

Policy 13 Family and Medical Leave

13.01 General Provisions

It is the policy of Winnebago County to provide family and medical leave in accordance with the federal Family and Medical Leave Act (FMLA) and Wisconsin law. When an employee's absence qualifies under both Wisconsin and federal laws, the employee will use his or her entitlement under each law at the same time, to the extent permitted by law. When one law's provisions provide a greater benefit, the employee will receive the greater benefit.

The function of this policy is to provide employees with a general description of their FMLA rights. In the event of any conflict between this policy and the applicable law, employees will be afforded all rights required by law.

Under this policy, Winnebago County will grant up to 12 weeks (or up to 26 weeks of military caregiver leave to care for a covered service member with a serious injury or illness) during a 12-month period to eligible employees. The leave may be paid, unpaid or a combination of paid and unpaid leave, depending on the circumstances of the leave and as specified in this policy. Winnebago County uses a calendar year to determine the 12-month period during which the FMLA leave is available for reasons that qualify for up to 12 workweeks of leave.

An employee who is not eligible for FMLA leave, uses up his or her FMLA leave, or wishes to take leave for a purpose that does not qualify for FMLA should consult Winnebago County's other leave policies to determine if other leave might be available.

Questions or concerns about FMLA leave requests should be directed to the Human Resources Department.

13.02 Eligibility

(a) Federal FMLA. To be eligible to take family or medical leave under the federal FMLA, the employee must have worked for the County for 12 months. The 12 months need not have been consecutive. The employee must also have worked at least 1,250 hours during the 12-month period immediately before the date when the leave is requested to commence.

(b) Wisconsin FMLA. To be eligible to take family or medical leave under the Wisconsin FMLA, the employee must have worked for the County for 52 consecutive weeks. The employee must also have been paid at least 1,000 hours during the 52-week period immediately before the date when the leave is requested to commence.

13.03 Qualified Leave and Amount of Leave

(a) Federal FMLA. Under the Federal FMLA, eligible employees may take up to 12 weeks of unpaid leave in a calendar year for any of the following:

1. For incapacity due to pregnancy or childbirth;
2. To care for the employee's child after birth, or placement for adoption or foster care provided the leave is concluded no later than 12 months after the birth or placement.
3. To care for the employee's spouse, son or daughter, or parent who has a serious health condition;
4. For a serious health condition that makes the employee unable to perform his or her job (including worker's compensation leave to the extent it is qualified); or
5. For a qualifying exigency, as described below.

"Serious health condition" under Federal FMLA means an illness, injury, impairment, or physical or mental condition that involves either inpatient care or continuing treatment by a health care provider.

(b) Wisconsin FMLA. Under the Wisconsin FMLA, eligible employees may take:

1. Up to six (6) weeks of unpaid leave for incapacity due to pregnancy, prenatal medical care, childbirth and to care for the employee's child after birth, or placement for adoption provided such leave commences within 16 weeks before or after the birth or adoption.
2. Up to two (2) weeks of unpaid leave to care for the employee's spouse, son or daughter, parent, or parent-in-law who has a serious health condition;
3. Up to two (2) weeks of unpaid leave for a serious health condition that makes the employee unable to perform his or her job.

"Serious health condition" under Wisconsin FMLA means a disabling physical or mental illness, injury, impairment, or condition that involves either inpatient care in a hospital, nursing home, or hospice, or outpatient care that requires continuing treatment or supervision by a health care provider.

(c) Married spouses both working for the County. Federal FMLA requires that the leave entitlement for birth, adoption, placement of a child and/or care of a parent be shared. They will be permitted to split the twelve weeks of eligible leave in any combination. Wisconsin FMLA does not allow for sharing of leave time.

If a husband and wife both work for the County and each wishes to take leave to care for a covered injured or ill service member, the husband and wife may only take a combined total of 26 weeks of leave.

Qualifying exigency leave

Eligible employees with a spouse, son, daughter, or parent on covered active duty (or who has been notified of an impending call or order to active duty) in the Armed Forces, including the National Guard and Reserves, may use their 12-week leave entitlement to

address certain qualifying exigencies. Covered active duty involves deployment to a foreign country. Qualifying exigencies include attending certain military events, arranging for alternative childcare, addressing certain financial and legal arrangements, attending certain counseling sessions, addressing parental care, and attending post-deployment reintegration briefings.

Military caregiver leave

An eligible employee may take up to 26 weeks of unpaid leave during any single 12-month period (a separate and distinct leave year from the period designated above) to care for the employee's spouse, son, daughter, parent, or next of kin who is a covered military service member and incurred a serious injury or illness in the line of military duty, or who experienced the aggravation of an existing or pre-existing condition in the line of active duty. The 12-month period is measured forward from the date leave begins. A covered service member is a current or former member of the Armed Forces, including a member of the National Guard or Reserves. A serious injury or illness for current members is one that may render the service member medically unfit to perform his or her duties for which the service member is undergoing medical treatment, recuperation, or therapy; or is in outpatient status; or is on the temporary disability retired list.

A serious injury or illness for a covered veteran is one that was incurred in the line of duty or existed before active duty and was aggravated, and manifested itself before or after becoming a veteran and is:

- A continuation of such an injury or illness, or a condition for which the veteran received a U.S. Department of Veterans Affairs Service-Related Disability Rating of 50 percent or greater based on the condition requiring leave,
- A condition that substantially impairs the veteran's ability to keep or obtain gainful employment, or
- An injury on the basis of which the veteran has been enrolled in the Department of Veterans Affairs Program of Comprehensive Assistance for Family Caregivers.

For military caregiver leave for veterans, the veteran must have been discharged or released under conditions other than dishonorable during the five-year period before the first date an employee takes FMLA leave.

13.04 Employee Status and Benefits During Leave

While an employee is on leave, the County will continue the employee's health benefits during the leave period at the same level and under the same conditions as if the employee had continued to work.

Under federal FMLA, an employee must return to work for at least 30 calendar days to be considered to have "returned" to work. If the employee chooses not to return to work for reasons other than a continued serious health condition of the employee or the employee's family member or a circumstance beyond the employee's control, the County may require the employee to reimburse the County the amount it paid for the employee's health insurance premium during the leave period.

While on paid leave, the County will continue to make payroll deductions to collect the employee's share of the premium. While on unpaid leave, the employee must continue to make this payment, either in person or by mail. If the payment is not paid in timely fashion, the employee's health care coverage may be dropped for the duration of the leave.

If the employee contributes to a life insurance or disability plan, the employer will continue making payroll deductions while the employee is on paid leave. While the employee is on unpaid leave, the employee may request continuation of such benefits and pay his or her portion of the premiums, or the employer may elect to maintain such benefits during the leave and pay the employee's share of the premium payments. If the employee does not continue these payments, the employer may discontinue coverage during the leave. If the employer maintains coverage, the employer may recover the costs incurred for paying the employee's share of any premiums, whether or not the employee returns to work.

13.05 Employee Status After Leave

An employee who takes leave under this policy may be asked to provide a fitness for duty clearance from the health care provider. This requirement will be included in the employer's response to the FMLA request. Generally, an employee who takes FMLA leave will be able to return to the same position or a position with equivalent status, pay, benefits and other employment terms. The position will be the same or one which is virtually identical in terms of pay, benefits and working conditions. The County may choose to exempt certain key employees from this requirement and not return them to the same or similar position.

13.06 Use of Paid and Unpaid Leave

An employee who is taking FMLA leave may elect to be paid or unpaid during the Wisconsin FMLA portion of the leave. Upon expiration of the Wisconsin FMLA, an employee must use all PTO and ELB (if eligible) (available under Policy 20.01 Sick Leave and Sick Absences) prior to being eligible for unpaid leave.

Disability leave for the birth of the child and for an employee's serious health condition, including workers' compensation leave (to the extent that it qualifies), will be designated as FMLA leave and will run concurrently with FMLA. The employee may then be required to substitute accrued (or earned) paid leave as appropriate before being eligible for unpaid leave for what remains of the 12-week entitlement. An employee who is taking leave for the adoption or foster care of a child must use all PTO prior to being eligible for unpaid leave.

An employee who is using military FMLA leave for a qualifying exigency must use all paid PTO prior to being eligible for unpaid leave. An employee using FMLA military caregiver leave must also use all PTO and ELB (as long as the reason for the absence is covered by the County's sick leave and sick absences policy) prior to being eligible for unpaid leave.

13.07 Intermittent Leave or a Reduced Work Schedule

The employee may generally take FMLA leave in 12 consecutive weeks, may use the leave intermittently (take a day periodically when needed over the year) or, under certain circumstances, may use the leave to reduce the workweek or workday, resulting in a reduced hour schedule. In all cases, the leave may not exceed a total of 12 workweeks (or 26 workweeks to care for an injured or ill service member over a 12-month period).

The County may temporarily transfer an employee to an available alternative position with equivalent pay and benefits if the alternative position would better accommodate the intermittent or reduced schedule, in instances of when leave for the employee or employee's family member is foreseeable and for planned medical treatment, including recovery from a serious health condition or to care for a child after birth, or placement for adoption or foster care.

Up to six (6) weeks of unpaid leave for incapacity due to pregnancy, prenatal medical care, child birth and to care for the employee's child after birth, or placement for adoption provided such leave commences within 16 weeks before or after the birth or adoption.

For the birth, adoption or foster care of a child, an employee may take intermittent leave to the extent allowed by Wisconsin FMLA. Leave not covered by Wisconsin FMLA must be continuous. Federal FMLA leave for birth, adoption or foster care of a child must be taken within one year of the birth or placement of the child.

13.08 Certification of Health Care Provider

The County will require certification for the employee's serious health condition. The employee must respond to such a request within 15 days of the request or provide a reasonable explanation for the delay. Failure to provide certification may result in a denial of continuation of leave.

The County may directly contact the employee's health care provider for verification or clarification purposes using an HR professional. The County will not use the employee's direct supervisor for this contact. Before the County makes this direct contact with the health care provider, the employee will be given an opportunity to resolve any deficiencies in the medical certification. In compliance with HIPAA Medical Privacy Rules, the County will obtain the employee's permission for clarification of individually identifiable health information.

The County has the right to ask for a second opinion if it has reason to doubt the certification. The County will pay for the employee to get a certification from a second doctor, which the County will select. The County may deny FMLA leave to an employee who refuses to release relevant medical records to the health care provider designated to provide a second or third opinion. If necessary to resolve a conflict between the original

certification and the second opinion, the County will require the opinion of a third doctor. The County and the employee will mutually select the third doctor, and the County will pay for the opinion. This third opinion will be considered final. The employee will be provisionally entitled to leave and benefits under the FMLA pending the second and/or third opinion.

The County will require certification for the family member's serious health condition. The employee must respond to such a request within 15 days of the request or provide a reasonable explanation for the delay. Failure to provide certification may result in a denial of continuation of leave.

The County may request recertification for the serious health condition of the employee or the employee's family member no more frequently than every 30 days and only when circumstances have changed significantly, or if the employer receives information casting doubt on the reason given for the absence, or if the employee seeks an extension of his or her leave. Otherwise, the County may request recertification for the serious health condition of the employee or the employee's family member every six months in connection with an FMLA absence. The County may provide the employee's health care provider with the employee's attendance records and ask whether need for leave is consistent with the employee's serious health condition.

13.09 Requesting FMLA Leave

All employees requesting FMLA leave must provide verbal or written notice of the need for the leave to the HR Department. In the event an employee would like family or medical leave, Winnebago County must be notified, in writing, at least fifteen (15) days before the date on which leave is to begin, except in the case of an emergency or where circumstances require shorter notice to Winnebago County. The Family and Medical Leave Request Form is available from the Human Resources Department and on the Winnebago County Intranet. In an emergency situation, notice must be given as to the need for leave as soon as possible but no later than three (3) business days after the commencement of leave. All forms must be provided to Winnebago County within 15 calendar days of leave commencement. Failing to timely notify the County of the need for leave may result in the delaying or denial of leave, though the County will classify leave based on the received information.

When the need for the leave is foreseeable, the employee must provide the employer with at least 30 days' notice. When an employee becomes aware of a need for FMLA leave less than 30 days in advance, the employee must provide notice of the need for the leave either the same day or the next business day. When the need for FMLA leave is not foreseeable, the employee must comply with the County's usual and customary notice and procedural requirements for requesting leave, absent unusual circumstances.

13.10 Designation of FMLA Leave

Within five business days after the employee has submitted the appropriate certification form, the HR department will complete and provide the employee with a written response to the employee's request for FMLA leave.

If an employee takes PTO for a condition that progresses into a serious health condition, the County may designate all or some portion of related leave taken as leave under this policy, to the extent that the earlier leave meets the necessary qualifications.

Each time an employee takes leave, the County will compute the amount of leave the employee has taken under this policy in the current calendar year and subtract it from the amount of available leave, and the balance remaining is the amount the employee is entitled to take at that time.