

SCHOOL DISTRICT OF AMERY
Guide to the
Family and Medical Leave Act (FMLA)
and the
Wisconsin Family and Medical Leave Act (WFMLA)

The Federal Family and Medical Leave Act (FMLA) and the Wisconsin Family and Medical Leave Act (WFMLA) provide you with the right to take job-protected leave with continued medical benefits when you need time off from work to care for yourself or a family member who is seriously ill, to care for a newborn or newly adopted child or to attend to the affairs of a family member who is called to active duty in the military. Effective June 30, 2009, WFMLA was expanded to include an employee's right to take up to two weeks of job-protected leave to care for a domestic partner or a domestic partner's parent.

Leave taken for FMLA-eligible reasons must run concurrently under FMLA, WFMLA and other leave provisions available. The leave available under the various provisions is exhausted simultaneously. To understand how the integration of laws with District policies and collective bargaining affects you, please contact the District Office.

The following gives a comparison of federal and state Family and Medical Leave Acts. The School District of Amery must comply with any provisions of state or local law that provide greater family or medical leave rights than the rights established by the federal FMLA. The U.S. Department of Labor will not enforce state family and medical leave laws, and states may not enforce federal family and medical leave laws. Employees have no obligation to designate whether the leave they are taking is federal or state FMLA leave. Thus, employers covered by both federal and state FMLA must comply with the provisions of both. Further information on federal FMLA may be obtained by contacting the nearest office of the Wage and Hour Division, listed in most telephone directories under U.S. Government, Department of Labor, Employment Standards.

What are an employee's leave entitlements under the federal law?

The federal Family and Medical Leave Act of 1993 entitles employees who have worked 12 months for an employer and at least 1,250 hours in the 12 month period prior to leave of up to 12 weeks. This leave may be taken for:

- the birth or placement for adoption or foster care of a son or daughter,
- the serious health condition of the employee's parent (but not parent-in-law), son, daughter or spouse,
- the serious health condition of the employee,
- "Any qualifying exigency" arising from fact that a spouse, parent or child (who is a member of the National Guard or Reserves) is on or has been called to active duty.

It also allows eligible employees who are family members of covered service members to take up to 26 weeks of unpaid leave in a single 12-month period to care for a covered service member with a serious illness or injury incurred in the line of duty. The employee is not entitled to 12 weeks for each of these reasons within a 12-month period.

What are an employee's leave entitlements under the Wisconsin Family and Medical Leave Law?

The Wisconsin Family and Medical Leave Law entitles employees who have worked for an employer for 52 consecutive weeks and at least 1,000 hours in the 12 months prior to leave, up to six (6) weeks of leave on the birth or adoption of a child. Two (2) weeks to care for a parent (or parent-in-law), child or spouse of the employee with a serious health condition and two (2) weeks for the serious health condition of the employee. Unlike leave under the federal law, entitlement under the Wisconsin Family and Medical Leave Law are specific to the category of leave requested.

What does the federal Family and Medical Leave Act consider as a serious health condition?

It defines a serious health condition as an illness, injury, impairment or physical or mental condition that involves one of the following:

- Inpatient care;
- Absence of more than 3 calendar days plus treatment;
- Pregnancy or parental care;
- Chronic conditions requiring treatments;
- Permanent long-term conditions requiring treatment;
- Multiple treatments of non-chronic conditions.

What does the Wisconsin Family and Medical Leave Act consider as a serious health condition?

Under the Wisconsin provisions, a serious health condition is a disabling physical or mental illness, injury, impairment or condition involving inpatient care in a hospital, nursing home or hospice, or out-patient care that requires continuing treatment or supervision by a health care provider.

Does an employee's pay continue during a period of leave?

Leave under both state and federal law is unpaid. However, under the state law, an employee may substitute paid or unpaid leave. Under federal law, an employer may require or an employee may elect to substitute paid leave for the otherwise unpaid leave. The School District of Amery requires employees to substitute any paid leave available for the leave.

Do employee's health benefits continue during a period of leave?

If the leave is covered by either state or federal law, the employee's health insurance shall continue, under the same conditions as comparable active employees.

What is the 12-month period within which an employee's leave is to be taken?

For Wisconsin leave purposes, the 12 month period during which leave must be taken is based on a calendar year. The federal 12-month period during which leave may be taken is based on the period selected by the employer, and the School District of Amery uses a rolling year based on the first day of leave.

If an employee qualifies for leave under one of the laws, does the employee automatically qualify for leave under the other law?

An employee must qualify under the federal law to be entitled to the 12 weeks of leave. The employee must qualify under Wisconsin law to be eligible for the Wisconsin leave entitlement. Satisfaction of one law's eligibility requirements does not necessarily mean the employee has satisfied the requirements of the other. However, an employer may use the lower of the federal and state requirements for purposes of leave administration. In such a case, the satisfaction of the lower thresholds for federal and Wisconsin leave will result in employee entitlement to such leaves.

If an employee is entitled to leave under both laws, how is his or her leave charged against the entitlement?

If an employee qualifies for federal family and medical leave and for leave under state law, leave used counts against the employee's entitlement under both laws.

If an employee is entitled to leave under only one law, how is his or her leave accounted for?

If an employee is entitled to leave under only one law, his or her leave used counts against the entitlement under that law.

If an employee is entitled to leave under only Wisconsin law, what rules apply as to notice, certification and intermittent leave.

When an employee is entitled only to leave under Wisconsin law, then only the Wisconsin rules regarding notice, certification and intermittent leave apply.

If an employee is entitled to leave under both laws, which requirements for notice, certification, substitution and intermittent leave apply?

Nothing in the Federal Family and Medical Leave Act supersedes any provision of state or local law which provides greater family and medical leave rights than those provided by the federal law. Therefore, where an employee is entitled to leave under both laws, the notice, certification, substitution and intermittent leave requirements which provide the greater leave rights apply. However, if an employee's leave extends beyond the period of coverage under one of the laws, an employer may require the employee to comply with the requirements of the continuing law.

If an employee is only entitled to leave under the federal law, what rules apply concerning notice, certification, substitution and intermittent leave?

If an employee is only entitled to leave under the federal law, then the federal rules concerning notice, certification, substitution and intermittent leave apply.

If an employer's policy and/or collective bargaining agreement provides greater family and medical leave rights than are provided by either federal or state law, which rules apply?

To the extent that an employer's policy and/or collective bargaining agreement provides leave rights in addition to or greater than those provided by state or federal law, the employer's policy and/or collective bargaining agreement shall apply to the extent they are more generous.

If an employee takes leave for the birth or adoption of a child and is eligible for leave under Wisconsin and federal formats, how are the leaves coordinated?

For an employee who qualifies under both the federal and Wisconsin laws for leave on a birth or adoption, the six weeks of Wisconsin and federal leave may commence prior to, on or after the birth or adoption. Wisconsin law provides that the six weeks of leave must commence within 16 weeks before or after the birth or adoption. Under federal law, up to 12 weeks of leave is available for the birth or placement for adoption provided the leave is concluded no later than 12 months after the birth or placement. The federal and Wisconsin leaves will run concurrently where an employee is entitled to both.

Example: Following the birth of a child, mother desires to take off 12 weeks and father six weeks. Mother will be on leave for her own serious health condition for a period of six weeks, under her employer's disability plan, concurrently using two weeks of Wisconsin leave for her serious health condition and six weeks of federal leave for her serious health condition. At the end of the six weeks of disability, she may take an additional six weeks of leave for the birth of the child under Wisconsin law, concurrently utilizing the remaining six weeks of her federal leave. The father will take six weeks of leave for the birth of a child. Concurrently using his six weeks for the birth of a child under Wisconsin law and six weeks of his federal entitlement, leaving six weeks of leave under the federal law which may be used for other qualifying purposes later in the year.

Is placement for foster care covered?

Placement for foster care is covered only under federal law but not under state law.

If an employee is eligible for leave to care for a family member with a serious health condition under Wisconsin and federal law, how are the leaves coordinated?

Under Wisconsin law, an employee is entitled to take up to two weeks per year to care for a parent (including parent-in-laws), child or spouse with a serious health condition. Federal law allows an employee up to 12 weeks per year to care for a parent, child or spouse with a serious health condition. If the requirements for leave under both laws are met, the leave under both laws run concurrently.

Example: The child of an employee experiences a serious health condition, which has a duration of 12 weeks. The first two weeks are covered by both laws with the next 10 weeks of leave covered only by federal law. If the employee's need for leave should extend beyond the 12 weeks, the availability of additional weeks will be governed by the employer's leave policies.

If an employee experiences a serious health condition, how are his or her leave entitlement coordinated under Wisconsin and federal law?

An employee will be entitled to up to two weeks of leave under Wisconsin's law for his or her own serious health condition, and up to 12 weeks of leave under federal law, provided the leave has not been utilized for other purposes. If the employee is entitled to leave under both laws, then leave use will be counted against both entitlements concurrently.

Example: An employee experiences a serious health condition which renders him or her unable to perform the functions of his or her position. The first weeks of leave are covered by both the Wisconsin and federal laws, concurrently, with any additional leave covered and charged only against the employee's federal entitlement, up to 10 additional weeks. If the employee's need for leave extends beyond 12 weeks from its commencement, the availability of leave from work will be governed by the employer's leave policies.