



WinnebagoLand UniServ

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*(Retain this for your
record.)*

Wisconsin's Family and Medical Leave Act

The Wisconsin Family and Medical Leave Act (Wisconsin Statute 103.10) took effect on April 26, 1988. All employers in Wisconsin who employ 50 or more persons are covered by the law. The law provides:

1. An employee must have been employed by the employer for at least 52 weeks and have worked at least 1,000 hours in that period to be eligible for the benefits of this law.
2. An employee of either sex shall be allowed up to six (6) weeks of unpaid leave in a twelve-month period for the birth or adoption of a child of the employee with the leave to begin within 16 weeks (before or after) of the birth or placement of that child.
3. An employee shall be allowed up to two (2) weeks of unpaid leave in a twelve-month period for the care of a child (including those over 18 years of age), spouse, or parent with a serious health condition. The employer may require certification from a health care provider.
4. An employee shall be allowed up to two (2) weeks of unpaid leave in a twelve-month period 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, emergency leave, or personal leave; otherwise the leave is without pay (although the employer must continue regular health insurance payments during all such leave, paid or unpaid).

The history of the ability to substitute accumulated paid leave involves litigation by a teacher with support from WEAC. When the law was first put into effect, a teacher in the Richland School

District attempted to substitute five days of his accumulated paid sick leave for the five days of unpaid leave he took under the new law for the adoption of a child. When the District refused to allow the teacher to substitute his paid leave, the teacher filed a complaint, and the WEAC Legal Division provided representation. The complaint was filed with the Equal Rights Division (ERD) of Wisconsin's Department of Industry, Labor and Human Relations (DILHR).

In September, 1989, a judge ruled for the teacher; his decision, which included interest on the back pay and attorneys' fees, has been upheld by higher courts after being appealed. As a result, it is now quite clear that members may, at their option, substitute any of their paid accumulated leaves for the statutory family leaves which would otherwise be unpaid.

Because this is a relatively new law (and as such subject to a variety of litigation and interpretations), and one which can provide substantial benefits, particularly in conjunction with established negotiated leave provisions, the following observations are made to assist members in obtaining their full benefits.

1. Members who wish to take a leave under the terms of the Family and Medical Leave Act 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 a (family/medical) 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,

.....

2. A significant factor in the Family and Medical Leave Act is that even when the leave is without pay (as a result of the employee having no other accumulated or available paid leave which could be substituted) the employer is required to continue health insurance payments during the entire family or medical leave authorized by the law. This provision has been used by members who have exhausted their personal sick leave and are unable to work because of personal illness; by applying for family leave for the employee's own health condition (see #4 above) the employee will have continuing health insurance payments for up to two weeks even though there is no paid leave for those two weeks.
3. Most of the employers are now very familiar with all of these provisions and relevant court rulings. As a result, most employers are being fully cooperative in extending family and medical leave benefits to members when the requests are made on a timely basis. It is possible to apply for this leave after an emergency involving a serious health condition of a child, spouse, or parent. Most employers have not raised objections when such requests are made as soon as is reasonably possible after the emergency.
4. Litigation continues over such terms as "serious health condition," and "to care for." The law specifically recognizes that a serious health condition exists when there is outpatient care with supervision by a health care provider (defined in Wisconsin law as a licensed nurse, chiropractor, dentist, physician, podiatrist, physical therapist, optometrist, or psychologist). Obviously inpatient care in a hospital also qualifies. "To care for" has been interpreted to mean providing transportation for a

child, spouse, or parent in connection with treatment by a health care provider, as well as staying with such a relative.

5. The provisions of the law are in addition to provisions in your CBA. A member who gives birth to a child is eligible to use sick leave for medical disability surrounding the birth of the child and later, or earlier, to use up to 6 weeks for additional leave provided that leave begins within 16 weeks of the child's birth.
6. The law states that complaints about an employer's denial of leaves are to be filed in writing within 30 days after the alleged violation occurs or the employee should reasonably have known that the violation occurred, whichever is later; complaints are to be filed with the Equal Rights Division of DILHR. WinnebagoLand UniServ maintains copies of the law and complaint forms which will be sent to any member upon request.

When Wisconsin's law first was enacted, and then clarified by the Richland case, some employers (or their highly paid representatives) directed strong objections to the substitution provision. They cried that under the law as it is now interpreted, a father could take up to 6 weeks, with full pay if he had 30 days of accumulated sick leave, to be with his wife as she gave birth to their child, and to be able to do so any time within four months of the date of birth.

Yet, this is exactly what the family leave law was designed to provide. For if the leave would have to be without pay in all instances, very few fathers could take substantial time off to be with their families during that momentous time. With the now clearly established right to substitute accumulated paid leave for this family leave, Wisconsin law provides members with an invaluable and irreplaceable opportunity for families to be together as a unit in critical times and to thereby encourage the establishment of strong family bonds, and strong families, from which society will benefit.