



CITY OF RICHMOND
CITY AUDITOR

DATE: November 7, 2019

TO: Ms. Lenora Reid
Interim Chief Administrative Officer

FROM: Louis Lassiter *LL*
City Auditor

SUBJECT: Citywide
Family Medical Leave Act (FMLA)

The City Auditor's Office has completed the Citywide Family Medical Leave Act audit and the final report is attached.

We would like to thank the staff of Central HR, Richmond Police Department and the Richmond Fire & Emergency Services for their cooperation and assistance during this audit.

Attachment

cc: The Richmond Audit Committee
The Richmond City Council
Mona Easley, Interim Human Resources Director
William Smith, Chief of Richmond Police Department
Melvin Carter, Chief of Fire & Emergency Services

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City of
RICHMOND
Office of the City Auditor

Audit Report# 2020-06
Citywide
Family Medical Leave Act (FMLA)
November 7, 2019



Audit Report Staff

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Executive Summary	i
Background, Objectives, Scope, Methodology	1
Findings and Recommendations	5
Management Responses	Appendix A

Highlights

Audit Report to the Audit Committee, City Council, and the Administration

Why We Did This Audit

The Office of the City Auditor conducted this audit as part of the FY20 audit plan approved by the Audit Committee. This audit focused on FMLA compliance. The objectives for this audit were to evaluate the internal controls over granting and tracking FMLA and to assess compliance with the applicable regulations.

What We Recommend

The Human Resources Director:

- Work with the FMLA Coordinators to establish and implement oversight procedures to ensure designation forms are properly marked and Fitness-For-Duty forms are received prior to employees returning to work.
- Establish and implement a standard process to ensure all employees taking FMLA leave are informed about the FMLA leave elements in RAPIDS.
- Implement a standard checklist to ensure all FMLA documentation is maintained in the employee files.
- Update the FMLA Policy to ensure it addresses the required time frame to provide the Eligibility and Rights and Responsibilities notice to employees.



Family Medical Leave Act

Background - According to the United States Department of Labor (DOL), the Family Medical Leave Act (FMLA), “is a federal law that provides eligible employees of covered employers with unpaid, job protected leave for specified family and medical reasons”. During a given 12-month period, eligible employees may take up to 12 weeks of unpaid leave.

Paid Parental Leave - Effective July 7, 2018, the City of Richmond implemented Administrative Regulation 4.3-A for Paid Parental Leave (PPL). It works in conjunction with FMLA, which means employees must meet the eligibility requirements as outlined by FMLA and cannot exceed the number of hours allowed. City employees may take PPL for the birth or adoption of a child, foster care placement or to take care of a parent.

Commendations:

Eligibility - Sampled employees met the outlined eligibility requirements as specified by the U.S. Department of Labor.

Qualifying Illness - Sampled employees met the outlined requirements for a qualifying illness as specified by the U.S. Department of Labor.

Needs Improvement:

Finding #1 – Return to Work

We tested 50 of 372 employees who took FMLA leave during FY19. Fourteen of these required a Fitness-For-Duty (*clearing by a physician prior to returning to work*). An analysis of the 14 revealed:

- Three - Designation forms were not marked even though these employees required clearing by a physician.
- Eleven – Designation forms correctly indicated a Fitness-For-Duty was required.
 - Four – Fitness-For-Duty Forms were in the FMLA files.
 - Seven - Fitness-For-Duty forms were not in the FMLA files

Human Resources staff within Central HR, Fire, and Police did not have proper oversight to ensure employees were cleared by a physician before returning to work. This means, employees taking FMLA leave for their own serious health condition may return to work without the proper release from their physicians.

Finding #2 - FMLA Tracking

A sample of 50 employees who took FMLA leave during FY19 revealed timekeepers are tracking the leave, however in some cases, this was inconsistent and inaccurate. We noted 30 of the 50 FMLA leave taken were for PPL. An analysis of the 30 revealed the City granted PPL of 171.5 hours to eight employees in excess of the allotted number of hours. This overage totaled approximately **\$5,134**.

Finding #3 - Maintaining Documentation

We analyzed the number of days between the employees’ FMLA notification and HR’s communication of their Eligibility and Rights and Responsibilities noting whether it exceeded five business days. The table below depicts the results:

	Number in Compliance
Yes	36
No	5
Could not conclude	9

Prior to December 2018, Central HR staff did not recalculate the service period and hours worked. Subsequently, they started recalculating this information; however, they did not maintain the supporting documentation. Although the DOL requires communication within five days, the HR FMLA Policy does not address the required time frame to provide the Eligibility and Rights and Responsibilities notice to employees.

Management concurred with 4 of 4 recommendations. We appreciate the cooperation received from staff during this audit.

BACKGROUND, OBJECTIVES, SCOPE, METHODOLOGY, MANAGEMENT RESPONSIBILITY and INTERNAL CONTROLS

This audit was conducted in accordance with the Generally Accepted Government Auditing Standards promulgated by the Comptroller General of the United States. Those Standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on the audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on the audit objectives.

BACKGROUND

According to the United States Department of Labor (DOL), the Family Medical Leave Act (FMLA), “is a federal law that provides eligible employees of covered employers with unpaid, job protected leave for specified family and medical reasons”. During a given 12-month period, eligible employees may take up to 12 weeks of unpaid leave. FMLA leave may be taken for:

- Birth or placement of a child (including adoption, foster, and bonding time);
- Care of an immediate family member with a qualifying serious health condition;
- Serious health condition of the employee (including pregnancy); and
- Qualifying needs of immediate family members for military and active duty members.

Eligible employees may also take up to 26 weeks of FMLA leave to care for a covered service member.

Paid Parental Leave

Effective July 7, 2018, the City of Richmond implemented Administrative Regulation 4.3-A for Paid Parental Leave (PPL). PPL works in conjunction with FMLA, which means employees must meet the eligibility requirements as outlined by FMLA and cannot exceed the number of hours allowed.

Richmond City Auditor's Report #2020-06

Citywide

Family Medical Leave Act (FMLA)

November 7, 2019

The following table depicts the types of PPL eligible City employees may be granted:

Event	Period Granted	Leave Use
Birthing Mothers	8 weeks	Continuous
Stillbirth (birthing mother)	4 weeks	Continuous
Bonding – non-birthing parent	8 weeks	Continuous or intermittent
Adoption/foster care placement	8 weeks	Continuous or intermittent
Care for sick parent	4 weeks	Continuous or intermittent

Eligibility:

In order to be eligible for job protection under FMLA, employees must meet the following requirements:

- Work for a covered employer,
- Be employed at least 12 months as of the FMLA start date,
- Have at least 1,250 hours of service preceding FMLA leave, and
- Work at a location with at least 50 employees within 75 miles of the worksite.

The FMLA Coordinator function within the City of Richmond is housed in three separate departments:

- Central Human Resources
- Police Human Resources
- Fire Human Resources

During FY19, at least 372 employees had 451 FMLA events. Of the total, 289 events were for job protection under the standard FMLA and 162 for PPL as depicted on the following table:

Richmond City Auditor's Report #2020-06

Citywide

Family Medical Leave Act (FMLA)

November 7, 2019

Leave Type	Number of Events
FMLA Standard Hours	289
Bonding or Maternity	93
Parent Care	69
Total	451

OBJECTIVES

The objectives for this audit were to:

- To evaluate the internal controls over granting and tracking all types of Family Medical Leave for City employees.
- To assess compliance with the U.S. Department of Labor policies and the City Of Richmond's Administrative Regulations covering FMLA for City employees.

SCOPE

The scope of this audit covered City employees who took FMLA and/or Paid Parental Leave during the 12 months ended June 30, 2019.

METHODOLOGY

The auditors performed the following procedures to complete this audit:

- Interviewed management and staff;
- Reviewed and evaluated relevant policies and procedures and tested for compliance;
- Reviewed FMLA guidelines;
- Validated eligibility and qualifying illness requirements;
- Analyzed FMLA/PPL leave taken by employees and method of tracking it; and
- Performed other tests, as deemed necessary.

Richmond City Auditor's Report #2020-06

Citywide

Family Medical Leave Act (FMLA)

November 7, 2019

MANAGEMENT RESPONSIBILITY

City management is responsible for ensuring resources are managed properly and used in compliance with laws and regulations; programs are achieving their objectives; and services are being provided efficiently, effectively, and economically.

INTERNAL CONTROLS

According to the Government Auditing Standards, internal control, in the broadest sense, encompasses the agency's plan, policies, procedures, methods, and processes adopted by management to meet its mission, goals, and objectives. Internal control includes the processes for planning, organizing, directing, and controlling program operations. It also includes systems for measuring, reporting, and monitoring program performance. An effective control structure is one that provides reasonable assurance regarding:

- Efficiency and effectiveness of operations;
- Accurate financial reporting; and
- Compliance with laws and regulations.

Based on the audit test work, the auditors concluded the City is in compliance with the FMLA requirements for eligibility and qualifying illnesses. However, improvements are needed in the tracking of FMLA time taken and retention of all pertaining documentation as discussed throughout this report.

FINDINGS and RECOMMENDATIONS

What Works Well

Eligibility

Sampled employees met the outlined eligibility requirements as specified by the U.S. Department of Labor.

Qualifying Illness

Sampled employees met the outlined requirements for a qualifying illness as specified by the U. S. Department of Labor.

Improvements Needed

Finding #1 – Return to Work

According to the Standard Operating Procedures (SOP) issued by the Human Resources Department (HR), an employee taking FMLA leave for their own serious health condition must provide notification from their physician of their ability to return to work. The return to work document should be provided to their supervisor and to the HR FMLA Coordinator.

We tested a sample of 50 of 372 employees who took FMLA leave during FY19 noting whether HR received the Fitness-for-Duty Certificates (*clearing by a physician to return to work*) prior to returning to work. Testing revealed the Fitness-for-Duty box in the designation forms were inconsistently filled out. In some instances, the designation forms were marked as requiring a Fitness-For-Duty even though it was PPL leave for a qualifying relative or maternity leave.

We noted, 14 of the 50 sampled FMLA leave were related to employees' continuous FMLA leave that required clearing by a physician before returning to work. The following table depicts the type of FMLA leave, including whether a Fitness-For-Duty certificate was required:

Richmond City Auditor's Report #2020-06

Citywide

Family Medical Leave Act (FMLA)

November 7, 2019

Type of Leave	Fitness-For-Duty Required	
	Y	N
Standard FMLA Employee	14	
Standard FMLA Qualifying Relative		6
Paid Parental Leave		30

An analysis of the 14 FMLA leave that required a Fitness-For-Duty certificate revealed:

- Three - Designation forms were not marked even though these employees required a Fitness-For-Duty.
- Eleven – Designation forms correctly indicated a Fitness-For-Duty was required.
 - Four – Fitness-For-Duty Forms were in the FMLA files.
 - Seven - Fitness-For-Duty forms were not in the FMLA files.

Human Resources staff within Central HR, Fire, and Police did not have proper oversight in place to ensure employees were cleared by a physician before returning to work. This means employees taking FMLA leave for their own serious health condition may return to work without the proper release from their physicians and return to duties that they are not released to perform.

Recommendation:

1. *We recommend the Human Resources Director work with the FMLA Coordinators to establish and implement oversight procedures to ensure designation forms are properly marked and Fitness-For-Duty forms are received prior to employees returning to work.*

Finding #2 – FMLA Tracking

According to the U.S. Department of Labor, FMLA records must be maintained for at least three years. The required documentation includes:

- Employee information including position, rate of pay, work hours, etc.;
- Dates the FMLA leave were taken;
- Total FMLA hours used; and
- FMLA notices to the employee from the employer.

Richmond City Auditor's Report #2020-06

Citywide

Family Medical Leave Act (FMLA)

November 7, 2019

According to City Administrative Regulation 4.3A, employees may be granted paid leave of up to eight weeks for maternity leave, bonding and adoption/foster care placement. It also grants up to four weeks for stillbirths and for caring for a sick parent.

We tested a sample of 50 of 372 employees who took FMLA leave during FY19 noting whether:

- FMLA leave was tracked by the departments' timekeepers.
- Granted PPL exceeded the allotted thresholds.
- Timekeepers' FMLA leave records agreed to the FMLA codes in RAPIDS (subsequent to their implementation in December 2018).

Testing revealed the timekeepers tracked the FMLA leave taken, however in some cases, this was inconsistent and inaccurate. The table below depicts the testing results:

Testing Criteria	Y	N	N/A
Timekeepers' Records Agreed to RAPIDS	7	33	10*
Paid Parental Leave exceeded City thresholds	8	22	20**

*FMLA was taken prior to the implementation of FMLA elements in RAPIDS

** FMLA was not for Paid Parental Leave

We noted eight employees exceeded the PPL threshold established by Administrative Regulation 4.3A as follows:

- Six - Paid parental care and maternity/bonding leave exceeded the threshold by 127.5 hours. We brought this to the attention of the departments and adjustments have been made.
- One – Paid bonding leave exceeded the threshold by 36 hours. An adjustment cannot be made as the employee has separated from the City.
- One – Paid maternity leave exceeded the threshold by eight hours. The Department agreed with overage but documentation was not provided to demonstrate the adjustment had been made.

Richmond City Auditor's Report #2020-06

Citywide

Family Medical Leave Act (FMLA)

November 7, 2019

Central HR provided communication to the timekeepers and HR Liaisons, however the information and/or training was not passed on to all employees. As a result, the FMLA leave elements were not entered in RAPIDS.

We noted the City granted PPL to eight employees totaling 171.5 hours in excess of the allotted number of hours. This overage totaled approximately **\$5,134**. Without proper FMLA leave tracking and monitoring:

- Available FMLA hours could be inaccurate, which could lead to improper approval of subsequent FMLA.
- The City could pay leave to employees that are not entitled to receive.

Recommendation:

- 2. We recommend the Human Resources Director establish and implement a standard process to ensure all employees taking FMLA leave are informed about the FMLA leave elements in RAPIDS.*

Finding #3 – Maintaining Documentation

According to the U.S. Department of Labor Employer Guide, FMLA records must be maintained “for no less than three years.” The employer’s FMLA records should include:

- Employee payroll information;
- FMLA date and amount of leave taken;
- FMLA notifications to/from employee/employer;
- Employee benefit information including premium payments; and
- Other documentation relevant to FMLA leave.

Also, according to the U.S. Department of Labor, “employers must provide a written Rights and Responsibilities Notice each time the employer provides an eligible employee the Eligibility Notice, within five business days of having notice of the employee’s need for leave.”

Richmond City Auditor's Report #2020-06

Citywide

Family Medical Leave Act (FMLA)

November 7, 2019

We tested a sample of 50 of 372 employees who took FMLA leave during FY19 noting whether they:

- Worked for the City for at least 12 months
- Had 1,250 or more hours of service with the City

We noted Central HR, Fire, and Police HR departments did not maintain documentation to support the employees' eligibility. Therefore, we obtained the eligibility information from RAPIDS. The analysis revealed 100% of the employees met the eligibility requirements. The table below depicts the testing results:

Requirement	In compliance	
12 months of service	Y	
1,250 hours worked	Y	
Properly Documented		N

We analyzed the number of days between the employees' FMLA notification and HR's communication of their Eligibility and Rights and Responsibilities noting whether it exceeded five business days. The table below depicts the results:

	Number in Compliance
Yes	36
No	5
Could not conclude	9

As stated on the table above, we could not conclude on nine of the fifty employees due to lack of documentation demonstrating the rights and responsibilities notices were communicated to the employees. Eight and one employees worked in the Fire and Police departments, respectively.

Prior to December 2018, Central HR staff did not recalculate the service period and hours worked. Subsequently, they started recalculating this information; however, they did not maintain the

Richmond City Auditor's Report #2020-06

Citywide

Family Medical Leave Act (FMLA)

November 7, 2019

supporting documentation. Additionally, the City's HR FMLA Policy does not address the required time frame to provide the Eligibility and Rights and Responsibilities notice to employees.

Without proper documentation, Central HR may not be able to demonstrate eligibility and time frame requirements were met.

Recommendations:

- 3. We recommend the Human Resources Director implement a standard checklist to ensure all FMLA documentation is maintained in the employee files (support for eligibility and communication of eligibility notice).*

- 4. We recommend the Human Resources Director update the FMLA Policy to ensure it addresses the required time frame to provide the Eligibility and Rights and Responsibilities notice to employees.*

**APPENDIX A: MANAGEMENT RESPONSE FORM
2020-06 Citywide Family Medical Leave Act (FMLA)**

#	RECOMMENDATION	CONCUR Y/N	ACTION STEPS
1	We recommend the Human Resources Director work with the FMLA Coordinators to establish and implement oversight procedures to ensure designation forms are properly marked and Fitness-For-Duty forms are received prior to employees returning to work.	Y	<ul style="list-style-type: none"> • For all FMLA Designation Notices completed for the Employee’s Serious Medical Condition, the Department of Human Resources will double-check that the category indicating that, upon return to work, the individual must present a fitness for duty certification from his/her healthcare provider. [The fitness-for-duty certification is a requirement under Administrative Regulation 4.3 – Family Medical Leave Act (FMLA)]. • For Police and Fire, the Human Resources Liaison who handle the mailing of the Designation Notices will also ensure that the above-referenced category is checked on the FMLA Designation Notice. • At the next HR Generalist/HR Liaisons still working in department meeting, we will provide a handout of instructions as to how Fitness–for-Duty certifications will be handled: <ul style="list-style-type: none"> o Employee provides fitness-for-duty certification to immediate supervisor prior to return-to-work, whenever possible. (It should be noted that many employees do not have access to email or fax and cannot scan or fax these certifications in ahead of time.). If not, it should be presented on the first day back at the commencement of the work day. As always, if the individual does not present the fitness-for-duty certification, he/she will be sent home pending the receipt of that document. o Immediate supervisor provides fitness-for-duty certification to the HR Generalist/HR Liaisons still working in individual departments and the departmental Safety Office, if applicable. o HR Generalists/HR Liaisons still working in individual departments send to the Citywide ADA Coordinator in central Human Resources to be placed in ADA file. o Receipt of fitness-for-duty certification/return-to-work note. o For Fire and Police, the process will be the same. • Human Resources will also edit the FMLA SOP to place a stronger emphasis on providing fitness-for-duty certifications ultimately to the City ADA Coordinator (and for Fire & Police, the HR Liaisons) and the process related to the receipt of those certifications.
	TITLE OF RESPONSIBLE PERSON		TARGET DATE
	Administrative Services Manager		11/29/2019
	IF IN PROGRESS, EXPLAIN ANY DELAYS		IF IMPLEMENTED, DETAILS OF IMPLEMENTATION
#	RECOMMENDATION	CONCUR Y/N	ACTION STEPS
2	We recommend the Human Resources Director establish and implement a standard process to ensure all employees taking FMLA leave are informed about the FMLA leave elements in RAPIDS.	Y	<ul style="list-style-type: none"> • As soon as the RAPIDS FMLA Absence Management and Timecard categories were available, all HR Liaisons and Timekeepers Citywide were notified via email by the HRIS Manager and Oracle Time & Labor administrator, on January 3, 2019, that these FMLA and FMLA Paid Parental Leave time and attendance and timecards categories had been finally activated. (Note: DIT has not yet developed FMLA Military Leave categories). The expectation was that this information would be passed on by the HR Liaisons and Timekeepers to the employees. • Based on the audit findings that not all employees are utilizing these RAPIDS FMLA and FMLA Paid Parental Leave (PPL) Categories, the Department of Human Resources will take the following steps: <ul style="list-style-type: none"> o Discuss this audit finding at the next scheduled/to-be scheduled meeting with all Human Resources Generalists and those remaining HR Liaison departmental staff. Those at the meeting will also remind all departmental Timekeepers, as well as employees, that the FMLA and FMLA PPL categories must be utilized. o Send out a StarNet announcement to all non-KABA timeclock City employees reminding them that it is their responsibility to request all FMLA leave types and FMLA Paid Parental Leave Types (with the exception of FMLA military leave) through RAPIDS Absence Management and to reflect those approved FMLA and FMLA Paid Parental Leave Categories on their timecard. (Note: For KABA timeclock employees, the Timekeepers work to make sure the correct leave categories are entered for those employees). After the necessary review, an announcement will be sent out in November 2019. o Review and update FMLA SOP to make sure that it reflects the establishment of the RAPIDS FMLA categories. The Paid Parental Leave SOP already reflects the FMLA and Paid Parental Leave FMLA time and attendance/timecard categories. This FMLA SOP review will be completed in November 2019 and all HR Generalists/HR Liaisons remaining in departments and Timekeepers will then be provided with the revised copy.
	TITLE OF RESPONSIBLE PERSON		TARGET DATE
	Administrative Services Manager		11/29/2019
	IF IN PROGRESS, EXPLAIN ANY DELAYS		IF IMPLEMENTED, DETAILS OF IMPLEMENTATION

**APPENDIX A: MANAGEMENT RESPONSE FORM
2020-06 Citywide Family Medical Leave Act (FMLA)**

#	RECOMMENDATION	CONCUR Y/N	ACTION STEPS
3	We recommend the Human Resources Director implement a standard checklist to ensure all FMLA documentation is maintained in the employee files (support for eligibility and communication of eligibility notice).	Y	<ul style="list-style-type: none"> Human Resources has developed a FMLA Checklist to be contained in each FMLA file. This checklist will also immediately be distributed to the departmental HR Liaison in Police and Fire.
	TITLE OF RESPONSIBLE PERSON		TARGET DATE
	Administrative Services Manager		11/29/2019
	IF IN PROGRESS, EXPLAIN ANY DELAYS		IF IMPLEMENTED, DETAILS OF IMPLEMENTATION
#	RECOMMENDATION	CONCUR Y/N	ACTION STEPS
4	We recommend the Human Resources Director update the FMLA Policy to ensure it addresses the required time frame to provide the Eligibility and Rights and Responsibilities notice to employees.	Y	<ul style="list-style-type: none"> The City's current FMLA Policy, Administrative Regulation 4.3 – Family Medical Leave Act (FMLA), does indicate on Page 6 of 16, Section VI. Procedures, 3. HR Liaison/ Timekeeper/ Supervisor (if applicable) that the FMLA Notice of Eligibility and Rights and Responsibilities must be provided within five (5) business days of the leave request (see below). “HR Liaison’s/Timekeeper/Supervisor (if applicable) Responsibility: The agency’s HR Liaison, in conjunction with the Timekeeper, will determine if the employee meets the minimum service requirements and available FMLA balance. The HR Liaison must: <ul style="list-style-type: none"> a) Provide the employee with a completed U.S. Department of Labor (DOL) – Notice of Eligibility and Rights and Responsibilities form (WH-381), U.S. Department of Labor (DOL) Fact Sheet #28, within five (5) business days of the leave request. He/she must advise the employee how to access the FMLA Administrative Regulation, 4.3.” Human Resources will ensure that this 5-day timeframe is specifically stated in the FMLA and Paid Parental Leave SOP’s and will distribute the updated SOP’s to all HR Generalists/department HR Liaison staff, and Timekeepers. This review and editing will be completed in November 2019.
	TITLE OF RESPONSIBLE PERSON		TARGET DATE
	Administrative Services Manager		11/29/2019
	IF IN PROGRESS, EXPLAIN ANY DELAYS		IF IMPLEMENTED, DETAILS OF IMPLEMENTATION