

FAMILY AND MEDICAL LEAVE ACT (FMLA) COMPLIANCE AND ADMINISTRATION

PROGRAM EVALUATION AND AUDIT



**METROPOLITAN
COUNCIL**

June 2018

INTRODUCTION

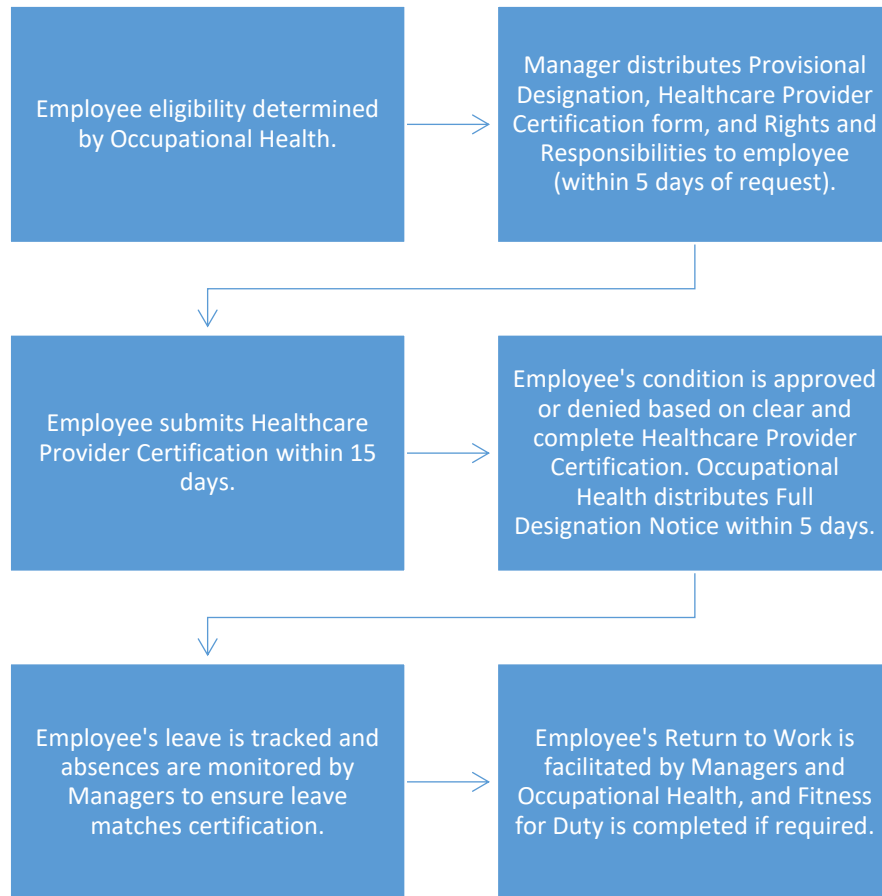
Background

The Metropolitan Council (the Council) provides family and medical leave in accordance with the federal Family and Medical Leave Act (FMLA) laws and regulations. The purpose of FMLA, as described by the United States Department of Labor (DoL), is to help balance the demands of the workplace with the needs of family and personal life by allowing employees to take reasonable unpaid leave for qualifying conditions. FMLA qualifying conditions include: an employee's own serious health condition; the birth of a child or placement of a child for adoption or foster care; care of an immediate family member who has a serious health condition; and care of an immediate family member who is called to active duty in the Armed Forces. The Council—as a public agency—is considered a covered employer that must offer FMLA leave. FMLA requirements of covered employers are influenced by federal statutes, including the Fair Labor Standards Act (FLSA), the Americans with Disabilities Act (ADA) and the Consolidated Omnibus Budget Reconciliation Act of 1986 (COBRA). Workers compensation statutes also affect employer's compliance with FMLA, and some Minnesota state laws have been enacted concerning family and medical leaves.

The FMLA entitles eligible employees to take unpaid leave, while creating specific expectations and obligations for covered employers. Employers must provide employees with a general notice about FMLA. If an employee has or might have a FMLA-qualifying condition, employees must be notified of their eligibility status and rights and responsibilities. When an employee requests FMLA leave, an employer must notify them whether their specific leave is designated as FMLA and the amount of time that would count against their FMLA leave entitlement.

FMLA leave must be provided to eligible employees. FMLA requirements state that to be eligible for leave, an employee must have worked 1,250 hours for an employer's designated 12-month period. At the Council, Occupational Health (OH) is responsible for determining whether a condition is FMLA qualifying, based on a Healthcare Provider Certification. OH oversees FMLA eligibility reviews and leave designations. The employees' manager provides support to OH in determining if an employee is eligible for FMLA leave and assists in facilitating the employee's return to work. Per Council policy, OH and managers are tasked with managing leaves to confirm compliance with the federal law. FMLA regulation emphasizes recordkeeping and notifying employees of their rights under the law. FMLA requires specific information to be recorded and maintained on individuals who take FMLA leaves and leave data is subject to DoL audit.

Figure 1. The FMLA process, as outlined by the FMLA requirements, begins with determining an employee’s FMLA eligibility and ends with a review of an employee’s condition to confirm if the employee is able to return to work, or if reasonable accommodations may be required.



Purpose

The purpose of this audit was to 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

The scope of this audit includes FMLA-related policies and procedures, as well as the designation and use of FMLA leave at the Council. This audit also examined 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 the Council's FMLA policy and procedural documents.
- Review of the Council's FMLA forms.
- Review of Council employees' use of FMLA.
- Review of the Council's FMLA records.
- Review of the Council's timekeeping, time and attendance systems, as they related to FMLA.
- Follow-up on the United States Department of Labor's findings from 2014 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.

Assurances

This audit was conducted in accordance with the Institute of Internal Auditors' International Standards for the Professional Practice of Internal Auditing and the U. S. Government Accountability Office's Government Auditing Standards.

OBSERVATIONS

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

The FMLA requirements state employers must provide employees with critical notices of eligibility status, rights and responsibilities, and FMLA leave designation. The DoL provides template forms to assist employers in meeting notification requirements. To simplify required notification forms, the Council has created streamlined notice documents. These forms comprise what is referred to as the Council's FMLA packet. Though the template forms provided by the DoL are not always clear or straightforward, all employer documents must include certain notifications required by the FMLA. Omitting the required language puts the Council at risk for not providing employees with important information required for FMLA compliance.

Audit found the Council uses two distinct FMLA packets – one that is generated in iDash, a workforce administration tool used by Metro Transit and another that is generated via the Council's intranet, MetNet. The iDash packet was developed to create system generated FMLA eligibility reviews for bus operators and is separate due to the need to calculate eligibility based off information contained in Transit's time management system. The MetNet packet requires manual reviews for FMLA eligibility by supervisors. Though generally the same, differences exist in the language and structure of the two FMLA packets.

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

The FMLA requires employers to display a general notice to employees about FMLA. The general notice must also be provided to employees in writing, which can be done either electronically or in an employee handbook. Audit found the Council does display the DoL's FMLA poster and electronically posts the FMLA Procedure, to distribute the general notice. The general notice provided is missing certain required information including disclosures of: the right to file complaints with the DoL; FMLA leave eligibility for bonding with a foster or adopted child; and the limitation of employer to not interfere with an individual's FMLA rights. Without disclosure of these rights in the general notice, the Council's notice is out of compliance with FMLA requirements.

Recommendation

- 1. (Essential) 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:** On June 1, 2018, Human Resources implemented the Employee Resource Center (ERC) which is a unit responsible in part, for processing employee FMLA requests in a lawful, timely and consistent manner. The FMLA Procedure will be revised to include missing required disclosure information.*

***Staff Responsible:** Connie DeVolder, Deborah Aebi*

***Timetable:** September 28, 2018*

***Thrive 2040 Principles:** Accountability*

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

The Council has created its own provisional FMLA leave designation notice, which is attached to the Healthcare Provider Certification in the FMLA packet. Per the FMLA and other state and federal rules, the healthcare information shared on the certification must be kept confidential. The Health Insurance Portability and Accountability Act (HIPAA) Privacy rule states employees must provide their healthcare provider with written authorization saying the provider can share individually-identifiable health information with the employer on a need to know basis. The Council's certification does include a privacy statement, but the statement lacks comprehensive language regarding the confidentiality of medical information. Audit consulted with the Council's General Counsel who confirmed the privacy statement had not been reviewed to consider FMLA and other federal and state legal requirements. The General Counsel confirmed, as departments Council-wide request data and have access to certain FMLA information, it would be good to review the privacy statement language. Without periodic legal reviews of the privacy statement, it is difficult to ensure compliance with state and federal law and protect confidential medical information.

Recommendation

- 2. (Essential) 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: *Employees will be provided with Healthcare Provider Certification forms that include the privacy statement to ensure compliance with state and federal law and to protect the confidentiality of employee's medical information that are reviewed periodically by the General Counsel.*

Staff Responsible: *Connie DeVolder, Deborah Aebi*

Timetable: *July 31, 2018*

Thrive 2040 Principles: *Accountability*

The Rights and Responsibilities Notice does not include disclosures of required Council and employee rights and responsibilities.

The Rights and Responsibilities Notice is included on the Council's provisional designation notice, which is part of the FMLA packet. FMLA requirements state employers must provide a notice to employees including disclosure of the FMLA rights and responsibilities. Audit found in simplifying the Rights and Responsibilities Notice, the iDash packet is 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. Additionally, the MetNet packet is missing: a disclosure of the right and/or requirement to substitute paid leave; and details regarding arrangements for making premium payments. It is important for the Council to explicitly state the employee's rights and responsibilities, as not providing employees with definitive requirements can lead to the perception that Council's administration of FMLA is not equitable. Not including premium payment requirement language can also compromise the Council's ability to collect premium payments.

Recommendation

- 3. (Essential) 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 each employee with a FMLA-qualifying leave of absence. This form will notify the employee of his/her rights and responsibilities under the Family Medical Leave Act of 1993.*

Staff Responsible: *Connie DeVolder, Deborah Aebi*

Timetable: *July 31, 2018*

Thrive 2040 Principles: *Accountability*

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

After the employee has provided the employer enough information to determine whether their leave request is FMLA-eligible, FMLA requirements state employers are to provide a Full Designation Notice to an employee stating whether the leave is FMLA-qualifying. If the Council knows how much leave is needed, they must notify the employee of how much time will be counted against the employee's FMLA entitlement. The Full Designation Notice must also include whether the employee is required to substitute paid leave. In reviewing the Council's Full Designation Notice, Audit found the notice to very clearly provide certain information to employees. However, the Full Designation Notice does not inform employees how much time will be counted against their FMLA entitlement and does not include language about requirements for substituting paid leave. This puts the Council at risk for not fully informing employees of their rights. Additionally, the Council risks inequitably notifying only some employees of their remaining leave and not notifying all employees of their remaining leave.

Recommendation

- 4. (Essential) 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 and provided to each employee with a FMLA-qualifying Leave of Absence to notify the employee, at the time the leave is designated, the amount of leave that will be counted against the employee's FMLA entitlement, as well as the rights and/or requirements to substitute paid leave if available.*

***Staff Responsible:** Connie DeVolder, Deborah Aebi*

***Timetable:** July 31, 2018*

***Thrive 2040 Principles:** Accountability*

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.

When an employer designates an employee's leave, FMLA requirements state the employee should be notified if they will be required to complete a fitness for duty exam prior to returning to work. Audit reviewed the fitness for duty exam language included in the notice with the Council's General Counsel and identified a lack of clarity around whether an employee would be required to complete an exam prior to returning to work. The Council's designation notice currently states that we "may or may not require a Fitness for Duty exam." Current forms and processes make it difficult to track which employees require an exam. The exam requirement is affected by Department of Transportation recovery time requirements for certain conditions, as well as limitations specific to the condition. The General Counsel suggested revisiting the exam requirement language to explicitly state that the employee will require an exam.

Occupational Health will send the manager an email if the employee requires a fitness for duty exam. The manager is then responsible for making a note on the employee's record reflecting

the requirement. This prevents the employee from being scheduled and returning to work without following up with the manager. However, Audit found that not all managers read the designation emails, which means fitness for duty notes within the system may not be recorded. Audit learned OH used to run regular reports on individuals on leave requiring a fitness for duty exam, however, this is no longer in practice. Finally, Audit observed that completed fitness for duty paperwork was not always maintained in the employee's FMLA file. By not comprehensively tracking and documenting an employee's fitness for duty requirement, the Council cannot confirm the safety of employees returning to work. This puts the Council at risk of returning an employee to work before they are ready and specifically returning a bus operator to work that is not DOT compliant.

Recommendations

- 5. (Essential) The Full Designation Notice should be updated to explicitly state if an employee is required to complete a Fitness for Duty exam.**

Management Response: *The revised Designation Notice will be provided to each employee with a FMLA-qualifying Leave of Absence, to notify the employee at the time the FMLA-qualifying leave is designated if they are required to complete a Fitness for Duty exam prior to returning to duty.*

Staff Responsible: *Connie DeVolder, Deborah Aebi*

Timetable: *July 31, 2018*

Thrive 2040 Principles: *Accountability*

- 6. (Essential) 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 ERC provides information to employees on an approved FMLA leave regarding their responsibilities while on a leave, which includes any requirement to submit to a Fitness for Duty exam prior to returning from leave. The ERC documents the expected return date for each employee on leave and tracks any requirement for a Fitness for Duty exam prior to the employee's return from leave. Occupational Health is responsible for arranging Fitness for Duty exams for employees on approved leaves. Employees may not return from an approved leave of absence until approved for a return to duty by Occupational Health.*

Work instructions will be revised to include procedures used by the ERC to track FMLA leaves to ensure that employees are not returned to duty without a Fitness for Duty exam.

Staff Responsible: *Connie DeVolder, Deborah Aebi*

Timetable: *July 31, 2018*

Thrive 2040 Principles: *Accountability*

The Council does not have a Qualifying Exigency form.

FMLA requires employers to have forms for all FMLA-qualifying leaves. Audit found there is not a form for employees requesting leave for a qualifying exigency leave. While the Council does not receive many requests for a qualifying exigency leave, this qualifying condition does have unique notification and documentation requirements. It is important to have forms and a written process in place, so all FMLA-qualifying requests are processed accurately, timely, and in an equitable manner.

Recommendation

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

***Management Response:** ERC and Occupational Health work instructions will be revised to include instructions on how to process Qualifying Exigency leaves. Additionally, the Council has created a new Leave of Absence Request form that has adopted the DoL language for Military Exigency and Military Caregiver Leave.*

***Staff Responsible:** Connie DeVolder, Deborah Aebi*

***Timetable:** September 28, 2018*

***Thrive 2040 Principles:** Accountability*

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

FMLA requires employers to maintain specific records in accordance with the Code of Federal Regulations Title 29, §825.500. These records include:

- Basic payroll and identifying employee data.
- Dates FMLA leave is taken by FMLA eligible employees.
- Copies of employee notices of leave furnished to the employer under FMLA.
- Any documents describing employee benefits or employer policies regarding the taking of paid and unpaid leaves.
- Premium payments of employee benefits.
- Records of any dispute between employer and eligible employee regarding designation of leave as FMLA leave.

The systems being used to track time and attendance at the Council are relied upon to record dates FMLA leave is taken, as well as hours worked. An employee is entitled to up to 12 workweeks of FMLA leave. An employee's leave is based on their workweek. FMLA leave entitlements can be tracked by hours or workweeks. An employee who works 40 standard hours each week would be entitled to up to 480 hours, or 12 workweeks. The Council's business units have different needs for their workforce, which has resulted in several workforce administration systems being used to track time and attendance and ultimately maintain these required records. The various systems used have complicated absence management and FMLA tracking. In making workforce administration systems into timekeeping systems, Council divisions have created updates to their own systems, adding leave tracking functionality to

assist in the administration of FMLA leaves. Even with system updates, system limitations exist. Not all systems have report functionality to organize FMLA leave entries and easily track leave usage by workweek or hours taken. All systems rely upon the manager to manually classify an absence as FMLA leave, but not all systems link to PeopleSoft to confirm the leave entry matches to an approved FMLA certification. These system limitations create challenges in determining employee eligibility and FMLA leave usage. This has also limited the data validation work Audit was able to do in this audit.

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

The time management systems used by Regional Administration (TxBase) and Metro Transit (TxBase and Hastus) were not made to track time but have been adapted to do so. For an FMLA absence to be properly recorded, an active FMLA certification number (designated at the time of approval) must be manually attributed to an employee’s absences by their manager. For the FMLA absence from Hastus to be properly uploaded into to the system created to monitor FMLA leaves (DataServ), an active FMLA certification number must be attributed to the absence. The Council is required to maintaining sufficient records of FMLA leave taken. Without comprehensive tracking, there is a risk of not maintaining sufficient FMLA payroll records, as required by FMLA. The Council has created workarounds for the time management systems to track FMLA leaves, yet there are still tracking issues that exist. Audit learned that one of the Metro Transit time management systems (Hastus) is not able to validate that FMLA certification numbers are active; this means if an invalid or inactive FMLA certification number for their employee’s absence, the FMLA leave usage is not uploaded and tracked.

Recommendation

- 8. (Essential) Going forward, the Council should review FMLA entries to confirm that the 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 the feasibility of using PeopleSoft as the system of record for tracking FMLA use. This feasibility analysis is underway.*

***Staff Responsible:** Connie DeVolder, Deborah Aebi*

***Timetable:** December 31, 2018*

***Thrive 2040 Principles:** Accountability*

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.

Audit learned that if a manager enters an invalid or inactive FMLA certification number for their employee’s absence in Hastus, the FMLA absence will not upload to DataServ, an FMLA reporting system for Metro Transit. Additionally, DataServ does not have the ability to restrict FMLA leave entries to 12 workweeks, which increases the risk that employees exceed the amount of leave covered by FMLA. Audit reviewed bus operators with zero or fewer hours remaining of FMLA in 2017 and validated the leave hours taken. In 26 of the 33 leaves,

operators had used more than 12 workweeks of FMLA, while the remaining seven operators used exactly 12 workweeks. OH explained they have worked with managers to approve FMLA absences for a complete shift, even if they only have enough FMLA to cover part of the shift. This allowance accounts for some of the operators who have exhausted their FMLA leave. However, six of the 33 operators exceeded 12 workweeks without a clear workweek explanation as to why they were afforded 500+ hours of FMLA (or more than the average maximum FMLA leave of 480 hours). Some of the leave records indicated the operators had been informed they would soon exhaust their FMLA hours, while other records had no indication of such communication with the employee. While the Council is permitted to be more generous than the law, an employee's FMLA leave entitlement is limited to up to 12 workweeks during any 12-month period, for a full-time employee. Time and attendance systems must correctly log FMLA leave to comply with FMLA record keeping requirements. Not having system rules that create a maximum leave threshold puts the Council at risk for not equitably limiting all employees to only the covered 12 workweeks of leave. While the Council has allowed some bus operators to exceed 12 workweeks of FMLA leave, it cannot be confirmed what the maximum covered leave was for these employees or that other employees leave entitlements have been equitably calculated when their covered FLMA leave exceeded the average 480-hour FMLA leave entitlement. If the Council is going to allow employees to exceed 12 workweeks of FMLA leave, it is critical that there are guidelines for doing so to ensure the leave, whether or not it is FMLA, is provided in an equitable manner to all employees. The iDash system is expected to create a system limitation for the amount of FMLA leave that can be awarded to an employee and allow managers to review and update all leave entries to confirm valid, approved FMLA certifications are attributed to all FMLA leaves.

Recommendation

- 9. (Essential) 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.**

***Management Response:** The upgrade from Hastus to iDash will trigger an automated response when FMLA hours exceed an approved FMLA-qualifying leave when it becomes operational on June 27, 2018. However, it is important to note that the proposed iDash solution impacts FMLA leaves for Transit bus operators, train operators and bus maintenance staff.*

There is not an automated system available to track FMLA hours worked and FMLA hours used across the Council, apart from operators and maintenance staff. Occupational Health will work with Information Services and the Council's PeopleSoft team to determine the feasibility of using PeopleSoft as the system of record for FMLA use. This feasibility analysis is underway.

With respect to employees who have used more than 12 workweeks of FMLA time, effective June 1, 2018 the ERC documents the proposed return date for each employee on leave and monitors proposed return dates for employees on approved leaves. Employees may not return from an approved leave of absence until approved for reinstatement by Occupational Health. At any given time, the status of each employee leave is known, and managers are notified if an employee is unable to return from a FMLA-qualifying leave. In such instances, the ERC closes the leave of absence and the employee is transitioned to Occupational Health for either an ADA reasonable accommodation, or an extension of medical leave which initiates the Medical

Disqualification process, whichever is appropriate. Occupational Health will review and correct the leaves for the six employees who exceeded 500 hours of FMLA, as required.

Work instructions will be revised to include procedures to track leave of absences, and to notify management and Occupational Health when an employee does not return to duty after a FMLA-qualifying leave as scheduled.

Staff Responsible: *Connie DeVolder, Deborah Aebi*

Timetable: *December 31, 2018*

Thrive 2040 Principles: *Accountability*

- 10. (Significant) The Council should create a work instruction and a process for employees that have been provisioned more than 12 workweeks of FMLA leave. The work instruction should 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: *Work instructions will be created for Occupational Health on how to reclassify FMLA leave exceeding 12 weeks.*

Staff Responsible: *Connie DeVolder, Deborah Aebi*

Timetable: *December 31, 2018*

Thrive 2040 Principles: *Accountability*

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.

The Council relies upon its time and attendance systems to confirm employee FMLA eligibility by confirming the employee: has worked 1,250 hours in the last 12-months; has been employed by the Council for at least 12 months; and has used less than 12 weeks of FMLA leave in the last 12 months. Time management systems are also used for tracking FMLA leave taken. Audit collected and analyzed several sources of data to confirm the reliability of FMLA data management. While Audit found most of the data sources to be reliable, there is an issue in determining an employee's eligibility when using the iDash FMLA packet. iDash calculates employee hours worked to ensure they meet the FMLA eligibility requirements, and then generates eligibility status for each of the three eligibility criteria on the iDash FMLA packet. Audit reviewed what hours were used in the iDash eligibility calculation and did not identify any issues. However, iDash does not require entry of the "leave begin date" field when generating the FMLA packet for initial eligibility reviews. For the system to properly check eligibility, the leave begin date must be entered to calculate 12 months back from the leave begin date. In testing, Audit identified one employee that was initially designated as ineligible without providing a reason as to why. This happened because iDash used the date the packet was run given the empty "leave begin date" field to calculate whether the employee had worked the required hours within the past 12 months. While this employee's eligibility was corrected, it is important that employees' eligibility is properly calculated to ensure no employee is incorrectly denied FMLA leave.

Recommendation

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

Management Response: *Currently when an employee has a need for FMLA leave, a manager in Metro Transit prints out the iDash FMLA packet for the employee and submits it to Occupational Health. Occupational Health submits the packet for processing according to established guidelines by the ERC.*

The Council will institute the use of a Leave of Absence Request form that managers will provide to employees that request a leave of absence or will be absent more than three consecutive calendar days. This form will replace the iDash FMLA packet and ERC staff will confirm eligibility.

Work instructions will be revised to include the replacement of the iDash FMLA Packet with a Leave of Absence request form.

Staff Responsible: *Connie DeVolder, Deborah Aebi*

Timetable: *July 31, 2018*

Thrive 2040 Principles: *Accountability*

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

Occupational Health calculates and produces FMLA statistics each year for HR's year end service review report, which is intended to be shared internally with business units. Statistics include the number of FMLA approvals, denials, leave revisions and extensions, incomplete requests, and the number of required 2nd/3rd opinions. Audit reviewed the data on FMLA request calculations and was able to confirm the statistics produced. However, Audit found the statistics are not consistently updated to reflect the fluidity of the FMLA designation process. Rather, the statistics are presented as static actions each month. For example, if an employee is initially denied in January based on not having worked enough hours to be FMLA-eligible and submits a request in February once they have worked enough hours, the FMLA request would be counted twice (once as a denial in January and once as an approval in February). Audit found the service review report does not define the methodology used to calculate the statistics, which presents the data out of context. Without clearly communicating our metrics in calculating statistics, the Council risks underrepresenting the workload of OH and miscommunication of potential trends or patterns in FMLA requests across the Council.

Recommendation

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

Management Response: *The Occupational Health unit will assess the data gap in the current PeopleSoft query used to calculate the FMLA statistics, define and draft new methodologies to include: 1) identification of gaps in current reporting; 2) rewrite the*

query used to calculate statistics; 3) draft new reporting metrics to be included within the report.

The Occupational Health team will establish the new methodology, obtain feedback from Program Evaluation staff and pilot the solution to ensure accuracy of data provided.

Staff Responsible: Connie DeVolder, Deborah Aebi

Timetable: December 31, 2018

Thrive 2040 Principles: Accountability

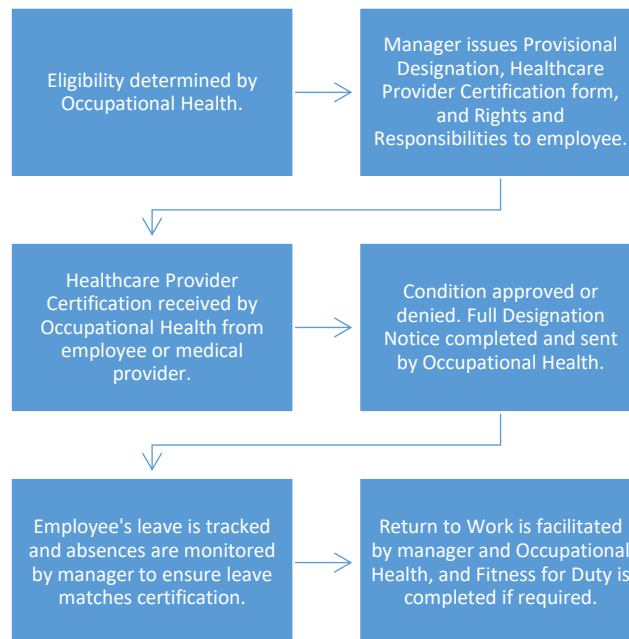
The processes used to monitor FMLA at the Council are complex and require coordination amongst several individuals and departments, leading to inconsistent monitoring of FMLA.

FMLA requirements outline specific processes for monitoring and documenting FMLA leave. As discussed above, OH is responsible for determining whether a condition is FMLA-qualifying and oversees FMLA eligibility reviews and leave designations. The employees' manager provides support to OH in determining if an employee is eligible for FMLA leave and assists in facilitating the employee's return to work. Recognizing the limitations in technology and the complexity of monitoring FMLA at the Council, Audit conducted a review of 30 FMLA leave requests across the Council to test the processing of FMLA notifications and documentation. Through this review, Audit identified several weaknesses in the FMLA monitoring process at the Council.

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

FMLA mandates response deadlines for employers throughout the process of designating FMLA leaves. The employer is responsible for notifying employees of their provisional FMLA designation (referred to as the Eligibility Notice by the DoL) within five business days of having notice of or identifying the employee's need for FMLA leave. The employee then has 15 days to return their healthcare provider certification form, absent unusual circumstances. Upon receipt of the healthcare provider certification form, the employer has five business days to request additional information if the certification is found to be incomplete or insufficient. Once the employer has received clear and sufficient information regarding the employee's condition. The employer has five business days to provide the employee with a full designation notice identifying if the condition is FMLA-qualifying.

Figure 2. The FMLA process is complex and involves several departments at the Council.



In a review of sampled leave requests, Audit tested whether employees received their provisional and full FMLA designation within the required timeframe. Audit found not all FMLA files contained documented proof that employees were notified within five business days if their leave was designated as FMLA-qualifying. Occupational Health has difficulty establishing the day a form is received, because documents are submitted to OH in a variety of ways. For example, a healthcare provider certification may be mailed, faxed, or electronically delivered. The processes in place for distributing and receiving FMLA forms do not provide a date stamp that can be used to establish that leave designations and other notifications were issued within the required timeline. While Audit did not find that any employee was wrongly denied FMLA, not consistently dating records limits the ability to confirm compliance with the mandated notification timeline.

Recommendation

- 13. (Essential) 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 consistently, timely and accurately document and date each FMLA receivable to ensure the Council can prove the date FMLA documents are sent and received. Moreover, the ERC uses an electronic database to log the date and method of submission for each FMLA-document sent to and received by employees requesting FMLA leave. This methodology serves to confirm the date FMLA documents are sent to and received by employees requesting FMLA leave.*

Work instructions will be updated to document each step associated with an FMLA leave including the date each FMLA receivable is sent and received to ensure the Council can confirm compliance with DOL requirements.

Staff Responsible: *Deborah Aebi, Connie DeVolder*

Timetable: *July 31, 2018*

Thrive 2040 Principles: *Accountability*

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

FMLA requires the Council to maintain thorough FMLA employee files. Audit tested these records across the sample of 30 FMLA leave requests and found a lack of consistency in FMLA notification documentation. While the iDash packet is automatically imaged into the employee's FMLA record, the MetNet packet must be printed and either sent to Occupational Health or scanned by the manager to be recorded in FMLA records. The extra steps required make it difficult to maintain MetNet FMLA documentation, which increases the risk of not maintaining sufficient records.

As Audit reviewed the sampled leaves, FMLA records were tested to ensure employees received the required FMLA Rights and Responsibilities notification. Audit found that in several cases, an employee would not receive required FMLA information if they did not receive the Council's provisional designation notice. For example, if an employee is using FMLA leave simultaneously with Workers' Compensation, medical documentation for the leave is processed by the third party administering Workers' Compensation and the employee would not receive a FMLA packet from the Council. Three of the FMLA leave requests tested were concurrently receiving Workers' Compensation and none of these samples had a FMLA provisional designation or completed healthcare provider certification on file. Workers' Compensation did provide a Workability Form to OH, which partially documented the medical condition in the employee's FMLA file. The Workability form is used to communicate to managers what work an employee can perform upon their return to work. Since the Council created their own notices and the Rights and Responsibilities notice is only included in the provisional designation, an employee must receive the provisional designation to receive notification of their FMLA rights and responsibilities. If they only receive the Full Designation Notice or do not receive their designation notice, an employee is not being notified of critical FMLA rights and responsibilities. Without documentation of rights and responsibilities notification, the Council cannot confirm required information is communicated to employees.

Recommendations

- 14. (Essential) 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: *Effective June 1, 2018 the ERC began processing FMLA leave requests by: 1) documenting an employee's request for leave; 2) providing the*

appropriate forms, disclosures and employee's rights and responsibilities to any eligible employee requesting leave; 3) documenting the date required notices and notifications are added to the employee's FMLA file; 4) monitoring each employee leave from beginning to end; and 5) documenting steps involved in the FMLA-leave process to ensure that FMLA leaves are administered within DoL requirements.

Work instructions will be revised for use by the ERC to ensure employees are receiving all required notices and that such notifications are properly documented in the employee's FMLA file.

Staff Responsible: *Connie DeVolder, Deborah Aebi*

Timetable: *July 31, 2018*

Thrive 2040 Principles: *Accountability*

15. (Consideration) The Council should consider updating the MetNet packet, so it is automatically transferred to an employee's electronic FMLA file.

Management Response: *The MetNet FMLA packet will be replaced with a Leave of Absence Request form and will include instructions to the employee/manager to complete and fax or email the form to the ERC for processing. The ERC will evaluate all leave requests, send the appropriate forms to the employee, and ensure that all notifications are properly documented in the employee's FMLA file..*

The FMLA Procedure will be revised to include the replacement of the MetNet FMLA Packet with a Leave of Absence request form.

Staff Responsible: *Connie DeVolder, Deborah Aebi*

Timetable: *July 31, 2018*

Thrive 2040 Principles: *Accountability*

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

Employers may work with the employee's healthcare provider if the provider certification is unclear or lacks sufficient information to confirm the condition is FMLA-qualifying. FMLA permits employers to obtain second opinions on a medical condition, but only if the employer has reason to doubt the validity of the initial condition certification. The requirements allow the Council to select a healthcare provider to perform the second opinion, but the provider cannot be one that is used on a regular basis. In 2013, the DoL conducted a review of FMLA processes at the Council. At the time of this review, the Council was using a vendor to facilitate the second opinion process. The vendor would provide employees with a list of approved healthcare providers to use for the second opinion and the employee could choose a provider from that list.

However, the DoL review concluded that the Council may designate the health care provider for second opinions, but must:

make a good faith effort to avoid regularly contracting with or otherwise regularly utilizing the services of the health care provider furnishing the second opinion.

Audit learned that the contract with the second opinion vendor was active through December 31, 2017 and the number of second opinions in 2017 was minimal. The Council currently does not have a written process in place for obtaining second opinions. While a written process for obtaining second opinions is not required, written processes would ensure clear and consistent administration. The Society of Human Resources Management (SHRM) explains that second opinions are a tool for employers to utilize, if they have any “reason to doubt the validity of the medical certification.” SHRM also emphasizes the importance of consistently enforcing leave procedures so that expectations around leave compliance are clear.

Recommendation

- 16. (Essential) 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: *Work instructions will be revised to include processes for ensuring that providers performing second opinions are not the regular providers of services to satisfy the requirements of the 2013 DoL Compliance Agreement.*

The Occupational Health department will issue a Request for Proposal (RFP), in consultation with the Office of General Counsel, to contract with a vendor to provide expert healthcare providers to complete second opinion reviews. The Scope of Work will include a requirement to have the vendor contract with multiple providers in each specialty most frequently needed for second opinion reviews.

Staff Responsible: *Connie DeVolder, Deborah Aebi*

Timetable: *September 28, 2018*

Thrive 2040 Principles: *Accountability*

DEPARTMENT OF LABOR REVIEW FOLLOW-UP

The DoL has the authority to investigate and collect data as needed to determine whether there are any violations of labor regulations and to help with the enforcement of FMLA. The Wage and Hour Division of the DoL visited the Council in 2013 to review the Council’s FMLA compliance. As part of this audit, we reviewed the findings from the DoL’s review and assessed current compliance with the DoL’s recommendations. Audit found that many recommendations have been addressed since the review. However, Audit observed that Council employees processing and administering FMLA are due for training. Employees involved in the FMLA process are to be trained every two years and Audit found that the last training was completed at the end of 2015. Employees involved in the FMLA process may include Occupational Health staff, as well as managers and supervisors.

Recommendations

- 17. (Significant) 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.**

Management Response: Occupational Health and Learning and Organization Development will update the current web-based training module to include division specific procedures for tracking Family Medical Leave used by managers and ERC staff and the responsibilities managers are accountable for in monitoring FMLA-qualifying leave for subordinates. ERC Staff, managers, and supervisors new to the Council will be required to complete web-based FMLA training. Current ERC Staff, managers, and supervisors will be required to refresh their knowledge by completing the training every two years.

Staff Responsible: Connie DeVolder, Deborah Aebi

Timetable: December 31, 2018

Thrive 2040 Principles: Accountability

- 18. (Essential) 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.**

Management Response: Occupational Health and Learning and Organization Development will update the current web-based training module to include division specific procedures for tracking Family Medical Leave used by managers and the responsibilities managers are accountable for in FMLA-qualifying leave for subordinates. Managers and Supervisors throughout the Council will be required to complete web-based FMLA training.

Staff Responsible: Connie DeVolder, Deborah Aebi

Timetable: December 31, 2018

Thrive 2040 Principles: Accountability

CONCLUSIONS

The Family and Medical Leave Act mandates specific notifications and documentation to ensure compliance with all federal and state laws. Without documentation of Employer Notifications requirements and leave usage, the Council is at risk of not providing employees with leave protected by federal law. While the Council's FMLA process has not wrongly denied leave to any employees, Audit's review of FMLA administration practices reveal that the Council is not able to confirm full compliance with Employer Notification Requirements. Certain Council notices and forms do not inform employees of important rights and responsibilities pertaining to their FMLA leave. In creating simplified Council-specific forms, key rights and responsibility information was omitted from the forms. Additionally, the time and attendance systems used across the Council make it difficult to maintain sufficient payroll records required by FMLA. The Council has created workarounds for time management systems to track FMLA leave, but limitations still exist that have caused inaccurate tracking data and has made it difficult to monitor FMLA leaves. Finally, gaps exist in the current process in place to monitor FMLA leave. The lag time in processing FMLA requests, inconsistent documentation, and lack of process for obtaining second opinions create liability for the Council. It is essential for the Council to review their FMLA process, documentation, and tracking systems and make updates to ensure notification requirements are met and leaves are adequately monitored. FMLA Leave monitoring improvements are also necessary to advance the Thrive 2040 principles of integration, collaboration, and accountability. The Council's Thrive 2040 outcomes of stewardship and equity further support ensuring that reviews of FMLA requests are administered consistently and leave is equitably provisioned.

RECOMMENDATIONS

Program Evaluation and Audit recommendations are categorized according to the level of risk they pose for the Council. The categories are:

- **Essential** – Steps must be taken to avoid the emergence of critical risks to the Council or to add great value to the Council and its programs. Essential recommendations are tracked through the Audit Database and status is reported twice annually to the Council’s Audit Committee.
- **Significant** – Adds value to programs or initiatives of the Council, but is not necessary to avoid major control risks or other critical risk exposures. Significant recommendations are also tracked with status reports to the Council’s Audit Committee.
- **Considerations** – Recommendation would be beneficial, but may be subject to being set aside in favor of higher priority activities for the Council, or may require collaboration with another program area or division. Considerations are not tracked or reported. Their implementation is solely at the hands of management.
- **Verbal Recommendation** – An issue was found that bears mentioning, but is not sufficient to constitute a control risk or other repercussions to warrant inclusion in the written report. Verbal recommendations are documented in the file, but are not tracked or reported regularly.



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