

Program Evaluation and Audit

# **Family and Medical Leave Act (FMLA) Compliance and Administration**

Audit Committee 6/28/18



# Background

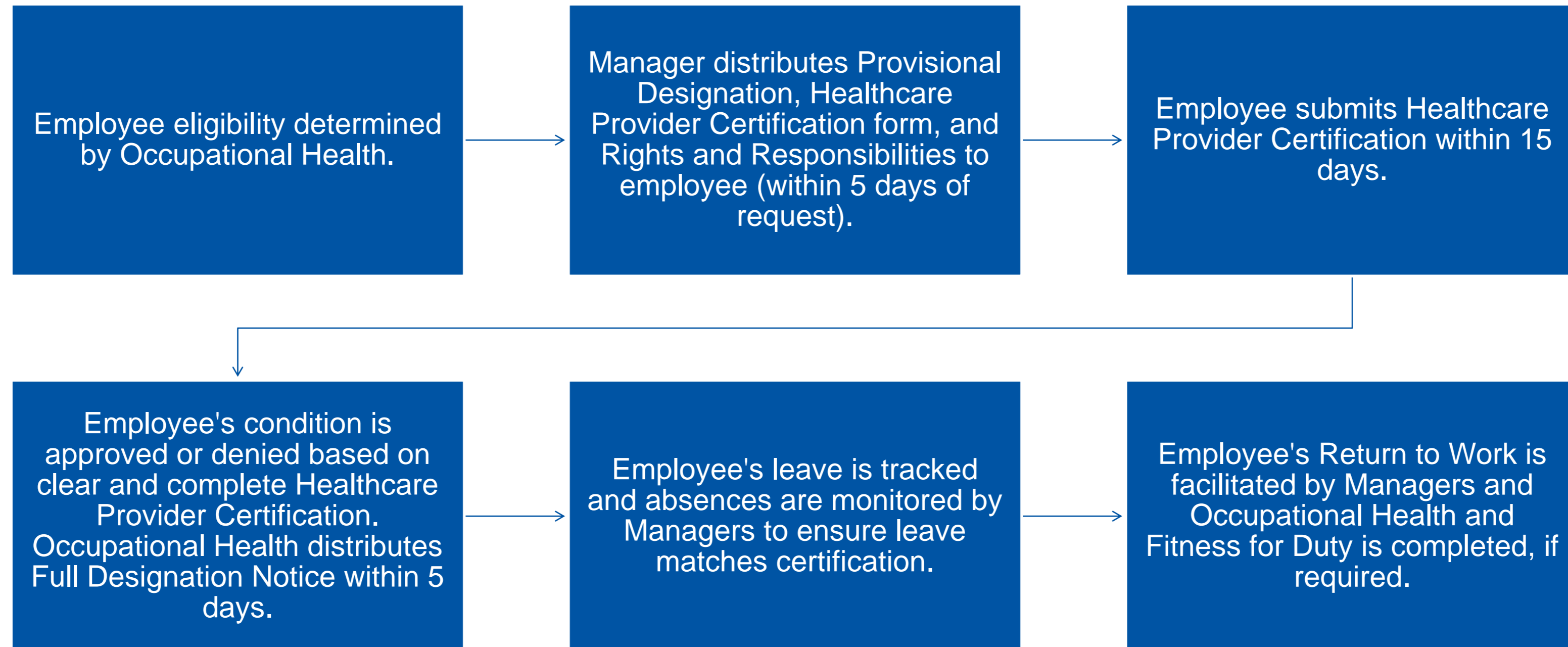
- Family and medical leaves should be provided in accordance with federal Family and Medical Leave Act (FMLA) laws and regulations.
- Intended to balance demands of workplace with needs of family and personal life by allowing employees to take reasonable unpaid leave for qualifying conditions.
  - Employee's Own Serious Health Condition
  - Birth of a Child or Placement of a Child for Adoption or Foster Care
  - Care of Immediate Family Member with Serious Health Condition
  - Care of Immediate Family Member Called to Active Duty in Armed Forces

# Background

- As public agency, Council must offer FMLA leave.
- FMLA requirements influenced by:
  - Federal Statutes
  - Fair Labor Standards Act (FLSA)
  - Americans with Disabilities Act (ADA)
  - Consolidated Omnibus Budget Reconciliation Act of 1986 (COBRA)
  - Workers' Compensation
  - Minnesota State Laws



# Background



# Purpose

Review the Council's FMLA policies and procedures and administration for compliance with FMLA requirements.

This audit also considered the Council's Thrive 2040 Outcomes and Principles. The provisioning of FMLA leave is reflected in Thrive 2040's desired outcomes of stewardship and equity. Thrive 2040's principles of integration, collaboration, and accountability should be reflected in the processing and administering of FMLA leave.

# Scope

- FMLA-related policies and procedures
- FMLA designation and use of FMLA leave at Council
- FMLA records and data from 2017



# Methodology

To ensure that FMLA administration and monitoring at the Council are compliant with FMLA requirements, this audit included:

- Review of:
  - Council’s FMLA policy and procedural documents and FMLA forms.
  - Council employees’ use of FMLA.
  - Council’s FMLA records.
  - Council’s timekeeping, time and attendance systems, as they related to FMLA.
  - Follow-up on the United States Department of Labor’s findings from 2013 review.
- Interviews with
  - Occupational Health staff.
  - Interview with the Council’s General Counsel.
  - Interviews with Environmental Services and Metro Transit staff.
  - Interviews with time and attendance system administrators at the Council.

# Observations

- Forms & Notices
- Processing & Tracking FMLA Leave
- Monitoring FMLA
- 2013 Department of Labor Review Follow-Up



# Observations: Forms & Notices

The Council's FMLA procedures, General Notice, Privacy Statement, Rights and Responsibilities Notice, and Full Designation Notice lack mandated FMLA information regarding employer and employee rights, requirements, and confidentiality.

# Observations: Forms & Notices

The Council's FMLA Procedure is missing key information regarding specific rights covered by FMLA.

## ***Recommendation: (Essential)***

*1.) The Council should update the FMLA Procedure to include disclosures of the employee's right to file complaints with the DoL, FMLA leave eligibility for bonding with a foster or adopted child, and the limitation of the employer to not interfere with an individual's FMLA rights.*

***Management Response:*** Human Resources implemented the Employee Resource Center (ERC), and HR will update FMLA Procedure accordingly.

***Thrive 2040 Principles:*** Accountability

# Observations: Forms & Notices

The privacy statement on the Healthcare Provider Certification lacks comprehensive language regarding the confidentiality of medical information.

***Recommendation: (Essential)***

*2.) The General Counsel should periodically review the privacy statement included on the Healthcare Provider Certification to ensure compliance with state and federal law and to protect the confidentiality of employees' medical information.*

***Management Response:*** *The privacy statement on the Healthcare Provider Certification will be periodically reviewed by the General Counsel.*

***Thrive 2040 Principles: Accountability***



# Observations: Forms & Notices

The Rights and Responsibilities Notice does not include disclosures of required Council and employee rights and responsibilities. Packets were missing disclosure of:

- the employee's right and/or requirement to substitute paid leave for unpaid FMLA leave;
- the employee's right to maintain benefits;
- premium payment requirements to maintain benefits; and
- details regarding how to make arrangements for insurance premium payments.

## ***Recommendation: (Essential)***

***3.) The Council should update forms to include disclosures of all rights and responsibilities essential for compliance with FMLA requirements.***

***Management Response:*** A rights and responsibilities document will be provided to employees notifying them of all rights and responsibilities under FMLA.

***Thrive 2040 Principles: Accountability***

# Observations: Forms & Notices

The Full Designation Notice does not notify employees how much leave time will be counted against the employee's FMLA entitlement.

***Recommendation: (Essential)***

*4.) The Council should update the Full Designation Notice to include information regarding how much leave will be counted against the employee's FMLA entitlement, as well as the right and/or requirement to substitute paid leave.*

***Management Response:*** *The Designation Notice will be revised to disclose amount of leave that will be counted against FMLA leave entitlement as well as the right and/or requirement to substitute paid leave.*

***Thrive 2040 Principles: Accountability***



# Observations: Forms & Notices

The Full Designation Notice does not include definitive language regarding whether an employee is required to complete a fitness for duty exam prior to returning to work.

## **Recommendations: (Essential)**

- 5.) The Full Designation Notice should be updated to explicitly state if an employee is required to complete a Fitness for Duty exam.*
- 6.) The Council should implement comprehensive tracking of employees requiring a Fitness for Duty exam to confirm employees are authorized to return to work, and that medical authorization is kept in the employee's FMLA file.*

**Management Response:** *The revised Designation notice will notify employees if they will be required to complete Fitness for Duty exam; ERC processes will ensure tracking of required Fitness for Duty exams to confirm they are completed before employees are returned to work.*

**Thrive 2040 Principles:** *Accountability*



# Observations: Forms & Notices

The Council does not have a Qualifying Exigency form.

## ***Recommendations: (Essential)***

*7.) The Council should create a form and update work instructions to account for Qualifying Exigency leave requests.*

***Management Response:*** *Occupational Health and the ERC will update work instructions for Qualifying Exigency leaves and has created a Leave of Absence form with adopted DoL language for Qualifying Exigency.*

***Thrive 2040 Principles: Accountability***

# Observations: Processes & Tracking

The systems used to process and track FMLA at the Council have limitations that complicate the administration of FMLA leave.

# Observations: Processes & Tracking

The Council's time management systems have limited functionality for tracking and documenting leave as mandated by FMLA requirements.

## ***Recommendations: (Essential)***

**8.)** *Going forward, the Council should review FMLA entries to confirm systems tracking FMLA absences only include leave entries connected to an active FMLA certification number.*

***Management Response:*** *Occupational Health will work with Information Services and the Council's PeopleSoft team to determine feasibility of using PeopleSoft to track FMLA leave usage. The feasibility analysis is underway.*

***Thrive 2040 Principles: Accountability***



# Observations: Processes & Tracking

The Council's time management systems do not limit the number of FMLA hours that can be entered on an employee's record, allowing employees to exceed the covered FMLA leave.

## **Recommendations: (Essential)**

*9.) The Council should regularly review for employees who have used more than 12 workweeks and make corrections to leave incorrectly classified as FMLA until the iDash system is fully operational.*

*10.) The Council should create work instructions and a process for employees that have been provisioned more than 12 workweeks of FMLA leave. The work instructions must include directions to ensure that for all FMLA leave exceeding 12 workweeks, leave is reclassified to assure all employees are equitably limited to the max of 12 workweeks of FMLA leave.*

**Management Response:** *Occupational Health will review and correct leaves for six employees who were observed to exceed 500 hours of FMLA. The ERC will manually track leaves and make corrections as needed to confirm leaves do not exceed allowable leave under FMLA until the outcome of PeopleSoft feasibility analysis.*

**Thrive 2040 Principles:** *Accountability*

# Observations: Processes & Tracking

The iDash system requires a leave begin date to properly calculate an employee's eligibility; however, the iDash FMLA packet does not require leave dates to be entered.

## ***Recommendations: (Essential)***

*11.) The iDash FMLA packet should be updated to require leave begin date entry to ensure the iDash system correctly calculates eligibility status.*

***Management Response:*** *The Council will replace the iDash FMLA packet with a Leave of Absence Request form and ERC staff will confirm FMLA eligibility.*

***Thrive 2040 Principles:*** *Accountability*



# Observations: Processes & Tracking

The FMLA statistics produced by Occupational Health may miscommunicate FMLA leave request information at the Council.

## ***Recommendations: (Significant)***

***12.) Occupational Health should define the methodology used to calculate FMLA statistics and include it in the year end service review report.***

***Management Response:*** Occupational Health will access the PeopleSoft query used to process FMLA statistics, define and draft new methodologies, and draft new reporting metrics to be included in the report.

***Thrive 2040 Principles: Accountability***



# Observations: Monitoring

The processes used to monitor FMLA at the Council are complex and require coordination amongst several individuals and departments, leading to inconsistent monitoring of FMLA.

# Observations: Monitoring

The Council is missing documented proof that leave requests are processed within the required timeline for processing FMLA requests and notifications.

## ***Recommendations: (Essential)***

***13.) Occupational Health should adopt a procedure to consistently document and date each FMLA receivable to ensure the Council can confirm the date FMLA documents are sent and received.***

***Management Response: The ERC has established work instructions to document the date each FMLA documents are sent and received***

***Thrive 2040 Principles: Accountability***

# Observations: Monitoring

There is not consistent documentation of FMLA notices in the Council's FMLA employee files.

## ***Recommendations: (Essential)***

*14.) The Council should update procedures to ensure employees are receiving all required notices and that such notifications are properly documented in the employee's FMLA file. This may include creating a Rights and Responsibilities Notice that is sent to employees along with all other notices and documented in the FMLA file.*

***Management Response:*** *The ERC has revised forms, processes, and work instructions to ensure required notices are sent, documented, and stored in the employee's FMLA file.*

***Thrive 2040 Principles:*** *Accountability*



# Observations: Monitoring

The Council does not currently have a process in place for obtaining second opinions.

## ***Recommendations: (Essential)***

***16.) The Council should develop a written second opinion process and ensure future selection processes do not include the use of regular providers and meets the requirements of the 2013 DoL Compliance Agreement.***

***Management Response: In consultation with the General Counsel's office, work instructions will be revised to ensure processes for obtaining second opinions comply with the 2013 DoL Compliance agreement.***

***Thrive 2040 Principles: Accountability***

# Observations: Department of Labor Review Follow-Up

The Wage and Hour Division of the DoL visited the Council in 2013 to review the Council's FMLA compliance.

## **Recommendations:**

*17.) The Council should reinstate the training on administering and monitoring FMLA leave to ensure consistent implementation and that all requirements by the Department of Labor are being met. **(Significant)***

*18.) The Council should update training once iDash is launched to ensure all FMLA administration and monitoring training includes information on iDash tasks required of managers. **(Essential)***

**Management Response:** Occupational Health and LOD will update FMLA training and require the training be taken every two years.

**Thrive 2040 Principles:** Accountability



# Conclusion

- Not able to confirm full compliance with FMLA employer notification requirements.
- Time and attendance systems make it difficult to maintain sufficient records required by FMLA.
- Gaps in current process to monitor FMLA leave.
- Consistent administration and equitable leave provision support Thrive 2040 outcomes of stewardship and equity.