

Travis County Clerk
Family Medical Leave Act Review
#16-24



TRAVIS COUNTY
AUDITOR'S OFFICE

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From: Nicki Riley, CPA
Travis County Auditor

Date: March 23, 2017

Subject: County Clerk FMLA Review

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

BACKGROUND

The County Clerk serves as the official record-keeper for the County Courts at Law and the Commissioners' Court. The County Clerk also conducts elections for Travis County voters. This office is divided into a number of divisions. The Clerk's Recording Division preserves all documents pertaining to real property records, and it issues DBA's and marriage licenses. The Misdemeanor Records Division maintains court documents and provides administrative support to the county courts. The Civil/Probate Division keeps records for the civil and probate courts, while the Records Management Division prepares the minutes of the meetings and maintains the documents presented during Court proceedings. The Elections Division conducts special, primary, and general elections in Travis County.

OBJECTIVE AND SCOPE OF REVIEW

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

REVIEW METHODOLOGY

Our review methodology included testing the entire population of FMLA absences during the examination period and verbal and written representations from County Clerk personnel. The total population under review included 7,387 FMLA hours and 54 individual leave events during the examination period. In regard to written and/or verbal representations obtained during this review, unless otherwise noted in this report, management maintains that the assertions we relied upon were correct to the best of their knowledge.

SUMMARY OF FINDINGS

During our review, we noted the following:

1. The County Clerk's administrative staff did not obtain medical certifications for 30 (55.6%) of the 54 FMLA leave events in the period, as required by Travis County Code 10.038.
2. Three (5.6%) FMLA medical certifications were incomplete. These certifications did not contain sufficient medical facts to determine if a qualifying event, as defined by the FMLA, had occurred.
3. Three (5.6%) FMLA medical certifications were not recertified when a change in the party's circumstance occurred, as required by Travis County Code 10.038.

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

EXAMINATION TEAM

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

CLOSING

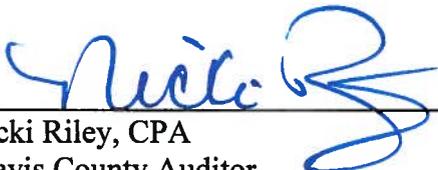
This report is intended solely for the information and use of your office and the Commissioners' Court. We greatly appreciate the cooperation and assistance received from the management and staff of the County Clerk's Office during this examination. Please contact us if you have any questions or concerns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



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Division



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Managers, Travis County Auditor's Office
Examination File

EXECUTIVE SUMMARY

SUMMARY OF FINDINGS

Our review disclosed significant findings in regards to administrative compliance related to obtaining medical certifications, and ensuring the related documentation is complete and sufficient in accordance with the Travis County Policy and best practices of the Department of Labor (DOL). The following paragraphs summarize our findings; individual leave events are not included in multiple findings:

Failure to provide certifications – The County Clerk’s administrative staff did not obtain 30 (55.6%) of 54 medical certifications. Without the proper medical certification, the leave events in question are not properly supported in accordance with Travis County Code 10.038.

Incomplete certifications – Three (5.6%) of 54 FMLA medical certifications were incomplete. These certifications did not contain sufficient, relevant medical facts to determine if the leave was a qualifying event as defined by the FMLA. Without these relevant medical facts, the leave events are either not valid or not properly supported in accordance with Travis County Code 10.038.

Recertifications – Three (5.6%) of 54 FMLA medical certifications should have been recertified due to a change in circumstance. There are many possible reasons for a change in circumstance for a FMLA leave event. The most common issue we noted was that the original certification’s definitive timeline or schedule (generally an exact date or range of dates) had lapsed. In these cases, without proper recertification, the leave events are no longer valid per Travis County Code 10.038.

Recordkeeping – One (1.9%) file was co-mingled with other job performance related information. All medical certifications should be maintained separately from all other types of files and be treated as confidential, per DOL regulations.

Eligibility/Request Forms – Three (5.6%) of 54 medical certifications were not accompanied by the associated compliance eligibility and request forms (Forms WH-381 Part A & B), as required by Travis County Human Resources Management Department (HRMD).

SIGNIFICANCE

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

RECOMMENDATIONS

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

1. The County Clerk's administrative staff should assess the soundness of certifications and require second and third opinions or a recertification if there is reason to doubt a medical certification. Likewise, if a medical certification is incomplete and/or insufficient, the HR administrative assistants should follow up with the health care provider to ensure that the leave qualifies as a serious health condition under the FMLA.
2. The County Clerk's supervisors and timekeepers should receive regularly updated training from HRMD or other appropriate outside parties regarding FMLA policy. They should also track and review FMLA leave events, requesting that administrative staff examine any excessive FMLA utilization or divergences from the applicable certification form.

BACKGROUND

Overview

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

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

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

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

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

FMLA Checklist

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

1. The employer must prominently display the FMLA information poster. In addition, the employer must also provide each employee with a general notice about the FMLA in the employer’s handbook or other written materials about leave and benefits.
2. When the employee requests leave, the employer must determine if the employee is eligible for FMLA leave. An eligible employee is an employee who has been employed by the

employer for at least 12 months and has worked at least 1,250 hours (actual hours worked) during the 12-month period immediately preceding the start of FMLA leave. The 12 months of employment need not be consecutive. Eligible employees are entitled to 12 weeks/480 hours of FMLA leave for qualifying events on a rolling 12-month basis (Note: Military caregiver leave is 26 weeks).

3. Within five business days of the initial request, the employer must complete and provide the employee with the notice of eligibility and rights and responsibilities (Form WH-381 Parts A&B).
4. The employee must obtain a completed medical certification as required by Travis County Code 10.038 within 15 calendar days of the leave request, absent unusual circumstances.
5. Upon receiving the medical certification, the employer must determine if the certification details a FMLA-qualifying event. If the event does not qualify and leave is denied, the employer must communicate the deficiencies in the medical certification to the employee in writing. The employee has seven calendar days to provide the employer with updated information on a “Designation Form”.
6. Throughout the leave period, the employer must provide the employee with the same healthcare benefits they received prior to taking the leave. When the employee returns from leave, they are to be restored to the position they previously occupied or to an equivalent one.

Qualifying Events

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

1. Birth of a newborn child,
2. Adoption or foster care placement of a child,
3. Care of the employee’s spouse, son, daughter, or parent with a serious health condition,
4. The employee’s own serious health condition, and
5. A qualifying military exigency arising from the employee’s spouse, son, daughter, or parent’s active military duty or impending call or order to active duty.

Employer and Employee Obligations and Responsibilities

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

Notice of Request

If the leave is foreseeable, at least 30 days advance notice should be provided by the employee. If less than 30 days notice is given, the employer may require an explanation as to why 30 days notice was not practical. The employee must provide sufficient information (i.e.: state the qualifying reason for and provide anticipated timing and duration of the leave, if foreseeable) for an employer to reasonably determine that the Act may apply.

Eligibility Notice WH-381 Part A

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

Rights & Responsibilities WH-381 Part B

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

1. The employer's designated 12-month FMLA year,
2. That leave may be designated and counted against the employee's FMLA leave entitlement if qualifying,
3. Whether a fitness for duty form will be required, and
4. Arrangements for continuing obligations of health care premiums.

Recordkeeping requirements

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

1. Basic payroll and identifying data,
2. Hours of leave,
3. Copies of employee notices to the employer and copies of employer notices to employees,
4. Internal documents regarding benefits and policies concerning paid and unpaid leave, and
5. Documentation regarding any disputes concerning whether leave is properly designated as FMLA.

Medical Certification

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

“Medical Certification. When the employee requests medical leave, Travis County will require that the employee provide medical certification from a health care provider that a serious health condition exists. A Family and Medical Leave Certification form is available from the employee’s department or the Human Resources Management Department.”

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

1. A certificate must be requested within five business days after the foreseeable leave is requested, or
2. Within five business days after unforeseeable leave commences, or
3. At a later date, if the employer has reason to question the appropriateness or duration of the leave.
4. They should also provide written notice to employees regarding the medical certification requirements in the Rights and Responsibilities (R&R) Notice Form.

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

Good Faith Efforts

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

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

If an employee fails to return the certification in a timely manner, the employer can deny FMLA protections for the leave following the expiration of the 15-calendar day time period until a complete and sufficient certification is provided. However, the 15-day period and the period of absence beginning the day the certification was

received is FMLA-protected leave. If the certification is not returned within a seven day cure period for deficiencies, the leave can be denied.”

Leave Beyond a Single Year

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

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

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

Incomplete Certifications

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

“The medical certificate must include:

- 1) The name, address, and telephone number of the health care provider,*
- 2) The name of the patient,*
- 3) Expected date of return to work,*
- 4) Diagnosis, and*
- 5) A statement that the employee’s absence from work is required.”*

Serious Health Condition

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

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

Recertifications

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

“(a) 30-day rule. An employer may request recertification no more often than every 30 days and only in connection with an absence by the employee, unless paragraphs (b) or (c) of this section apply.

(b) More than 30 days. If the medical certification indicates that the minimum duration of the condition is more than 30 days, an employer must wait until that minimum duration expires before requesting a recertification, unless paragraph (c) of this section applies. For example, if the medical certification states that an employee will be unable to work, whether continuously or on an intermittent basis, for 40 days, the employer must wait 40 days before requesting a recertification. In all cases, an employer may request a recertification of a medical condition every six months in connection with an absence by the employee. Accordingly, even if the medical certification indicates that the employee will need intermittent or reduced schedule leave for a period in excess of six months (e.g., for a lifetime condition), the employer would be permitted to request recertification every six months in connection with an absence.

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

(1) The employee requests an extension of leave;

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

(3) The employer receives information that casts doubt upon the employee's stated reason for the absence or the continuing validity of the certification. For

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

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

(e) Content. The employer may ask for the same information when obtaining recertification as that permitted for the original certification as set forth in §825.306. The employee has the same obligations to participate and cooperate (including providing a complete and sufficient certification or adequate authorization to the health care provider) in the recertification process as in the initial certification process. See §825.305(d). As part of the information allowed to be obtained on recertification for leave taken because of a serious health condition, the employer may provide the health care provider with a record of the employee's absence pattern and ask the health care provider if the serious health condition and need for leave is consistent with such a pattern.

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

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

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

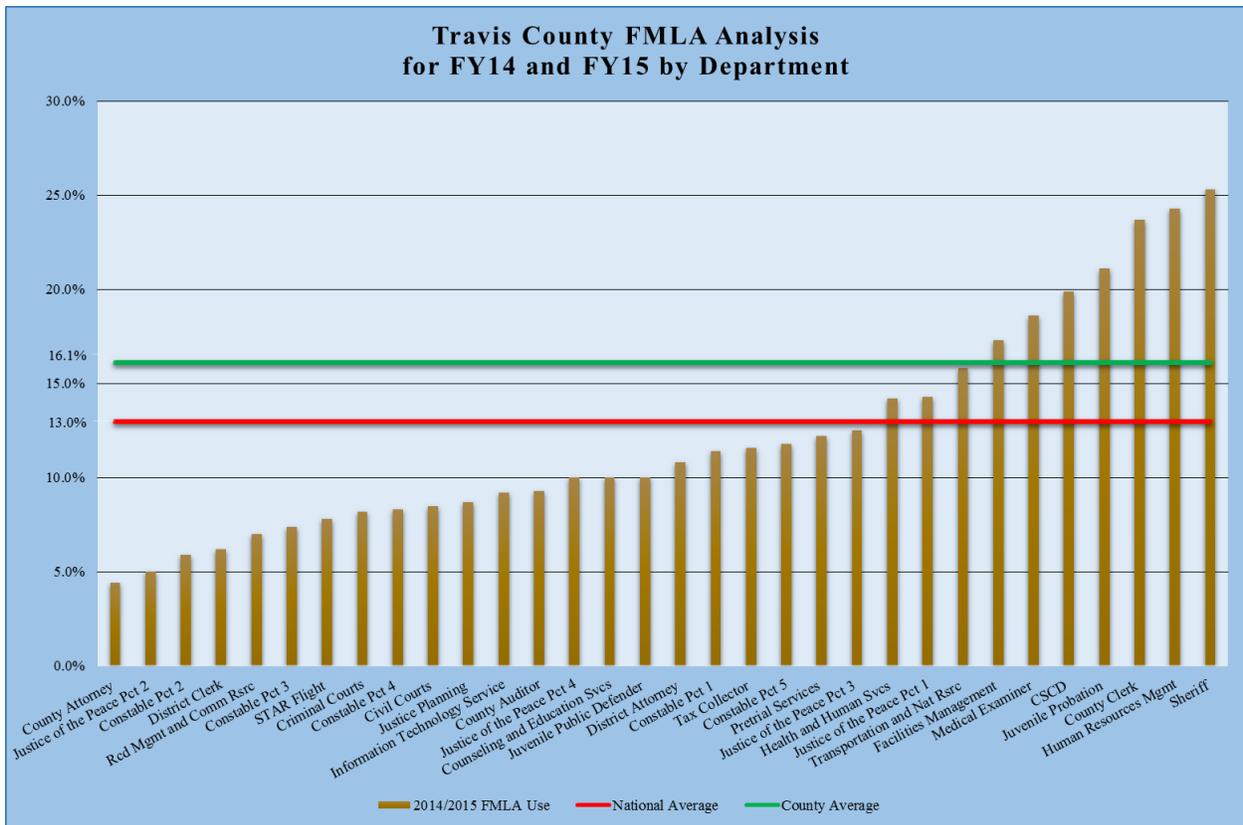
Second and Third Opinions

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

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

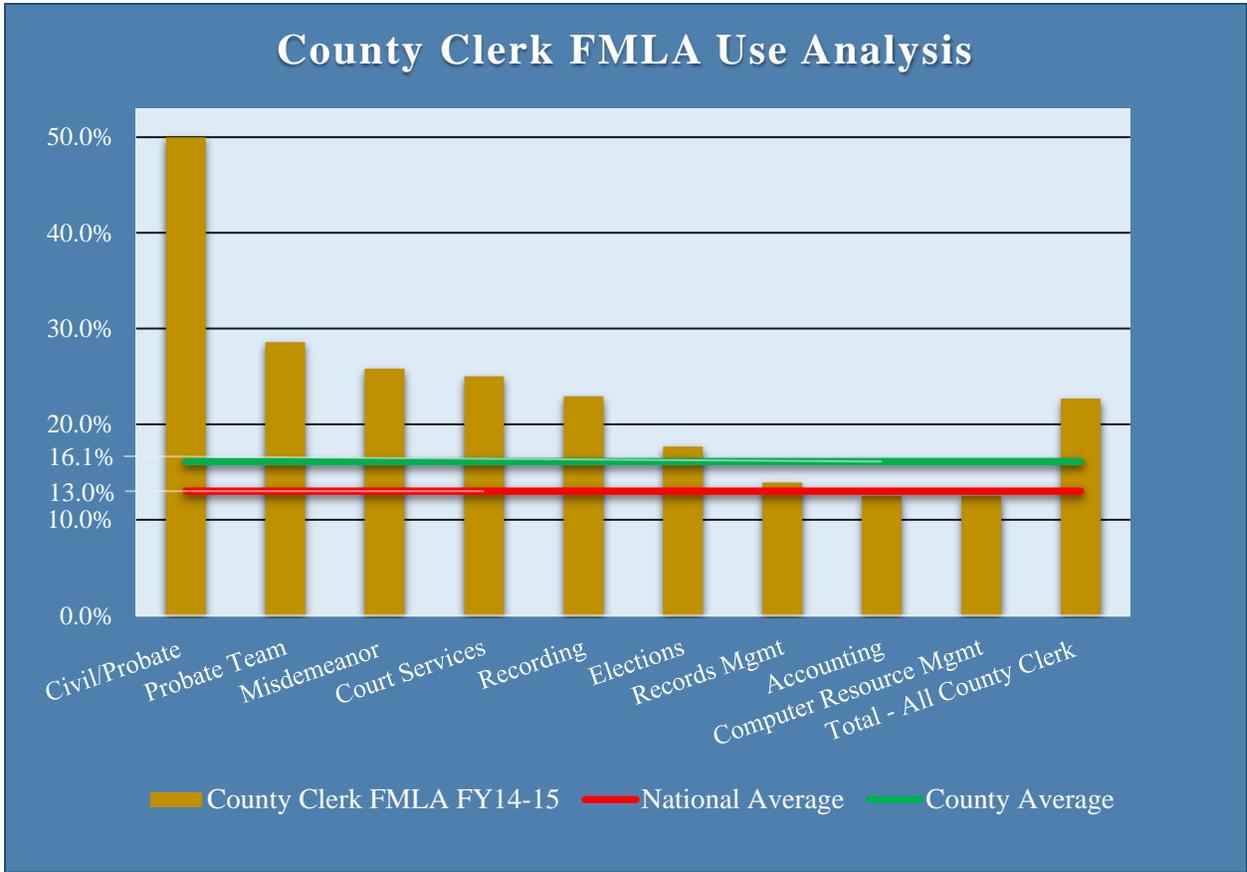
County-wide FMLA Rate Comparison

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



County Clerk FMLA Comparison

The graph on the following page represents the average number of FMLA leave events for fiscal years 2014-2015 for all divisions of the County Clerk’s Office, as well as an office-wide total. The national and County-wide average rates are illustrated in the same manner as in the previous graph. During the period, the County Clerk had an overall average FMLA utilization percentage of 23.7% for all divisions, or 27 leave events for 114 employees.



FY16 Update

In FY16, the County Clerk’s FMLA utilization percentage dropped to 16%, which is slightly below the County’s average.

AREAS OF CONCERN

1. FAILURE TO PROVIDE FMLA MEDICAL CERTIFICATION

FMLA certifications are important in order to verify the reasonableness of the leave request, including the medical basis for the leave. In addition, the misuse/abuse of FMLA is more likely to occur if supervisors are not provided with sufficient information about an employee’s leave, including the relevant start and end dates for the leave. For more information, see “Medical Certifications” in the Background Section beginning on page 10.

Overall, thirty FMLA medical certifications were not found in the employee medical files. These 30 (55.6%) leave events are not valid or properly supported in accordance with Travis County Code 10.038. The following table details our findings:

Item #	Issues Noted	Issues Defined	Number of Findings	% of total Sample
1	a) Failure to provide certification and b) Request/Eligibility issues	a) The employee failed to provide a medical certification as required by Travis County Code 10.038. b) When an employee requests FMLA leave, the employer must notify the employee within five business days of the employee's eligibility to take FMLA leave (Form WH-381).	29	53.7%
2	a) Failure to provide certification and b) FMLA hours exceeded 480 during 12-month period	a) The employee failed to provide a medical certification as required by Travis County Code 10.038. b) The employee was certified for 12 weeks/480 hours of FMLA leave, but exceeded the balance, for the 12 month period.	1	1.9%
	Total Findings		30	55.6%

Recommendations:

We recommend that the County Clerk’s Office implement the following best practices in order to reduce the risk of abuse or misuse of FMLA leave as follows:

1. The County Clerk’s administrative staff should assess the soundness of certifications and require second and third opinions, or a recertification, if there is reason to doubt a medical certification.

2. To improve the control environment and prevent and deter FMLA abuse, the County Clerk’s administrative staff should encourage supervisors to actively and continuously monitor FMLA leave administration of employees by maintaining contact with HR staff.
3. The County Clerk’s supervisors and HR staff should work together to ensure that FMLA time is properly identified and certified for the proper time-periods.
4. The County Clerk’s supervisors and timekeepers should receive regularly-updated training from the Human Resources Management Department and other appropriate sources on FMLA policy.

2. INCOMPLETE FMLA MEDICAL CERTIFICATION

Medical certifications should contain all medically relevant facts in order to ascertain if the individual has a qualifying event under the FMLA and to be in compliance with Travis County Code 10.038. FMLA misuse/abuse is more likely to occur when the HR staff does not receive sufficient information to properly complete and review the medical certification. For more information, see “Medical Certifications” in the Background Section beginning on page 10.

Overall, three (5.6%) FMLA medical certifications were incomplete and did not contain the relevant medical facts in order to determine if the leave was a qualifying event as defined by the FMLA act. These three leave events are not valid or properly supported in accordance with Travis County Code 10.038. The following table details our findings:

Item #	Issues Noted	Issues Defined	Number of Findings	% of total Sample
1	Contact HCP/ Incomplete certification	If a medical certification is incomplete, the employer's HR staff should contact the employee's health care provider (HCP) to clarify the form.	1	1.9%
2	a) Contact HCP/ Incomplete certification and b) Recertification/ change in circumstance issues	a) If a medical certification is incomplete, the employer's HR staff should contact the employee's HCP to clarify the form. b) A significant change in circumstances other than what is described by the certification occurred, which should prompt the employer to request a recertification.	2	3.7%
	Total Findings		3	5.6%

Recommendation:

We recommend that the County Clerk’s Office implement best practices to reduce the risk of abuse or misuse of FMLA leave. If a medical certification is incomplete and/or insufficient, as defined by Travis County Code 10.038, the HR staff/administrative assistants should follow up with the Health Care Professional (HCP) to ensure that the leave qualifies as a serious health condition under the FMLA.

3. RECERTIFICATION

Per CFR Title 29, Section 825.308, there are a number of reasons a change in FMLA circumstance can occur. The most common issue we noted was that the original certification had a definitive timeline or schedule (generally an exact date, or range of dates), and that this timeline had lapsed, or was significantly different than the leave that was actually taken, per 29 CFR 825.308. For more information, see “Recertifications” in the Background Section beginning on page 12.

Overall, three FMLA medical certifications should have been recertified, primarily because the employee’s leave pattern had changed significantly in comparison with the treatment plan prescribed in the original medical certification. This should have prompted the Clerk’s human resource liaison to request a recertification. These three (5.6%) leave events are not valid or properly supported in accordance with Travis County Code 10.038. The following table details our findings:

Item #	Issues Noted	Issues Defined	Number of Findings	% of total Sample
3	Recertification/ Change in circumstance	A significant change in circumstances other than what is described by the certification occurred, which should prompt the employer to request a recertification.	3	5.6%
	Total Findings		3	5.6%

Recommendation:

Based on the noted significance, we recommend that the County Clerk’s Office implement best practices to reduce the risk of abuse or misuse of FMLA leave. Specifically, County Clerk human resource liaisons should work to ensure that supervisors and timekeepers are well informed and updated on FMLA leave certification periods, durations, and frequencies. If timekeepers and supervisors notice leave patterns significantly different than the certification, County Clerk human resource liaisons should request a recertification. They should also consider requiring second and third medical opinions if a reason exists to substantially doubt the leave is in accordance with FMLA guidance.

4. MAINTENANCE AND DISTRIBUTION OF FORMS/RECORD KEEPING

When FMLA leave is foreseeable at least 30 days in advance, the employee should submit a leave request form. These forms should include sufficient information (i.e.: state the qualifying reason for and provide anticipated timing and duration of the leave, if foreseeable) for an employer to reasonably determine that FMLA may apply.

Informing each FMLA applicant of their rights and responsibilities is required by the DOL; Travis County uses the Eligibility Notice Form WH-381 Part A to communicate this information. Failing to properly advise applicants on these issues may create significant liabilities to the County for various reasons.

Employees must be eligible to take FMLA leave, and HR staff are responsible for verifying their eligibility. This includes confirming that they have worked at least 1,250 hours over the prior 12 months prior to taking leave. Ensuring that each FMLA applicant is properly advised of their eligibility throughout the entire process is required by the DOL. Travis County utilizes the Rights & Responsibilities Form WH-381 Part B to verify this portion of employee eligibility. For more information, see “Employer and Employee Obligations and Responsibilities” in the Background Section beginning on page eight.

We noted that three (5.6%) of 54 FMLA files did not contain the FMLA request forms or Form WH-381, Parts A&B. Therefore, we were unable to determine if the employees properly requested FMLA leave, were eligible for this leave, or if they were advised of their rights and responsibilities.

All medical records must be kept separate and confidential from all other types of records in order to assure the information is not used against the employee while exercising their protected FMLA rights. We noted one (1.9%) FMLA leave file co-mingled with other employee performance-related information. The following table details our findings:

Item #	Issues Noted	Issues Defined	Number of Findings	% of total Sample
1	Recordkeeping issues	Employers are required to keep medical records separate and confidential from other files in compliance with DOL regulations.	1	1.9%
2	Request/Eligibility issues	When an employee requests FMLA leave, the employer must notify the employee within five business days of the employee’s eligibility to take FMLA leave (Form WH-381). Although requests for leave may be given orally, it is best practice to complete a leave request when the leave is foreseeable.	2	3.7%
	Total Findings		3	5.6%

Recommendation:

We recommend that the Clerk’s Office improve internal controls and processes related to obtaining, maintaining and, securing records related to FMLA leave.

OVERALL MANAGEMENT RESPONSE

We will not be providing responses to each item cited. Instead, we wish to provide you an assurance that we are reviewing these issues carefully and remediating them as quickly as possible.

Globally, we would like to provide the following response: over the past several years, the size of staff of the Clerk’s office coupled with the diversity of responsibilities handled by the office has presented a challenge in managing the attendant human resources-related workload due to the very small staff of 2 assigned those duties. This Audit, which covers 2014-2015, is evidence of this

challenge. In January of 2016, we were able to re-organize our Administration Division and hire two special project temporary employees to assist in managing this workload. We are confident that, armed with your findings, we will be able to use those added staff to address the root causes of the issues your audit has identified.