



January 28, 2020

MEMORANDUM

TO: Administration and Regulation Appropriations Subcommittee and Legislative Services Agency

FR: James Kurtenbach, Director, Department of Administrative Services

RE: Fiscal Year 2019 Report on the Contract for Family Medical Leave Act Third-Party Administration Services

In accordance with 2016 Iowa Acts – Chapter 1130.2, enclosed please find the Fiscal Year 2019 Report on the Contract for Family Medical Leave Act Third-Party Administration Services.

Please contact Christy Niehaus, Human Resources Enterprise - Chief Operating Officer, at christy.niehaus@iowa.gov with any questions or comments.

Federal Requirements of Family and Medical Leave Act

The Family and Medical Leave Act (FMLA) entitles eligible employees of certain employers to take unpaid, job-protected leave for specified family and medical reasons with continuation of group health insurance coverage under the same terms and conditions as if the employee had not taken leave. FMLA is a federally-mandated program designed to help employees balance their work and family responsibilities by allowing them to take reasonable unpaid leave for certain family and medical reasons. It also seeks to accommodate the legitimate interests of employers and promote equal employment opportunity for men and women. All public employers are required to comply with FMLA.

The same unplanned absence which could have resulted in dismissal before FMLA, now triggers a workflow of mandatory administrative activities:

- Determination of eligibility for protected leave;
- Calculation of leave benefits;
- Mandatory communications between Human Resources and the employee;
- Validation of the leave event; and
- Confidential documentation of the entire process.

Eligibility

Only eligible employees are entitled to take FMLA leave. An eligible employee is one who:

- Works for a covered employer;
- Has worked for the employer for at least 12 months (months do not have to be consecutive);
- Has at least 1,250 hours of service for the employer during the 12-month period immediately preceding the leave; and
- Works at a location where the employer has at least 50 employees within 75 miles.

Leave Entitlement

Employers must provide an eligible employee with up to 12 weeks of unpaid leave each year for any of the following reasons:

- For the birth and care of the newborn child of an employee;
- For placement with the employee of a child for adoption or foster care;
- To care for an immediate family member (spouse, child, or parent) with a serious health condition; or
- To take medical leave when the employee is unable to work because of a serious health condition.

An eligible employee may also take up to 26 workweeks of leave during a "single 12-month period" to care for a covered military servicemember with a serious injury or illness, when the

employee is the spouse, child, parent, or next of kin of the military servicemember. The "single 12-month period" for military caregiver leave is different from the 12-month period used for other FMLA leave reasons.

Notice

When an employee seeks leave for an FMLA-qualifying reason for the first time, the employee is not required to expressly assert FMLA rights or even mention the FMLA. If an employee later requests additional leave for the same qualifying condition, the employee must specifically reference either the qualifying reason for leave or the need for FMLA leave.

Employees must comply with their employer's requirements for requesting leave and provide enough information for the employer to reasonably determine whether the FMLA may apply to the leave request. Depending on the situation, such information may include that the employee is incapacitated due to pregnancy, has been hospitalized overnight, is unable to perform the functions of the job, and/or the employee or employee's qualifying family member is under the continuing care of a health care provider. At the same time an employer provides an employee notice of the employee's eligibility to take FMLA leave, the employer must also notify the employee of the specific expectations and obligations associated with the leave.

Employees generally must request leave 30 days in advance of when the need for leave is foreseeable. (Some extenuating circumstances apply.)

Absent extenuating circumstances, the regulations require an employer to notify an employee of whether the employee is eligible to take FMLA leave (and, if not, at least one reason why the employee is ineligible) within five (5) business days of the employee requesting leave or the employer learning an employee's leave may be for an FMLA-qualifying reason. In addition, the employer is required to issue a Designation Notice within five (5) business days of receiving a Certification of Health Care Provider, whether complete or incomplete.

Certification

An employer may require an employee provide medical certification, containing sufficient medical facts to establish a serious health condition exists. If an employee fails to timely submit a properly requested medical certification (absent sufficient explanation of the delay), FMLA protection for the leave may be delayed or denied. If the employee never provides a medical certification, then the leave is not FMLA protected.

State of Iowa – Administration of FMLA

The State of Iowa, through the Iowa Department of Administrative Services (DAS), is required by Iowa statute and federal law to administer the Family and Medical Leave Act (FMLA). DAS is responsible for FMLA policy and program oversight for all employees of the Executive and Judicial Branch, excluding Board of Regents' employees.

FMLA Requests During Fiscal Year 2019

In fiscal year 2019, a third-party vendor administered FMLA leave for 19,869 employees.¹ This resulted in over 21,000 calls related to FMLA leave and 4,581 FMLA claims being approved. There are generally four reasons for which an employee may be entitled to FMLA leave: (1) an employee's own health condition; (2) an employee's family health condition; (3) pregnancy, care for a newborn, adoption, or foster care; or (4) military caregiver leave. Based on the State of Iowa's experience, in fiscal year 2019, an employee's own health condition was the primary reason for FMLA usage in 76% of the approved cases and employees averaged 17.35 days of leave in fiscal year 2019.

Table 1: FMLA Leave Reasons

| FMLA Leave Reasons | # of Claims | % of Total |
|---|-------------|------------|
| Employee Health Condition | 3,657 | 70.2% |
| Family Health Condition | 753 | 14.4% |
| Pregnancy/Care for a Newborn/Adoption/Foster Care | 783 | 15% |
| Military Caregiver/Military Exigency | 10 | .4% |
| Total | 5,203 | 100% |

Table 2: FMLA State of Iowa Claims Data

| Quarter | Active Claims | New Claims | % Approved | Avg Work Days Used |
|----------|---------------|------------|------------|--------------------|
| FY 19 Q4 | 3,250 | 664 | 83% | 15.3 days |
| FY 19 Q3 | 3,253 | 1,127 | 79% | 18.5 days |
| FY 19 Q2 | 3,114 | 1,137 | 76% | 19.7 days |
| FY 19 Q1 | 3,862 | 1,653 | 86% | 15.9 days |

FMLA Denials in Fiscal Year 2019

The State of Iowa requires an employee seeking FMLA leave provide certification. This is done through the State's third-party vendor. The employee is notified if additional information is necessary to complete the certification process. Employees are given additional time to submit missing information in order for the FMLA leave request to be fully reviewed. Under federal law, the State of Iowa (through its third-party vendor) is required to reconsider the leave request in light of any new or additional information provided by the employee.

The following table reflects the denial reasons as reported by the third-party vendor for fiscal year 2019. The most common denial reason was failure of the employee to report time within their parameters and/or failure to report the leave within set timeframes. The second most common reason for denial was requesting a leave for insufficient/incomplete certification. These two reasons comprise 55% of the total number of denials issued in fiscal year 2019.

¹ Based on per employee per month billing in fiscal year 2019.

Table 3: FMLA FY2019 Denials

| FMLA Denial Reasons FY 2019 | # Denials | % of Total |
|--|--------------|-------------|
| Time Exceeds Parameters/Not Reported Timely/Improper Leave Notice | 1,314 | 33.5% |
| Insufficient/Incomplete Certification | 830 | 21.2% |
| Ineligible/Unqualified Reason | 818 | 20.9% |
| Certification Not Returned | 692 | 17.7% |
| Exhausted* | 226 | 5.7% |
| All Other Reasons | 37 | 1.0% |
| Total | 3,917 | 100% |

Appeals of Denials in Fiscal Years 2019

If an employee’s request for FMLA is denied and the issue is not resolved within certain timelines, the employee may: (1) file a collective bargaining agreement grievance, if applicable; (2) file an administrative rule 61 grievance;² (3) report the matter to the US Department of Labor and ask for an investigation; or (4) file a claim in district court.

In fiscal year 2019, there were no grievances filed pertaining to the denial of an FMLA request.

Analysis of Cost Savings to the State for Fiscal Year 2019

Prior to contracting for the administration of FMLA with a third-party vendor, FMLA was administered in a decentralized manner through each State agency. Because the administration was decentralized, the State did not have a mechanism to monitor: (1) the number of calls human resources personnel received from employees requesting information about FMLA leave; (2) the number of formal requests submitted by employees to open cases; (3) the number of cases opened; (4) the time/labor cost to manage opened cases; (5) the postage associated with leave notices; (6) whether the leave was continuous or intermittent; or (7) the cumulative quantity or cost of time/labor used to administer FMLA. Moving from a decentralized to a centralized administration of FMLA has improved processes, allowing staff to focus on items such as trends and metrics, providing program information to employees and managers, as well as return to work efforts after an employee’s FMLA. Based on the limited data prior to implementing the centralized administration of FMLA, statistically reliable data to analyze any cost savings to the State is not possible.

² 11 IAC 61