

523.6

FAMILY AND MEDICAL LEAVE

CESA #9 complies with all applicable laws concerning family and medical leave (FMLA). Employees may be eligible for leave under both the federal and state family and medical leave laws. There are different eligibility provisions for these laws, different rights under the laws, and different procedural requirements for employees to follow. The purpose of this policy is to briefly describe some of the rights and responsibilities of employees under these laws. However, this policy does not, nor is it intended to, spell out every right and responsibility under the two laws. If an employee has any questions or desires additional information, the employee should contact the Agency Administrator or designee. When both laws apply, the leaves under state and federal law will run concurrently and the provisions more beneficial to the employee will apply. Medical leaves that qualify under the FMLA will also run concurrently with leaves under short and long term disability policies, worker's compensation, and other laws, as applicable and as allowed by law.

To qualify for federal FMLA, employees must be employed by the Agency for a total of at least twelve (12) months and have actually worked at least 1,250 hours in the preceding 12-month period. To qualify for Wisconsin FMLA, employees must have been employed at least 52 consecutive weeks and have worked or been paid at least 1,000 hours in the preceding 52 weeks.

Employees on FMLA leave may not engage in any other employment that is inconsistent with the reason for the employee's FMLA leave.

The Agency will not use the requesting or taking of FMLA leave in compliance with the law as a basis for any adverse employment decision. Employees should direct any questions regarding FMLA leave to the Agency Administrator or designee.

General Leave Rights

Federal FMLA - Under the federal FMLA, eligible employees are allowed up to 12 workweeks of unpaid leave per 12-month period for the following reasons (see also Military Family Leave below):

- The employee's own serious health condition that makes the employee unable to perform the functions of his or her position
- To care for the employee's spouse, child or parent with a serious health condition
- For the birth of the employee's child, or placement of a child for adoption or foster care with the employee
- For incapacity due to pregnancy, prenatal medical care or child birth

Wisconsin FMLA - The Wisconsin FMLA permits eligible employees to take unpaid leave for the following reasons:

- Two (2) weeks for the employee's own serious health condition

- Two (2) weeks to care for the employee's spouse, child, domestic partner, parent, parent-in-law, or parent of a domestic partner with a serious health condition
- Six (6) weeks to care for the employee's child after birth or adoption

The Agency will calculate the federal 12-month period as a fiscal year from July 1 to June 30. Under federal FMLA, leave for birth, adoption or foster care placement must be concluded within 12 months of the birth or placement for adoption or foster care. If both parents work for the Agency, the employees will share one 12 week leave for the birth or placement of a child.

The Wisconsin FMLA entitlement will run on a calendar year basis. Any leave for the birth or adoption of a child taken under Wisconsin FMLA must start within 16 weeks of the birth or adoption of the child.

Military Family Leave - The federal FMLA provides for military family leave. Several provisions of this FMLA policy (including employee notice provisions and certification requirements) apply to military family leave as well.

There are two types of military family leave.

Qualifying Exigency Leave. Eligible employees with a spouse, son, daughter or parent on covered active duty or called to covered active duty status may use their 12-week FMLA entitlement to address certain qualifying exigencies. Qualifying exigencies may include attending certain military events, arranging for alternative childcare or parental care, addressing certain financial and legal arrangements, attending certain counseling sessions, and attending post-deployment reintegration briefings. The 12 weeks of leave afforded for a qualifying exigency is not in addition to the general 12 weeks afforded under the federal FMLA. An employee is entitled to no more than 12 total weeks of leave for any combination of personal, family or qualifying exigency military FMLA.

Servicemember Care Leave. Eligible employees may also take up to 26 weeks of leave during a single 12-month period to care for an ill or injured servicemember who is the employee's spouse, parent, child, or "next of kin" who is a covered servicemember. A covered servicemember is : (1) a current member of the Armed Forces, including a member of the National Guard or Reserves, who is undergoing medical treatment, recuperation or therapy, is otherwise in outpatient status, or is otherwise on the temporary disability retired list, for a serious injury or illness; or (2) a veteran who was discharged or released under conditions other than dishonorable at any time during the five-year period prior to the first date the eligible employee takes FMLA leave to care for the covered veteran, and who is undergoing medical treatment, recuperation, or therapy for a serious injury or illness. The 26 weeks of leave afforded for servicemember care is not in addition to the general 12 weeks afforded under the federal FMLA.

Married Employees - Married employees who both work for the Agency are limited to no more than an aggregate of 26 weeks of leave between them for military family leave.

School Year Employees - If a school year employee is on leave at the end of one school year and the beginning of another, the leave will be considered consecutive, not intermittent, and the employee will be provided with any benefits over the summer vacation that he/she would normally receive in the employee had been working at the end of the school year. Summer vacation is not counted against a school year employee's FMLA leave entitlement.

Definition of "Child" and "Parent"

Under both state and federal FMLA laws, "child" means a biological, adopted or foster child, step child, legal ward, or a child for whom the employee provides day-to-day care. Also, the child must either be under age 18, or be 18 years or older and unable to care for him/herself because of a mental or physical disability or serious health condition. Under both state and federal laws, "parent" means biological parent, foster parent, adoptive parent, step parent or an individual who was responsible for the day-to-day care of the employee when the employee was a child. Under federal FMLA law, "parent" does not include parents of spouses or domestic partners. Under state FMLA law, "parent" includes parents of spouses or domestic partners.

Serious Health Condition

A serious health condition is an injury, illness, impairment or physical or mental condition that involves:

- Inpatient care in a medical care facility; or
- Continuing treatment by a health care provider for a condition that either prevents the employee from performing the functions of the employee's job or prevents a qualified family member from participating in school or other daily activities. Continuing treatment by a health care provider includes:
 1. A period of incapacity of more than three (3) consecutive full calendar days combined with at least two (2) visits to a health care provider or one (1) visit and a regimen or continuing treatment under the supervision of a health care provider (time limits apply to health care provider visits);
 2. Any time period of incapacity due to pregnancy or prenatal care;
 3. Any period of incapacity or treatment for such incapacity due to chronic serious health condition;
 4. A period of incapacity which is permanent or long-term due to a condition for which treatment may not be effective; or
 5. Any period of absence to receive multiple treatments by a health care provider or for a condition that would likely result in a period of incapacity of more than three (3) consecutive calendar days in the absence of medical intervention or treatment. (Under the Wisconsin FMLA, the requirement for more than three (3) consecutive calendar days of incapacity does not apply.)

Notification and Certification

Whenever possible, employees must give at least 30 days' written notice of the need for FMLA leave. When 30 days' notice is not possible, employees are expected to give as much written notice as is practical. Please see Agency Administrator or designee for FMLA request forms. Normal call-in procedures must also be followed for all FMLA absences. If an employee does not specifically request family or medical leave, but requests leave

for a reason that might qualify as family or medical leave, the Agency will provide the employee with a leave request form to fill out and return to the Agency Administrator or designee as soon as possible in order to determine whether the leave requested qualifies as FMLA leave. The Agency may temporarily designate the leave as FMLA leave.

When requesting FMLA, employees must give sufficient information to determine if the leave may qualify for FMLA protection and the anticipated timing and duration of the leave. Sufficient information may include that the employee is unable to perform job functions, a family member is unable to perform daily activities, the need for hospitalization or continuing treatment by a health care provider, or circumstances supporting the need for military family leave. Employees must also inform the Agency if the requested leave is for a reason for which FMLA leave was previously taken or certified.

The Agency may require an employee who is requesting FMLA leave to provide medical certification for the leave. Employees will have 15 days in which to provide the certification, except in extenuating circumstances. If an employee fails to provide adequate certification in a timely manner, the employee's leave request or continuation of leave may be delayed or denied altogether. The Agency may require a second medical opinion at its expense regarding a serious health condition from a health care provider of its choice. If the first two opinions differ, the Agency may obtain a third opinion at its expense from a mutually agreed upon health care provider. The third opinion shall be binding on the parties. Recertification and periodic reports regarding the employee's status and intent to return to work may also be required as allowed by law.

The Agency will inform employees who have requested leave whether they are eligible for leave, specify any additional information needed, and inform the employee of his/her rights and responsibilities. If the employee is not eligible for leave, the Agency will provide a reason for the ineligibility. The Agency will also inform eligible employees whether requested leave will or will not be designated as FMLA leave and the amount of leave that will be counted against the employee's leave entitlement.

Intermittent Leave

An employee may take any leave covered by Wisconsin FMLA as intermittent leave, provided the employee provides notice as required by the law. The last increment of intermittent leave for the birth or adoption of a child under Wisconsin FMLA must begin within 16 weeks after the birth or placement for adoption of the child.

For leaves covered only by FMLA, an employee may take "intermittent" or "reduced schedule" leave, if medically necessary, for the employee's own serious health condition, to care for a spouse, parent, son, or daughter with a serious health condition, and to care for a covered servicemember with a serious injury or illness. Employees must make reasonable efforts to schedule leave for planned medical treatment so as to not unduly disrupt the Agency's operations. For medically necessary intermittent or reduced schedule leave that is foreseeable based on planned medical treatment for the employee, a family member, or a covered servicemember, the Agency may temporarily transfer an employee taking such leave to a

position with equivalent pay and benefits if the new position better accommodates the leave. Military leave due to qualifying exigencies may also be taken on an intermittent basis. Employees may also take intermittent FMLA leave for the birth, adoption or foster placement of a child during the federal-only portion of their FMLA leave.

In addition, special rules apply to intermittent leave for "instructional" employees under the federal FMLA. The special rules apply to intermittent or reduced schedule leave, or leave near the end of a semester. "Instructional employees" are employees whose principal function is to teach students in a class, small group, or individual setting, and includes athletic coaches, driving instructors, and special education assistants such as signers for the hearing impaired. It does not include assistants or aides who do not actually teach nor does it include auxiliary personnel such as counselors, psychologists, or curriculum specialists, or non-instructional support staff. The special rules for "instructional" employees include:

- If an eligible employee needs intermittent leave or leave on a reduced leave schedule to care for a family member with a serious health condition, to care for a covered servicemember, or because of the employee's own serious health condition, which is foreseeable based on planned medical treatment, and the employee will be on leave for more than 20 percent of the total number of working days over the period the leave would extend, in order to minimize the disruption to the educational process, the Agency may require the employee to choose either to:
 1. take leave for a particular duration, not longer than the duration of the planned treatment. If the employee chooses this option, the entire amount of leave will be counted against his/her FMLA leave entitlement; or
 2. transfer temporarily to an available alternate position, for which he/she is qualified, which has equivalent pay and benefits and which better accommodates recurring periods of leave.
- If the employee does not give required notice of foreseeable leave to be taken intermittently or reduced leave schedule, the Agency may require the employee to take leave of a particular duration, or to transfer temporarily to an alternative position, or delay the taking of leave until the employee has given the necessary notice.
- If the employee begins a leave more than five weeks before the end of a semester, less than five weeks before the end of a semester, and less than three weeks before the end of the semester, special rules apply:
 1. In the employee begins leave more than five weeks before the end of a semester, the leave will last at least three weeks, and the employee would return to work during the three-week period before the end of the semester, the Agency may require the employee to continue taking leave until the end of the semester.
 2. If the employee begins leave during the five-week period before the end of a semester because of the birth of a son or daughter; the placement of a son or daughter for adoption or foster care; to care for a spouse, son, daughter, or parent with a serious health condition; or to care for a covered servicemember, the Agency may require the employee to continue

taking leave until the end of the semester if the leave will last more than two weeks, and the employee would return to work during the two-week period before the end of the semester.

3. If the employee begins leave during the three-week period before the end of a semester because of the birth of a son or daughter; the placement of a son or daughter for adoption or foster care; to care for a spouse, son, daughter, or parent with a serious health condition; or to care for a covered servicemember, the Agency may require the employee to continue taking leave until the end of the semester if the leave will last more than five working days.
4. If the Agency requires the employee to continue taking leave to the end of the semester, only the period of leave until the employee is ready and able to return to work will be charged against the employee's FMLA leave entitlement. However, the Agency will maintain the employee's group health insurance and restore the employee to the same or equivalent job including other benefits at the conclusion of the leave.

Substituting Paid Time Off

During the portion of any FMLA leave covered by Wisconsin law, employees may elect to substitute, or not substitute, any accrued paid leave for unpaid FMLA leave. During the federal-only portion of an FMLA leave, an employee may substitute any paid leave the employee would be eligible to take in compliance with the Agency's normal paid leave policies. During the federal-only portion of an FMLA leave, the Agency may require employees to substitute accrued paid leave.

Benefits During Leave

An employee's coverage under group health plans (i.e., group health and dental coverage) will be maintained during the period of an FMLA leave as required by the Wisconsin and federal FMLA laws and in accordance with the applicable terms of the plans.

Employees who normally pay a portion of the premium for insurance coverage must continue to do so during the period of FMLA leave. If paid leave is substituted for unpaid leave, the employee's portion of the premium will be deducted from the employee's paycheck. For those employees on unpaid leave, payment arrangements must be made prior to the start of the leave, or as soon as practicable. A 30-day grace period will apply to premium payments. If payment is not made within the grace period, the employee's group health/dental insurance may be terminated.

If the Agency maintains an employee's insurance during an FMLA leave, and the employee does not return from FMLA leave, under certain circumstances the Agency will have the right to recover the total cost of the insurance premiums paid during the employee's leave, as allowed by law.

Use of FMLA cannot result in the loss of any employment benefit that accrued prior to the start of the employee's leave. Other benefit accruals may be suspended during the period of the leave and will resume upon return to active employment. An employee should check with the Agency Administrator or designee regarding other benefit continuation provisions.

Returning to Work at the End of Leave

Employees who return to work from FMLA leave within the timeframes protected by the FMLA laws will be returned to their former position or, if that position is no longer available, an equivalent position with equivalent pay, benefits and other employment terms. If an employee wishes to return to work before his/her leave is to end, and work is available, the employee must notify the Agency Administrator or designee at least 2 days prior to the desired return date. If an employee took FMLA leave for his/her own serious health condition, a fitness for duty certification will be required before the employee may return to work. In such cases, an employee's return will be delayed until such a certification is received.

Failure to Return to Work at End of FMLA-Protected Leave

If an employee fails to return to work after the expiration of an FMLA-protected leave, the employee's rights under state and federal FMLA laws will no longer be in effect and the employee will be subject to immediate termination. If the employee's inability to return to work is due to the continuation, recurrence or onset of the employee's own serious health condition, or of the serious health condition of the employee's spouse, child or parent, the Agency will consider a request for a further unpaid leave. However, the employee must submit a written request for consideration of a further leave as soon as the employee realizes that he/she will not be able to return at the expiration of the FMLA-protected leave period. The Agency will consider each such request on a case by case basis. There is no guarantee that a further leave will be granted.

Failure to Meet Policy Requirements

If the employee fails to meet the requirements of this policy for family or medical leave, the request for leave will be denied until the requirements are met.

LEGAL REFERENCE: Federal Family and Medical Leave Act - 29 U.S.C. 2601, et. seq.
Federal Family and Medical Leave Act Regulations-29 CFR Part 825
Wisconsin Family & Medical Leave Act - Wis. Stats. §103.10
Wisconsin Family & Medical Leave Act Regulations - Wis. Admin. Code DWD 225

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