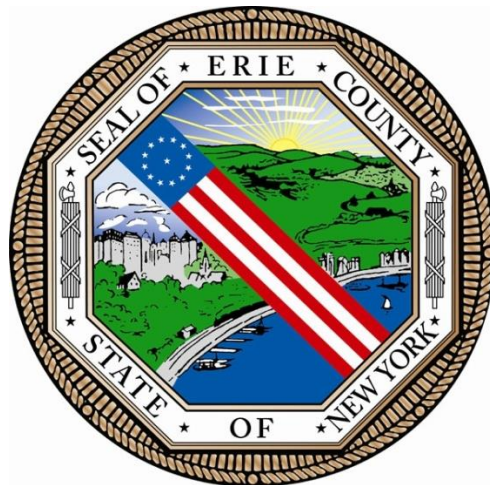


March 2017

**Erie County Department of Personnel
Performance Audit of
The Family and Medical Leave Act
For the Year Ended December 31, 2015**



**STEFAN I. MYCHAJLIW
ERIE COUNTY COMPTROLLER**

**HON. STEFAN I. MYCHAJLIW
ERIE COUNTY COMPTROLLER'S OFFICE
DIVISION OF AUDIT & CONTROL
95 FRANKLIN STREET
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March 29, 2017

Erie County Legislature
92 Franklin Street 4th Floor
Buffalo, New York 14202

Dear Honorable Members:

The Erie County Comptroller's Office has completed a performance audit of the Family and Medical Leave Act (FMLA) for maternity, and child care purposes for the year ended December 31, 2015.

Our objectives were to determine whether:

- FMLA leave has been accounted for and accurately recorded in SAP.
- The employee's type of leave taken was in adherence with FMLA, Erie County Policies and Procedures, and his or her collective bargaining agreement.
- Proper documentation has been submitted by the employee.
- Proper paperwork has been retained by the employer.

We conducted our audit in accordance with Generally Accepted Government Auditing Standards. 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. We believe that the evidence obtained provides a reasonable basis for our findings and recommendations based on our audit objectives.

The scope of our audit included the testing of Erie County employees who took FMLA leave for maternity and/or child care purposes from January 1, 2015 to December 31, 2015. We traced the employees' source documents, FMLA Notice of Eligibility of Rights and Responsibilities and FMLA Designation Notices, to Erie County's computerized SAP personnel module to confirm

records and leave dates were in agreement. We also traced the source documents to SAP to confirm the type of leave taken was in accordance with the applicable policies and procedures. Lastly, we evaluated internal control over the FMLA operations within the Department of Personnel (Personnel).

Management of Personnel is responsible for establishing and maintaining a system of internal control. The objective of such a system is to provide reasonable, but not absolute, assurance that transactions are executed in accordance with management's authorization are recorded properly. Because of inherent limitations in the system of internal control, errors or irregularities may nevertheless occur and not be detected.

In our opinion, internal controls over the administration of the Family and Medical Leave Act are adequate.

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BACKGROUND

The Family and Medical Leave Act is a federal law enacted on February 5, 1993, and adopted by Erie County on August 5, 1993. FMLA will provide an eligible employee with 12 workweeks (480 hours) of unpaid, job protected leave within a 12 month period. An employee may take FMLA for the following reasons:

- The birth of a child and to care for a newborn within the first year of birth.
- The placement with the employee of a child for adoption or foster care for the newly placed child within the first year of placement.
- The care for the employee's spouse, child, or parent who has a serious health condition.
- A serious health condition that makes the employee unable to perform the essential functions of his or her job.
- Any qualifying exigency arising out of the fact that an employee's spouse, son, daughter, or parent is a covered military member on covered active duty.

For an employee to be eligible for FMLA leave he or she must have been employed with the organization for at least 12 months. During that 12 month period, the employee must have worked for a minimum of 1,250 hours.

Per the FMLA policy, an employer may require an employee to use any form of accrued leave time (vacation, personal, sick, compensatory, etc.) as FMLA leave. Erie County follows this approach. If the employee has no accrued leave time, he or she can take FMLA leave without pay (LWOP). To ensure the employee receives the most possible benefit from FMLA, leave can be taken in various leave increments, such as, months, weeks, hours, and/or minutes per the Federal statute.

Because Erie County employs individuals from many collective bargaining agreements associated with the County, members of CSEA, CSEA – Correctional Officers, AFSCME, Teamsters, and PBA allow sick leave to be used for: sickness or injury, a serious illness in the employee's family, quarantine regulations, and medical and dental visits. CSEA, CSEA – Correctional Officers, and AFSCME, also allow their members use of sick leave for maternity.

While the various collective bargaining agreements cover most employees, Managerial Confidential (MC) employees have a specific sick leave policy. A MC employee can use sick leave for: medical and dental appointments, illness, injury, maternity, and the serious illness of the employee or the serious illness of an immediate family member. Once a MC employee has 40 hours of accrued sick leave, the excess leave gets put in a Catastrophic Illness Bank which can be used for a serious health condition of the employee or for an employee's immediate family member. Pregnancy and prenatal care qualifies as a serious health condition for which leave from the catastrophic illness bank can be used.

AUDIT FINDINGS

1. Incorrect Use of Employee Leave

Erie County employees are utilizing their leave time not in accordance with the applicable collective bargaining agreement, Erie County policy, and/or FMLA policy. We sampled 51 employees taking FMLA leave for either maternity leave or child care and found two major miscoding discrepancies: miscoding of sick leave and miscoding of FMLA leave. The total cost of the miscoded leave was \$24,815.67 for eight employees.

There were five Erie County employees who miscoded their sick leave. The employees were managerial confidential employees, as well as members of the CSEA-Correction Officers and PBA collective bargaining agreements. The employees took sick leave for reasons not stipulated in the applicable Erie County policy or collective bargaining agreements. The total cost of the miscoded sick leave was \$20,257.49.

There were three CSEA members who miscoded their FMLA leave. One employee took FMLA leave when she was denied FMLA leave, as evident in the Designation Notice. There were two employees who took FMLA leave after the maximum of 480 hours of leave was already reached. The total cost of miscoding FMLA leave in these instances was \$4,558.18.

While no overpayments were made as a result of the miscoding, the County's payroll process has no measures in place to detect or prevent the improper coding of leave.

WE RECOMMEND County management in conjunction with the Department of Information Support Services take the steps necessary to modify the SAP payroll module to prevent sick leave, catastrophic sick leave, and FMLA leave from being used improperly. **WE RECOMMEND** that Personnel management take the steps necessary to provide appropriate guidance to both employees and department management on the acceptable uses of sick leave, catastrophic sick leave, and FMLA leave.

2. Records Not Adequately Maintained and Retained

FMLA paperwork and records have not been adequately maintained. The Employer's Guide to the Family and Medical Leave Act published by the United States Department of Labor requires employers to make, keep, and preserve records pertaining to FMLA. An employer must maintain records detailing: the dates and hours FMLA is taken for all eligible employees, copies of employee notices (i.e., Notice of Eligibility and Rights and Responsibilities and Designation Notice), and documentation of employee benefits or employer paid and unpaid leave policies and practices, and any record of dispute between the employer and the employee concerning FMLA.

The Employer's Guide requires employers to retain FMLA records for no less than three years, and the New York State Department of Education requires employee time records covering leave, absences, hours worked and scheduling be retained for no less than six years.

In our testing, we reviewed the Notice of Eligibility and Rights and Responsibilities and the Designation Notices furnished to the employees. There were two employees who were granted FMLA leave where the Notice of Eligibility and Rights and Responsibilities could not be located. There was another employee who was granted FMLA leave where the Designation Notice for that individual cannot be located.

Management of Personnel did not adhere to the Federal or State record retention requirements.

WE RECOMMEND that management of Personnel reviews existing policies and procedures to ensure that they include retention of all FMLA paperwork. We further recommend that management of Personnel determine which retention guidelines are appropriate for FMLA paperwork and include as an integral part of their operating policies and procedures.

AUDITOR'S COMMENT

Lack of Data Continuity

There is a disconnect between various sources of data utilized by Personnel. The leave dates provided on 2015 query "List of EEs Receiving Leave without Pay (LWOP)" supplied by Personnel do not correspond with the SAP transaction "Overview of Absences" nor do the dates correspond with the SAP transaction "Attendance/Absence Data: Calendar View."

The disconnect of data makes it extremely difficult for Personnel management to have any degree of certainty of exactly how much maternity and/or child care leave is taken in a calendar year. Furthermore, the disconnect could create difficulty in determining if the leave was taken under FMLA designation versus any other type of leave (i.e., Voluntary leave unpaid, LWOP, sick leave, vacation, personal leave, etc.).

While LWOP and voluntary leave unpaid presents no financial impact, the accuracy of leave taken is distorted preventing management from adequately assessing leave time taken.

WE RECOMMEND management of Personnel take the steps necessary to ensure all mandatory paperwork is completed and correctly imputed into the SAP system to guarantee all reports match the corresponding SAP transactions.

RESULTS OF THE EXIT CONFERENCE

An exit conference was held on May 4, 2017. We met with the Erie County Personnel Commissioner, a member of his staff, and a representative from Budget and Management.

The contents of the report were discussed and the auditee was in general agreement with our findings and recommendations. Personnel asked for and were provided with copies of documentation that supported our findings.

The Commissioner of Personnel forwarded a written response to our office on May 9, 2017. However, this response did not specifically address our findings and recommendations (see appendix 1). Therefore, in accordance with the County's Audit Response System and Procedures, we request that the Department of Personnel prepare a written response to the County Executive concerning the recommendations in this report by June 19, 2017. We further request that the County Executive forward copies of the written response to the Comptroller's Office, the Erie County Legislature and the Erie County Fiscal Stability Authority by July 3, 2017.

We wish to thank the Commissioner and his staff for their assistance afforded our staff during the course of the audit.

ERIE COUNTY COMPTROLLER'S OFFICE

cc: David Palmer, Commissioner, Erie County Department of Personnel
Hon. Mark C. Poloncarz, County Executive
Robert W. Keating, Director, Budget and Management
Erie County Fiscal Stability Authority

APPENDIX A – Department of Personnel’s Response To Report

On May 9, 2017, our office received a written response from the Commissioner of Personnel addressed to the Erie County Legislature. We are providing a summary of their written comments together with our evaluation of their comments where necessary.

FINDINGS

1. Incorrect Use Of Employee Leave

The Commissioner stated that the coding issue, although incorrect, did not result in violation of FMLA law and did not result in unauthorized payments to any of the employees. In their response the Department of Personnel stated that they train and will continue to train new employees and managers on the proper use of ESS. Personnel also responded that they offer refresher courses and will continue to offer these courses to help combat the issue of miscoded leave. Finally, Personnel said they will work with DISS in an effort to upgrade the ESS payroll system to accurately reflect employee FMLA balances and consequently eliminate the potential for miscoding of FMLA time.

2. Records Not Adequately Maintained and Retained

Personnel stated that the CSEA employees were incorrectly coded for FMLA leave but that they were appropriately paid from their accrued time in the time banks.

However, Personnel did not sufficiently respond to the recommendation regarding the retention of documentation due to the fact that document retention goes beyond adherence to County policy.

Audit Comment – Lack of Data Continuity

The Department of Personnel did not respond to the recommendation made in this comment.