Travis County Human Resources Management Department
Family Medical Leave Act Review
#16-24



TRAVIS COUNTY
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From: Nicki Riley, CPA
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Date: May 9, 2017

Subject: Human Resources Management Department (HRMD) FMLA Review

The Risk Evaluation and Consulting (REC) Division of the Travis County Auditor's Office has completed a review of HRMD regarding Family Medical Leave Act (FMLA) compliance. We conducted our review in accordance with the applicable statutes governing the County Auditor's Office, and those relating to FMLA compliance and County Policy.

Background

HRMD in an internal service department focused on activities relating to County employees, primarily recruiting and hiring new employees, orientation and training of current employees, employee benefits, and employee retention. HRMD is committed to providing quality customer service to County offices and departments in all aspects of human resources delivery, including, but not limited to, the following:

- Americans with Disabilities Amendments Act (ADAA): HRMD cooperates with Risk Management for the development of new curriculum and training for HR liaisons, managers, and supervisors.

- Recruitment: HRMD is working to develop a long-term plan for the recruitment of qualified employees for key positions in the organization.

- Bilingual (Spanish) Training: HRMD provides classes in the areas of sexual harassment, respect in the workplace and workplace violence.

- Family Medical Leave Act Training: HRMD develops curriculum and trains HR liaisons. In addition, HRMD staff update compliance posters, provide ongoing assistance and training to supervisors, managers and employees.

Objective and Scope of Review

The primary objective of this review was to assess the adequacy and effectiveness of the overall system of internal controls in place for HRMD's FMLA compliance process. The period under review was October 1, 2013 through September 30, 2015.

Review Methodology

Our review methodology included testing the entire population of FMLA absences during the examination period and verbal and written representations from HRMD personnel. The total population under review included 1,937 FMLA hours and 15 individual leave events during the examination period. In regard to written and/or verbal representations obtained during this review, unless otherwise noted in this report, management maintains that the assertions we relied upon were correct to the best of their knowledge.

Summary of Findings

During our review, we noted the following:

1. HRMD's administrative staff did not obtain a medical certification for one (6.7%) of the 15 FMLA leave events in the period, as required by Travis County Code (CC) 10.038.

2. One (6.7%) of the 15 FMLA medical certifications reviewed was incomplete. This certification did not contain sufficient medical facts to determine if a qualifying event, as defined by the FMLA, had occurred.

3. Four (26.7%) FMLA medical certifications were not recertified when a change in the party's circumstance occurred, as required by CC 10.038.

4. Twelve "stacked" worker's compensation/FMLA leave events were not documented or supported properly, as required by CC 10.038.

In the above, individual leave events are not included in multiple findings; therefore, there are no overlapping findings.

Examination Team

James Marlett, CPA, Lead Auditor
Travis Lee, Staff Auditor

Closing

This report is intended solely for the information and use of your office and the Commissioners' Court. We greatly appreciate the cooperation and assistance received from the management and staff of HRMD during this examination. Please contact us if you have any questions or concerns regarding this report.

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EXECUTIVE SUMMARY

Summary of Findings

Our review disclosed significant findings in regard to administrative compliance related to obtaining medical certifications, and ensuring the related documentation is complete and sufficient in accordance with the Travis County Policy and best practices of the Department of Labor (DOL). The following paragraphs summarize our findings:

Failure to provide certifications – HRMD's administrative staff did not obtain one (6.7%) of 15 medical certifications. Without the proper medical certification, the leave event in question is not properly supported in accordance with CC 10.038.

Incomplete certifications – One (6.7%) of 15 FMLA medical certifications was incomplete. This certification did not contain sufficient, relevant medical facts to determine if the leave was a qualifying event as defined by the FMLA. Without these relevant medical facts, the leave event is either not valid or not properly supported in accordance with CC 10.038.

Recertifications – Four (26.7%) of 15 FMLA medical certifications should have been recertified due to a change in circumstance. There are many possible reasons for a change in circumstance for a FMLA leave event. The most common issue we noted was that the original certification's definitive timeline or schedule (generally an exact date or range of dates) had lapsed or was not being followed. In these cases, without proper recertification, the leave events are no longer valid per CC 10.038.

"Stacked" Worker's Compensation/FMLA – During our FMLA reviews of HRMD, the Sheriff's Office (TCSO), and Juvenile Probation, we noted 12 "stacked" worker's compensation/FMLA leave events that were not properly supported. "Stacked" leave occurs when an employee is both unable to work under worker's compensation regulations and is on FMLA leave for the same medical issue. According to Juvenile Probation and TCSO personnel, HRMD personnel informed them that the standard FMLA supporting documents required under CC 10.038 were not necessary for "stacked" leave. Because of this, our findings regarding lack of FMLA support for "stacked" leave events across these three entities are included in HRMD's report.

Significance

Insufficient processes and internal controls governing FMLA leave may lead to the misuse or abuse of this type of leave. Outside studies of misuse/abuse of FMLA leave have indicated a strong correlation between poorly controlled FMLA leave processes and increased administrative and personnel costs, including overtime costs, where applicable.

Recommendations

We recommend that HRMD implement policies and procedures for improving their internal control environment and that those involved with administering all FMLA duties obtain sufficient training to reduce the risk of abuse or misuse of FMLA leave as detailed on the following page:

1. HRMD's administrative staff should assess the soundness of certifications and require second and third opinions or a recertification if there is reason to doubt a medical certification. Likewise, if a medical certification is incomplete and/or insufficient, the administrative assistants should follow up with the health care provider to ensure that the leave qualifies as a serious health condition under the FMLA.

2. HRMD's supervisors and timekeepers should receive regularly-updated training on FMLA policy. They should also track and review FMLA leave events, requesting that administrative staff examine any unusual leave patterns or divergences from the applicable certification form.

3. HRMD should implement the required compliance procedures to ensure that all departments receiving worker's compensation/FMLA timekeeping information also receive the appropriate DOL and County policy-required FMLA documentation guidance.

BACKGROUND

Overview

In 1993, President Bill Clinton signed the Family Medical Leave Act (the Act). The Act became the first national law guaranteeing workers the right to take time off from work to care for themselves and for family members for qualifying health events. This includes time off for the birth or adoption of a child.

The Act provides employees various benefits and protections, including continued employee health care coverage. It also provides the restoration of employment positions and makes it illegal for most employers to penalize or terminate workers for taking this type of leave.

Eligible employees may use the Act to take time from work after child-birth, adoption or accepting a foster child. They can also take time to care for their spouse, child, or parent if they are seriously ill or injured. In addition, employees may also use the Act if they have a health condition that prevents them from performing their job duties. Generally, an illness or injury qualifies under the Act if the employee or family member is receiving care from a health care professional and is absent from work for at least three consecutive days.

The eligible employee has rights and responsibilities under the Act. For example, if the employee will be using FMLA and the leave is foreseeable, the employee must give the employer thirty days advance notice (e.g.: birth of a child.). In accordance with Travis County Code, if an employee takes time off because of an unexpected injury or illness, the employee must have a health care professional (HCP) certify the medical condition.

The Act requires that, in the case of foreseeable leave, the employee must "consult with the employer and make a reasonable effort to schedule the leave so as not to disrupt the employer's operations." If the employee does not consult with the employer, the employer may require such consultations. An employer may delay leave for an employee that qualifies for foreseeable FMLA leave, if that employee is aware of the FMLA notice requirements but does not follow them. Posting the required notice in the workplace is considered sufficient to inform employees of these notice requirements.

FMLA Checklist

The following checklist is a general list of requirements and items to consider in relation to FMLA leave:

1. The employer must prominently display the FMLA information poster. In addition, the employer must also provide each employee with a general notice about the Act in the employer's handbook or other written materials about leave and benefits.

2. When the employee requests leave, the employer must determine if the employee is eligible for FMLA leave. An eligible employee is an employee who has been employed by the employer for at least 12 months and has worked at least 1,250 hours (actual hours worked)

during the 12-month period immediately preceding the start of FMLA leave. The 12 months of employment need not be consecutive. Eligible employees are entitled to 12 weeks/480 hours of FMLA leave for qualifying events on a rolling 12-month basis (Note: Military caregiver leave is 26 weeks).

3. Within five business days of the initial request, the employer must complete and provide the employee with the notice of eligibility and rights and responsibilities (Form WH-381 Parts A&B).

4. The employee must obtain a completed medical certification as required by CC 10.038 within 15 calendar days of the leave request, absent unusual circumstances.

5. Upon receiving the medical certification, the employer must determine if the certification qualifies as a FMLA event. If the event does not qualify and leave is denied, the employer must communicate the deficiencies in the medical certification to the employee in writing. The employee has seven calendar days to provide the employer with updated information on a "Designation Form".

6. Throughout the leave period, the employer must provide the employee with the same healthcare benefits they received prior to taking the leave. When the employee returns from leave, they are to be restored to the position they previously occupied or to an equivalent one.

Qualifying Events

The following is a list of qualifying events under the Act:

1. Birth of a newborn child,

2. Adoption or foster care placement of a child,

3. Care of the employee's spouse, son, daughter, or parent with a serious health condition,

4. The employee's own serious health condition, and

5. A qualifying military exigency arising from the employee's spouse, son, daughter, or parent's active military duty or impending call or order to active duty.

Employer and Employee Obligations and Responsibilities

Both employers and employees have notice requirements in the FMLA compliance process. In Travis County, HRMD recommends the use of specific forms which comply with the DOL best practices. The following page contains a summary of these forms and their information requirements:

<u>Notice of Request</u>

If the leave is foreseeable, at least 30 days advance notice should be provided by the employee. If less than 30 days notice is given, the employer may require an explanation as to why 30 days notice was not practical. The employee must provide sufficient information (i.e., state the qualifying

reason for and provide anticipated timing and duration of the leave, if foreseeable) for an employer to reasonably determine that the Act may apply.

Eligibility Notice WH-381 Part A
When an employee requests FMLA leave, or when an employer acquires knowledge that an employee's absence may qualify for FMLA, the employer must notify the employee about their potential eligibility for FMLA leave within five business days. The employer must then verify whether or not the employee qualifies.

Rights & Responsibilities WH-381 Part B
DOL regulations require employers to provide written notice detailing the specific expectations and obligations of the employee seeking leave and the consequences of the failure to meet these obligations. This information is required to ensure the following items are met:

1. The employer's designated 12-month FMLA year,

2. That leave may be designated and counted against the employee's FMLA leave entitlement if qualifying,

3. Whether a fitness for duty form will be required, and

4. Arrangements for continuing obligations of health care premiums.

Recordkeeping requirements
Medical certifications must be kept separate from all other types of files and be treated as confidential. The following is a list of FMLA records, which must be maintained for a minimum of three years in accordance with DOL regulations:

1. Basic payroll and identifying data,

2. Hours of leave,

3. Copies of employee notices to the employer and copies of employer notices to employees,

4. Internal documents regarding benefits and policies concerning paid and unpaid leave, and

5. Documentation regarding any disputes concerning whether leave is properly designated as FMLA.

Medical Certification

The County has adopted DOL best practices in regard to the certification of FMLA leave. Specifically, CC 10.038 requires medical certification of all FMLA leave as stated below:

> *"Medical Certification. When the employee requests medical leave, Travis County will require that the employee provide medical certification from a health care provider that a serious health condition exists. A Family and Medical Leave*

Certification form is available from the employee's department or the Human Resources Management Department."

Since the County adopted standardized medical certifications in CC 10.038, each office or department's HR personnel are required to obtain and administer FMLA certifications under the following rules:

1. A certificate must be requested within five business days after the foreseeable leave is requested, or

2. Within five business days after unforeseeable leave commences, or

3. At a later date, if the employer has reason to question the appropriateness or duration of the leave.

4. They should also provide written notice to employees regarding the medical certification requirements in the Rights and Responsibilities (R&R) Notice Form.

The R&R Notice includes the time-period during which the employee is to return the applicable medical certification – no later than 15 calendar days after the day the employee is provided notice.

Good Faith Efforts

As detailed in the Act, an employee has two opportunities to provide a complete medical certification, as follows:

"The employee must provide the requested medical certification within 15 calendar days after an employer's request, unless it is not feasible under the particular circumstances to do so despite the employee's good faith efforts, or if the employer permits more than 15 calendar days to return the requested certification. When an employee makes diligent good faith efforts but is unable to meet the 15-calendar day deadline, the employee is entitled to additional time to provide the certification.

If an employee fails to return the certification in a timely manner, the employer can deny FMLA protections for the leave following the expiration of the 15-calendar day time period until a complete and sufficient certification is provided. However, the 15-day period and the period of absence beginning the day the certification was received is FMLA-protected leave. If the certification is not returned within a seven day cure period for deficiencies, the leave can be denied."

Leave Beyond a Single Year

CC 10.038 delineates the following leave parameters, which are consistent with the Act as follows:

"Paid/unpaid leave. Whether paid or unpaid, all Travis County employees are entitled to a total of 12 weeks of family and medical leave in a 12 month period."

Based on the above, if the leave period extends beyond a 12-month period, the leave should be recertified at the start of each new 12-month period.

Incomplete Certifications

The County adopted DOL best practices to ensure that FMLA certifications are complete and sufficient in CC 10.038, as detailed below:

> *"The medical certificate must include:*
> *1) The name, address, and telephone number of the health care provider,*
> *2) The name of the patient,*
> *3) Expected date of return to work,*
> *4) Diagnosis, and*
> *5) A statement that the employee's absence from work is required."*

Serious Health Condition

The DOL has created two prototype medical certification forms – one for the employee's own serious health condition (Form WH-380-E), and the other for a family member's serious health condition (Form WH-380-F). Upon completing the medical certification, the applicable HCP is asked to provide all medically relevant facts in order to determine if the event is a qualifying event under the Act. In addition, the form requires information necessary to reasonably establish that the employee is unable to perform the essential functions of his/her position and the likely duration of such inability. If intermittent leave is requested for ongoing care, the form requires information detailing why there is a medical necessity for the leave and an estimate of the duration of incapacity or ongoing care.

If the employee returns the certification/recertification without all the required information, the employer should use the DOL/County approved "Designation Form" or provide the employee written notice of the specific information that is still required. Employees should be given seven calendar days to cure the deficiencies. This may be extended if the seven days is not sufficient despite the employee's documented good faith efforts.

Recertifications

In accordance with Code of Federal Regulations (CFR) Title 29, Section 825.308, recertifications may be required for leave taken due to an employee's own serious health condition or the serious health condition of a family member, or other qualifying event, as follows:

> *"(a) 30-day rule. An employer may request recertification no more often than every 30 days and only in connection with an absence by the employee, unless paragraphs (b) or (c) of this section apply.*
>
> *(b) More than 30 days. If the medical certification indicates that the minimum duration of the condition is more than 30 days, an employer must wait until that minimum duration expires before requesting a recertification, unless paragraph (c) of this section applies. For example, if the medical certification states that an employee will be unable to work, whether continuously or on an intermittent basis, for 40 days, the employer must wait 40 days before requesting a*

recertification. In all cases, an employer may request a recertification of a medical condition every six months in connection with an absence by the employee. Accordingly, even if the medical certification indicates that the employee will need intermittent or reduced schedule leave for a period in excess of six months (e.g., for a lifetime condition), the employer would be permitted to request recertification every six months in connection with an absence.

(c) Less than 30 days. An employer may request recertification in less than 30 days if:

(1) The employee requests an extension of leave;

(2) Circumstances described by the previous certification have changed significantly (e.g., the duration or frequency of the absence, the nature or severity of the illness, complications). For example, if a medical certification stated that an employee would need leave for one to two days when the employee suffered a migraine headache and the employee's absences for his or her last two migraines lasted four days each, then the increased duration of absence might constitute a significant change in circumstances allowing the employer to request a recertification in less than 30 days. Likewise, if an employee had a pattern of using unscheduled FMLA leave for migraines in conjunction with his or her scheduled days off, then the timing of the absences also might constitute a significant change in circumstances sufficient for an employer to request a recertification more frequently than every 30 days; or

(3) The employer receives information that casts doubt upon the employee's stated reason for the absence or the continuing validity of the certification. For example, if an employee is on FMLA leave for four weeks due to the employee's knee surgery, including recuperation, and the employee plays in company softball league games during the employee's third week of FMLA leave, such information might be sufficient to cast doubt upon the continuing validity of the certification allowing the employer to request a recertification in less than 30 days.

(d) Timing. The employee must provide the requested recertification to the employer within the time frame requested by the employer (which must allow at least 15 calendar days after the employer's request), unless it is not practicable under the particular circumstances to do so despite the employee's diligent, good faith efforts.

(e) Content. The employer may ask for the same information when obtaining recertification as that permitted for the original certification as set forth in §825.306. The employee has the same obligations to participate and cooperate (including providing a complete and sufficient certification or adequate authorization to the health care provider) in the recertification process as in the

initial certification process. See §825.305(d). As part of the information allowed to be obtained on recertification for leave taken because of a serious health condition, the employer may provide the health care provider with a record of the employee's absence pattern and ask the health care provider if the serious health condition and need for leave is consistent with such a pattern.

(f) Any recertification requested by the employer shall be at the employee's expense unless the employer provides otherwise. No second or third opinion on recertification may be required."

In CC 10.038, the County has adopted DOL best practices for recertifications as follows:

"An elected/appointed official or the Human Resources Management Department will require certification of continued need for leave... (1) Every 30 days, (2) When the employee requests an extension of leave, (3) If the circumstances surrounding the leave change, or (4) When Travis County receives information that casts doubt upon the continuing validity of the certification."

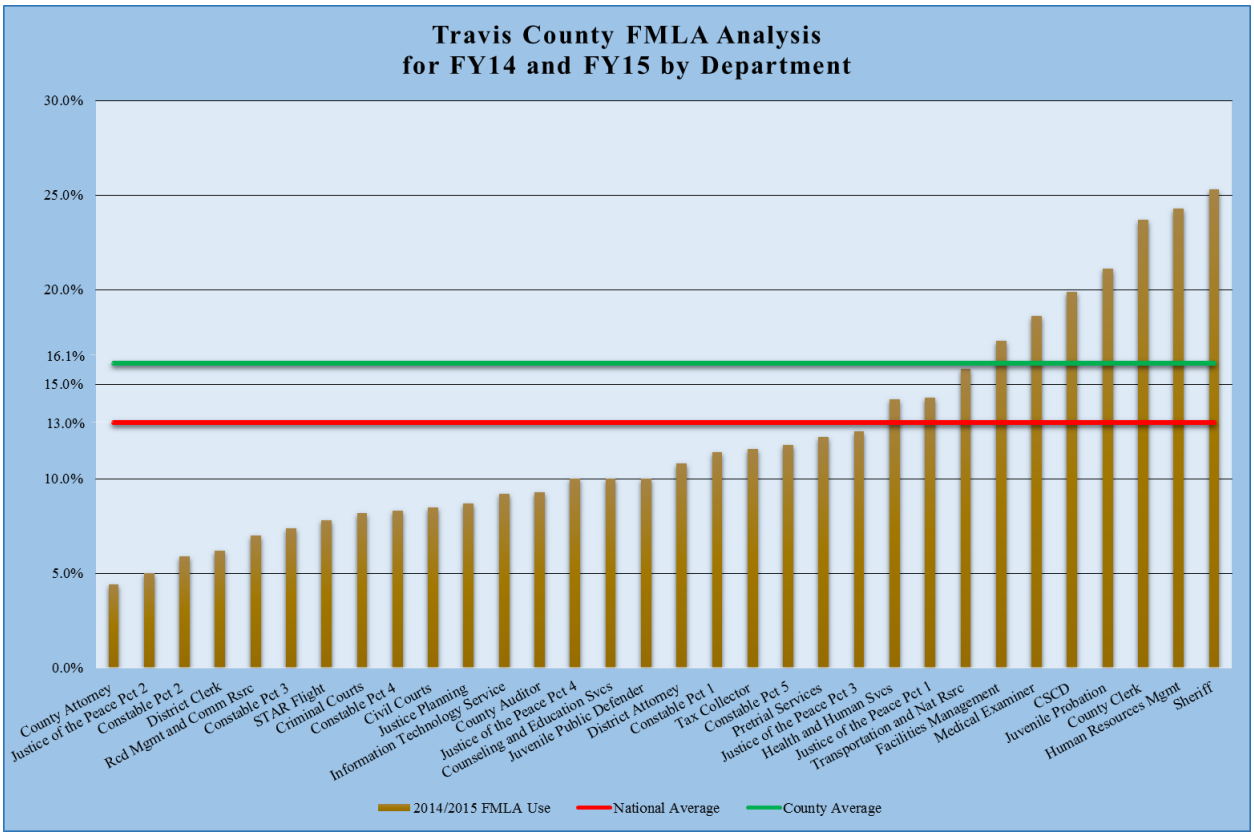
Second and Third Opinions

The second and third opinions are perhaps the most important compliance tool the employer has to identify misuse and abuse of FMLA leave. When employers ask for a second opinion, which varies from the first opinion, they must also follow up with a third opinion to confirm the results if the second opinion differs from the first. In Travis County Code 10.038, the County has adopted DOL best practices for obtaining second and third opinions as stated on the following page:

"(bb) Additional certification. Travis County may require a second opinion be obtained from a health care provider selected by Travis County, and at the county's expense. Should the first and second opinions vary, a third opinion may be sought from a mutually agreed upon provider, at the county's expense:"

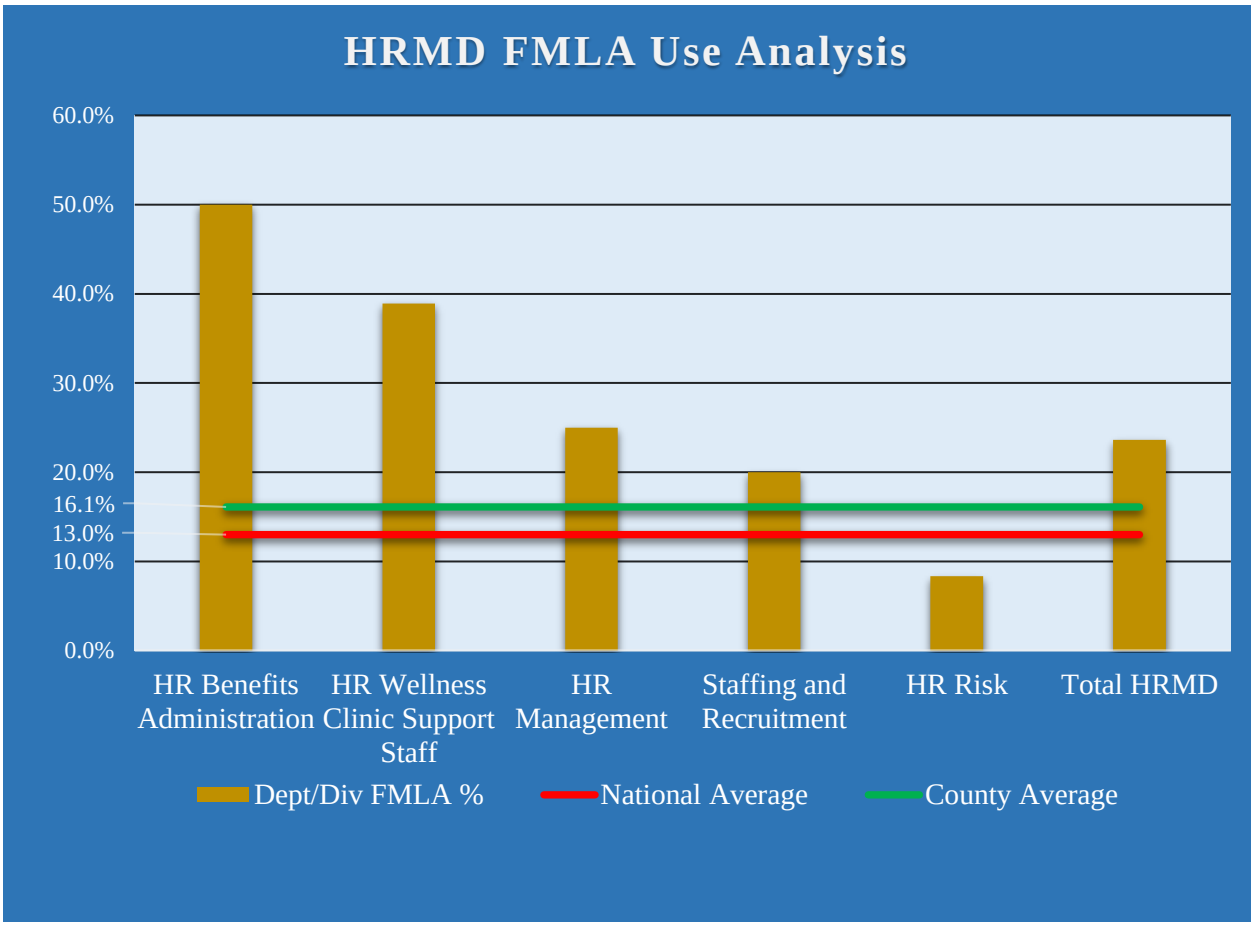
County-wide FMLA Rate Comparison

The chart below details FMLA utilization rates for County offices and departments across fiscal years 2014 and 2015. The red line illustrates the 2013 national average FMLA utilization rate of 13.0% provided by the Department of Labor. The green line represents the County's average FMLA utilization rate for the period of 16.1% that we calculated using the applicable data. We have performed FMLA reviews for the four entities with the highest FMLA utilization rates in this period.



HRMD FMLA Comparison

The graph on the following page represents the average number of FMLA leave events for fiscal years 2014-2015 for each division of HRMD, as well as the total for the entire entity. The national and County-wide average rates are illustrated in the same manner as in the previous graph. During the period, HRMD had an overall average FMLA utilization percentage of 23.6%, or 8.5 leave events for 36 employees.



FY16 Update

In FY16, HRMD's FMLA utilization percentage dropped to 7.9%, below the national average – a significant decrease from the examination period.

AREAS OF CONCERN

1. Failure to Provide FMLA Medical Certification

FMLA certifications are important in order to verify the reasonableness of the leave request, including the medical basis for the leave. In addition, the misuse/abuse of FMLA is more likely to occur if supervisors are not provided with sufficient information about an employee's leave, including the relevant start and end dates for the leave. For more information, see "Medical Certifications" in the Background Section beginning on page nine.

We reviewed all 15 HRMD leave events that occurred during fiscal years 2014 and 2015. Overall, one leave event did not contain a valid FMLA medical certification. The employee did not provide a medical certification completed by the health care provider (HCP), but rather obtained a note, which did not contain the adequate medically relevant facts to determine the presence of a qualifying event per the Act and CC 10.038. The following table details our findings:

Item #	Issues Noted	Issues Defined	Number of Findings	% of total Sample
1	Failure to provide certification	The employee failed to provide a medical certification as required by Travis County Code 10.038.	1	6.7%
	Total Findings		**1**	**6.7%**

Recommendations:

We recommend that in order to reduce the risk of abuse or misuse of FMLA, HRMD staff should assess the soundness of certifications and require second and third opinions, or a recertification, if there is reason to doubt a medical certification.

Management Response:

Based on the FMLA review performed by the Auditor's Office, HRMD has implemented additional review procedures to ensure that certifications are obtained and retained in all employee medical files in compliance with the Department of Labor (DOL) best practices and Travis County Code 10.038. In addition, HRMD has assisted the SAP Support Team in updating the SAP FMLA Workbench tool. This reporting tool provides leave administrators the ability to analyze the FMLA eligibility for employees and track the amount of hours used for FMLA for any time period. HRMD also provided the SAP Support Team with feedback on new SAP department administrator time reports that will aid in the monitoring and tracking of FMLA.

2. Incomplete FMLA Certification

Medical certifications should contain all medically relevant facts in order to ascertain if the individual has a qualifying event under the FMLA and to be in compliance with Travis County Code 10.038. FMLA misuse/abuse is more likely to occur when the HR staff does not receive

sufficient information to properly complete and review the medical certification. For more information, see "Incomplete certifications" in the Background Section beginning on page 11.

Overall, one (6.7%) FMLA medical certification was incomplete and did not contain the relevant medical facts in order to determine if the leave was a qualifying event as defined by the FMLA. This leave event is not valid or properly supported in accordance with CC 10.038. The following table details our findings:

Item #	Issues Noted	Issues Defined	Number of Findings	% of total Sample
1	Incomplete certification	When a medical certification is incomplete, the employer's HR staff should contact the employee's health care provider (HCP) to clarify the form.	1	6.7%
	Total Findings		**1**	**6.7%**

Recommendation:
We recommend that HRMD implement best practices to reduce the risk of abuse or misuse of FMLA leave. Specifically, if a medical certification is incomplete and/or insufficient, as defined by CC Section 10.038, HRMD staff should follow up with the health care provider to ensure that the leave is a qualifying event/serious health condition under the FMLA.

Management Response:
HRMD personnel have analyzed the issues highlighted in the FMLA review and have implemented improved procedures and Department of Labor (DOL) best practices to ensure medical certifications are complete, sufficient and in compliance with Travis County Code 10.038.

3. RECERTIFICATION

According to CFR Title 29, Section 825.308, there are many reasons for a change in FMLA circumstance. The most common issue we noted was that the original certification had a definitive timeline or schedule (generally an exact date or range of dates), and that this timeline had lapsed, or was significantly different than the leave that was actually taken, per CFR Title 29, Section 825.308. For more information, see "Recertifications" in the Background Section beginning on page 11.

We noted four (26.7%) FMLA medical certifications that should have been recertified, primarily because the employee's leave pattern had changed significantly in comparison with the treatment plan prescribed in the original medical certification. This should have warranted that human resources administration (HR) request a recertification. These four leave events are not valid or properly supported in accordance with CC 10.038. The table on the following page details our findings:

Item #	Issues Noted	Issues Defined	Number of Findings	% of total Sample
1	Recertification/Change in circumstance issues	A significant change in circumstance other than described by the certification has occurred, which should prompt the employer to request a recertification.	3	20.0%
2	a) Recertification/Change in circumstance issues and b) Second and third opinion issues	A significant change in circumstance other than described by the certification has occurred, which should prompt the employer to request a recertification. b) When an employer has reason to doubt the validity of a medical certification, they should obtain a second opinion (and a third as appropriate) at the employer's expense.	1	6.7%
	Total Findings		**4**	**26.7%**

Recommendation:
We recommend that HRMD implement best practices to reduce the risk of abuse or misuse of FMLA leave. Specifically, HRMD staff should work to ensure that supervisors and timekeepers are well informed and updated on FMLA leave certification periods, durations, and frequencies. If timekeepers and supervisors notice leave patterns significantly different than the certification, HR should request a recertification. They should also consider requiring second and third medical opinions if a reason exists to substantially doubt the leave is in accordance with FMLA guidance.

Management Response:
HRMD will continue to track and monitor FMLA leaves to ensure that medical certifications are recertified whenever substantial doubt exists or leave patterns are significantly different than the leave certified by the healthcare physician. Likewise, if situations arise where a second and third medical opinion should be obtained based on DOL guidance, HRMD will seek a mutually agreed provider's opinion at the County's expense. Also, HRMD will provide training and information updates to timekeepers and supervisors annually to reduce FMLA misuse and abuse.

4. WORKER'S COMPENSATION/FMLA

If an employee's on-the-job injury is a serious health condition as defined by the FMLA, the employee may qualify to take both worker's compensation benefits and FMLA leave concurrently – effectively "stacking" the two leave types.

A beneficial aspect of being on both leaves simultaneously are the additional employee benefits and protections provided by the FMLA, including continued employee health care coverage, and the restoration of employment positions. When an employee elects or an employer requires the

"stacking" of worker's compensation and FMLA leave, the employee is provided reinstatement rights and the employer effectively caps the total time that the employee can be out on leave and retain reinstatement rights. While an employee is on "stacked" leave, the County must still follow all FMLA-related requirements of the DOL as well as the compliance, notification, and documentation processes detailed in CC 10.038.

During our reviews of Juvenile Probation, HRMD and TCSO, we noted 12 "stacked" worker's compensation/FMLA leave events were not properly supported with a copy of the Eligibility Notice (Form WH-381 Part A) and the Rights & Responsibilities Notice (Form WH-381 Part B). According to Juvenile Probation and TCSO personnel, HRMD personnel informed them that these documents were not necessary for "stacked" leave. The following table details our findings:

Item #	Issues Noted	Issues Defined	Number of Findings
1	Worker's Comp Claim/FMLA – TCSO issues	We were unable to locate supporting FMLA documentation for the associated "stacked" in five instances from the period.	5
2	Worker's Comp Claim/FMLA – Juvenile Probation issues	We were unable to locate supporting FMLA documentation for the associated "stacked" in six instances from the period.	6
3	Worker's Comp Claim/FMLA – HRMD issue	We were unable to locate supporting FMLA documentation for the associated "stacked" in one instance from the period.	1
	Total Findings		**12**

Recommendation:
We recommend that HRMD implement the required procedures to ensure that all "stacked" leave complies with CC 10.038 and communicate to all relevant parties in the County.

Management Response:
HRMD Risk Management sent the following memo to all human resource liaisons on December 7, 2016:

> *"It has been brought to my attention by our Internal Audit Team that we are not in compliance with Travis County Policy concerning FMLA forms and workers compensation claims. Travis County Code 10.038 Family Medical Leave adopted August 5, 1993 as amended 2009 requires the completion of Department of Labor forms MW-381 (Notice of Eligibility and Rights) and MW-380 (Certification of Health Care Provider) or the Travis County equivalent forms when FMLA runs concurrently with workers compensation.*

County policy requires FMLA to run concurrently with workers compensation lost time immediately following the third full day of losing time if the employee qualifies under FMLA. The State DWC 73 form sometimes referred to as the work status report that is submitted and signed by the treating physician will satisfy the medical certification information needed for the completion of the MW-380 or County equivalent form without the need for the employee to submit the form to the physician for completion. The MW-381, MW-380 or County equivalents forms should be completed, a copy provided to the claimant and a copy retained in your departments file."

5. TRAVIS COUNTY CODE 10.038 AMENDMENT

Code Updates:

We performed a review of CC 10.038, which details Travis County's policy related to the Act. During the review, we noted that this code section had not been updated since March 9, 1999. Since that date, the DOL has issued a number of updates to how the Act is to be administered that are not reflected in CC 10.038. Some examples of pronouncements that effect FMLA administration issued since 1999 include the following:

1. The FMLA and the Americans with Disabilities Act of 1990, as amended in 2008

2. The FMLA and the Genetic Information Nondiscrimination Act of 2008 (GINA)

3. Qualifying Exigency Leave, the National Defense Authorization Act of 2008, as amended by the 2010 National Defense Authorization Act.

4. The Department of Labor's February 2008 "Notice of Proposed Rulemaking", which contains changes to FMLA regulations in response to several U.S. Supreme Court and lower court cases that invalidated portions of the then-current regulations.

Without being properly updated, the existing Travis County Code creates a high risk for discontinuity between the Act and Travis County's internal policies, increasing the possibility of improper or inconsistent handling of FMLA leave.

Funding for second and third opinions:

There is currently no reimbursement mechanism for costs incurred by employees in obtaining second and third opinions for medical certifications, if required to do so by County HR personnel. Per CC 10.038, these costs are to be paid by the County.

The second and third opinions on medical certifications are perhaps the most important compliance tool the employer has to ascertain misuse and abuse of FMLA leave. Because of this, a clear reimbursement process should be implemented to facilitate their use.

Recommendation:
We recommend that HRMD work with the Travis County Attorney's Office to fully update CC 10.038 for all relevant FMLA updates/changes implemented since March of 1999. We also recommend that HRMD work with the applicable County entities to develop a mechanism to pay costs related to second and third opinion requests for FMLA medical certifications.

Management Response:
HRMD personnel are currently working with the County Attorney's Office to update Travis County Code 10.038. We intend to update all outdated sections and replace them with the best practices of the Department of Labor (DOL), which protect the best interests of the Travis County taxpayers. Currently, we are projecting to amend this section prior to the end of fiscal year 2017.