

**Travis County Sheriff's Office
Family Medical Leave Act Review
#16-24**



TRAVIS COUNTY
AUDITOR'S OFFICE

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To: Sally Hernandez
Travis County Sheriff

From: Nicki Riley, CPA
Travis County Auditor

Date: February 28, 2017

Subject: Travis County Sheriff's Office FMLA Review

The Risk Evaluation and Consulting (REC) Division of the Travis County Auditor's Office has completed a review of the Travis County Sheriff's Office (TCSO) 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 Travis County Sheriff's Office (TCSO) enforces laws, protects the life and property of Travis County residents, and provides safe, secure, and humane confinement for inmates. This office is comprised of three bureaus – Law Enforcement, Corrections, and Administration and Support. The Law Enforcement Bureau provides patrol functions, criminal investigations, and community-oriented services. The Corrections Bureau is responsible for securing, providing for, and transporting parties confined in Travis County correctional facilities.

The Administration and Support Bureau consists of many specialized sections and units designed to support the Corrections and Law Enforcement Bureaus. These administrative and support responsibilities include the management of the following sections: Finance & Procurement, Human Resources, Records Management, Integrated Technologies, Central Warrants, Criminal Justice Information Center, Inmate Programs, Inmate Counseling & Education, Inmate Mental Health Services, Chaplain Services and Inmate Medical Treatment. Human Resources (HR) is responsible for administering and ensuring compliance with the Family Medical Leave Act.

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 TCSO's FMLA compliance process. The period under review was October 1, 2013 through September 30, 2015. This examination period occurred during the previous Sheriff's administration; therefore, the findings included in this report relate only to Sheriff Hamilton's administration, not the current administration of Sheriff Hernandez.

Review Methodology

Our review methodology included testing 58.2% or 85,209 of 146,288 FMLA hours, and 48.6%, or 397 of 817 leave events during the review period and receiving verbal and written representations from TCSO personnel. 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 TCSO's administrative staff did not obtain medical certifications for 65 (16.4%) of the 397 FMLA leave events tested from the period, as required by Travis County Code 10.038.
2. Thirty-three (8.3%) 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. Thirty-three (8.3%) FMLA medical certifications were not recertified when a change in the party's circumstance occurred, as required by Travis County Code 10.038.
4. Twelve (3.0%) leave events totaling 1,244 hours exceeded the 480-hour FMLA leave-limit during the period.

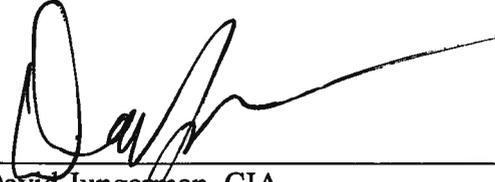
In the above, individual leave events are not included in multiple findings; therefore, there are no overlapping findings.

Examination Team

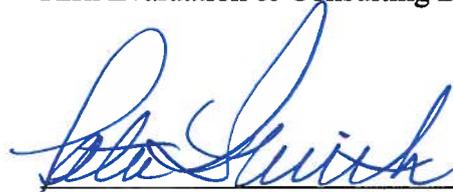
James Marlett, CPA, Lead Auditor
Travis Lee, Staff Auditor

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 TCSO during this examination. Please contact us if you have any questions or concerns regarding this report.



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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 TCSO’s administrative staff failed to obtain 65 (16.4%) of 397 medical certifications. Without the proper medical certification, the leave events in question are not properly supported in accordance with Travis County Code 10.038. See comment one on page 16 in “Areas of Concern” for details.

Incomplete certifications – Thirty-three (8.3%) of 397 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. See comment two on page 19 in “Areas of Concern” for details.

Recertifications – Thirty-three (8.3%) of 397 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. See comment three on page 20 in “Areas of Concern” for details.

Leave exceeding 480 hours/12 weeks – We noted 12 leave events totaling 1,244 hours during which the employee’s absence exceeded the 480-hour FMLA leave-limit during the period. See comment four on page 22 in “Areas of Concern” for details.

Significance

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

Recommendations

We recommend that the TCSO implement policies and procedures for improving their control environment and that those involved with administering FMLA duties obtain sufficient training to reduce the risk of FMLA abuse, misuse, and errors as follows on the next page:

1. The TCSO'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 Human Resources (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 TCSO's supervisors and timekeepers should receive regularly-updated training from the Travis County Human Resources Management Department (HRMD) or 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.
3. TCSO HR personnel should obtain training on assessing the reasonableness of qualifying events and on determining the sufficiency of information provided by health care professionals and employees requesting leave.

Auditor's Note

As noted in the transmittal letter, the examination period for this review occurred during the previous Sheriff's administration; therefore, the findings including in this report relate only to Sheriff Hamilton's administration, not the current administration of Sheriff Hernandez.

Overall Response by Current Administration

Travis County Sheriff Sally Hernandez and the TCSO executive leadership team has reviewed the Travis County Auditor's Office Risk Evaluation and Consulting (REC) Division's report on TCSO's compliance with the various requirement related to the Family Medical Leave Act (FMLA).

TCSO wants to acknowledge and thank the Auditor's Office for its assistance in reviewing our policies and procedures not only from a compliance perspective, but that of best practices as well. We believe that such reviews play a vital role in our mission to serve our stakeholders in the best way possible while meeting all legal mandates.

While TCSO also acknowledges the findings of the review as presented in the report and embraces the best practice recommendations, we wish to emphasize that the dataset for the review covered some 397 leave events that occurred during 2014-2015 period selected for review by the REC. Since that time, the TCSO Human Resources Section has implemented several changes to its FML process to include a dedicated staff member for FML and Workmans Compensation workload, improved communications procedures with employees and supervisors, etc. Further, TCSO has included an additional FTE that will be dedicated to FML issues for consideration in the current budget process.

Further, it should also be noted that TCSO routinely seeks the advice of the Travis County Attorney's Office regarding FML cases where appropriate, keeping compliance with FMLA requirements at the fore of our efforts.

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.”

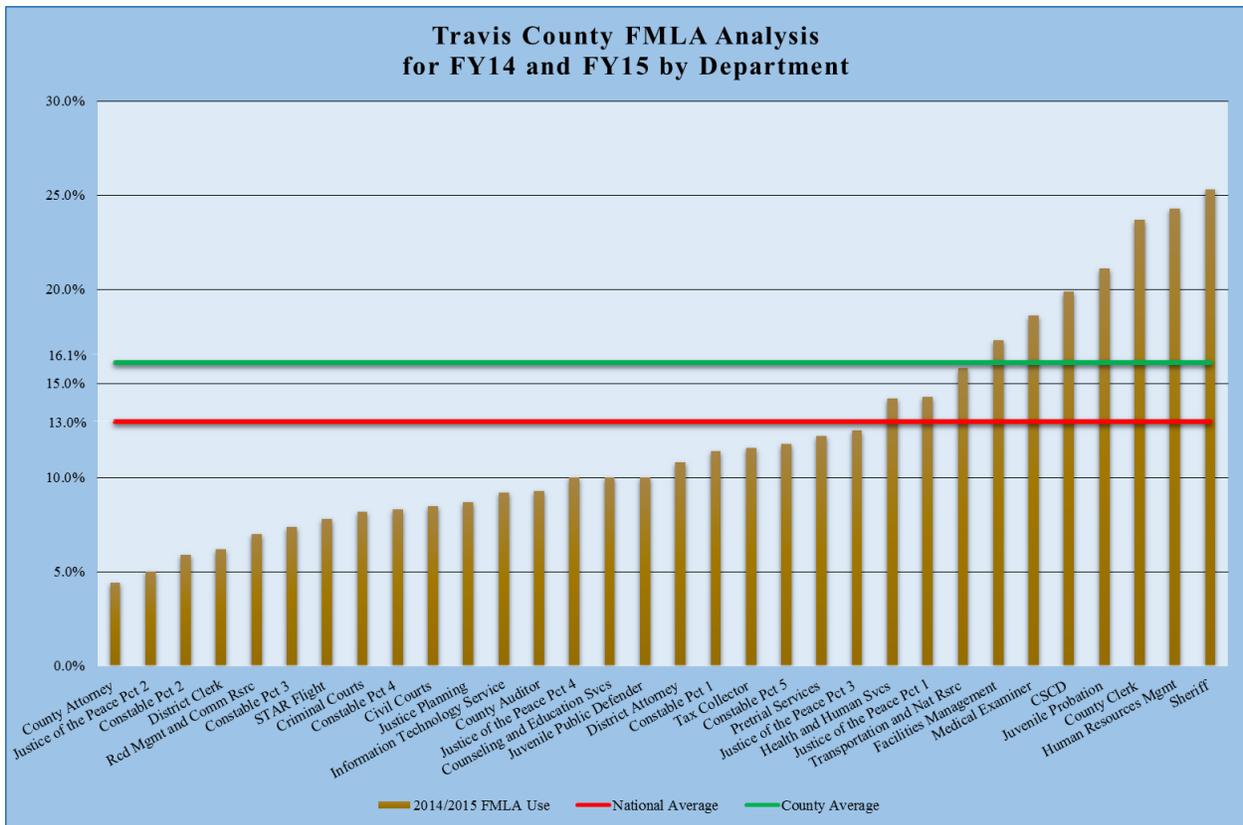
Second and Third Opinions

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

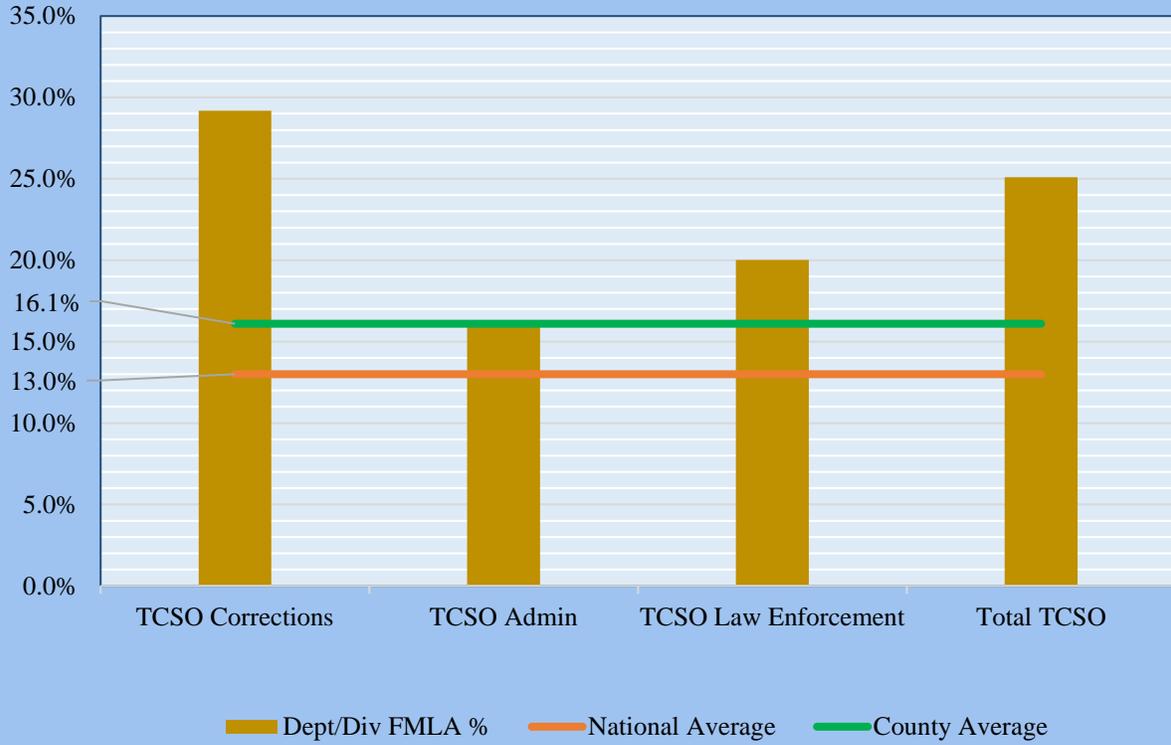
The chart below details FMLA utilization rates for County offices and departments across fiscal years 2014 and 2015. The red line illustrates the 2013 national average FMLA utilization rate of 13.0% provided by the Department of Labor. The green line represents the County’s average FMLA utilization rate 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.



TCSO FMLA Comparison

The graph on the following page represents the average number of FMLA leave events for fiscal years 2014-2015 for the TCSO Corrections, Administration, and Law Enforcement Divisions, as well as the total for the entire Sheriff’s Office. The national and County-wide average rates are illustrated in the same manner as in the previous graph. During the period, TCSO had an overall average FMLA utilization percentage of 25.3% for all divisions, or 408.5 leave events for 1,615 employees.

TCSO FMLA Use Analysis for FY 2014/2015



AREAS OF CONCERN

We sampled the records related to 85,209 (58%) hours of the 146,287 of total FMLA leave hours incurred by the TCSO in fiscal years 2014 and 2015. The sampled hours corresponded to 397 (49%) individual leave events out of 817 events in the population. Based on this sample, we noted the following issues; individual leave events are not included in multiple findings:

1. Failure to provide FMLA 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, 62 of the FMLA medical certifications were not found in employee files, two certifications were completed by the employee, and one certification was not provided in a timely manner. Combined, these 65 (16.4%) leave events are not valid or properly supported in accordance with Travis County Code 10.038. The following table details our findings (Table continues onto following page):

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). Although requests for leave may be oral, it is best practice to require employees to complete a leave request when the leave is foreseeable.	41	10.3%
2	a) Failure to provide certification and b) Unverified time sheet error	a) The employee failed to provide a medical certification as required by Travis County Code 10.038. b) Time was coded to FMLA without proper documentation.	14	3.5%

Item #	Issues Noted	Issues Defined	Number of Findings	% of total Sample
3	a) Failure to provide certification and Request Form and b) Leave exceeded 480 hour issues	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.	3	0.8%
4	a) Failure to provide certification and Request Form and b) Recertification/Change in circumstance issues	a) The employee failed to provide a medical certification as required by Travis County Code 10.038. 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	0.5%
5	Medical certification was completed by the employee	The employee appears to have completed Section III of the medical certification, which must be completed by the healthcare provider.	2	0.5%
6	a) Failure to provide certification and b) Contact HCP/ Incomplete certification issues	a) The employee failed to provide a medical certification as required by Travis County Code 10.038. b) If a medical certification is incomplete, the employer's HR staff should contact the employee's health care provider (HCP) to clarify the form, working with the employee as appropriate.	2	0.5%
7	Failure to provide <i>timely</i> notification	A medical certification was not produced by the employee within 15 calendar days.	1	0.3%
	Total Findings		65	16.4%

In regard to item #2 in the chart on the previous page, we noted 14 instances where employees properly utilized FMLA leave, then months later, after their leave had expired, they coded time to FMLA again for indeterminate reasons. In items #3, #4, and #6 in the chart above, we noted instances where employees had multiple, different issues with multiple leave events during the audit period.

Recommendations:

We recommend that TCSO implement the following best practices to reduce the risk of abuse or misuse of FMLA leave:

1. TCSO's HR staff should assess the soundness of certifications and require second and third opinions if there is reason to doubt a medical certification. This is suggested per CC 10.038.
2. To improve the control environment and prevent and deter FMLA abuse, supervisors should be encouraged to actively and continuously monitor FMLA leave administration of employees by maintaining contact with HR staff.
3. Supervisors and HR staff should work together to ensure that FMLA time is properly identified and certified for the proper time-periods.
4. Supervisors and timekeepers should receive regularly-updated training on FMLA policy from HRMD or other appropriate parties.

Management Response:

1. TCSO's current practice is to assess the soundness of each certification. When certification is in doubt, TCSO requests additional information. TCSO does not require second and third opinions, however they are only required after consultation with the County Attorney's Office.
2. TCSO HR notifies both the supervisor and employee via email as to the approval or denial of family medical leave (FML) certifications. These notifications include the projected start and end dates as well as the type of FML, intermittent etc. TCSO will continue and direct the employee and supervisor to notify TCSO HR of any changes to the dates originally certified. TCSO Supervisors will be instructed to monitor FMLA leave and notify TCSO HR of any significant pattern changes that do not fall within the current certification. This should flag abuse.
3. The email sent by TCSO HR denoted above, provides instruction on how properly enter FML on timesheets. TCSO HR will send out periodic reminders to all supervisors stressing the importance of reviewing and approving FML time, as well as how to run FML reports on their assigned personnel to avoid coding more than the 480 hours during the rolling calendar year.
4. The Travis County Human Resources Management Department periodically provides a basic 4-hour "Fundamentals of HR" Course that teaches the basics of FML, ADAAA and FLSA. TCSO will remind supervisors they can sign up for this training. TCSO annually sends TCSO HR Personnel to outside training in order to receive new updates on FMLA Law and Workers Compensation Law.

Additionally, TCSO Human Resources provides training on FML, Workers Compensation, Limited duty, proper documentation of timesheets and a myriad of other topics annually to TCSO Supervisors. This training also includes handouts that supervisors can refer to as needed. TCSO HR conducted this training eight times in calendar year 2016. It was taught in both the Supervisors

In-Service Class, which tenured supervisors are required to attend, as well as the Introduction to Supervision Class, which all newly promoted supervisors attend. In addition, the Auditor’s SAP Team provided instruction at these eight classes on how to run FML, Limited Duty and other reports. This way supervisors can audit their employee’s time entry to avoid exceeding 480 hours of FML during the rolling calendar year or surpassing the number of limited duty hours authorized.

2. Incomplete FMLA certification

Medical certifications should contain all medically relevant facts in order to ascertain if the individual has a qualifying event under the Act and to be in compliance with Travis County Code 10.038. FMLA misuse/abuse/errors are more likely to occur when the HR staff does not receive sufficient information to properly complete and review the medical certification. For more information, see “Incomplete certifications” in the Background Section beginning on page 11.

Overall, 33 (8.3%) 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. These 33 leave events are not valid or properly supported in accordance with CC 10.038. The following table details our findings:

Item #	Issues Noted	Issues Defined	Number of Findings	% of total Sample
1	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.	22	5.5%
2	a) Contact HCP/ Incomplete certification and b) Leave exceeded eligible hour issues	a) If a medical certification is incomplete, the employer's HR staff should contact the employee's HCP to clarify the form. b) The employee exceeded the eligible FMLA leave balance for the 12-month period.	4	1.0%
3	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.	7	1.8%
	Total Findings		33	8.3%

Recommendation:

We recommend that TCSO 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 CC 10.038, the HR staff should follow up with the health care provider to ensure that the leave is a qualifying event/serious health condition under the Act.

Management Response:

TCSO HR currently adheres to the best practices to reduce the risk of abuse or misuse of FMLA leave. When the medical certification is incomplete or there is insufficient documentation, TCSO HR contacts the employee and or the medical provider for the missing information. This allows for the certification request to be appropriately approved or denied. When TCSO HR is uncertain or there is an anomaly in the certification, TCSO HR consults with the County Attorney's Office prior to approving, disapproving or requiring a second or third opinion.

Currently TCSO HR only has 1 FTE dedicated to processing all the FMLA, Workers Compensation and Limited Duty Assignments. To mitigate possible error in the future, TCSO will be requesting at least 1 additional FTE in the FY18 Budget Process to assist with the monumental task of processing such documentation for an office of 1,760 employees. TCSO will also search for any possible software that may enhance current operations and consult with TCSO IT to see if special programs could be developed to enhance tracking of hours.

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. For more information, see "Recertifications" in the Background Section beginning on page 12.

We noted 33 (8.3%) FMLA medical certifications that should have been recertified, primarily because the employee's leave pattern had changed significantly in comparison with the treatment plan prescribed in the original medical certification. This should have prompted TCSO personnel to request a recertification. These 33 leave events are not valid or properly supported in accordance with Travis County Code 10.038. The table on the following page details our findings:

Item #	Issues Noted	Issues Defined	Number of Findings	% of total Sample
1	a) FMLA hours exceeded 480 hours during fiscal year and b) Recertification/ Change in circumstance issues	a) The employee was certified for 12 weeks/480 hours of FMLA leave, but exceeded the balance, for the 12 month period. b) A significant change in circumstances other than what is described by the certification occurred, which should prompt the employer to request a recertification.	5	1.3%
2	a) Recertification/ Substantial Doubt and b) Second and Third Opinions	a) When independent facts conflict with the information on the form, a recertification or a second and potential third medical opinion is required. b) In these cases, a second opinion can be obtained and the employer must make all arrangements and find an appropriate provider and pay for the visit. If the second opinion conflicts with the original, a binding third opinion may be obtained, also at the employer's expense.	8	2.0%
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.	20	5.0%
	Total Findings		33	8.3%

Recommendation:

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

Management Response:

TCSO HR will continue to notify supervisors whenever updated FML leave certifications are received. TCSO will direct supervisors to notify TCSO HR when an employee’s FML pattern significantly changes in comparison with the current FML certification. This should alert TCSO HR to determine if additional recertification is warranted, or consult with the Travis County Attorney’s office as to if a second or third medical opinion is warranted.

4. FMLA Leave in excess of 12 weeks/ 480 hours

We noted 12 (3.0%) leave events totaling 1,244 hours during which the employee’s absence exceeded the 480-hour FMLA leave-limit during the audit period. For more information, see “FMLA Checklist, item # 2” in the Background Section beginning on page seven.

Item #	Issues Noted	Issues Defined	Number of Findings	% of total Sample
1	The FMLA hours exceeded the eligible hours for the 12-month period	Based on the eligibility notice, the employee exceeded the number of eligible hours for the 12-month period.	2	0.5%
2	FMLA hours exceeded 480 hours during 12-month period	The employee was certified for 12 weeks/480 hours of FMLA leave, but exceeded the balance, for the 12-month period.	10	2.5%
	Total Findings		12	3.0%

Recommendation:

We recommend that the TCSO HR staff monitor all FMLA leave balances and notify employees before they exceed the accrued balances in accordance with Department of Labor (DOL) guidance.

Management Response:

TCSO has previously requested that the Auditor’s SAP Team implement a cap on FML in the same manner that personal holidays have a cap. The response received was to use the workbench. It is not feasible or manageable for the lone FTE assigned to manage FML to utilize the current workbench in SAP for a workforce of 1,760 employees. TCSO will once again ask if such a cap can be implemented and point to this audit as to why it is necessary.

Additionally, TCSO HR requested and the Auditor’s SAP Team provided a report that individual supervisors can run to review FML on their current employees. TCSO will continue to direct supervisors that this report is just one avenue to track the number of FML hours their employees have used to avoid approving FML time in excess of 480 hours during the rolling calendar year.

As previously stated, TCSO will be requesting at least one additional FTE to manage FML, Workers Comp and Limited Duty Personnel in FY18. TCSO IT has been contacted to see if a

report can be developed to enhance tracking capabilities for the one lone FTE currently performing this function.