

HR Handbook Chapter 724 Family and Medical Leave
A Summary of Revisions
February 2014

Sec. 724.010 Introduction

No changes

Sec. 724.020 Applicability of this Handbook Chapter

No changes

Sec. 724.030 Statutory and Rule Authority

Removed note that indicated the chapter was consistent with federal law changes in October 2009 but not with federal regulations which were not yet updated. (The current chapter recognized changes to the federal law which had not yet been promulgated through updated federal regulations.)

Sec. 724.040 Definitions

Revised style of statute and regulation citations, and added many. Did not include cites if statute or regulation simply pointed to a different statute or regulation. Clarified various definitions used in the chapter.

Child

Reference to the DOL interpretation for “in loco parentis” added to definition.

Covered Active Duty

United States Code definition replaced with the detailed definition found in the new federal regulations. The 2009 federal law change expanding coverage from activations from Reserve or National Guard status to the foreign deployment of any soldier had already been incorporated into the Handbook Chapter.

Covered Veteran

Added definition of the new federal term “covered veteran” as a subcategory of the existing term “covered service member.” As such, the definition is listed as “Covered service member / Covered veteran.” Federal law was revised in October 2009 to expand FMLA eligibility to care for a “covered service member” to include care of a veteran discharged under conditions other than dishonorable within five years of the first date an employee takes leave to care for the veteran. Caveat: the period from October 28, 2009 to March 8, 2013, does not count towards the five-year window between military discharge and the need for care. The previous HR Handbook revision included this concept of FMLA to care for a veteran starting within five years of discharge, but it may not have been enforceable until the new regulations were implemented in March 2013.

Employee

For the WI FMLA, deleted the definition based on the Administrative Code definition of employee, and replaced it with the simple WI FMLA statutory definition of “any individual employed in this state” by the State of Wisconsin.

For the federal FMLA, added the definition applicable for a public agency, and which specifies the exclusion of elected office holders, certain key appointees, and nearly all employees in the legislative branch from the definition of “employee.”

In loco parentis

Added information from the DOL Administrator’s Interpretation No. 2010-3 which concluded that day-to-day care **or** financial support may establish an in loco parentis relationship, rather than both as the definition in the regulations seems to state.

Parent

DOL Administrator’s interpretation of “in loco parentis” added as a reference.

Qualifying Exigency

The list of qualifying exigencies is expanded corresponding to the additions in the federal regulations. Significant additions include expanding leave from five to fifteen days to be with a military member on temporary rest and recuperation leave, and specifying exigencies related to providing or arranging for care for parents of military members.

Serious injury or illness

Language added from the new federal regulations specifying categories of covered physical and psychological injuries for veterans of military service.

Spouse

Federal definition revised to reflect the implications of the US Supreme Court decision nullifying aspects of the Defense of Marriage Act (DOMA). For the federal FMLA, same-sex partners are recognized as spouses if same-sex marriage is recognized in the state where the partners reside. Therefore, State of WI employees may take federal FMLA leave for their same-sex spouses if they reside in Iowa or Minnesota, and starting in June 2014, Illinois.

Veteran

Removed the definition and instead cross-referenced to the definition of Covered service member / Covered veteran. This is due to the new federal regulations making veterans a subcategory of covered service members.

Sec. 724.050 Eligibility Requirements

Rearranged and added regulatory detail regarding counting employment prior to a break in employment, and deeming periods of military service as employment with the employer.

Sec. 724.060 Leave Entitlements—Reasons and Duration

Added clarifications regarding leave for pregnancy, childbirth, adoption, and foster care.

Notation “covered service members” includes certain veterans added.

Sec. 724.070 Leave Request, Scheduling and Approval Process

No significant changes.

Sec. 724.080 Intermittent Leave

Quoted the DWD Adm. Code for the WI FMLA with regard to the employee’s responsibility to schedule intermittent leave so as not to unduly disrupt the employing agency operations

For the federal FMLA, clarified that care includes providing psychological comfort, added detail about minimum increments of FMLA leave, and added a reminder that in certain circumstances an employee requesting intermittent or reduced schedule leave may be required to temporarily transfer to a different position with equivalent pay and benefits.

Sec. 724.090 Overtime Hours

No significant changes.

Sec. 724.100 Alternative Employment

Removed detailed restrictions based on union contracts for moving employees needing intermittent leave to alternative positions since the only remaining contract is for State Patrol Troopers and Inspectors in a single agency.

Reminder added to consider the ADA and other employment laws when contemplating involuntary transfer to an alternative position.

Sec. 724.110 Recordkeeping

General statement added of the federal requirement for keeping FMLA-related records.

Information added about observing the confidentiality of the Genetic Information Nondiscrimination Act (GINA) where applicable.

Sec. 724.120 Substitution of Paid Leave

In example of substituting paid leave for unpaid leave during maternity leave, added note that six weeks is considered the normal recovery time from childbirth, or eight weeks if a caesarean birth.

Sec. 724.130 Certification

General rules of certification were re-ordered and additional detail added. For medical certification, added the listing of information that may be requested from a health care provider (and which is the basis for the questions on the medical certification forms).

Extensive information added from the new federal regulations regarding medical certification of a serious injury or illness for covered service members.

Added details from the new federal regulations regarding the certification of a qualifying exigency related to the military service of a family member.

Instructions added that a Genetic Information Nondiscrimination Act (GINA) notice should be included with all requests to health care providers for medical information. Provides recommended GINA notice language, which is also available in the FMLA Toolkit on the OSER website.

Sec. 724.140 Continuation of Benefits

ETF contact telephone numbers for health coverage questions added.

WI FMLA statutory language added with regard to not reducing or denying any employee benefit due to the use of family or medical leave.

Sec. 724.150 Return from Leave

Revised note about the interaction of FMLA leave and layoff, clarifying that employees laid off during FMLA leave will be afforded the same rights and eligibility that they would have received if FMLA leave had not been taken.

Clarified that under the federal FMLA; an employee may be required to provide a fitness-for-duty certification before restoration, provided that proper advance notice of the need for such certification was provided to the employee.

Sec. 724.160 Prohibited Acts

New detail added from the federal regulations on the prohibitions against discharging or discriminating against a current or prospective employee, because of the employee's exercise of FMLA rights.

Added information that employees may settle or release FMLA claims against an employer for past employer conduct without approval from the DOL or a court.

Sec. 724.170 Civil Action

No significant change.

Sec. 724.180 Posting Notice/Notice to Employees

Information revised on federal FMLA notice requirements to add more detail from the federal regulations. In particular, information was added to specify the need to notify employees of any requirement for fitness-for-duty certification at the time the employer provides the Designation notice to the employee, and including a list of the essential functions of the employee's position.

Sec. 724.190 Administrative Information

Summarized that substantive changes in the chapter addressed the expansion of military caregiver leave to certain veterans, expansion of qualifying exigencies related to the military deployment of a family member to a foreign country, and the impact of the US Supreme Court decision on the Defense of Marriage Act on the definition of "spouse" under the federal FMLA.

Attachment #1 Simultaneous Use of Leave Benefits

Table revised to add a leave category for Military Caregiver.

Attachment #2 Guide to Determining Employee Coverage Under Family & Medical Leave & Related Leave Benefits

Table revised to clarify that nearly all employees are now nonrepresented for leave policy purposes.

Attachment #3 Comparison of Federal Family & Medical Leave Act and Wisconsin Family & Medical Leave Act

Table updated.

Attachment #4 Links to FMLA Forms and Posters

Updated form links, added new link for federal form WH-385-V for certification of a serious injury or illness of a veteran for military caregiver leave, and added link to GINA notification document.

Attachment #5 Index

Updated.