



**Division of State Patrol
Policy and Procedure**

Number 11-25

Subject USE AND MONITORING OF SICK LEAVE AND THE USE OF THE FAMILY MEDICAL LEAVE ACT (FMLA)	
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I. POLICY

It is the policy of the Division of State Patrol (DSP) to monitor the use of employee sick leave and establish thresholds of use that initiate further review. Employees are expected to report for duty as scheduled and to notify the employer in a timely manner when, for any reason, they are unable to report as scheduled. Employees are also expected to report back to work when the original reason for the use of sick leave no longer exists. It is the responsibility of supervisors and managers to apply this policy consistently and uniformly. It is also the policy of the DSP to ensure that the state and federal requirements of the Family Medical Leave Act (FMLA) are adhered to, ensuring employees are afforded the protections and benefits provided under this act.

II. BACKGROUND

The intent of sick leave is to ensure that an employee remains in pay status while unable to work due to injury or illness. The benefit is intended to act as a barrier against financial hardship, which might otherwise occur as a result of one’s inability to work.

Labor agreements, state statutes, and personnel rules govern the amount of sick leave employees earn and use. The inappropriate or excessive use of sick leave is costly in both productivity and employee morale. It is, therefore, in the best interest of the Division of State Patrol to monitor the use of sick leave.

The intent of Wisconsin FMLA and Federal FMLA is to allow eligible employees the right to job protected leave for qualifying reasons. There are medical and non-medical qualifying reasons covered under FMLA. Employees may choose to use their own earned paid leave, unpaid leave, or a combination of earned paid/unpaid leave after a final approval on the FMLA Designation Notice is received from the Bureau of Human Resource Services

(BHRS). The appropriate use of FMLA-sick leave should not be counted as part of the sick leave monitoring.

III. OBJECTIVES

- A. To establish a fair and equitable method to allow the legitimate use of sick leave and FMLA while controlling abuse.
- B. To ensure that the Division is as productive as possible by assuring that employees are on duty when they should be.
- C. To maintain high levels of employee morale concerning the use of sick leave.
- D. To establish a review process by which unanticipated sick leave use is monitored.
- E. To establish a process and procedure for requesting time off from work due to a qualifying reason under FMLA

IV. GENERAL PROVISIONS

- A. This policy provides a detailed review process for the use of unanticipated sick leave, including identification of thresholds and time frames for the review process. Specific procedures for dealing with an abuser of sick leave are provided that consider both management needs and the welfare of the employee.

Unanticipated use of sick leave is defined as: "An employee or family member who calls the employee's place of employment per the established call-in procedure indicating that the employee is not able to report to or continue to work for that day under the guidelines of Article XII, Section 5 of the WLEA agreement.

If an employee provides the employer a medical certificate or other appropriate verification for absences covered by this article, that instance (and/or hours) shall not be considered unanticipated use of sick leave.

- B. Supervisors and employees shall maintain the confidentiality of personal medical information received and/or disclosed during the course of sick leave reviews. The handling of confidential medical information will conform to Transportation Administrative Manual Medical Leave Policy (TAM) HR 119.
- C. Specific instances of individual sick leave abuse, outside of the general review program, may be reviewed by management and addressed either independently or in conjunction with this review process, whichever is determined to be appropriate. Examples of such instances are found beginning at "Verification" under Section V. A. 2. in this policy. All requests for medical verification should meet the criteria established in these guidelines.

- D. Employees who request time off from work under FMLA must follow the usual and customary call in procedures and answer supervisory questions so that the supervisor can differentiate between leave that is FMLA or non-FMLA related.
- E. The amount of approved FMLA related leave outlined by the certifying authority (e.g. treating medical provider, court, military officer, etc.) will be specified on the FMLA Designation Notice issued by the WisDOT Medical Coordinator or BHRS Designee. If the employee's absences exceed or are inconsistent with what the certifying authority deemed necessary, the employee and supervisor should contact the WisDOT Medical Coordinator as soon as the change in circumstance is recognized.

V. PROCEDURE

In the event an employee is unable to report for an assigned work shift due to illness or injury, the employee shall contact his/her immediate supervisor directly and request approval for sick leave or FMLA and state the specific reason. Employees should not be asked to provide supervisors with a detailed medical diagnosis but rather the symptoms or reason(s) why they are unable to work because of injury or illness.

The Office of General Counsel (OGC) has approved a series of questions that supervisors may ask employees to help determine if leave may be FMLA related. Employees are expected to answer these questions completely and accurately. Supervisors will document the employee's responses or lack of a response. If an employee chooses not to provide enough information to the supervisor to determine if the leave is FMLA related, the supervisor should contact the WisDOT Medical Coordinator to find out if the employee's FMLA related absence request may be delayed or denied.

The employee's supervisor may contact the employee at a later time to ask the series of questions approved by OGC in the event the employee is unable to contact their supervisor or attempts to do so and the supervisor is unavailable. In such circumstances, the region/post communication center or applicable section/unit shall be notified by supervisory staff regarding the type of leave being used (i.e.; personal sick leave, family, funeral, etc.).

- A. Thresholds and Review of Sick Leave Use
 - 1. Review – Supervisors will review each employee's use of sick leave at minimum, every six months.
 - 2. Verification – Supervisors may require medical verification if they have reason to suspect that the employee is misusing sick leave. If the employee has provided a complete and sufficient Department of Labor (DOL) Certification form within the last 30 days of the suspected abuse, the supervisor should contact the WisDOT Medical Coordinator before requiring additional verification. Examples include: an employee who goes home sick immediately after receiving job instructions; an employee who is denied a time-off day and then claims to be sick; an employee on sick leave observed

engaging in activities which are reasonably inconsistent with sick leave use as requested.

Supervisors should require the employee to utilize form DT1099, the Employee Medical Absence Verification, for this purpose.

All confidential medical information should be submitted by the employee or the employee's treating medical provider to the WisDOT Medical Coordinator.

3. Thresholds Signaling Possible Abuse of Unanticipated Sick Leave – Any of the following in a six-month period could signal a possible abuse of unanticipated sick leave benefits:
 - a. Forty hours or more of unanticipated sick leave use for full-time employees; twenty or more hours for half-time employees. This includes other types of paid leave used in lieu of sick leave.
 - b. Four or more unanticipated sick leave absences on the same day of the week, before or after a weekend or holiday, during severe weather conditions, for shifts where physical training or range activities are scheduled, or to avoid a particular shift (e.g., midnight relief).
 - c. A leave balance of eight hours or less. Once an employee has a zero balance, the employee may be required to bring in verification for each instance of unanticipated time-off for sick leave purposes, and disciplinary action could follow. Cases will be reviewed for any unusual circumstances that resulted in a zero balance.
 - d. Legitimate use of sick leave and approved use of earned paid or unpaid leave under the FMLA is not considered part of this provision.

B. First Review

If any employee meets one or more of the thresholds outlined above during a six-month period, the supervisor will schedule a conference to discuss the facts with the appropriate level of division management. If there is agreement that there is no satisfactory explanation for the absences, the supervisor will notify the employee that they will meet to discuss the facts. The employee will be notified of the meeting in writing and may have a union or personal representative present at the meeting, if represented. If non-represented, the employee may have a personal representative of choice.

The employee will have a chance to explain the reasons for the absences and the supervisor will document sick leave and use. If the supervisor is satisfied with the employee's explanation for the absences, no further action is taken. Employees should not be asked to provide supervisors with a detailed medical diagnosis but

rather the symptoms or general reason(s) why they are unable to work because of injury or illness. If either the employee or a supervisor believe that explaining the reasons for the leave involve disclosure of confidential medical information, the supervisor should contact the Wisconsin Department of Transportation (WisDOT) Medical Coordinator (in the Bureau of Human Resource Services – BHRS) to determine further courses of action. If the supervisor is not satisfied with the account of the absences, the employee will be told that use of sick leave will be closely monitored during the next six months. The employee will be told that if the employee again meets one of the thresholds, the employee could be identified as a sick leave abuser and required to provide medical verification for every use of unanticipated sick leave.

The supervisor will provide written notice to the employee indicating the decision made as a result of this review, will cite the facts to date and indicate possible future consequences if there is not improvement. A copy of that notice will be sent to the union if the employee is represented. The supervisor will retain a copy, along with a copy of the worksheet. A copy of the notice shall **not** be placed in the employee's personnel file; however, copies of this and other notices dealing with this subject may be kept by the supervisor in a general file labeled "**Attendance.**"

C. Second Review

If during or after the next six-month period a review of the employee's use of sick leave shows that the employee again meets one of the thresholds, there will be another meeting as described in the "First Review." If the supervisor is not satisfied with the explanation, the supervisor will consult with the applicable management and the employee may be identified as a sick leave abuser. This decision will be documented in writing from the same organization level as outlined in the "First Review." In addition to copies being sent to the same parties as outlined in the "First Review," a copy **will** also be placed in the employee's personnel file.

Any employee given written notice that they have been identified as a sick leave abuser will be given the opportunity to meet with their respective Region Commander, WSPA Commander, Section Chief, or Bureau Director to discuss whether the employee should be identified as a sick leave abuser. The employee's immediate supervisor should schedule this meeting within 30 days of the date of written notice.

If identified as a sick leave abuser, the employee will be required to submit medical verification for all use of unanticipated sick leave. A medical exam and written verification must occur on the same day as the absence from work, if possible. This medical verification requirement remains in effect until rescinded in writing by the employee's supervisor. An employee identified as a sick leave abuser should also be referred to the Employee Assistance Program.

D. Unanticipated Sick Leave Verification

Employees required to submit medical verification for use of unanticipated sick leave must provide their supervisor with the following written information from a health care provider upon returning to work:

1. Name of the patient
2. The time and date that the patient was seen by the medical provider

Note: This should be the same day that the employee used time-off for sick leave purposes, if possible.

3. A statement by the health care provider as to the date when the employee was too ill to work or had a family illness that prevented the employee from returning to work
4. A statement by the health care provider as to the date when the employee will be medically fit to return to work
5. The signature of the health care provider dated on the day of the unanticipated sick leave absence, if possible

Note: The signature of a receptionist is not acceptable.

6. The name and title of the health care provider

The supervisor will record whether adequate verification was received and will forward the verification forms to the WisDOT Medical Coordinator in BHRS. Employees should utilize form DT1099, Employee Medical Absence Verification, for this purpose.

- E. OGC approved questions a supervisor may ask an employee to determine if leave may be FMLA related. The supervisor will inform employees up-front that they do not have to disclose their or their family members' confidential medical diagnoses. Supervisors will document the employee's responses or lack of responses. Employees are expected to answer these questions truthfully and completely:

RE: Employee's own serious health condition:

- What is the specific reason for your absence?
(e.g. symptoms or medically necessary treatment that prevented employee from performing one or more job duties.)
- What job duties are you unable to perform?
- Will you see a doctor for this injury or illness?
- Have you suffered from this condition before and previously taken leave for it? If so, when?
- When did you first learn that you would need to be absent from work?
- What is the expected return to work date (or time, if less than a day)?

RE: Employee's family member with a serious health condition, serious injury or serious illness:

- What is the specific reason for your absence? (e.g. What activities of daily living is the family member unable to perform without your (the employee's) assistance?)
- What type of care are you providing to the family member during your absence?
- Will the family member see a doctor for this injury or illness?
- Has your family member suffered from this condition and needed your assistance before? If so, when?
- When did you first learn that you would need to be absent from work?
- What is the expected return to work date (or time, if less than a day)?

F. Failure to provide enough information to determine if leave may be FMLA qualifying

If an employee chooses not to provide enough information to the supervisor to determine if the leave is FMLA related, the supervisor should contact the WisDOT Medical Coordinator to determine if the employee's use of FMLA may be delayed or denied. If an absence is denied under the FMLA, the employee will be held accountable to the usual and customary attendance policy including sick leave monitoring, if relevant.

G. Failure to Supply Complete Verification

When an employee is required to obtain medical verification and such verification is not supplied, is incomplete, is not provided to the employee's supervisor immediately upon return to work, or otherwise fails to conform to the requirements of this policy, the absence may be declared leave without pay and the employee may be subject to disciplinary action.

H. Removal From Medical Verification Requirements

If at the end of the six-month period following sick leave abuser notification, the employee provides satisfactory verification of unanticipated sick leave usage or uses no unanticipated sick leave, the employee will be relieved of the verification requirement. The employee and the applicable union, if the employee is represented, will receive a notice from the supervisor removing the abuser designation.

If the pattern of sick leave abuse is not a recurring situation, as defined in paragraph I. below, the supervisor will initiate action to have the initial abuser notices removed from the employee's personnel file. These notices will be retained by the supervisor for twelve months. If there has been no need to use them (see paragraph I.), they may be discarded at the end of twelve months.

I. Recurring Abuse/Return to Medical Verification Requirements

If, within twelve months following removal of the abuser designation, the employee again meets one or more of the thresholds, the employee will be re-identified as a sick leave abuser and will be subject to medical verification for a subsequent twelve-month period. A copy of the written notice will be sent to both the employee and the applicable union. A copy of the notice of recurrence as well as the notices concerning the previous sick leave abuse will be placed in the employee's personnel file.

Any employee given written notice that they have been re-identified as a sick leave abuser will be given the opportunity to meet with their respective Region Commander, WSPA Commander, Section Chief, or Bureau Director, as applicable, to discuss whether the employee should be re-identified as a sick leave abuser. The employee's immediate supervisor shall schedule this meeting within 30 days of the date of the written notice.

If the employee provides satisfactory verification of sick leave use during this twelve-month period or uses no unanticipated sick leave, the employee will be relieved of the verification requirement at the end of the twelve-month period. The supervisor will send both the employee and the applicable union a notice removing the abuser designation.

The written notices of the recent and previous sick leave abuse situations will be removed from the employee's personnel file upon such written request being received from the employee. If time off for unanticipated sick leave during this twelve-month period is not properly verified, the consequences outlined in paragraph G. above will take effect.

J. Process and Procedure for the Request and Use of FMLA

1. There are medical and non-medical reasons for leave covered by the FMLA regulations that are governed by state and federal laws. Employees should review the Medical Leave Policy (HR 119) to help determine if the type of leave actually needed may be covered under FMLA.

a. Basic Categories of FMLA Related Leave:

- i. Employee's own serious health condition
- ii. Family member's serious medical condition
- iii. Military leave to care for a seriously injured or ill current service member
- iv. Military leave to care for a seriously injured or ill covered veteran
- v. Military leave as a qualifying exigency (non-medical)

2. To request time off from work under FMLA, and for eligible employees to have job protection while on leave, the requirements of FMLA must be met. When an employee has to take four (4) days or more off work due to the same

medical condition or another covered reason, the employee may be eligible for job-protected leave under Wisconsin FMLA and/or Federal FMLA. Contact the employee's Payroll and Benefits Specialist to verify whether FMLA appears to be applicable. If so, the employee should complete and sign the FMLA Employee Request Form (DT1295). The Payroll & Benefits Specialist will need the employee's first actual date of leave from work in order to determine the employee's eligibility. The employee will receive a Notice of Eligibility, Rights and Responsibilities form (DT1296). If the employee's leave is anticipated, such as the birth/placement of a child or treatment of a serious health condition, an employee must give at least 30 days advanced notice (or as much notice as feasible if leave is to begin in less than 30 days). If an employee is incapacitated and unable to complete the FMLA request form, management will work with the Payroll and Benefits Specialist or WisDOT Medical Coordinator to determine if an employee is eligible for FMLA. Eligibility is not approval to use FMLA coding.

3. Complete and sufficient Department of Labor (DOL) Certification form from an employee's treating health care provider (or other certifying authority for non-medical FMLA leave) must be provided within 15 calendar days after the Notice of Eligibility, Rights and Responsibilities form (DT1296) is issued. It is the employee's responsibility in all cases to ensure the DOL Certification form is submitted directly to the WisDOT Medical Coordinator in a timely manner. Failure to provide a complete and sufficient DOL Certification form may result in a delay or denial of an employee's right to job protected leave under FMLA.
4. Once complete and sufficient DOL Certification form is received by the WisDOT Medical Coordinator, the Medical Coordinator or BHRS Designee will issue the FMLA Designation Notice (DT1297). If the FMLA related leave is approved, the employee may choose to use earned paid, unpaid, or a combination of paid/unpaid leave for the FMLA related reason.
 - a. WisDOT approved TEAL Activity Codes:
 - i. FMLA-sick leave
 - ii. FMLA-term/sabbatical
 - iii. FMLA-personal holiday
 - iv. FMLA-vacation
 - v. FMLA-absence without pay (AWOP)
 - vi. FMLA-legal holiday
 - vii. FMLA-compensatory time
5. If an employee is restricted from work due to a medical condition, an employee must provide a release from his or her physician, before an employee resumes any work activities. The employee is responsible for providing periodic updates about restrictions, limitations or accommodations needed until the restrictions are cleared or become permanent.

VI. REFERENCES

DT1099, Employee Medical Absence Verification
Transportation Administrative Manual (TAM), Medical Leave Policy HR 119
Transportation Administrative Manual (TAM), Worker's Compensation/Return to Work
Program RS 113
WLEA Collective Bargaining Agreement Article
Administrative Code ER-18
Wisconsin Statute 230.35

VII. ATTACHMENTS

- A. [Wisconsin General Notice](#)
- B. [Federal General Notice](#)