



FMLA Administration Special Audit
Internal Audit Report

July 2017

Bernalillo County Internal Audit FMLA Administration Special Audit

Executive Summary

SUMMARY OF PROCEDURES

REDW performed internal audit procedures over selected processes in place at the County for Family and Medical Leave Act (FMLA) administration. Our internal audit focused on evaluating if the County is administering FMLA in accordance with applicable regulations, and internal policies and procedures. Additionally, our procedures were designed to evaluate internal controls in place for approving and tracking individuals on FMLA and identify any areas for improvement in the process.

We performed the following procedures:

- Obtained an understanding the FMLA administration process, including the method for approving and tracking leave balances.
- Compared the County's FMLA guidelines and procedures to industry best practices by utilizing the Business and Legal Resources (BLR) Leave of Absence Audit checklist to determine where improvements could be made to the County's current guidelines and procedures.
- Obtained an understanding of the FMLA processes in place regarding training provided to employees and necessary support for files.
- Selected 150 employees that recorded FMLA during the calendar year ended December 31, 2016, and tested to determine if the employee met the minimum hours worked and service requirements to take FMLA, the appropriate form was utilized and filled out completely including appropriate signatures, the reason for request appeared to be for reasonable medical/family reasons, the FMLA utilized did not exceed the maximum hours allowed, and FMLA time was not recorded after the approved end date.

SUMMARY OF OBSERVATIONS AND RECOMMENDATIONS

REDW observed areas during the course of the audit where controls were functioning properly and established procedures were followed. All of the 100 randomly selected sample items had the appropriate forms filled out, were eligible for FMLA based on service and hours, and had all necessary signatures included on the forms.

As a result of our testing, the following significant high and moderate risk observations were identified:

- 1) **Monitoring of FMLA administration** – Multiple instances were identified where the information tracked in the manual excel spreadsheet was not correctly entered. Additionally, instances were identified where the applications or FMLA forms were not completed correctly.
- 2) **Departmental reporting of FMLA was not accurate** – There were not defined responsibilities for the FMLA process or training provided to timekeepers and supervisors, which lead to unapproved FMLA hours being recorded.
- 3) **FMLA Policies and procedures** – There were no P/Ps specifically designed for department personnel responsible for FMLA processes. Additionally, there were best practice elements from the BLR Checklist which were not included in the County’s guidelines over FMLA.

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Further detail of our purpose, objectives, scope, and procedures are included in the internal audit report.

REDW LLC

Albuquerque, New Mexico
July 7, 2017

Bernalillo County Internal Audit FMLA Administration Special Audit

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Bernalillo County Internal Audit FMLA Administration Special Audit Report

INTRODUCTION

We performed the internal audit services described below solely to assist Bernalillo County in evaluating compliance with the FMLA Guidelines and applicable Policies and Procedures (P/Ps). Our services were conducted in accordance with the Consulting Standards issued by the American Institute of Certified Public Accountants, Generally Accepted Government Auditing Standards, and the terms of our contract agreement for internal audit services. Since our procedures were applied to samples of transactions and processes, it is possible that significant issues may not have been identified.

An entrance conference was held on April 7, 2017, and fieldwork began the week of May 15, 2017. An exit conference was held on June 29, 2017.

PURPOSE AND OBJECTIVES

The Family and Medical Leave Act (FMLA) is a federal law that provides up to 12 work weeks (480 hours for standard employees and 636 for Fire/EMT employees) each year of unpaid leave to employees. The County is responsible for administering FMLA in compliance with Department of Labor (DOL) regulations.

This special audit was requested due to the number of employees at the County reporting FMLA. In 2016, there were 446 employees reporting FMLA time. The purpose of this special audit was to evaluate if the County was administering and tracking FMLA in accordance with applicable regulations and internal P/Ps. Additionally, our procedures were designed to evaluate internal controls that were in place for approving and tracking individuals on FMLA and to identify any areas for improvement in the process.

SCOPE AND PROCEDURES PERFORMED

In order to gain an understanding of the processes and operations, we interviewed the following personnel:

- Virginia Chavez, Interim Human Resources Director
- Chuck Griffith, Benefits Manager
- Carolyn Jaramillo, Benefits Specialist

In order to gain an understanding of the processes and applicable laws, we read relevant portions of:

- Bernalillo County FMLA Guidelines
- Bernalillo County Family Medical Leave Act Policy (rev 01/14)
- Business and Legal Resources Leave of Absence (BLR) Audit checklist – Family and Medical Leave
- 29 CFR Part 825 – The Family and Medical Leave Act of 1993
- The Employer’s Guide to The Family and Medical Leave Act –Wage and Hour Division of the United States Department of Labor

We performed the following testwork:

County FMLA administration: Obtained an understanding the County’s FMLA administration processes including the FMLA request, approval of leave, tracking employees granted FMLA, time entry and monitoring, re-certifications, and documentation maintained.

Industry best practices: Compared the County’s FMLA guidelines and procedures to industry best practice by utilizing the BLR Leave of Absence Audit checklist to identify ways to strengthen the current P/Ps.

Recordkeeping and tracking of FMLA: Selected 150 of 446 employees who reported FMLA hours during the year ended December 31, 2016. We performed data analytics to identify employees reporting unusual FMLA, including employees who appeared to be ineligible based on the required number of hours worked, reported hours past the approved end dates, reported more than the maximum hours of FMLA allowed, or requested FMLA multiple times in a year. From those analytics we selected 50 employees for testing (leveraged sample). An additional 100 employees were randomly selected from the listing of employees who reported FMLA to allow for a representative sample of the total population.

For each employee selected, we tested to determine if:

- The employee was eligible for FMLA based on the number of hours worked at the County (over 1,250) and one year of service.
- The appropriate FMLA form was filled out completely, and included all necessary signatures/authorizations, and appropriate recertification documentation existed, if applicable.

- The employee did not record FMLA leave exceeding the allowed 12 weeks (480 hours for regular employees or 636 hours for Fire/EMT employees).
- The employee's FMLA was appropriately tracked in the Benefits' Department Manual Tracking sheet.
- The employee did not report FMLA after the end date.
- Appropriate documentation was maintained for when the FMLA ended and the employee returned to work.

For each employee tested, we evaluated the approving physician and the reason for the FMLA to determine if there appeared to be any trends that would indicate FMLA abuse.

OBSERVATIONS, RECOMMENDATIONS AND MANAGEMENT RESPONSES

As a result of our testing, REDW identified the following observations:

1. Monitoring of FMLA administration

The Benefits group within the Human Resources Department is responsible for administering FMLA in accordance with regulations and County policies. The only method used to track FMLA by the Benefits group was an excel spreadsheet. There were no controls in place to ensure that employee's FMLA information was entered accurately into the tracking spreadsheet and that all employees on FMLA were appropriately included. Our testing identified the following errors in the FMLA tracking spreadsheet:

- Eight of 50 employees in the leveraged sample and three of 100 employees in the random sample had incorrect data entered into the Benefits' Department Manual Tracking sheet.
- Seven of 50 employees in the leveraged sample were approved for FMLA, but were not added to the Benefits' Department Manual Tracking sheet.
- One of 50 employees in the leveraged sample where the FMLA application was approved, but not signed by the responsible Human Resources personnel.
- One of 50 employees in the leveraged sample had both the approved and not approved boxes checked on the employee application.

Additionally, there did not appear to be appropriate controls or oversight of the FMLA hours reported. There was no training provided to timekeepers and supervisors for their responsibilities for FMLA reporting. There were also minor inconsistencies in the way the DOL Notice of Eligibility and Rights & Responsibilities forms were populated, including incorrectly marking the FMLA requested for the employee versus the spouse, or incorrectly calculating the 12 weeks of leave.

Potential Risk: High – If the County does not have adequate oversight and internal controls to ensure only authorized and allowable FMLA is being reported, there may be employees who take unauthorized or excessive FMLA. Unauthorized or excessive FMLA can cause inefficiencies and undue stress in the workplace for the remaining employees and significantly

increase the cost of additional resources. Additionally, inconsistencies in the FMLA approval process may increase the risk of legal claims related to FMLA candidates who are declined.

Recommendation: The County should evaluate the process for FMLA administration and oversight to determine how to best administer FMLA and create responsibilities for oversight. Oversight should include reviewing FMLA taken each pay period to ensure hours are authorized, evaluating the FMLA requests for reasonableness and obtaining second opinions as needed, reviewing the FMLA spreadsheet for accuracy, and alerting individuals and departments of key deadlines.

The County may wish to appoint an in-house specialist, which would require additional FMLA training for that individual to ensure proper FMLA processes are consistently followed. A process and reoccurring training should be created for timekeepers and supervisors to understand the FMLA requirements and to review the FMLA time entered each pay period.

The County may also consider hiring a third party FMLA administrator to perform the technical duties of administering FMLA. A third party FMLA administrator would be responsible for approving FMLA, obtaining second opinions, tracking FMLA on a continuous basis, communicating the FMLA status to the timekeepers, and ensuring all documentation is in compliance with regulations. An additional benefit of a third party FMLA administrator would be reducing the risk of approving an inappropriate requests, and eliminating concern of biased treatment towards departments. Additionally, the third party administrator would allow the Benefits group to perform benefit administration beyond FMLA with more efficiency.

Management Response: The HR Benefits, Payroll and IT will collaborate to evaluate the FMLA process and provide County management with options for process improvements and/or third party administration of FMLA. First meeting has been scheduled for August 2, 2017.

2. Departmental reporting of FMLA was not accurate

Supervisors within each department are responsible for ensuring that their employees are accurately submitting timecards, and monitoring the FMLA time entered by employees. There was not a clear understanding of who in the County is responsible for tracking FMLA hours, and supervisors and timekeepers did not have the resources to determine if appropriate approval was obtained prior to reporting FMLA, or to determine if the employee had remaining FMLA. There were no desk procedures and no training provided directly to the supervisors/timekeepers responsible for approving FMLA. Additionally, there were no controls in place to ensure that the FMLA entered by the timekeepers were accurate and allowable. We tested 150 employees reporting FMLA and identified that:

- Four of 50 employees in our leveraged sample and one of 100 employees in our random sample recorded FMLA time after their approved end date. In total, these employees accounted for an additional 364.56 and 16 hours respectively.
- Seven of 50 employees in our leveraged sample recorded more than the 12 allowable weeks (480 hours) of FMLA time. In total, these seven employees accounted for an additional 621 hours taken beyond the allowable amount.
- Three of 50 employees in our leveraged sample were not approved for FMLA, however they recorded FMLA hours. In total, these employees accounted for 603.3 unapproved hours.

Potential Risk: High – If employees are not appropriately trained to administer FMLA, the County could be allowing employees to take unauthorized or excess FMLA, which would result in the County using additional resources to cover those employees on FMLA and may expose the County to potential litigation or be in violation of FMLA regulations.

Recommendation: The County should evaluate the process for departments reporting FMLA and implement reoccurring training over the FMLA process and requirements for supervisors, timekeepers, and designated back-ups who are responsible for reporting and tracking FMLA. Controls should be implemented by the Benefits group to review the FMLA hours reported by the timekeepers to ensure the employees reported during that payroll cycle are approved for FMLA and the hours are within the allowable limits. The County should identify who should be responsible for notifying employees when they are close to their maximum hours.

Management Response: HR Benefits will also provide FMLA refresher training to all supervisors and timekeepers twice per year. The HR Benefits, Payroll and IT will collaborate to evaluate the FMLA process and provide County management with options for process improvements and/or third party administration of FMLA. First meeting has been scheduled for August 2, 2017.

3. FMLA Policies and Procedures

The County did not have desk procedures or policies specifically directed for department individuals responsible for FMLA processes. Additionally, the comparison of the County's FMLA Guidelines and procedures to industry best practices identified the following items that were not included in the policy:

- Specific wording regarding forbidding discrimination for taking FMLA (29 USC 2615);
- Procedures when there are layoffs during FMLA leave (29 CFR 825312);
- Notification to employees if they are “Key” employees within the meaning of FMLA (29 CFR 825.217, 218, 219, and 301);
- The process for obtaining second opinions; and
- The process for contacting healthcare providers to authenticate or clarify the information received.

Potential Risk: Moderate – If individuals responsible for administering FMLA do not have formally documented guidance, the risk of inappropriately administering FMLA is heightened. Inappropriate administration of FMLA may result in inefficiencies, unnecessary costs to the County, and litigation. Additionally, if County policies and procedures do not exist or do not include best practices, there may be a risk that the County is inappropriately administering FMLA.

Recommendation: The County should create policies and procedures for timekeepers reporting FMLA, which include requirements for checking the employees eligibility and FMLA hours balance prior to reporting FMLA. The County should also perform a review of the FMLA Guidelines on an annual basis and update the FMLA Guidelines to incorporate the areas identified above.

Management Response: The HR Benefits, Payroll and IT will collaborate to evaluate the FMLA process and provide County management with options for process improvements and develop policies and procedures for timekeeping reporting. First meeting has been scheduled for August 2, 2017.

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This report is intended for the information and use of Bernalillo County Management, the audit committee, members of the Board of Commissioners of Bernalillo County and others within the organization. However, this report is a matter of public record, and once accepted its distribution is not limited.

We discussed and resolved minor observations with management and received cooperation and assistance from the Department during the course of our interviews and testing. We sincerely appreciate the courtesy extended to our personnel.

REDW LLC

Albuquerque, New Mexico
July 7, 2017