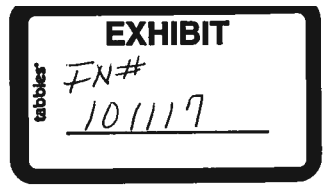


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MAJOR PROVISIONS OF FEDERAL AND STATE FAMILY AND MEDICAL LEAVE LAWS



Issues	Wisconsin Current Law	Federal	Wisconsin Proposed Amendment
Employers Covered	Employers of at least 50 permanent employees during at least 6 of the preceding 12 calendar months	Employers of 50 or more employees in at least 20 weeks of current or preceding year.	Conforms to federal
Employees Eligible	Have worked for employer at least 1,000 hours in preceding 52 weeks and for at least 52 consecutive weeks.	Have worked for employer at least 1,250 hours in preceding 12 months; Employed for at least 12 months; and Employed at worksite by employer with 50 or more employees within 75 miles of that worksite	Conforms to federal
Amount of Leave	During a 12 month period. <ul style="list-style-type: none"> • 6 weeks for birth or adoption • 2 weeks for serious health condition of parent, child or spouse. • 2 weeks for employee's own serious health condition. 	12 weeks during a 12-month period. Leave entitlement for birth, adoption, or to care for sick parent must be shared by spouses working for same employer Maximum 12 weeks for both husband and wife for birth/placement/sick parent	Conforms to federal Method of calculating 12-month period is unclear
Domestic Partners	Includes domestic partner coverage	Not covered as eligible family member	Includes domestic partner coverage
Parents-in-law	Covers parents-in-law	No coverage for parents-in-law	Covers parents-in-law
Foster Children	Previously no coverage for foster children	Includes foster children	Includes coverage for foster children

Children age 18 and over	Substantially identical to federal	requires more serious level of disability for children age 18 or older	Conforms to federal
Serious Health Condition	A disabling physical or mental illness, injury, impairment or condition involving inpatient care in a hospital, nursing home or hospice, or out-patient care that requires continuing treatment or supervision by a health care provider.	<p>(1) Illness, injury, impairment, or physical or mental condition involving incapacity or treatment connected with inpatient care in hospital, hospice.</p> <p>(2) Residential medical-care in hospital, hospice, or residential medical-care facility.</p> <p>(3) continuing treatment by a health care provider involving:</p> <p>(a) Incapacity or absence of more than 3 days from work, school, or other activities.</p> <p>(b) Chronic or long term condition incurable or so serious if not treated would result in incapacity of more than 3 days.</p> <p>(c) Prenatal care.</p>	Substantially unchanged from former definition
Employer May Require Medical Certification	More limited than federal in scope of information that employer may require	Certification can be required for both leave requests and fitness for duty upon return to work	Retains current provisions and further permits employer to require federal form of medical certification, which provides more detailed information
Temporary Transfer to Equivalent Position	No provision	Employer may temporarily transfer employee on intermittent leave for foreseeable medical treatment (and recovery therefrom) to an available alternative position that better accommodates the absences	Conforms to federal
Fitness for Duty / Return To Work	No provision	Employer may require fitness-for-duty certification if it is part of a uniformly-applied policy	Conforms to federal

Health Care Provider	<p>Means: licensed physician, nurse, chiropractor, dentist, podiatrist, physical therapist, optometrist, psychologist; certified occupational therapist, occupational therapy assistant, respiratory care practitioner, acupuncturist, social worker, marriage and family therapist, professional counselor, speech-language pathologist or audiologist; and Christian Science practitioner.</p>	<p>(1) doctors of medicine or osteopathy authorized to practice medicine or surgery in the State;</p> <p>(2). podiatrists, dentists, clinical psychologists, optometrists, chiropractors (for manual manipulation of spine to correct subluxation demonstrated by X-ray)</p> <p>(3). nurse practitioners, and nurse-midwives, if authorized to practice under State law; or,</p> <p>(4). Christian Science practitioners listed with the First Church of Christ Scientist in Boston, Massachusetts.</p>	<p>No change – similar but not identical to federal</p>
Intermittent Leave	<p>Permitted for all family and medical leaves in increments equal to the shortest increment permitted by employer for any other nonemergency leave</p>	<p>Permitted for serious health condition when medically necessary. Not permitted for birth or adoption unless employer agrees.</p>	<p>Conforms to federal</p>
Substitution of Paid Leave	<p>Employee may elect to substitute accrued paid or unpaid leave of any other type provided by employer. Wisconsin</p>	<p>Employee may elect or employer may require accrued paid leave to be substituted in some cases. No limits on substituting paid vacation or personal leave.</p> <p>Employee may not substitute paid sick leave, medical, or family leave for any situation not covered by employer's leave plan.</p>	<p>Substantially identical to federal,</p> <ul style="list-style-type: none"> • limits on sick leave substitution • employer right to require substitution
Reinstatement Rights	<p>Similar Provision</p>	<p>Must be restored to same OR equivalent position, even if the employee has been replaced or old position has been restructured to accommodate the absences.</p> <p>Employer may fill the position during the leave</p>	<p>Conforms to federal</p>

Key Employee Exception	No Similar Provision	Exempts salaried employees if among highest paid 10% and if restoration would lead to grievous economic harm to employer.	Conforms to federal
Maintenance Of Health Benefits During Leave	Similar Provision	Health insurance must be continued under same conditions as prior to leave.	Conforms to federal
Notice for Leave Requests	Made by employee in advance in a reasonable and practicable manner.	Made by employee 30 days in advance or as soon as practicable.	Conforms to federal
Second opinion on Medical Certification	Automatic right for employer to seek Second opinion Employer right to "tiebreaker" third opinion	Employer may request if there is "reason to doubt the validity" of a medical certification Employer right to "tiebreaker" third opinion if necessary	Conforms to federal; no more automatic right for employer to get second opinion
Executive, Administrative & Professional Employees	Unpaid leave would not result in loss of exempt status under State minimum wage and overtime law. Comparable	Salaried executive, administrative and professional employees of covered employers who meet the Fair Labor Standards Act (FLSA) criteria for exemption from minimum wage and overtime under Regulation 29 CFR part 541, do not lose their FLSA-exempt Status by using any unpaid FMLA leave. This special exception to the "salary basis" requirement extends only to "eligible" employees use of leave required by FMLA	Similar but not identical
Service Member Family Leave	None	26 weeks of leave in a 12-month period for covered relative who is an injured service member	Conforms to federal

Service Member Exigency Leave	None	<p>Available when spouse, child or parent is on or called to active duty for "covered exigencies" such as making arrangements for childcare, making financial and legal arrangements, attending counseling relating to the active duty of the service member, or attending to farewell or arrival arrangements for the service member</p> <p>Part of the total 12-week entitlement for FMLA leave</p>	Similar to federal, but "qualifying exigency" is not yet defined
Enforcement Agency	WI Dept of Workforce Development	U.S. Department of Labor	WI Dept of Workforce Development
Limitations Period	30 days after employee knew or should have known of violation	Two years after the date of the last event constituting the alleged violation; three years if the violation was willful	Substantially identical to federal