

# **Fond du Lac County Family and Medical Leave Policy**



Effective October 1, 2019

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**The following documents can be found on the County Website for print:**

- Form ERD-10110 Family and Medical Leave Request
- Form WH-380-E Certification of Health Care Provider for Employee’s Serious Medical Condition
- Form WH-380-F Certification of Health Care Provider for Family Member’s Serious Medical Condition
- Form WH-385 Certification for Serious Injury or Illness of Covered Service Member
- Form WH-384 Certification of Qualifying Exigency for Military Family Leave

**FOND DU LAC COUNTY  
FAMILY AND MEDICAL  
LEAVE POLICY**

**PURPOSE**

This policy sets forth family and medical leave provisions that comply with the Wisconsin and Federal Family and Medical Leave Acts (WFMLA) (FMLA). Should this policy conflict in any way with applicable State/Federal statutes or regulations, then the statutes or regulations will apply.

**GENERAL LEAVE REQUIREMENTS**

1. **Eligibility:** Employees who have been employed by Fond du Lac County for one (1) year and who have worked one thousand (1000) hours (WFMLA) or 1250 hours (FMLA) during the preceding fifty-two (52) weeks are eligible for leaves set forth in this policy. Also, when the employer has fifty (50) or more employees within a 75-mile radius.
2. **Family and Medical Leave Limits:** Employees are eligible for twelve (12) weeks of leave in a calendar year (defined as January through December) for any one leave or combination of leaves for child rearing, family illness or employee illness. Should the leave qualify as a leave under both County policy and State and Federal leave provisions, the leave will run concurrently.
3. **Serious Health Conditions – Prerequisite for Family and Medical Leave:** Eligibility for family illness and employee medical leave is contingent upon the existence of a “serious health condition”.
4. **Serious Medical Condition:** Under this policy, a “serious health condition” is considered to be a disabling physical or mental illness, injury, impairment or condition involving either:
  - a. Inpatient care in a hospital, nursing home, hospice or residential medical facility, or
  - b. Outpatient care that requires continuing treatment or supervision by a health care provider wherein the provider (after initial contact) directs and inspects continuously and at first-hand, the individual with the serious health condition.
  - c. Period of incapacity due to pregnancy or for prenatal care.
  - d. Chronic condition (i.e. asthma, diabetes, epilepsy) that requires periodic medical treatment; continues over an extended period of time and may cause episodes of incapacity.

- e. Permanent/long-term condition that requires continuing supervision but not necessarily active treatment by a health care provider (i.e. Alzheimer's, severe stroke, terminal stages of a disease.)
- f. Multiple treatments (i.e. chemotherapy, radiation, dialyses, physical therapy, restorative surgery after an accident or injury) by health care provider for condition which would likely result in incapacity for three (3) consecutive calendar days in absence of medical intervention.

Medical problems such as a common cold, flu, earaches, upset stomach, minor ulcers, non-migraine headaches and routine dental problems are not typically considered serious health conditions unless complications arise.

### **DOMESTIC PARTNER BENEFITS**

1. **Rules:** The WFMLA requires employers with 50 or more employees to provide leave to eligible employees under the following circumstances:

- a. Two (2) weeks of unpaid leave to care for certain family members suffering from a "serious health condition";
- b. Two (2) weeks of unpaid leave for the employee's own serious health condition;
- c. 6 weeks of unpaid leave for the birth or adoption of a child. \*

2. **Definition of Family Member:** Family members now include a domestic partner and the parents of the employee's domestic partner. However, the term "child" does not include the children of the employee's domestic partner. Thus, an employee may take WFMLA leave to care for his or her domestic partner or the parent but not to care for the child of a domestic partner. Even if the employee is jointly raising the child alongside the employee's own biological (or adopted) children, the employee cannot take WFMLA leave if he or she is not the legal parent of the child.

3. **Eligibility:** Employees can exercise the rights under the WFMLA as either a registered or unregistered domestic partner. Starting on August 3, 2009 partners can register as domestic partners with the Register of Deeds in their county of residence. Registered domestic partners must demonstrate or attest to the following:

- a. Each individual is at least 18 years old and capable of consenting to the domestic partnership;
- b. Neither individual is married or in a domestic partnership with another individual;
- c. The two individuals share a common residence;
- d. The two individuals are not nearer kin than second cousins; and

- e. The individuals are of the same gender.

In order to exercise WFMLA rights as an individual in an unregistered domestic partnership, the employee must show that he or she (and his/her partner) satisfy the following criteria:

1. Each individual is at least 18 years old and otherwise competent to enter into a contract;
2. Neither individual is married or in a domestic partnership with another individual;
3. They share a common residence;
4. They are not related by blood in any way that would prohibit marriage under Wisconsin law;
5. They consider themselves to be members of each other's immediate family; and
6. They agree to be responsible for each other's basic living expenses.

While registered domestic partnership is reserved for individuals in a same-sex relationship, unregistered domestic partners can be in either a same sex or opposite sex relationship.

### **FAMILY LEAVE FOR BIRTH/ADOPTION/FOSTER CARE**

1. **Rules:** Unpaid child rearing leave may be used within sixteen (16) weeks before or after (under WFMLA), or within twelve (12) months (under FMLA) following:
  - a. The birth of the employee's natural child; or
  - b. The placement of a child with the employee for adoption or as a precondition to adoption under Wisconsin Sec. 48.90(2), Stats.; or
  - c. The placement of a child with the employee for 24-hour foster care that is made by agreement with a licensed child welfare agency or County Social Services agency.
2. **Length of Child Rearing Leave:** Child rearing leave is limited to twelve (12) weeks per calendar year under FMLA which is normally unpaid\* or six (6) weeks under WFMLA in which you have the right to substitute paid leave\* (see substitution below). Leave taken for the birth of a child is limited to twelve (12) weeks. Wherein the mother and father of a child are employed by the County, they are entitled to a combined total of twelve (12) weeks.
3. **Substitution:** An employee may choose to substitute or go unpaid under WFMLA for the first 2 weeks. Under maternity FML, the **employee must substitute available leave for the remaining FML**. During the first **six (6) weeks the employee can use accrued sick leave or other accrued leave for the recovery period after child birth. This recovery period can be extended with proper medical documentation that the employee is unable to work. After the first six (6) weeks, the employee is required to**

**use accrued vacation or floating holiday pay for all the remaining leave period. Substitution of accrued sick leave for foster care placement is not permitted.**

\*The County requires substitution of available leave during FML.

4. **Scheduling Child Rearing Leave:** Requests for child rearing leave must be submitted to their supervisor using Form ERD-10110 Family and Medical Leave request. The form must be submitted no less than fifteen (15) days prior to the start of the leave and must be scheduled after reasonable consideration of the needs of the County. If the birth, adoption or foster care placement requires that the leave begin sooner, the employee must give notice as soon as possible. The employee, in conjunction with the leave request, must indicate if and what type of paid accrued leave will be substituted during the leave period (this information needs to be provided to the employee's supervisor for completion of timesheets during the leave period).
  
5. **Intermittent Leave:** Intermittent or partial absences may be permitted during the first six (6) weeks of the child rearing leave period provided that they do not unduly disrupt the County's work operations and:
  - a. The employee gives the County a written schedule of the proposed intermittent or partial absences at least fifteen (15) days in advance;
  - b. The proposed schedule is of sufficient definiteness so as to allow the County to schedule replacement employees, if necessary, to cover the absences.

**FAMILY AND MEDICAL LEAVE (FML)**

1. **Family Illness Leave:** Unpaid family illness leave may be used to care for an individual who has a "serious health condition" and is the employee's:
  - Legally married spouse
  - biological, adopted or foster child
  - child for which the employee stood "in loco parentis"
  - biological parent or parent who stood "in loco parentis" to employee
  - spouse's parent
  - a. Family illness leave is limited to twelve (12) weeks per calendar year except in instances involving the "serious health condition" of the spouse's parent. In such case, the leave is limited to a maximum of two (2) weeks.
  - b. An employee may substitute up to two (2) weeks accrued sick leave or other accrued leave for the first two (2) weeks of the otherwise unpaid leave. Use of accrued vacation, or personal holiday time **is required** for the remaining portion of the leave period.

- c. An employee must consider the needs of the County when scheduling family illness leave.
2. **Employee Medical Leave:** Medical leave may be used by an employee who has a “serious health condition” which makes him/her unable to perform his/her job duties.
  - a. Employee medical leave is limited to twelve (12) weeks per calendar year.
  - b. An employee is required to substitute accrued sick leave or other accrued leave for part or all of the otherwise unpaid leave. After the first two (2) weeks, the employee will be required to use accrued sick leave, vacation, personal holiday for the remainder of the leave period.
  - c. Employee medical leaves shall be scheduled in accordance with medical necessity.
  - d. No blanket Family/Medical Leave will be issued for employees with chronic conditions. Employees will be required to submit a request for FML for each illness and state at the time they call-in that this absence is an FML event. Employees with chronic conditions will be required to provide an updated medical certification every 6 months.
3. **Scheduling Family and Medical Leave:** If an employee intends to take family and medical leave for planned medical treatment or supervision, the employee must:
  - a. Submit a completed Family Medical Leave Request Form, ERD-10110, to their supervisor and the Human Resources Department at least fifteen (15) days in advance with the intent to take such leave, the reason for such leave and the planned dates of the leave. (This fifteen (15) day requirement may be waived if the need for leave is the result of an emergency.)
  - b. Indicate if and what type of paid accrued leave is to be substituted (if applicable).
  - c. Provide the County with a proposed schedule for the leave with reasonable promptness after learning of the probable necessity of the leave. Such schedule (for planned medical treatment or supervision) must not unduly disrupt the County’s operations and must be sufficiently definite so as to allow the County to schedule a replacement employee, if necessary.
  - d. Provide the required medical certification using the appropriate form- Form WH-380-F for Serious Health Condition of a Family Member or Form-380-E for the Employee’s Serious Health Condition.

Family and medical leave may be taken on an intermittent or partial leave basis if it is medically necessary to do so and provided that it does not unduly disrupt the County’s operations. Such requests are subject to the approval of the County and the employee must provide the County

with a proposed schedule of the partial absences. Absences must be in increments of no less than one-half (1/2) of a day.

4. **Medical Certification:** Requests for family and medical leave must be accompanied by a properly completed Medical Certification Form (Form WH-380-F for Serious Health Condition of a Family Member or Form-380-E for the Employee's Serious Health Condition). This form must be completed by the employee and the health care provider treating the family member (family illness leave) or employee (employee medical leave). The County may request a second health care provider opinion at the County's expense. Approval for family and medical leave will not be granted without a properly completed medical certification form.

### **MILITARY FAMILY LEAVE**

Unpaid Military Leave is available for the following reasons: for an employee's own serious health condition; to care for a parent, son or daughter, or spouse with a serious health condition; or for birth, adoption, or foster care placement; or for a qualifying exigency related to active military duty. In no event will an employee be entitled to more Federal and/or State family or medical leave than the maximum number of weeks provided for in one (1) calendar year by Federal or State FMLA statutes. The weeks of Federal and State FMLA leave will be considered concurrent. Employees may combine leaves for different purposes (i.e., six weeks of family leave for the birth of a child and two weeks of family leave to care for a seriously ill child) if circumstances qualify. Current State law provides for six (6) weeks of family leave related to birth, adoption, or foster care placement; two (2) weeks of family leave to care for an employee's parent, son or daughter, or spouse who has a serious health condition; and two (2) weeks of medical leave for an employee's own serious health condition. Note, however, that current Federal law provides for a total of twelve weeks of FMLA leave for any and all of these reasons, and 26 weeks to care for a family member with a serious health condition related to military service.

An unpaid County-provided Medical Leave of Absence may be available to an employee who has exhausted his or her vacation, and/or compensatory time, and/or sick leave benefit, and who is unable to return to work due to illness or injury. The County-provided medical leave of absence, generally up to six (6) months in duration.

An unpaid County-provided General Leave of Absence may be available to an employee who makes a written request for same. The County-provided general leave of absence, generally up to six (6) months in duration.

1. **Eligibility:**
  - a. County provided Medical Leave of Absence and General Leave of Absence is available to an employee who meets the requirements of this policy or by labor agreement.
  - b. An employee is eligible for Federal and State Family and Medical Leave of Absence if the leave is for a reason listed in below:



1. Has a serious health condition which makes the employee unable to perform his or her job duties, or
2. Is needed to care for a parent, son or daughter, or spouse who has a serious health condition, or
3. Desires to take leave due to:
  - a) The birth of their child, and to care for the newborn child, or
  - b) Due to the placement with the employee of a child for adoption (or as a pre-condition to adoption, but not both) or foster care, and to care for the newly placed child, or
4. Employee is needed to care for a spouse, parent, son or daughter, or next of kin who is a “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”(see form WF-385 Certification for Serious Injury or Illness of Covered Servicemember) (H.R. 4986, National Defense Authorization Act for FY 2008), or
5. Employee is needed for “any qualifying exigency (as the Secretary [of Labor] shall, by regulation, determine) arising out of the fact that the spouse, or a son, daughter, or parent of the employee is on active duty (or has been notified of an impending call or order to active duty) in the Armed Forces in support of a contingency operation” (see Form WH-384 Certification of Qualify Exigency).

## **INSURANCE, ACCRUAL OF BENEFITS AND RETURNS FROM LEAVE**

1. **Group Health Insurance:** Continuance of group health insurance benefits and County contribution toward the cost of providing coverage is maintained while an employee is on family and medical leave. In such instance, the employee is required to pay his/her normal portion of the premium in accordance with the procedures outlined in the Fringe Benefit Guide.
  - a. Employees prior to going out on a continuous (non-intermittent) leave, where a paycheck may not be received, are presented with the option to have one additional month of health insurance premiums withheld from their paycheck on a non-health insurance payroll. If an employee would like to utilize this option, they will have to contact the Human Resources Department’s Benefits Coordinator to discuss, and provide written authorization to have the deduction withheld from their paycheck.

**Provision of this benefit will cease if:**

- a. **The employee on leave informs the County that he/she will not be returning to work at the end of the leave period; or**
- b. **The employee decides to terminate employment upon conclusion of the leave.**
- c. **Under this circumstance the County may require the employee to reimburse the County for the entire cost of the medical insurance during the period of leave.**

Under (a) and (b) above, the employee will be required to repay the total amount of health insurance premium contribution made by the County on his/her behalf during the period of unpaid leave. This repayment obligation will not apply wherein the employee:

- d. Terminates employment after having returned to work for thirty (30) or more calendar days; or
  - e. Is unable to return to work due to continuation or recurrence of his/her serious health condition (medical certification may be required), or other circumstances beyond the control of the employee.
2. **Accrual of Benefits:** Accrual of benefits continues for any period of the leave during which paid leave is substituted.
3. **Returns from Leave:** The following conditions apply when an employee returns to work from a leave.
- a. Employee's returning from employee medical leave is required to obtain medical certification ("fitness for duty" certificate) from the health care provider that he/she is able to resume work with or without restrictions.
  - b. Returning from leave as provided under this policy can return to his/her prior position if vacant at the time the employee returns to work. In the event the position is not vacant, the employee will be offered an equivalent position with equivalent benefits, pay, and other terms and conditions of employment.
  - c. Requesting to return to work prior to the scheduled end of the leave will be returned to his/her previous position or an equivalent position within a reasonable time after the request to return to work is made.