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Title:	Family and Medical Leave Act Policy
Issuer:	Human Resources
Coverage:	All Employees
Authority:	Human Resources
Duration:	Indefinite

Policy Intent

The Family and Medical Leave Act (FMLA) provides eligible employees the opportunity to take unpaid, job-protected leave for specified family, medical, and military-related reasons. This policy outlines the provisions of the Federal and Wisconsin Family and Medical Leave Acts and the rights and obligations of employees and employers under both laws.

The Family and Medical Leave Acts provide eligible employees with up to 12 work weeks (or up to 26 weeks in the event of military caregiver leave) of unpaid protected leave each calendar year for specified family and medical reasons. The eligibility and entitlements are defined differently under federal and state law.

Eligibility

Employees are eligible for FMLA benefits if the following requirements are met:

Federal – Have been employed by Vilas County for at least 12 months and have worked at least 1,250 hours during the 12 months prior to the start of the FMLA leave. The 12 months of service do not need to be consecutive. Separation periods of employment will be counted, provided that the break in employment does not exceed seven years.

State – Have been employed by Vilas County for at least 52 consecutive weeks and have worked for at least 1,000 hours during the 52 weeks prior to the start of the leave.

Qualifying Event and Amount of Leave

Federal Law Requires the County to Provide Leave for the Following:

1. Birth of the employee's child and to care for the newborn child.
2. Placement of a child with the employee for adoption or foster care and to care for the newly placed child.
3. Care for the employees' spouse, child or parent who has a serious health condition.
4. A serious health condition that makes the employee unable to perform his/her job.
5. Qualifying exigency arising out of the fact that the employee's spouse, son or daughter, or parent is a covered military member on active duty (or has been notified of an

impending call or order to active duty) in support of a contingency operation. Qualifying exigencies may include:

- a. Short-notice deployment (up to 7 days of leave)
 - b. Attending certain military events
 - c. Arranging for alternative childcare
 - d. Addressing certain financial and legal arrangements
 - e. Attending certain counseling sessions
 - f. Attending post-deployment activities
6. To care for a covered service member with a serious injury or illness if the employee is the spouse, son or daughter, parent or next of kin of the service member.

Wisconsin Law Requires the County to Provide for the Following:

- Up to 2 work weeks of leave in a calendar year for the employee's own serious health condition.
- Up to 2 weeks of leave in a calendar year for the serious health condition of an employee's spouse, registered domestic partner, dependent child, parent, parent-in-law or domestic partner's parent.
- Up to 6 weeks of leave in a calendar year for the birth or adoption of the employee's child.

Leave qualifying for both Wisconsin and Federal FMLA leave will count against the employee's entitlement under both laws and will run concurrently. When the reason(s) for qualified leave differ, the leave may not run concurrently under federal and state law, and an employee may be entitled to more than 12 weeks of leave in a calendar year. This type of leave occurrence will be evaluated and reviewed with the employee at the time of leave.

Qualified leave taken under Worker's Compensation will also run concurrently with federal FMLA leave.

Under the federal FMLA, spouses employed by the County are jointly entitled to a combined total of 12 work weeks of family leave for the birth or placement of a child for adoption or foster care, and to care for a parent (but not a parent-in-law) who has a serious health condition.

Serious Health Condition

Federal Definition – A serious health condition that results in a period of incapacity of more than three (3) consecutive, full calendar days, as a result of an illness, injury, impairment or physical or mental condition that involves inpatient care or continuing treatment by a health care provider.

State Definition – A disabling physical or mental illness, injury, impairment or condition that involves inpatient care in a hospital, nursing home or hospice or that requires continuing treatment by a health care provider.

Military Leave Entitlements

Eligible employees may take up to a total of 26 work weeks of unpaid FMLA leave during a single 12 month period beginning on the first day the eligible employee takes FMLA leave to care for a covered service member and ends 12 months after that date, regardless of the method used by the employer to determine the employee's 12 work week of leave entitlement for other FMLA qualifying reasons to care for a spouse, child, parent, or next of kin who is a member of the Armed Forces who suffered an injury or illness while on active duty that renders the person unable to perform the duties of the member's office, grade, rank, or rating, or to care for a veteran if he or she seeks medical treatment for a serious service related injury or illness, incurred or aggravated while in the line of duty within 5 years of serving in the military. During the single 12 month period, an eligible employee shall be entitled to a combined total of 26 work weeks of leave under federal law.

Non Continuous of Intermittent Leave

Employees are permitted to take leave on an intermittent or reduced work schedule when medically necessary. Federal FMLA leave for the birth or placement of a child for adoption or foster may not be taken in non-continuous increments unless approved by the County. Under Wisconsin FMLA, the last increment of leave for the birth or placement of a child for adoption must begin within 16 weeks of that birth or placement.

Medical or family caretaking leave should be planned so as not to unduly disrupt the County's operations. Employees requesting non-continuous federal FMLA leave that is foreseeable based on planned medical treatment for purposes of providing care to a child, spouse or parent with a serious health condition or for the employee's own serious health condition may be required to transfer temporarily to an available alternative position for which the employee is qualified and which better accommodates recurring periods of leave than the regular employment position of the employee. An employee temporarily transferred will receive the same pay and benefits, but may be assigned different duties.

The County allows for intermittent leave to be taken in no less than 15 minute increments. The employee may not take, or be required to take, more leave than medically necessary to address the circumstances that caused the need for the leave.

Applying for FMLA Leave

Employees must submit a **Request for Leave** form to the Human Resources Department at least 30 days, or as soon as practicable, in advance of taking leave. If circumstances do not permit an employee to give notice in advance of taking leave, the employee must submit the Request for Leave form as soon as possible. Failure to give timely notice may result in the delay or denial of FMLA leave and may be subject to disciplinary action.

If the leave is for a family member or the employee's own serious health condition, upon notification by the County, the employee must submit a **Medical Certification** from the employee's or the family member's health care provider within 15 days. If an employee does

not provide the required certification by the designated deadline, or if the County determines that an employee's absence is not covered as FMLA leave, the leave may not be designated as Wisconsin and/or Federal FMLA leave, and the employee may be subject to discipline under the County's attendance policies unless he or she uses accrued paid leave.

Second or third certifications at the County's expense and periodic re-certification at the employee's expense may be required under certain circumstances. The County requires periodic reports during FMLA leave regarding the employee's status and intent to return to work.

All forms are available through the Human Resources Department.

The County will inform employees requesting leave whether they are eligible under FMLA. The notice will specify any additional information required as well as the employee's rights and responsibilities. If the FMLA request is not eligible for leave, a reason for the ineligibility will be provided.

Substitution of Paid Leave for the Unpaid FMLA Period

In general, both Wisconsin and Federal FMLA leaves are unpaid with the following exceptions:

- For qualified Federal medical leave, the County requires employees to substitute available paid leave for unpaid leave.
- For qualified State medical leave, the County does substitution of paid leave for up to two weeks. However, employees can choose to substitute paid time for unpaid leave.

Continuation of Benefits

Group health insurance coverage will be maintained for employees while they are on FMLA leave, on the same terms as if the employee continued to work. The employee will be required to pay his/her regular portion of the health insurance premium payments on a schedule established by the County.

When all paid time is exhausted (PTO, Vacation, Sick Leave, Short-Term Disability) the employee will be responsible for the full monthly insurance premium.

The County may discontinue health insurance benefits if the employee fails to make a premium payment within 30 days of the due date after providing written notice to the employee of the cancellation of coverage for non-payment.

It is the responsibility of the employee to ensure timely payment of other elected payroll premium deductions for various elected benefits such as supplemental insurances, dental insurance, etc. during periods of unpaid FMLA leave. Premiums must be paid in advance of the leave or on a schedule established by the County. Please contact Human Resources regarding payment of premiums.

Accrual of Benefits

Benefits (seniority, vacation, PTO, sick leave) will accrue during periods of FMLA with the usage of paid time off from the employee's banks. After the 12 week FMLA period has been exhausted, the employee will no longer accrue benefits.

Worker's Compensation and Light Duty

Federal FMLA will run concurrent with worker's compensation provided that the injury meets the criteria for a "serious health condition", as defined by law.

Return to Work

An employee's return from FMLA for their own serious health condition must provide a medical certification from their treating physician that they are eligible to return to work and able to perform the essential functions of the job. The certification must include any work restrictions the employee may have at the time of return to work. Upon return from FMLA leave, an employee shall be restored to his/her original position or, if the position is not vacant, to an equivalent position with equivalent pay, benefits and other terms and conditions of employment.

Employees will not be restored to their original or equivalent position if they are unable to perform the essential functions of their job because of a mental or physical condition.

Definitions:

Child: Biological, adopted, or foster child, stepchild, legal ward or, under the federal FMLA, the child of a person having day-to-day care of the child, or a child of a person standing "in loco parentis," who is under 18 years of age or 18 years of age or older and "incapable of self-care because of a mental or physical disability" at the time that FMLA is to commence.

Covered Service Member (Federal FMLA): Active members 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, AND veterans who were members of the Armed Forces (including National Guard or Reserves) at any point in time within 5 years preceding the date on which the veteran undergoes medical treatment, recuperation or therapy.

Domestic Partner (Wisconsin FMLA): Same-sex couples who register in their county of residence and same-sex and opposite-sex couples who are not required to register.

To qualify as a registered domestic partners, two individual must meet the following criteria:

- at least 18 years of age and capable of consenting to the relationship

- not married to, or in a domestic partnership with another individual, not more closely related than second cousins (whether of the whole or half blood or by adoptions)
- must share a common residence, and be members of the same sex.

To qualify as domestic partners without registration, two individuals must meet the following criteria:

- at least 18 years of age and capable of consenting to the relationship
- not married to, or in a domestic partnership with another individual
- must share a common residence
- not be related by blood in a way that would prohibit marriage under Wis. Stat. 763.03
- must consider themselves to be members of each other's immediate family
- agree to be responsible for each other's basic living expenses

Incapable of Self-Care: The individual requires active assistance or supervision to provide daily self-care in three or more of the activities of daily living (i.e. grooming, hygiene, bathing, dressing, eating) or instrumental activities of daily living (i.e. cooking, cleaning, shopping, utilizing public transportation, paying bills, maintaining a residence, using telephones and directories, and using a post office).

Next of Kin (Federal FMLA): 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, aunts and uncles and first cousin, 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 no such designation is made, and there are multiple family members with the same level of relationship to the covered service member, all such family members shall be considered the covered service member's next of kin and may take FMLA leave to provide care to the covered service member, either consecutively or simultaneously. When such designation has been made, the designated individual shall be deemed to be the covered service member's only next of kin.

Parent: Biological parent, foster parent, adoptive parent, stepparent or legal guardian of an employee or, under the Wisconsin FMLA, parent-in-law or domestic partners' parent. Under the federal FMLA "parent" includes an individual who provides day-to-day care to the employee when the employee was a child.

Spouse- as defined in the statute means a husband or wife. For purposes of this definition, husband or wife refers to the other person with whom an individual entered into marriage as defined or recognized under State law for purposes of marriage in the State in which the marriage was entered into or, in the case of a marriage entered into outside of any State, if the

marriage is valid in the place where entered into and could have been entered into in at least one State. This definition includes an individual in a same-sex or common law marriage that either (1) was entered into in a State that recognizes such marriages or, (2) if entered into outside of any State, is valid in the place where entered into and could have been entered into in at least one State.