

## Wisconsin Basic Leave Entitlement

Under the Wisconsin Family and Medical Leave, covered employers are to provide eligible employees up to:

- Six weeks leave in a calendar year for the birth or adoption of the employee's child, providing the leave begins within 16 weeks of the birth or placement of that child;
- two weeks of leave in a calendar year for the care of a child, spouse, or parent with a serious health condition;
- two weeks leave in a calendar year for the employee's own serious health condition.

Employees may be eligible if they have worked for The Diagnostic & Treatment Center (The DTC) more than 52 consecutive weeks and for at least 1,000 hours during the 52-week period. Eligibility for benefits is defined by applicable statutes and supporting regulations.

## Federal Basic Leave Entitlement

Under the Federal Family and Medical Leave Act of 1993, covered employers are to provide up to 12 weeks of unpaid leave in a 12-month period to eligible employees for certain family and medical 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.

Employees may be eligible if they have worked for The DTC for at least 1 year and for 1,250 hours over the previous 12 months. Eligibility for benefits is defined by applicable statutes and supporting regulations.

The DTC will consider the 12-month period for which leave is available to be the same as the calendar year starting on January 1 and ending on December 31 of each year.

## Military Family Leave Entitlement

Eligible employees with a spouse, son, daughter, or parent on active duty status in the National Guard or Reserves in support of a contingency operation may use their 12-week leave entitlement in any 12-month period 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/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.

- The employee must be the spouse, son, daughter, parent, or next of kin (nearest blood relative other than the servicemember's spouse, parent, son, or daughter) of a covered servicemember.
- The "single 12-month period" commences on the first day of leave taken to care for the servicemember and expires 12 months from the date.
  - ✓ If the employee does not take all of the 26 workweek entitlement during the "single 12-month period," the remainder of the 26 workweek entitlement is forfeited.
  - ✓ The "single 12-month period" is applied on a per-covered-servicemember, per-injury basis so an employee may be entitled to take more than one period of 26 workweeks of leave if the leave is to care for a different servicemember or the same servicemember with a subsequent illness or injury.
  - ✓ No more than 26 workweeks of leave may be taken within any "single 12-month period".
  - ✓ An employee is entitled to a combined total of 26 workweeks of leave for any FMLA-qualifying reason during the "single 12-month period." Within the "single 12-month period," an employee is limited to a total of 12 weeks of FMLA leave for any purpose other than to care for an injured servicemember.

## Medical Certification

The DTC may require medical certification to support a request for medical leave due to the serious health condition of the employee's parent, spouse, son, or daughter or for the serious health condition that makes the employee unable to perform the employee's job. If required, the employee must provide the requested certification within 15 calendar days from the day The DTC has requested the certification, unless it is not practical to do so under the particular circumstances. Failure to provide adequate and timely certification could result in The DTC denying the employee's request for leave.

The DTC reserves the right to obtain a second or third opinion (at The DTC's expense) when there are questions as to the adequacy of the medical certification.

## Certification of "Qualifying Exigency"

The DTC will require a copy of active duty orders, type of exigency and documentation as reasonable, and dates of leave.

### **Certification for Serious Injury or Illness of Covered Servicemember for Military Family Leave (FMLA)**

The DTC will require certification to support a request for medical leave to care for a servicemember with a serious illness or injury of an employee's spouse, son, daughter, parent, or nearest blood relative (next of kin).

### **Worker's Compensation**

If the employee is receiving time off from work due to an injury or illness covered by the Worker's Compensation law, that time shall be deemed to be medical leave under the Wisconsin Family and Medical Leave Law and the Federal Family and Medical Leave Act of 1993.

### **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 healthcare 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 must be a period of incapacity of more than three consecutive, full calendar days combined with at least two visits to a healthcare 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**

The employee may substitute accrued Paid Time Off (PTO) for unpaid leave allowable under the Wisconsin Family and Medical Leave Law and the Federal Family and Medical Leave Act of 1993.

If the employee is on exclusively Federal family or medical leave, The DTC may require the employee to substitute PTO for the unpaid leave.

### **Payment of Insurance Premium**

Healthcare benefits will continue during the employee's family or medical leave. If the employee's leave is substituted paid leave or leave running concurrently with another paid leave, insurance premiums will be collected through payroll deduction as normal. If the employee's leave is unpaid leave, the employee is required to pay the premium to The DTC at the same time as it would be

made through payroll deduction. If premiums are increased or decreased, the employee is required to pay the new rate.

If the employee's leave is unpaid leave and the employee has enrolled in the Section 125 healthcare reimbursement and/or dependent care reimbursement accounts, the employee has two options while on leave:

- The employee may continue coverage. To do so, the employee would be required to pay the contributions to The DTC at the same time as they would be made through payroll deductions. If the employee chooses this option, the employee will be an active participant in the plan and will be able to submit and be reimbursed for eligible claims.
- The employee may suspend those benefits until the employee returns from their leave and is again on the payroll. Any claims incurred during the suspension period will not be paid, and the employee's annual election will then be reduced by the corresponding amount.

If the employee does not remit the flex contribution to The DTC, it will be assumed that the employee chooses to suspend benefits.

If the employee does not return to work at the end of the leave, health insurance benefits will terminate on the day the leave ended. Medical continuation may be available, under the federal COBRA law, subject to the terms of The DTC's health plan.

### **Potential Liability for Health Insurance Premiums**

If the employee fails to return to work from their family or medical leave, except for reasons listed below, the employee may be liable for premiums paid by The DTC during his/her entire unpaid family and medical leave. For purpose of this section, "premiums" means an amount equal to the charge for COBRA coverage for the period the employee is on leave. In determining this amount, the two-percent administrative charge used to determine COBRA rates will not be included in the cost to the employee. Please note that the word "premium" as used in this section is not the premium or charge the employee typically pays as an employee to participate in the medical plan.

The employee will not be held liable for premiums if the employee does not return to work from their family or medical leave for one of the following reasons:

- The continuation, recurrence, or onset of a serious health condition which would entitle the employee to leave under the Wisconsin Law and the Federal Act; or
- other circumstances beyond the employee's control.

## **Restoration to Same or Equivalent Job**

When the employee returns from family or medical leave, the employee is entitled to return to the same position the employee held when the leave commenced, or to an equivalent position with equivalent benefits, pay, and other terms and conditions of employment.

If the employee does not return to work after an approved leave, the employee reinstatement rights will be forfeited.

The DTC reserves the right to designate certain employees as "Key Employees." Employees who are designated as "Key Employees" are not entitled to mandatory reinstatement rights. If the employee is designated as a "Key Employee," the employee will receive a separate notice explaining that designation and will be allowed to decide whether to voluntarily return to work or to continue FMLA leave at the risk of losing reinstatement rights.

## **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 healthcare 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.

For further information regarding the Wisconsin Family and Medical Leave Law and the Federal Family and Medical Leave Act of 1993, please consult the FMLA posters which have been posted at various locations in the workplace, the Federal and State FMLA laws and regulations, or Human Resources.