

**Fiscal Year 2016**  
**Report on Contract for Family Medical Leave Act**  
**Third-Party Administration Services**

**February 1, 2017**



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**Iowa Department of Administrative Services**  
**Human Resources Enterprise**  
**Hoover State Office Building**  
**1305 E. Walnut Street**  
**Des Moines, IA 50319-0150**

**Please direct questions and comments to:**  
**Karin Gregor, HRE Chief Operating Officer**  
**[karin.gregor@iowa.gov](mailto:karin.gregor@iowa.gov)**



February 1, 2017

**MEMORANDUM**

**TO:** Administration and Regulation Appropriations Subcommittee and Legislative Services Agency

**FR:** Janet E. Phipps, Director, Department of Administrative Services

**RE:** Fiscal Year 2016 Report on the Contract for Family Medical Leave Act Third-Party Administration Services

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

## ***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 that 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, son, daughter, 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 that 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 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 that 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 that an employee provide medical certification, containing sufficient medical facts to establish that 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 Branch of

government, excluding Board of Regents' supervisory, professional and scientific staff. DAS (or its predecessor agency, the Iowa Department of Personnel) has administered the FMLA since 1993 for non-contract employees and since 1994 for contract-covered employees. Individual agencies are responsible for tracking, certifying, and documenting the FMLA leave requests of their employees.

In 2014, after hearing anecdotal stories of difficulties in administering and understanding FMLA leave, DAS undertook a statewide analysis of how the State collectively administered FMLA. Based on the efforts of an interagency work group comprised of members of the Department of Human Services, the Department of Transportation, the Department of Natural Resources, and the Department of Corrections, it was determined that because each agency used different processes and standards for administration, monitoring, and certification, there was little uniformity in the administration of FMLA overall. Additionally, no centralized system existed to track the use (certification or denial) of FMLA leave.

Issues identified in the statewide analysis revealed both real and perceived inconsistencies in: (1) the application of FMLA leave itself; (2) documentation required to support the leave request; (3) the process to certify the FMLA-qualifying leave reasons; and (4) call-in procedures. Even with increased efforts and guidance, the lack of software availability made tracking, notification, and certification requirement compliance under the federal law difficult. Agencies struggled even though they endeavored to correctly provide employees with their rights. Based on the analysis, it was determined that to ensure that the FMLA was consistently offered and applied, and to ensure employees were afforded their federal rights under the FMLA, the Department of Administrative Services sought a third-party vendor to administer FMLA on a statewide basis.

The third-party vendor would (1) perform intake; (2) determine eligibility; (3) issue all required notices; (4) provide FMLA statuses to employees and managers; (5) review FMLA certifications; (6) request clarifications; (7) authenticate certifications; (8) request second/third opinions when indicated; (9) report FMLA usage and metrics; (10) track FMLA use and the metrics associated with the leave statuses; (11) maintain and issue all necessary communication with employees, supervisors, and human resources staff; and (12) facilitate requests for re-certifications. The reduction of cost savings to the State was not a determining factor in the State's decision to have FMLA leave managed by a third-party vendor.

Reed Group was awarded the contract and began managing FMLA absences for State of Iowa Central Payroll and Department of Transportation (DOT) employees on July 1, 2015.

#### **Analysis of Cost Savings to the State for Fiscal Year 2016**

While previously the State could ascertain its workforce population, it 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 FMLA program improved processes, allowing staff to focus on high-priority items: trends and metrics, program strategy, and, most importantly, return to work efforts. Based on the limited data available prior to July 1, 2015, a statistically reliable analysis of cost savings to the State is not possible.

### **FMLA Requests During Fiscal Year 2016**

In fiscal year 2016, the third-party vendor administered FMLA leave for 18,293 employees.<sup>1</sup> This resulted in over 30,500 calls related to FMLA leave and over 7,000 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 2016, an employee's own health condition was the primary reason for FMLA usage in 70% of the approved cases and employees averaged 17.5 days per leave in fiscal year 2016.

Table 1: FMLA Leave Reasons

FMLA Leave Reasons	# of Claims	% of Total
Employee Health Condition	5,497	70%
Family Health Condition	1,223	16%
Pregnancy/Care for a Newborn/Adoption/Foster Care	787	10%
Military Caregiver/Military Exigency	363	4%
Total	7,870	100%

Table 2: FMLA State of Iowa Claims Data

Quarter	Active Claims	New Claims	% Approved	Avg Work Days Used
FY 16 Q4	3,841	1,361	68%	17.5 days
FY 16 Q3	4,085	1,534	71%	15.7 days
FY 16 Q2	4,054	1,758	57%	17.9 days
FY 16 Q1	4,003	3,882	35%	19.1 days

### **FMLA Denials in Fiscal Year 2016**

The State of Iowa requires that 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

<sup>1</sup> Based on per employee per month billing in fiscal year 2016.

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 2016. The most common denial reason in fiscal year 2016 was where the employee failed to return the certification form to the third-party vendor. The second most common reason for denial was the sufficiency of the documentation; meaning, the employee complied with the request for information, but the documentation was inadequate. These two reasons comprise 75% of the total number of denials issued in fiscal year 2016.

Table 3: FMLA FY2016 Denials

FMLA Denial Reasons FY 2016	# Denials	% of Total
Certification Not Returned	1,917	45%
Insufficient/Incomplete Certification	1,297	30%
Ineligible/Unqualified Reason	570	13%
All Other Reasons	500	12%
<b>Total</b>	<b>4,284</b>	<b>100%</b>

### Appeals of Denials in Fiscal Year 2016

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;<sup>2</sup> (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 2014, there were nine grievances filed with the Department of Administrative Services (DAS) pertaining to FMLA. Of those filed, four related to approval or denial of FMLA leave. Of the four filed, two grievances were sustained and two were denied. In fiscal year 2015, there were 10 grievances filed with DAS pertaining to FMLA. Of those filed, five related to approval or denial of FMLA leave. Of the five filed, two grievances were sustained and three were denied. In fiscal year 2016, there were 23 grievances filed with DAS pertaining to FMLA. Of those filed, 14 related to approval or denial of FMLA leave. Of the 14 filed, four were sustained and 10 were denied.

Table 4: FMLA Denial Appeals FY2014-FY2016

Fiscal Year	# of Appeals	Sustained	Denied
FY 14	4	2	2
FY 15	5	2	3
FY 16	14	4	10

<sup>2</sup> 11 IAC 61