

FAMILY AND MEDICAL LEAVE POLICY

The West Salem School District complies with the provisions of the Federal and State Family and Medical Leave laws. Employees may be eligible for family and medical leave under the Federal Family and Medical Leave Act of 1993 ("FMLA"), the Wisconsin Family and Medical Leave Act ("WFMLA"), or both. There are different eligibility requirements for these laws, different rights under the laws, and different procedural requirements for employees to follow. The purpose of this policy is to briefly describe some of the employees' rights and responsibilities under these laws; however, this policy does not, nor is it intended to, spell out every right and responsibility under the two laws. If an employee has any questions or desires additional information, the employee should contact the Superintendent or his/her designee. Copies of the WFMLA and FMLA notice posters are also attached at the end of this policy.

Generally, an employee is eligible for leave under the FMLA Act after he/she has been employed by the School District for a total of at least 12 months (not necessarily consecutive); and has worked at least 1,250 hours during the previous 12 months. Paid time off does not count toward the "1,250 hours worked" requirement.

Generally, an employee is eligible for leave under the WFMLA after he/she has been employed by the School District for more than 52 consecutive weeks; and has worked at least 1,000 hours during the preceding 52 week period. Paid time off does count toward the WFMLA "1000 hours" requirement.

If an employee is eligible for WFMLA and/or FMLA leave, the following describes some of the employee's rights under the two laws:

- An eligible employee has a right under the FMLA for up to 12 weeks of unpaid leave during a calendar year, for the birth or placement for adoption or foster care of a child, the serious health condition of the employee or the employee's child, spouse or parent, or because of a qualifying exigency arising out of active duty or call to active duty of the employee's spouse, son, daughter or parent. If the employee and the employee's spouse are both eligible for FMLA leave and are both employed by the District, the employee and the employee's spouse are eligible to take a combined total of 12 weeks of leave during the 12 month period for child rearing or a family member's serious health condition.

- An eligible employee has a right under the FMLA for up to 26 weeks of unpaid leave in a single 12-month period to care for a covered servicemember with a serious injury or illness.
- An eligible employee has a right under the WFMLA, during each calendar year, for unpaid leave of up to six weeks for birth or placement of a child for adoption; two weeks to care for a child, spouse or parent with a serious health condition; and two weeks for the employee's own serious health condition.
- If an employee's leave qualifies under both laws (FMLA and WFMLA), it will be counted against his/her entitlement under both laws and shall run concurrently.
- For school year employees, if the employee is on leave at the end of one school year and the beginning of another, the leave will be considered consecutive, not intermittent, and the employee will be provided with any benefits over the summer vacation that he/she would normally receive if the employee had been working at the end of the school year. Summer vacation is not counted against a school year employee's FMLA leave entitlement.
- **Instructional Employees.** Special rules apply to "instructional" employees under the FMLA. The special rules affect the taking of intermittent leave or leave on a reduced leave schedule, or leave near the end of a semester. "Instructional employees" are employees whose principal function is to teach students in a class, small group, or individual setting, and includes athletic coaches, driving instructors, and special education assistants such as signers for the hearing impaired. It does not include assistants or aides who do not actually teach nor does it include auxiliary personnel such as counselors, psychologists, or curriculum specialists, or non-instructional support staff. The special rules for "instructional" employees include:
 - If an eligible employee needs intermittent leave or leave on a reduced leave schedule to care for a family member with a serious health condition, to care for a covered servicemember, or because of the employee's own serious health condition, which is foreseeable based on planned medical treatment, and the employee

will be on leave for more than 20 percent of the total number of working days over the period the leave would extend, in order to minimize the disruption to the educational process, the District may require the employee to choose either to:

1. Take leave for a particular duration, not longer than the duration of the planned treatment. If the employee chooses this option, the entire amount of leave will be counted against his/her FMLA leave entitlement.
 2. Alternatively, the employee may transfer temporarily to an available alternative position, for which he/she is qualified, which has equivalent pay and benefits and which better accommodates recurring periods of leave.
- If the employee does not give required notice of foreseeable leave to be taken intermittently or reduced leave schedule, the District may require the employee to take leave of a particular duration, or to transfer temporarily to an alternative position, or delay the taking of leave until the employee has given the necessary notice.
 - If the employee begins a leave more than five weeks before the end of a semester, less than five weeks before the end of a semester, and less than three weeks before the end of a semester, special rules apply.
 - If the employee begins leave more than five weeks before the end of a semester, the leave will last at least three weeks, and the employee would return to work during the three-week period before the end of the semester, the District may require the employee to continue taking leave until the end of the semester.

- If the employee begins leave during the five-week period before the end of a semester because of the birth of a son or daughter; the placement of a son or daughter for adoption or foster care; to care for a spouse, son, daughter, or parent with a serious health condition; or to care for a covered servicemember, the District may require the employee to continue taking leave until the end of the semester if the leave will last more than two weeks, and the employee would return to work during the two-week period before the end of the semester.
- If the employee begins leave during the three-week period before the end of a semester because of the birth of a son or daughter; the placement of a son or daughter for adoption or foster care; to care for a spouse, son, daughter, or parent with a serious health condition; or to care for a covered servicemember, the District may require the employee to continue taking leave until the end of the semester if the leave will last more than five working days.
- If the District requires the employee to continue taking leave to the end of the semester, only the period of leave until the employee is ready and able to return to work will be charged against the employee's FMLA leave entitlement. However, the District will maintain the employee's group health insurance and restore the employee to the same or equivalent job including other benefits at the conclusion of the leave.
- For the purposes of the WFMLA and FMLA, "child" means a biological, adopted or foster child, step child, legal ward, or a child of a person having day-to-day care for the child. Also, the child must either be under age 18, or be 18 years or older and unable to care for him/herself because of a mental or physical disability or serious health condition. "Parent" means biological parent, foster parent, adoptive parent, step parent or an individual who was responsible for the day-to-day care of the employee when the employee was a child. While the FMLA does not include parents of spouses or domestic partners in the definition of "parent", the WFMLA does.

- An employee may substitute any paid leave for WFMLA leave and may substitute any paid leave for which he/she is qualified under the terms and conditions of the District's paid leave policies for FMLA leave. As noted, in some cases, the District may require the employee to substitute paid leave for any portion of leave that is FMLA leave only. All substituted leave runs concurrently with WFMLA and FMLA leave. The terms and conditions of applicable sick/vacation/other leave usage are stated in the Board's policies. If an employee has any questions about how these policies relate to each other and the WFMLA/FMLA, the employee should contact the Superintendent or his/her designee. If the employee does not meet the requirements for taking paid leave, the employee may still be eligible to take unpaid WFMLA/FMLA leave.
- An employee may take the allotted WFMLA and/or FMLA leave on an intermittent or leave reduced work schedule basis only in certain circumstances:

Under FMLA, the District is not obligated to grant intermittent leave unless the employee is requesting intermittent leave for his/her own serious health condition or to care for a family member with a serious health condition, and there is a medical need for such leave which can best be accommodated through an intermittent or reduced leave schedule. If an employee requests intermittent leave or leave on a reduced schedule, the District may require the employee to transfer temporarily to an available alternative position for which he/she is qualified and which better accommodates recurring periods of leave. The alternative position will have equivalent pay and benefits, but does not have to have equivalent duties.

Under the WFMLA, an employee may take leave in increments equal to the shortest increment permitted by the District for any other non emergency leave. Intermittent family leave must be scheduled so that it does not unduly disrupt the District's operations. Intermittent leave for a serious health condition must be scheduled as medically necessary.

- The District will maintain an employee's group health insurance benefits during any period of WFMLA and/or FMLA under the same conditions as if the employee continued to work.

- Upon an employee's return from WFMLA/FMLA covered leave, the employee will be reinstated to the same job or, if that job is not vacant, an equivalent job with the same pay, benefits, and terms and conditions of employment. If the employee's leave extends beyond the end of his/her allowable WFMLA/FMLA leave, these return rights provided by the WFMLA/FMLA laws will end.
- If the employee does not return to work following FMLA leave for a reason other than: (1) the continuation, recurrence, or onset of a serious health condition which would entitle the employee to FMLA leave; (2) the continuation, recurrence, or onset of a covered servicemember's serious injury or illness which would entitle the employee to FMLA leave; or (3) other circumstances beyond the employee's control, the employee may be required to reimburse the District for its share of health insurance premiums paid on the employee's behalf during the FMLA leave.
- If an employee fails to return to work after the expiration of his or her WFMLA/FMLA leave, the employee will be subject to immediate termination unless an extension of such is granted by the Board or its designee. If the employee's inability to return to work is due to the continuation, recurrence or onset of the employee's own serious health condition, or of the serious health condition of the employee's spouse, child or parent, the employee must submit a written request for such an extension as soon as the employee realizes that he/she will not be able to return at the expiration of the WFMLA/FMLA leave period. The District will consider each such request on a case by case basis. There is no guarantee that an extension will be granted.

If an employee needs to use leave under the WFMLA and/or FMLA, the employee must provide the District with proper notice of his/her intent to do so. While the time requirements differ under the FMLA and WFMLA, as a good rule of thumb, an employee should make every effort to provide as much notice as possible for foreseeable leave and should provide notice as soon as possible for unforeseeable leave. Under the WFMLA and/or the FMLA, employees are required to try to schedule foreseeable leave so as not to unduly disrupt the District's operations.

Under the FMLA, an employee must provide at least 30 days' advance notice when the need for the leave is foreseeable. Under the WFMLA, advance notice of leave must be given in a reasonable and practicable manner. If the leave is not foreseeable, notice must be given as soon as practicable. The District will appreciate the employees providing as much notice as possible in all situations. The District reserves the right to deny leave if you fail to meet notice requirements.

To request family or medical leave, an employee must submit a leave request form to the Superintendent or his/her designee. The leave request form is available from the Superintendent or his/her designee. If an employee does not specifically request family or medical leave, but requests leave for a reason that might qualify as family or medical leave, the District will provide the employee with a leave request form to fill out and return to the Superintendent, or his/her designee, as soon as possible in order to determine whether the leave requested qualifies as leave under the WFMLA and/or the FMLA. The District may temporarily designate the leave as leave qualifying under the WFMLA and/or the FMLA.

The Superintendent or his/her designee will determine which provisions of the WFMLA and/or the FMLA, if any, apply to the employee's situation and, if necessary, provide additional guidance on the employee's rights and responsibilities.

After requesting leave, an employee may be asked to provide additional information. The District may require that the employee obtain certification from a health care provider or other third party, depending upon the type of leave requested. The employee will be allowed at least 15 calendar days to return the completed medical certification form. In addition, the District may require the employee to report periodically on his/her status and intent to return to work, as well as to submit additional medical certification forms.

If any of the following apply, the District may deny an employee's request for leave:

- The employee does not meet the eligibility requirements.
- The purpose for the employee's requested leave does not qualify under the WFMLA or the FMLA.
- The employee failed to provide timely advance notice.
- The employee has not provided required information.

ADDITIONAL INFORMATION

Employees should also refer to the WFMLA and FMLA posters which are reproduced as the next two pages of this Policy. This Policy does not spell out all rights and responsibilities of the District's employees for every possible situation under the WFMLA and/or the FMLA. If an employee has any questions or desires additional information, he/she should contact the Superintendent or his/her designee at:

West Salem School District
405 East Hamlin Street
West Salem WI 54669
(608)786-0700

LEGAL REFERENCE: Federal Family and Medical Leave Act - 29 U.S.C. 2601, et. seq.

Federal Family and Medical Leave Act
Regulations-29 CFR Part 825
Wisconsin Family & Medical Leave Act - Wis.
Stats. §103.10
Wisconsin Family & Medical Leave Act Regulations
- Wis. Admin. Code DWD 225

APPROVED: November 10, 2008
REVISED: March 26, 2012

EMPLOYEE RIGHTS AND RESPONSIBILITIES UNDER THE FAMILY AND MEDICAL LEAVE ACT

Basic Leave Entitlement

FMLA requires covered employers to provide up to 12 weeks of unpaid, job-protected leave to eligible employees for the following reasons:

- For incapacity due to pregnancy, prenatal medical care or 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, son or daughter, or parent, who has a serious health condition; or
- For a serious health condition that makes the employee unable to perform the employee's job.

Military Family Leave Entitlements

Eligible employees with a spouse, son, daughter, or parent on active duty or call to active duty status in the National Guard or Reserves in support of a contingency operation may use their 12-week leave entitlement to address certain qualifying exigencies. Qualifying exigencies may include attending certain military events, arranging for alternative childcare, addressing certain financial and legal arrangements, attending certain counseling sessions, and attending post-deployment reintegration briefings.

FMLA also includes a special leave entitlement that permits eligible employees to take up to 26 weeks of leave to care for a covered servicemember during a single 12-month period. A covered servicemember is a current member of the Armed Forces, including a member of the National Guard or Reserves, who has a serious injury or illness incurred in the line of duty on active duty that may render the servicemember medically unfit to perform his or her duties for which the servicemember is undergoing medical treatment, recuperation, or therapy; or is in outpatient status; or is on the temporary disability retired list.

Benefits and Protections

During FMLA leave, the employer must maintain the employee's health coverage under any "group health plan" on the same terms as if the employee had continued to work. Upon return from FMLA leave, most employees must be restored to their original or equivalent positions with equivalent pay, benefits, and other employment terms.

Use of FMLA leave cannot result in the loss of any employment benefit that accrued prior to the start of an employee's leave.

Eligibility Requirements

Employees are eligible if they have worked for a covered employer for at least one year, for 1,250 hours over the previous 12 months, and if at least 50 employees are employed by the employer within 75 miles.

Definition of Serious Health Condition

A serious health condition is an illness, injury, impairment, or physical or mental condition that involves either an overnight stay in a medical care facility, or continuing treatment by a health care provider for a condition that either prevents the employee from performing the functions of the employee's job, or prevents the qualified family member from participating in school or other daily activities.

Subject to certain conditions, the continuing treatment requirement may be met by a period of incapacity of more than 3 consecutive calendar days combined with at least two visits to a health care provider or one visit and a regimen of continuing treatment, or incapacity due to pregnancy, or incapacity due to a chronic condition. Other conditions may meet the definition of continuing treatment.

Use of Leave

An employee does not need to use this leave entitlement in one block. Leave can be taken intermittently or on a reduced leave schedule when medically necessary. Employees must make reasonable efforts to schedule leave for planned medical treatment so as not to unduly disrupt the employer's operations. Leave due to qualifying exigencies may also be taken on an intermittent basis.

Substitution of Paid Leave for Unpaid Leave

Employees may choose or employers may require use of accrued paid leave while taking FMLA leave. In order to use paid leave for FMLA leave, employees must comply with the employer's normal paid leave policies.

Employee Responsibilities

Employees must provide 30 days advance notice of the need to take FMLA leave when the need is foreseeable. When 30 days notice is not possible, the employee must provide notice as soon as practicable and generally must comply with an employer's normal call-in procedures.

Employees must provide sufficient information for the employer to determine if the leave may qualify for FMLA protection and the anticipated timing and duration of the leave. Sufficient information may include that the employee is unable to perform job functions, the family member is unable to perform daily activities, the need for hospitalization or continuing treatment by a health care provider, or circumstances supporting the need for military family leave. Employees also must inform the employer if the requested leave is for a reason for which FMLA leave was previously taken or certified. Employees also may be required to provide a certification and periodic recertification supporting the need for leave.

Employer Responsibilities

Covered employers must inform employees requesting leave whether they are eligible under FMLA. If they are, the notice must specify any additional information required as well as the employees' rights and responsibilities. If they are not eligible, the employer must provide a reason for the ineligibility.

Covered employers must inform employees if leave will be designated as FMLA-protected and the amount of leave counted against the employee's leave entitlement. If the employer determines that the leave is not FMLA-protected, the employer must notify the employee.

Unlawful Acts by Employers

FMLA makes it unlawful for any employer to:

- Interfere with, restrain, or deny the exercise of any right provided under FMLA;
- Discharge or discriminate against any person for opposing any practice made unlawful by FMLA or for involvement in any proceeding under or relating to FMLA.

Enforcement

An employee may file a complaint with the U.S. Department of Labor or may bring a private lawsuit against an employer.

FMLA does not affect any Federal or State law prohibiting discrimination, or supersede any State or local law or collective bargaining agreement which provides greater family or medical leave rights.

FMLA section 109 (29 U.S.C. § 2619) requires FMLA covered employers to post the text of this notice. Regulations 29 C.F.R. § 825.300(a) may require additional disclosures.



For additional information:
1-866-4US-WAGE (1-866-487-9243) TTY: 1-877-889-5627
WWW.WAGEHOUR.DOL.GOV



Wisconsin Family and Medical Leave Act

Section 103.10, Wisconsin Statutes, requires that all employers with 50 or more employees display a copy of this poster in the workplace. Employers with 25 or more employees are required to post their particular leave policy

Under state law all employers with 50 or more permanent employees must allow employees of either sex:

- **Up to six (6) weeks leave in a calendar year for the birth or adoption of the employee's child, providing the leave begins within sixteen (16) weeks of the birth or placement of that child.**
- **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(21c) or 770.01(1) or parent or a parent of a domestic partner with a serious health condition.**
- **Up to two (2) weeks leave in a calendar year for the employee's own serious health condition.**

This law only applies to an employee who has worked for the employer more than 52 consecutive weeks and for at least 1000 hours during that 52-week period. The law also requires that employees be allowed to substitute paid or unpaid leave provided by the employer for Wisconsin Family and Medical Leave. Employers may have leave policies, which are more generous than leaves required by the law.

A complaint concerning a denial of rights under this law **must be filed within 30 days** after the violation occurs or the employee should have reasonably known that the violation occurred, whichever is later.

For answers to questions about the law, a complete copy of the law, or to make a complaint about a denial of rights under the law contact:

**STATE OF WISCONSIN
DEPARTMENT OF WORKFORCE DEVELOPMENT
EQUAL RIGHTS DIVISION**

201 E WASHINGTON AVE ROOM A300
PO BOX 8928
MADISON WI 53708

Telephone: (608) 266-6860
TTY: (608) 264-8752

819 N 6th ST
ROOM 255
MILWAUKEE WI 53203

Telephone: (414) 227-4384
TTY: (414) 227-4081

Website: <http://dwd.wisconsin.gov/er/>

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