

Can You Mandate Wisconsin FMLA?



Employee requests for family leave under the Family and Medical Leave Act (FMLA) can be covered under several scenarios: federal and Wisconsin leave running concurrently, federal leave only, or Wisconsin leave only. The number of potential leave combinations makes FMLA compliance a real challenge for covered Wisconsin organizations. When an employee is only eligible for Wisconsin leave an important issue arises. Can the employer mandate the use of Wisconsin family and medical leave?

Leave is an Employee Option

Leave under the Wisconsin FMLA is an employee option. Wisconsin statute 103.10(3)(a) states "... no employee may take more than ..." Wisconsin statute 103.10(3)(b) states "An employee may take family leave..." Wisconsin statute 103.10(4)(b) states "No employee may take ..." This permissive language is quite different than the language of the federal FMLA which states, in general, a qualified employee is entitled to leave. In addition to the language of the statute, the Wisconsin Labor and Industry Review Commission referenced this issue in several cases involving unemployment claims. For example, in hearing number 01000679MD (1997), the commission, like the appeal tribunal council, "... has some difficulty with the notion of an employer imposing family and medical leave on an unwilling employee." In addition, the Wisconsin Supreme court in *Kelly Co. Inc. v. Marquardt* (1992) stated that state FMLA requires certain employers to "permit employees" to take leave and went on to explain situations in which an employee may take family leave. The decision does not suggest that an employer may require an employee to take such leave.

By overlooking the direction provided by the state courts and Labor Commission, an organization is exposed to potential claims under the Wisconsin FMLA.

This sample document is only an example and is based on the laws in effect at the time it was written. MRA-The Management Association, Inc. does not make any representations or warranties regarding the appropriateness or prudence of using this information for any particular individual or situation. Your company should add, delete, or modify the content of this document as needed to suit your purposes. This material is for your information only and should not be construed as legal advice. In some circumstances it may be advisable to have legal counsel review final documents prior to implementation. © MRA – The Management Association, Inc.




Handling Leave Requests

Requests for leave that are covered only under Wisconsin FMLA should be approached with the employee as an employee choice. This can be accomplished by providing an employee with a memo that provides two options:

- **Option 1:** I request leave under Wisconsin FMLA.
- **Option 2:** I do not wish to have this leave covered by Wisconsin FMLA. I understand that by selecting this option, I do not receive the protection provided by the law including job protection and continuation of group health benefits during the absence.

MRA's HR Hotline can help you!

 **866-HR-Hotline** | 866.474.6854

 **InfoNow@mrnet.org**

 **mrnet.org/24-7/hr-hotline**

As one of the largest nonprofit employer associations in the nation, MRA:

Serves 4,000 employers

covering one million employees worldwide.

Holds more than
2,000 Training
events annually.

200 HR experts

with more than 2,000 years of collective knowledge, experience and expertise.

Offers more than
1,000 HR Guides
templates, toolkits, and more.

HR SERVICES



LEARNING & ORGANIZATION DEVELOPMENT



TALENT MANAGEMENT



TOTAL REWARDS



MRA is Your TotalHR® Resource.

MRA helps you create powerful teams and a safe, successful workplace with talent, tools, and training.



Wisconsin

Minnesota

Illinois

Iowa

www.mranet.org 800.488.4845