

## 17-114 Family Medical Leave (FML)

We have completed our audit of the FML process. This audit was performed at the request of the UTHealth Audit Committee and was conducted in accordance with the *International Standards for the Professional Practice of Internal Auditing*.

### BACKGROUND

Title 29 of the Code of Federal Regulations § 825 *The Family and Medical Leave Act of 1993* allows employees to balance work and family life by taking reasonable unpaid leave for qualifying family and medical reasons. The federal guideline provides eligible employees with up to 12 weeks of job-protected, unpaid leave (or substituted with appropriate paid leave) a year. Eligibility requirements, qualifying reasons, terminology definitions, as well as rights and obligations of employees and employers are outlined in the federal guideline. The federal guideline also directs employers to the Department of Labor Wage and Hour Division (DOL) for information on prototype notices and forms.

Section 661.912 of the Texas Government Code *Family and Medical Leave Act* became effective in 1999 and emphasized requirements similar to the federal guideline. The state guideline emphasized the eligibility requirement whereas only a state employee who has a total of at least 12 months of state service and has worked at least 1,250 hours during the 12-month period preceding the beginning of leave is entitled to take FML under the federal guideline. In addition, the state guideline also requires employee to first use all available and applicable paid vacation and sick leave while taking FML leave.

At UTHealth, FML is administered at the department level. The Employee Relations Team within the Human Resources department established HOOP 106 *Family and Medical Leave Act* (HOOP 106) and other procedural guidance outlining Family Medical Leave (FML) Coordinators and/or supervisor's responsibilities, employee's responsibilities, as well as the FML Coordinator's Handbook to assist departments in complying with the federal and state guidelines.

### OBJECTIVES

The objective of this audit was to review the FML process for efficiency and effectiveness of operations as well as to determine whether controls are adequate to ensure compliance with federal and state guidelines.

### SCOPE PERIOD

The scope period was September 1, 2015 – December 31, 2016.

**METHODOLOGY**

The following procedures were performed:

- Reviewed federal and state guidelines as well as the FML policies and procedures established by UTHealth.
- Selected and interviewed a sample of departments (10) during planning to gain an understanding of how FML processes are administered at the department level.
- Performed a comparison of the FML standardized forms used by UTHealth to the prescribed forms from the DOL to determine consistency and adequacy of required elements. The link to the FML poster indicated on the eligibility notice was not active at the time of our audit. In addition, the language on three of UTHealth’s standardized certification forms was not consistent with the guidance from the federal guideline or the DOL. We have provided suggestions to HR Management to correct these issues.
- Selected a sample of employees (30) with FML hours recorded during the audit period and reviewed supporting documentation for compliance with the federal guideline and UTHealth’s policies and procedures.
- Selected a sample of employees (30) with high leave usage (sick, vacation and leave without pay hours recorded) during the audit period and reviewed available documentation to verify proper classification of hours.

**AUDIT RESULTS**

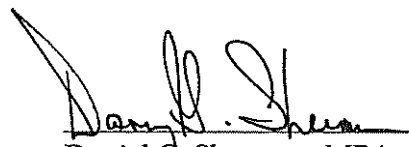
A&AS identified an area of improvement related to the FML process:

- A responsible party has not been designated to administer and provide oversight over the current FML process. The lack of oversight resulted in inconsistent application of the federal guideline as well as UTHealth’s policies and procedures.

**NUMBER OF PRIORITY & HIGH FINDINGS REPORTED TO UT SYSTEM**

None

We would like to thank the staff and management within Human Resources, Payroll & Benefits, Information Technology, Harris County Psychiatric Clinic (HCPC), School of Biomedical Informatics (SBMI), School of Dentistry (SoD), and various departments at McGovern Medical School who assisted us during our review.

  
Daniel G. Sherman, MBA, CPA, CIA  
Assistant Vice President

**MAPPING TO FY 2017 RISK ASSESSMENT**

<b>Risk (Rating)</b>	R.96 - The FML process is decentralized and could lead to errors in application (High).
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**AUDITING & ADVISORY SERVICES ENGAGEMENT TEAM**

<b>Assistant Vice President</b>	Daniel G. Sherman, MBA, CPA, CIA
<b>Audit Manager</b>	Nathaniel Gruesen, MBA, CIA, CISA, CFE
<b>Auditor Assigned</b>	Kathy Tran, CIA, CFE
<b>End of Fieldwork Date</b>	March 28, 2017
<b>Issue Date</b>	June 7, 2017

**Copies to:**

Audit Committee

Kevin Dillon

Mike Tramonte

Eric Fernette

**Issue #1**

The FML process can be categorized into three phases. The initial phase consists of identifying employees who may need FML, verifying their eligibility, and requesting applicable supporting documentation in order to designate the leave as FML. The second phase consists of communication during FML to inform employees of their options as their FML approaches expiration. Lastly, the third phase consists of reinstating the employees upon their return to work.

**Eligibility & Designation of FML**

*Notice of Eligibility and Rights and Responsibilities (Eligibility Notice)*

29 Code of Federal Regulations §825.300 – Employers are required to provide a written notice (Eligibility Notice) to employees of their eligibility to take FML within five business days, absent extenuating circumstances. The five business days is determined from the date of receiving a request from the employee or when the employer acquires knowledge of the employee’s need for FML. The Eligibility Notice should state whether the employee is eligible (or reasons why not) as well as include any requirements for making premium payments in order to maintain health benefits.

*Certification Notices*

29 Code of Federal Regulations §825.305 – Employers may require an employee’s leave to be supported by a certification issued by a health care provider. The employer must allow at least 15 days for the employee to return the requested certification.

HOOP 106/FML Coordinator’s Handbook – Eligible employees should have the applicable certification form completed by the appropriate health care provider. An original certification form is required.

**Communication During FML**

*Timekeeping*

29 Code of Federal Regulations § 825.200(a) – Except for leave to care for a covered service member, an eligible employee’s FML entitlement is limited to a total of 12 work weeks of leave during any 12-month period.

HOOP 106 – All leave taken by employees under the policy must be designated in time keeping as FML (full days and time less than full days).

*FML Middle Letter*

FML Coordinator’s Handbook – The FML Middle Letter and a Certification of Fitness for Duty Form (if applicable) are required to be sent approximately 30 days prior to the employee’s anticipated return to work.

**Reinstatement After FML**

*Certification of Fitness for Duty form*

HOOP 106 – Employees must have their health care provider complete the Certification of Fitness for Duty Form.

*Document Retention*

29 Code of Federal Regulations §825.500(b) – Employers must keep the records for no less than three years and make them available for inspection, copying, and transcription by representatives of the DOL upon request.

*Liability*

29 Code of Federal Regulations §825.300(e) – Employers failing to follow the notice requirements may constitute an interference with, restraint or denial of the exercise of an employee’s FML rights. In this case, employers may be liable for compensation and benefits lost by the employee.

**Audit Procedures & Results**

We selected a random sample of 30 employees with FML hours recorded and noted the following issues:

- Eight employees did not have the Eligibility Notice available for review. For two others, the Eligibility Notices were not completed within five business days.
- Four employees did not have the applicable certification form available for review.
- Seventeen of the certification forms available for review were not an original copy
- Eight employees did not have all applicable Designation Notices available for review; one of these had a verbal designation notice while awaiting the original certification form.
- Twelve of the Designation Notices were not completed within five business days of the request. Some reasons for the delay included late receipt of the certification forms (4), original designation notice could not be located (1), and the designation was done verbally (1).
- Four employees used incorrect time codes when reporting time taken.
- Ten employees did not have documentation evidencing the monitoring of FML usage to the total FML entitlement hours performed on a rolling 12-month calendar.
- Three employees did not have the FML Middle Letter prepared and sent to them after being on continuous leave of more than 30 days.

	<ul style="list-style-type: none"> <li>• Three employees did not have evidence the Certification of Fitness for Duty Form was obtained upon their return to work from FML.</li> <li>• One employee's FML file could not be located.</li> <li>• One employee took FML leave during the audit period; however, the most recent documentation in the FML file was from 2012.</li> </ul> <p>Additionally, we selected a judgmental sample of 30 employees with high leave usage (sick leave, vacation, and leave without pay hours recorded) that may indicate FML should have been used and identified six employees who should have been covered under FML.</p> <p><b>Conclusion</b></p> <p>The FML process is decentralized, resulting in varying levels of expertise and compliance with the federal regulation. In many departments, the FML Coordinator performs this task without receiving sufficient training. Furthermore, these individuals may not have the medical expertise to make an informed determination as to whether the medical certification received substantiates the FML request or whether a second medical opinion is necessary.</p>
<b>Recommendation #1</b>	We recommend executive management review current FML practices to identify whether there are opportunities to centralize portions of the process through the use of subject matter experts. In addition, we recommend central university oversight be a part of the process to assist department FML Coordinators and ensure all conditions of FML are completed accurately and timely.
<b>Rating</b>	Medium
<b>Management Response</b>	Leave management, including Family Medical Leave Act processes, are complex in highly decentralized academic health center work environments such as UTHHealth's. These are not typical "white collar," office work environments (to cite one relevant example: Within UTHHealth's large faculty group practice plan (far and away the single largest component of UTHHealth), more than 75% of its professional fee gross charges originate from a non-UTHHealth (and non-UT Physicians) practice location (e.g., Memorial Hermann inpatient, Memorial Hermann outpatient, Harris Health System, both in- and out-patient)). Therefore, a comprehensive re-look at management of our highly distributed and atypical work environments is needed to improve FMLA compliance levels. This work has already begun, via peer-to-peer discussions with "sister" UT System health institutions, review of on-line and other departmental training platforms, and the like. We believe that we will complete the development of this revised plan by August 1st, 2017, with effective roll-out by October 1st, 2017.
<b>Responsible Party</b>	Kevin Dillon
<b>Implementation Date</b>	October 1, 2017