



# **FEDERAL AND WISCONSIN FAMILY AND MEDICAL LEAVE LAWS**

**EMPLOYEE'S GUIDE AND NOTICE OF RIGHTS**  
MAY 2010

Office of Employee Services

**TABLE OF CONTENTS**

NOTE TO EMPLOYEE CONSIDERING FAMILY AND/OR MEDICAL LEAVE ..... 3

Q. What is Family and Medical Leave (FML)? ..... 4

Q. Am I eligible? ..... 5

Q. What do "spouse", "parent" and "son" or "daughter" mean for purposes of qualifying to take FMLA leave? ..... 5

Q. What does "Next of Kin" mean for purposes of qualifying for care of an injured/recovering military s  
ervice member? ..... 5

Q. What does "Son or Daughter" of a covered service member or "Son or Daughter" on active duty or call to  
active duty status mean for purposes of qualifying for FMLA in relation to the National Defense Authorization Act  
(NDAA)? ..... 6

Q. What is a "serious health condition?" ..... 6

Q. How is "continuing treatment by a health care provider" defined? ..... 6

Q. What does it mean that an employee is "needed to care for" a family member? ..... 7

Q. When may intermittent or reduced leave be utilized? ..... 7

Q. What notice do you have to give the District when the need for FMLA leave is foreseeable? ..... 7

Q. What are the consequences of failing to provide required notification to the District? ..... 8

Q. When must you provide a medical certificate to support a FMLA leave request? ..... 8

Q. What can the District request of you if it questions the adequacy of a medical certification? ..... 8

Q. Will a medical certificate be required to return to work? ..... 9

Q. What special FMLA rules apply to employees of schools? ..... 9

Q. When is FMLA exhausted? ..... 10

Q. Does FMLA leave have to be taken all at once or can it be taken in parts? ..... 10

Q. May the District transfer you to an "alternate position" to accommodate your request for intermittent or a  
reduced leave schedule? ..... 10

Q. Is FMLA paid or unpaid? ..... 11

Q. What benefits are you entitled to while using FMLA leave? ..... 11

Q. What are the consequences if you fail to make timely health plan premium payments? ..... 11

Q. May the District recover its contribution to health insurance premiums for maintaining your coverage during  
FMLA leave? ..... 11

Q. What are your rights to return to work from FMLA leave? ..... 11

Q. Are there any limitations on the District's obligation to reinstate you? ..... 12

Q. If you exercise your FMLA leave rights, how are you protected? ..... 12

Q. Under what circumstances can the District refuse to provide FMLA or reinstatement to eligible employees? ..... 12

Q. How does the Family and Medical Leave Laws affect state laws, District master contracts and personnel policies?... 13

***NOTE TO EMPLOYEE CONSIDERING FAMILY AND/OR MEDICAL LEAVE***

If you have determined that you will need to file for Family and/or Medical Leave, please obtain the corresponding FMLA FORMS PACKET to complete the appropriate forms for your needs.

Forms required for **ALL FMLA** requests:

- **Employee Leave Request Form**
- **Physician's Release to Work Following Employee's Serious Illness/Injury** – completed by physician to release employee back to employment with no restrictions or with recommendations for limitations

Forms required, **based on circumstance of leave:**

**MEDICAL NEED**

- Physician's Certification of Short-Term Illness (For Illness Exceeding Three Consecutive Days but Not Expected to Exceed 10 days) – completed by attending physician
- Physician's Certification of Employee's Serious Illness – completed by both employee and attending physician
- Physician's Certification of Family Member's Serious Illness – completed by both employee and family member's attending physician

**MILITARY NEED**

- Certification of Qualifying Exigency for Military Family Leave – completed by employee
- Certification of Serious Illness or Injury of a Covered Service Member for Military Family Leave – Completed by both the employee and/or covered service member and by a UNITED STATES DEPARTMENT OF DEFENSE ("DOD") HEALTH CARE PROVIDER or a HEALTH CARE PROVIDER who is either: (1) a United States Department of Veterans Affairs ("VA") health care provider; (2) a DOD TRICARE network authorized private health care provider; or (3) a DOD non-network TRICARE authorized private health care provider

---

**EMPLOYEE'S GUIDE  
TO THE  
FAMILY AND MEDICAL LEAVE POLICY  
OF THE  
MIDDLETON-CROSS PLAINS AREA SCHOOL DISTRICT**

The purpose of this document is to identify for employees the basic features of the Federal and Wisconsin family and medical leave laws and the Policy of the District on the taking of Family and Medical Leave. The information contained in this Guide is not intended to be a complete representation of all facets of these important laws or a full explanation of the District's Policy, but only a summary to help you understand the laws and your rights and obligations under the Policy of the District. Contact the Office of Employee Services if you wish to obtain additional information regarding the District Policy.

The District administers its Family and Medical Leave Law ("FMLA") obligations on a calendar year basis. To that extent the reasons for leave would entitle an employee leave under the federal and Wisconsin law, the leaves will run concurrently, along with any leave to which the employee is entitled under the applicable Policy of the District.

***Q. What is Family and Medical Leave (FML)?***

The Family and Medical Leave Act of 1993 (FMLA), a federal law, gives an eligible employee up to twelve (12) weeks of leave for the birth or placement of a child for adoption or foster care; to care for the employee's spouse, child or parent with a serious health condition; and for a serious health condition that makes the employee unable to perform the essential functions of the employee's job. A week of leave is equivalent to the number of hours worked per week by the employee. An employee on FMLA leave is also entitled to have health insurance benefits maintained while on leave as if the employee had continued to work instead of taking leave.

Amendments to FMLA (Section 585 of the National Defense Authorization Act (NDAA) for FY 2008) - Among other things, amends FMLA to permit a "spouse, son, daughter, parent, or next of kin" to take up to 26 workweeks of leave to care for a "member of the Armed Forces, including a member of the National Guard or Reserves, who is undergoing medical treatment, recuperation, or therapy, is otherwise in outpatient status, or is otherwise on the temporary disability retired list, for a serious injury or illness." ***Further, the NDAA expanded the definition of the FMLA to provide for additional job-protected leave rights to eligible employees because of qualifying exigencies (need/demand) arising out of the fact that a covered military member is on active duty or has been notified of an impending call or order to active duty in support of a contingency operation. The reasons for which an employee can take leave because of a "qualifying exigency" are (1) Short-notice deployment; (2) Military events and related activities; (3) Childcare and school activities; (4) Financial and legal arrangements; (5) Counseling; (6) Rest and recuperation; (7) Post-deployment activities; and (8) Additional activities.***

The Wisconsin Family and Medical Leave Law also allows eligible employees to take a leave from employment. Under Wisconsin law, an employee may take up to six (6) weeks of leave for the birth or placement of a child for adoption; 2 weeks to care for the employee's spouse, child or parent with a serious health condition; and 2 weeks for a serious health condition which renders the employee unable to perform the essential functions of the employee's job.

The District has combined its obligations under these two laws to form the current FMLA Policy of the District. The below information reflects the rights of employees under the laws as administered by the District.

**Q. Am I eligible?**

**You are eligible for Federal FML if you have been employed by the District for at least twelve months and have worked for at least 1,250 hours during the twelve month period immediately preceding the commencement of the leave. To qualify for Wisconsin FML, you must have worked for the District for 52 consecutive weeks and at least 1,000 hours in the preceding 52 weeks.**

**Q. What do "spouse", "parent" and "son" or "daughter" mean for purposes of qualifying to take FMLA leave?**

Spouse means husband or wife as recognized under Wisconsin law for purposes of marriage. Unmarried domestic partners do not qualify for family leave to care for their partner.

Parent means biological parent or an individual responsible for the day-to-day care of the child. The term does not include "parents-in-law." However, under Wisconsin law you are entitled to take your two weeks of family leave to care for a parent-in-law with a serious health condition.

"Child" means a natural, adopted, foster or treatment foster child, a stepchild or a legal ward to whom any of the following applies:

1. The individual is less than 18 years of age.
2. The individual is 18 years of age or older and cannot care for himself or herself because of a serious health condition.

"Incapable of self-care" means that the child requires active assistance or supervision to provide daily self-care in several of the "activities of daily living." Activities of daily living include adaptive activities such as activities of caring appropriately for one's grooming or hygiene, bathing, dressing, eating, cooking, shopping, taking public transportation, paying bills, maintaining a residence, using telephones or directories, using a post office, etc.

"Physical or mental disability" means a physical or mental impairment that substantially limits one or more major life activities of the individual.

**Q. What does "Next of Kin" mean for purposes of qualifying for care of an injured/recovering military service member?**

***The National Defense Authorization Act (NDAA) defines "Next of Kin" as the nearest blood relative other than the covered service member's spouse, parent, son, or daughter, in the following order of priority: Blood relatives who have been granted legal custody of the covered service member by court decree or statutory provisions, brothers and sisters, grandparents, uncles, aunts, first cousins, unless the covered service member has specifically designated in writing another blood relative as his/her nearest blood relative for purposes of military caregiver leave under the FMLA. When the service member has designated someone as "next of kin" the designated individual shall be deemed to be the covered service member's only next of kin.***

**Q. *What does "Son or Daughter" of a covered service member or "Son or Daughter" on active duty or call to active duty status mean for purposes of qualifying for FMLA in relation to the National Defense Authorization Act (NDAA)?***

*Includes biological, adopted, or foster child, stepchild, legal ward, or a child for whom the covered service member and/or employee stood in loco parentis and who is of any age.*

**Q. *What is a "serious health condition?"***

A serious health condition means an illness, injury, impairment, or physical or mental condition that involves:

1. Any period of incapacity or treatment in connection with or subsequent to inpatient care in a hospital, hospice or residential medical facility;
2. Any period of incapacity requiring absence from work, school or other regular daily activities of more than three (3) consecutive calendar days that also involves continuing treatment or supervision by a health care provider;
3. Continuing treatment by (or under the supervision of) a health care provider for a chronic or long-term health condition that is incurable or so serious that if not treated, would likely result in a period of incapacity of more than three (3) calendar days; or
4. Pregnancy or prenatal care.

**Q. *How is "continuing treatment by a health care provider" defined?***

Continuing treatment by a health care provider means one or more of the following:

1. The employee or family member in question is treated two or more times for the injury or illness by a health care provider. This requires first hand, hands-on treatment or care by a health care provider including a physician's assistant under the direct supervision of the health care provider.
2. The employee or family member is treated for an injury or illness two or more times by a provider of health care services under orders of, or on referral by, a health care provider; or is treated for the injury or illness by a health care provider on at least one occasion which results in a medical regime of continuing treatment under the supervision of a health care provider to resolve the health condition.
3. The employee or family member is under the continuing supervision of, but not necessarily being actively treated by, a health care provider due to a long-term or chronic condition or disability which cannot be cured. Examples include persons with Alzheimer's, persons who have suffered a severe stroke or persons in the terminal stages of a disease who may not be receiving active medical treatment.
4. Prenatal care is included as a serious health condition.

Voluntary or cosmetic treatment (such as medical check-ups, most treatments for orthodontia or acne) which are not medically necessary are not "serious health conditions" unless inpatient hospital care is required. Treatments for allergies, stress or for substance abuse are serious health conditions if all the conditions of the regulations are met. Prenatal care is included as a serious health condition. Routine preventative physical examinations are excluded.

**Q. *What does it mean that the "employee is unable to perform the functions of his or her position?"***

An employee is unable to perform the functions of the position where the health care provider finds that the employee is unable to work at all or is unable to perform the critical functions of the employee's position. An employee who must be absent from work to receive medical treatment for a serious health condition is considered to be unable to perform the essential functions of the position during the absence for treatment.

For a copy of the essential functions of your position, contact your immediate supervisor or the Office of Employee Services.

**Q. *What does it mean that an employee is "needed to care for" a family member?***

"Needed to care for" includes both physical and psychological care. The term also includes situations where the employee may be needed to fill in for others who are caring for the family member, or to make arrangements for changes in care, such as transfer to a nursing home.

**Q. *When may intermittent or reduced leave be utilized?***

Intermittent leave or leave on a reduced schedule may be utilized when there is a qualifying medical need for leave that can be accommodated through periodic absences from work. Employees needing intermittent or a reduced leave schedule must attempt to schedule their leave so as not to disrupt the District's operations. In making this determination, the District will take into account the operational needs of the District and the interests of the children in meeting their educational needs.

Intermittent or reduced schedule leave may be used by an employee not only in the situation where the family member's condition is intermittent, but also where the employee is needed only intermittently to care for such individual such as where other care is normally available, or care responsibilities are shared by another member of the family or a third party.

**Q. *What notice do you have to give the District when the need for FMLA leave is foreseeable?***

You must provide the District with at least 15 days advance notice if the reason for leave is foreseeable. If leave is not foreseeable, notice must be given as soon as practicable, but in no event later than two (2) days after the absence from work began. This notice must be in writing and delivered to the Office of Employee Services.

If the need for leave is unforeseen, i.e., in the event of an emergency, an employee must provide at least verbal notice sufficient to make the District aware that the employee needs FMLA-qualifying leave, including the anticipated duration of leave. This notice must be provided to the District within two (2) business days of the commencement of the leave.

When planning medical treatment, whether for the employee or someone who the employee will care for, the employee should consult with the District before scheduling treatment and make a reasonable effort to schedule the leave so as to not unduly disrupt the District's operations or needs of the children, subject to the approval of the health care provider. The District may request the employee to reschedule treatment, subject to the approval of the health care provider.

In the case of a request for medically necessary intermittent or reduced schedule leave, the employee must advise the District, in writing, of the reasons why the intermittent or reduced leave schedule is necessary

and the schedule for treatment, if applicable. The District and the employee shall attempt to work out a schedule that meets the employee's needs without unduly disrupting the District's operations or needs of the children, subject to the approval of the health care provider. The District may transfer an employee to an alternate position during the period of intermittent or reduced schedule leave which better accommodates the schedule of leave.

***Q. What are the consequences of failing to provide required notification to the District?***

If you fail to give advance notice under the District's Policy for foreseeable leave, with no reasonable excuse for the delay, the District may deny the taking of FMLA leave for up to fifteen days after the date the employee provides notice to the District of the need for leave to locate a satisfactory replacement.

***Q. When must you provide a medical certificate to support a FMLA leave request?***

You must provide the District with a Health Care Provider Certification in the event of a serious health condition, whether for your condition or that of another covered person. You will be provided with a Certification form by your supervisor or the Office of Employee Services. When requesting medical leave which is foreseeable, you have fifteen (15) calendar days after receipt in which to provide the requested Certification. The Health Care Provider Certification must be prepared by, and signed by, the health care provider.

In the case of a medical emergency, an employee must provide a completed Certification form within a reasonable time, as determined by the relevant facts and circumstances, but in no event later than fifteen (15) days after the Health Care Provider Certification form is provided to you.

Failure to provide the Certification may result in denial of the FMLA leave request or delay of the leave request until an adequate certification is received.

***Q. What can the District request of you if it questions the adequacy of a medical certification?***

If you submit a completed Health Care Provider Certification signed by a health care provider, the District may not request additional information from the health care provider. Rather, the District may require you to obtain a second opinion from a health care provider selected by the District, at the District's expense.

If the second opinion is in disagreement with the original medical certification, then a third opinion may be requested by the District. In this case, a third health care provider will be selected to render the third opinion. This third opinion will be final and binding upon the parties. The District is responsible for the expense of the third opinion.

The District may request recertification as to the continuance of the serious health condition at any reasonable interval of time but not more often than every thirty (30) days unless:

1. the employee requests an extension of leave;
2. the circumstances described by the original certification have changed significantly;
3. the District receives information that casts doubt on the continuing validity of the certification; or
4. the employee indicates that he/she is unable to return to work because of the continuation, reoccurrence, or onset of the serious health condition.

***Q. Will a medical certificate be required to return to work?***

If you are on FMLA leave for your own serious health condition, you will be required to present a certification from your health care provider prior to being allowed to return to work indicating that you are able to return to your position at work and perform the essential functions of your job. If you are not able to perform all of your duties upon the expiration of leave, please contact the Office of Employee Services to further discuss your employment with the District.

The District may require you to periodically report your status and intention to return to work. The District may deny restoration to employment until you submit the required fitness for duty certification.

***Q. What special FMLA rules apply to employees of schools?***

If you are employed principally in an instructional capacity and request a leave that is foreseeable based upon planned medical treatment and would be on leave for greater than 20% of the total number of working days in the period in which the leave would extend, the District may require you to elect either:

1. to take leave for periods of a particular duration not to exceed the duration of a planned medical treatment; or
2. to transfer temporarily to an available alternative position offered by the District for which you are qualified and that has equal pay and benefits and better accommodates reoccurring periods of leave than your regular position.

If you are principally employed in an instructional capacity and are requesting FMLA leave that begins more than five weeks prior to the end of the semester, the District may require you to continue taking leave until the end of the semester if:

1. the leave is of at least three weeks duration and
2. the return to employment would occur during the three week period before the end of the semester.

If you are employed principally in an instructional capacity and are requesting FMLA leave because of the birth, adoption or foster care placement of a child or to care for a spouse, child or parent, other than an in-law, with a serious health condition during the period that commences five weeks prior to the end of the semester, the District may require you to continue taking leave until the end of the semester if:

1. the leave is greater than two weeks duration; and
2. the return to employment would occur during the two week period before the end of the semester.

If you are employed principally in an instructional capacity and are requesting FMLA leave because of the birth, adoption or foster care placement of a child or to care for a spouse, son, daughter or parent, other than an in-law, with a serious health condition during the period that commences three weeks prior to the end of the semester and the duration of leave is greater than five working days, the District may require you to continue to take leave until the end of the semester.

**Q. *When is FMLA exhausted?***

You are entitled to take up to twelve (12) weeks of FMLA leave during the calendar year **and up to twenty-six (26) weeks for care of an injured/recovering service member**. Your Wisconsin leave entitlement will run concurrently with your federal leave to the extent your reason for leave satisfies the requirement for leave under each such law. For example, if you are absent from work for 12 weeks as a result of your serious health condition, you will have exhausted your federal leave entitlement as well as your two (2) weeks of Wisconsin leave for your serious health condition.

The FMLA leave, federal and Wisconsin, that you are entitled to will also run concurrently with any leave you take or are entitled to take under the policies of the District which are permitted on your serious health condition. For example, workers compensation leave will run concurrently with your FMLA entitlement.

**Q. *Does FMLA leave have to be taken all at once or can it be taken in parts?***

FMLA leave may be taken intermittently or on a reduced leave schedule under certain circumstances. For the birth or placement of a child, leave on an intermittent or reduced schedule basis is available for leave commencing during the first sixteen (16) weeks before or after the birth. The last segment of intermittent or reduced schedule leave must be commenced before the expiration of the sixteen (16) week period. Thereafter intermittent or reduced scheduled leave is only available if approved in advance by the District.

When leave is taken for a sick family member or for the employee's own serious health condition, leave may be taken intermittently or on a reduced leave schedule when medically necessary.

There is no limit, other than the maximum period of leave available, on the size of an increment of leave when an employee takes intermittent leave or leave on a reduced leave schedule under this Policy except that the District may limit leave increments to the shortest period of time that the District's payroll system uses to account for absences or use of leave.

Only the amount of leave actually taken will be counted toward the employee's FMLA entitlement.

The Superintendent's approval will be necessary for intermittent leave or leave in a reduced schedule which is not recommended on the medical certificate but requested by the employee.

**Q. *May the District transfer you to an "alternate position" to accommodate your request for intermittent or a reduced leave schedule?***

For intermittent or reduced schedule leave that is foreseeable based on planned medical treatment, the District may transfer you temporarily to an available alternative position for which you are qualified and which better accommodates reoccurring periods of leave.

Although the alternative position must have equivalent pay and benefits, the position does not have to have equivalent duties. The District may also transfer you to a part-time position with the same hourly rate of pay and benefits. However, you will accrue employment benefits during the period of leave on the basis of the hours

of employment. The District will not eliminate benefits which otherwise would not be provided to part-time employees.

***Q. Is FMLA paid or unpaid?***

FMLA leave is unpaid. An employee may utilize accrued reimbursable leave while on FMLA leave. Paid vacation or paid personal leave may also be utilized at the employee's request.

***Q. What benefits are you entitled to while using FMLA leave?***

The District will maintain your group health plan coverage on the same conditions as coverage would have been provided if you had been continuously employed during the leave period. The District's existing rules for payment of health benefit premiums while on leave without pay will be followed. Contact the benefits department in the Office of Employee Services to discuss your particular payment requirements.

***Q. What are the consequences if you fail to make timely health plan premium payments?***

You have a thirty (30) day grace period after the agreed upon date for payment of premiums without affecting your health insurance coverage. If you do not make the payment within the thirty (30) day grace period, the District may terminate your health insurance coverage. If you have questions or problems on the coverage payments, please contact the Office of Employee Services.

***Q. May the District recover its contribution to health insurance premiums for maintaining your coverage during FMLA leave?***

If you fail to return to work for reasons unrelated to FMLA leave or not for circumstances beyond your control, health insurance premiums paid by the District during the period of FMLA leave, i.e., the District's portion as well as any employee portion paid by the District, are a debt owed by you to the District. An employee who returns to work for at least thirty (30) calendar days is considered to have "returned" to work. The District may recover health insurance premiums paid on the behalf of an employee through deduction of any sums due to you from employment. Any deficiency will be due from the employee. The District, if necessary, may initiate legal action against you to recover unpaid health insurance premiums.

***Q. What are your rights to return to work from FMLA leave?***

Upon the expiration of your FMLA leave, you will be returned to the same or an equivalent employment position having equivalent benefits, pay and other terms and conditions of employment. The position will involve the same or substantially similar duties and responsibilities, which entails substantially equivalent skill, effort, responsibility and authority.

If you are no longer qualified for the position at the end of the leave, you may be considered for other available employment at the District.

***Q. Are there any limitations on the District's obligation to reinstate you?***

You are entitled to no greater right to reinstatement or to any other benefit or condition of employment upon returning from FMLA leave than you would have had if continuously employed during the FMLA leave. The District has the burden of showing that you would not otherwise have been employed at the time of reinstatement as requested in order to deny restoration to employment. If you were hired for a specific term or to perform a specific project, the District has no obligation to restore you if the employment term or project is over and the District would not otherwise have continued to employ you.

***Q. If you exercise your FMLA leave rights, how are you protected?***

The District will not interfere with the exercise of an employee's rights to FMLA leave, not only by not refusing to authorize FMLA leave, but by not discouraging an employee from utilizing such leave. The District may not discriminate against an employee who uses FMLA leave.

If you have concerns as to the exercise of your legal rights or questions as to the FMLA, please contact the Office of Employee Services.

If an employee believes that his/her rights under FMLA have been violated, the employee may file or have another person file on his/her behalf, a written complaint with the Wage and Hour Division of the Department of Labor or the Department of Workforce Development-Equal Rights Division.

***Q. Under what circumstances can the District refuse to provide FMLA or reinstatement to eligible employees?***

1. If an employee fails to give timely advance notice when the need for FMLA leave is foreseeable, the District may deny the taking of FMLA leave until fifteen days after the date the employee provides notice to the District.
2. If an employee fails to provide in fifteen calendar days a requested Health Care Provider Certification to substantiate the need for foreseeable FMLA leave due to a serious health condition, the District may deny FMLA leave until the employee submits this Certification. If an employee on an unforeseen or emergency leave fails to provide the District with a completed Certification within fifteen days of receipt of the Certification, the District may deny the employee's leave or the continuation of leave.
3. If an employee fails to provide a requested fitness for duty certification to return to work, the District may deny reinstatement until the employee submits this certificate.
4. An employee has no greater right to reinstatement or to other benefits and conditions of employment than if the employee had been continuously employed during the FMLA leave period. However, an employee will not accrue any additional benefits or rights during leave.
5. If an employee unequivocally advises the District that he/she does not intend to return to work, the employment relationship is terminated and the employee's entitlement to reinstatement, continued leave and employment benefits ceases. The District may require an employee on FMLA leave to report periodically on the employee's status and intention to return to work.
6. An employee who fraudulently obtains FMLA leave from the District is not protected by FMLA job restoration or maintenance of health benefits provisions. Further, any employee who fraudulently obtains FMLA leave will be subjected to discipline, up to and including discharge.

*Q. How does the Family and Medical Leave Laws affect state laws, District master contracts and personnel policies?*

Nothing in the law supersedes any greater benefits already required by state law or provided by the District.