

**MARYANNE MORSE  
THE CLERK OF THE CIRCUIT COURT AND COMPTROLLER  
SEMINOLE COUNTY FLORIDA**

**LIMITED REVIEW  
OF  
FAMILY AND MEDICAL LEAVE ACT**

**Report No. 102015**



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Clerk of the Circuit Court and Comptroller  
Seminole County, Florida

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## Limited Review

# Family and Medical Leave Act of 1993

## BACKGROUND

The Family and Medical Leave Act of 1993 (FMLA) was signed into law on February 5, 1993. It is referred to as Public Law 103-3. Employees are provided with certain rights and protections under the law. Specifically, Title 29: Labor, Code of Federal Regulations Part 825.100 (a) states in part:

The Family and Medical Leave Act of 1993, as amended, (FMLA or ACT) allows eligible employees of a covered employer to take job-protected, unpaid leave, or to substitute appropriate paid leave if the employee has earned or accrued it, for up to a total of 12 workweeks in any 12 months because of the birth of a child and to care for the newborn child, because of the placement of a child with the employee for adoption or foster care, because the employee is needed to care for a family member with a serious health condition, because the employee's own serious health condition makes the employee unable to perform the functions of his or her job.....FMLA leave may be taken on an intermittent basis rather than all at once, or the employee may work a part time schedule.

The Act is more extensive than what is presented above. The complete law can be found under the Title 29 Code of Federal Regulations (CFR) Part 825.

The Seminole County Administrative Code Section 24.603.0 (Family and Medical Leave) addresses the above and ensures compliance with the regulation.

The review that follows was done specifically to verify compliance with the federal law, county policy, and finally, that employees were not being too liberal with the use of the policy.

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***The Office of the Clerk of the Circuit Court and Comptroller***



An employee in each calendar year is entitled to up to 12 weeks of FMLA leave, i.e. 480 hours for 40 hours per week workers and 672 hours for 56 hours per week members (firefighters) which hours may be taken continuously or intermittently depending on needs.

For the calendar year 2014, there were a total of 65 employees who applied for FMLA. There was a total of 13,996 FMLA hours used which is equivalent to approximately 7 full time employees.

## **AUDIT OBJECTIVES**

The objective is to determine if the administrative controls over the FMLA are adequate, effective, and in compliance with county, state, and federal laws and regulations; specifically, the Family and Medical Leave Act of 1993.

## **SCOPE AND METHODOLOGY**

The review included the examination of employees' timesheets and records relating to the FMLA process and procedures. The records for calendar year 2014 were subject to our review.

The following was included in this review:

- Federal, state, and county policy; and,
- The county records as considered necessary.

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## OVERALL EVALUATION

It is our opinion, the county is in compliance with the federal guidelines and with the County Administrative Code.

The following opportunity for improvement should be considered.

- Written departmental procedures ensure consistency.

### *Opportunities for Improvements*

#### 1. Written departmental procedures ensure consistency.

The county policy is to allow its employees to apply for up to 12 weeks of Family and Medical Leave in a calendar year. If approved by management, the leave can be taken without interruption or used on an occasional basis as needed.

The employees are limited to a total of 480 hours if they are on a 40 hour a week work schedule; or 672 hours for a 56 hour schedule. The HR Division has been diligent in making sure that the policy is in compliance with the federal law.

For this review, we identified all of the employees who had received approval for the medical leave in 2014. We analyzed their time off from work for any unusual trends.

We also looked to see that the county policy addressed the notification process (i.e. HR to County Finance), the eligibility process, and the process to get approval to come back to work.

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All 65 employees that applied for FMLA were approved by HR. However, one approval came after the fact. This employee started FMLA on June 25th, 2014 and the medical certificate to support the FMLA was received in HR on August 19th, 2014. This employee had actually returned to work on August 18th, 2014.

There is also a requirement to obtain a physician's certification of fitness for return to work if an employee has been out on FMLA for his own serious health condition. We noted three (3) employees had actually submitted their doctor's approval to return to work after they had already returned to work. These cases were clearly isolated and HR has since received all of the appropriate paperwork.

There is a risk associated with allowing employees to return to work prior to receiving doctor's clearance to return to work. To ensure that the employee doesn't return to work prematurely, department management should not allow an employee back to his job without first going to HR for clearance. This requirement is established in Administrative Code 24.305.0 (8). The requirement is as follows:

The County reserves the right to require any member who is returning to work from an absence due to an injury or illness to report to the Human Resources Division and provide a health care provider's certification of the member's ability to return to work before the member is released to duty.

With an interdepartmental procedure that complements the administrative code will ensure that all employees with medical conditions are treated consistently and the County is protected from liability.

## **Recommendation**

1. Enforce the requirement of Administrative Code 24.305.0 (8) (i.e. require employees to report to HR and get clearance prior to returning to work).
2. Written procedures should be established to complement the Administrative Code to ensure compliance and consistency.

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## **Management Response**

We concur with the findings in the review of the Family and Medical Leave Act of 1993 compliance. In response, Human Resources will begin auditing time records to identify employees that are out more than 1 week so we can make contact with the departments to find out if FMLA should be offered to the employee. Since Seminole County BCC has PTO time and Human Resources does not receive copies of the time sheets, we do not know if an employee is out due to medical reasons or if it is pre-scheduled vacation time. We will review the amount of hours in a 2 week pay period and reach out to the department to gather additional information. – ANTICIPATED COMPLETION 11/1/2015 AND WILL BE ONGOING

Additionally, Human Resources will establish Standard Operating Procedures that will be distributed to each department that outlines what FMLA is, Federal, State, and County Guidelines/Laws as they pertain to FMLA, the policy as outline in the County Administrative Code, and the procedure for ensuring compliance. – ANTICIPATED COMPLETION 12/15/2015.

## **Audit Comment**

We appreciate the management response to the audit finding. To support their planned action, a memorandum should be sent to department directors instructing them to notify Human Resources immediately if there is any indication that FMLA might be needed.