

CITY OF ALLENTOWN

FAMILY MEDICAL LEAVE ACT (FMLA)

Date of Report: SEPTEMBER 01, 2023

Per the Department of Labor (DOL):

“The Family and Medical Leave Act (FMLA) provides certain employees with up to 12 weeks of unpaid, job-protected leave per year. It also requires that their group health benefits be maintained during the leave.

FMLA is designed to help employees balance their work and family responsibilities by allowing them to take reasonable unpaid leave for certain family and medical reasons. It also seeks to accommodate the legitimate interests of employers and promote equal employment opportunity for men and women. FMLA applies to all public agencies, all public and private elementary and secondary schools, and companies with 50 or more employees.

Employees are eligible for leave if they have worked for their employer at least 12 months, at least 1,250 hours over the past 12 months, and work at a location where the company employs 50 or more employees within 75 miles. Whether an employee has worked the minimum 1,250 hours of service is determined according to FLSA principles for determining compensable hours or work.”

OBJECTIVE

The objectives of the review were to:

- Document the process flow for the FMLA process to identify any potential risk and/or weaknesses.
- Determine that policies and procedures exist and are being followed.
- Ensure the timeliness and propriety of internal reporting.

PROCEDURES

This audit was conducted in accordance with Generally Accepted Governmental Auditing standards and utilized an approach that included staff interviews, reviews of documents, and reports and examinations of individual FMLA documentation.

The period selected for testing was 01/2022 – 06/2023. Our process began by:

- Developing a Process Flowchart and Narrative for the FMLA process.
- Using the Process Flowchart and Narrative to identify any potential risks and developing the appropriate testing of the risk area.
- Reviewing the controls for the process and identifying any potential weaknesses.

To provide prospective, the number of active City employees as of 06/30/2023 was 808. Below is the FMLA population:

- For the month 06/01/2023 – 06/30/2023 there were 19 (nineteen) employees who used FMLA. 2 (two) of the employees were on parental leave.
- For the period 01/01/2023 – 06/30/2023 there were 47 (forty-seven) employees who used FMLA.
- For the year 2022, there were 58 (fifty-eight) employees who used FMLA.

FINDINGS, RECOMMENDATIONS AND RESPONSES

INTERNAL CONTROL WEAKNESSES

1. FMLA Over 480 Hours

Per the Department of Labor (DOL),

“The Family and Medical Leave Act (FMLA) provides eligible employees up to 12 work weeks of unpaid leave a year”, this equates to 480 hours in a continuous 12-month period.”

“The FMLA entitles eligible employees of covered employers to take unpaid, job-protected leave for specified family and medical reasons with continuation of group health insurance coverage under the same terms and conditions as if the employee had not taken leave.”

Upon the end of the 480 hours of protected FMLA leave, the employee is bound by their respective agreement which is governed by their union contract or the Personnel Policy Manual (PPM).

We selected 17 (seventeen) employees with FMLA hours in 01/01/2022 – 06/30/2023 and reviewed the hours designated as FMLA and noted:

- 4 (four) instances where the EDEN FMLA hours exceeded the DOL 480-hour limit before any adjustments.
 - The exceeded hours ranged from 56 to 336 hours.
- 10 (ten) instances totaling 1,093 hours where the FMLA hours included hours outside of the approved FMLA dates.
- 8 (eight) instances totaling 616 hours where the hours should have been designated as FMLA but were not.

We recalculated the FMLA hours for each of the 17 (seventeen) employees to include hours outside of the approved FMLA and hours that should have been designated as FMLA, including holiday hours not properly designated as FMLA (see Issue #4) and identified:

- 5 (five) instances where an employee exceeded the maximum 480 FMLA hours allowed in a 12-month period.
 - The exceeded hours ranged from 80 to 536 hours.

By allowing excessive FMLA the Bureaus cannot properly staff for their job responsibilities. Additionally, it can provide a precedent for other employees to take more leave than allowed by the DOL.

Note: This same type of issue (different testing period/sample) was reported on September 21, 2022 in the Performance Audit: Changes to an Employee's EDEN Record, Issue #1.

Recommendation

HR should develop documented procedures (procedures manual) to provide guidance to the timekeepers.

The procedures should be made accessible on SharePoint and distributed to the timekeepers. Consideration should be given to include recorded video training on SharePoint and power point demonstrating how to enter the hours.

On a pay period basis, HR should run pay period FMLA Usage reports and distribute them to the Bureau Directors and timekeepers to ensure hours are not being exceeded and that those individuals designated as FMLA have the proper paperwork (See Issue #3).

Timekeepers should identify employees reaching the 480-hour FMLA threshold and communicate the information to HR for timely follow-up.

Where necessary and possible, excessive FMLA hours should be adjusted to non-FMLA so that staffing needs can be properly addressed.

Administration's Response

HR agrees with the findings and thanks the City Controller's office.

HR will develop a procedures manual to provide guidance to timekeepers. The manual will address the points identified in 1. HR intends to acquire 3rd party FMLA services to assist in the accurate management and accounting of FMLA use.

2. Excessive Leave Resulting in Staffing Issues

Per the DOL,

“Employees who use FMLA leave have the right to go back to work at their same job or to an equivalent job that has the same pay, benefits, and other terms and conditions of employment at the end of their FMLA leave. Violations of an employee's FMLA rights may include changing the number of shifts assigned to the employee, moving the employee to a location outside of their normal commuting area...”

“An employer may require a second or third medical opinion (at the employer's expense) if he or she has reason to doubt the validity of the medical certification.”

Upon the end of the 480 hours of protected FMLA leave, the employee is bound by their respective agreement which is governed by their union contracts or the PPM.

We selected 17 (seventeen) employees with FMLA hours in 01/01/2022 – 06/30/2023 and reviewed the FMLA correspondence provided by HR to the departments and identified:

- 1 (one) instance where the employee’s FMLA 480 hours had been exhausted prior to the end of the 12 (twelve) continuous months. HR extended the FMLA prior to the end of the consecutive 12 (twelve) months.
 - This resulted in the municipal employee having 912 hours of FMLA in less than 12 (twelve) consecutive months. During this time the department was understaffed, and HR would not post the position.
- 1 (one) instance where the municipal employee submitted 2 (two) FMLA requests within a 12-month period.
 - The first approved FMLA was for continuous FMLA, and 432 hours were used as FMLA.
 - This left a balance of 48 (forty-eight) hours for the remainder of the 12-month period.
 - The second approved FMLA was for intermittent FMLA, and the number of hours were not listed in the correspondence.
 - By omitting the balance, the timekeeper has no idea how many hours can be designated as FMLA.
- 1 (one) instance where the municipal employee bid for a job and had not formally accepted the position prior to going on FMLA.
 - This resulted in both the new position and the old position remaining on hold pending the employee’s return from FMLA which was extended past the initial request.
- 3 (three) instances where FMLA hours were being designated, but there was no correspondence received from HR to support the FMLA.
 - We requested the WH-382’s from HR but none of them were provided. See Issue #6.

These situations hinder the departments’ ability to properly staff and manage their departments’ responsibilities.

Recommendation

Administration should seek guidance from the Solicitor’s Office as to staffing solutions, strategies, best practices, remedies, when employees are on excessive leave before and after FMLA is exhausted that would comply with the DOL, Union contracts and PPM.

Consideration may include reassigning the employee on leave to a similar open position (grade) and filling their position or working with the Unions to address these issues thru a Memo of Understanding (MOU).

Administration's Response

HR agrees with the findings and thanks the City Controller's office.

HR will seek guidance from the Solicitor's Office for appropriate follow-up.

3. FMLA Usage Reports Not Provided

EDEN provides an FMLA Usage Report. The report details the FMLA employee's FMLA hours by time period requested. The report is only available to those with EDEN HR User access and that access is limited to HR staff members.

We noted that in 2019, HR would send the FMLA usage report and a letter/email with the FMLA hour balance to the employee, the timekeeper, and the Bureau Directors. The letter/email encouraged the review of hours and correction of erroneous absences and/or other errors.

In 06/2023, 19 (nineteen) out of 808 employees were on FMLA.

We surveyed 6 departments and noted none of them receive the FMLA usage report.

Additionally, we noted, the HR staff are members of the Society of HR Management (SHRM) which has tools helpful in tracking FMLA.

Recommendation

HR should consider reimplementing the practice of providing the FMLA usage report to the departments.

On a pay period basis, HR should run pay period FMLA Usage reports and distribute them to the Bureau Directors and timekeepers to ensure hours are not being exceeded and that those individuals designated as FMLA have the proper paperwork.

The report will allow management the ability to ensure the FMLA time has been properly designated as FMLA.

Consideration should be given to using the SHRM FMLA Absence Tracking (Calendar) Spreadsheet or providing it to the timekeepers to help track their employees' FMLA.

Administration's Response

HR agrees with the findings and thanks the City Controller's office.

HR will address usage reports in the procedures manual. HR intends to acquire 3rd party FMLA services to assist in the accurate management and accounting of FMLA use.

4. Lack of Timekeeper Procedures and Inconsistent FMLA Holiday Designation

Currently there is no formal timekeeping process or procedure manual.

Per Title 29, Subtitle B, Chapter V, Subchapter C, Part 825, Subpart B of the Code of Federal Regulations,

“For purposes of determining the amount of leave used by an employee, the fact that a holiday may occur within the week taken as FMLA leave has no effect; the week is counted as a week of FMLA leave. However, if an employee is using FMLA leave in increments of less than one week, the holiday will not count against the employee's FMLA entitlement unless the employee was otherwise scheduled and expected to work during the holiday.”

During our review of FMLA time entry, we identified several different ways that the timekeepers coded and designated Holiday time.

- Holiday time entered as Holiday without FMLA designation,
- Holiday time entered as Holiday with FMLA designation,
- Holiday time entered as Sick with FMLA designation, and
- Holiday time entered as Zero Hours with FMLA designation.

We tested 17 (seventeen) employees on FMLA and identified 10 (ten) instances of continuous FMLA where the employee’s Holiday hours were not designated as FMLA; This resulted in a total of 192 Holiday hours not designated as FMLA.

During our review of 01/01/2022 – 06/30/2023 FMLA designated time, we identified:

- 8 (eight) instances where an employee’s PTO/Zero hours were not being correctly designated as FMLA; This resulted in a total of 616 hours (other than Holiday) not designated as FMLA.

Additionally, we noted there is no formal process for reporting and correcting errors in designated FMLA hours.

Recommendation

HR should develop documented procedures (procedures manual) to provide guidance to the timekeepers.

The procedures should include a process for reporting and correcting errors in FMLA designation. The procedures should be consistent with the DOL, individual union contracts and PPM.

The procedures should be accessible on SharePoint and distributed to the timekeepers.

Administration’s Response

HR agrees with the findings and thanks the City Controller’s office.

HR will address corrections in the procedures manual. HR intends to acquire 3rd party FMLA services to assist in the accurate management and accounting of FMLA use.

5. Insurance Coverage and Medical Flex - Zero Hours

When an employee runs out of paid time off (Sick, Vacation, Personal, etc.) they may continue to be on the City's employee roster and take time as Zero Hours with no pay.

In 2023, there were:

- 14 (fourteen) employees who had Zero Hours over 1 (one) week.
 - 2 (two) employees' hours were designated FMLA.

Per the DOL,

“The Family and Medical Leave Act (FMLA)...requires group health benefits to be maintained during the leave as if employees continued to work instead of taking leave.”

Per the PPM, dated April 2009:

“Health Care Coverage: During the period of your FMLA leave, the City of Allentown (COA) will continue your health care coverage as if you were continuously employed. Failure to make timely co-payments, for those required, may result in the termination of your health care coverage. Provisions for the payment of your health care co-payments will be made at the time of your leave request. The use of FMLA leave will not affect your exempt status under the Fair Labor Standards Act if you are already considered exempt. If you fail to return to work at the conclusion of your leave period, you are obligated to repay the City of Allentown the cost of your health care premiums paid for by the City during the period of your leave.”

- Non-Bargaining employees contribute to Health Care Coverage and based on the type of coverage elected, there are payroll deductions for Health Care Coverage.
- Municipal Employees' Health Care Coverage is administered by the Service Employees International Union Local 32BJ (SEIU). There are no payroll deductions for Municipal Employees Health Care Coverage.
- Both Municipal and Non-Bargaining employees may elect to participate in what is referred in the City as FSA (per the DOL, the Health Spending Account (HSA) program). The employee's payroll deduction is calculated based on the yearly election amount.
 - The total of the FSA election is available for the employee's immediate use and is not required to be pre-funded by payroll deductions.
- Both Municipal and Non-Bargaining employees may elect to participate in other Optional Benefit programs i.e., short term disability, additional life insurance, etc.

When an employee uses Zero Hours and is not on FMLA, the FMLA protection does not apply.

The City may offer the employee continued Health Care Coverage but is not required. The City may offer COBRA to the employee during this time.

Regardless of FMLA designation, Zero Hours result in no pay and therefore no way to collect payroll deductions.

While reviewing the employee's benefits and deductions we noted that while on Zero Hours, there is no formal process to collect the employee's unfunded Health Care Coverage and FSA election deductions.

Prior to March 2023, HR was responsible for the collection of the unpaid employee benefit deductions. Beginning March 2023, HR is responsible for informing Risk of the need for collection and Risk is responsible for billing and collecting the unpaid employee benefit deductions.

Discussions with Risk and Payroll indicated they are not notified when an employee is on Zero Hours. Both departments indicated HR must request the billing or the adjustment for the payroll deduction (to satisfy the outstanding payroll deductions).

Recommendation

A formal process should be developed to address the repayment of an employee's contribution deductions.

HR should communicate the Zero Hours and request the rebilling of unpaid employee contributions.

Administration's Response

HR does not fully agree with this finding. Risk Management is currently invoicing employees on Zero time.

6. WH-382 Weaknesses

The City of Allentown HR uses the U.S. Department of Labor Wage and Hour Division FMLA Designation Notice Form WH-382 which:

- Informs the employee whether the FMLA leave request is approved,
- Provides the amount of leave that is designated and counted against the employee's FMLA entitlement,
- Provides the type of FMLA: continuous or intermittent, (designated in SECTION III of the form).
 - For continuous leave, the anticipated FMLA leave schedule (hours, days, weeks) is identified.

We requested from HR the WH-382 forms for 17 (seventeen) employees' recent (2022 – 2023) FMLA leave and noted:

- HR was unable to locate 7 (seven) of the 17 (seventeen) WH-382 forms.
 - The forms provided did not correspond with the employee's most recent FMLA period and the corresponding WH-382s could not be located by HR. Therefore, testing was only able to be performed with 10 (ten) of the WH-382 forms.

We reviewed the 10 (ten) WH-382 forms and found:

- 8 (eight) did not indicate the type of FMLA leave: Continuous, Intermittent or both,
- By reviewing employees' FMLA absence, we concluded that 7 (seven) of the 10 (ten) employees' FMLA were continuous.
 - Out of the 7 (seven) continuous forms, 6 (six) did not note the dates for the specified FMLA.
- 1 (one) form did not have the requested date filled out.
- 1 (one) form did not indicate how the employee would be paid during their leave (SECTION III of the form).

We also requested the certification forms (WH-380-E, WH-380-F, WH-384, WH-385, or WH-385-V) for the selected sample of 17 (seventeen) employees from HR but did not receive them.

Recommendation

A formal process of correct completion or a new Designation Notice form should be developed and implemented.

HR should ensure WH-380 and WH-382 forms are being completed consistently and correctly. The forms should be filed.

Administration's Response

HR agrees with the findings and thanks the City Controller's office.

HR intends to acquire 3rd party FMLA services to assist in document management.

7. Government Garage Parking

The Allentown Parking Authority (APA) charges the City of Allentown (COA) \$100.00 per month for employees who are registered to park in the Government Parking Garage.

Through a payroll deduction, Municipal employees contribute \$40.00 a month towards the parking cost.

Regardless of actual usage, COA is responsible for the monthly payment for the registered employees. Finance is responsible for paying the invoice.

HR must contact the APA and advise them to deactivate the Parking Pass in a timely basis. Failure to do so results in the COA being responsible for the monthly charge for the employee's garage parking.

Per the Senior HR Generalist no one in HR is assigned the responsibility of contacting the APA or Finance when an employee goes out on continuous FMLA.

While reviewing employee parkers for the year 2023, we found 3 (three) non-bargaining employees' whose parking was not deactivated while they were out on continuous FMLA. This resulted in the City paying the APA \$100.00 a month for the parking.

Recommendation

A deactivation policy should be implemented for employees who are on continuous FMLA.

HR should appoint someone to contact the APA, Finance, and Payroll when an employee goes out on continuous FMLA.

While out on continuous FMLA, the FMLA employee's parking and the Municipal employees' parking deduction should be suspended.

Administration's Response

HR agrees with the findings and thanks the City Controller's office.

HR will create a deactivation policy in conjunction with the procedure manual.

8. Inconsistent FMLA Notification to the Departments

Per the FMLA process flow, when an employee is approved for FMLA leave, HR notifies the employee's supervisor and timekeeper via email. The email identifies the type of FMLA leave and anticipated dates of absence.

We reached out to both the Bureau Directors and HR requesting the FMLA letters/correspondence for 17 (seventeen) employees' FMLA. HR did not respond. We reviewed the correspondence provided by the Bureau Directors and noted:

- 2 (two) had multiple FMLA periods,
- 3 (three) did not indicate the type of FMLA,
- 2 (two) read both "continuous" and "intermittent".
 - The wording is confusing and can lead to a misunderstanding of the employee's FMLA leave.
- 5 (five) where the FMLA start date preceded the FMLA approval date.

Although HR does have an email template for notifying departments, it is not being used on a consistent basis.

Recommendation

Consideration should be given to using the WH-382 as the source document for FMLA notification or HR should develop a standard template that clearly identifies the type of FMLA leave, FMLA dates and a generic reason, Medical, Family, etc.

Administration's Response

HR agrees with the findings and thanks the City Controller's office.

HR will determine which recommendation will be used to notify departments.

9. Expiration of FMLA

Per the PPM, dated April 2009:

“Return from FMLA Leave: At the conclusion of FMLA leave, most employees will be restored to their original or equivalent positions with the equivalent pay, benefits and other terms and conditions of employment. The City of Allentown is not obligated to restore any employee whose job position has been eliminated during the leave period. The City of Allentown reserves the right to deny restoration to certain highly compensated employees if necessary to avoid substantial and grievous economic injury to the City of Allentown's operations. These "key" employees are among the ten percent (10%) most highly compensated employees and will be notified of their status as "key" employees at the time they make their request for family medical leave. If it is anticipated that it may be necessary to deny restoration to a "key" employee, the City of Allentown will notify that employee and offer him/her an opportunity to return to work. If that employee elects not to return to work, the City of Allentown will nevertheless reconsider at the end of the leave period whether or not it will be possible to reinstate that employee without suffering substantial and grievous economic injury.”

An employee should return to work after their approved FMLA time expires. Currently, there is no tracking to determine if an Employee's approved FMLA leave has expired.

Per the FMLA process flow, HR has no formal process for an employee's return to work from continuous FMLA leave.

We surveyed 6 (six) departments and noted:

- 1 (one) department had 1 (one) employee on FMLA and requested an update from HR regarding an employee's return and never received a response, and
- 3 (three) departments had at least 1 (one) instance of an employee on FMLA for which they never got a formal notification from HR of the employee's return.

We requested the communication from HR and did not receive a response therefore no further testing could be performed.

Recommendation

HR should notify Department Supervisors and Timekeepers when an employee is returning from continuous FMLA.

A formal process should be developed and implemented to inform the departments of returning employees. The process should include procedures for management to respond to employees who have returned but have no documented release from HR.

Administration's Response

HR agrees with the findings and thanks the City Controller's office.

HR will develop a procedure to notify departments and employees.

10. Denied FMLA Not Communicated

If an employee does not meet the criteria for FMLA eligibility, HR will deny their FMLA request.

We requested a listing from HR of Denied FMLA several times. No response was received.

We surveyed 6 (six) departments and noted none of them receive or are being informed of any denied FMLA.

We noted some employees will assume they are approved for FMLA and provide the timekeepers with the HR request for FMLA. The timekeepers designate the time as FMLA with no HR proof of FMLA approval.

Recommendation

As part of the procedures, timekeepers should not designate time as FMLA unless proper HR approval is communicated.

HR should communicate denied FMLA to the Bureau Managers and the timekeepers to insure proper designation of an employee's time.

Administration's Response

HR agrees with the findings and thanks the City Controller's office.

HR intends to acquire 3rd party FMLA services to assist in managing FMLA denials.

11. Zero Hours FMLA and Accruals

Per the PPM:

“FMLA leave taken because of an employee’s serious health condition shall not be considered when calculating occasions of sick leave used. During the term of FMLA leave, employees will accrue seniority, sick leave, vacation leave and personal days.”

Per the SEIU contract 01/01/2022 – 12/31/2025, Section 5.

“During the term of the unpaid leave of absence, no sick leave, vacation leave, or seniority shall be accumulated, nor shall any such employee be entitled to holiday pay if a holiday occurs during the leave of absence.”

Payroll does not make a distinction between Zero Hours – FMLA and Zero Hours – Non-FMLA.

Regardless of the leave type, Zero Hours coding impacts the accruals the same way.

Currently when an employee is on unpaid FMLA leave and exhausts all available leave time, the employee stops accruing seniority, sick leave, vacation leave and personal days.

The PPM is ambiguous when it comes to an employee accruing seniority, sick leave, vacation leave, and personal days during FMLA leave, zero time.

Recommendation

The PPM should be updated. Consideration should be taken to rewording the FMLA leave policy.

The PPM should address Zero Hours reporting with and without FMLA designation.

Administration’s Response

HR agrees with the findings and thanks the City Controller’s office.

HR is currently working on an updated PPM and will address these issues within it.

12. Absence of Processes

Per the DOL,

“Employees have the right to take FMLA leave all at once, or, when medically necessary, in separate blocks of time or by reducing the time they work each day or week.”

- Continuous FMLA means taking consecutive workdays as leave.
- Intermittent FMLA means that an eligible employee can take leave in an "on" and "off" basis.

IT - The City issues some employees a cell phone. Some employees have access to various systems within the City with their unique sign-ins and passwords, including but not limited to Banking access.

- By deactivating cell phones and suspending access to City systems, the cost to the city can be limited and the potential risk of malfeasance can be mitigated.

Purchasing - For business purposes, the City issues some employees a PCard.

- To mitigate the potential risk of malfeasance, the Purchasing Department can deactivate PCard when an employee is not active.

Fleet Garage - The City issues some employees a fleet vehicle and a gas FOB to fill up their issued City vehicle's gas tank;

- To mitigate the potential risk of malfeasance of vehicles and gas FOBs, Fleet Garage can deactivate a continuous FMLA employee's keys and gas FOBs.

We contacted the identified Departments and found that they are not notified when employees are on continuous FMLA.

Additionally, HR issues Security Badges to its employees. The Security Badges provide access to various areas within the City.

- To mitigate the potential risk of malfeasance, HR can temporarily suspend the Security Badge when an employee is not active.

Recommendation

HR should develop a FMLA checklist which includes notifying the affected departments when an employee is out on continuous FMLA.

Administration's Response

HR agrees with the findings and thanks the City Controller's office.

HR will develop a procedure to notify affected departments.