

## **LEAVE BENEFITS**

### **Vacation**

Housestaff are allowed annual paid vacation of three weeks, provided the vacation schedule does not conflict with their duties and it is approved by the Program Director. Vacation time is not cumulative from year to year.

### **Educational Leave**

Housestaff (PG-2 and above) are allowed up to one week of educational leave, without interruption of pay or benefits, contingent upon the approval by the Program Director. Educational leave time is not cumulative from year to year.

### **Sick Leave**

Sick leave accrues to housestaff at the rate of two weeks per year to a maximum of four weeks from previous academic years. Unused sick leave is not paid upon completion of training or termination.

When ill, a housestaff will use their previously accrued days first, utilize the two weeks from the current academic year next, and then may borrow two weeks from the next academic year providing their training program extends throughout another academic year. Housestaff requiring more paid leave than this may utilize vacation leave.

### **Leave of Absence – Training Schedule & Completion**

Each Member Board of the American Board of Medical Specialties has policies regarding absence from training and the impact that absence may have on the Board eligibility of the candidates. Housestaff who take leave of absence during their residency should communicate with their Program Director to ensure that their total leave time does not exceed the maximum allowed by the Board. The Program Director should communicate with the Specialty Board on behalf of the housestaff if necessary for clarification.

At the conclusion of the training program, the Program Director must certify that the resident/fellow has mastered each component of clinical competence and has acquired proficiency in each of the various procedural skills identified in the program's curriculum. In case the trainee does not meet the requirements of the Board because of a sick leave or leave of absence, the Program Director may require the individual to extend the training beyond the usual time required to complete the program. Program level advance dates may also need to be extended.

### **Requesting a Leave of Absence**

Housestaff assignments are made by the Program Directors, who must verify that those assignments were met. The Program Director must be notified promptly by the housestaff in the event of absence due to illness or any other reason.

Housestaff should request a Leave of Absence through their programs, using the standard Leave of Absence form that is readily available on MCWAH's website. All Leaves of Absence must be approved by MCWAH and the Program Director. The completed form needs to be promptly forwarded to the MCWAH office by the Program Coordinator. If additional information is needed in order to determine if the housestaff qualifies for Federal Family and Medical Leave (FMLA)\Wisconsin Family and Medical Leave (WFMLA) and\or to approve the LOA, the Program Director or Program Coordinator must contact the MCWAH Office. The MCWAH Office will follow up as needed directly with the housestaff and obtain the necessary information on a confidential basis.

The MCWAH Office does not need to be notified of an absence of seven calendar days or less if the housestaff remains on the payroll (using available sick, vacation, or educational leave days; on jury duty, or similar); nor does the MCWAH office need to be notified if the housestaff is taking scheduled vacation using their available vacation days.

MCWAH does not grant indefinite leaves of absence.

### **Computing Leave Days**

Housestaff are considered to be available for duty on a continuous basis throughout their training period and are paid accordingly. In a 15-day pay period, housestaff are entitled to 15/365 of their annual stipend. Thus, when counting leave days, include weekends and holidays. If a housestaff member is ill on a Thursday and returns on the following Tuesday, they should be charged for 5 days of sick leave (Thursday, Friday, Saturday, Sunday and Monday). This method is used for computing all leave days including leave days under FMLA and WFMLA.

### **FMLA Leave**

MCWAH will grant family and medical leaves of absence in accordance with both the Wisconsin and Federal Family and Medical Leave Acts (WFMLA\FMLA).

MCWAH has defined the Federal FMLA year as the Academic Year 7/1-6/30. The Wisconsin WFMLA year is the Calendar Year 1/1-12/31.

If an employee qualifies for Federal Family and Medical leave (FMLA) and for leave under Wisconsin Family and Medical leave (WFMLA), leave used counts against the employee's entitlement under both laws.

**Eligibility Requirements - Federal FMLA** - Employees are eligible if they have worked for MCWAH for at least one year and for 1,250 hours over the previous 12 months.

**Eligibility Requirements - Wisconsin WFMLA** - Employees are eligible if they have worked for MCWAH at least 1,000 compensated hours in the preceding 52 weeks and for at least 52 consecutive weeks.

**Basic Leave Entitlement - Federal FMLA** - FMLA requires covered employers to provide up to 12 weeks of unpaid, job-protected leave to eligible employees for any one or a combination of the following reasons:

- For incapacity due to pregnancy, prenatal medical care or child birth;
- To care for the employee's child after birth, or placement for adoption or foster care [within 12 months after birth or placement].
- To care for the employee's spouse, dependent child, or parent (excluding parent-in-law), who has a serious health condition; or
- For a serious health condition that renders the employee unable to perform the essential functions of the employee's job.

**Basic Leave Entitlement - Wisconsin WFMLA** - WFMLA requires covered employers to provide, during a 12 month calendar period:

- 6 weeks for birth or adoption of a child [must begin within 16 weeks of birth or placement].
- 2 weeks for a serious health condition of a child, spouse, domestic partner [as defined in WI Statutes 40.02(1) or 770.01(1)] or parent (including parent-in-law) or parent of a domestic partner.
- 2 weeks for employee's own serious health condition that renders the employee unable to perform the essential functions of the employee's job.
- Employee may not take more than 8 weeks in a year for any combination of the above leave.

**Military Family Leave Entitlements - Federal FMLA** - Eligible employees with a spouse, son, daughter, or parent on active duty or call to active duty status in the National Guard or Reserves in support of a contingency operation may use their 12-week leave entitlement to address certain qualifying exigencies. Qualifying exigencies may include attending certain military events, arranging for alternative childcare, addressing certain financial and legal arrangements, attending certain counseling sessions, and attending post-deployment reintegration briefings.

FMLA also includes a special leave entitlement that permits eligible employees to take up to 26 weeks of leave to care for the employee's spouse, child, parent, or next of kin who is a covered servicemember during a single 12-month period. A covered servicemember is a current member of the Armed Forces, including a member of the National Guard or Reserves, who has a serious injury or illness incurred in the line of duty on active duty that may render the servicemember medically unfit to perform his or her duties for which the servicemember is undergoing medical treatment, recuperation, or therapy; or is in outpatient status; or is on the temporary disability retired list. Spouses are entitled to a combined total of 26 weeks of unpaid FMLA leave in a 12 month period to care for a covered service member. Leave taken for other FMLA qualifying reasons by either spouse during the same 12 month period will be combined with and exhausted against the 26 week entitlement.

See the Federal Family and Medical Leave Act for specific definitions related to the Military Family Leave entitlements outlined above.

MCWAH may require certifications for the serious injury or illness of the covered servicemember or for the qualifying exigency in accordance with the FMLA.

**Definition of Serious Health Condition -Federal FMLA** -A serious health condition is an illness, injury, impairment, or physical or mental condition that involves:

Either

- Incapacity or treatment in connection with inpatient care, a hospice or a residential medical care facility (overnight stay in a medical care facility).

Or

- Continuing treatment by a health care provider for a condition that either prevents the employee from performing the functions of the employee's job, or prevents the qualified family member from participating in school or other daily activities;

Subject to certain conditions, the continuing treatment requirement may be met by a period of incapacity of more than 3 consecutive calendar days combined with at least two visits to a health care provider or one visit and a regimen of continuing treatment, or incapacity due to pregnancy, or incapacity due to a chronic condition. Other conditions may meet the definition of continuing treatment.

If a serious health condition is based upon:

- three consecutive calendar days of incapacity plus two visits to a healthcare provider, the first visit must occur within 7 days of and both visits must occur within 30 days of the beginning of the period of incapacity.
- three consecutive calendar days of incapacity plus a regimen of continuing treatment, the employee must visit a healthcare provider within 7 days of the onset of incapacity.
- periodic visits to a healthcare provider for a chronic serious health condition, the employee must make at least two visits to a healthcare provider per year.

**Definition of Serious Health Condition - Wisconsin WFMLA** - Means a disabling physical or mental illness, injury, impairment or condition involving inpatient care in a hospital, nursing home or hospice, or out-patient care that requires continuing treatment or supervision by a health care provider.

### **When Taking a FMLA Leave**

1. The housestaff must provide the Program Director with at least 30 days advance notice of the need to take FMLA leave when the need is foreseeable. If FMLA leave is not foreseeable, notice must be given to the Program Director as soon as practicable, ordinarily within one or two business days of when the housestaff learns of the need for a FMLA leave, except in extraordinary circumstances. The housestaff needs to request a leave of absence through the program using the standard leave of absence request form that is available from their Program Coordinator and on the MCWAH Web site.

2. Housestaff must provide sufficient information for MCWAH to determine if the leave may qualify for FMLA protection and the anticipated timing and duration of the leave.

If leave is for a housestaff's own serious health condition or that of a family member, MCWAH requires the housestaff to submit a confidential medical certification form from the housestaff's or the family member's health care provider. The required medical certification is to be submitted no later than 15 days after the date it is requested. If the housestaff can not comply with this deadline, they must contact the MCWAH Office to obtain an extension prior to the date that the form is originally due. If the housestaff fails to return the completed medical certification form to the MCWAH office and/or request an extension of time, the housestaff's request for FMLA leave can be delayed or denied. Second and third certifications, and periodic re-certification, may be required under certain circumstances.

Sufficient information shall include, the housestaff is unable to perform job functions, the family member is unable to perform daily activities, the need for hospitalization or continuing treatment by a health care provider, or circumstances supporting the need for military family leave.

Housestaff must also inform MCWAH if the requested leave is for a reason for which FMLA leave was previously taken or certified.

3. If leave is for a housestaff's own serious health condition, a Fitness for Duty Report will be required upon the housestaff's return to work. The Fitness for Duty Report must be submitted to MCWAH, not the Program. MCWAH will inform the Program Director of any information, restriction or accommodations that are identified in the Fitness for Duty Report. If there is a need to clarify information regarding a housestaff's fitness for duty, MCWAH senior staff or Risk Manager will contact the medical provider who issued the report. If such Fitness for Duty Report is not received, the housestaff's return to work may be delayed until such certification is provided or the return to work may be denied.
4. Both Wisconsin and Federal FMLA are unpaid. The housestaff may choose to (and MCWAH recommends it) substitute accrued paid sick and vacation time for the unpaid FMLA leave time if accrued sick or vacation days are available; however, it is not required. Substitution of accrued paid sick and vacation time must be done in accordance with MCWAH's paid sick and vacation leave policies. Paid days due to substitution of accrued sick and vacation days will run concurrent with the FMLA leave and will count against the FMLA leave entitlement. Thus, the total time off cannot exceed the time off allowed under FMLA.
5. Health, dental and vision insurance will be provided for up to 12 weeks of FMLA leave on the same basis as was provided before the housestaff took leave. The housestaff must pay the usual employee contribution for these coverages that is normally deducted from the housestaff's paycheck during any period of leave. After 12 weeks, the health, dental and vision insurance will continue through COBRA and the housestaff will be responsible for 100% of the premiums at that time.
6. While on leave, the housestaff must provide their Program Director with periodic updates regarding their intent to return to work.
7. If the circumstances of the housestaffs' leave change and they are able to return to work earlier than anticipated, they need to notify their Program Director at least two work days prior to the date they intend to report for work.
8. MCWAH will inform housestaff requesting leave of their eligibility under FMLA. If eligible, the notice will specify if any additional information is required as well as the housestaffs' rights and responsibilities. If the housestaff is not eligible, MCWAH will provide a reason for the ineligibility.
9. MCWAH will inform housestaff if leave will be designated as FMLA-protected and the amount of leave counted against the housestaff's FMLA leave entitlement. If the MCWAH determines that the leave is not FMLA-protected, MCWAH will notify the housestaff.

**Benefits and Protections** - During FMLA leave, the MCWAH must maintain the employee's health coverage under any group health plan on the same terms as if the housestaff had continued to work. Upon return from FMLA leave, most housestaff must be restored to their original or equivalent positions with equivalent pay, benefits, and other employment terms.

Use of FMLA leave cannot result in the loss of any employment benefit that accrued prior to the start of an employee's leave.

**Use of Leave** - Housestaff do not need to use this leave entitlement in one block. Leave can be taken intermittently or on a reduced leave schedule when medically necessary. The housestaff must make reasonable efforts to schedule leave for planned medical treatment so as not to unduly disrupt the GME training. Leave due to qualifying exigencies may also be taken on an intermittent basis.

**Notice** - Any employees wishing to view their rights and entitlements under the FMLA/WFMLA may view these rights at anytime on the posters contained in the Human Resource offices of the Medical College of Wisconsin, each affiliate hospital or facility, and near the cafeteria in the Curative building. The poster is also posted on the GME website and is available at: [Federal FMLA Poster](#).

The Wage and Hour Division of the U.S. Department of Labor is the federal agency that regulates the federal FMLA. Federal law makes it unlawful for an employer to interfere with, restrain, or deny the exercise of any right provided under the FMLA; or to discharge or discriminate against any person for opposing any practice made unlawful by the FMLA or for the involvement in any proceeding under or relating to the FMLA. Nothing in the FMLA affects any federal or state law prohibiting discrimination, or supersedes any state or local law or collective bargaining agreement which provides greater family and medical leave rights. Employees have the right to file a complaint with the U.S. Department of Labor ("DOL") or bring a private lawsuit if they feel the College has violated their rights under the FMLA. For more information, you may contact the DOL at (866) 487-9243 or [www.wagehour.dol.gov](http://www.wagehour.dol.gov). That being said, it is the preference of MCWAH is that its employees first bring any concerns to the attention of Executive Director of MCWAH.

### **NON-FMLA Medical [and Family] Leave**

Housestaff who would otherwise qualify for a FMLA Leave except that they are ineligible (do not meet the eligibility requirements) or have already exhausted their FMLA and WFMLA entitlements for the applicable year, may be granted a Non-FMLA Medical Leave. This leave is not an entitlement and is not job protected. Housestaff must be on-duty prior to being given a Non-FMLA Medical leave.

The granting of a Non-FMLA Medical Leave is totally at the discretion of the Program Director and the Executive Director of MCWAH. The amount of leave time to be approved will be determined by them, not to exceed 12 weeks in an Academic year counted in the same manner as Federal FMLA leave time. The Program Director and Executive Director of MCWAH will need to consider the impact of the leave on the training program and determine if it would be disruptive to the training program, the affiliated hospitals, patient care, and the meeting of the program requirements by the other housestaff in the program.

Housestaff must provide sufficient information to MCWAH to determine if the leave qualifies as a Non-FMLA Medical leave and the anticipated timing and duration of the leave. MCWAH may request additional information before approving the leave if such additional information is necessary for MCWAH to have sufficient information.

If leave is for a housestaff's own serious health condition or that of a family member, MCWAH requires the housestaff to submit a confidential medical certification form from the housestaff's or the family member's health care provider. The required medical certification is to be submitted no later than 15 days after the date it is requested. If the housestaff can not comply with this deadline, they must contact the MCWAH Office to obtain an extension prior to the date that the form is originally due. If the housestaff fails to return the completed medical certification form to the MCWAH office and/or request an extension of time, the housestaff's request for Non-FMLA Medical leave can be delayed or

denied.

If leave is for a housestaff's own serious health condition, a Fitness for Duty Report will be required upon the housestaff's return to work. The Fitness for Duty Report must be submitted to MCWAH, not the Program. MCWAH will inform the Program Director of any information, restrictions or accommodations that are identified in the Fitness for Duty Report. If there is a need to clarify information regarding a housestaff's fitness for duty, MCWAH senior staff or Risk Manager will contact the medical provider who issued the report.

If such Fitness for Duty Report is not received, the housestaff's return to work may be delayed until such certification is provided or the return to work may be denied.

Housestaff must use any accrued sick days and vacation days they have available at the beginning of their Non-FMLA Medical leave and in accordance with MCWAH's paid sick and vacation leave policies. Paid days utilized from accrued sick and vacation days will run concurrent with the amount of time approved and available for the Non-FMLA Medical leave. Health, Dental, and Vision benefits will be paid until the end of the month in which the date arrives at which the housestaff has taken a total of 12 weeks of FMLA/WFMLA and Non-FMLA Medical leave combined during the Academic year [unless a later date is mandated either by the FMLA/WFMLA requirements or the number of paid sick and vacation days being taken for a specific leave]. The housestaff must pay the usual employee contribution for these coverages that is normally deducted from the housestaff's paycheck during any period of leave. After these 12 weeks (or later date if mandated), if the housestaff is not scheduled to return during the subsequent calendar month, the health, dental, and vision insurance will continue through COBRA and the housestaff will be responsible for 100% of the premiums at that time.

While on leave, the housestaff must provide their Program Director with periodic updates regarding their intent to return to work.

If the circumstances of the housestaff's leave change and they are able to return to work earlier than anticipated, they need to notify their Program Director at least two work days prior to the date they intend to report for work. It will be up to the discretion of the Program Director and the MCWAH Executive Director whether they will be able to accommodate the early return of the housestaff and as of what date, if any, other than the scheduled return date. Any return date will be subject to the Fitness for Duty requirement.

### **Personal Leave**

**Personal Leave may not be taken for medical reasons.** Personal Leave should only be requested if absolutely necessary and for compelling reasons as leaves of absence have an overall disruptive impact on the training and training program. This leave is not an entitlement and is not job-protected. Housestaff must be on-duty prior to being given a Personal leave.

The granting of personal leave is totally at the discretion of the Program Director and the Executive Director of MCWAH. The amount of leave time to be approved will be determined by them, not to exceed 12 weeks in an academic year counted in the same manner as federal FMLA leave time. The Executive Director may grant an extension upon consultation with the Program Director. The Program Director and Executive Director of MCWAH will need to consider the impact of the leave on the training program and determine that it will not be disruptive to the training program, the affiliated hospitals, patient care, and the meeting of the program requirements by the other housestaff in the program.

The MCWAH Office may require the housestaff to submit a written request with sufficient information for the Program Director and the Executive Director of MCWAH to make a determination as to whether the personal leave will be approved and for what duration.

Housestaff must use any accrued vacation days they have available at the beginning of their personal leave and in accordance with MCWAH's paid vacation leave policies. Paid days utilized from accrued vacation days will run concurrent with the amount of time approved and available for the personal leave.

While on leave, the housestaff must provide their Program Director with periodic updates regarding their intent to return to work.

Health, Dental and Vision benefits will be paid until the end of the month in which the last paid day is utilized. The housestaff must pay the usual employee contribution for these coverages that is normally deducted from the housestaff's paycheck during this period of leave. If the personal leave becomes unpaid after the utilization of the vacation days; and the housestaff is not scheduled to return during the subsequent calendar month, Health, Dental, and Vision insurance will continue through COBRA as of the 1<sup>st</sup> of that month and the housestaff will be responsible for 100% of the premiums at that time.

If the circumstances of the housestaff's leave change and they are able to return to work earlier than anticipated, they need to notify their Program Director at least two work days prior to the date they intend to report for work. It will be up to the discretion of the Program Director and the MCWAH Executive Director whether they will be able to accommodate the early return of the Housestaff.

### **Funeral Leave**

Housestaff may be granted up to three days off with pay for funerals of immediate family members, defined as spouses, parents, parents of spouse, grandparents, grandparents of spouse, foster parents, children, grandchildren, foster children, brothers (and their spouses), and sisters (and their spouses). In the event of the death of a close relative, not in the immediate family, a housestaff may be granted funeral leave at the discretion of the Program Director.

### **Jury Duty**

While jury duty is considered a civic responsibility, there may be an occasion when housestaff may wish to request a deferral of this obligation. As a trainee in a Graduate Medical Education program, the housestaff may qualify for such a deferral.

Please discuss deferment with your Program Director. The Program Director could write a letter to the appropriate court. There is no guarantee that this approach will be successful.

If the housestaff serves on jury duty, they will continue to be paid their stipend.

### **Military Leave**

A formal leave of absence will be granted to a housestaff called to active military duty for a period of time consistent with the assignment. Reservists called to active duty should provide their Program Director with a copy of their military orders as soon as practical.

Housestaff must provide advance notice to their Program Director regarding their intent to participate in annual military training.

Housestaff may (but, are not required to) use vacation time while performing military duty. If an individual wants to be paid from MCWAH and also receive military pay, he/she must utilize vacation time.

If the individual does not elect to use vacation time, the leave will be non-paid. The military leave may lead to extension of the training to meet the requirements of the specialty boards.

#### References:

United States Department of Labor, Wage and Hour Division: November 17, 2008. 29 CFR Part 825 The Family and Medical Leave Act of 1993, Final Rule. Federal Register Vol. 73 No. 222.

United States Department of Labor, Wage and Hour Division: WHD Publication 1420. Revised January 2009.

Updated 07-08 Wis. Stats. Database 103.10

State of Wisconsin, Department of Workforce Development: Wisconsin Family and Medical Leave Act Publication ERD-7983-P (R-01/2010).