

W/FMLA Overview for Supervisors

WAISMAN CENTER

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Agenda

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What is W/FMLA?

W/FMLA allows eligible employees to take job-protected, unpaid leave, or to substitute appropriate paid leave if the employee has earned or accrued it.

Types of W/FMLA:

- Continuous
- Intermittent

W/FMLA can be used for the following qualifying reasons:

- For incapacity due to pregnancy, prenatal medical care of child birth;
- To care for the employee's child after birth, or placement for adoption or foster care;
- To care for the employee's spouse, dependent son or daughter, or parent who has a serious health condition;
- For a serious health condition that makes the employee unable to perform the employee's job.

What is not W/FMLA?

- Cold
- Flu
- Medical appointments not related to serious medical condition
- Dental appointments
- Care for a child over 18 years of age capable of self-care

All medical documentation does not necessarily equal W/FMLA. For example, if an employee is out with a cold or flu for more than 5 consecutive work days, the employee must present certification from a health care provider of the medical necessity for sick leave.

Medical Certification form: https://www.ohr.wisc.edu/forms/Medical_Certification_Form.doc

What is a DDR?

A Divisional Disability Representative is appointed to manage reasonable accommodation and medical leaves for the division.

OVCERGE's DDRs:

- Julia Rielly, Human Resources Manager
- Julie Karpelenia, Assistant Vice Chancellor

Medical information is confidential:

- Supervisor cannot ask if an employee has a medical condition.
 - Supervisor cannot disclose that an employee has a medical condition to anyone other than your HR Office.
 - Any medical information received by a supervisor (written or verbal) should go to your HR Office and should not be shared with others.
 - If an employee's conversations about confidential information are disruptive, you can direct him or her to stop. Consult your HR Office in these circumstances.
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University Policy

Per HR Policy (Sick Leave), 16.03, III., b, employees with accrued sick leave are eligible to use sick leave for:

- Personal illness, injury, disability, pregnancy, adoption, or exposure to contagious diseases
- To care for an immediate family member (for up to five consecutive work days)
- To attend immediate family and personal medical or dental appointments
- Bereavement leave (up to three days after the death of an immediate family member, up to four days additional for related travel)
- For any absence covered by WFMLA and FMLA

Per HR Policy (Family-Related (Parental) Leave), 16.06, employees are eligible for additional leave:

- FAASLI: right to take a leave of absence without pay up to one year from the date of the birth or adoption
- US: medical leave without pay up to six months

Leave Without Pay (LWOP):

- FAASLI: OVCRGE can approve up to one year of LWOP per the Unclassified Personnel Policies and Procedures, 16.01
- US: medical leave without pay up to six months per the Classified Policies and Procedures, Chapter 16.03

Eligibility

Eligibility for Federal FMLA:

- Employed by the State* for at least 12 months (need not be consecutive) **and**
- Worked for the State* at least 1,250 hours (not including paid leave time used in the 12 month period immediately preceding the beginning of the requested leave under FMLA).

Eligibility for Wisconsin FMLA:

- Employed by the State* for more than 52 consecutive weeks **and**
- Worked for the State* for at least 1,000 hours (including paid leave time) in the preceding 52-week period.

*"State" includes all campuses of the UW System and State Agencies

Entitlement

Federal FMLA Entitlement:

- 12 weeks

Wisconsin FMLA Entitlement:

- 2 weeks for your own serious health condition;
- 2 weeks to care for your family member's serious health condition;
- 6 weeks family leave for the birth of your child or adoption.

When possible, Federal FMLA and WFMLA are run concurrently.

Entitlement year:

- FAASLI: Fiscal Year
- US: Calendar Year

Designation of W/FMLA

An employer can designate W/FMLA without the employee's approval or submittal of the W/FMLA certification form. This can occur when the employer knows that an eligible employee is going to be out of work, and the employer has sufficient information to know that it is for an FMLA covered reason.

Provided it does not cause harm or injury to the employee, an employer may retroactively designate an earlier, qualifying leave as W/FMLA leave with appropriate notice to the employee.

The benefits of designating W/FMLA are:

1. The employee's absences are protected
2. The employer is meeting their obligation of the law
3. The employer is treating all employees equitably and fairly (past practice of the University)

Responsibilities

Supervisor

- Recognize the need
- Alert HR
- Avoid informal accommodations

Employee

- Recognize the need
- Provide medical documentation timely

HR

- Recognize the need
 - Provide forms to employee
 - Work with DDR
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Recognize the Need

Supervisor should contact Waisman HR when an employee:

- Uses 5+ consecutive days of sick leave
- Is using a lot of leave
- Is using unscheduled leave in a pattern (i.e. always after their bowling league on Wednesday nights)
- Gives you a Dr.'s note
- States he or she cannot do a task because of a medical condition
- Uses more W/FMLA leave than authorized
- Has made a Workers' Comp claim
- Requests leave for a medical treatment or surgery
- Requests schedule change/alternate work schedule to accommodate illness

Forms to Complete

The most common forms needed in the OVCRGE-HR Office:

1. The OVCRGE Employee Family and/or Medical Leave Request
 - Completed by the employee and routed through his or her supervisor to the Waisman HR Office
2. Certification of Family and Medical Leave form for either the employee's own serious health condition or a family members serious health condition
 - Completed by the treating specialist and sent to the DDR
3. Leave Without Pay Request form
 - Only if the employee plans to take a LWOP during the leave, completed by the employee and routed through his or her supervisor to the DDR
4. Military leave forms
 - Only if the leave is to attend to the affairs of a family member who is called to active duty or to care for an injured service member.
5. Medical release to return to work
 - Medical documentation releasing the employee to return to work on a specific date without restrictions is required. If restrictions are required, the specific restrictions and a next evaluation date is required.
 - **The W/FMLA approval letter to the employee provides information on returning to work and required documentation.**

Tracking Hours

- Employees are responsible for noting FMLA leave on their timesheet or leave report.
- The supervisor reviews for accuracy.
- Waisman HR is responsible for entering hours on the FMLA tracking spreadsheet and notifying the DDR if questions or concerns arise.

Unpaid Leave vs. Paid Leave

An employee may choose to take FMLA as paid or unpaid. Under WFMLA, the employee may elect to substitute any type of paid leave. Under FMLA, the employee may elect to substitute paid leave, but sick leave may only be used per UW policy.

We cannot require an employee to use a specific type of leave. For example, a supervisor cannot require an employee to use paid leave balances before using unpaid leave.

Responses to Employees

If an employee brings up medical information or hands you medical documentation:

- I appreciate you bringing this to my attention, however because this is confidential medical information I am going to send this to our HR Office. As your supervisor, I should not have access to your confidential medical information. Our HR Office will be in contact with you regarding any additional forms you need to complete.

If an employee comes to you and is upset that an employee with FMLA seems to be out a lot:

- I can see this is frustrating for you. I want you to know that even though the situation seems unfair, we are following an employment policy. I am not able to share further information since this matter is confidential.

If an employee comes to you and seems to know a lot about the person with leave:

- I understand that person X may have shared this with you, but I am not able to discuss it, since it is a confidential matter. I also request that you refrain from discussing the personal information as well.

If an employee indicates that a medical condition is a factor of poor performance:

- I appreciate you bringing this to my attention, however because this is confidential medical information I am going to notify our HR Office to determine our next steps.

Performance and Expectation Setting

A supervisor has the right to:

- Set clear, measurable expectations in writing within the first 30 days of employment and review annually
- Establish procedures (e.g. call-in) and hold the employee accountable
- Document conversations and performance

Poor performance is not a protection of W/FMLA – however, we may be required to explore reasonable accommodations through the ADA process.

Links

UW System Employee Benefits, Family & Medical Leave:

<https://www.wisconsin.edu/ohrwd/benefits/leave/fmla/>

OHR Forms: <https://www.ohr.wisc.edu/forms/>

HR Policy 16.03, Sick Leave Policy: <https://kb.wisc.edu/ohr/policies/page.php?id=53366>

HR Policy 16.06, Family-Related (Parental) Leave Policy:

<https://kb.wisc.edu/ohr/policies/page.php?id=53041>

Unclassified Personnel Policies and Procedures, 16.01:

<http://www.ohr.wisc.edu/polproced/UPPP/1601.htm>

Classified Policies and Procedures, Chapter 16.03:

http://www.ohr.wisc.edu/polproced/CPPP/cppp_chapter16-03_Current.pdf

Questions?

