



City of Waukesha HR Policy

C3 Leaves of Absences

Purpose

The City of Waukesha is desirous of promulgating a uniform Leaves of Absence Policy for all City employees (If a labor agreement exists covering the employee and speaks to any policy section herein, the labor agreement will supersede this policy). (~~← moved to paragraph below~~)

Recognizing ~~The City of Waukesha~~ **recognizes** that on occasion an employee may request a leave of absence, ~~the City~~ **and** has established these guidelines in assessing these requests in order to provide consistent management of leave of absence procedures. ~~If a labor agreement exists covering the employee and speaks to any policy section herein, the labor agreement will supersede this policy.~~

It is the policy of the City to consider, based on individual need, the conditions under which various leaves of absence may be granted to employees. The City reserves the right to approve or deny any leave request and to place restrictions on the length of the leave being requested. (~~← moved to summary section~~)

Summary

It is the ~~policy~~ **practice** of the City to consider, based on individual need, the conditions under which various leaves of absence may be granted to employees. The City reserves the right to approve or deny any leave request and to place restrictions on the length of the leave being requested.

General Guidelines

1. No leaves of absence will be granted to any employee to seek or have outside employment.
2. All leaves must be requested in writing and documentation ~~may be required to address as to~~ **may be required to address** the necessity of the leave ~~may be required~~.
3. Leaves of absence must be approved in advance by the appropriate supervisory authority **unless due to an emergent situation**.
4. The length of the leave granted will be contingent upon the reason for the leave and the department operations.
5. As benefits may be affected by a leave of absence, employees are encouraged to contact the Human Resources Department prior to the leave taking effect. Benefits impact will be explained at that time. Failure to contact the Human Resources Department prior to going on leave may result in the loss of benefits for part or the duration of the leave.
6. Failure of an employee to return to work on the return to work date will be considered as a voluntary termination of employment (quit).
7. Leaves of absence will not be granted during an employee's initial ninety (90) calendar days of employment.

A. Sick Leave

Sick leave may be used for bona fide injury or illness, ~~physician~~ **physician**-medical appointments ~~that cannot be scheduled outside of the work time,~~ and emergency illness or accident. Sick leave entitles eligible employees to time off from work to recuperate from off the job illness or accident, while retaining employment and pay and while continuing to accrue benefits.

1. Sick leave with pay shall accrue to all regular employees at the rate of one day (8 hours) for each full month of service and is credited to the employee on the 15th day of the month. Sick leave while accrued cannot be used during an employee's initial ninety (90) calendar days of employment. Unused sick leave shall accumulate from year to year to maximum of one hundred and twenty-five (125) work days (1000 hours). **(Monthly and yearly maximum accrual based on employee's work schedule.)**
2. Employees covered by labor agreements are subject to their contract provisions for sick leave benefits.
3. **Sick leave may be used for the employee's personal illness or** ~~Up to five (5) days of sick leave per calendar year may be used~~ to provide care to immediate family members, **referred to as "sick family",** who reside in the employee's legal residence. **(Does not apply to Police and Fire Department employees covered by a labor agreement.)** Immediate family members shall include spouse, parent residing with the employee and children in the employee's legal custody living at home. **The City reserves the right to require employees to provide a note from the doctor verifying that an absence was caused by a medical situation.**
4. Sick leave will be paid only for regularly scheduled work days. Employees are not eligible for sick pay while absent from work on vacation, holiday, funeral, a leave of absence, etc.
5. To receive compensation while absent on sick leave, employees must notify their immediate supervisor or his/her designee at least one-half (1/2) hour prior to the start of work (or in emergencies as soon thereafter as possible) or before leaving work.
6. Employees on sick leave will notify the City once per week as to their progress to recovery, unless a doctor's certificate has been presented which designates a period of time that the person will be off work. The employee must then contact the City prior to reaching the expiration of that period of time as to their progress to recovery and must continue weekly notification, unless a new doctor's certificate is received by the City.
7. A treating physician's certificate is required to justify the granting of paid sick leave benefits for any period of time of three (3) or more work days, or where the City has reason to believe that an employee is abusing the sick leave program including but not limited to sick leave requested contiguous to any other leave of absence.
8. Under any of the following circumstances, an employee must obtain a treating physician's release to return to work and present it to his/her immediate supervisor:
 - a. When an employee has had, or has been exposed to, a reportable communicable disease.
 - b. When an employee is absent from work for health reasons for a period of three (3) days or more.
 - c. When an employee is approved for return to work, but with physical restrictions.
9. Where it is determined an employee is abusing sick leave, that employee will be subject to disciplinary action.
10. Sick leave pay is at the regular straight time base pay rate.

11. Sick leave of any length will not be paid for any absence occurring during the last month of employment without certification by the treating physician.
12. Accrued unused sick leave is not paid out upon termination of employment. Upon death of an employee with ten (10) or more years seniority, his or her estate shall be paid the amount of one hundred percent (100%) of his or her accumulated unused sick leave days.

B. Extended Sick Leave (Runs concurrent with FMLA)

The following extended sick leave benefit may be provided to eligible employees who have exhausted their sick leave, personal holiday, annual leave and compensatory time accruals.

1. ~~A minimum of five (5) years of full time employment are required before any request for extended sick leave will be considered.~~
2. Paid extended sick leave may be provided only for the period of time an employee is medically disabled from working, certified by a doctor as a serious health condition and not for additional personal convenience or other reasons not medically mandated. Recommendation will be made by the department director and the Human Resources ~~Manager~~ **Director** to the City Administrator with the Human Resources Committee informed of all such requests.
3. The City Administrator may grant the extended sick leave benefit to an eligible employee for up to ninety (90) calendar days.
4. Additional sick leave extension may be granted by the Common Council. However, in no case shall: ~~(a) the rate of pay and benefits exceed 50% of the employee's base pay and (b) no an extension with pay can exceed a one-year period of time commencing from the start date of the original extended sick leave request.~~

C. Leave of Absence Without Pay (Runs concurrent with FMLA and WFMLA)

A leave of absence without pay may be granted for situations considered by the supervisor to be of such nature to be recommended and then subsequently authorized by the department director not to exceed twenty-one (21) consecutive calendar days in each rolling twelve (12) month period. A leave of absence without pay in excess of twenty-one (21) consecutive calendar days, may be granted by the City Administrator upon recommendation of the Human Resources ~~Manager~~ **Director** providing said employee does not accept employment elsewhere. Leaves of absence without pay in excess of thirty (30) consecutive calendar days are provided without accrual of any fringe benefits. This means that for partial month absences, the employee would be required to have worked or been paid for, one hundred and twenty (120) hours at full pay during that calendar month. **Employee will pay 100% of all insurance premiums while off on an extended leave of absence except when covered under FMLA.**

D. MILITARY LEAVE

Eligible full-time employees who enter military service will be placed on a leave of absence and are granted reemployment rights upon their return to civilian status as outlined by Federal Law:

1. The request for reinstatement is made any time before ninety (90) days after the completion of active service duty in the armed forces;

2. The employee is still qualified to perform the duties of such position;
3. The City's circumstances have not so changed as to make it impossible or unreasonable to so restore the employee;

E. LEAVE FOR ANNUAL RESERVE TRAINING

Employees who are members of the military reserves of any of the United States armed force or National Guard who are required to take ~~two (2) weeks training~~ annually **training leave** shall be granted a leave of absence during their annual ~~two week~~ training period and shall receive their regular pay less the amount of earned pay received for such training excluding all allowances and allotments for themselves and dependents upon presentation of proof, if their military pay is less than their salary. If military pay exceeds salary, the time shall be considered as leave of absence without pay but with benefits. ~~Said leave shall not exceed two weeks in any one calendar year.~~

F. BEREAVEMENT AND ~~FUNERAL~~ LEAVE

In the event of death in an employee's immediate family, up to three (3) consecutive work days of leave from work may be allowed without loss of pay. Such leave will not be allowed if an employee is on ~~annual leave, vacation,~~ sick leave, holiday or on normal days off. Time off may be requested within fourteen (14) days of the death of the immediate family member. (Immediate family shall include spouse, children, step children, grandchildren, parents, step parents, grandparents, siblings and step siblings, ~~brother-in-law, sister-in-law~~ of the employee or spouse, and son-in-law or daughter-in-law.) Bereavement ~~and funeral leave~~ time are not chargeable to sick leave accrual. The City may require evidence of the employee's relationship to the deceased person.

G. COURT LEAVES

Employees of the City required to attend court as a witness in connection with the duties and responsibilities of their job on behalf of the City, or for jury duty during their normal work hours shall receive full pay equal to their regular work hours for the time they attend court. ("Court" shall include any legal or administrative proceeding requiring a subpoena and in conjunction with City employment)

1. Procedure:
 - a. An employee who receives notice of jury duty or witness subpoena must notify his/her supervisor as soon as possible in order that arrangements can be made to cover that position.
 - b. Employees on jury duty or under witness subpoena will present the official court ~~check (or other documentation)~~ to their supervisor. ~~who will arrange for appropriate salary payment.~~
2. Salary Remuneration and Time Off:
 - a. Employees subpoenaed for jury duty shall be paid ~~the difference between their regular rate of pay and the pay they receive for jury duty not to exceed their regular rate of pay for any one day. (Such payment excludes expenses.)~~
 - b. Employees subpoenaed as a witness ~~(as above described)~~ shall be paid ~~the difference between their regular rate of pay and the witness pay~~ **when testifying for a job-related case. for all required hours.**

- i. Employees attending court as a witness (City related case), on their day off shall be paid for their time in court, at the appropriate rate of pay, but will not receive an extra day off.
- c. Employees attending court for only a portion of a regular scheduled work day are expected to report back to their supervisor when excused or released by the court.
- d. Employees required to attend court while on a scheduled vacation will be allowed to reschedule the time with pay, provided the department needs are met.
- e. In the event a City authorized holiday occurs during the period of an employee's court duty, he/she shall receive straight time pay as a jurist and double time pay as a witness for the City but will not receive any additional time off.

H. DEATH.

Upon the death of an active eligible employee (with ten (10) or more years of continuous seniority), his or her estate shall be paid the amount of one hundred percent (100%) of his or her accumulated unused sick leave. **Already stated in A(12).**

H. FAMILY AND MEDICAL LEAVE

(Federal Family and Medical Leave Act = "FMLA;" Wisconsin Family and Medical Leave Act = "WFMLA")

Eligibility and Coverage

If an employee has worked for the City for a minimum twelve (12) months and one thousand two hundred and fifty (1,250*) within the previous seven (7) years, the employee is eligible for family and medical leave. All of an employee's time away from work, paid or unpaid, that meets the criteria of FMLA or WFMLA will be charged to the benefits available under those Acts, including but not limited to Worker's Compensation or sick leave. (* WFMLA - 1,000 hours).

The City will grant family and medical leaves of absence to eligible employees for the following reasons: the birth of the employee's child, the placement of a child with the employee for adoption or foster care, the serious health condition of an employee's family member, including legal spouse, child or parent, ** the employee's own serious health condition and military exigent or caregiver leave. Travel time for the care of a family member will not be included in the Family Medical Leave computation.

*Foster care only covered by WFMLA

**In-laws covered only by WFMLA

Computation of Available Leave

FMLA grants eligible employees up to twelve (12) weeks leave in a twelve (12) month period.

The City has established that leave under FMLA will be computed on a rolling twelve (12) month period*. This means that on the date of a "qualifying event" i.e. birth, adoption, serious medical condition, the City will look back twelve months into the employee's record to determine how much leave has been utilized and determine how much is still available to the employee. The employee will then be notified of how much leave remains available to them. (* WFMLA - calendar year basis.)

If the employee's request for leave meets the requirements for family and medical leave, as outlined in this policy, and the employee has not used up the number of weeks of leave to which the employee is entitled, the employee's request for leave will be approved.

Where the employee and the employee's spouse are employed by the City, they are entitled to total combined leave of up to twelve (12) weeks for the birth, adoption or placement of a child for foster care or to care for a sick parent.

Intermittent and Reduced Schedule Leave

Leave for serious health conditions may be taken intermittently or on a reduced leave schedule when that type of scheduling is medically necessary. If the employee requests intermittent leave or leave on a reduced schedule, the City may require that the employee transfer to a temporary alternative position for which the employee is qualified and that better accommodates the intermittent or reduced hour leave than the employee's regular job assignment. The temporary position will have pay and benefits equivalent to the employee's regular work assignment. The City will decide, on a case by case basis, whether or not intermittent or reduced scheduled leave will hinder or be a help to the schedule of the requesting employee's department.

~~FMLA for birth or adoption must be taken in one continuous period.~~ Entitlement to leave for birth or adoption expires one year from the birth or placement.

Status While on Leave

Family and medical leave is unpaid leave.

Substitution

Under FMLA* eligible employees may choose to substitute accrued paid leave -- vacation, or compensatory time for statutory family leave. Even if the employee does not elect to substitute paid accrued leave during family leave, the City may require its use. No unpaid leave will be granted if paid accrual balances are available.

(* WFMLA - allows use of accrued sick leave in substitution.) In the case of a serious health condition, the same rule applies, however, the available accrued leave includes paid vacation, compensatory time, or sick leave.

Substitution of paid accrued leave during family and medical leave does not extend the length of the leave allowance. Rather it takes the place of unpaid leave. For example, if the City provides an employee four weeks of paid vacation in substitution of unpaid family leave, and the federal or state law provides twelve weeks total, the employee would have a maximum allowance of twelve weeks of leave -- 4 paid and 8 unpaid -- not sixteen weeks of leave. **WFMLA does allow use of unpaid leave (6 weeks).**

The fact that the employee may choose to substitute paid accrued leave or that the City may require the employee to use paid accrued leave does not mean that the City is required to provide paid leave that it otherwise would not have provided.

Advance Notification

In order for the City to prepare for an employee's absence during a leave for the birth or adoption of a child, the City requires the employee give advance notice, in a reasonable and practicable manner, of the expected birth or adoption.

For medical leave due to planned medical treatment or supervision of a child, spouse, or parent, or the employee, the employee shall make a reasonable effort to schedule the medical treatment or supervision so as not to unduly disrupt the affected department's operations.

Employees will submit requests for WFMLA or FMLA on the authorized City form "Request for Family or Medical Leave" in accordance with the time guidelines of the acts. The form **will be hand delivered** by the employee to the department director or immediate supervisor. The form will then be date stamped received by the supervisor and expeditiously forwarded with a recommendation to the Human Resources ~~Manager~~ **Director** for final disposition.

If, due to an emergency or unforeseen circumstance, the employee is unable to provide notice in accordance with the guidelines of the acts before taking leave, notice as soon as possible and practical is acceptable, **but no later than fourteen (14) calendar days after the event.**

Medical Certification

When requesting leave for the serious health condition of a family member or for the employee's own serious health condition, the City requires the employee provide advance written certification issued by the attending health care provider of the need for leave, except in a medical emergency situation. Certification will be presented to the department director or immediate supervisor along with the required Family Medical Leave Request form. Both forms will be immediately forwarded to the Human Resources ~~Manager~~ **Director**.

Medical certification forms will be completed (legibly) by the health care provider and include the date the serious health condition commenced, its probable duration and all appropriate medical facts. When leave is requested to care for a family member, the certification will also state that the employee is needed to care for the ill family member and an estimate of the time necessary to do so.

When intermittent or reduced schedule leave is requested for planned medical treatment, the City will require the certification to include the dates and duration of the treatment. As well as a statement the intermittent or reduced leave schedule is medically necessary for the employee or to the care of the family member.

If the City finds reason to doubt the validity of the certification, it may require, at its own expense, a second medical opinion from a health care provider designated or approved by the City. Should the second opinion differ from the original certification provided by the employee, the City, again at its own expense, may require the employee obtain a third opinion. The opinion of the third health care provider, designated and approved by both parties, is final and binding.

The City requires re-certification of the continued need for leave every thirty (30) days while the employee is still taking such leave.

Reinstatement

While on family and medical leave, the employee's benefits, including health care coverage, will be continued as if the employee were not on leave.

Contributions ordinarily made by the employee through payroll deduction must be continued during the period of leave. The employee's total contribution amount due for that period must be paid by mail or in person on or before each regularly scheduled payday. Should payment cease, such benefits will be suspended until payment is resumed or the employee returns to work.

At the end of family and medical leave, the employee will be returned to the position the employee held when leave began or will be given an equivalent position with like employment benefits, pay, and other terms and conditions of employment. No benefits that accrued prior to taking leave will be lost, ~~however the employee will not be entitled to accrue further seniority or employment benefits while on leave.~~ In addition, the employee is not entitled to any right, benefit, or position of employment other than a right, benefit or position of employment that the employee would have been entitled to if the employee were not on leave.

Return to Work

Employees must report their status and their intention to return to work at least two (2) weeks prior to the date they intend to return to work. In addition, recertification of the medical need for leave may be required.

Should an employee be ready to return to work from family and medical leave before the scheduled return to work date, the employee is to notify the City as soon as possible to request reinstatement. The City will attempt to accommodate all requests for early reinstatement.

If family and medical leave is taken because of the employee's own serious health condition, the employee is required to provide certification prior to returning from leave that they are able to resume work.

Should an employee fail to return to work at the expiration of family and medical leave, the City will assume that the employee has voluntarily resigned their position and will require the repayment of group benefit insurance premiums paid by the City on the employee's behalf during the leave period. Reimbursement will not be required if the employee does not return from leave because of the continuance, reoccurrence, or onset of a serious health condition that prevents their performing their job or because of other documented circumstances that are beyond their control.

The City requires written medical certification that the employee cannot return to work because of the employee's own illness or the illness of a family member that the employee is needed to care for.

Notices and Records

Copies of this policy will be posted in all City departments. Should the employee need more information, they may contact the Human Resources Department at extension 3745 or visit the Human Resources Department at City Hall.

The Human Resources Department will keep all records regarding family medical leave requests and application of the leave for three (3) years.

I. UNPAID VOLUNTARY LEAVE

Unpaid voluntary leave means time off without pay initiated by the employee.

Employees, except those employees in a probationary status, may request unpaid voluntary time off in increments of four (4) or more hours up to a maximum of eighty (80) hours per calendar year. Additional unpaid voluntary leave may be approved by the City Administrator. Such time shall be coded as “unpaid voluntary leave” within the time and attendance system.

An employee requesting unpaid voluntary leave shall state his/her intention in writing on a form provided by the Human Resources Office. Completed forms requesting voluntary leave shall be submitted to the Department Head who will forward a copy of the request, if approved, to the Human Resources Office. Any changes to the approved voluntary leave must be resubmitted under the same procedure.

Requests for unpaid voluntary leave will be reviewed on a case-by-case basis considering the operational needs of the Department. Approval of a request for voluntary leave is entirely at the discretion of the Department Head and the Human Resources ~~Manager~~ **Director** unless otherwise specified by the terms of any applicable labor agreement. Unpaid voluntary leave may be cancelled by the Department Head in the case of emergency or special circumstances. All reasonable attempts to honor approved requests shall be made by the Department. Conversely, once the time off has been approved by the Department Head and the Human Resources ~~Manager~~ **Director**, the employee shall not request to cancel the approved leave unless the Department Head approves.

Unpaid voluntary leaves shall not supersede requests for paid time off where such requests for paid time off are made seven (7) or more calendar days in advance of the requested day(s) off. Any conflicts for unpaid voluntary leave shall be resolved on the basis of seniority.

No request for unpaid voluntary leave will be granted when the approval of such request would result in overtime for any other employee.

It is not necessary for employees to exhaust earned vacation or compensatory time prior to requesting unpaid voluntary leave. Employees may not utilize unpaid voluntary leave in lieu of sick leave. ~~Use of unpaid voluntary leave does not eliminate the requirement for employees to use all accrued vacation by December 31st and use of unpaid voluntary leave will not result in vacation carryover to the following year.~~

Unpaid voluntary leave shall not be considered an entitlement, nor will this policy constitute a change to conflicting terms and conditions of employment set forth in any labor agreement or human resources policy.

Accrual of City benefits will not be affected by any unpaid voluntary leave approved pursuant to this policy provided the employee meets all of the applicable eligibility requirements associated with the particular benefit. If a holiday occurs during any unpaid voluntary leave, the employee shall be compensated for the holiday as if the employee had worked the scheduled shifts prior to and after the holiday. Neither an employee’s seniority nor length of service shall be affected by any unpaid voluntary leave approved pursuant to this policy. The employee cannot substitute paid leave for unpaid voluntary leave.

Procedure:

1. Employee completes, signs and dates Unpaid Voluntary Leave request form and submits it to the Department Head.
2. Department Head approves or denies the request, signs and dates the form and transmits a copy of the request form to the Human Resources ~~Manager~~ **Director**.
3. The Human Resources ~~Manager~~ **Director** approves or denies the request, signs and dates the form and returns a copy to the employee and the Department Head. A copy of the request shall be filed in the employee's personnel file in the Human Resources office.

Grievances under this policy shall be limited to seniority conflicts and the issue of conflicts between requests for unpaid leave and paid time off.

~~This policy shall remain in effect from date of Common Council approval through December 31, 2014.~~

Approved this 7th day of January, 2014.

Passed this 7th day of January, 2014.

Mayor

ATTEST:

City Clerk

Background and Other Information

The following is an outline of the Wisconsin Family Medical Leave Act (**WFMLA**) and the Family Medical Leave Act of 1993 (**FMLA**). The differences are noted. Wisconsin employees are entitled to leave under both acts. Because state and federal leave benefits are concurrent, leave under state law will be utilized first.

Eligibility Requirements

WFMLA - To be eligible the employee must have worked for the same employer fifty-two consecutive weeks and have 1000 hours of work during the previous fifty-two weeks. (Includes non-work hours such as vacation and sick.)

FMLA - To be eligible the employee must have worked for the same employer for 12 months and 1250 hours during the previous seven (7) years from the date the leave commences. Does not count paid time off.

Provisions

The Wisconsin Family and Medical Leave Law 103.10 Wis. Stats. and The Family and Medical Leave Act of 1993 provides eligible employees the opportunity to take time away from work for the birth or adoption of a child and to care for themselves, a spouse, child or parent with a serious medical condition. Eligible employees are covered under both the State and Federal laws. The leaves run concurrently for a total of twelve weeks for any single statutory purpose.

For example: When an employee takes twelve weeks in connection with the birth or adoption of a child, the first six weeks count against the employees leave entitlement under the Wisconsin law and the second six weeks apply to the federal leave law.

Leave Entitlement

The Wisconsin Family and Medical Leave Law provides six weeks for a birth or adoption and two weeks for a serious medical condition of the employee and two weeks for a serious medical condition of a spouse, child or parent per calendar year.

The Family and Medical Leave Act of 1993 provides twelve weeks per twelve month period that is to be determined by the employer and up to twenty-six (26) weeks for an eligible employee who is the spouse, son, daughter, parent or next of kin of a covered military service member who is recovering from a serious illness or injury sustained in the line of active duty or up to twelve (12) weeks of leave because of any qualifying exigency arising out of the fact that the spouse, son, daughter or parent of the employee is on active duty, or has been notified of an impending call to active duty status, in support of a contingency operation.

Under FMLA spouses of the same employer are limited to a combined total of twelve weeks for the birth or adoption of a child or care of a sick parent during any twelve-month period.

The leaves run concurrently when the statutes provide for the same type of leave.

Intermittent and Reduced Scheduled Leave

Under WFMLA the employee is entitled to reduced schedule or intermittent leave .

Under FMLA for the purpose of birth or adoption, the employer must agree to an intermittent and reduced schedule leave arrangement. In connection with the employees own serious health condition or that of a child, spouse or parent, intermittent or reduced schedule leave is available.

Timing of the Leave

WFMLA requires that leave associated with birth or adoption must commence within sixteen (16) weeks before the birth or placement or after the birth or placement and be completed within that thirty-two (32) week period.

FMLA allows leave to commence before the birth if circumstances require or before the placement of a child for adoption or foster care if absence from work is required for the placement to proceed.

WFMLA requires that the last non-continuous increment of leave begin no later than sixteen (16) weeks before or after the birth or adoption and be completed within that thirty-two (32) week period.

FMLA must be concluded one year from the commencement of leave.

Notification

Under WFMLA planned leave notification must be in a "reasonable and practicable manner." The law requires that for birth or adoption, the employee must provide at least as much notice as the shortest notice the employer requires for "any other nonemergency or nonmedical leave."

For medical reasons, the employee must notify the employer with "reasonable promptness" after the employee learns of the necessity of the leave and must identify the planned dates of the leave.

If the family or medical leave is foreseeable under FMLA the employee must give at least 30 days' notice. If the situation requires the leave begin in fewer than thirty (30) days, the employee shall request leave within one or two business days.

Medical Certification

Serious Health Condition - A disabling physical or mental illness, injury, impairment or condition which involves inpatient or outpatient care requiring continuing treatment or supervision by a health care provider.

Under both statutes, an employer may require an employee to provide medical certification concerning the employee's own serious health condition, or that of a child, spouse, or parent. Both statutes state that the certification should set forth the date the serious health condition commenced, its probable duration, and the appropriate medical facts regarding the condition. In the case of medical leave, it should also state that the employee is unable to perform the functions of his/her job.

FMLA also allows the employer to require certification that the employee is needed to care for a seriously ill child, spouse or parent, and that there is an estimate of the amount of time needed for such care. When

intermittent or reduced schedule leave is requested an employer may require the certification include the dates and duration of the treatment. Also, the employer may require that the medical provider certify that intermittent or reduced schedule leave is medically necessary.

Under FMLA re-certification is allowed generally not more than every thirty (30) days.

FMLA expressly allows an employer to require employees to provide certification that they are able to resume work. It also expressly allows employers to require employees on leave to report periodically concerning their status and intention to return to work.

Second Opinion for Certification of Illness

Both WFMLA and FMLA allow an employer to obtain a second medical opinion from a health care provider chosen and paid for by the employer. Under WFMLA, DILHR may appoint a third health care provider but only at the administrative proceeding stage. The employer and employee share the cost. FMLA permits a third opinion by a health care provider both the employer and employee agree upon. The third opinion is considered binding.

Substitution of Paid Leave

WFMLA allows employees to substitute other paid or unpaid leave for statutory leave.

FMLA allows an employee to elect **or an employer to require** substitution of accrued paid leave for statutory leave.

The type of leave determines which leave may be substituted. For the birth or adoption or placement of the child for foster care, employees may substitute vacation or personal leave. For the care of a family member with a serious health condition, an employee may substitute vacation, personal, or sick leave. For the employee's own serious health condition, vacation or sick leave may be substituted.

FMLA **does not allow** an employee to elect to substitute paid sick or medical leave for family leave associated with childbirth or the placement of a child for adoption or foster care.

Maintenance of Group Benefits

Under both laws an employer must maintain group benefits for the employee on leave under the same conditions that applied immediately prior to the leave. An employee must continue to pay his normal share of health plan premiums.

The WFMLA allows an employer to require an employee to escrow premium payments. If an employee terminates employment during leave or within thirty (30) days after the leave, the employer can deduct from the amount held in escrow the premiums it paid during the leave.

Under FMLA, an employee is deemed to have returned to work if he/she returns for at least thirty calendar days. If the employee fails to return, the employer may recover the premium paid for maintaining health insurance coverage unless the employee can't return because of a serious health condition or other circumstances beyond the employee's control.

An employee may choose not to continue health insurance coverage during leave, but must be again covered without any qualifying period, physical examination, or exclusion of preexisting conditions. Both laws state that an employee is not entitled to the accrual of seniority or other employment benefit while on leave.