

Family & Medical Leave A Guide for Supervisors

The federal Family & Medical Leave Act (FMLA) and Wisconsin Family & Medical Leave Act (WFMLA) provide eligible employees with entitlements to job-protected, unpaid leave for specified family and/or medical reasons with continuation of group health insurance coverage under the same terms as if the employee had not taken leave. Employees can choose to use their sick leave or other accrued paid leave during an approved FMLA/WFMLA leave. These laws exist to help employees balance their work and family responsibilities.

Employees will often first discuss their need for leave with their supervisor. Under the law, employers are responsible for informing employees of their eligibility status for FMLA and providing them with a notice of their rights and responsibilities within **5 business days** of becoming aware that an employee has a leave need that may be covered under the FMLA. As soon as an employee notifies their supervisor about a leave need, this countdown begins.

This guide will help you:

1. Understand leave entitlements of the FMLA and WFMLA
2. Recognize when an employee's request for leave may qualify under the FMLA and/or WFMLA
3. Know how to respond to employee leave requests and when to direct employees to their Divisional Disability Representatives (DDRs) to discuss their leave options and next steps in the leave process. DDRs are trained professionals within HR designated to manage FMLA/WFMLA leave in your division.
4. Notify the DDR as soon as you become aware of an employee's need for leave
5. Know what to do with confidential medical information
6. Understand your responsibilities during an employee's leave

FMLA and WFMLA Leave Entitlements

FMLA and WFMLA are separate leave entitlements that have their own eligibility requirements. Employees may be eligible for leave under one, both, or neither depending on their employment history and the reason for their leave.

FMLA and WFMLA allow for leave to be used on a continuous, reduced schedule, and/or an intermittent basis. It is the DDR's responsibility, not the supervisor's, to determine which type(s) of leave an employee is entitled to, based on what is certified by the health care provider.

Under the federal Family and Medical Leave Act (FMLA), eligible employees are entitled to:

1. Up to 12 workweeks of unpaid*, job-protected leave **per calendar year** (January 1st - December 31st) for the following reasons:
 - For a serious health condition that makes the employee unable to perform the essential functions of their job;
 - For incapacity due to pregnancy, prenatal medical care, or childbirth;
 - To care for the employee's child after birth, or placement for adoption or foster care. (A parent who did not give birth has the same right to take FMLA leave for the birth of a child and bonding as a parent who gave birth.);
 - To care for the employee's spouse, son or daughter, or parent with a serious health condition;
 - For any qualifying exigencies arising out of the fact that the employee's spouse, child, or parent is a military member on covered active-duty or call to covered active-duty status.

2. Up to 26 workweeks of unpaid*, job-protected leave during a single 12-month period for the following reason:
 - To care for a covered servicemember with a serious injury or illness incurred or aggravated in the line of active duty, when the employee is the spouse, child, parent, or next of kin of the servicemember.

Under the Wisconsin Family and Medical Leave Act (WFMLA), eligible employees are entitled to:

1. Up to 2 workweeks of unpaid*, job-protected leave **per calendar year** (January 1st-December 31st) for the following reason:
 - For the employee's own serious health condition
2. Up to 2 workweeks of unpaid*, job-protected leave **per calendar year** (January 1st – December 31st) for the following reason:
 - To care for a spouse, domestic partner, child, parent, spouse's parent, or domestic partner's parent with a serious health condition
3. Up to 6 workweeks of unpaid*, job-protected leave **per calendar year** (January 1st-December 31st) for the following reason:
 - For the birth or adoption of a child. (A parent who does not give birth to the child has the same right to take WFMLA leave for the birth of a child and bonding as a parent who gave birth.)

*While leave approved under the FMLA and WFMLA is unpaid, employees may use their accrued paid leave (sick days, vacation days, personal holidays, etc.) to continue receiving partial or full pay while they are out on leave.

Employees who wish to take their FMLA and/or WFMLA leave without pay must submit a Leave of Absence request form. Employees are entitled to continue receiving benefits from their employer during their FMLA and/or WFMLA leave, but they must continue paying their premiums as well. Refer employees to Benefits Services with questions regarding their benefits status during leaves of absence.

To review the Notice of Employee Rights and Responsibilities

<https://hr.wisc.edu/docs/fmla-notice-of-employee-rights-and-responsibilities.pdf>

How to Recognize Possible Employee Requests for FMLA/WFMLA Leave

The FMLA law puts the responsibility on the employer to recognize when an employee is requesting a leave that is covered under the FMLA and/or WFMLA. However, employees may not always say, "I need leave and it is covered under the FMLA," or "I'd like to request FMLA," or otherwise come forward with a formal request or notification. Therefore, listen and watch for cues that may indicate an FMLA need, such as: an employee missing time from work (whether using sick leave or some other paid leave) or needing a change in schedule. For example, an employee:

- Has been calling in sick a few days each week, for several weeks
- Indicates that they may need to adjust their schedule for chemotherapy treatments or another type of medical treatment
- Tells you their child has been diagnosed with a heart condition, and they will need to take a few days off work each week to attend appointments and meet with specialists for at least the next few months
- Leaves you a voice mail message, saying that they are depressed and can't come to work
- Tells you they may need a month off work for back surgery
- Informs you they will need two weeks off to care for their father and help them move into an assisted living facility
- Has been off work for a work-related injury

- Needs to arrange for alternate childcare prior to their spouse leaving for active duty in the National Guard
- Tells you they are planning to reduce their work hours for one month after their baby is born
- Tells you they may need to be on partial or full bed rest prior to the birth of their baby
- Informs you they need time off to care for their elderly parent who has dementia

How to Respond to Employee Requests for Leave

When you become aware that an employee needs to take a leave of absence for family or medical reasons that may qualify under the FMLA and/or WFMLA, tell the employee:

- *This leave may be covered under the federal or state Family & Medical Leave Acts, which provide job-protected leave. You need to contact the DDR who will provide you with information about your leave options and will provide next steps in the leave process. Their contact information is email@wisc.edu. Please reach out to them as soon as possible.*
- *As a supervisor, I have a responsibility to notify the DDR of your need for leave to ensure that you receive all the required information and assistance.*
- *We will also be able to discuss planning for your leave.*

Do not ask for any medical information! Consult your DDR **immediately**. Remember, the university is required to provide specific information related to FMLA to employees within **5 business days** of learning of their need for leave.

Divisional Disability Representative (DDR)

Notify your DDR whenever you think an employee's situation may qualify under the FMLA/WFMLA. Consult early and often! Your DDR will:

- Work directly with the employee and confirm if they meet the FMLA/WFMLA eligibility requirements
- Notify the employee of their rights under the law and inform the employee if medical certification or other documentation is needed.
- Determine if the reason the employee is requesting leave is covered under the FMLA/WFMLA
- Issue a leave approval memo to an employee detailing the dates their leave is approved and the type or amount of leave that is approved. As the supervisor, you will receive a copy of this memo. The DDR will also provide you with necessary information such as restrictions on hours, schedule changes, how to track intermittent leave, or any work restrictions the employee may have.
- If an employee does not meet the FMLA or WFMLA eligibility criteria, if their reason for leave isn't covered by FMLA or WFMLA, or if their leave need extends beyond the FMLA and/or WFMLA entitlements, the DDR will work with the employee to discuss other leave options UW-Madison provides.

Find Your Divisional Disability Representative (DDR)

<https://employee disabilities.wisc.edu/divisional-disability-representatives-ddr/>

All Medical Information is Confidential

DDRs are authorized to request, receive, and maintain confidential medical information and records on behalf of employing units in their division.

- Employees should submit all medical information directly to the DDR – not to you.

- Any medical information (written or verbal) that you receive must go to your DDR and cannot be shared with others.
- You cannot ask if an employee has a medical condition or disability.
- The leave approval memo that the DDR shares with you will not include any confidential medical information, so you may not even know the reason for the employee's absence. You are not allowed to ask for the reason or request any confidential medical information.
- You cannot disclose to others that an employee is using leave under the FMLA and/or WFMLA, or has a medical condition or disability accommodation (even if the employee shares this information with you or others). If others are asking you questions regarding another employee's leave, ask your DDR for tips on how to respond.
- If an employee's conversations about confidential information are disruptive in the workplace, you can direct them to stop. Consult your DDR in this situation.

During the Employee's Leave

- As a supervisor, you are responsible for keeping a record of an employee's FMLA/WFMLA usage. The DDR will share a tracking method with you so that when an employee is absent for FMLA/WFMLA reasons, you can record them.
- Contact your DDR when an employee is close to exhausting their annual FMLA/WFMLA leave entitlement and/or if the employee is using more FMLA/WFMLA leave than what was approved.
- If an employee is using their own earned leave to remain in pay status during their FMLA/WFMLA absence, they must report the leave used in their time and absence portal (or other timekeeping system used by your division) at the time they use the leave.
 - For FLSA exempt employees, the typical process for rounding and reporting leave in 0, half, or full day increments no longer applies. Instead, FLSA exempt employees must report their FMLA and/or WFMLA leave in actual hours absent. Payroll will need to override HRS to prevent the automatic rounding of leave. Please remind your employees of this different leave reporting process.
- Employees taking intermittent leave are still required to follow their unit's regular call-in procedure for absences. When doing so, employees need to state that their absence is FMLA/WFMLA.
 - If they are calling in absent for other reasons, unrelated to their FMLA/WFMLA, those absences cannot reduce their FMLA and/or WFMLA entitlements.
- Details about the employee's leave must be kept confidential and must not be shared with anyone. Employees may decide to share their personal medical leave information with you or their colleagues, but they cannot be required to do so. Even if your team knows the reason for an employee's absence, as a supervisor, you are not allowed to engage in conversations with others about the employee's confidential information.
- You are allowed to talk with team members about their own feelings and concerns that may arise due to the extra workload they are taking on in their colleague's absence. It is important to keep the focus of these conversations on the concerned employee and to refrain from talking about the absent employee's leave. If others are asking you questions regarding another employee's leave, ask your DDR for additional tips on how to respond.
- When employees are on continuous FMLA and/or WFMLA leave, you cannot ask them to perform substantive work. It is okay to ask 'de minimis' things if necessary – such as passwords and where certain items can be found. When possible, try to obtain needed information before the employee begins a leave of absence.
- The return-to-work date will be determined prior to the start date of the leave. You cannot ask your employees to return prior to the agreed upon return date.