

WAUKESHA PUBLIC LIBRARY
HUMAN RESOURCES POLICY PROCEDURE

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| SUBJECT: LEAVES OF ABSENCE | Issued: 12/18/14 12/12/19 | No: C-3 |
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Purpose

~~Recognizing The Waukesha Public Library recognizes~~ that on occasion an employee may request a leave of absence ~~the Library and~~ has established these guidelines in assessing these requests in order to provide consistent management of leave of absence procedures.

Summary

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

~~Policy Sections:~~

- ~~A. Sick Leave~~
- ~~B. Extended Sick Leave~~
- ~~C. Leave of Absence without Pay~~
- ~~D. Military Leave~~
- ~~E. Annual Reserve Training~~
- ~~F. Bereavement and Funeral Leave~~
- ~~G. Court Leaves~~
- ~~H. Death~~
- ~~I. Family Leave~~
- ~~J. Unpaid Voluntary Leave~~

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 ~~as to the necessity of the leave~~ may be required ~~to address the necessity of the leave~~.
3. Leaves of absence must be approved in advance by the appropriate supervisory authority ~~unless due to an emergency situation~~.
4. The length of the leave granted will be contingent upon the reason for the leave and the department operations.

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5. As benefits may be affected by a leave of absence, employees are encouraged to contact the Library's human resources designee or the City Human Resources Department prior to the leave taking effect. Benefits impact will be explained at that time. Failure to contact the City 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, unless approved by the Library Director ~~and Library Board of Trustees~~.

A. SICK LEAVE.

Sick leave may be used for bona fide injury or illness, ~~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 (pro-rated for regular part-time employees). 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 a maximum of one hundred and twenty-five (125) workdays (one thousand (1,000) 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 year may be used~~ to provide care of immediate family members, referred to as "sick family", who reside in the employee's legal residence. Immediate family members will include children living at home, children whose legal custody may be shared with employee regardless of place of residence, spouse, and parent residing with the employee. ~~The Library reserves the right to require employees to provide a note from a doctor verifying that an absence was caused by a medical situation.~~

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4. Sick leave will be paid only for regularly scheduled workdays. 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 will notify their immediate supervisor or ~~the Librarian-in-Charge~~ a manager on duty at least one-half ~~(1)~~ (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 Library 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 Library prior to reaching the expiration of that period of time as to their progress to recovery and must continue weekly notification, unless the Library receives a new doctor's certificate.
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 Library 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.

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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.~~
1. 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. Recommendations will be made by the Library Director and the Library Board Human Resources Committee to the Library Board.
2. The Library Board may grant the extended sick leave benefit to an eligible employee for up to ninety (90) calendar days.
3. Additional sick leave extension may be granted by the Library Board. However, in no case shall ~~(a) the rate of pay and benefits exceed 50% of the employee's base pay and (b) no~~ 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 & WFMLA~~)

A leave of absence without pay may be granted for situations considered by a manager or supervisor to be of such nature to be recommended and then subsequently authorized by the Library Director or his/her designee 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 Human Resources Committee upon recommendation of the Library Director or his/her designee, 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.~~

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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, provided:

- a. The request for reinstatement is made any time before ninety (90) days after the completion of active service duty in the armed forces;
- b. The employee is still qualified to perform the duties of such position;
- c. The Library'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 forces or National Guard who are required to take two (2) weeks training annually, 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 vacation~~ leave, 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 is not chargeable to sick leave accrual. The Library may require evidence of the employee's relationship to the deceased person.

G. COURT LEAVES

Employees of the Library required to attend court as a witness in connection with the duties and responsibilities of their job on behalf of the Library, or for jury duty during their normal work hours shall receive full pay equal to their regular work hours for the

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time they attend court. ("Court" shall include any legal or administrative proceeding requiring a subpoena and in conjunction with Library 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 their ~~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 for all required hours when testifying for a job-related case.~~
 - 1) Employees attending court as a witness ~~(City/Library 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 their 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 Library 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 Library, but will not receive any additional time off.

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~~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.~~

H. FAMILY and Medical Leave (Family and Medical Leave Act = "FMLA;" Wisconsin Family and Medical Leave Act = "WFMLA")

Eligibility and Coverage

If an employee has worked for the Library for a minimum of twelve (12) Months and one thousand two hundred and fifty (1,250*) hours within the previous seven (7) years, the employee is eligible for family and medical leave. All of an employees 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 minimum required)

The Library 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,** and 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 covered only 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 Library 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 Library 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 – computed on a calendar year basis.)

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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 or the Library, 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 Library 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 Library 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 leave 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 Library may require its use. No unpaid leave will be granted if paid accrual balances are available. (* WFMLA - allows use of accrued sick leave as 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.

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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 Library provides an employee four (4) weeks of paid vacation in substitution of unpaid family leave, and the federal or state law provides twelve (12) weeks total, the employee would have a maximum allowance of twelve (12) weeks of leave -- four (4) paid and eight (8) unpaid -- not sixteen (16) weeks of leave.

The fact that the employee may choose to substitute paid accrued leave or that the Library may require the employee to use paid accrued leave does not mean that the Library is required to provide paid leave that it otherwise would not have provided. **WFMLA does allow use of unpaid leave (6 weeks).**

Advance Notification

In order for the Library to prepare for an employee's absence during a leave for the birth or adoption of a child, the Library 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 Library's operations.

Employees will submit requests for WFMLA or FMLA on the authorized Library form "Request for Family or Medical Leave" (Copy attached), in accordance with the time guidelines of the acts. The form **will be hand delivered** by the employee to the Library's Deputy Director. The form will then be date stamped and signed by the Library Director and expeditiously forwarded with a recommendation to the City Human Resources Manager.

If, due to emergency or unforeseen circumstances, 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 Library 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

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presented to the Library's Deputy Director along with the required Family Medical Leave Request form. Both forms will immediately be forwarded to the City's Human Resources Director.

Medical certification forms will be completed (legibly) by the health care provider, and will 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 amount of time necessary to do so.

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

If the Library 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 Library. Should the second opinion differ from the original certification provided by the employee, the Library, 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, will be final and binding.

The Library 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

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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 Library as soon as possible to request reinstatement. The Library 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 Library will assume that the employee has voluntarily resigned their position and will require the repayment of group benefit insurance premiums paid by the Library 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 them from performing their job, or because of other documented circumstances that are beyond their control.

The Library 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 the Library. Should the employee need more information, they may contact their immediate supervisor, the Library's human resources person, the City Human Resources Department at extension 3745, or visit the Human Resources Department at City Hall.

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

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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 Library Director. 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 department supervisor. Completed forms requesting voluntary leave shall be submitted to the department supervisor who will forward it to the Library Director. The Library Director 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 taking into account the operational needs of the Library. Approval of a request for voluntary leave is entirely at the discretion of the department supervisor and the Library Director unless otherwise specified by the terms of any applicable labor agreement. Unpaid voluntary leave may be cancelled by the Library Director in the case of emergency or special circumstances. All reasonable attempts to honor approved requests shall be made by the Library. Conversely, once the time off has been approved by the Library Director, the employee shall not request to cancel the approved leave unless the Director 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.~~

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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 Library 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 the Unpaid Voluntary Leave request form and submits it to the Department Supervisor.
2. Department Supervisor approves or denies the request, signs and dates the form and transmits a copy of the request form to the Library Director.
3. The Library Director approves or denies the request, signs and dates the form and returns a copy to the employee and the department supervisor. A copy of the request shall be filed in the employee's personnel file.

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 the date of the Library Board approval through December 31, 2013.~~

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 nonwork hours such as vacation and sick.)

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FMLA - To be eligible the employee must have worked for the same employer for 12 months and 1250 hours during the previous 12 months 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.

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.

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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 begins no later than sixteen (16) weeks before or after the birth or adoption and is 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 non-emergency or non-medical 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 as soon as possible (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

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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, recertification is generally not allowed 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 that 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.

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FMLA does not allow an employee to elect to substitute paid sick or medical leave for family leaves 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 the premiums it paid during the leave from the amount held in escrow.

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 again be 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 benefits while on leave.

Adopted by the Library Board

~~December 18, 2014~~ December 12, 2019