

legal matters

WISCONSIN FAMILY MEDICAL LEAVE ACT – WHAT DOES IT MEAN FOR EMPLOYERS?

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Wisconsin Governor Doyle signed the biennial budget on June 29, 2009, which extends Wisconsin's Family Medical Leave Act (WFMLA) entitlements to domestic partners effective June 30, 2009.

As an employer, these changes require you to take action.

The former WFMLA

Since April 26, 1988, the WFMLA has required employers with 50 or more permanent employees in Wisconsin to grant employees:

- Up to six weeks leave for the birth/adoption of a child
- Up to two weeks leave for the care of a child, spouse or parent with a serious health condition
- Up to two weeks leave for the employee's own serious health condition

Employees received these benefits for every 52-week period assuming the employee worked at least 1,000 hours and worked for the past 52 weeks.

The former WFMLA allowed employees to take leave for family members which were defined as children (including adopted, foster, stepchildren and wards), parents, parents-in-law, and spouses.

The revised WFMLA – effective June 30, 2009

In most circumstances, the revised law (effective June 30, 2009) extends WFMLA entitlements to registered

and unregistered domestic partners. It allows the employee to request leave for the serious health condition of the domestic partner or the domestic partner's parents.

However, the law did not change the definition of child to allow the employee to take leave for the serious health condition of the domestic partner's child. Nor does it allow the employee to take leave following the birth or adoption of the domestic partner's child. Thus, the child would have to be defined as the employee's child for purposes of the statute if the employee wanted to be able to take leave for the birth or serious health condition of a child.

What is the difference between registered and unregistered domestic partnerships?

The statutes make a distinction between registered and unregistered domestic partnerships.

To register a domestic partnership, the employee must register at the Register of Deeds in the county where the domestic partner resides. The registration process requires the employee to declare the following:

- Each individual is at least 18 years old and capable of consenting to a domestic partnership.

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WHAT DO WISCONSIN EMPLOYERS NEED TO DO?

Wisconsin employers need to update WFMLA policies to include registered and unregistered domestic partners. Employers must:

- ✓ Review and modify employee handbooks and WFMLA policies to conform to the new rights
- ✓ Adopt systems, processes and strategies for assessing the validity of unregistered domestic partnerships
- ✓ Determine what documents will be required from employees to substantiate the validity of unregistered domestic partnerships
- ✓ Change WFMLA posters when the Department of Workforce Development issues the updated poster

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- Neither individual is married to, or in a domestic partnership with, another individual.

- The two individuals share a common residence.

- The two individuals are not nearer of kin to each other than second cousins.

- The individuals are members of the same sex.

In an unregistered domestic partnership, the employee must establish that he/she (and his/her partner) is in a relationship between two individuals who satisfy the following:

- Each individual is at least 18 years old and otherwise competent to enter into a contract.

- Neither individual is married to, or in a domestic partnership with, another individual.

- The two individuals are not related by blood in any way that would prohibit marriage under Wisconsin law.

- The two individuals consider themselves to be members of each other's immediate family.

- The two individuals agree to be responsible for each other's basic living expenses.

- The two individuals share a common residence.

Individuals in an unregistered domestic partnership do not have to file anything with the State of Wisconsin, and the domestic partners may be members

of the opposite sex. Thus, employers may want to require employees to substantiate their claim that they are in an unregistered domestic partnership.

This new law applies to all municipal employers and to all private employers who meet the 50-employee threshold.

What if employers are not prepared to comply?

Employers who do not honor WFMLA requests for domestic partners may be subject to penalties including back pay, attorneys' fees, reinstatement, punitive damages and compensatory damages. As an example, if an employee's domestic partner becomes seriously ill, and the employer wrongfully denies the domestic partner WFMLA leave, the employer could be exposed to significant legal liability.

How can employers make sure they are complying?

Employers should consult with an employment law attorney to make sure they have fulfilled all requirements and have a full understanding of the new WFMLA.

Contact the law firm of Murphy Desmond to assist you with making changes and to ensure you are in compliance with the new law.

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