

Are Spouses Employed by the Same Employer Limited in Taking FMLA Leave?



According to legislative history, the intent of combining certain FMLA leaves taken by spouses who work for the same employer is to eliminate any employer incentive to refuse to hire married couples.

In evaluating whether or not to include this combined leave time provision in an FMLA policy, an employer should consider these questions.

- From an employee relations perspective, will married employees perceive a policy with a combined leave to be unfair? Will this cause resentment in the workplace if unmarried parents are granted more leave for the birth of a child than married parents?
- Does the organization want to promote an image of a family-friendly work environment? How will the inclusion or exclusion of combined leave reflect upon that image?
- What is the organization's policy on substitution of paid time versus unpaid time? If the organization requires substitution (limitations apply to concurrent leave under the Wisconsin law), will the combined leave result in little unpaid FMLA time being used?
- Will the business suffer in choosing not to include a combined leave time provision in an FMLA policy? Does the organization employ many married couples? Is the organization large enough to successfully carry on business if a number of employees are on FMLA leave at the same time?
- How do the Wisconsin Fair Employment Act, Illinois Human Rights Act, and Minnesota Human Rights Act impact leave entitlement under the FMLA? All of these laws prohibit discrimination based on marital status. Does limiting married couples to a total of 12 weeks of leave have a disparate impact on married individuals? While some state officials have indicated it could be marital status discrimination, this issue has not been litigated.

Since the Wisconsin Family and Medical Leave Act allocates leave according to the reason for taking the leave, in Wisconsin such a policy provision might not be as effective as an employer would like. For example, if a married couple was limited to a combined total of 12 weeks of FMLA for the birth of a child, at the end of 6 weeks disability for the mother, she could still be entitled to 6 weeks of bonding under Wisconsin FMLA.


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The federal Family and Medical Leave Act (FMLA) indicates that spouses who are eligible for FMLA leave and are employed by the same covered employer may be limited to a combined total of 12 weeks of leave during any 12-month period if the leave is taken for:

- For birth of the employee's son or daughter or to care for the child after birth;
- For placement of a son or daughter with the employee for adoption or foster care, or to care for the child after placement; or
- To care for the employee's parent with a serious health condition.

While it is imperative to comply with the law, many employee relations issues need to be considered when drafting a policy. A properly drafted policy should reflect the organization's culture and meet its business needs.

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