



Audit of
Family Medical Leave Act (FMLA)
Utilization

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City Comptroller
City of Milwaukee, Wisconsin

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March 9, 2004

To the Honorable
the Common Council
City of Milwaukee

Dear Council Members:

The attached report presents the results of our Audit of Family Medical Leave Act (FMLA) utilization. The scope of this audit was to review paid FMLA leaves as recorded on the City's PeopleSoft Human Resources Management System (HRMS). The audit examined a sample of the request and approval paperwork in those departments with the highest FMLA use. The five departments reviewed (Police Department, Fire Department, Health Department, Library, Public Works) accounted for 88 percent of FMLA users and 90 percent of FMLA leave.

The audit recommends changes to the review and approval process for the granting of FMLA to ensure consistent treatment of employees, and implementing a means to track FMLA use.

Audit findings and recommendations are more fully discussed in the Audit Questions, Conclusions and Recommendations sections of the report, and the Departmental Response follows thereafter.

Appreciation is expressed for the cooperation extended to the auditors by the staff of the City departments involved in this audit.

Sincerely,



W. MARTIN MORICS
Comptroller

I Audit Scope and Objectives

The audit scope was to review paid Family Medical Leave Act (FMLA) leaves as recorded on the City's payroll system (the PeopleSoft Human Resources Management System (HRMS)). The objectives were to determine if the HRMS data is correct and can be relied upon, and to determine compliance by City Departments with the rules for length of time permitted for the different categories of FMLA leave (self, family, birth/adoption).

The audit addresses the following questions:

- A. Is the leave status data on HRMS pertaining to FMLA correct and can it be relied upon?
- B. Are City Departments in compliance with the law regarding the amount of time permitted for the different categories of FMLA?
- C. Are City Departments consistent in their evaluation and granting of requested leave under FMLA?

II Background

The Family Medical Leave Act (FMLA) benefit is a complex benefit available to City employees. State and federal laws are summarized in Table 1 on the next page, which identifies the authorized purposes and benefits for FMLA leave.

Table 1: FMLA purposes and benefits

Leave purpose:	Wisconsin benefits:	Federal benefits:
Employee's own serious health condition; medical certification must be attached	Combined maximum of 2 weeks paid sick leave, comp time, vacation and/or unpaid time per calendar year	Combined maximum of 12 weeks paid sick leave, comp time, vacation and/or unpaid time per calendar year
Care of child, spouse, or parent with a serious health condition; medical certification must be attached	Combined maximum of 2 weeks paid sick leave , comp time, vacation and/or unpaid time per calendar year. Parents-in-law allowed under state FMLA only.	Combined maximum of 12 weeks comp time, vacation and/or unpaid time per calendar year— but not paid sick leave
Birth or placement for adoption of a child	Combined maximum of 6 weeks paid sick leave , comp time, vacation and/or unpaid time per calendar year that must commence within 16 weeks of birth or placement.	Combined maximum of 12 weeks comp time, vacation and/or unpaid time per calendar year— but not paid sick leave
Placement for foster care of a child	None, federal only.	Combined maximum of 12 weeks comp time, vacation and/or unpaid time per calendar year— but not paid sick leave

Correct usage is highly complex as State and federal entitlements run concurrently, yet the two laws vary as described above. Some of these differences are: different amounts of time are allowed by State and federal laws for same category of leave; there are different substitution limits for paid leave; and the definition of "family" varies between the federal and State laws.

State and federal laws are combined to provide employees with the greatest benefit. For example, employees are allowed up to 12 weeks of leave per year including 2 weeks of paid sick leave for care of a child, spouse, or parent. An employee on unpaid leave must continue to pay his/her own normal employee contributions, if any, for health and dental

insurance. Both State and federal laws permit unpaid leave under FMLA.

In 2002, 852 employees received a total of \$1,326,073 for 62,501 hours of paid FMLA time. As of August 16, 2003, 611 employees had received a total of \$816,350 for 39,133 hours of paid FMLA time, as detailed in Table 2 below. Five departments (Fire, Police, Health, Public Works, Library) accounted for 88 percent of FMLA users and 90 percent of FMLA leave.

Table 2: 2003 (pay periods 1-17) FMLA usage (totals may not equal 100% due to rounding)

Department	Employees using FMLA	Percent of FMLA Users	Department's percent of Workforce	Percent of FMLA Hours	Average FMLA Hours
City Clerk	8	1%	1%	1%	63
Municipal Court	6	1%	1%	0%	31
City Attorney	3	0%	1%	0%	48
Administration	2	0%	1%	0%	60
Employee Relations (DER)	6	1%	1%	1%	56
City Development (DCD)	20	3%	3%	2%	46
Comptroller	7	1%	1%	1%	45
Assessor	9	1%	1%	1%	30
Fire	42	7%	14%	8%	76
Police	127	21%	34%	33%	102
Neighborhood Services	10	2%	3%	2%	68
Health	51	8%	4%	6%	48
Port of Milwaukee	1	0%	0%	0%	1
Employee Retirement System	2	0%	0%	0%	49
Public Works	274	45%	29%	38%	55
Library	43	7%	5%	5%	46
totals	611	100%	99%	100%	
Board of Zoning Appeals	0		0%		
Deferred Compensation	0		0%		
Fire & Police Commission	0		0%		
Mayor	0		0%		
Police Annuity & Benefit Fund	0		0%		
Election Commission	0		0%		
City Treasurer	0		1%		

III Audit Questions, Conclusions and Recommendations

The answers to the audit questions are not favorable. The findings below indicate the need for improved controls and clearly communicated policies and procedures. This review was limited in scope and designed to gain an understanding of the processes involved rather than to provide the basis for a numerical evaluation of the accuracy of the data. The City Departments reviewed were keeping appropriate records, but the Family Medical Leave Act (FMLA) status data is not readily available as there is no way to correctly record it in the city's payroll system (PeopleSoft Human Resources Management System (HRMS)). No evidence of abuse of FMLA leave was found in the sample of records reviewed; however, the decentralized approval process provides the potential for problems. The processes are functioning, but they could be improved as described in the recommendations.

A. Is the leave status data on HRMS pertaining to FMLA correct and can it be relied upon?

The audit concludes that FMLA leave status data in HRMS is often incorrect or missing and cannot be relied upon.

HRMS includes a leave status and reason code that can be changed when an employee goes on FMLA. This data is informational only and does not affect pay processing. There is no requirement to use status information to track employees when they go on or return from leave. The review of leave status data showed that it was not reliable due to a high incidence of data that did not conform to FMLA policy, such as showing an employee on FMLA for almost two years (i.e, the leave status had not been changed when the employee returned to work). Due to the limited scope of this audit, no attempt was made to quantify the quality of this data.

The audit found that most departments did not use leave status to track FMLA use, or had used it at one time but were not keeping their files current. Examples were found where employees' leave status was recorded as FMLA but with a last worked date in 2002.

Such a leave would be in gross violation of the provisions of the laws. Apparently the status for these employees was not updated when they returned from leave, making it appear that they are still on leave well in excess of maximum time permitted. Payroll information for these employees shows that they did return from leave and were working at the time of the review.

B. Are the Departments in compliance with the law regarding the amount of time permitted for the different categories of FMLA?

The audit concludes that compliance cannot be determined from the currently available data in HRMS.

Request and approval paperwork was examined for 32 employees with the highest FMLA use in the sampled City Departments. Requests were reviewed for completeness and that they had been approved by an appropriate departmental official. Requests were reviewed for compliance with the purpose definitions in the laws. Medical certifications were reviewed for completeness and the presence of a signature of a medical provider, as required by both state and federal laws.

The audit was not able to determine overall compliance with the length of leaves under the law as HRMS is not able to track the specific type of FMLA leave (self, family, birth/adoption) used. HRMS can not track unpaid FMLA leave. The limited number of files selected for review was designed to provide insight into the process rather than a statistically valid sample on which to base an audit opinion. The audit did note that in the sample there were no cases found of excessive leave use.

Each Department sampled has its own procedures and forms for requesting, approving and tracking FMLA. One earnings code (243) has been used City-wide for all forms of paid FMLA. Two new earnings codes (242, 266) were recently established for using vacation or compensatory time. This was done at the request of MPD because leave balances affect their pension.

It is not practical to calculate unpaid leave by comparing paid hours to a standard pay period. This is a labor-intensive process requiring an understanding of the various earnings codes and the differences between paid time and worked time. Additionally,

standard pay period hours vary between general employees, police and fire.

Depending on the specifics of the change requested, adding FMLA tracking to HRMS could be a very expensive project but ITMD is unable to provide any estimates without specific details of what would be needed. A more cost-effective solution to the tracking problem is presented in Recommendation 1.

C. Are the Departments consistent in their evaluation and granting of requested leave under FMLA?

The audit was not able to determine the consistency of approvals as there is no ability to monitor these approvals across all Departments, nor is there the means to track all components of FMLA leaves in HRMS.

Each Department sampled has its own procedures and forms for requesting, approving and tracking FMLA. MPD has a computerized tracking approach that may be usable by other Departments.

The audit concludes that the lack of city-wide monitoring and the lack of ability to easily track all components (paid and unpaid) of these leaves provides an opportunity for abuse of FMLA leave and/or inconsistent treatment of employees.

No abuse was found in terms of excessive paid time used; however, determination of improperly granted leave would require extensive review of confidential medical data and this was not in the original objectives. For purposes of this audit, no attempt was made to second guess approvers as to whether or not the request was valid.

Staff in some Departments expressed concern over the potential for abuse or different standards between Departments for granting of leave. Department of Employee Relations (DER) staff and City Attorney's staff are concerned with consistent treatment of employees. They currently become involved only when a situation is brought to their attention because:

- a) There is no current means to monitor FMLA city-wide,
- b) There is no current means to review requests for reasonableness city-wide,
- c) Any current monitoring of FMLA use is done at the department level and

stays there.

Both State and federal laws require the leave be for a "serious health condition". In the recent FMLA training class conducted by DER and City Attorney's Office there was an example of a FMLA request for taking a child to the orthodontist which was denied because a payroll clerk correctly thought it did not meet the definition and contacted the City Attorney's Office for guidance. A different clerk might have routinely approved the request since it had been approved by the appropriate official in the department.

Recommendation 1: There should be a means to readily track and monitor all FMLA use.

DER with the assistance of the Comptroller's Payroll Administration staff should prepare policy and procedures that will provide a cost-effective means to track and monitor FMLA use. These policies and procedures would explain the benefits available to employees under the laws, how to apply for them, and how such use would be monitored to ensure fair and equitable treatment consistent with the FMLA.

FMLA is mandated by both State and federal laws. It must be granted if the employee's request meets the criteria as defined in the laws. Abuse of FMLA could result in a liability issue for the City if its provisions are not consistently and fairly administered. If different standards are applied to different groups of employees, it could result in a disciplinary and morale matter. Without a reliable means to monitor FMLA use, leave in excess of statutory amounts could be granted.

The cost of modifying the PeopleSoft software is believed to be considerable and would be extremely difficult to justify in the current budget environment. The addition of new earnings codes (instead of modifying computer programs) to track all FMLA use, whether sick leave, vacation, compensatory time, or unpaid, and whether for employee, family, or birth/adoption (the types of FMLA leave) may provide the data needed for monitoring at the lowest possible cost.

Recommendation 2: FMLA review and monitoring should be centralized in the Department of Employee Relations (DER).

The limited audit sample did not discover any abuse or non-compliance. However, the sample was too limited to conclude as to the existence of any material incidence of intentional fraud or abuse. Also, due to the lack of centralized monitoring, such abuse would likely be identified only by the employee's supervisor or other department managers.

The audit recommends that DER review and monitor all FMLA leave. Initial approval authority could remain with the Departments, as it does now. Departments would submit completed forms to DER for review. DER would confirm the Department's approval, modify, or deny the FMLA request. Centralized FMLA monitoring by DER would provide the ability to identify problems that may indicate the need to revise existing policy and procedures. It would also provide assurance that personal leave is being reviewed and approved on a consistent basis city-wide.



Department of Employee Relations

Marvin E. Pratt
Acting Mayor

Glorance Dukes
Director

David Heard
Fire and Police Commission
Executive Director

Michael Brady
Employee Benefits Director

March 5, 2004

W. Martin Morics
Comptroller
200 East Wells Street, Room 404
City of Milwaukee

Dear Mr. Morics:

The Department of Employee Relations (DER) commends the City Comptroller's Auditing staff and City department representatives for their assistance in preparing the FMLA Utilization Audit recommendations.

Comments from DER on the recommendations of the FMLA audit are listed below by specific recommendation. DER supports solutions that will provide consistency in the provision of FMLA benefits citywide and a system of tracking the benefit that will give departments ready and correct data.

Recommendation #1: There should be a means to readily track and monitor all FMLA use.

As referenced in the audit, DER is concerned that there is no mechanism to monitor requests for and approval of FMLA leave citywide. Requests are only brought to the attention of the City Attorney's Office or to the Department of Employee Relations when a manager inquires on the merit of a particular request, or if a problem surfaces with a manager's determination on a request. In departments with higher usage of FMLA (such as Police, Fire, DPW, DCD, Library and Health), personnel officers have had to develop their own in-house expertise on the benefit. However, because of the complexity of the benefit, a concern remains on whether the benefit is being applied reasonably and consistently citywide.

As explained in the audit report, the FMLA benefit is very complex, with overlapping state and federal laws that allow either paid or unpaid leave for the employee, family, or birth/adoption. Because there is no citywide tracking mechanism, each department has had to create their own process. This means that the City of Milwaukee has multiple mechanisms for approving and tracking one citywide benefit. The presence of multiple systems creates the possibility of differences in application of the benefit from department to department.

DER supports the recommendation that there be a means for departments to readily track and monitor all FMLA use. The department supports the recommendation to prepare policies and procedures that explain the benefits available under the state and federal laws, how to apply for them, and how such use would be monitored to ensure equitable and consistent application of the benefit city-wide. DER staff would prepare these policies and procedures with input from the City Attorney's Office and Comptroller's Payroll Administration staff, as well as from City department personnel managers.

DER also recommends and would provide biannual training briefings for department managers and supervisors as well as payroll personnel on the FMLA policy and procedures.

DER also supports the use of new earnings codes to track all types of FMLA use on the payroll system. As indicated in the report recommendations, this would not involve the purchase or development of new software and would allow departments to readily track the variations in leave allowed through the state and federal laws.

Recommendation #2: FMLA review and monitoring should be centralized in the Department of Employee Relations.

The Department of Employee Relations shares the concern raised by this audit that FMLA benefits be applied by City departments in compliance with state and federal laws. The recommendation to have DER review and monitor all FMLA leave with final approval authority would provide the mechanism to ensure that leaves are provided correctly and consistently city-wide. However, as is the practice now, DER staff and city departments should continue to consult with the City Attorney's staff on the more difficult and/or complex FMLA requests or if the denial of an FMLA request is considered.

There are two issues of concern that this recommendation raises for Employee Relations. The first is the issue of reduced staff resources. The second is the treatment of confidential medical information.

The staff resources that would be necessary to implement this recommendation would include the services of a higher-level clerical support person (such as a Program Assistant) and a management level employee. Available staff time to develop such a program and to perform these functions does not currently exist. Additional staff resources would need to be added to the department before this recommendation could be implemented.

W. Martin Morics

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The second issue is that of the processing and filing of confidential medical data. If DER were to take on a centralized monitoring role, there would be two points of approval on each request. The first review point would be to determine if the request may be approved as a qualified "serious health condition" as detailed on the Medical Certification Form. Employee Relations staff would need to consult with the City Attorney's Office staff on unusual or more difficult to determine cases.

The second review point would be to determine if leave time has been applied correctly depending upon the type of leave sought (employee, family, birth/adoption). This would involve a review of the Request for Leave Form as well as verification of the employee's current leave balances from the payroll system.

Currently, individual departments retain the Medical Certification Forms that contain the confidential medical information. DER would need access to the information listed on these forms, but would not recommend that these forms be stored in DER for both medical confidentiality and space issues.

Sincerely,



Florence Dukes
Director

C: Ellen Tangen