

# FAMILY AND MEDICAL LEAVE LAWS — THE BASIC FACTS

## Wisconsin Family and Medical Leave Act - Wisconsin Statute 103.10

1. An employee must have been employed by the employer for at least 52 weeks and have worked at least 1000 hours in that period to be eligible for the benefits of this law; also, the employer must employ 50 or more persons on a permanent basis.
2. An employee of either sex shall be allowed up to six weeks (30 workdays) of unpaid leave in a twelve-month period (the calendar year) for the birth or adoption of a child of the employee with the leave to begin within 16 weeks (before or after) the birth or placement of that child.
3. An employee shall be allowed up to two weeks (10 days) of unpaid leave in a twelve-month period (the calendar year) for the care of a child (including those over 18 years of age), spouse or parent (including in-laws) with a serious health condition. The employer may require certification from a health care provider.
4. An employee shall be allowed up to two weeks (10 days) of unpaid leave in a twelve-month period (the calendar year) for the employee's own serious health condition which makes the employee unable to perform the employee's employment duties. The employer may require certification from a health care provider.
5. The leave can be with pay if an employee asks to substitute accumulated paid leave such as sick leave; vacation leave, or personal leave; otherwise the leave is without pay.
6. The employer must continue the same level of group health insurance payments during all such leave, paid or unpaid, which the employer was paying prior to the leave.
7. NTU members who wish to take this leave should give the employer reasonable notice. A family/medical leave request should be in writing, addressed to the immediate supervisor or superintendent, and can be as simple as:

*Dear Administrator,*

*I hereby request leave under Wisconsin's Family and Medical Leave Act for (#of days/weeks) from (date) to (date). This leave is (to care for my child/spouse/parent/self, or, for the birth/adoption of my child). During this leave, I am requesting to substitute (# of days) day(s) of (accumulated sick leave and/or emergency leave and/or personal leave and/or vacation), so that this leave will be with pay.*

*Sincerely...*

## Federal Family and Medical Leave Law

1. Eligibility is the same as under Wisconsin law except the employee must work at least 1,250 hours during the previous 12 months.
2. All eligible employees will be able to take up to 12 weeks of unpaid leave in a 12-month (employer chooses calendar or fiscal or rolling 12-month) period for any combination of the following:
  - Birth/adoption or the placement of a child with the employee for foster care.
  - To care for a spouse, child, or parent with a serious health condition.
  - For a serious health condition of the employee (which makes the employee unable to perform the essential functions of his/her job.)
3. The Federal law requires the employer to continue group health insurance payments at the same level as it did prior to the leave (this is the same as Wisconsin law).

4. The Federal unpaid leave can be with pay. The employee can ask to substitute other paid leave, but the employer need not agree; the employer, however, can require the employee to substitute paid leave (such as vacation) to make the unpaid leave a paid leave.
5. Active Duty Family Leave. Employees with a spouse, parent, or child who is on or has been called to active duty in the Armed Forces may take up to 12 weeks of FMLA leave when they experience a “qualifying exigency.” There is no 12-month time limit for this one.
6. Injured Service Member Leave. Employees who are the spouse, parent, child or next of kin (defined as “the nearest blood relative of that individual”) of a service member who incurred a serious injury or illness on active duty in the Armed Forces may take up to 26 weeks of leave in a 12-month period (including regular FMLA leave).

**Final Comments:** In general the Wisconsin law is more favorable. For example, it allows the employee to make the decision as to whether or not to substitute paid leave for the otherwise unpaid leave, and it covers parents-in-law.

The greatest advantage of the Federal law is that there is a potential total 12 weeks of leave. Under Wisconsin law there is a two-week-per-year limit for medical leave for family members, and a six-week-per-year limit for leave in connection with the birth or adoption of a child. The Federal 12-week total can be used in any combination for any or all of the events (birth/adoption, family medical, or employee medical). The Federal law also has the advantage of an intermittent leave option; for example, you could have leave every Wednesday to take care of a family member with a serious health condition.

The Federal law is written so as to not replace or reduce any leave benefits under state law. Nonetheless, the two laws do not combine to allow 18 weeks of leave for birth/adoption; rather, the two run concurrently for six weeks, and then the Federal law allows up to six more weeks (unless already used earlier in the year).