time during a family/medical leave, this time must ***not*** be counted against the employe's FMLA leave entitlement.

(i) *Workers' compensation:* When a serious health condition results from injury to an employe while on the job, the employe's FMLA entitlement will run concurrently with any workers' compensation benefits. An employe may only substitute paid leave for the hours not covered by workers' compensation benefits. If the health care provider treating the employe for the workers' compensation injury certifies the employe is able to return to a "light duty job" but is unable to return to the same or equivalent job, the employe may decline the offer of a "light duty job." As a result, the employe may lose workers' compensation payments, but is entitled to remain on unpaid FMLA leave until the 12-week entitlement is exhausted.

Examples of Substitution of Paid Leave for Unpaid Family & Medical Leave

Following are examples of family and medical leave requests and how paid leave could be substituted under the described circumstances. **Examples 1** and **2** demonstrate how the substitution provisions apply for state employes who have requested leave for the birth of a child. Examples of both maternity and paternity leave are included to illustrate the differences in qualifying for use of paid leave when taking all leave benefit provisions into consideration (i.e., WFMLA, FMLA, administrative rules or a collective bargaining agreement). **Example 3** demonstrates a situation in which an employe has requested leave to care for a spouse with a serious health condition, and **Example 4** demonstrates a situation which does not qualify for use of family and medical leave.

Example 1: An employe requests maternity leave for six months. She is eligible for leave under both the WFMLA and the FMLA. She has accumulated at least six weeks of annual leave and holiday leave, and at least six weeks of sick leave. The employe wishes to maximize use of paid leave.

What paid leave may the employe take for maternity leave? If the employe uses 12 weeks of paid leave for maternity, this would exhaust her FMLA leave entitlement for the entire calendar year, as well as her family leave for birth and medical leave under WFMLA. The paid and unpaid portions of her leave would all run concurrently and would be taken as follows:

1. First six weeks (recovery from birth): Employe would use six weeks of paid sick leave accrued under administrative rule or collective bargaining agreement.

   Explanation: This first six-week period qualifies as and counts against the employe's entitlement to all of the following:

   a. 6 weeks FMLA leave (for which the employe may substitute accrued annual leave, personal leave, or sick leave);

   b. 2 weeks WFMLA medical leave (for which the employe may substitute accrued leave of any type, including sick leave);

   c.* 6 weeks of sick leave accrued under state administrative rule or collective bargaining agreement.

   *Since option "c." is the most generous to the employe, that is the leave the employe must be granted.

2. Second six weeks (caring for newborn child): Employe would receive six weeks of WFMLA family leave (for which the employe may substitute any type of accrued paid leave, including sick leave).

   Explanation: This second six-week period qualifies as and counts against the employe's entitlement to all of the following:

   a. 6 weeks FMLA leave (for which the employe may substitute accrued annual leave or personal leave, but *not* sick leave);

   b.* 6 weeks WFMLA family leave (for which the employe may substitute accrued leave of any type, including sick leave); and

   c. 6 months unpaid leave of absence for maternity under state administrative rule or collective bargaining agreement.

   *Since option "b." is the most generous to the employe, that is the leave the employe must be granted.

3. Remaining three months of maternity leave: Employe would receive three months of unpaid maternity leave under state administrative rule or collective bargaining agreement (assuming employe has used all her accumulated paid leave during the first 12 weeks).

Example 2: An employe requests paternity leave for six months. He is eligible for leave under both the WFMLA and the FMLA. He has accumulated at least six weeks of annual leave and holiday leave, and at least six weeks of sick leave. The employe wishes to maximize use of paid leave.

What paid leave may the employe take for paternity leave? If the employe uses 12 weeks of paid leave for paternity, this would exhaust his FMLA leave entitlement for the entire calendar year, as well as his family leave for birth under WFMLA. The paid and unpaid portions of his leave would all run concurrently and would be taken as follows:

1. First six weeks (caring for newborn child): Employe would receive six weeks of WFMLA family leave (for which the employe may substitute any type of accrued paid leave, including sick leave).

   Explanation: This first six-week period qualifies as and counts against the employe's entitlement to all of the following:

   a. 6 weeks FMLA leave (for which the employe may substitute accrued annual leave or personal leave, but *not* sick leave);

   b.* 6 weeks WFMLA family leave (for which the employe may substitute accrued leave of any type, including sick leave); and

   c. 6 months unpaid leave of absence for paternity under state administrative rule or collective bargaining agreement.

   *Since option "b." is the most generous to the employe, that is the leave the employe must be granted.

2. Second six weeks (caring for newborn child): Employe would receive six weeks of FMLA family leave (for which the employe may substitute accrued annual leave or personal leave, but *not* sick leave).

   This second six-week period qualifies as and counts against the employe's entitlement to all of the following:

   a.* 6 weeks FMLA leave (for which the employe may substitute accrued annual leave or personal leave, but not sick leave);

   b. 6 months unpaid leave of absence for paternity under state administrative rule or collective bargaining agreement.

   *Since option "a." is the most generous to the employe, that is the leave the employe must be granted.

3. Remaining three months of paternity leave: Employe would receive three months of unpaid paternity leave under state administrative rule or collective bargaining agreement (assuming employe has used all his accumulated paid leave during the first 12 weeks).

Example 3: An employe requests and has approval for a six month leave of absence to care for his/her spouse who has a serious health condition. S/he is eligible for leave under both the WFMLA and the FMLA. S/he has accumulated at least four weeks of annual leave and eight weeks of sick leave and wishes to maximize the use of paid leave.

What paid leave may the employe take for this purpose? If the employe uses 12 weeks of paid leave for this purpose, this would exhaust his/her FMLA leave entitlement for the entire calendar year, as well as his/her family leave to care for a family member under WFMLA. The paid and unpaid portions of leave run concurrently and would be taken as follows:

1. First two weeks: Employe would receive two weeks of WFMLA family leave (for which the employe may substitute any type of accrued paid leave including sick leave).

   This first two-week period qualifies and counts against the employe's entitlement to all of the following:

   a. Two weeks FMLA leave (for which the employe may substitute accrued annual leave, personal leave, or sick leave, to the extent sick leave is available for this purpose under state administrative rule or collective bargaining agreement**);

   b.* Two weeks of WFMLA family leave (for which the employe may substitute accrued leave of any type, including sick leave);

   c. Six months unpaid leave of absence under state administrative rule or collective bargaining agreement.

2. Next 10 weeks: Employe would receive 10 weeks of FMLA family leave (for which the employe may substitute accrued annual leave, personal leave, or sick leave, to the extent sick leave is available for this purpose under state administrative rule or collective bargaining agreement**).

   This 10-week period qualifies and counts against the employe's entitlement to all of the following:

   a.* 10 weeks FMLA leave (for which the employe may substitute accrued annual leave, holidays, or sick leave, to the extent sick leave is available for this purpose under state administrative rule or collective bargaining agreement**);

   b. Six months unpaid leave of absence under state administrative rule or collective bargaining agreement.

   *Since option "a." is the most generous to the employe, that is the leave the employe must be granted.

3. Remaining three months leave of absence: Employe would receive three months of unpaid leave of absence under state administrative rule or collective bargaining agreement (assuming employe has used all his/her accumulated paid leave during the first 12 weeks).

** Under state administrative rule and collective bargaining agreements, use of sick leave for temporary emergency care of an ill family member is limited to five workdays for any one illness or injury. However, with prior approval from the appointing authority, use of sick leave may be extended under unusual circumstances.

Example 4: An employe requests three days of sick leave to stay home with her/his child who has a common cold. Since a common cold is not a "serious health condition" under the FMLA, this leave *cannot* be counted against the employe's 12-week FMLA leave entitlement. However, this leave *would* count against the employe's leave entitlement under WFMLA.

Pursuant to s. ILHR 225.01(8) and (9), Wis. Adm. Code, since sick leave provided under administrative rule or collective bargaining agreement is provided in a manner which allows for a more generous use of sick leave than leave provided under the WFMLA, use of sick leave is "deemed" to be leave available to the employe under the WFMLA when used for the same purpose, i.e., to care for a family member or for the employe's own health.

Sec. 724.100 Certification.

(1) ***WFMLA*** [§ 103.10(7) & (12)(c), Wis. Stats., § ILHR 225.02(9), Wis. Adm. Code]

(a) The employing agency may require an employe to provide certification if the employe requests medical leave, or requests family leave to care for a family member because the family member has a serious health condition.

(b) The required certification shall be issued by the health care provider or Christian Science practitioner of the employe or family member, whichever is appropriate.

(c) No employing agency may require certification stating more than the following:

1. That the employe or family member has a serious health condition.

2. The date the serious health condition commenced and its probable duration.

3. Within the knowledge of the health care provider or Christian Science practitioner, the medical facts regarding the serious health condition.

4. If the employe requests medical leave, an explanation of the extent to which the employe is unable to perform his or her employment duties.

(d) The employing agency may require the employe to obtain the opinion of a second health care provider, chosen and paid for by the employing agency, concerning any information certified under (c), above.

(e) If two or more health care providers disagree about any of the information required to be certified, the Personnel Commission may appoint another health care provider to examine the employe or family member. The Personnel Commission shall notify the employee and the employing agency of the appointment. The employing agency and the employe shall each pay 50% of the cost of the examination and opinion.

(f) Except where emergency health care consultation or treatment is required, an employing agency may deny a requested leave where the agency has made a proper request for certification as to that leave, and the employe fails or refuses to provide the requested certification.

(2) ***FMLA*** [§§ 825.301(c)(2), 825.305-825.308, 825.311 & 825.312(e)]

(a) Medical certification should be required when leave under FMLA is requested for the serious health condition of the employe or the employe's family member. If the agency is requiring medical certification, the employe must be provided with written notice that such certification is required at the time FMLA leave is requested. The agency has the option, in requiring certification of the employe's own serious health condition, to provide a statement of the essential functions of the employe's position for the health care provider to review.

(b) For any request, the following medical certification requirements will apply:

1. Employes must be allowed at least 15 calendar days to return the medical certification unless it is not practicable under the particular circumstances despite the employe's good faith efforts. The agency must advise the employe of the possible consequences of failure to provide adequate certification. Should an employe fail to provide timely medical certification, leave may be denied until the required certification is provided.

   If an employe submits a complete certification signed by the health care provider, the agency may not request additional information from the employe's health care provider. However, a health care provider representing the agency may contact the employe's health care provider, with the employe's permission, for purposes of *clarification* and authenticity of the medical certification.

2. *Medical records are strictly confidential and* ***must*** *be kept separate from personnel files.*

3. The appointing authority, at the agency's expense, may request a second opinion by a health care provider who is designated by the appointing authority. The agency may not regularly contract with or otherwise regularly utilize the services of the health care provider furnishing the second opinion, unless located in an area where access to health care is extremely limited. Pending receipt of the second opinion, the employe is provisionally entitled to FMLA benefits.

4. In the event that the two medical opinions differ, a third opinion by a health care provider mutually agreed upon by the employe and the appointing authority will be final and binding. The third opinion will also be at the agency's expense.

5. The agency is required to provide the employe with a copy of the second and third opinions, if requested by the employe. Absent extenuating circumstances, the requested copies are to be provided within two business days.

(c) Recertification may be requested as specified in 1. through 4., below. The employe must provide the recertification within the time frame requested, which must allow at least 15 calendar days, unless it is not practicable under the particular circumstances to do so despite the employe's good faith efforts. Any recertification will be at the employe's expense unless the agency provides otherwise. No second or third opinion on recertification may be required.

1. Recertification may be requested no more often than every 30 days in connection with an absence for pregnancy, a chronic, or a permanent/long-term condition, unless:

   a. Circumstances described by the previous certification have changed significantly; or

   b. The agency receives information that casts doubt upon the employe's stated reason for the absence.

2. If the minimum duration of the period of incapacity specified on a certification furnished by a health care provider is more than 30 days, recertification may not be requested until that minimum duration has passed unless one of the conditions set forth in 4., below, is met.

3. For FMLA leave taken intermittently or on a reduced leave schedule basis, recertification may not be requested in less than the minimum period specified on the certification as necessary for the leave (including treatment), except as specified in 4., below.

4. For circumstances not covered by 1. through 3., above, recertification may be requested at reasonable intervals, but not more often than every 30 days, unless:

   a. The employe requests an extension of leave;

   b. Circumstances described by the previous certification have changed (e.g., the duration of the illness, the nature of the illness, complications); or

   c. The agency receives information that casts doubt upon the continuing validity of the certification.

(d) The agency may require an employe on FMLA leave to report periodically on the employe's status and intent to return to work.

Sec. 724.110 Continuation of Benefits.

(1) *Continuation of group health insurance*. Questions regarding health insurance coverage and premium payment for employes while on WFMLA leave should be directed to the Department of Employe Trust Funds, Employer Communications Center, at (608) 264-7900.

> **NOTE:** Section 40.05(4)(a), Wis. Stats., provides that the State will continue to pay a portion of the employe's health insurance premium for not more than the first three months of an *unpaid* leave of absence. This three-month period would normally be equal to or longer than an employe's family/medical leave. Consequently, an employe's group health insurance coverage will normally be maintained under Chapter 40 provisions as opposed to WFMLA or FMLA provisions.

(a) ***WFMLA*** [§ 103.10(9), Wis. Stats.]

An employe's group health insurance coverage must be maintained under the conditions that applied immediately before the FMLA leave began.

(b) ***FMLA*** [§§ 825.209 - 825.213]

1. An employe's coverage under any group health plan must be maintained on the same conditions as coverage would have been provided if the employe had been continuously employed during the entire FMLA leave period.

2. If leave under FMLA is taken in part or in whole without pay, the agency must advise the employe of eligibility for group health insurance continuation under the provisions of FMLA, the cost of coverage, and when and where to send the premium payments, if applicable.

3. Employes will be subject to any change in group health insurance plans or benefits that affect all employes.

4. Employes must be given notice of any opportunity for any change in plans or benefits that is available to all employes.

5. An employe may choose not to retain group health plan coverage during FMLA leave. However, when an employe returns from leave, the employe is entitled to be restored on the same terms as prior to taking the leave, including family coverage, without any qualifying period, physical examination, exclusion of pre-existing conditions, etc.

(2) *Continuous service:*

WFMLA & FMLA [§§ 103.10(9), Wis. Stats. & 825.215(d)(2)]

Employes are not *entitled* to accrue continuous service (seniority) while on unpaid leave under WFMLA or FMLA. Therefore, the following will apply:

(a) Nonrepresented Employes. In accordance with § ER 18.02(2)(b)1., Wis. Adm. Code, the continuous service of a nonrepresented employe shall not be interrupted if the employe was on an approved leave of absence. Since WFMLA and/or FMLA leave is approved leave of absence, it does not interrupt continuous service.

(b) Represented Employes. Refer to the appropriate provisions of the applicable collective bargaining agreement for information regarding the continuous service of an employe upon return from approved leave of absence without pay.

(3) *Creditable Service:*

(a) ***WFMLA & FMLA*** [§§ 103.10(9), Wis. Stats. & 825.215(d)(4)]

Creditable service for retirement purposes will *not* continue to accrue while the employe is on unpaid leave.

(b) ***FMLA*** [§ 825.215(d)(2)]

Benefits Accrued Prior to Leave. While employes will not accrue additional benefits during leave without pay under FMLA, benefits accrued prior to leave will be retained at the same levels upon return to work. For example, paid annual leave, sick leave, or personal holidays which are not substituted for FMLA leave must be available to the employe upon return from leave.

Sec. 724.120 Return from Leave.

(1) ***WFMLA*** [§ 103.10(8) & (9), Wis. Stats.]

(a) An employe returning from WFMLA leave shall be immediately placed in a position as follows:

1. If the position which the employe held immediately before the leave began is vacant when the employe returns, the employe will be placed in that position.

2. If the position which the employe held immediately before the leave began is not vacant when the employe returns, the employe will be placed in an equivalent position having equivalent compensation, benefits, working shift, hours of employment, and other terms and conditions of employment.

3. *Project, Limited Term, and Unclassified Employes*: When a project, limited term, or unclassified employe returns from leave, the employe shall immediately be placed in a position pursuant to 1. or 2., above. If the appointment period for the position which the employe held immediately before the WFMLA leave began has expired, the employe shall have no employment right.

(b) If an employe wishes to return to work before the end of the scheduled leave, the agency will place the employe as specified in (a), above, within a reasonable time not exceeding the duration of the leave as scheduled.

(c) An employe returning from WFMLA leave is not entitled to any right, employment benefit, or employment position to which the employe would not have been entitled had he or she not taken leave.

(2) ***FMLA*** [§ 825.214 - 825.216, 825.310 & 825.312(c) & (d)]

(a) An employe returning from FMLA leave is entitled to be returned to the same position the employe held when leave began, or to an equivalent position. An employe is entitled to such placement even if the employe has been replaced or the position has been restructured to accommodate the employe's absence.

(b) An employe has no greater right to restoration or to other benefits and conditions of employment than if the employe had been continuously employed during the FMLA leave period. In order to deny restoration to an employe returning from FMLA leave, the agency must be able to show that the employe would not otherwise have been employed if leave had not been taken, e.g., if the employe would have been laid off.

(c) If the employe is unable to perform an essential function of the position because of a physical or mental condition, including the continuation of a serious health condition, the employe has no right to return to another position under FMLA. However, agency obligations may be governed by the Americans with Disabilities Act.

(d) *Project, Limited Term, and Unclassified Employes:* If an employe was hired for a specific term or only to perform work on a discrete project, the agency has no obligation to restore the employe if the employment term or project is over and the agency would not otherwise have continued to employ the employe.

(e) *Fitness for Duty Certification:*

1. Agencies may require a fitness for duty certification signed by the employe's health care provider prior to restoring the employe when the FMLA leave was occasioned by the employe's own serious health condition, unless the leave was taken intermittently. Employes must be notified of the agency's policy regarding fitness for duty certification at the time FMLA leave is requested. The cost of the certification is to be paid by the employe and the employe is not entitled to be paid for the time or travel costs spent in acquiring the certification.

2. A health care provider employed by the agency may contact the employe's health care provider, with the employe's permission, for purposes of clarification of the employe's fitness to return to work. No additional information may be acquired, and clarification may be requested only for the serious health condition for which FMLA leave was taken. No second or third fitness for duty certification may be required. The employe's return to work may not be delayed while contact with the health care provider is being made.

3. Agencies may deny restoration to employes who fail to provide fitness for duty certification until such time as that certification is provided.

(f) An employe's rights to continued leave, maintenance of health benefits, and restoration cease under FMLA if and when the employment relationship terminates (e.g., layoff or resignation), unless that relationship continues, for example, by the employe remaining on paid FMLA leave.

(g) See § ER-MRS. 16.03(6), Wis. Adm. Code, or the applicable collective bargaining agreement for additional information regarding the restoration rights of employes upon return from a leave of absence without pay.

(h) Questions regarding the restoration rights of *nonrepresented* employes under the administrative rules may be directed to the Division of Merit Recruitment and Selection, Office of State Employment Relations. Questions regarding the restoration rights of *represented* employes under the applicable collective bargaining agreement may be directed to the Division of Collective Bargaining, Office of State Employment Relations.

724.130 Prohibited Acts.

(1) ***WFMLA*** [§ 103.10(11) & (12), Wis. Stats.]

(a) No person may:

1. Interfere with, restrain or deny the exercise of any right provided under § 103.10, Wis. Stats. (the WFMLA leave provisions).

2. Discharge or in any other manner discriminate against any individual for opposing a prohibited practice under 1., above.

(b) The Wisconsin Department of Workforce Development (DWD) - Equal Rights Divison, is charged with responsibility for handling complaints charging violation of the rights of State employees under WFMLA leave provisions.

1. An employe who believes that his or her employing agency has violated the provisions of the WFMLA may, within 30 days after the violation occurs or the employe should reasonably have known that the violation occurred, whichever is later, file a complaint with the DWD/Equal Rights alleging the violation.

2. The DWD/Equal Rights shall investigate the complaint and shall attemp t to resolve the complaint by conference, conciliation, or persuasion. If the complaint is not resolved and the DWD/Equal Rights finds probable cause to believe a violation has occurred, the DWD/Equal Rights shall proceed with notice and a hearing on the complaint. The hearing shall be held within 60 days after the DWD/Equal Rights receives the complaint.

3. The DWD/Equal Rights shall issue its decision and order within 30 days after the hearing. If the DWD/Equal Rights finds that an employing agency has violated the provisions of the WFMLA, it may order the employing agency to take action to remedy the violation, including providing requested WFMLA leave, restoring an employe, providing back pay accrued not more than two years before the complaint was filed, and paying reasonable actual attorney fees to the complainant.

(2) ***FMLA*** [§§ 825.220, 825.400, & 825.401]

(a) Interference with an employe's rights under FMLA is prohibited.

1. The agency is prohibited from:

a. Interfering with, restraining, or denying the exercise of (or attempts to exercise) any rights provided under FMLA.

b. Discharging or in any other way discriminating against any person for opposing or complaining about any unlawful practice under FMLA.

c. Discharging or in any other way discriminating against any person (whether or not an employe) because that person has opposed or complained about any unlawful practice under FMLA.

d. Discriminating against employes or prospective employes who have used FMLA leave.

(b) Employes cannot waive their rights under FMLA.

(c) The Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor is charged with responsibility for handling complaints charging violation of the rights of State employes under FMLA leave provisions.

1. An employe who believes that his or her employing agency has violated the provisions of the FMLA may file a complaint with the Secretary of the U.S. Department of Labor within a reasonable time of when the employe discovers that his or her FMLA rights have been violated. In no event may a complaint be filed more than two years after the action which is alleged to be a violation of FMLA occurred, or three years in the case of a willful violation.

2. The complaint must be in writing and should include a full statement of the acts and/or omissions, with pertinent dates, which are believed to constitute the violation.

724.140 Civil Action.

(1) ***WFMLA*** [§ 103.10(13), Wis. Stats.]

An employe may bring an action in circuit court against the State to recover damages caused by violation of employe rights under the WFMLA after the completion of an administrative proceeding. The action must be initiated within the later of the following periods:

(a) Within 60 days from the completion of an administrative proceeding, including judicial review, concerning the same violation.

(b) Twelve months after the violation occurred, or the employe should reasonably have known that the violation occurred.

(2) ***FMLA*** [§ 825.400]

An employe who feels that his or her rights under FMLA have been violated may file a private lawsuit against the State. The lawsuit must be filed:

(a) Within two years after the last action which the employe contends was in violation of the FMLA; or

(b) Within three years if the violation was willful.

724.150 Posting Notice/Notice to Employes.

(1) ***WFMLA*** [§ 103.10(14), Wis. Stats.]

(a) Each employing agency shall post, in one or more conspicuous places where notices to employes are customarily posted, a notice in the form approved by the Department of Workforce Development (and provided by the Office of State Employment Relations) setting forth state employes' rights under the WFMLA. (See **Attachment 4** for copy of WFMLA notice.)

(b) Any employing agency who fails to post the required notice shall forfeit not more than $100 for each offense.

(2) ***FMLA*** [§§ 825.300, 825.301, & 825.402]

(a) A notice providing FMLA information for employes must be posted where it can be readily seen by employes and applicants for employment. Failure to post the required notice precludes the agency from taking any adverse action against the employe, including denying FMLA leave for failing to furnish advance notice of the need to take FMLA leave. (See **Attachment 5** for copy of FMLA notice.)

(b) Any employing agency who fails to post the required notice shall forfeit not more than $100 for each offense.

(c) Agencies must distribute the document "The Federal Family and Medical Leave Act of 1993" **(Attachment 6)** to employes for placement in employe handbooks. This document notifies employes of their FMLA rights and responsibilities, as well as the State's policies regarding FMLA.

(d) Agencies must provide the document "Employe Rights and Obligations" (**Attachment 7**) to employes who request FMLA leave. The document should be provided within one to two business days, if feasible. This document must be provided to an employe no less often than the first time in each six-month period that an employe gives notice of the need for FMLA leave.

(e) If the agency fails to provide the documents specified under (c) and (d), above, the agency may not take action against an employe for failure to comply with any provision contained in the documents.

724.160 Referral of Questions.

Questions regarding this handbook chapter and administration of the WFMLA and FMLA leave provisions for represented and nonrepresented employes should be directed to the Division of Compensation and Labor Relations at (608) 266-8250.

ATTACHMENT 1

SIMULTANEOUS USE OF LEAVE BENEFITS

The following information applies to employes (as defined in Wisconsin Human Resources Handbook Chapter 724.040(4)) who are eligible for leave under the state and/or federal family and medical leave laws, and the reason for the leave is consistent with the applicable law.

Type of Leave Used ® **Reason for Leave ¯**	**WFMLA FAMILY LEAVE Parental (6 weeks)**	**WFMLA FAMILY LEAVE Other (2 weeks)**	**WFMLA MEDICAL LEAVE (2 weeks)**	**FMLA FAMILY LEAVE (12 weeks)**	**ACCRUED SICK LEAVE (Varies)**	**PARENTAL LEAVE OF ABSENCE (6 months)**
A. PERSONAL ILLNESS	---	---	Yes	Yes	Yes	---
B. FAMILY ILLNESS						
1. <= 5 days	---	Yes	---	Yes	Yes	---
2. > 5 days & <= 10 days	---	Yes	---	Yes	Employe Discretion	---
3. > 10 days	---	---	---	Yes	Per Contract or Rule	---
C. MATERNITY						
1. Physically Unable to Work						
a. <= 2 weeks	---	---	Yes	Yes	Yes	Yes
b. > 2 weeks	---	---	---	Yes	Yes	Yes
2. Care for Child						
a. <= 6 weeks	Yes	---	---	Yes	Employe Discretion	Yes
b. > 6 weeks	---	---	---	Yes	No	Yes
D. PATERNITY & ADOPTION						
a. <= 6 weeks	Yes	---	---	Yes	Employe Discretion	Yes
b. > 6 weeks	---	---	---	Yes	No	Yes

ATTACHMENT 2

GUIDE TO DETERMINING EMPLOYE COVERAGE UNDER FAMILY & MEDICAL LEAVE & RELATED LEAVE BENEFITS*

Type of Leave Used ® **Employe Type ¯**	**WFMLA FAM/MED LEAVE § 103.10**	**FMLA FAM/MED LEAVE**	**SICK LEAVE**		**LEAVES OF ABSENCE**	
			§§ 230.35(2) & ER 18.03	Coll. Barg. Agreement	§ ER 18.14	Coll. Barg. Agreement
CLASSIFIED-Exec/Leg Branch						
Nonrepresented:						
Permanent	Yes	Yes	Yes	---	Yes	---
Project	Yes	Yes	Yes	---	---	---
LTE	Yes	Yes	---	---	---	---
Represented	Yes	Yes	---	Yes	---	Yes
UNCLASSIFIED						
Executive Branch § 20.923(4), (8) & (9) indefinite term	Yes	Yes	Yes	---	---	---
Executive Branch § 20.923(2) & (4) fixed	Yes	Yes	Yes	---	---	---
Executive Branch Other Unclassified Except UW	Yes	Yes	Yes	---	---	---
Represented	Yes	Yes	---	Yes	---	Yes

*To determine employe eligibility for family/medical leave benefits, refer to § 724.060 of the handbook chapter.

COMPARISON OF FEDERAL FAMILY & MEDICAL LEAVE ACT AND WISCONSIN FAMILY & MEDICAL LEAVE ACT

PROVISION	FEDERAL LAW (FMLA)	WISCONSIN LAW (WFMLA)	MOST FAVORABLE TO EMPLOYES
Employer Applicability	Employers with 50 or more employes for each working day in 20 or more (nonconsecutive) workweeks of the preceding or current calendar year. Public agencies and private elementary and secondary schools are covered employers without regard to the number of employes employed.	Public and private employers (in Wisconsin) who employ 50 or more "permanent" employes during at least six of the preceding 12 months. Any business entity employing at least 50 workers overall, but as few as one in Wisconsin, is covered.	Varies with circumstances; WFMLA counts partial months as full months, which may or may not exceed 20 weeks.
Employe Eligibility	A person employed by the employer for at least 12 months (need not be consecutive) and employed at least 1,250 hours during the previous 12 months (determination made as of date leave begins). Excludes employes employed at a worksite with fewer than 50 employes, if the employer employs fewer than 50 workers total within 75 miles of that worksite.	A person employed by an employer at least 52 consecutive weeks and who worked at least 1,000 hours during the preceding 52 weeks. No 75-mile requirement.	• WFMLA for purposes of fewer total hours worked necessary for eligibility. • Federal law does not require 12 months employment to be consecutive, Wisconsin requires 52 consecutive weeks.
Reasons for Leave	Birth of a child or the placement of a child for adoption or foster care, to care for a child, spouse or parent (*not* “in-law”) experiencing a serious health condition, or because the employe's own serious health condition renders employe unable to perform job duties.	Same as FMLA *except* does not include leave in connection with placement of a child for foster care. WFMLA provides for leave for a "parent-in-law.”	Varies with circumstances.

PROVISION	FEDERAL LAW (FMLA)	WISCONSIN LAW (WFMLA)	MOST FAVORABLE TO EMPLOYES
Length of Leave	• Twelve weeks in a 12-month period for the birth or placement of a child for adoption or foster care, to care for a spouse, child or parent with a serious health condition, or for an employe's own serious health condition. • Spouses employed by the same employer are limited to a total of 12 weeks of leave for the birth (or placement for adoption or foster care) of a child, or for the care of a sick parent, in a 12-month period. (**Note:** This provision does *not* apply to state employes.)	• Within a calendar year, six weeks of family leave for the birth or placement for adoption of a child (which must begin within 16 weeks before or after the event), two weeks to care for a seriously ill child, spouse or parent, and two weeks for an employe's own serious health condition. • WFMLA has no such provision.	• FMLA • WFMLA, because spouses working for the same employer are *each* entitled to all leave for which they are eligible.
Determination of "12-month" Period	An employer is entitled to choose any one of the following methods for determining the 12-month period: (1) the calendar year; (2) any fixed 12-month "leave year," such as the fiscal year, a year required by state law, or a year starting on employe's anniversary date; (3) the 12-month period measured forward from the date any employe's first FMLA leave begins; or (4) a "rolling" 12-month period measured backward from the date any employe uses any FMLA leave.	An employer is required to use the calendar year.	No difference, as state agencies are required to use the calendar year as the 12-month period under FMLA.
Definition of "Parent"	Biological parent *or* individual who stood *in loco parentis* to an employe when that employe was a child. Specifically *excludes* parents "in-law."	Natural parent, foster parent, adoptive parent, stepparent or legal guardian of employe *or* employe's spouse.	Varies; WFMLA includes "in-laws"; FMLA includes individuals who stood *in loco parentis* to employe as a child.

PROVISION	FEDERAL LAW (FMLA)	WISCONSIN LAW (WFMLA)	MOST FAVORABLE TO EMPLOYES
Definition of "Child"	Biological, adopted or foster child, a stepchild, a legal ward, or a child of a person standing *in loco parentis*, who is either under age 18, or age 18 or older and incapable of self-care because of a mental or physical disability.	Natural, adopted or foster child, a stepchild or a legal ward who is under age 18, or age 18 or older but cannot care for self because of a serious health condition.	FMLA
Definition of "Spouse"	Spouse means a husband or wife as defined or recognized under state law for purposes of marriage, including common law marriage in states where it is recognized.	An employe's legal husband or wife.	Comparable
Serious Health Condition	Illness, injury, impairment or physical or mental condition involving inpatient care in hospital, hospice or residential medical facility; or continuing treatment or supervision by a health care provider. Where continuing outpatient treatment is involved, "serious health condition" involves any period of incapacity requiring more than three days absence from work, or a chronic or long-term health condition that is incurable or serious.	Disabling physical or mental illness, injury, impairment or condition involving inpatient care in hospital, nursing home or hospice; or outpatient care that requires treatment or supervision by a health care provider.	Comparable
Health Care Provider	Doctors of medicine or osteopathy licensed to practice in the State; podiatrists, dentists, clinical psychologists, optometrists, chiropractors (for manual manipulation of spine to correct subluxation demonstrated by X-ray), nurse practitioners, nurse-midwives, and clinical social workers, if authorized to practice under State law; or Christian Science practitioners listed with the First Church of Christ, Scientist in Boston, Massachusetts; any health care provider from whom a certification of the existence of a serious health condition would be accepted; any health care provider listed above who is authorized to practices in a country outside of the U.S.	Licensed physician, nurse, chiropractor, dentist, podiatrist, physical therapist, optometrist, pharmacist, psychologist; certified occupational therapist, occupational therapy assistant, physician assistant, respiratory care practitioner, dietitian, acupuncturist, social worker, marriage and family therapist, professional counselor, speech-language pathologist or audiologist; a partnership of any of the above-listed providers, hospices, inpatient health care facility, community-based residential facility, rural medical center, and Christian Science practitioner.	Varies, as FMLA and WFMLA each include several different types of health care providers.

PROVISION	FEDERAL LAW (FMLA)	WISCONSIN LAW (WFMLA)	MOST FAVORABLE TO EMPLOYES
Intermittent and Reduced Schedule Leave	• An employer may approve an employe's taking intermittent or reduced leave in connection with the birth of a child or placement of child for adoption or foster care. An employe must be allowed to take intermittent or reduced leave in connection with the employe's own serious health condition, or that of the employe's child, spouse or parent, when medically necessary.	• An employe must be allowed to take partial absence leave for any statutory purpose, in increments equal to the shortest increment permitted by the employer for any other non-emergency leave, as long as such leave does not unduly disrupt the employer's operations.	• WFMLA
	• An employer may require the employe to transfer temporarily to an alternative position that better accommodates recurring periods of leave.	• WFMLA has no such provision; however, such an accommodation would be possible with the employe's approval.	• WFMLA
Timing of Family Leave Associated with Birth, Adoption, or Foster Care	An employe may begin family leave before the birth or placement, and the leave must conclude within one year after the birth or placement.	Leave must begin within 16 weeks before or after birth or placement.	FMLA
Employe Notice to Employer	At least 30 days' notice if the need for leave is foreseeable. If leave is not foreseeable, the employe shall provide as much notice as is practicable. This ordinarily means at least verbal notice within one or two business days of when need for leave becomes known to employe.	For family leave or planned medical leave, employe must give advance notice in a reasonable and practicable manner. When employe requests partial absence leave in connection with childbirth or adoption, the employe must provide at least as much notice as the shortest notice the employer requires for any other non-emergency or non-medical leave. For medical leave or leave associated with the care of an ill family member, employe must notify employer with "reasonable promptness" after employe learns of necessity for leave.	WFMLA

PROVISION	FEDERAL LAW (FMLA)	WISCONSIN LAW (WFMLA)	MOST FAVORABLE TO EMPLOYES
Certification of Illness	• - Date serious illness commenced - Probable duration - Appropriate medical facts regarding condition	• Same as FMLA	• Comparable
	• Own Illness: Employe unable to perform functions of job	• Own Illness: Same as FMLA	• Comparable
	• To Care for Seriously Ill Child, Spouse or Parent: - Certification that employe is needed to care for ill family member - Estimated time for such care	• To Care for Seriously Ill Child, Spouse or Parent: - Date serious illness commenced - Probable duration - Appropriate medical facts regarding condition	• Comparable
	• Intermittent or Reduced Schedule Leave: - Dates and duration of treatment - Statement that such leave is medically necessary	• Partial Absence Leave: Not required	• WFMLA
	• Recertification: Allowed	• Recertification: WFMLA has no such provision.	• WFMLA
	• Periodic reports may be required by the employer concerning employe's status and intention to return to work.	• WFMLA has no such provision	• WFMLA
	• Ability to return to work: Employer can require certification of employe's ability to resume work.	• WFMLA has no such provision	• WFMLA
Second and Third Medical Opinions	• Second medical opinion allowed, chosen and paid for by employer. The second health care provider cannot be employed by the employer on a regular basis.	• Second medical opinion allowed, chosen and paid for by employer.	• Comparable
	• If two opinions conflict, the employer can require third opinion, at employer's expense. Employer and employe must agree on third health care provider, whose opinion is considered binding.	• If first two health care providers disagree, the DWD/Equal Rights may appoint a third health care provider (at admin.. proceeding) at the shared expense of the agency & employe.	• FMLA

PROVISION	FEDERAL LAW (FMLA)	WISCONSIN LAW (WFMLA)	MOST FAVORABLE TO EMPLOYES
Executive, Administrative and Professional Employes	Salaried executive, administrative, and professional employes of covered employers who meet the Fair Labor Standards Act (FLSA) criteria for exemption from minimum wage and overtime under Regulations, 19 CFR Part 541, do not lose their FLSA-exempt status by using any unpaid FMLA leave. This special exception to the "salary basis" requirements for FLSA's exemption extends only to "eligible" employes' use of leave required by FMLA.	Unpaid leave would not result in loss of exempt status under State minimum wage and overtime law (per DILHR verbal interpretation).	Comparable
Substitution of Paid Leave	Employe may elect accrued paid leave to be substituted in some cases. No limits on substituting paid vacation or personal leave. Employes may *not* substitute paid sick leave for any situation not covered by employer's sick leave plan.	Employe may elect to substitute accrued paid or unpaid leave of any other type provided by employer. Employers may not force substitution.	WFMLA
Maintenance of Employe Benefits	• Group Health Insurance: Must maintain at the same level and under same conditions that applied immediately prior to leave. • Seniority: Not entitled to accrue seniority while on leave. Cannot lose benefits accrued before leave commenced. Not entitled to any right, benefit or position to which employe would not have been entitled had s/he not taken leave. • Retirement System: • Entitled to accrue continuous service for purposes of vesting and eligibility to participate in retirement plan. • Not entitled to accrue creditable service while on leave.	• Group Health Insurance: Same, except employer may require employe to escrow amount equal to premium for 8 weeks of employe's group health coverage. • Seniority: Same as FMLA. Same as FMLA. Same as FMLA. • Retirement System: • WFMLA contains no provisions related to the retirement system.	• FMLA • Comparable • FMLA

PROVISION	FEDERAL LAW (FMLA)	WISCONSIN LAW (WFMLA)	MOST FAVORABLE TO EMPLOYES
Restoration to Same or Equivalent Position and Key Employe Exception	• Restoration to the same position, or an equivalent position with equivalent benefits, pay and other terms and conditions of employment.	• Essentially same as FMLA.	• Comparable
	• Employer can deny restoration to salaried employes if among highest paid 10% and if restoration would lead to grievous economic harm to employer.	• WFMLA has no such provision.	• WFMLA
Prohibited Acts	• An employer is prohibited from interfering with, denying or restraining any employe from exercising any statutory right. An employer is prohibited from discharging or otherwise discriminating against an employe for opposing a practice made unlawful under the statute, or for participating in any inquiry or proceeding relating to rights established under the statute.	• Same as FMLA.	• Comparable
	• An employe cannot waive rights under the FMLA.	• WFMLA has no such provision, however, s. 111.91(2)(f), Wis. Stats., states that the employer is prohibited from bargaining family and medical leave rights below the minimum afforded under WFMLA.	• FMLA
Enforcement	• Employe can bring a civil action in state or federal court or file a claim with the Secretary of Labor.	• State employes must file a complaint with the DWD/Equal Rights.	• FMLA
	• <u>Statute of Limitations</u>: Two years after alleged violation, and up to three years if violation is "willful."	• <u>Statute of Limitations</u>: Within 30 days after alleged violation.	• FMLA

PROVISION	FEDERAL LAW (FMLA)	WISCONSIN LAW (WFMLA)	MOST FAVORABLE TO EMPLOYES
Remedies	• Lost wages, benefits or other compensation, and interest calculated at the prevailing rate. An employe may also seek equitable relief including employment, reinstatement or promotion. Employer required to pay prevailing employe's reasonable attorney's fees, reasonable expert fees, and other costs.	• Reinstatement, back pay accrued not more than two years before complaint filed, reasonable actual attorney's fees and interest at 12%.	• FMLA
	• Employer may be liable for liquidated damages if violation is found to be "willful."	• WFMLA does not provide liquidated damages.	• FMLA
Investigative Authority and Recordkeeping Requirements	• Investigative: Secretary of Labor is given investigative authority.	• DWD/Equal Rights can investigate only after employe files a complaint.	N/A
	• Recordkeeping: Employer must keep specified records. Secretary of Labor can request review once every 12 months.	• No such requirement under WFMLA	
Posting Requirements	• Post notices containing information about law and how to file complaint.	• Same as FMLA.	N/A
	• $100 fine for each offense.	• Same as FMLA.	
	• Must include information about FMLA in employe handbook or other written materials if employer supplies these.	• WFMLA has no such provision.	
	• When employe requests leave, employer must provide employe written notice of employe's rights and obligations, and the consequences of failing to meet these obligations.	• WFMLA has no such requirement.	

NOTICE OF STATE EMPLOYES' RIGHTS UNDER THE WISCONSIN FAMILY AND MEDICAL LEAVE ACT

Wisconsin law requires all state agencies to display copies of this poster in one or more conspicuous places where notices to employes are customarily posted.

The Wisconsin Family and Medical Leave Act, s. 103.10, Wis. Stats., took effect on April 26, 1988, for nonrepresented employes. For represented employes, this law took effect on July 1, 1989, the day after the collective bargaining agreements were extended.

This Act, which applies to all state agencies, requires the following:

- *That an employe of either sex be allowed up to six (6) weeks of leave in a twelve month period for the birth or adoption of a child of the employe with all increments of leave to begin within 16 weeks of the birth or placement of that child.*
- *That an employe be allowed up to two (2) weeks of leave in a twelve month period for the care of a child, spouse, or parent with a serious health condition. The employing agency may require certification from a health care provider.*
- *That an employe be allowed up to two (2) weeks of leave in a twelve month period for the employe's own serious health condition which makes the employe unable to perform the employe's employment duties. The employing agency may require certification from a health care provider.*

Use of family/medical leave will frequently result in the simultaneous use of other leave benefits such as sick leave and parental leave.

This Act only applies to an employe who has worked for the State of Wisconsin more than 52 consecutive weeks and who has worked (including paid leave) for at least 1,000 hours during that 52-week period. Employes may also be subject to leave policies which are more generous than leaves required by the Act. Contact your employing agency to find out exactly what policies are in place.

A COMPLAINT CONCERNING A DENIAL OF RIGHTS UNDER THIS ACT MUST BE MADE WITHIN 30 DAYS AFTER THE VIOLATION OCCURS OR THE EMPLOYE SHOULD HAVE REASONABLY KNOWN THAT THE VIOLATION OCCURRED, WHICHEVER IS LATER.

For answers to questions about the Act, contact your agency personnel office. To make a complaint about a denial of rights under the Act, contact:

DWD/Equal Rights
201 E Washington Avenue
Madison, WI 53702
(608) 266-6860

YOUR RIGHTS UNDER THE FAMILY & MEDICAL LEAVE ACT OF 1993

FMLA requires covered employers to provide up to 12 weeks of unpaid, job-protected leave to "eligible" employees for certain family and medical reasons. Employees are eligible if they have worked for a covered employer for at least one year, and for 1,250 hours over the previous 12 months, and if there are at least 50 employees within 75 miles.

REASONS FOR TAKING LEAVE: Unpaid leave must be granted for any of the following reasons:

- 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;
- for a serious health condition that makes the employee unable to perform the employee's job.

At the employee's or employer's option, certain kinds of paid leave may be substituted for unpaid leave.

ADVANCE NOTICE AND MEDICAL CERTIFICATION: The employee may be required to provide advance leave notice and medical certification. Taking of leave may be denied if requirements are not met.

- The employee ordinarily must provide 30 days advance notice when the leave is "foreseeable."
- An employer may require medical certification to support a request for leave because of a serious health condition, and may require second or third opinions (at the employer's expense) and a fitness for duty report to return to work.

JOB BENEFITS AND PROTECTION:

- For the duration of FMLA leave, the employer must maintain the employee's health coverage under any "group health plan."
- Upon return from FMLA leave, most employees must be restored to their original or equivalent positions with equivalent pay, benefits, and other employment terms.
- The use of FMLA leave cannot result in the loss of any employment benefit that accrued prior to the start of an employee's leave.

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:

- The U.S. Department of Labor is authorized to investigate and resolve complaints of violations.
- An eligible employee may bring a civil action against an employer for violations.

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.

FOR ADDITIONAL INFORMATION: Contact the nearest office of the Wage and Hour Division, listed in most telephone directories under U.S. Government, Department of Labor.

U.S. Department of Labor, Employment Standards Administration **WH Publication 1420**
Wage and Hour Division, Washington, D.C. 20210 **June 1993**

THE FEDERAL FAMILY & MEDICAL LEAVE ACT OF 1993

The following policies have been developed by the Office of State Employment Relations to ensure statewide compliance with the federal Family and Medical Leave Act of 1993 (FMLA). The FMLA took effect on August 5, 1993, for nonrepresented employes. For represented state employes for whom a collective bargaining agreement was in effect on that date (including extension of a previous agreement), the law became effective when the collective bargaining agreement terminated or February 5, 1994, whichever was earlier.

1. Employe Eligibility. State employes (including limited term and project employes) are eligible for unpaid leave under FMLA if they:

   a. Have been employed by the state for at least 12 months; ***and***

   b. Have worked for the state at least 1,250 hours in the 12 month period immediately preceding the beginning of the requested leave under FMLA; ***and***

   c. Are employed at a worksite where there are at least 50 state employes employed within 75 miles of the worksite.

2. Reasons for Leave. Eligible employes are entitled to use unpaid leave under FMLA when taken for the following purposes:

   a. For the birth of the employe's child ***and*** to care for the newborn child (leave must be concluded within 12 months following birth); or

   b. For placement of a child with the employe for adoption or foster care (leave must be concluded within 12 months following placement); or

   c. To care for the employe's child, spouse, or parent (but *not* parent "in-law") with a serious health condition; or

   d. For the serious health condition of the employe that makes the employe unable to perform the functions of the employe's position.

3. Length of Leave. Eligible employes are entitled to use 12 workweeks of unpaid leave for FMLA-qualifying purposes during each calendar year.

4. Notice of Need for Leave. Employes are required to provide agencies 30 days' advance notice of the need to take FMLA leave, or as much notice as feasible if leave is to begin in less than 30 days. Employes must request FMLA leave by completing a "Family and Medical Leave--Employe Request Form" which can be obtained from the agency personnel office. Failure to provide timely notice as required may result in an employe's request for leave being denied until at least 30 days after the date notice is provided.

5. Substitution of Paid Leave for Unpaid FMLA Leave:

   Employes may substitute unused accumulated paid leave, i.e., annual leave, personal/legal holiday (*not* compensatory time), or a combination thereof, for portions of unpaid FMLA leave for the birth of a child or for placement of a child for adoption or foster care. Employes may elect to substitute sick leave, in addition to leave noted previously, for unpaid FMLA leave to care for a family member with a serious health condition or for the employe's own serious health condition. **Sick leave may *only* be substituted under those circumstances for which sick leave is otherwise provided under the applicable collective bargaining agreement or administrative rules.** Under no circumstances will employes be entitled to FMLA leave in excess of the authorized 12 weeks as a result of the substitution of paid leave.

   Any leave, with or without pay, that is designated as leave under FMLA will count against the employe's FMLA entitlement.

6. Intermittent Leave. Intermittent leave or leave on a reduced work schedule:

   a. Must be given only when there is a medical need for such leave *and* the medical need can best be accommodated through an intermittent or reduced leave schedule; and

   b. The leave is being used for the employe's own serious health condition, or to care for a family member with a serious health condition;

   c. May be given, at the discretion of the appointing authority, when taken for the birth of the employe's child, or placement of a child with the employe for adoption or foster care.

7. Medical Certification. If requested, employes must provide medical certification for leave under FMLA when taken for the serious health condition of the employe or the employe's family member. Failure to provide timely medical certification as requested may result in the denial of leave until the required certification is provided.

8. Benefit Continuation:

   a. Group Health Insurance: For employes on leave without pay under FMLA, agencies must maintain the employe's group health insurance coverage on the same conditions and continuing agency contributions as would have been provided if the employe had been continuously employed.

      The agency will advise employes of their individual eligibility for continuation of group health insurance under the provisions of FMLA. Employes are required to pay the employe portion of health insurance premiums, if applicable, during unpaid leave under FMLA. The agency will advise employes as to the cost of coverage and when and where to send the premium payments, if any. ***Coverage may be terminated for employes who do not pay their portion of the cost of coverage.***

      If the employe fails to return to work after the employe's FMLA leave entitlement has been exhausted or expires, the agency will collect from the employe the employer portion of premiums paid during the leave *unless* the reason the employe does not return is due to:

      1) The continuation, recurrence, or onset of a serious health condition which would qualify as leave under FMLA; or

2) Other circumstances beyond the employe's control (e.g., an individual other than an immediate family member has a serious health condition and the employe is needed to provide care, or the employe is laid off while on leave).

b. Benefits Accrued Prior to Leave: While employes will not accrue additional benefits during leave without pay under FMLA, benefits accrued prior to leave will be retained at the same levels upon return to work. For example, paid annual leave, sick leave, or personal holidays which are not substituted for FMLA leave will be available to the employe upon return from leave.

c. Continuous Service:

1) State Seniority: Employes will continue to accrue continuous service for seniority purposes while on leave under FMLA.

2) Retirement System: The time an employe is on FMLA leave (either paid or unpaid) will be treated as continuous service for purposes of vesting and eligibility to participate in the retirement plan. However, the time an employe is on unpaid FMLA leave will *not* be counted as creditable service.

9. Return from FMLA Leave: When returning from leave taken under FMLA, generally an employe will be returned to the same or equivalent position, including the same pay, benefits, and other terms and conditions of employment. However, the employe has no *right* under FMLA to return to the *same* position. If state law or a collective bargaining agreement governs an employe's return to work, those provisions shall be applied.

   Fitness-for-duty certification may be required prior to returning to work from FMLA leave taken for the employe's own serious health condition. Failure to provide fitness-for-duty certification as requested may result in denial of reinstatement until the required certification is provided.

10. FMLA and Other Leave Benefit Provisions: FMLA entitlement is to be coordinated with the provisions of the Wisconsin Family and Medical Leave Act (WFMLA), as well as leave benefits provided under administrative rules of the Director of OSER, or the applicable collective bargaining agreements. Employes may *not* use benefits provided under FMLA *in addition* to benefits provided under the WFMLA, administrative rule, or applicable collective bargaining agreement. Leave qualifying under both laws will be counted against the employe's entitlement under both the federal and state laws, as well as towards the employe's entitlement under administrative rule or the applicable collective bargaining agreement.

Questions regarding the Family and Medical Leave Act should be referred to the agency personnel office.

NOTICE TO EMPLOYES REQUESTING LEAVE UNDER THE FEDERAL FAMILY AND MEDICAL LEAVE ACT OF 1993

The following is information regarding policies and procedures for leave under the federal Family and Medical Leave Act of 1993 (FMLA), as well as employes' rights and responsibilities. It is important that employes are aware of their obligations and understand the consequences of failure to meet these obligations.

Please carefully review this information and refer any questions to your supervisor or the agency personnel office.

1. Employe Eligibility: An employe is eligible for unpaid leave under FMLA if s/he:

   - has been employed by the state for at least 12 months; ***and***
   - has worked for the state at least 1,250 hours during the previous 12 months; ***and***
   - is employed at a worksite where there are at least 50 state employes employed within 75 miles of the worksite.

2. Reasons for Leave: Employes determined to be eligible under 1., above, are entitled to use unpaid leave under FMLA when taken:

   - for the birth of a child ***and*** to care for the newborn child (leave must be concluded within 12 months following birth);
   - for placement of a child with the employe for adoption or foster care (leave must be concluded within 12 months following placement);
   - to care for the employe's child, spouse, or parent (but *not* parent "in-law") with a serious health condition; or
   - for the employe's own serious health condition that renders the employe unable to perform the functions of his/her position.

3. Length of Leave: An employe is entitled to use 12 workweeks of leave for FMLA purposes during each calendar year. Leave, with or without pay, taken by an employe that is FMLA-qualifying will be counted against the employe's annual FMLA entitlement.

4. Notice of Need for Leave: Employes are required to inform agencies 30 calendar days in advance of the need to take FMLA leave, or give as much notice as feasible if leave is to begin in less than 30 days. Employes must request leave by completing the "Family and Medical Leave Act--Employe Request Form" provided by the agency personnel office. ***Failure to provide timely notice as required may result in an employe's request for leave being denied until at least 30 days after the date notice is provided.***

   Employes should check with their supervisor or agency personnel office for the agency's policy regarding fitness-for-duty certification.

5. Substitution of Paid Leave for Unpaid FMLA Leave: Employes may request to substitute unused accumulated paid leave, i.e., annual leave, personal/legal holiday (*not* compensatory time), or a combination thereof, for portions of unpaid FMLA leave for the birth of a child or for placement of a child for adoption or foster care. Employes may elect to substitute sick leave, in addition to leave noted previously, for unpaid FMLA leave to care for a family member with a serious health condition or for the employe's own serious health condition. **Sick leave may *only* be substituted under those circumstances for which sick leave is otherwise provided under the applicable collective bargaining agreement or administrative rules.**

   Under no circumstances will employes be entitled to FMLA leave in excess of the authorized 12 weeks as a result of the substitution of paid leave.

   Any leave, paid or unpaid, that is designated as leave under FMLA will count against the employe's FMLA entitlement. Employes should check with their supervisor or agency personnel office for the agency's dispute resolution process in case of disagreement as to whether leave should be designated as leave under FMLA.

6. Intermittent Leave

   Intermittent leave or leave on a reduced work schedule:

   - ***Must*** be given only when there is a medical need for such leave *and* the medical need can best be accommodated through an intermittent or reduced leave schedule; *and*

   - The leave is being used for the employe's own serious health condition, or to care for a family member with a serious health condition;

   - ***May*** be given, at the discretion of the appointing authority, when taken for the birth of the employe's child, or placement of a child with the employe for adoption or foster care.

   If an employe requests intermittent leave or leave on a reduced schedule, the employer may require the employe to transfer temporarily to an available alternative position for which the employe is qualified and which better accommodates recurring periods of leave than does the employe's regular position. The alternative position must have equivalent pay and benefits but does not have to have equivalent duties.

   Employes should check with their supervisor or agency personnel office for the agency's intermittent leave policy.

7. Medical Certification

   a. Agencies may require employes requesting FMLA leave to provide medical certification. If medical certification is requested, the medical certification form (provided by the agency) must be completed by the employe's health care provider or, in the case of a seriously ill family member, the family member's health care provider. The medical certification form must be returned within fifteen (15) days of request for leave, or in cases of a medical emergency or unforeseen circumstances, as soon as practicable after commencement of leave. ***Failure to provide timely medical certification as requested may result in the denial of leave until the required certification is provided.***

b. If medical certification is requested, the following requirements will apply:

1) The appointing authority, at the agency's expense, may request a second opinion by a health care provider who is designated by the appointing authority. In the event that the two medical opinions differ, a third opinion by a health care provider mutually agreed upon by the employe and the appointing authority, also at the agency's expense, may be requested. The third opinion will be final and binding. If an employe is being treated by a Christian Science practitioner, the agency may require a second or third certification from a health care provider who is not a Christian Science practitioner.

2) Agencies may request recertification at reasonable intervals but not more often than every 30 days unless the employe has requested a leave extension, circumstances described by the original certification have changed significantly, the agency received information which casts doubt upon the continuing validity of the certification, or the employe is unable to return to work after FMLA leave and the employer needs the certification for health insurance purposes.

3) The agency may require an employe on FMLA leave to report periodically on the employe's status and intent to return to work.

8. Benefit Continuation

a. Group Health Insurance:

For employes substituting *paid* leave (e.g., annual leave or sick leave) under FMLA, group health insurance will continue as with any paid leave.

For authorized leave *without pay* under FMLA, agencies must maintain the employe's group health insurance coverage on the same conditions and continuing agency contributions as would have been provided if the employe had been continuously employed.

The agency will advise employes of their individual eligibility for continuation of group health insurance under the provisions of FMLA. Employes are required to pay the employe portion of health insurance premiums, if applicable, during unpaid leave under FMLA. The agency will advise employes as to the cost of coverage and when and where to send the premium payments, if any. ***Coverage will be terminated for employes who do not pay their portion of the cost of coverage.***

In the event an employe's coverage is terminated due to non-payment while on leave, the employe may re-enroll in whatever coverage was in effect prior to taking leave under FMLA upon return to work. Coverage will be effective the first day the employe returns from leave under FMLA.

The agency may recover its share of group health insurance premiums during a period of unpaid FMLA leave if the employe fails to return to work after the employe's FMLA leave entitlement has been exhausted or expires, unless the reason the employe does not return is due to:

1) The continuation, recurrence, or onset of a serious health condition of the employe or the employe's family member which would otherwise entitle the employe to leave under FMLA; or

2) Other circumstances beyond the employe's control.

b. Benefits Accrued Prior to Leave: While employes will not accrue additional benefits during leave without pay under FMLA, benefits accrued prior to leave will be retained at the same levels upon return to work. For example, paid annual leave, sick leave, or personal holidays which are not substituted for FMLA leave will be available to the employe upon return from leave.

c. Continuous Service:

1) State Seniority: Employes, other than LTEs, will continue to accrue continuous service for seniority purposes while on leave under FMLA.

2) Retirement System: The time an employe is on FMLA leave (either paid or unpaid) will be treated as continuous service for purposes of vesting and eligibility to participate in the retirement plan. However, the time an employe is on unpaid FMLA leave will *not* be counted as creditable service.

9. Return from FMLA Leave: When returning from leave taken under FMLA, an employe generally will be returned to the same or equivalent position, including the same pay, benefits, and other terms and conditions of employment. However, an employe has no *right* under FMLA to return to the *same* position. If state law or a collective bargaining agreement governs an employe's return to work, those provisions shall be applied.

Employes may be required to provide a fitness-for-duty certification signed by the employe's health care provider before returning to work from FMLA leave taken for the employe's own serious health condition. ***Failure to provide a fitness-for-duty certification upon request may result in denial of reinstatement until the required certification is provided.***

Employes should check with their supervisor or agency personnel office for the agency's policy regarding fitness-for-duty certification.

10. FMLA and Other Leave Benefit Provisions: FMLA entitlement is to be coordinated with the provisions of the Wisconsin Family and Medical Leave Act (WFMLA), as well as leave benefits provided under administrative rules of the Director of OSER or the applicable collective bargaining agreement. Employes may not use benefits provided under FMLA *in addition* to benefits provided under the WFMLA, administrative rule, or applicable collective bargaining agreement. Leave qualifying under both laws will be counted against the employe's entitlement under both the federal and state laws, as well as towards the employe's entitlement under administrative rule or the applicable collective bargaining agreement.

Questions regarding the Family and Medical Leave Act should be referred to the agency personnel office.

This is a fill-in form. Please click on the appropriate area to enter information. Tab between fields and PRINT when completed.

State of Wisconsin
Office of State Employment Relations
Division of Compensation and Labor Relations

If using Adobe Acrobat Reader you CANNOT e-mail the form -- no data will be included.

FAMILY AND MEDICAL LEAVE ACT - EMPLOYEE REQUEST

NAME:

HOME ADDRESS: _____
_____ WI _____
(City) (State) (Zip)

HOME TELEPHONE: **WORK TELEPHONE:**

AGENCY NAME/DIVISION:

WORK ADDRESS: _____
_____ WI _____
(City) (State) (Zip)

REASON FOR LEAVE:

- ☐ Birth/Adoption/Pre-Adoptive Foster Care
- ☐ Foster Placement
- ☐ Employee's Own Serious Health Condition
  [medical certification may be required]
- ☐ To Care for Family Member with Serious Health Condition*
  [medical certification may be required]

***NAME OF FAMILY MEMBER AND EXPLANATION OF RELATIONSHIP:** (When Family and Medical Leave is needed to care for a seriously ill family member, the employee shall state the care s/he will provide and an estimate of the time period during which this care will be provided, including a schedule if intermittent leave or leave on a reduced work schedule is requested.)

ANTICIPATED DATES OF LEAVE: From: Through:

BRIEFLY EXPLAIN REASON FOR LEAVE REQUEST:

SUBSTITUTION OF PAID LEAVE:
(to the extent provided by law)

[Attach completed leave report form]

☐ Annual Leave	_____ Hours
☐ Personal Holiday	_____ Hours
☐ Sick Leave (if eligible)	_____ Hours
☐ Other (specify)	_____ Hours

I certify that I understand, agree to, and meet the requirements and conditions of the Family and Medical Leave Act of 1993.
I authorize the appointing authority to obtain any necessary information regarding my request for family and medical leave.

_____
Employee Signature Date

FOR AGENCY USE ONLY: Leave request is
_____ Approved [Circle: Federal/State/Both]
_____ Not Approved (Explanation on reverse side)**

_____
Authorizing Signature Date

****If FMLA request is *not approved*, send photocopy of completed form and explanation of denial to OSER, Division of Compensation & Labor Relations**, 101 East Wilson Street, 4th Floor, **P.O. Box 7855, Madison, WI 53707-7855**

Print Form Clear Form

ATTACHMENT 9

CERTIFICATION BY PHYSICIAN OR PRACTITIONER FOR FAMILY OR MEDICAL LEAVE

EMPLOYE'S NAME:	PATIENT'S NAME (if other than employe):

1. Does _____ have a serious health condition?*
(patient)

- Yes (continue with #2)
- No (provide signature and return form to address listed)

*NOTE: Wisconsin's Family and Medical Leave law (s. 103.10, Wis. Stats.) defines a "serious health condition" as: A disabling physical or mental illness, injury, impairment or condition involving either: 1) inpatient care in a hospital, or 2) outpatient care that requires continuing treatment or supervision by a health care provider.

2. Date condition commenced:

3. Probable duration of condition:

4. Specify medical facts regarding the serious health condition:

5. Indicate the extent to which the employe is unable to perform his or her employment duties:

Physician/Practitioner Name (please print): _____

_____
Physician/Practitioner Signature Date

Please return completed, signed form to the following address:

_____

_____

_____

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