

WFMLA Changes Effective June 30, 2009

Effective on June 30, 2009 domestic partners are included under the Wisconsin Family and Medical Leave Act (WFMLA). This allows employees to request WFMLA leave to care for a seriously ill domestic partner or the domestic partner's parents. It does not extend to children of the domestic partner unless the children are legally adopted by the employee. There is no domestic partner coverage available under federal FMLA leave provisions.

Under 2009 Wisconsin Act 28 (state budget bill), same-sex domestic partners may be registered or unregistered. Same sex domestic partners may register with the Register of Deeds in the county in which they reside. Opposite sex domestic partners are not eligible to legally/officially register their domestic partnership with the Register of Deeds, but they are eligible to declare an unregistered domestic partnership.

Note: This process may be revised as more WFMLA guidance becomes available.

1. You will need to obtain a completed *Employee Request for Family and /or Medical Leave* ([UWS 80](#)) if an employee requests WFMLA to care for a seriously ill domestic partner or the domestic partner's parent(s) regardless of whether or not the employee has submitted an Affidavit of Domestic Partnership or the couple has registered with Register of Deeds. A certification of domestic partnership for WFMLA purposes only was added to the back page of the UWS 80.
2. The domestic partnership must meet one of the following two definitions:

To qualify as *registered* domestic partners, two individuals must meet the following criteria:

- a. Each individual is at least 18 years old and competent to enter into a contract;
- b. Neither individual is married to, or in a domestic partnership with, another;
- c. The individuals share a common residence;
- d. The individuals are not related by blood in any way that would prohibit marriage under Wisconsin law;
- e. The individuals are members of the same sex; and
- f. The couple is registered with the Register of Deeds in their county of residence.

Note: To register, domestic partners must: (a) apply for a declaration of domestic partnership to the County Clerk's Office in the county where they have lived for 30 days prior to the date of application; and (b) file the signed and notarized Declaration in the Register of Deeds Office in the same county.

OR

To qualify as a domestic partnership *without registration* (available to same-sex and opposite-sex domestic partnerships), the following criteria must be met:

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

- b. Neither individual is married to, or in a domestic partnership with, another;
 - c. They share a common residence;
 - d. Their partnership must not violate Wis. Stats. 765.03, which bars marriage between certain persons based on kinship and divorce;
 - e. They must consider themselves to be members of each other's immediate family; and
 - f. They must agree to be responsible for each other's basic living expenses.
3. The FMLA *Notice of Eligibility of Rights and Responsibilities* ([UWS 81](#)) has been updated with the new domestic partner provisions under WFMLA.
 4. An additional *Certification by Health Care Provider for Family Member's Serious Health Condition* was created that should be used by employees who are only eligible to take a WFMLA-only leave. This should be given to employees who are not eligible for a federal FMLA leave either because the leave is to care for a domestic partner or the domestic partner's parent(s) or if an employee does not satisfy the work requirements relative to federal FMLA. This new form has the form number [UWS 83a](#).
 5. An additional *Certification by Health Care Provider for Employee's Serious Health Condition* was created that should be used by employees who are only eligible to take a WFMLA-only leave. This should be given to employees who are not eligible for a federal FMLA leave because the employee does not satisfy the work requirements relative to federal FMLA. This new form has the form number [UWS 82a](#).
 6. There is not a separate two-week family leave entitlement for domestic partners. Leave taken to care for a domestic partner will be included counted in the two weeks of family leave available to eligible employees under WFMLA
 7. To terminate a domestic partnership:
 - a. A registered couple must provide the benefits office with a copy of a notarized notice of termination of domestic partnership form filed with the county clerk who issued the declaration of domestic partnership and paying the fee under Wis. Stats. 770.17. The notice must be signed by one or both domestic partners and notarized.
 - b. A non-registered couple must notify the benefits office by filing a Statement of Termination ([UWS 51](#)) if there is any change in status as domestic partners. If they are registered domestic partners, completing the Statement of Termination ([UWS 51](#)) does not meet or pre-empt the requirement that they complete and submit a notarized notice of termination of domestic partnership form with the county clerk.
 8. There is not yet guidance available about how long an employee must wait after terminating a domestic partnership before s/he can enter into a new domestic partnership.
 9. Upon approval of a domestic partnership affidavit we will accept that affidavit as proof of domestic partnership status relative to WFMLA.