

**Performance Audit**  
**The City Could Do More to Reduce**  
**the Risk of FMLA Abuse**

October 2009

**City Auditor's Office**  
**City of Kansas City, Missouri**



October 14, 2009

Honorable Mayor and Members of the City Council:

We focused this audit of the city's administration of the Family and Medical Leave Act (FMLA) on compliance with federal requirements and use of recommended practices. We found that the city's written FMLA policy complies with federal requirements, but, in practice, the city misinterprets the regulation's definition of "workweek." This misinterpretation may prevent some full-time staff from receiving the total FMLA leave hours they are entitled to receive when it is taken on an intermittent or reduced leave schedule.

While we did not examine the merits of individual cases of FMLA leave or investigate potential abuses of the benefit, it is clear from our interviews with and a survey of supervisors and timekeepers that there is a perception of FMLA leave abuse in the city. We identified several recommended practices for reducing the risk of FMLA leave abuse. The city already incorporates some of these practices, but could improve efforts to prevent abuse by ensuring consistent application of other practices across departments and by adopting additional recommended practices.

Internal controls for administering FMLA leave need improvement. The city's PeopleSoft system cannot alert supervisors that an employee is approaching or has exceeded his or her maximum allowed FMLA leave hours. The PeopleSoft system also allows absences to be coded as FMLA leave for employees who have no record in the system of being approved for the benefit. Some supervisors report they need training in monitoring FMLA leave use, better tools, and regular encouragement to monitor the use of FMLA leave effectively. Active, continuous monitoring improves the city's control environment and reduces the risk that the city's FMLA benefit will be abused.

Human Resources' FMLA administration also needs improvement. Human Resources does not always meet its timeliness goals for processing FMLA leave paperwork and copies of outdated FMLA leave policies are still available from the Human Resources Department.

We make recommendations intended to improve the timeliness and accuracy of FMLA leave request processing, reduce the perception and risk of abuse of this benefit, improve management controls, and ensure that the city accurately interprets federal regulations.

We shared a draft report with the director of human resources on June 25, 2009. His response is in Appendix D. The city auditor's comments on the human resources director's response is in Appendix E. We appreciate the courtesy and cooperation of the Human Resources staff during this audit. We would also like to thank all of the supervisors and timekeepers who took the time to respond to our survey. The audit team for this project was Linna Hung, Renata Matos, Julia Talauliker, and Deborah Jenkins.

Gary L. White  
City Auditor

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# The City Could Do More to Reduce the Risk of FMLA Abuse

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## Introduction

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### Objectives

We conducted this audit of the city's Family and Medical Leave Act policy under the authority of Article II, Section 216 of the Charter of Kansas City, Missouri, which establishes the Office of the City Auditor and outlines the city auditor's primary duties.

We did this audit because department managers had voiced concerns that the use of unscheduled intermittent FMLA leave is difficult to track, disrupts productivity, incurs overtime costs, reduces levels of customer service, and affects morale of coworkers. In addition, managers believed the city had no process for investigating cases of possible misuse of FMLA leave.

A performance audit provides assurance or conclusions based on an evaluation of sufficient, appropriate evidence against stated criteria. Performance audits provide objective analysis so that management and those charged with governance and oversight can use the information to improve program performance and operations, reduce costs, facilitate decision making, and contribute to public accountability.<sup>1</sup>

This report is designed to answer the following question:

- Does the city comply with the Family and Medical Leave Act regulations and follow best practices?

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### Scope and Methodology

Our review focused on the city's administration of its Family and Medical Leave Act policy and compliance with federal requirements. Our audit did not look at the merits of individual cases of FMLA leave or investigate potential abuses of the benefit. Audit methods included:

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<sup>1</sup> Comptroller General of the United States, *Government Auditing Standards* (Washington, DC: U.S. Government Printing Office, 2007), p. 17.

*The City Could Do More to Reduce the Risk of FMLA Abuse*

- Reviewing and comparing the Family and Medical Leave Act and regulations and the city's FMLA policy to identify criteria and to verify the city's compliance with the regulations.
- Reviewing human resources literature and FMLA leave policies of other jurisdictions to identify recommended practices for administering FMLA leave, and comparing those with the city's FMLA policy and practices.
- Interviewing Human Resources staff to understand how they process FMLA leave requests, and interviewing supervisors and timekeepers to understand their concerns about FMLA leave and how they track FMLA leave use.
- Reviewing Family and Medical Leave files and other supporting documentation (with all personal medical information removed) to understand the information Human Resources staff review and generate, and to compare information in the hardcopy files with the electronic FMLA data in PeopleSoft.
- Analyzing PeopleSoft data related to FMLA leave to understand how widespread FMLA leave use is in the city, and to identify discrepancies that could indicate problems in record keeping, data reliability, and/or administering FMLA leave.
- Surveying supervisors and timekeepers to understand how they administer FMLA leave in their departments and how they comply with the city's FMLA policy and incorporate recommended practices, and to learn about their concerns related to FMLA leave use.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives. We omitted information from the report concerning an access control issue that we reported to Human Resources and the Law Department. No other information was omitted from this report because it was deemed privileged or confidential.

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## Background

The Family and Medical Leave Act (FMLA) was enacted on February 5, 1993. The FMLA allows eligible employees to take up to 12 weeks of unpaid leave from work for certain family and medical situations. The FMLA protects most<sup>2</sup> eligible employees' employment status and benefits for the duration of the leave taken. In addition, the FMLA does not discourage employers from having a more generous FMLA policy than what the federal law requires.

The FMLA was recently amended to provide job protected leave for eligible employees providing care for covered military service members. In addition, the FMLA regulations were updated to provide clearer information on the rights and responsibilities of both the employer and the employees. The new provisions became effective on January 16, 2009.

The Benefits Division in the Human Resources Department administers the FMLA policy. Benefits Division staff responsibilities include processing FMLA requests, approving or denying requests, recertifying employees, and entering FMLA data into PeopleSoft.

### **General Requirements for Leave under the FMLA**

The FMLA provides 12 weeks of job-protected leave for eligible employees for certain medical and family reasons.

**Covered employers.** The FMLA applies to all public agencies, all public and private elementary and secondary schools, and companies with 50 or more employees.

**Eligible employees under FMLA.** An "eligible employee" under the FMLA is an employee who has worked for at least 12 months for the employer and for at least 1,250 hours during the previous 12-month period.

**Entitlement to leave.** Employees covered under FMLA are entitled to 12 workweeks of leave during any 12-month period for qualifying medical and family reasons. Employees can take FMLA leave continuously, intermittently, or on a reduced leave schedule. Employers

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<sup>2</sup> Some highly compensated employees may be denied the restoration of their position in certain situations.

can require employees to use any accrued paid leave for any part of the 12 workweeks of FMLA leave.

**Employment and benefits protection.** Eligible employees are restored to either the same or equivalent position or job classification when they return from FMLA leave. Employees taking FMLA leave cannot lose their employment benefits because of the leave. In addition, the employer is required to maintain health care coverage for eligible employees during their leave.

**Qualifying medical and family reasons.** Qualifying medical and family reasons under the FMLA include the birth<sup>3</sup> of a son or daughter of the employee; placement of an adopted or foster child into the home of the employee; care for a spouse, son, daughter, or parent with a serious health condition;<sup>4</sup> or a serious health condition that makes the employee unable to perform his or her duties.

Employers may require employees requesting FMLA leave to provide a medical certification to support the need for leave. The certification from the employee's health care provider should indicate the dates of leave, duration of leave, and appropriate medical facts to support the need for leave. The FMLA allows employers to request a second or third medical opinion, at their own expense, if the provided certification is questionable.

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<sup>3</sup> FMLA leave for birth, adoption, or placement of a foster child must be taken within 12 months of the birth or placement.

<sup>4</sup> The term "serious health condition" is defined as an illness, injury, impairment, or physical or mental condition that involves inpatient care or continuing treatment by a health care provider.

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## Findings and Recommendations

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### Summary

Generally, the city's written Family and Medical Leave Act policy meets the requirements in the federal legislation. However, the city's calculation of leave entitlement for intermittent and reduced leave schedules is not consistent with the leave entitlement definitions in the federal guidelines. The FMLA provides covered employees with 12 workweeks of protected leave, determined by the employee's normal working schedule. The city's practice of providing up to 480 hours of FMLA leave may be too generous to part-time employees and it may deny the full benefit to employees who have more than a 40-hour work schedule.

Although human resources literature says that most employees use FMLA leave in the spirit intended, the city's supervisors and timekeepers perceive that some employees abuse it. The city has incorporated some of the recommended practices designed to curb the abuse of FMLA leave; however, the city could further reduce the risk and perception of FMLA leave abuse by incorporating additional recommended practices into its policy.

Misuse of FMLA can occur unintentionally if the proper tools and training are not available. PeopleSoft does not have the capacity to identify inappropriately coded FMLA leave. Some supervisors who responded to our survey reported that they are neither encouraged to monitor their staff's FMLA leave use nor do they know how to check the amount of FMLA leave used by their employees. Human Resources should encourage proactive monitoring of FMLA leave use by departments, develop procedures for Human Resources to regularly review FMLA data in PeopleSoft for discrepancies, and follow up with departments when discrepancies are found. Active and continuous monitoring is one component of an effective control environment and could reduce the risk of abuse of the city's FMLA benefit.

The city does not always meet its processing timelines and continues to provide outdated FMLA policies to its employees. Survey respondents expressed needing better communication with the Human Resources Department and better support from the Human Resources Department when they identify cases of potential abuse. Less than half of the survey respondents said they had received training on the city's FMLA policy

and how to monitor their staff's FMLA leave use. The city has provided little additional training to staff on the recent changes to the Family and Medical Leave Act legislation. The city could also strengthen its FMLA administration by ensuring that only the most recent revision of the FMLA policy is available to employees, and providing additional training opportunities and resources to supervisors and timekeepers on administering the city's FMLA policy.

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## **The City Complies with Most Federal Requirements**

Generally, the city's written Family and Medical Leave Act policy meets federal requirements. Elements of the city's policy are more generous than the minimum requirements, which is encouraged by the federal legislation. However, the city's interpretation of an employee's normal "workweek" may interfere with an employee's mandated leave entitlement for intermittent and reduced work schedules. While the city's part-time employees may be allowed more leave than is required, city employees who have more than a 40-hour workweek may not receive all the leave they are entitled to under the FMLA.

### **City's Written FMLA Policies Comply with Federal Requirements**

The city's written FMLA policy is consistent with the requirements of the Family and Medical Leave Act and corresponding regulations. Although some of the city's policies are more generous than what is required by law, the FMLA encourages employers to have more generous leave policies.

### **The City Miscalculates Leave Entitlement for Some Employees**

The city's calculation of leave entitlement for intermittent and reduced leave schedules does not reflect the leave entitlement definitions in the federal guidelines. The city's method of calculating leave entitlement is more generous for part-time employees and may deprive employees whose normal workweek is more than 40 hours of their full entitlement.

The FMLA provides covered employees 12 workweeks of leave for any 12-month period for qualifying medical and family reasons. The Department of Labor Regulations defines the term "workweek" as an employee's normal working schedule and is the controlling factor in determining the amount of leave an employee is entitled to use for an intermittent or a reduced leave schedule. If an employee's schedule varies, an employer should use the weekly average of the hours worked

over the 12 weeks before the beginning of the leave period to determine the employee's normal workweek.

The city interprets 12 workweeks as 480 hours. All approved employees are provided with up to 480 hours of FMLA protected leave (unless their doctor prescribes less leave time in the medical certification) regardless of their normal workweek. This practice denies the full amount of FMLA leave some city staff are entitled to for intermittent or a reduced leave schedule. For example, some firefighters work 49.5 hours during their normal workweek, which entitles them to receive up to 594 hours of FMLA leave, not the 480 the city currently allows.

The director of human resources should revise the city's calculation of leave entitlement to ensure the appropriate amount of leave is provided for all employees.

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## **The City Could Do More to Manage Risk of Abuse**

Supervisors and timekeepers perceive that some employees approved for FMLA leave abuse the benefit. The city follows some recommended practices designed to curb the risk of abuse, but could do more. Human resources literature says that most employees use FMLA leave for legitimate reasons, but some will attempt to "work the system."<sup>5</sup> The Human Resources Department plays a major role in reducing FMLA leave abuse.

### **Perception of FMLA Leave Abuse Exists**

Our audit did not look at the merits of individual cases of FMLA leave or investigate potential abuses of the benefit. However, according to the supervisors and timekeepers we interviewed and surveyed, there is a perception that some employees abuse FMLA leave. They gave examples of employees who need FMLA leave only on Mondays and Fridays, employees who used FMLA leave for circumstances other than the approved reason, and employees who call to say they need to take FMLA leave and then are seen working at another job or attending events. Some supervisors feel they need better support from the Human Resources Department when they identify cases of potential abuse.

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<sup>5</sup> Gillian Flynn, "HR Must Take Proactive Steps to Curb FMLA Misuse," *Personnel Journal*, September 1994, Vol. 73, No. 9, pp. 36-45; and Leah Carlson Shepherd, "I'm on FMLA Leave: Benefits Pros Offer Their Peers Advice on Combating FMLA Abuse," *Employee Benefit News*, <http://ebn.benefitnews.com>, March 12, 2009.

**Supervisors and timekeepers expressed concerns about FMLA leave abuse in survey responses and interviews.** We surveyed supervisors and timekeepers to learn how the city manages FMLA leave. (See Appendix A for the survey methodology, Appendix B for the survey results, and Appendix C for survey comments.) We gave survey respondents the opportunity to write in comments about how the city administers FMLA leave. Almost one-third of the survey respondents' comments included concerns related to abuse or misuse of FMLA leave. Some survey respondents perceived abuse of the benefit, but felt helpless to do anything about it. And, some comments indicate they do not feel they get enough support from the Human Resources Department when they suspect abuse.

Some supervisors said abuse of FMLA leave affects the morale of employees who have to pick up the slack on the job, and that it is frustrating when employees who are repeatedly on FMLA leave can get the same attendance bonus through the city's variable pay plan (VPP)<sup>6</sup> as employees who have had fewer absences.

The city's VPP includes a 1 percent attendance bonus for labor class employees who use less than 51 hours of sick leave annually. Until the recent revisions in the federal regulations, the city was prohibited from counting FMLA leave against employees when determining whether they met the requirements for the VPP attendance bonus. That meant that an employee who took up to 480 hours of FMLA leave, but less than 51 hours of non-FMLA scheduled or unscheduled sick leave, qualified for the attendance bonus; while someone who took only 52 hours of non-FMLA scheduled or unscheduled sick leave for the year, would not qualify for the bonus. Revisions to the law, effective January 2009, allow employers to disqualify employees on FMLA leave from attendance bonuses as long as employees taking non-FMLA leave are treated the same.

To ensure the bonus rewards those employees who have good attendance, the director of human resources should include the number of sick leave hours employees used annually for FMLA leave when determining qualification for the VPP attendance bonus.

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<sup>6</sup> The Variable Pay Plan (VPP) is an incentive program for employees covered by the MOU (Memorandum of Understanding) between the city and local 500 of the American Federation of State, County, and Municipal Employees (AFSCME).

**The City Follows Some Recommended Practices for Curbing FMLA Leave Abuse**

We looked at human resources literature to identify recommended practices designed to curb abuse of the FMLA benefit. The city uses most of those recommended practices at least part of the time. (See Exhibit 1.) Adopting additional recommended practices could further reduce the risk of FMLA leave abuse. Employees who know their employer is monitoring for abuse of the benefit and will not permit unsubstantiated leave will be less inclined to abuse their leave rights.

Exhibit 1. City's Use of Recommended Practices Designed to Curb FMLA Leave Abuse

Recommended Practices for Curbing FMLA Leave Abuse <sup>7</sup>	City Consistently Follows	City Inconsistently Follows	City Does Not Follow
Require medical certifications be returned within 15 days.	X		
Require a new certification every 12 months for chronic conditions requiring intermittent leave.	X		
Have a policy prohibiting employees from working second jobs while on leave.	X		
Require employee's certifying medical provider to give concrete information on the medical basis for, and probable duration of, the need for intermittent leave.	X		
Monitor employee's use of FMLA leave for suspicious patterns of unscheduled absence or red flags (e.g., Monday/Friday absences, consistently using maximum amount of accumulated leave), and consider seeking recertification if employee's use of FMLA leave is inconsistent with the medical provider's description of the frequency and amount of leave needed.		X	
Require employees to schedule medical treatments around department operations, and to provide written verification when intermittent leave is based on the need to be present at some location (e.g. appointments at a health care provider's office).		X	
Require "fitness for duty" certifications for employees returning to work.		X	
Train supervisors so they feel confident about FMLA rules and can recognize red flags.		X	
Calculate FMLA leave using a rolling year instead of a calendar year to determine the 12-month period in which the 12 weeks of leave entitlement occurs.			X
Require all employees to use all paid leave prior to taking unpaid FMLA leave.			X
Verify medical provider information when assessing the soundness of certifications, and require second and third opinions if there is reason to doubt a medical certification.			X

Sources: City of Kansas City, Missouri, Family and Medical Leave Policy (November 1, 2006), interviews with city staff, City Auditor's Office analysis of survey results.

**The city inconsistently follows other recommended practices for curbing FMLA leave abuse.** Although the city's FMLA policy includes the recommended practice of requiring employees returning to work after being on FMLA leave due to their own serious health condition to bring a "fitness for duty" certification from a health care

<sup>7</sup> Gillian Flynn, "HR Must Take Proactive Steps to Curb FMLA Misuse," *Personnel Journal*, September 1994, Vol. 73, No. 9, pp. 36-45.

Stephen P. Sonnenberg and Christina McEnerney, "A Prescription for Medical Leave," *Workforce Management*, April 2004, pp. 16-18.

W. Melvin Haas III, J.D., "12 Ways to Curb FMLA Abuse," *Business and Legal Reports*, January 2007. Retrieved March 20, 2008. <http://hr.blr.com/whitepapers.aspx?id=75341>.

Bart Bixenstine, "Tactics for Controlling Abuse of FMLA Intermittent Leave," *Council on Education in Management*, July 2005. Retrieved March 20, 2008.

[http://www.counciloned.com/council\\_resources/hr\\_tips\\_detail.asp?tip\\_id=18](http://www.counciloned.com/council_resources/hr_tips_detail.asp?tip_id=18).

provider, it is not applied consistently. It is up to individual departments to decide whether to require fitness for duty certifications. According to Benefits staff, if it is a department's practice to require fitness for duty certifications for employees returning from sick leave, the department can also require it from employees returning from FMLA leave, as long as they apply the requirement consistently.

To ensure compliance with the city's FMLA policy, the director of human resources should instruct departments to require "fitness for duty" certifications for employees returning from FMLA leave due to their own serious health condition.

Other recommended practices we identified are not formalized in city policy, but our survey showed that at least some supervisors follow them. For example:

- Almost 10 percent of supervisors said they require employees to schedule medical visits and/or treatments around department operations.
- About 23 percent of supervisors said that when an employee is approved for FMLA leave based on the need to see a health care provider, they require written verification that the employee went to an appointment.
- Approximately 70 percent of supervisors said they know how to recognize red flags that may indicate FMLA is being abused (i.e. suspicious patterns of unscheduled absences; absences only on Mondays and/or Fridays; consistently using maximum amount of accumulated leave), and over 50 percent said they know who to contact when they suspect abuse.
- Over 65 percent of supervisors said they compare an employee's FMLA use to what the letter from the Human Resources Department says the employee is approved to take, but only about 44 percent said they inform Human Resources if an employee is using more FMLA leave than he or she is approved to take.

To improve consistency of FMLA administration and reduce opportunities for abuse, the director of human resources should include in the city's FMLA policy a requirement that employees schedule medical appointments around department operations and provide written verification that the appointment was kept.

The director of human resources should also provide supervisors with training on monitoring for red flags that may indicate FMLA is being abused, comparing the employee's use of FMLA leave with the

parameters described in the letter from Human Resources, and guidance on appropriately addressing these issues.

**The City Should Adopt Additional Recommended Practices to Reduce Risk of Abuse**

The city does not follow three of the recommended practices we identified. Adopting these practices could enhance the city's efforts to reduce the risk of FMLA leave abuse.

**Calculate FMLA leave using a rolling year instead of a calendar year to determine the 12-month period in which the 12 weeks of leave entitlement occurs.**<sup>8</sup> Human Resources staff said the city chose to use the calendar year instead of a rolling year because it is easier to manage given the resources they have to administer the FMLA process. They said that by using a calendar year, the city has an FMLA "season" during which the recertification process is conducted.<sup>9</sup>

Recommended practices include controlling the period of time in which employees take leave by instituting a rolling year policy. This ensures that leave requests are granted only if the maximum time allowed has not been used in the previous 12 months, and prevents the employee from being able to take 12 weeks at the end of one calendar year and another 12 weeks at the beginning of the next.

We looked at the FMLA policies from 14 other jurisdictions to see how they define the 12-month period.<sup>10</sup> Of those, only one other jurisdiction used the calendar year to define the 12-month period in which the 12 weeks of leave entitlement occurs.

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<sup>8</sup> 29 C.F.R. §825.200 (b) (2008) of the Family and Medical Leave Act lets the employer choose from the following methods for determining the 12-month period in which the 12 weeks of leave entitlement occurs:

- 1) The calendar year;
- 2) Any fixed 12-month "leave year," such as a fiscal year, a year required by State law, or a year starting on an employee's "anniversary" date;
- 3) The 12-month period measured forward from the date employee's first FMLA leave begins; or
- 4) A "rolling" 12-month period measured backward from the date an employee uses any FMLA leave.

<sup>9</sup> The city requires employees approved for intermittent FMLA leave to be recertified by their healthcare provider at the end of each calendar year.

<sup>10</sup> The FMLA leave policies we reviewed were from these jurisdictions: Conyers, Georgia; Dothan, Alabama; El Paso, Texas; Fairfax County, Virginia; Grandview, Missouri; La Mesa, California; Oregon State; Richardson, Texas; Santa Rosa, California; Thousand Oaks, California; Villa Park, California; Lake County, Illinois; Whittier, California; Woodbury, Minnesota.

To control the period of time in which employees take leave, the director of human resources should use a “rolling” year to define the 12-month period within which an employee’s FMLA entitlement occurs.

**Require all employees to use accrued leave prior to taking unpaid FMLA leave.** The city’s policy is to require most employees approved for FMLA leave to use accrued sick leave, vacation leave, and free days before taking unpaid FMLA leave. However, the city’s policy makes an exception for exempt employees. Since 2004, the city has allowed exempt employees, who are approved for intermittent FMLA leave, to use a maximum of 120 hours of paid leave for partial day absences without it being deducted from their accrued sick leave or vacation. Human Resources staff told us this policy helps make up for the fact that exempt employees do not earn compensatory time for working more than 40 hours a week. Recommended practices say that requiring employees to use accrued leave can prevent them from trying to get two vacations for the “price of one.”<sup>11</sup>

To more consistently administer FMLA leave benefits, the director of human resources should eliminate the policy that allows exempt employees approved for intermittent FMLA leave to take up to 120 hours of paid FMLA leave without charging it to their accrued sick leave or vacation.

**Assess the soundness of certifications and require second and third opinions if there is reason to doubt a medical certification.** Human Resources staff told us they do not routinely verify whether information about the medical provider is valid (e.g. checking names and addresses against the Blue Cross/Blue Shield provider list). Verifying the medical provider’s information should be done routinely as a step in reviewing the certification paperwork for completeness and legitimacy.

The city’s policy states that if the city has reason to doubt the validity of a medical certification, it can require a second and third opinion at the city’s expense.<sup>12</sup> Human Resources staff told us they have never encountered a certification that they thought called for a second opinion. However, according to a survey conducted in 2007 by the Society for Human Resource Management, almost 40 percent of human resources

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<sup>11</sup> Gillian Flynn, “HR Must Take Proactive Steps to Curb FMLA Misuse,” *Personnel Journal*, September 1994, Vol. 73, No. 9, pp. 36-45.

<sup>12</sup> 29 C.F.R. §825.307 (b) (1) (2008) Federal regulations allow employers to require employees to obtain second and third opinions at the employer’s expense when the employer has reason to doubt the validity of the original certification.

professionals reported having approved FMLA requests that they perceived to be illegitimate.

To reduce the risk of false FMLA applications, the director of human resources should direct staff to routinely verify information about the medical provider when assessing the soundness of certifications, and establish guidelines for determining when it is appropriate to require second opinions.

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## **Improved Monitoring Reduces Opportunities for Abuse**

The city could improve its monitoring efforts of employees' use of FMLA leave. PeopleSoft cannot alert supervisors that an employee is approaching or has exceeded his or her maximum allowed FMLA leave hours. Some employees have had leave time classified as FMLA leave with no evidence in the PeopleSoft system that they have applied for or been approved for FMLA leave. Some supervisors reported that they are not encouraged to monitor FMLA use nor do they know how to check the amount of leave used by their employees. Active and continuous monitoring could minimize the risk of misuse of FMLA leave.

The city could improve its FMLA administration. Some supervisors do not know who to contact when they suspect abuse of FMLA leave. FMLA applications are not always processed timely, and the city does not consistently provide updated FMLA policy information or training to staff. Information disseminated by uninformed or poorly trained management and staff can lead to unintentional misuse of FMLA leave.

### **The City Could Improve FMLA Monitoring Efforts**

Supervisors may not have the training and tools necessary to monitor the use of FMLA, and some supervisors feel they are not encouraged to monitor use of FMLA leave. In addition, PeopleSoft lacks controls to prevent abuse of FMLA leave. Active and continuous monitoring is one component of an effective control environment, and it could discourage abuse of the city's FMLA benefit. Human Resources should support and encourage monitoring for potential abuse of FMLA leave.

### **Continuous monitoring of FMLA use can decrease the risk of abuse.**

Two-thirds of the city's supervisors surveyed said they compared an employee's actual FMLA use to what the letter from Human Resources says he or she is approved to take. However, less than half of those surveyed said they report when employees are taking more FMLA leave than is approved to Human Resources.

Over 40 percent of supervisors and timekeepers responding to our survey reported that they are not encouraged to monitor employees' use of FMLA leave. In written comments, some supervisors stated they need better support from the Human Resources Department when they identify cases of potential abuse.

Actively monitoring program operations is one characteristic of an effective control environment. Program monitoring should be performed continually and ingrained into the program's operations. Recommended practices suggest that employers should not give up trying to monitor employees' need for and use of medical leave because in so doing, they are encouraging abuse of the system. Monitoring employee's FMLA use may deter employees from misuse if they know management will actively seek out and investigate cases of potential abuse.

To improve the city's management of FMLA, the director of human resources should support and encourage a positive control environment that monitors FMLA leave time and enforces FMLA leave rules.

**Supervisors and timekeepers may not have the tools needed to monitor FMLA use.** According to the director of human resources, the city's supervisors, not the Human Resources Department, are responsible for monitoring FMLA leave. Based on survey responses, 51 percent of supervisors and timekeepers reported having access to PeopleSoft queries and reports on FMLA use by employees. However, only thirty-five percent of the supervisors said they received training on enforcing the city's FMLA policies or monitoring FMLA usage and about 32 percent of supervisors and timekeepers do not know how to check an employee's FMLA usage.

One key element to ensure an effective control environment is management's commitment to competence. Human Resources needs to identify the appropriate resources necessary and provide training to use those resources to ensure that the city is monitoring employees' FMLA use correctly and effectively. Without the proper tools necessary to monitor employees' FMLA use, such as training and reporting systems, the city cannot detect and deter the misuse of FMLA leave.

**PeopleSoft lacks controls to prevent miscoding of FMLA leave.** PeopleSoft cannot identify and alert supervisors and timekeepers if they are entering FMLA leave hours for employees who may not be approved for FMLA leave, or that an employee has reached or exceeded the number of hours of FMLA leave allowed. Our review of PeopleSoft data revealed discrepancies such as employees using more than 480 hours of FMLA leave in a year; employees who had their FMLA request denied

in PeopleSoft but had leave hours coded as FMLA; employees who had an application status of “open”<sup>13</sup> but had leave hours coded as FMLA; and employees with absences coded as FMLA leave who had no record in PeopleSoft that they had ever applied for FMLA leave. These discrepancies could be a result of inaccurate data entry by Human Resources or department staff or intentional miscoding of leave time.

We compared the documentation contained in a sample of FMLA hard copy files with data in the PeopleSoft system and found some discrepancies. We found approvals/denials in the hardcopy files that were missing in PeopleSoft, and approval/denials in PeopleSoft that did not have corresponding documentation in the hardcopy files. Benefits staff said they spot check the accuracy of their own data entry. They do not run regular reports on FMLA leave use to check for discrepancies.

To ensure that employees whose leave time is coded as FMLA leave are approved for the benefit, the human resources director should develop procedures for regularly reviewing FMLA data in PeopleSoft for discrepancies, and following up with departments when discrepancies are identified so they can be resolved.

### **Human Resources Could Improve Communication and Process**

Supervisors and timekeepers do not know who to contact when they suspect misuse of FMLA leave. In addition, Human Resources does not always meet its timeliness goals in processing FMLA requests. Copies of outdated FMLA policies are available to city staff. And survey respondents want additional training on FMLA procedures.

**Survey respondents report a lack of communication with Human Resources.** The Benefits Division is responsible for processing FMLA applications and sending a letter informing the Human Resources liaison of the approval/denial, including dates for the leave and time allowed.<sup>14</sup> Forty-five percent of survey respondents reported they do not know who to contact if they suspect misuse of FMLA leave. According to Human Resources, departments need to notify staff in the Benefits Division when an employee is missing work outside of what has been approved. However, the process does not work if supervisors and timekeepers do not know who they should contact when they suspect misuse.

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<sup>13</sup> “Open” applications have not yet been approved or denied by Benefits staff.

<sup>14</sup> If the leave is intermittent, the approval letter specifies the frequency that the employee may take leave (e.g. three times per month with each incident lasting up to four days). The letter also specifies whether the approved leave is specifically for doctor appointments.

**Human Resources does not always meet its own goal for processing FMLA paperwork.** Human Resources staff told us their goal is to approve or deny FMLA requests within 7 to 14 business days. Of the 21 FMLA applications we reviewed, about three quarters were processed within the 14 day goal. However, Human Resources took between 15 and 35 days to approve or deny one quarter of the applications once they received the medical certification.

The director of human resources should establish an FMLA application process that ensures applications are processed in a timely manner.

**Human Resources should update the FMLA information available to city staff.** As of August 2009, copies of outdated FMLA policies were still available from the Human Resources Department. The city's FMLA policy was last revised on November 1, 2006, but the city's most recent Human Resources Rules and Policies Manual contains an outdated FMLA policy.<sup>15</sup> The Human Resources site on the city's intranet has more than one link that directs employees to an outdated FMLA policy. There was one link on the intranet which led to the latest revision of the policy. An employee in the City Auditor's Office received a hard copy of the outdated policy when requesting an FMLA packet in September 2008.

So that employees are aware of the most current FMLA policy, the director of human resources should ensure that only the latest FMLA policy is available.

**Supervisors and timekeepers need more training on FMLA.** Fifty-five percent of supervisors responding to our survey report they have not received training on the enforcement of the city's FMLA policy or how to monitor FMLA leave usage. In addition, over one-third of the written comments on the survey identified the desire for more and continued training regarding the city's FMLA policy. Also, 22 percent of survey respondents report they do not know how to appropriately code FMLA leave. Some unintentional misuse may occur because those responsible for tracking leave have not been properly trained. A misunderstanding on the part of a supervisor can lead to misunderstandings by his or her subordinates.

Human Resources provided little information to city staff regarding the recent changes in the FMLA legislation. Human Resources staff offered a roundtable discussion where they provided a brief overview of the 2008 changes to federal FMLA legislation, but attendance was voluntary.

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<sup>15</sup> The outdated FMLA policy states it was last revised February 11, 2002

The FMLA legislation is very complex, making it hard for employers to fully comply with the law.

To increase understanding of administering the city's FMLA policy, the director of human resources should provide additional training opportunities and resources to supervisors and timekeepers.

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## **Recommendations**

1. The director of human resources should revise the city's calculation of leave entitlement to be consistent with the requirements of the Family and Medical Leave Act.
2. The director of human resources should include the number of sick leave hours employees use for FMLA leave when determining qualification for the VPP attendance bonus.
3. The director of human resources should instruct departments to require "fitness for duty" certifications for employees returning from FMLA leave due to their own serious health condition as required by the city's FMLA policy.
4. The director of human resources should include in the city's FMLA policy a requirement that employees who need intermittent leave for planned medical visits and/or treatments make a reasonable effort to schedule the appointments so they do not disrupt the department's operations, and to provide written verification that the appointment was kept.
5. The director of human resources should train supervisors on how to monitor for red flags of FMLA abuse, comparing the employee's use of FMLA leave with the parameters described in the letter from Human Resources, and provide guidance on appropriately addressing suspicions of abuse.
6. The director of human resources should use a "rolling" year to define the 12-month period within which an employee's FMLA entitlement occurs.
7. The director of human resources should eliminate the policy that allows exempt employees approved for intermittent FMLA leave to take up to 120 hours of paid FMLA leave without charging it to their accrued sick leave or vacation.

8. The director of human resources should direct staff to routinely verify information about the medical provider when assessing the soundness of certifications, and establish guidelines for determining when it is appropriate to require second opinions.
9. The human resources director should develop procedures for regularly reviewing FMLA data in PeopleSoft for discrepancies, and following up with departments when discrepancies are identified.
10. The director of human resources should support and encourage a positive control environment that monitors FMLA leave time and enforces FMLA leave rules.
11. The director of human resources should establish an FMLA application process that ensures applications are processed in a timely manner.
12. The director of human resources should ensure that only the latest FMLA policy is available to employees.
13. The director of human resources should provide additional training opportunities and resources to supervisors and timekeepers on administering the city's FMLA policy.

*The City Could Do More to Reduce the Risk of FMLA Abuse*

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## **Appendix A**

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### **Survey Methodology**

*The City Could Do More to Reduce the Risk of FMLA Abuse*

## Survey Methodology

Part of our objective during this audit was to compare the city's practices to recommended practices.

In order to obtain information about the city's applications of its Family and Medical Leave Policy, we surveyed supervisors and timekeepers using a five point Likert Scale,<sup>16</sup> yes/no questions, and two open-ended questions. We designed the questions to help identify areas for which supervisors and timekeeper feel they might want or need additional training and/or support. We also asked questions designed to help assess the city's practices related to FMLA administration and whether the city administers FMLA consistently for all city employees.

Human Resources staff informed us that there was no comprehensive list of supervisors in the city. In order to develop one, we ran a query on PeopleSoft identifying individuals who have someone "reporting" to them. We received a list of timekeepers from a senior accountant in Finance.

We sent emails to a total of 879<sup>17</sup> supervisors and timekeepers with a link to our online survey. Of those surveyed, 668 were supervisors<sup>18</sup> and 211 were timekeepers. After survey deployment, nine emails were returned as undeliverable and could not be resent. Additionally, some survey recipients contacted audit staff indicating they were no longer supervisors or timekeepers.

A total of 472 supervisors and timekeepers started to take the survey online, and 367 supervisors and timekeepers actually completed it. We eliminated answers from supervisors and timekeepers that did not complete the entire survey – i.e. they did not answer all of the Likert scale and yes/no questions, from our analysis. We included surveys with completed Likert scale and yes/no questions if they did not have additional comments provided to the open-ended survey questions in our analysis.

We also administered paper surveys to 18 supervisory staff in the Maintenance and Pipeline divisions in the Water Services Department that either do not have city email accounts or do not have regular access

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<sup>16</sup> When responding to a Likert questionnaire item, respondents choose their level of agreement with the statement – e.g. strongly agree; agree; neutral; disagree; and strongly disagree.

<sup>17</sup> Supervisors and timekeepers from the City Auditor's Office were not surveyed.

<sup>18</sup> This number includes individuals who identified themselves as both supervisors and timekeepers.

to city email accounts. We omitted two of the paper surveys completed by Water Services Department staff due to incomplete answers.

Out of the 383 completed surveys we received either online or in paper, we filtered out 70 surveys from supervisors and/or timekeepers who have not supervised and/or entered time for someone who applied for FMLA in the past 3 years. Our analysis is drawn from the 313 supervisors and timekeepers who completed the entire survey and either supervised or entered time in the past three years for an employee who applied for FMLA.

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## **Appendix B**

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### **Survey Results**

*The City Could Do More to Reduce the Risk of FMLA Abuse*

## Survey Results<sup>19</sup>

<b>1. I know how to check an employee's FMLA usage.</b>				
Response	All Respondents	Supervisor	Timekeeper	Supervisor AND Timekeeper
Strongly Agree	25.2%	18.8%	42.4%	40.0%
Agree	37.4%	39.7%	27.1%	40.0%
Disagree	22.0%	25.0%	15.3%	13.3%
Strongly Disagree	10.2%	10.7%	10.2%	6.7%
Not Applicable	5.1%	5.8%	5.1%	0.0%

<b>2. I know when to code FMLA to vacation, sick leave, free day, or unpaid leave.</b>				
Response	All Respondents	Supervisor	Timekeeper	Supervisor AND Timekeeper
Strongly Agree	24.3%	16.1%	45.8%	43.3%
Agree	40.9%	42.9%	33.9%	40.0%
Disagree	14.7%	17.0%	6.8%	13.3%
Strongly Disagree	7.3%	6.7%	11.9%	3.3%
Not Applicable	12.8%	17.4%	1.7%	0.0%

<b>3. I know when I need to reclassify leave after an employee is approved or denied for FMLA.</b>				
Response	All Respondents	Supervisor	Timekeeper	Supervisor AND Timekeeper
Strongly Agree	21.1%	14.3%	39.0%	36.7%
Agree	39.6%	41.1%	39.0%	30.0%
Disagree	21.7%	23.2%	15.3%	23.3%
Strongly Disagree	7.0%	8.5%	1.7%	6.7%
Not Applicable	10.5%	12.9%	5.1%	3.3%

<b>4. I am encouraged to notify Human Resources if I think that an employee's situation qualifies for FMLA.</b>				
Response	All Respondents	Supervisor	Timekeeper	Supervisor AND Timekeeper
Strongly Agree	21.1%	21.0%	16.9%	30.0%
Agree	45.4%	49.6%	30.5%	43.3%
Disagree	20.1%	19.6%	23.7%	16.7%
Strongly Disagree	7.7%	5.8%	13.6%	10.0%
Not Applicable	5.8%	4.0%	15.3%	0.0%

<sup>19</sup> Percentage may not total 100 due to rounding.

<b>5. I understand the city's FMLA policy and FMLA rules.</b>				
Response	All Respondents	Supervisor	Timekeeper	Supervisor AND Timekeeper
Strongly Agree	21.4%	18.8%	25.4%	33.3%
Agree	56.5%	58.9%	49.2%	53.3%
Disagree	16.6%	17.0%	18.6%	10.0%
Strongly Disagree	4.2%	3.6%	6.8%	3.3%
Not Applicable	1.3%	1.8%	0.0%	0.0%

<b>6. I know how to recognize red flags that may indicate FMLA is being misused (i.e. suspicious patterns of unscheduled absences; absences only on Mondays and/or Fridays; consistently using maximum amount of accumulated leave).</b>				
Response	All Respondents	Supervisor	Timekeeper	Supervisor AND Timekeeper
Strongly Agree	21.7%	19.2%	27.1%	30.0%
Agree	47.3%	50.0%	35.6%	50.0%
Disagree	18.5%	19.2%	18.6%	13.3%
Strongly Disagree	8.6%	9.4%	6.8%	6.7%
Not Applicable	3.8%	2.2%	11.9%	0.0%

<b>7. I know who to contact if I recognize redflags or misuse.</b>				
Response	All Respondents	Supervisor	Timekeeper	Supervisor AND Timekeeper
Strongly Agree	14.4%	15.2%	11.9%	13.3%
Agree	36.7%	36.2%	32.2%	50.0%
Disagree	29.4%	31.3%	27.1%	20.0%
Strongly Disagree	15.7%	15.2%	16.9%	16.7%
Not Applicable	3.8%	2.2%	11.9%	0.0%

<b>8. I am encouraged to monitor employees' FMLA use.</b>				
Response	All Respondents	Supervisor	Timekeeper	Supervisor AND Timekeeper
Strongly Agree	14.7%	13.4%	18.6%	16.7%
Agree	38.7%	42.0%	23.7%	43.3%
Disagree	29.1%	29.0%	32.2%	23.3%
Strongly Disagree	12.1%	11.6%	13.6%	13.3%
Not Applicable	5.4%	4.0%	11.9%	3.3%

<b>9. Do you have access to PeopleSoft queries or reports on FMLA use by employees?</b>				
Response	All Respondents	Supervisor	Timekeeper	Supervisor AND Timekeeper
Yes	50.5%	42.9%	74.6%	60.0%
No	14.7%	17.4%	6.8%	10.0%
Don't Know	31.9%	35.7%	18.6%	30.0%
Not Applicable	2.9%	4.0%	0.0%	0.0%

<b>10. Have you received training on enforcing the city's FMLA policies or monitoring FMLA usage?</b>				
Response	All Respondents	Supervisor	Timekeeper	Supervisor AND Timekeeper
Yes	33.5%	35.3%	22.0%	43.3%
No	56.9%	55.4%	66.1%	50.0%
Don't Know	6.1%	6.3%	5.1%	6.7%
Not Applicable	3.5%	3.1%	6.8%	0.0%

<b>11. If an employee tells you a certain absence was FMLA later than two business days after returning to work, do you reclassify the leave as FMLA?</b>				
Response	All Respondents	Supervisor	Timekeeper	Supervisor AND Timekeeper
Yes	28.1%	23.7%	32.2%	53.3%
No	30.4%	32.6%	28.8%	16.7%
Don't Know	26.8%	29.9%	20.3%	16.7%
Not Applicable	14.7%	13.8%	18.6%	13.3%

<b>12. Do you receive a letter from Human Resources (or your department's HR liaison) informing you that an employee has requested an FMLA packet?</b>				
Response	All Respondents	Supervisor	Timekeeper	Supervisor AND Timekeeper
Yes	52.4%	50.9%	50.8%	66.7%
No	39.0%	39.7%	40.7%	30.0%
Don't Know	5.1%	5.4%	5.1%	3.3%
Not Applicable	3.5%	4.0%	3.4%	0.0%

<b>13. Do you receive a letter from Human Resources (or your department's HR liaison) informing you that an employee's application for FMLA has been approved or denied?</b>				
Response	All Respondents	Supervisor	Timekeeper	Supervisor AND Timekeeper
Yes	70.0%	71.0%	69.5%	63.3%
No	22.0%	20.5%	23.7%	30.0%
Don't Know	4.5%	4.9%	1.7%	6.7%
Not Applicable	3.5%	3.6%	5.1%	0.0%

<b>14. When an employee's FMLA application is pending approval by Human Resources, do you start coding the absences as FMLA?</b>				
Response	All Respondents	Supervisor	Timekeeper	Supervisor AND Timekeeper
Yes	16.9%	13.8%	20.3%	33.3%
No	63.9%	62.5%	72.9%	56.7%
Don't Know	8.6%	9.8%	3.4%	10.0%
Not Applicable	10.5%	13.8%	3.4%	0.0%

<b>15. Do you compare an employee's FMLA use to what the letter from HR says he or she is approved to take?</b>				
Response	All Respondents	Supervisor	Timekeeper	Supervisor AND Timekeeper
Yes	66.5%	66.5%	67.8%	63.3%
No	19.2%	20.1%	13.6%	23.3%
Don't Know	5.4%	5.8%	1.7%	10.0%
Not Applicable	8.9%	7.6%	16.9%	3.3%

<b>16. Do you inform Human Resources if an employee is using more FMLA than the letter from HR says she or he was approved to take?</b>				
Response	All Respondents	Supervisor	Timekeeper	Supervisor AND Timekeeper
Yes	42.5%	43.8%	35.6%	46.7%
No	27.8%	27.7%	28.8%	26.7%
Don't Know	9.9%	8.9%	8.5%	20.0%
Not Applicable	19.8%	19.6%	27.1%	6.7%

<b>17. When an employee who is approved for FMLA requests leave, do you ask him or her if it is an FMLA-related absence?</b>				
Response	All Respondents	Supervisor	Timekeeper	Supervisor AND Timekeeper
Yes	44.4%	47.8%	28.8%	50.0%
No	46.0%	43.3%	55.9%	46.7%
Don't Know	3.5%	4.5%	1.7%	0.0%
Not Applicable	6.1%	4.5%	13.6%	3.3%

<b>18. Have you ever transferred an employee on FMLA to a different position to deal with intermittent absences?</b>				
Response	All Respondents	Supervisor	Timekeeper	Supervisor AND Timekeeper
Yes	1.9%	1.3%	1.7%	6.7%
No	84.0%	90.6%	57.6%	86.7%
Don't Know	2.6%	1.8%	5.1%	3.3%
Not Applicable	11.5%	6.3%	35.6%	3.3%

<b>19. Do you require employees on FMLA to schedule medical visits and/or treatments around your department's operations?</b>				
Response	All Respondents	Supervisor	Timekeeper	Supervisor AND Timekeeper
Yes	9.3%	9.8%	8.5%	6.7%
No	75.7%	80.8%	55.9%	76.7%
Don't Know	5.4%	4.0%	6.8%	13.3%
Not Applicable	9.6%	5.4%	28.8%	3.3%

<b>20. When an employee is approved for intermittent FMLA based on his/her need to see a health care provider, do you require written verification that he/she went to the appointment?</b>				
Response	All Respondents	Supervisor	Timekeeper	Supervisor AND Timekeeper
Yes	20.4%	23.2%	10.2%	20.0%
No	64.2%	67.4%	47.5%	73.3%
Don't Know	6.4%	4.9%	11.9%	6.7%
Not Applicable	8.9%	4.5%	30.5%	0.0%

<b>21. Do you ask employees on FMLA to help plan for how their duties will be covered while they are on leave?</b>				
Response	All Respondents	Supervisor	Timekeeper	Supervisor AND Timekeeper
Yes	21.7%	25.0%	6.8%	26.7%
No	63.6%	67.9%	45.8%	66.7%
Don't Know	2.6%	1.8%	5.1%	3.3%
Not Applicable	12.1%	5.4%	42.4%	3.3%

<b>22. Do you request employees on continuous FMLA to check in from time to time?</b>				
Response	All Respondents	Supervisor	Timekeeper	Supervisor AND Timekeeper
Yes	30.7%	34.4%	16.9%	30.0%
No	42.2%	43.3%	33.9%	50.0%
Don't Know	6.4%	5.8%	6.8%	10.0%
Not Applicable	20.8%	16.5%	42.4%	10.0%

*The City Could Do More to Reduce the Risk of FMLA Abuse*

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## **Appendix C**

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### **Survey Comments**

*The City Could Do More to Reduce the Risk of FMLA Abuse*

## Survey Comments

### Supervisor Responses to “What (if any) additional training and/or support related to FMLA do you think is needed?”

1	The biggest problem I and other managers and supervisors have is the problem with trying to identify if the employee is taking regular sick time or FMLA when calling in sick due to the prohibition of asking why the person is sick. In most cases the reason for the FMLA is unknown; therefore, a subject can simply call in and state FMLA and we have no recourse but to approve the time. Abuse is tremendous.
2	Training updates if applicable.
3	I do not believe that all managers understand everything about FMLA. I believe that more training is required.
4	Managers need to be aware of the FMLA rules, as they oftentimes pass responsibility to the payroll clerks.
5	I think a refresher training class on FMLA is called for.
6	Clarification of misuse of FMLA leave. Proper protocol to follow when misuse is identified.
7	What we can and can't say/ask, etc. would be helpful.
8	It's pretty rare to get FMLA employees, but it is important to know our (supervisors) options when authorizing leave. I believe that when the FMLA approval is sent to the supervisor a short “What you need to know” note should be included. This would be the major things that we should be on the look out for and should outline what we should avoid doing.
9	Training is very much needed by me and other supervisors. Some supervisors most likely will not be honest due to looking incompetent. I tried to be as honest as possible. When I first graduated, I knew about FMLA well, but the old philosophy is if you don't use it, you lose it. I've lost a lot and need refreshing [training]. Thank you.
10	I have only been informed indirectly to contact the timekeeper for my division regarding FMLA. Please show a flow chart or provide information on what other avenues the a supervisor can use for tracking FMLA.
11	Policy for abuse of FMLA.
12	A brief “cheat sheet” would be nice. Otherwise, I rely on my HR liaison person for information. That has worked well for me.
13	Much training is needed to provide supervisors with the necessary tools to adequately manage employees on FMLA.
14	Time and Labor codes for FML time entry have not been communicated to departments. Clear time entry direction is needed on 1) How FML time codes are to be used; 2) How to correct time that has been entered and paid under incorrect FML codes; 3) How to correct time that was not coded as FML but was approved; and 4) Time frame and responsibility for FML time reporting errors.
15	How to handle intermittent exempt employee’s leave. If they routinely miss 1 to 2 hours a day they are told by HR that it doesn't have to be recorded because they are exempt. I am unsure what can and can't be asked for from the employee when they use FMLA absences. Are you allowed to question that it is FMLA related or do you just have to accept it?

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16	The ____ FML is centralized and most of these questions are not applicable to how we administer FML.
17	This is the most abused benefit I have ever seen. We have 50% of staff on FMLA. When an employee is issued a letter of reprimand for attendance they simply put in for FMLA. There is no control or oversight and we must follow HR advice with no specifics on what the issue is. The city needs an independent doctor to evaluate employee requests and the employees themselves before we allow this type of leave. The overall cost to the city is out of control.
18	I have had none.
19	I am the supervisor. Our HR staff in our own department helps out tremendously if I have a question, but I have never been asked or taken any FMLA intro classes or just even a briefing.
20	How far can I go with investigating FMLA abuse.
21	I do not believe additional training is necessary. Although, I do believe it should be offered to employees who wish to have a refresher course. I also think a new employee should have the ability to have training. I also believe if there are any change in the Federal Law, we should have training offered.
22	There has been no training at all on FLMA that I am aware of.
23	There is no consistent way of forcing the employee to report in on a daily basis if they are using FMLA. Some employees will take the full 12 weeks off, or more, for FMLA and they have not been approved for constant use but only for doctor visits and treatments.
24	Training on how to look up FMLA used in PeopleSoft.
25	If you have an HR Liaison, that person normally can inform you of any information you may need. It may be helpful for the supervisors to at least know how to check the information.
26	I would like additional training to clarify how to code time off during the period between being notified the employee is asking for FMLA and when it is approved or denied.
27	Human Resource Liaisons or consultants can make supervisors aware when an employee has applied for FMLA. Employees can be made aware that when calling in for time off and it is FMLA that it should be made aware at that time if the approval has been authorized already.
28	FMLA clear misuse.
29	I think an overall review of FMLA policies would help.
30	Management tends not to address unexcused dock in any fashion if used by females. In this regard, it becomes fruitless to concern ourselves with whether it is FMLA or not. Training should be given to upper management in treating all employees the same. Training should be given to Equal Employment Opportunity office on how to treat employees equally. The city and Equal Employment Opportunity office are very discriminatory organizations.
31	Training on the FMLA process should be given to all supervisors managing employees. A supervisor can ask for the employee to request for FMLA, but there are no checks and balances from Human Resources so the supervisor never knows unless the employees tell them.

32	As a supervisor I do not know why a person is on FMLA or to what extent his/her job may be affected by the FMLA situation. I understand the need for privacy, however, the supervisor should know so that they are aware of and can notify the appropriate resources if needed.
33	Annual seminar on changes to FMLA law.
34	How to monitor usage; how to assure that FMLA is not being abused. For many, the approach has been: if FMLA is being requested, we as supervisors have no right to ask or request additional information principally due to issues related to confidentiality and HIPAA.
35	We are encouraged not to question an employee who is using FMLA whether we feel they are abusing it or not. I would like to know if I can require them to use vacation or sick leave for the FMLA.
36	A short course to go over the basic items of FMLA would be helpful.
37	[Training] In all areas.
38	We (supervisors) need to be informed, in a timely manner, when an employee is approved for FMLA, and what is covered for the FMLA in time frame and scope.
39	I don't recall any FMLA training that has been conducted for supervisors. I think that would be good.
40	Training only when requested or when I need answers.
41	The use of FEX code for exempt employees on FMLA leave that is intermittent. Is this at supervisor's discretion or an employee right for exempt employees? Clarification on the multiple FMLA codes that can be used in PeopleSoft and what each means and how it is intended to be used would be helpful.
42	Who to contact when there are red flags. Is there anything I can do when the work is not getting done and 2/3rds of my staff are using FML? How to discipline someone who is on FML for not meeting work related deadlines and not have it reversed by HR on appeal.
43	I question the open policy that HR uses to interpret the FMLA laws. We have over half of our division on FMLA. The city's FMLA policy should be audited as to how they approve an individual for FMLA. HR is too liberal on issuing FMLA which makes it a big scam and allows employees to abuse sick leave policies.
44	As a supervisor I do know how to recognize "red flags"; the problem is that the city is too "scared" to approach the federal legal issues involved so the point is mute.
45	[Training on] question #7 who to contact.
46	It's not the training that is the problem, it's letting people abuse FMLA. It is too easy for an employee to allow their doctor to let them off with a little encouragement from the employee.
47	I would guess a class just on FMLA. What it is and how it can be used. What kind of notice if someone were to need it do they have to give, etc. Occasional refresher.
48	We need more training and support on keeping track of FMLA leave and more training on how to check abuse of this leave.

49	We need more support in getting sick leave donations entered into PeopleSoft for associates receiving it. We have had associates without or close to not receiving a check because the donations weren't entered in a timely manner, although the donation forms were hand carried to Benefits as soon as they were completed.
50	Explanation and training on applying, administering and using FMLA.
51	There should be a departmental approach in handling some of the issues involving FMLA practices and administration of such; primarily because many of the situations cited above are not readily known by all supervisors and most cases are handled on a per incident basis and information is referenced (most of the time) between colleagues dealing with these concerns.
52	I think the letter sent out should specifically state what the FMLA is granted for and should tell employees that when calling in and using FMLA, they should state why they're calling and that they want to use FMLA.
53	The supervisor needs to be notified earlier in the process that FMLA is approved for an employee.
54	Employees abuse the FMLA program.
55	Employees on FMLA need to understand that it does not apply to every sickness they encounter, only for what FMLA was granted.
56	We have been taught in HRMA to contact HR with respect to FMLA and not become involved with suspected misuses or even question alleged misuse.
57	Exempt employees need training on when to report/code FMLA on their timecards. They believe that because they are exempt, they can use FMLA for less than a full day and not report it.
58	Employees should be required to provide documentation to support any doctor's appointments. FMLA should not be granted with unspecified parameters that allow employees to call in anytime and claim FMLA. Employees that have second jobs should not be allowed to claim intermittent FMLA for their city job and then work a second job. There should be active random audits of misuse of FMLA.
59	There is no support related to chronic abuse of FMLA. We have an employee who we know is abusing FMLA, but the system seems to nourish such misuse instead of discouraging it. Whenever an employee uses the maximum amount of FMLA allowed one year after another, there should be an automatic internal review of that person's need for FMLA. There is also poor communication on FMLA status to timekeepers and supervisors. We are at the mercy of the employee to provide the FMLA documentation. The entire city FMLA management system needs to be reviewed and strengthened to discourage abuse.
60	In the past, I've had several employees that I knew were abusing the FMLA policy and were using FMLA for reasons other than what they were covered for. These abuses were documented and the information was forwarded to Benefits for assistance; however, the impression that I received from the responses that I got was that it didn't appear that anyone wanted to deal with the abuses. Responses received were that "they understood my frustrations, but..." FMLA is a good policy if it is used correctly, but from my experiences, it is being abused and allowed to continue to be abused, and the employee seems to be protected. I know of several employees who have gotten FMLA just for the purpose of

	calling in so that they didn't have to work overtime, and they know that their co-workers are doing it, so why shouldn't they do it!
61	A process to follow when you suspect an employee is abusing the FMLA approval. I have been told by HR that this is very hard to prove. We get the idea that we should not or cannot investigate suspicions due to the federal coverage.
62	Explain the newest rules to supervisors and managers. People who report to those who report to me are out on FMLA for as long as a week and I have no idea. Supervisors are not told to keep their own supervisors informed. It is very secretive so I don't know how we can monitor employees' usage.
63	Validating usage.
64	I don't know that much about the FMLA rules and/or policy. I encourage those employees whom I feel should apply to apply. I do not discourage people not to apply. Of the 2 or 3 _____ members I have on my team, I am not detecting any misuse. I would say for some of them, they don't use it enough or not when they are eligible. What do I do?
65	Last year's VPP had employee sick leave usage and HR did not give our department the paperwork so his time and reclassify the time to reflect it as FLMA. The pending approval process lacks transparency on the status of individual FLMA.
66	How much does a supervisor get to know of a subordinate's FMLA status? I mean if he has FMLA for allergies, what are the boundaries which he cannot use this in? Calling in one hour before reporting to work? Can FMLA taken in conjunction with NWDs set a pattern? If so, what can be done? Is there a time limit before reporting to duty that a subordinate needs to give the supervisor a notification so coverage can be made in a timely manner?
67	Better communication is needed between the Benefits Office and departments.
68	An easy way to find out what is going on. There is no system but calling and calling HR to find something out. In the meantime, they tell us it is pending so put them down for FMLA, when it may not be. So in the meantime, they get off for no reason and then when you write them up, the union says that this was months ago, and it is, but that is when you finally get the answer to these questions.
69	Additional information is always welcome and refreshers are also needed.
70	Some of the FMLA issues are handled for us by our department HR. They do keep us informed.
71	General training on FMLA provisions, including eligibility, monitoring, and reporting.
72	I think that all supervisors need further training on FMLA. I have some employees that think that they can call in at the last minute (or even well after the beginning of their shift) and claim FMLA for the entire day. When on the authorization form, it clearly states that it is for 'scheduled' doctors appointments. In fact, this same language is used for almost every authorization that I have seen. Yet the employee states that their doctor has approved them to be off for other circumstances. I also have a real problem with seeing 'management trainee' or 'intern' listed for the signature on the FMLA authorization form. Please tell me that there is a physician that is reviewing these requests and making the determination on what is actually needed. Also, is there an additional review process for those individuals that continually use 480 hours annually? I fully understand that it is a much needed benefit and have used it myself, but there is also some abuse of the system occurring.
73	Need more information about FMLA to the employee.
74	I believe that FMLA is being abused by city employees but do not know what to do about it.

75	Occasional annual update of the current changes or additions to policies and procedures.
76	Any additional help is always welcomed.
77	I think the city needs to do a better job of holding the people misusing the FMLA accountable for their actions!!
78	Red flags and misuse.
79	I would like to have more training concerning the abuse of FMLA.
80	It should be monitored closer because of abuse.

**Timekeeper Responses to “What (if any) additional training and/or support related to FMLA do you think is needed?”**

1	I think as a timekeeper all supervisors need complete training and support on FMLA leave and rules. I initially went through FMLA training in 2002 and how to track FMLA as a timekeeper was explained in detail and I was given a clear explanation on the FMLA policy. However, since the city has switched to PeopleSoft, many supervisors as well as timekeepers are limited in their understanding on how to properly enter, track and identify FMLA. A training class and job aid would be very beneficial.
2	I think employees should attend a training on FML. That way they can learn what the consequences are if they misuse this. A lot of employees think they can get away with using FMLA leave when they really are not sick.
3	Better enforcement of employees who are abusing the FML.
4	KNOWLEDGE OF MISUSE OF FMLA. (Emphasis in the original.)
5	Refresher courses as there are sometimes extended intervals when a timekeeper may be required to enter time for FMLA. Usually this is met with “you've done this before” indicating a one time training is all that is necessary.
6	If there are any current changes or updates that need to be addressed, then I would appreciate the current information.
7	Information and training. I have never had a class on this.
8	Better communication between benefits and outer departments. Also, when a possible abuse of FML is reported, it feels that these reports go by the wayside.
9	For larger departments who may have only one HR liaison but more than one supervisor who oversees a certain division's timekeeping, it would certainly save the liaison's time if each supervisor is sent the copy of the FMLA data rather than just the one liaison who then has to forward it.
10	Regarding the questions above, maybe additional training on who is responsible for the following: contacting HR regarding FMLA, recognizing "red flags", monitoring employees' FMLA or tracking misuse of FMLA, etc.
11	Training is needed on all FMLA polices.
12	How to determine misuse...and the person to contact if I believe misuse has occurred. At present I would contact either Antionetta Jones or Tiffany Pearson
13	I have a supervisor that thought that FMLA meant “Free Time”, that the city doesn't charge an employee any leave against their own leave status. It's like pulling teeth to get supervisors to provide any other information other than FMLA, on a time sheet. I finally

	<p>had to copy the FMLA section from the HR Rules &amp; Policy and the MOU because ... they didn't know how it really worked. I see patterns and I point them out to my old supervisor and she just would say ok. But nothing was ever mentioned and they definitely had a pattern. I didn't know the stipulations of the FMLA, so it was hard to say they were abusing the benefit. I have an employee who used to say any time that they were late or left for the day that it was FMLA and our division has a "Leave Request Form" and I never received a copy of the FMLA papers. The employee just started placing FMLA on their timesheet. I had to ask the employee's supervisor about the FMLA. If your immediate supervisor doesn't respond, and they are your division manager as well and they choose not to do anything, then who else do I contact? I cannot contact our HR Liaison, _____, because she tells it all. ... I do not trust our confidentiality within our HR Representatives....FMLA is confidential and payroll clerks don't need to know the reason for the FMLA but they should be aware that an employee even has it or has been approved for FMLA. Payroll clerks shouldn't find out when they show up on an employees' time sheet and payroll clerks have to seek out whether an employee does or doesn't have FMLA....The employee has an on-going FMLA status. When the status changed, the supervisor and payroll clerk were not notified nor copied of the changes or new status. Payroll issues in this division are a real joke. Deceit and falsification on a monthly basis....Prior division manager didn't like handling confrontations and let things get way out of hand. I have been a payroll clerk since _____ and I pretty much know all the policies and regulations; however, after posting for this division, it has been a living terror. It is very stressful and time consuming. Either these folks never really had been taught the HR Rules and Polices nor the MOU or they have just been getting away with things that everyone has learned to close their eyes to all the wrong doings.... Because when the employees look bad or are found doing wrong that it makes the management look bad and that they aren't doing their work..... I give up.</p>
14	<p>I believe there needs to be a training class to ensure timekeepers are aware of all FMLA policies and procedures.</p>
15	<p>I believe if the timekeeper or supervisor feels that FMLA is being abused and has continuously been abused by someone, that there should be a way to anonymously turn in the abuse. At this time, there is not a way. I also believe that the HR Liaison should keep a watch on FMLA as well to notice patterns and abuse.</p>
16	<p>The ones that I disagree on are the things I'm not real sure about.</p>
17	<p>I don't understand why FMLA is used for vacation or free day. Is it after all sick leave is exhausted?</p>
18	<p>When an employee should be told about the history of absences concerning his or her FMLA.</p>
19	<p>I think a training class on FMLA would be helpful.</p>
20	<p>An educational "seminar" for the employee using FMLA, once they have been approved. This should go over the things we look for in abusing FMLA time, how time is reported/recorded, what to do if they feel their time is being mis-recorded, what to do or where to go if their supervisor is non-responsive to their FMLA questions, and other things like that. This would help us timekeepers by giving us a document to which we could refer the employee to help answer questions that come up repeatedly.</p>
21	<p>Training on how to check FMLA leave, if someone is eligible for it...maybe someone from Payroll could teach us.</p>

22	There seems to be issues relating to when an employee is abusing FML. When a supervisor suspects that an employee is misusing FML, they are discouraged from pursuing any further action. There is no clear and open communication with FML administrators to get issues resolved. We are also not encouraged to question whether an employee's condition is warranted for FML.
23	Refresher class would be ok.
24	Timely communication that an employee has been approved for FMLA.
25	To be notified in a timely manner if approved or not. Most intermittent leave is for scheduled appointments; not to always be disregarded so quickly when attempting to report possible misuse. To be kept informed of any update with FML. For sick leave donations to be handled in a timely manner. And to be informed of completed sick leave donations in a timely manner.
26	How to identify abuse of FMLA.
27	I would like a training class on FMLA, because I am not a doctor and how would you know when someone has a chronic condition, if they are misusing FMLA?
28	I have never entered FMLA usage for ___ employees. I did on a couple of occasions when I was entering time for former divisions of the ... department. I have never had training re: FMLA and feel I would need some in order to correctly enter time for anyone approved for FMLA.
29	Refresher course never hurt anyone, especially if it is not something you work with regularly.

**Supervisor and Timekeeper Responses to “What (if any) additional training and/or support related to FMLA do you think is needed?”**

1	How FMLA combines with or is affected by Worker’s Comp has never been addressed to my knowledge and I don't think employees are clear on the differences either. A lot of employees I deal with still think if you have enough sick leave available, there is no benefit to applying for FMLA. Some still think it is separate leave not tied to sick leave and vacation accruals.
2	I feel that 90% of FMLA is misused. If you check all FMLA cases that 90% have had attendance problems.
3	I would be nice to know more about the whole issue of FMLA.
4	I am not aware that there has been any formalized training offered other than official government documents outlining the general rules for FMLA and obviously those documents are very difficult to understand and apply to specific situations. Generally, as a supervisor, I am at a loss of what can be discussed about FMLA with an employee and how to monitor this, etc. It seems something in the form of an easy to interpret information, FAQ's or some other explanatory information about the program and its limitations should be provided as a tool to supervisors.

5	How to properly record FML on the timesheet so the timekeeper knows when to use FML and not just record time as sick leave. Who is going to do anything about an individual who is misusing their FML? We are told to just enter and not question the time as we would be in violation of HIPAA. Red flags? Employees who use FML and abuse FML know all the tricks there are. Managers need more training on how to detect abuse and what to do about it.
6	I am not only a supervisor and a timekeeper, but I also use FMLA time. I understand the guidelines for usage, but unfortunately some employees don't understand two major components of the program--that FMLA usage comes from their leave balances, and that they MUST notify their supervisor that they will be using FMLA when they need that type of leave. I know this is explained in detail to them in all communication from Human Resources, but some simply miss these two items.
7	I believe that all of the supervisors and timekeepers should go through a refresher training. I received training in 2002 on FML and nothing since. I have had to learn how to run my own queries to track my employees' use of FML and make sure that he/she is within the guidelines of their approval letter. I try to keep up on the federal changes and keep my staff informed. I report suspicious patterns to my direct supervisor in hopes that the problem will be addressed. Other than my direct supervisor, I believe that I could report the suspected abuse to HR, or the Benefits Office.
8	I think we need training on how to properly discipline employees who misuse FMLA. The Human Resources Department doesn't always keep us informed of employee situations and FMLA updates.
9	Training on the process of how to know when FMLA is properly used and not abused.
10	Suggestion: Timekeeper's need to also get the paperwork regarding FML. We enter the time, do the tracking etc. It would make it easier for us if we got a copy of the paperwork, so we will know what to go by. Most supervisors do not monitor etc. What is the turn around time on the FML? We have employees constantly asking us for the status of their request. They submitted months ago, we have nothing to show it was approved or even received. Timekeepers often get caught in the middle.
11	Need better system and support when associates abuse FMLA.
12	Refresher courses, especially if the timekeeper has not had to enter FMLA, and in case the rules have been updated.
13	The awareness that FMLA is only for the condition approved. They would have to reapply for any other medical conditions that have nothing to do with their original request.

**Supervisor Responses to “What other comments do you have related to how the city administers the FMLA?”**

1	My responses are based on not having many FMLA problems. I am sure if I had a larger group of employees, I might have answered the questions differently.
2	I think departments needs to know if an employee has been approved/denied FMLA in a more timely manner. Example: an employee applied for FMLA at the beginning of August. In mid-September we received paper work saying they were approved.
3	FMLA is greatly abused by a lot of employees. It would be helpful if more assistance is provided by HR to handle abuse. A better monitoring system needs to be put in place for supervisors to use along with help from HR to cut down on FMLA abuse.
4	Training should be required for all managers. That will help them when addressing employees on FMLA.
5	Exempt managers who have never been non-exempt employee need to have a better understanding and not leave the accountability factor up to the payroll clerks.
6	FML involves personal (HIPAA - type) information, so it's difficult to know what can/cannot be discussed and with whom. I have no medical training, so how am I to judge what is "abuse"? Based on how things usually go with HR, I tend to give the employee all benefit of the doubt and don't question anything because the employee usually wins on appeal anyway.
7	Why are the VPP forms set up to “reward” those on FMLA leave and penalize those who are not?
8	I believe that all supervisors should have to attend FMLA training every other year.
9	I think that the city could better utilize staff time by not requiring all requests to be submitted with a medical certification. The requirement that all employees submit a medical certification causes a tremendous burden on staff, and results in a delay in the processing of routine requests. Therefore, instead of staff focusing on the more questionable (new intermittent/reduced schedule) requests, it is required to sift through all requests.
10	It seems FMLA is given too freely and is abused by some people. Others are very conscientious about its use.
11	This is not an issue that occurs frequently in our area. The HR liaison has been very good about briefing me on the rules, or watching for me.
12	Just need HR to be more responsive to getting papers to the departments so time can be entered correctly the first time.
13	Strange audit, as FMLA is known to have many issues that are constantly being updated and tweaked. Audit Payroll entries and approvals.
14	Employees and managers need to practice day to day compliance with privacy laws in relation to serious health conditions. City may want to consider third party administration.
15	Would seem there should be some way to have more control over intermittent leave. To some it is like a blank check to miss work.
16	I anticipate you finding many issues with this type of survey. We attempt to administer FML with our Human Resources liaison and the assistant city attorney assigned to our department. The issues are too complex to expect supervisors to properly address.
17	Please fix this program. When staffing levels are so low city wide, having employees work when they feel like it does not work. In our case if one person is gone there is an immediate

	overtime cost to cover that shift. It appears any doctor can fill out the paperwork and doctors now charge \$25 per page to complete the forms. This appears to be an incentive for them to say FML is needed.
18	I have no understanding or knowledge of the program at all, except in the most general terms.
19	I wish the FMLA was easier to track. Each case is so different and it is hard to remember who has been approved and for what amount of time. It is sometimes a hassle to check back in their personnel file to verify the hours used. Other than the above, I am not sure how we can make this easier, but it can be time consuming for the timekeeper to check this, especially if you have several employees using FMLA for different increments of time. Each one is different.
20	I don't even know what to ask. I thought we were purposely kept out of the loop due to privacy issues.
21	Some doctors charge for them to fill out FMLA forms. I do not think this is fair to the employee to pay this cost.
22	I don't always receive a letter stating that the employee has been approved, once I did receive a phone call stating that an employee was approved. The letter doesn't state what the FMLA condition is for, so I depend on the employee to let me know when they are sick and that it is FMLA.
23	I personally have only had one employee in the past file for FMLA only for a surgery, it wasn't continuous. Most of the questions asked in the survey I've not had to deal with.
24	The people who decide what FML should be approved for an employee should be someone with a medical background. In my mind having trainees or interns review paperwork from doctors is less than enough. Many times the doctor has put much more detail about absences on the FMLA form but that information never seems to reach the approval letter and then employees are stuck. The other comment I would give would be to give supervisors some firm rules about what is and what is not acceptable for differing types of leave. For example, I supervise an employee who has intermittent leave and can leave for scheduled doctor's appointments. Is intermittent leave something different from leave for scheduled appointments? That is, is this employee entitled to intermittent leave and leave for doctor's appointment or is intermittent leave just an umbrella term for scheduled leave for appointments and other FMLA time? These are the types of questions I think supervisors have.
25	These questions raise doubt if we are administering FMLA correctly!
26	I would like to have a choice of taking sick leave, vacation or time off without pay.
27	I feel FMLA is approved too often for minor medical issues that can be sufficiently covered by sick leave. I also feel there should be a limit to the number of FMLAs one employee can accumulate.
28	Clarity regarding off time when an employee has more than one illness of FMLA and multiple FMLA's, for example, self and family members. How many days are allowed? Does the time frame apply per issue or per packet of FMLA? This is something many departments are not sure about.
29	I don't believe each city department applies FMLA policies in a consistent manner which leads to a lot of confusion. More refresher training sessions are needed.

*The City Could Do More to Reduce the Risk of FMLA Abuse*

30	To my knowledge, I've never had a male employee on FMLA. Females are generally permitted to come and go as they please. An individual's own work initiative will determine how much real work is expected. Another good program which is abused.
31	Help is needed.
32	Stop the abuse of FMLA. It affects the work environment and allows some employees to report off FMLA when they get frustrated with the work.
33	Be sure all valid FMLA time off is documented as qualified under FMLA law and city policy. Undocumented time off should not be FMLA.
34	There is a perception that management does not have a "need to know" re staff usage of FMLA; this perception comes from both the employee as well as HR.
35	I was once asked if an employee could have worked extra hours so that he could qualify for the minimum hours worked during the previous 12 months. I spent a considerable amount of time listing all possible times he could have worked and proved that it still wasn't enough, but he was granted additional FMLA relief anyway. I believe this person is an abuser of the program, but I felt that interference from me was inappropriate. On the other hand, I felt that the reviewer inferred that list of extra hours was reason enough to give him a break when it was clear to me that he had not earned the additional FMLA relief.
36	I feel that the half a day absences for exempt employees are the most disruptive to the section operation. I feel that we should be allowed to ask the employee to use their leave.
37	It would be nice if there was a tracking system in PeopleSoft.
38	We are not allowed to know why an employee was granted FMLA. We cannot check if an employee's usage is in harmony with the time they have been granted. We can only check with Human Resources to see if they have been granted time and for how long.
39	Training on monitoring FMLA usage and how to report abuse.
40	There have been several instances of use in our division over the past few years. More training to provide for consistency in how this is to be administered would be very helpful. Suggest training for senior administrative assistants, division managers, and supervisors with more than 8 or so employees to help achieve the desired consistency, and not for all supervisors. To be effective in achieving consistency the training will need to deal with the details, not just provide an overview.
41	My employees have to tell me it is FML when they call in or they schedule the appointment. If they fail to do that, then the time is charged to unscheduled sick leave, vacation, etc. I believe FML is abused by many staff especially those with "intermittent" FML.
42	What measures does HR take to verify and "check" on FMLA to ensure requests are fraudulent or not, now that VPP incentives mandate less than 51 hours of sick leave are used?
43	There are some employees that abuse FMLA to the point that you are able to tell what days they will come to work and some will call on a Sunday morning to want FMLA for Monday morning and return to work Tuesday with no proof from the doctor's visit and state you did not ask for proof.

44	I have a person who will use up every bit of the 480 hours each year well before the end of the year. This year it was up by July! When you use it for _____ reason it's hard to question the reason. I think the program needs to exam the validity of the absence with the doctor rather than letting it just happen and cause conflicts with internal co-employees who have to step up and perform this individual's duties weeks at a time.
45	I have not had any experience with FMLA. My employees, thankfully, haven't had to use it. I have only been in this position a little over a year. Prior instances were handled by my boss. I do not know if the 2nd line supervisor would take on that responsibility or not when it occurred.
46	We need more training to know if an employee is abusing the FMLA.
47	I need more knowledge on the program.
48	Will there be training administered on a more corporal platform rather than having supervisor and timekeepers alike, depend solely on the information derived from applied knowledge and experience?
49	Employees are allowed to abuse the policy.
50	I believe FMLA is one of the most abused benefits employees enjoy.
51	HR told us in class that we should not ask for medical notes from doctors that the staff person has gone to an FMLA appointment, nor should we discuss their appointments with them, or ask them for anything about their FMLA.
52	I think that there is too much abuse.
53	It takes too long for FMLA to be approved or denied, which leaves the supervisor and timekeeper in limbo. There needs to be a city review process for chronic users of FML or for individuals that use the maximum amount of time allowable each year.
54	I think that the city needs to start cracking down on employees who are abusing FMLA and not following the guidelines for why they received FMLA in the first place. From past knowledge, if an employee is running late, they call and cite FMLA, and they are allowed to cover their lateness by the FMLA. Some use FMLA to extend their time off, and patterns are tracked and reported, but it appears that Benefits allows this coverage without any repercussions. FMLA should only be used for the original reason cited, and documentation from a health care provider should be provided/required when it appears that the employee is abusing the system.
55	I work the _____ shift. I have an employee on intermittent FMLA for scheduled doctor's appointments and treatment that wants to use this benefit even though the appointments are not scheduled during his working hours. Please advise if FMLA benefits are for this purpose.
56	Information and more knowledge about FMLA.
57	Any kind of training on the latest regulations regarding city FMLA will be very helpful.
58	I think that the city does a fairly poor job of training the supervisors as to how to handle these specific issues, not only FMLA but the whole range of these types of issues. The HR people do a fairly good job answering questions when I bring questions to them.
59	The timekeeper and myself as the immediate first line supervisor and division manager co-share the monitoring of FLMA. As first line supervisor as I learn the employee is FLMA approved, I monitor. I usually do not know if it is pending approval, therefore, I do not know to monitor. I suggested on our leave form FLMA pending approval and was

	requested. How would one reclassify time later when it gets approved or to start monitoring?
60	It is definitely a headache when trying to provide adequate staffing and FMLA can be used at random.
61	The city process is slow. We need to know either approved, or not and not this pending for weeks. If they are out of time and this is the only way off, they will take it. On intermittent, you never really know if they are sick. If it is for a headaches, how do you know when they call in FMLA on a headache?
62	FMLA paperwork is circulated to the division manager, timekeeping issues are handled by the division.
63	Some of the questions asked are handled by our HR staff and they keep us informed on individual FMLA issues. We have assigned backup and absence plans for all of the employees on our team and FMLA is not treated differently.
64	I made most of my comments in the previous section, but I truly hope that the city looks more closely at how this system is potentially being abused and how to remedy the situation. Right now, quite honestly, I feel it is a joke.
65	There should be a city policy that every one follows and not variations by departments.
66	Having to go back and change the time for FML after causes additional work.
67	Need to tell employees about the vacation and sick leaves they have left.
68	Some employees on FMLA do not report to work more than 50% of the time. This makes getting their work done very difficult.
69	When an employee is on FLMA and they call in 5 minutes before their shift starts and states they will be in but it is FMLA and they arrive 20 minutes later. Should they call in 30 minutes before their shift starts? When this happens, I give them 30 minutes FMLA and 7 1/2 regular hrs, is this correct?
70	Need more info and/or training on FMLA policy.
71	I think it is being misused by a lot of workers that need to be terminated. Too much abuse!!
72	Any

**Timekeeper Responses to “What other comments do you have related to how the city administers the FMLA?”**

1	I am fully informed of how FMLA works, but in my department it is the supervisors’ duty to handle many of the questions that are asked. I only report what the supervisors submits.
2	Approval letters not given to HR Liaison/Consultants in a timely fashion.
3	I am new to my timekeeper role. I rely on the division manager to report to me when FMLA is appropriate.
4	Training and refresher training is needed on a continual basis. It seems that once a training session is held that everything one needs to know has been taught. Please schedule training sessions and follow-up with updates/refresher courses.
5	I think training updates would be great every six months to a year.
6	There should be a column for “sometimes” documentation is not always received when an employee requests FML, or is in a pending status, or has been denied. This process has improved, but still inconsistent.

7	The not applicable answers on question 6 are because each person's supervisor does these things and informs me to put it into PeopleSoft.
8	It would be nice to have more contact with Benefits as to the status of an employee's FML request. Sometimes we do not get letters from HR until several weeks after he/she has been approved or denied.
9	I feel I am very comfortable with what I am supposed to do when an employee is on FMLA, but don't feel we have ever had training specifically on FMLA...
10	In our division employees are allowed to sign their own time sheets and then the supervisor approves the time written down and then I get the time sheets and post time. The responsibility lies with the employees' immediate supervisor and so if he/she approves whatever leave is used, then that's what I'm suppose to post. However, our supervisors don't know the policy as well as they should and basically just approve without challenging the employee. I've never seen a request in advance but once or twice until I raised cane. That's when I was told by _____ that my only job was to alert or bring my allegations to the immediate supervisor...and he/she will handle it from there....Our supervisors are very lenient and as long as the employee has time on the books they allow them to use or take the leave time. They also give employees vacation, sick leave or unpaid leave when they arrive late and or want to leave early without prior request. They aren't challenged in any way. Not even requested to notify their supervisor in advance of doctor appointments and or FMLA issues. Currently we have an employee that told me she has requested FMLA and she arrives to work everyday late, so she is putting down sick leave to get paid for time off prior to arriving to work and supervisor approves the time. Just can't wait until employee actually does get granted the FMLA....I have two FMLA approvals out of eight employees claiming and or using FMLA since _____. I have been posting time for this division since _____ and am to post what is on the time sheets. I give my boss a headache I'm sure, but I was hired as a payroll clerk .... I wish not to do payroll any longer due to all the stress and static with all of the employees in this division.
11	It would be helpful to notify the timekeepers (via e-mail preferably) that an employee has applied for and been approved/denied for FML. Give the basic parameters as set forth by the doctor so the timekeeper can track and know if misuse is taking place. This is not happening now in _____.
12	The one requesting FMLA talks to their supervisors on most of it and we discuss what concerns me.
13	A refresher course on the day-to-day application of FML would be helpful. FML is a hugely abused benefit and there doesn't seem to be a lot of control of it, especially on the operational end. We just have to take their word that it's FML and we haven't been supported from Benefits in getting things changed.
14	I never received information on how many hours our employee has available to use from Human Resources.
15	We don't inform HR when an employee is using more FMLA than approved. The supervisor is notified of the history of absences. As long as an employee is approved FMLA, we're suppose to grant it as long as the supervisor approved and recorded time on his _____ sheet.
16	It is administered differently from department to department and from supervisor to supervisor. We know the overall rules, but different departments or supervisors allow more or less flexibility depending on who the employee is and how "valuable" that employee

	seems to be. Since these responses are anonymous, I feel comfortable stating this, but I would not say this in the presence of my supervisor, as that would be insubordination.
17	The wait time for FML administrators to deem FML approved or denied seems to be excessive.
18	When an employee decides not to use the FMLA program, he or she should let the time keeper know that they are no longer on the program.
19	To offer more training for timekeepers and supervisors when changes occur with the policy of using FMLA.
20	I wanted to add that although I commented on one question that I don't receive the letter from HR when a person is placed on FMLA, I do get an e-mail from the HR liaison. Since I am a timekeeper I would rather receive a copy of the letter, so I could better understand what kind of FMLA each employee was given. Although the liaison does try to convey that to me. I also have never had to reclassify someone on FMLA.
21	My supervisor monitors FMLA.

**Supervisor and Timekeeper Responses to “What other comments do you have related to how the city administers the FMLA?”**

1	To my knowledge, there has never been a program in place to report suspected misuse of FMLA and I am an HR liaison. Individual supervisors probably handle each situation differently without a lot of guidance or standards.
2	I believe the city’s current policies are good. I don’t really see a need for change.
3	I think this is a great program and it is needed if it is used for what it is intended.
4	Better information needs to be provided to management about the parameters for supervising this and what they can or cannot do, in the form of common language.
5	When we have questioned FML usage we have been told by HR staff to code it as FML. HR doesn't send info to departments timely, we have to get copies of letters from employees and then receive department copies days later. Is it a matter of staffing in HR? Knowledge? There needs to be more training for supervisors and managers other than just HRMA on FML and the laws are changing, who is going to train us?
6	I'm not sure managers understand what they can and cannot do or that they understand intermittent leave. Some do not understand the notice that their employees have applied, not been approved but applied. I have seen paperwork that I know is incorrect but have been told not to “challenge” the wrong paperwork just enter it and re-enter it when it is corrected!
7	While I am in agreement with FMLA I see to many employees misusing what FMLA was meant for. I see a lot of employees with patterns only getting sick on Monday, Tuesday and Fridays. Or after they have exhausted their time it’s a miracle they can come to work everyday and not get sick.
8	This really wasn't thorough survey.
9	Our department's HR consultant handles this program quite well. She assists employees when needed without hesitation, and keeps supervisors informed about changes, etc. We have never had formal training, but she relates the required program's guidelines and procedures to all necessary parties.

10	I believe that all supervisors and timekeepers need to go through a refresher course and be trained especially when major changes occur in the policy, and that new timekeepers and supervisors should go through a mandatory training. This is a very important policy and it needs to be followed to the strictest of guidelines so that it is not abused. It's great for those that need it and use it for its intended purposes, while not abusing it.
11	I worry that the city doesn't have strong enough training on FMLA and that some employees find loopholes to avoid our department's policies on it.
12	The amount of time that is allowed to get the doctors to complete the FMLA papers needs to be longer.
13	FML approvals or denials need to be processed faster. Most of the time we request the employee to bring their letter showing approval, because we in the office have not received anything from HR. When we call our liaison for a status, we have to wait for them to try and get a answer from HR. It is a very frustrating process. One employee even told us, it is not their job to supply us with a copy of his approved FML; he only did it to ensure that he would get paid. Need a better way of communicating the status of approved or denied FML's, even though he could file a grievance if he was not paid accordingly. Thanks for asking my opinion.
14	_____ HR does not give us copies of the letters from central HR with the FMLA information. We just receive email stating the employee was approved for FMLA with very minimal details yet we're expected to enforce it. I think there needs to be stricter guidelines for FMLA use to cut down on abuse of FMLA and to assist supervisors with following the guidelines.
15	I do not remember quite all of the rules, and I could use a refresher course, or better yet, if there is a booklet or information on the use of FMLA, I would appreciate receiving it. Thank you.
16	There should be a better way to verify abuse of FMLA use.

*The City Could Do More to Reduce the Risk of FMLA Abuse*

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## **Appendix D**

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### **Director of Human Resources' Response**

*The City Could Do More to Reduce the Risk of FMLA Abuse*



Department of Human Resources

Office of the Director

12th Floor, City Hall  
414 East 12th Street  
Kansas City, Missouri 64106-2743

(816) 513-1947  
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Date: September 14, 2009  
To: Gary L. White, City Auditor  
From: Gary O'Bannon, Director, Human Resources  
RE: FML Audit



I have reviewed the recommendations offered by the City Auditor's review of the City's Family Medical Leave Administration. I would like to stress that I generally accept all recommendations based on the premise that constructive criticism of our processes is not only necessary but helpful in developing policies that are professional and in the best interest of the organization. However, I strongly disagree with a number of recommendations contained in this audit and, as a result, I have attempted to provide thorough responses as to those reasons. I would like to thank the audit team for their professionalism exhibited during the course of this review.

The intent of The Family and Medical Leave Act of 1993 (FMLA) was to entitle covered workers to take up to 12 weeks of unpaid leave to care for newly born or adopted children, tend to ailing relatives, or recuperate from poor health or injuries. Following FMLA leave, his or her employer must restore the worker to his or her old job or a new position with equivalent duties and pay. The Act was essentially created sixteen years ago because prior to the legislation female employees had zero job protection for the above events.

There are many critics of this legislation and it has been described frequently as one of the most frustrating workplace regulations ever created, and that it is "burdensome" and "open to abuse." There have been calls by various professional groups for Congress to revise the regulations to close loopholes that could be taken advantage of by those seeking to abuse the legislation. In advance of federal changes, this audit recommends various interventions designed to prevent or seek out abuse although not one incident of abuse has been discovered. Regardless, I have no issues with most of the recommendations but, essentially, my areas of disagreement are based on my concern of an adverse impact on the female segment of our work population. Generally, a larger percentage of females take advantage of this lawful benefit. Our internal population data is consistent with this trend. For example, 31% of all female employees currently have an approved FML, which is double the male percentage on FML. An additional concern is that implementing a full schedule of additional rules and requirements to stop the few employees who *may* be "abusing" the intent of the legislation appears excessive and,

See Comment  
No. 1 Page 65

See Comment  
No. 2, Page 65

See Comment  
No. 3, Page 65

See Comment  
No. 4, Page 65

ultimately, may be interpreted by employees that the organization does not want them to use the benefit. Finally, a number of the recommendations may actually serve to drive up benefit costs by mandating additional visits to the doctor office.

See Comment  
No. 5, Page 66

Please see the below responses to the specific recommendations.

**Recommendation 1:** The director of human resources should revise the city’s calculation of leave entitlement to be consistent with the requirements of the Family and Medical Leave Act.

**Response:** Agree. Staff will verify each employee’s average workweek prior to determining the number of hours an employee is entitled to receive.

**Recommendation 2:** The director of human resources should include the number of sick leave hours employees use for FMLA leave when determining qualification for the VPP attendance bonus.

**Response:** Under Consideration. From 1993 to 2009, FML legislation did not allow for the inclusion of FML hour when determining attendance bonus or incentive programs. Recent modifications in January 2009 made this an employer option, not a mandate. However, the City concluded the most recent negotiations over work rules and pay provisions with the American Federation of State, County and Municipal Employees Local No. 500 four months prior to this modification. This option is subject to formal negotiations with the American Federation of State, County and Municipal Employees Local No. 500. Therefore, the department of human resources will consider in a more deliberate fashion as to whether the City believes this is an appropriate recommendation when we develop our proposals for the next scheduled negotiations.

**Recommendation 3:** The director of human resources should instruct departments to require “fitness for duty” certifications for employees returning from FMLA leave due to their own serious health condition as required by the city’s FMLA policy.

**Response:** Do not agree. The current policy language that describes a “fitness for duty” requirement is not in keeping with current practice. The more appropriate term is a “return to duty” notice, which essentially approves an employee’s return to the workplace. A “fitness for duty” certification implies a much higher standard e.g. complete physical, review of medical records, review of job description/responsibilities, consideration of work restrictions, etc. However, while the current policy uses the language “shall”, department management has over the years expressed difficulty in requiring this for certain conditions such as non-contagious illnesses e.g. migraine headaches. A universal mandate, or “one size fits all” policy, does not comport with FML administration, or the best interests of the City or employees. First, certain medical conditions should not require such certification. Is it appropriate to question whether a

See Comment  
No. 6, Page 66

See Comment  
No. 7, Page 66

woman who is pregnant will have to seek and trigger FML requests, whether intermittent or in blocks of time? Is it necessary to have the woman return to her doctor for a *return to work* notice each time she misses work after her medical certification has already been approved for such leave? Second, requiring this in ALL cases will only serve to continue to drive up the cost of healthcare by requiring employees to visit the doctor's office. Third, it will result in higher costs out of the employees pocket by mandating doctor visits when it is unnecessary. Fourth, this policy should be viewed as a shared responsibility among the employee, doctor, employee's supervisors and human resources. We believe it works best when we trust supervisors and managers, those closest to the situation, to make the determination of when a *return to duty* medical certification is necessary. Last, we conducted a survey of thirteen medium to large cities and found that eight do not make this a requirement (Phoenix, Virginia Beach, Los Angeles, Charlotte, San Jose, San Diego, Tucson and Shreveport); only four appear to require this of all employees and they only utilize them for public safety positions, if there is a delay in returning to work or positions with high physical demands.

**Recommendation 4:** The director of human resources should include in the city's FMLA policy a requirement that employees who need intermittent leave for planned medical visits and/or treatments make a reasonable effort to schedule the appointments so they do not disrupt the department's operations, and provide written verification that the appointment was kept.

**Response:** Partially agree. As with all leave requests, we encourage all employees with any sick leave usage to attempt to schedule appointments outside of their work hours. We will modify the policy re-draft to include written language that encourages employees to make a reasonable effort to schedule appointments so not to unduly disrupt operations. While the recommendation for employees to submit written verification that the appointment was kept appears, on the surface, to be a good practice, it is problematic when this is not currently required of non-FML sick leave appointments. Only mandating this for FML users could result in a claim that the City has imposed a requirement that discriminates against FML users. We conducted a survey of thirteen medium to large cities and only one (perhaps as many as three) of the thirteen appears to mandate the requirement to schedule appointments in a certain manner; a couple of others allowed departments the flexibility and authority to mandate verification that the appointment was kept, but this was not mandated in their FML Policy.

**Recommendation 5:** The director of human resources should train supervisors on how to monitor for red flags of FMLA abuse, comparing the employee's use of FMLA leave with the parameters described in the letter from Human Resources, and provide guidance on appropriately addressing suspicions of abuse.

See Comment  
No. 8, Page 66

See Comment  
No. 9, Page 66

See Comment  
No.10, Page 66

See Comment  
No. 11, Page 67

See Comment  
No. 12, Page 67

**Response:** Agree. The January 2009 FML changes did not justify a call for mandatory training but simply a briefing. The main changes involved the treatment of those on military leave (Military Caregiver Leave (required), Military Exigency Leave (required) and counting against the twelve-week FML allotment used either on a holiday that the employee was scheduled to work or required to work overtime) and the ability to consider FML time in attendance bonuses or incentive plans. Since the latter was not a part of our policy, no time was spent on this aspect. We conducted a recent survey asking City departments which training initiatives they sought. *Red Flags for FML Abuse* did not receive even one vote. However, if there is any evidence that training is needed or requested, we generally respond quickly. We have finalized a draft training session that we have already announced and are accepting requests for training.

See Comment  
No. 13, Page 67

**Recommendation 6:** The director of human resources should use a “rolling” year to define the 12-month period within which an employee’s FMLA entitlement occurs.

**Response:** Do not agree. The FML Act provides agencies with the option of using a “rolling” or calendar year period of eligibility. Administrative burdens are minimized, supervisory and employee understanding of the legislation and of an employee’s eligibility is enhanced as well as employee communications by using a calendar year. An example may be helpful. Many employees have multiple FML certifications for qualifying medical conditions. Employers have to track each approved certification. Therefore, if an individual has three on file, staff would have to track each one of these on a rolling basis. The legislation already requires that you track on a rolling basis each employee’s eligibility for the benefit, which is 1,250 hours of work with the employer. Clearly, tracking on a calendar basis is more advantageous in that it would reduce the above described administrative burden and the employee also can easily track his or her eligibility. It is generally agreed that the only ‘advantage’ to using the “rolling” year to track FML usage is it could prevent an employee from ‘stacking’ FML from the end of one calendar year to the beginning of the next calendar year. After reviewing our records, we did not find a single example of where ‘stacking’ occurred. We conducted a survey of medium to large cities and usage is mixed as you would expect when employers have an option; four (Phoenix, Las Vegas, Milwaukee County and Shreveport) utilized a calendar year review.

See Comment  
No. 14, Page 67

**Recommendation 7:** The director of human resources should eliminate the policy that allows exempt employees approved for intermittent FMLA leave to take up to 120 hours of paid FMLA leave without charging it to their accrued sick leave or vacation.

**Response:** Do not agree. This policy addition was added in 2004 after exempt employees and departments approached the department of human resources with concerns over mandating that exempt (salaried) employees use sick leave for incremental use of FML for doctor’s appointments. For example, if there are salaried employees who

See Comment  
No. 15, Page 67

consistently work 55+ hours each week, this policy allows departments to not charge those employees leave balance in recognition of their exempt status. However, the auditors communicated that some supervisors view this benefit as an entitlement as opposed to an option for consideration. Therefore, we propose changing the critical language from "...will be allowed..." to "...may be allowed..." to make clear that this is an option that may be utilized for those deserving consideration. Last, we conducted a survey of thirteen medium to large cities and the City of San Diego only requires exempt employees to use sick leave in whole day increments, which means they don't have to use sick leave for incremental use. Another jurisdiction changed the FLSA status of exempt employees to hourly, which I would not recommend because a) you may jeopardize the exempt status of the entire job class by continuing to have that individual perform exempt status duties and expectations and b) you risk allowing that employee to accumulate a significant amount of overtime.

**Recommendation 8:** The director of human resources should direct staff to verify information about the medical provider during the certification process and establish guidelines for determining when it is appropriate to require second opinions.

**Response:** Partially Agree. Human Resource staff's current practice is to review the certifications for completeness and conformity with the FMLA. When there are obvious signs of inconsistency, e.g. no health care provider signature, illegible handwriting, no health care provider address, health care provider's notations not on either the medical certification form or on health care provider letterhead, etc., we follow Department of Labor regulations by bringing this to the attention of the employee, in writing, regarding what information is lacking and allow the employee ten (10) calendar days to cure the deficiency. One of the recommendations by the Auditor's Office was to validate that the doctor was in the Blue Cross Reference Book. However, employees are not required to utilize a doctor covered under the BCBS-KC plan. Also, the FMLA does not require that medical certifications be authored by a medical doctor but a health care provider. The FMLA defines a "health care provider" as: 1) a doctor of medicine or osteopathy who is authorized to practice medicine or surgery by the state in which the doctor practices; or 2) any other person determined by the secretary of labor to be capable of providing health care services (C.F.R. 825.118). The definition also includes any health care provider from whom an employer's group health plan's benefits manager will accept medical certification of the existence of a serious health condition. The Department of Labor adopted the definition, which includes, but is not limited to the following: podiatrists, dentists, clinical psychologists, clinical social workers, optometrists, chiropractors (limited to treatment consisting of the manual manipulation of the spine to correct a condition demonstrated by X-ray to exist), nurse practitioners, nurse-midwives, Christian Science practitioners. Last, we conducted a survey of thirteen medium to large cities. Twelve of those cities do not routinely verify information about medical providers or consider second opinions unless there is a "red flag" such as those ones described above.

See Comment  
No. 16, Page 68

See Comment  
No. 17, Page 68

The City of San Francisco is the only surveyed agency that has a policy that triggers a request for a second opinion ONLY after the department head submits formal, written evidence as to why he or she doubts the validity of the Certification of Health Care Provider. Per DOL regulations, the second opinion must be from a provider that has no employment relationship with the City. If there is a conflicting opinion, then a third opinion is solicited from yet another medical provider and that decision is binding. The City pays for each of the additional reviews. Likewise, the City of Kansas City would consider investigating and/or the possibility of second opinions if we receive formal, written notice from the department director or designee that questioned the validity of a Provider Certification. To date, while we have received numerous telephone calls alleging abuse of FML, when told of the requirement to submit the allegation(s) in writing, we have not, to date, received one formal request for review.

See Comment  
No. 18, Page 68

**Recommendation 9:** The director of human resources should develop procedures for regularly reviewing FMLA data in PeopleSoft for discrepancies, and following up with departments when discrepancies are identified.

**Response:** Agree. We have improved the stability in the position that processes FML requests, increased internal staff training and, in addition, began reviewing queries to identify discrepancies.

**Recommendation 10:** The director of human resources should support and encourage a control environment that monitors FMLA leave time and enforces FMLA leave rules.

**Response:** Implemented. There is no valid or reasonable evidence that supports a claim that the director of human resources does not support a control environment that monitors FML time and enforces FMLA rules. I do believe that this is a shared responsibility. For example, the City Auditor's Office described a conversation where a timekeeper acknowledged entering in FML time inconsistent with an approved Provider Certification received from Human Resources. While Human Resources can run queries and search for inconsistencies after the fact, a mature system attempts to identify inconsistencies at the earliest point, which begins with time entry, prior to department level approval. We have created a number of queries that are designed to assist departments in ensuring that they are entering time and complying with the approved FML Provider Certification in addition to providing job aides outlining the appropriate time reporting codes listed below. If time is not accurately entered, the queries will not be effective. We will add this to our training designs. Payroll Clerks have access to the FML Occurrence Report through PeopleSoft Time and Labor module. These codes are also posted on our Intranet site.

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See Comment  
No. 20, Page 69

Time Rpt Code (TRC)	Description
HOF	FML-Holiday Not Worked/Paid
MLC	FML-Mil Leave Comp Time
MLF	FML-Mil Leave Free Day
MLS	FML-Mil Leave Sick Leave
MLU	FML-Mil Leave Unpaid Leave
MLV	FML-Mil Leave Vacation
MXC	FML-Mil Ext Leave Comp Time
MXF	FML-Mil Ext Leave Free Day
MXS	FML-Mil Ext Leave Sick Leave
MXU	FML-Mil Ext Leave Unpaid Leave
MXV	FML-Mil Ext Leave Vacation
XCF	FML - Comp - Family Member
XCS	FML - Comp - Self
XEX	FML - Exempt Employee
XFF	FML - Free Day - Family
XFS	FML - Free Day - Self
XSF	FML - Sick Family Member
XSS	FML - Sick Self
XUF	FML - Ex- Unpaid Family Member
XUS	FML - Ex - Unpaid Leave Self
XVF	FML - Vacation Family Member
XVS	FML - Vacation Self
YLC	FML-Mil Leave Comp Time
YLF	FML-Military Leave Free Day
YLS	FML-Military Leave Sick Leave
YLU	FML-Mil Leave Unpaid Leave
YLV	FML-Military Leave Vacation
YOF	FML-Holiday Not Worked /Paid
YXC	FML-Mil Ext Leave Comp Time
YXF	FML-Mil Ext Leave Free Day
YXS	FML-Mil Ext Leave Sick Leave
YXU	FML-Mil Ext Leave Unpaid Leave
YXV	FML-Mil Ext Leave Vacation

We have developed additional training to identify “red flags” of suspected abuse.

**Recommendation 11:** The director of human resources should establish an FMLA application process that ensures applications are processed in a timely manner.

**Response:** Agree. One additional negative for use of a calendar year review period. From October through December, more than one-thousand requests for FML recertification are submitted to Human Resources. During this time, one hundred percent compliance remains the goal but compliance with the fourteen-day turnaround time is difficult at best. Three of the five samples outside of the 14-day period occurred during the recertification period; one sample was one day over the goal; and all but one of those outside the goal occurred more than two years ago.

**Recommendation 12:** The director of human resources should ensure that only the latest FMLA policy is available to employees.

**Response:** Implemented. We have purged all outdated links and from our accessible files.

**Recommendation 13:** The director of human resources should provide additional training opportunities and resources to supervisors and timekeepers on administering the city's FMLA policy.

**Response:** Agree. We have training designs on "Red Flags of Suspected Abuse", which will include a section on "How to Enter FML" developed and ready for launch.

See Comment  
No. 21, Page 69

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**Appendix E**

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**City Auditor's Comments Regarding the Director of Human Resources'  
Response**

*The City Could Do More to Reduce the Risk of FMLA Abuse*

This appendix is the city auditor's written comments on the Human Resources director's response to this audit. Government Auditing Standards require us to evaluate the validity of management's comments and provide reasons for any disagreement. The numbers listed for each comment correspond to specific passages in the director's response (Appendix D).

**Comment 1 (See page 55)**

Neither men nor women had job protected leave for these situations before the FMLA was enacted. The Family and Medical Leave Act helped workers, both women and men, meet the dual demands of work and family by providing job protected leave to care for a baby or an ill family member or to recover from a serious illness.

**Comment 2 (See page 55)**

We intentionally did not look at the merits of individual cases of FMLA leave or investigate potential abuses of the benefit. We found through our interviews and survey of supervisors and timekeepers that the *perception* of FMLA abuse clearly exists. Our recommendations are pro-active measures the director of human resources can take to decrease the risk of FMLA leave abuse.

**Comment 3 (See page 55)**

We do not see how our recommendations would adversely affect any employee, male or female, who has a valid reason for taking FMLA leave.

**Comment 4 (See page 55)**

We believe that classifying our recommendations as "a full schedule of additional rules and requirements" that employees could interpret as barriers to using the benefit is a mischaracterization. The only recommendation that would add a requirement for employees is recommendation 4, requiring those who need intermittent leave for planned medical visits and/or treatments to make a reasonable effort to schedule the appointments so they do not disrupt the department's operations, and to provide written verification that the appointment was kept. Our recommendations are intended to strengthen internal controls in the Human Resources Department and improve the consistency of administering the FMLA benefit.

**Comment 5 (See page 56)**

Our recommendations do not mandate additional visits to a medical provider.

**Comment 6 (See page 56)**

We used the language, “fitness for duty,” in our recommendation to match the language in the city’s policy. Although it is not being followed consistently, it is currently a requirement in the city’s FMLA policy. In addition, employees approved for FMLA get a letter from Human Resources stating he or she will be required to present a fitness for duty certificate prior to being restored to employment, and that if such certification is not received, the employee’s return to work may be delayed until it is provided. Recommended practices suggest that employees who know they will need their health care provider to approve their return to work will be less likely to attempt a fraudulent certification.

**Comment 7 (See page 56)**

The recommendation applies only to employees returning to work after being on continuous FMLA leave due to their own serious health condition not for intermittent absences caused by conditions such as migraine headaches.

**Comment 8 (See page 57)**

The recommendation would not apply to an employee’s intermittent leave due to conditions related to pregnancy.

**Comment 9 (See page 57)**

The recommendation does not mandate an additional office visit. The employee’s health care provider can supply the certification to the employee at the time of a scheduled appointment, by mail, by fax, or by email. Our recommendation is to follow and enforce the city’s current FMLA policy requiring a fitness for duty certification.

**Comment 10 (See page 57)**

Due to privacy considerations, a supervisor/manager is aware of the reason an employee needs FMLA leave only if the employee volunteers the information to him or her. The supervisor knows the general

category of leave (e.g. serious health condition), but has no specific information on which to judge the necessity for a fitness for duty certification. Only the medical provider is in position to evaluate the employee's suitability to return to work.

**Comment 11 (See page 57)**

We believe the policy should require, not simply encourage, employees to make a reasonable effort to schedule appointments so as not to unduly disrupt department operations.

**Comment 12 (See page 57)**

According to our survey of City of Kansas City, Missouri, supervisors, 23 percent of those responding currently require employees approved for intermittent FMLA based on his/her need to see a health care provider and to submit written verification that appointments are kept.

**Comment 13 (See page 58)**

The results of our survey show supervisors could benefit from training.

- Nearly 30% of supervisors reported they do not know how to recognize red flags
- 46% of supervisors say they do not know who to contact if they suspect misuse
- 41% of supervisors say they are not encouraged to monitor FMLA use
- 55% of supervisors say they have not received training on enforcing the city's FMLA policies or monitoring FMLA use.

**Comment 14 (See page 58)**

Although using a rolling year to track FMLA leave is more complicated than using a calendar year, having multiple certifications does not increase the complexity. Each day an employee requests FMLA leave on the rolling year method, the employer looks back 12 months and totals the amount of FMLA leave the employee has already taken to determine if additional leave is available. Whether an employee has one certification or three certifications, 12 workweeks of FMLA leave is the maximum allowed. In other words, employees do not get 12 workweeks of FMLA leave hours for *each* certification.

**Comment 15 (See page 58)**

Our analysis of PeopleSoft data found that 13 employees "stacked" their FMLA leave between October 2005 and March 2006, and 12 employees

“stacked” their FMLA leave between October 2006 and March 2007. Using the calendar method to define the 12-month period of FMLA entitlement allowed these employees to take more than 480 hours of FMLA leave in a 6-month period.

**Comment 16 (See page 59)**

The Family and Medical Leave Act allows employers to require exempt employees to use accrued leave for either continuous or intermittent FMLA-qualifying leave. In addition, the regulations specifically allow the employer to make deductions from the employee’s salary for any hours taken as intermittent or reduced FMLA leave within a workweek, without affecting the exempt status of the employee (CFR 825.206).

**Comment 17 (See page 59)**

Our suggestion to use the Blue Cross/Blue Shield provider directory, which includes a variety of medical professionals in addition to physicians, was an example of the sources available to human resources staff for assessing information about the health care provider. If human resources staff discovered that the medical provider who certified a city employee needed treatment for migraine headaches was actually a pediatrician or a podiatrist, that could be cause for requiring a second opinion.

**Comment 18 (See page 60)**

The director’s point that human resources receives “numerous telephone calls alleging abuse of FML” further supports the need to establish guidelines about when it is appropriate to require second opinions. The city would also benefit from the director establishing formal written guidelines for managers about how to submit information when they suspect abuse of FMLA leave. Managers told us they believe the city has no process for investigating cases of possible misuse of FMLA leave.

**Comment 19 (See page 60)**

We believe there is evidence of an inadequate control environment. Of those who responded to our survey, over 40 percent of supervisors do not feel that they are encouraged to monitor FMLA use, and over 45 percent of the supervisors do not know who to contact if they do suspect abuse. In addition, during the audit we asked human resources staff what reports they use to monitor FMLA. They said they do not run any reports to monitor FMLA.

**Comment 20 (See page 60)**

The list of time reporting codes omits 10 FMLA codes, including a number of commonly used ones. The director of human resources should update the Human Resources intranet site to include a full listing of FMLA time reporting codes.

**Comment 21 (See page 62)**

We did not review any applications made after January 2008. However, some of the comments from those who took our survey included concerns about timeliness of approvals.