

The state law on family and medical leave first became effective on April 26, 1988. Coverage for domestic partners became effective on July 1, 2009.

1. Who is covered?

The law applies to all employers with 50 or more permanent employees. Employers with 25 or more employees must post a notice describing the employer's leave policy.

Employees are covered if they have worked for the same employer for more than 52 consecutive weeks and for at least 1,000 hours in the proceeding 52-week period.

2. What Kinds of Leave Does the Law Specify?

Covered employers (those with 50 or more employees) may have more generous policies than the law requires. However, they must grant the following amounts of leave time to covered employees under the following conditions.

I. Leave Purposes and Amounts

A. "Family Leave"

1. Covered employers must allow up to 6 weeks, in a 12-month period of family leave for:
 - a) The birth of the employee's natural child if the leave begins within 16 weeks of the child's birth.
 - b) Either the placement of a child with the employee for adoption or as a precondition to adoption (but not both) if the leave begins within 16 weeks of a child's placement.
2. Up to two (2) weeks of leave in a calendar year for the care of a child, spouse, domestic partner, as defined in § 40.02(1) or 770.01(1) or parent or a parent of a domestic partner with a serious health condition.
3. Employees may take no more than 8 weeks of family leave in 12 months.
4. The law requires that the employee schedule such leave after reasonably considering the needs of his or her employer.
5. Employees may also take partial absences (partial days or weeks) if they are scheduled so that they don't unnecessarily disrupt the employer's operations.

B. "Medical Leave"

1. Covered employers must allow up to 2 weeks in a 12-month period if the employee has a serious health condition, which makes him or her unable to perform the job.
2. The employee may schedule this leave as medically necessary.

II. Substitution of Other Leave

The employee may substitute any other paid or unpaid leave for portions of the family or medical leave.

III. Certification of Medical Condition

- A. Employers may require certification of the health condition of the employee (for medical leave) or of the affected family member (family leave for health care). The health care provider or a Christian Science practitioner may issue the certification, whichever is appropriate.
- B. The information requested in the certification can cover no more than:
 1. Whether the person has a serious health condition;
 2. The date the condition began and how long it is expected to last;

3. The provider/practitioner's knowledge of the medical facts about the serious health condition; and
 4. If the employee is requesting medical leave, the extent to which the employee can or cannot perform the job.
- C. The employer can request an opinion from a second provider/practitioner chosen by the employer asking the same information described in III (B). The employer must pay the costs for receiving the second opinion.
- D. If two or more health care providers disagree, the Department of Workforce Development (Equal Rights Division) may appoint a practitioner/provider to make the final determination. The employer and employee must each pay half the cost of the examination and the opinion.

3. How does the Wisconsin Family and Medical Leave Law define "domestic partner"?

Sec. 103.10(1)(ar), Stats., provides that "domestic partner" has the meaning in either sec. 770.01(1), Stats. or sec. 40.02(21c), Stats.

Sec. 770.01(1), Stats., defines "domestic partner" as an individual who has filed a declaration of domestic partnership in the office of the register of deeds in the county in which the individual resides. A domestic partnership is a legal relationship. [The criteria for forming a domestic partnership are that the individuals: (1) are 18 or older, (2) are not married, (3) are not related by blood, (4) share a common residence, and (5) are of the same sex.]

Sec. 40.02(21c), Stats., defines "domestic partner" as an individual in a domestic partnership. Sec. 40.02(21d), Stats., defines "domestic partnership" as a relationship between two individuals who: (1) are 18 or older, (2) are not married or in a domestic partnership with anyone else, (3) are not related by blood, (4) share a common residence, (5) consider themselves to be members of each other's family, and (6) agree to be responsible for each other's basic living expenses.

4. What Notification Must the Employee Give the Employer about the Leave?

If the employee requests family leave for a birth or adoption, the employee must give the employer reasonable advance notice of the intent to take such leave and when it is expected to occur.

If the leave is for medical reasons (for the employee or a family member), the employee must try to follow the directions of the health care provider in a way that will cause the least disruption of the employer's operations. Advance notice of medical treatment or examination should be given as far ahead as possible.

5. What Rights Does an Employee Have to a Job When He or She Returns from Leave?

If the employee's former position is vacant when he or she returns, the employee is to be placed in that position.

If the former position has been filled, the employee is to be placed in an equivalent position with equivalent compensation, benefits, shift, hours of work and other terms/conditions of employment.

All employment benefits earned and not used by the employee prior to and during the leave must be maintained for the employee's use.

If the employee wishes to return early from a scheduled leave, the employer must place the employee in an equivalent position within a reasonable time.

Seniority and other benefits are not earned during the leave unless specified by the employer.

6. Must Health Insurance Coverage Be Maintained?

The employer must maintain the same group health insurance coverage for the employee during the leave as existed prior to the leave. The same conditions must apply to coverage during the leave that applied before the leave. (For Example: If an employee contributed part of the health insurance premium, this same arrangement will continue for coverage during the leave. If the employer contributed the entire premium, that will also be the case during the leave.)

If health insurance coverage is provided, the employer may require that the employee pay the full premium for eight weeks of coverage into an interest-bearing escrow account in a financial institution. The employer keeps the account. The premium amount can be paid by the employee at regular intervals over a period of 12 months or longer. The employer must return the amount placed in escrow plus interest to the employee when he or she terminates employment with that employer.

If the employee terminates employment with the employer within 30 days after returning from family or medical leave, the employer may deduct the employer's costs for health insurance coverage during the leave from the escrow account.

If the employee ends his or her employment during or at the end of family or medical leave, the time period for conversion to individual health insurance coverage will begin on the first day of the leave period.

7. Can Alternative Employment be developed for Employees with Health Problems?

Employees and employers may agree on a different job arrangement that better suits the employee's medical condition. Such changes do not reduce the employee's right to family or medical leave as described above.

8. What Other Protections Does the Law Provide?

The law states that no one may "interfere with, restrain, or deny the exercise of any right" provided under the law.

The law also prohibits discharging or discriminating against anyone for opposing a practice prohibited under the law, for filing a charge under the law, for assisting in an investigation or other proceeding under the law or for testifying in an investigation or hearing held in relation to rights guaranteed by the law.

9. How Soon Must a Complaint be filed?

The complaint must be filed within 30 days after the violation occurred or when the employee should reasonably have known of the violation, whichever is later.

10. How is a Complaint Filed?

The Complainant should contact the Wisconsin Equal Rights Division of the Department of Workforce Development for a complaint form. The Madison office telephone number is (608) 266-6860 and the Milwaukee office telephone number is (414) 227-4384. The complaint form should be filled out, notarized, and returned to the address on the form.

11. What is the Process for Handling a Complaint?

Division staff will first attempt to see if the matter can be resolved in a way that is satisfactory to the employee and the employer. If resolution is not possible, an investigator will quickly work to determine if there is probable cause to believe that there has been a violation of the law. If probable cause is found, the matter will go immediately to a hearing.

When the hearing is completed, if either party wishes to appeal the decision, the matter must be taken to circuit court. The employee or the Department may bring an action in civil court to recover

damages if the Department finds a violation at hearing and all appeals are completed. Civil action must be started within 60 days of the hearing or appeal or 12 months after the violation occurred (or should have been reasonably known), whichever is later.

12. If a Violation is found at Hearing, What are the Possible Remedies?

The Department can order the employer to make the employee whole. Remedies can include granting the requested leave, reinstatement, providing back pay for up to two years before the filing of the complaint and payment of reasonable attorney fees.

13. Can Persons Taking Family or Medical Leave Get Unemployment Compensation?

No

14. What Notices Must Be Posted?

Employers with 50 or more employees must post, in one or more conspicuous places, a poster developed by the Department, which states the employees' rights under the law. These posters are available from the Equal Rights Division. The penalty for violation is \$100 for each offense. Employers who have 25 or more employees (including those with 50 or more employees) must post a notice which states the employer's policies for family and medical leave.

15. How does the Federal Family and Medical Leave Law Relate to State Law?

An employee may be covered under both laws. Federal law may provide additional protection. For a comparison between State and Federal laws, call the Equal Rights Division and ask for [publication ERD 9680-P, Comparison of Federal and Wisconsin Family and Medical Leave Laws](#).

For additional information please contact us

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