

## **City of De Pere**

### **Notice of Rights and Responsibilities for Family and Medical Leave Act (FMLA)**

The FMLA entitles all employees who meet the eligibility requirement listed below to take unpaid, job-protected leave for specified family and medical reasons with continuation of group health insurance coverage under the same terms and conditions as if the employee had not taken leave. Anytime an employee has a period of incapacity of more than three full consecutive calendar days (this includes work and non-work days) they must apply for FMLA. This holds true even if the employee is using sick leave for their absence.

#### **A. FMLA Leave Summary**

The City provides family and medical leave in accordance with the Federal Family and Medical Leave Act (FMLA) and the Wisconsin Family and Medical Leave Act. The Military Family Leave Amendment extends the FMLA to provide military exigency leave and caregiver leave.

For the most part, the federal and state family and medical leave laws overlap. When an employee's absence qualifies as FMLA leave under state and federal laws, the employee will use up their entitlement under each law at the same time. Where one law provides a greater benefit than the other, the employee will receive the greater benefit. Entitlements are calculated on a calendar year, January 1 to December 31 for both state and federal purposes.

#### **B. Eligibility**

An employee is eligible for FMLA under state law if they have been employed by the City for more than 52 consecutive weeks and have been paid for at least 1,000 hours during the preceding 52-week period. Service has to be consecutive to be considered. Under federal law, eligibility requires at least 12 months of service and at least 1,250 hours worked during the 12-month period preceding the leave.

#### **C. Leave Available**

State law allows two weeks of medical leave due to an employee's serious health condition; two weeks of family leave to provide care to an immediate family member (child, spouse, domestic partner or parent) with a serious health condition; and six weeks of family leave for the birth of an employee's natural child or adoption. (If you plan to add your child to the medical and/or dental plan, you must do that within 60 days of the birth/adoption). Federal law allows 12 total weeks of medical and/or family leave due to an employee's serious health condition, the birth of an employee's natural child or adoption, or to provide care for the serious health condition of an employee's child, spouse or parent. The Military Family Leave Amendment (MFLA) allows up to 12 weeks of family leave due to a qualifying exigency when the employee's spouse, son, daughter or

parent is on covered active duty service, or has been called to covered active duty status. The FMLA also allows up to 26 weeks of leave for a spouse, son, daughter, parent or next of kin to care for a “covered service member” who is recovering from a serious illness or injury sustained or aggravated in the line of active duty or to care for a veteran who is undergoing medical treatment, recuperation, or therapy for a serious injury or illness that occurred or was aggravated in the line of duty during the five years preceding the date of treatment (26 weeks total in a single 12-month period combined with other types of FMLA leave). Military caregiver leave is available to an eligible employee once per service member, per serious injury or illness.

<u>TYPE</u>	<u>ELIGIBILITY</u>	<u>MAXIMUM DURATION FOR WILEAVE</u>	<u>MAXIMUM DURATION FOR FEDERAL LEAVE</u>
Personal serious health condition; inpatient hospitalization, chronic condition or continuing care by a physician	Unable to work because of serious health condition	Up to two (2) weeks per calendar year	Up to 12 weeks per calendar year
Birth, adoption, foster care	Birth of a child, placement of child for adoption or as pre-condition to adoption, or foster care placement	Up to six (6) weeks per calendar year	Up to 12 weeks per calendar year
Family serious health condition, inpatient hospitalization, chronic or continuing care by a physician	Necessary to care for spouse, child or parent with serious health condition Necessary to care for parent-in-law, domestic partner or domestic partner’s parent (Wisconsin FMLA only)	Up to two (2) weeks per calendar year	Up to 12 weeks per calendar year
Leave to care for a seriously ill or injured military service member or covered veteran within five years of discharge (other than dishonorable) who is a spouse, son or daughter, parent, or next of kin.	Spouse, son, daughter, parent, or next of kin service member or covered veteran has incurred a serious illness or injury on active duty or aggravated an existing illness or injury by service in the line of duty on active duty, and service member 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.	None	Up to 26 weeks per single 12-month period, per service member, per injury.
“Qualifying exigency” leave due to employee’s spouse, son, daughter or parent being on or called up for covered active duty in the Armed Forces.	Short-notice deployment to a foreign country, military events and related activities, childcare and school activities, parental care, financial and legal arrangements, counseling, rest and recuperation, post-deployment activities, and additional activities where the employer and employee agree to the leave.	None	Up to 12 weeks per calendar year, which includes up to 15 days used to spend time with a military member on Rest and Recuperation leave.

If an employee is not eligible for FMLA, or has exhausted their FMLA entitlement, or wishes to take leave for a purpose that does not qualify for statutory leave, please consult the other leave policies of the City to determine if other leave might be available.

D. Definitions and Clarification on Types of Leave

1. Child, Spouse, and Parent

A “child” includes not only your biological, adopted, or foster child, but also a step child, legal ward, or child for whom you have day-to-day responsibilities to provide care and financial support. If older than age 18, the child must be incapable of self-care at the time leave is to commence because of a “physical or mental disability.” A “physical or mental disability” is a physical or mental impairment that substantially limits one or more of an individual’s major life activities.

For purposes of the Wisconsin FMLA, however, a child over 18 must be incapable of self-care because of a serious health condition (defined below).

The term “spouse” means a husband or wife as defined or recognized in the state where the individual was married, including in a common law marriage or same-sex marriage. Spouse also includes a husband or wife in a marriage that was validly entered into outside of the United States, if the marriage could have been entered into in at least one state. The term spouse does not include an unmarried domestic partner. The Wisconsin FMLA has a separate provision covering qualified domestic partners.

“Domestic partner,” is defined in s. 40.02(21c) or 770.01(1) of the Wisconsin Statutes as either: (1) an individual in a domestic partnership, or (2) an individual who has signed and filed a declaration of domestic partnership in the office of the register of deeds of the county in they resides. Please see s. 40.02(21d) and 770.05 of the Wisconsin Statutes for the definition of domestic partnership.

A “parent” includes your biological parents or another individual who provided day-to-day care and financial support during your own childhood. Your parent-in-law or parent of your domestic partner is not considered a parent for purposes of the FMLA but is considered a parent for purposes of the Wisconsin FMLA.

2. Serious Health Condition

A “serious health condition” under the FMLA is an illness, injury, impairment, or physical or mental condition that involves either an overnight stay (being admitted) in a hospital or other treatment facility or “continuing treatment by a health care provider.”

For purposes of the federal FMLA, a serious health condition involving “continuing treatment by a health care provider” includes any of the following:

- a. A period of incapacity—inability to work, attend school, or perform other regular daily activities due to the serious health condition—of more than three full consecutive calendar days, and (1) treatment two or more times, within 30 days of the first day of incapacity, by a health care provider or by another health care professional under the orders of or on referral by a health care provider, or (2) treatment on at least one occasion by a health care provider that results in a regimen of continuing treatment under the health care provider’s supervision. “Treatment” must be an in-person visit to a health care provider for examination, evaluation or specific treatment.
  - b. Any period of incapacity due to pregnancy or for prenatal care.
  - c. Any period of incapacity or treatment due to a chronic serious health condition, such as asthma, diabetes, or epilepsy.
  - d. Any period of incapacity that is permanent or long-term due to a condition for which treatment may not be effective, such as Alzheimer’s, a severe stroke, or the terminal stages of a disease.
  - e. Any period of absence to receive multiple treatments, either for restorative surgery or for a condition that would likely result in a period of incapacity of more than three full consecutive calendar days in the absence of medical intervention or treatment, such as cancer, severe arthritis, and kidney disease.
3. Under the Wisconsin FMLA, a “serious health condition” is a disabling physical or mental illness, injury, impairment, or condition involving:
    - a. Inpatient care in a hospital, nursing home, or hospice; or
    - b. Outpatient care that requires continuing treatment or supervision by a health care provider.
  4. The term “health care provider” includes a physician, dentist, clinical psychologist, podiatrist, chiropractor, a nurse practitioner, physician assistant, a nurse midwife, a clinical social worker, and certain other health care professionals.
  5. Spouses:
    - a. Spouses who are both eligible for FMLA leave and are both employed by the City are limited to a combined total of 12 weeks

of leave during a 12-month period for (a) the birth of a child or to care for the child after birth; or (b) for the placement of a son or daughter with the employee for adoption or foster care, or to care for the child after placement.

- b. Spouses who are both eligible for FMLA leave and are both employed by the City are each eligible to take 12 weeks of leave for their own serious health condition or to care for a child or spouse who has a serious health condition. However, the total leave for an employee cannot exceed 12 weeks in a calendar year.

- 6. Please note: The eligibility requirements for the City's sick leave benefits and workers' compensation will normally meet the requirements for the Federal Medical Leave Act and allow the City to count the amount of time used for these leaves against employees' FMLA entitlement. Therefore, FMLA forms are required anytime an employee has a period of incapacity of more than three full consecutive calendar days and may be required for less than three days given the circumstances.

#### E. Procedures for Requesting Leave

Leave request forms are available from the Human Resources Department. Failure to comply with the following rules may result in the delay of leave or denial of leave.

- 1. Foreseeable Leave: Where leave is foreseeable, employees should make a written request for leave at least 30 days in advance.
- 2. Unforeseeable Leave: Where advance written notice of the need for leave is not possible (such as where there is an emergency need for medical consultation or treatment) advance oral notice (in person or by telephone) is required. When advance written nor oral notice is possible, then oral notice must be provided as soon as reasonably practicable with written documentation to follow.

#### F. Use of Leave

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. When taking intermittent leave under the FMLA, an eligible employee is only allowed to take the amount of leave that is necessary to address the particular circumstance that triggered the need for leave. For example, if an employee needs to take two hours off every week to attend a medical appointment, they are only allowed to take those two hours off, and not additional time that is not necessary to address their medical needs.

For the birth or adoption of a child intermittent leave is only allowed under the state law and must be completed within 16 weeks of the birth or after placement. Any leave time taken after the 16<sup>th</sup> week after birth or placement must be consecutive.

The smallest increment for partial leave is the smallest measure of time that employees are able to take time for any non-emergency leave.

Where intermittent leave or reduced work schedules are requested for foreseeable or planned medical treatment, the City may temporarily transfer the employee to an available equivalent position if the employee is qualified and the position better accommodates recurring leave.

G. Substitution of Benefits

Under State leave, employees have the option of substituting benefits for their State leave period. Under Federal leave, the City has the ability to require employees to substitute all vacation, floating holidays, or sick leave during the leave period; if an employee receives disability benefits, the employee will not be required to substitute vacation, floating holidays, or sick leave for the period they receive benefits. When paid leave is substituted for unpaid leave, the paid leave will not be available to the employee later, nor will the employee be entitled to additional family and/or medical leave as a result of the substitution of paid leave. In addition, because the eligibility requirements for workers' compensation benefits require a medical condition that meets the eligibility requirements for family and medical leave, the time an employee is off due to an on-the-job injury will automatically be counted against their Federal FMLA entitlement. In other words, FMLA and substituted paid leave or workers' compensation leave will run concurrently.

H. Medical Certification & Examinations

Where leave involves a serious health condition, the City requires employees to provide a medical certification form from the health care provider within 15 days of the City's request for certification. The City reserves the right to require a second opinion or even third opinion, or may require recertification of a serious health condition when appropriate.

Failure to provide the requested medical certification may result in delay or denial of the leave. This means the absence may then be counted against the employee for purposes of discipline for attendance.

I. Reporting While on Leave

While an employee is on leave, the City may require the employee to report periodically on their status and intent to return to work.

J. Fitness for Duty Report

If an employee has taken medical leave of more than three consecutive days (counting non-work days) as a result of their own serious health condition, then the employee may be required to provide a fitness for duty certificate before returning to work. The certificate should be submitted to the employee's supervisor or designee; the supervisor should submit a copy to Human Resources.

K. Insurance and Benefits

An employee who is enrolled in the City's group health or dental insurance plans may continue to participate in the program at the same contribution rate as before the leave for the duration of the leave. To maintain insurance coverage employees must continue to pay their portion of the premium on a bi-weekly basis while on leave. Coverage will cease if payment is not received within 30 days of the premium due date; the premium due date is the payroll date in which the deduction would have been taken. While on unpaid leave, employees may not accrue benefits (e.g., vacation or sick leave) and benefits will be prorated by the City accordingly. This includes employees who are receiving income replacement benefits from a source other than City of De Pere payroll, such as income continuation insurance and long-term disability. If the employee is currently participating in the City Flexible Benefits Plan and takes an unpaid leave of absence exceeding a full pay period, contact the Human Resources Department to modify the payment schedule for the remainder of the year.

L. Failure to Return to Work

If an employee fails to return to work for reasons other than a continuation of a serious health condition, the employee will be required to reimburse the City for any insurance premiums paid by the City on their behalf while on leave. Further, any leave used in excess of earned leave must be paid back to the City.

M. Designation of Leave

Within five business days of obtaining complete information from the employee, Human Resources will notify the employee whether the leave has been approved any change in the originally approved leave must be submitted and approved using the same procedure as above.

**It is the employee's responsibility to ensure communication between the health care provider and Human Resources is timely and efficient, as well as to ensure Human Resources received the complete Health Care Provider certification. Frequent follow up with Human Resources is pertinent.**

There may be times when an employee is absent under circumstances that would qualify as FMLA leave, and the employee has not specifically applied for FMLA leave. The City has the right to designate such absences as FMLA leave, and may also waive the requirement of medical certification at its discretion.

N. Employment Protection

Upon return from family or medical leave, the employee will be returned to the position they held immediately prior to the leave if the position is vacant. If the position is not vacant, the employee will be placed in an equivalent position unless the employee would have been terminated during the statutory leave for a legitimate business reason. The employee, however, has no greater right to reinstatement or benefits than if they had been actively employed during the leave. If the employee exhausts their statutory leave before returning to work, return to work will be controlled by the City's other policies and practices.

“Key Employees,” a salaried employee whose salary rate is in the top 10% of City employees, may be denied restoration to employment on the grounds that such restoration will cause substantial and grievous economic injury to the City.

This policy provides an introduction to the rights provision of the family and medical leave laws. Specific questions an employee may have about this law should be directed to the Human Resources Department.