

OFFICE OF THE CITY CONTROLLER



**CITY-WIDE POLICY & PROCEDURE AUDIT
PHASE III POLICY DESIGN/EFFECTIVENESS AND OPERATIONAL
EFFECTIVENESS**

**REVIEW OF ADMINISTRATIVE PROCEDURE 3-2 – FAMILY AND
MEDICAL LEAVE FOR FY 2015**

Ronald C. Green, City Controller

Courtney E. Smith, City Auditor



OFFICE OF THE CITY CONTROLLER
CITY OF HOUSTON
TEXAS

RONALD C. GREEN

June 11, 2015

The Honorable Annise D. Parker, Mayor and Honorable Council Members

**SUBJECT: REPORT #2015-07
CITY-WIDE POLICY & PROCEDURE AUDIT, PHASE III – POLICY DESIGN/EFFECTIVENESS AND
OPERATIONAL EFFECTIVENESS REVIEW – ADMINISTRATIVE PROCEDURE 3-2 - FAMILY AND
MEDICAL LEAVE FOR FY 2015**

Dear Mayor Parker and Council Members:

As part of our responsibilities under Article VIII, Section 7 of the City of Houston Charter, Code of Ordinances, the Audit Division (AD) of the Office of the City Controller has completed a Compliance Audit of the City of Houston's(City) policy design and operational effectiveness of Administrative Procedure 3-2 (AP 3-2), Family and Medical Leave, including alignment of the strategic objectives to the framework of the policies, management, monitoring activities, effectiveness of the design, operational effectiveness and departmental compliance with the policy.

This audit is part of a recurring audit process as outlined in our audit notification letter to your office dated January 15, 2014 and includes the following audit phases:

- Assess Policy Governance Framework;
- Assess Policy Design and Effectiveness;
 - Identify relevant Strategic Objectives and how they are aligned with Policies;
 - Assess Policy Management; and
 - Review Policy Monitoring Activities;
- Test Operational Effectiveness of Specific Policies and Departmental Compliance.

The Audit Team concluded that the City has established key control procedures for overall policy design and operational effectiveness of Administrative Procedure (AP 3-2). We identified several strengths and noted only a few recommended areas for improvement.

Respectfully submitted,

Ronald C. Green
City Controller

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City of Houston
City-Wide Policy & Procedure Audit
Phase III Policy Design/Effectiveness and
Operational Effectiveness Review of
Administrative Procedure 3-2
Family and Medical Leave
For FY2015 - Audit Report No. 2015-07

June 11, 2015



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Executive Summary

Introduction

The Administration & Regulatory Affairs Department (ARA) is charged with the responsibility of facilitating the creation of and updates to City-wide policies and procedures. The City of Houston Controllers Office Audit Division (AD) collaborated with Protiviti to perform a review of City of Houston (City) Administrative Procedures (AP's) and Executive Orders (EO's) and evaluated the following:

- Policy Design and Effectiveness
- Operational Effectiveness

The selection process for identifying the AP's and EO's for review consisted of the following factors: AD's Risk Assessment, last update/creation date of the policy, reputational risk of the City, risk of claims or fines against the City and the potential for fraudulent activity. In addition to development of a selection process, Protiviti developed testing procedures for the AP's and EO's selected for testing going forward.

As a result of the selection process, AP 3-2, Family and Medical Leave (FMLA) – September 2013 (AP 3-2) was selected as one of the policies for review. AP 3-2 was updated for the purpose of complying with regulations established in February 2013 by the U. S. Department of Labor (DOL) under the Federal Family and Medical Leave Act –FMLA (29 U.S.C. 2601).

This report covers a review of the operational effectiveness of AP 3-2.

Procedures Performed

Procedures performed included a review of the operational effectiveness of the selected policy, AP 3-2 outlining the City's leave policies designed to comply with the FMLA. To evaluate compliance with AP 3-2, the AD and Protiviti selected six departments: Department of Neighborhoods, Fleet Management Department, General Services Department, Houston Fire Department, Planning and Development Department, and the Public Works and Engineering Department and utilized a combination of testing procedures (i.e. inquiry, inspection and observation).

Key Tasks performed during the internal audit included:

- Reviewing the administrative policy to identify compliance risks and internal controls;
- Making inquiries of representatives from the Human Resources (HR), Legal and ARA departments to assess the update process and development of procedures related to AP 3-2 in September 2013;
- Meeting with representatives from HR, the Legal Department, and FMLA coordinators from selected departments to discuss key factors of the policy and obtain supporting documentation for testing;

- Reviewing supporting documentation provided by the FMLA coordinators from selected departments to evaluate the processes and controls in place at each department for complying with AP 3-2; and
- Documenting results in an audit report, detailing identified findings and recommendations.

Audit Methodology

We conducted this performance audit in accordance with Generally Accepted Government Auditing Standards and the International Standards for the Practice of Internal Auditing as promulgated by the Institute of Internal Auditors. 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 based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Summary of Results

Based on inquiries and detailed testing performed, the Audit Team noted that HR has various controls in place to help ensure the City is in compliance with AP 3-2. Based on inquiries conducted during the audit and supporting documentation reviewed, we determined:

- FMLA coordinators promptly process requests enabling employees to receive FMLA leave benefits;
- FMLA eligibility notices clearly communicate the approved leave period and leave classification;
- The City's AP 3-2 was updated consistent with City procedures and complies with DOL regulations in effect during this review; and
- FMLA communication through employee orientation, the HR handbook and publicly displayed posters provide employee awareness of their rights and FMLA leave benefits.

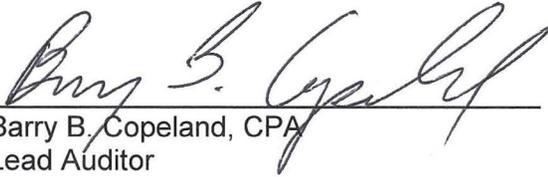
The Audit Team identified three opportunities to improve both the design and operating effectiveness of AP 3-2 and the related procedures. Below is a listing of observations identified during the audit:

1. 16.7 percent (10 of 60) of selected employees had FMLA leave time recorded in the SAP payroll system without sufficient approved leave for the entire leave period taken;
2. 42.4 percent (14 of 33) of the FMLA files for employees tested who returned to work had no fitness for duty certification in the file or had "Return to Work" release dates that did not align to payroll records; and
3. AP 3-2 incorporates a procedure that is not being followed. However the procedure requires duplicative communication of employee rights and responsibilities under FMLA which is not required under the regulations.

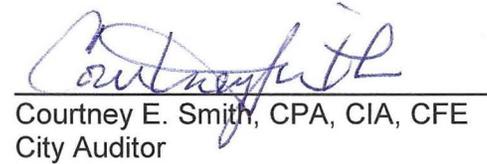
We also noted certain better practices developed and implemented by individual departments that could be more widely implemented throughout all departments. These practices are outlined in the positive observations identified in this report.

Acknowledgement and Signatures

The Audit Team would like to thank the ARA Department, HR Department, and Legal Department, as well as the FMLA coordinators for the Department of Neighborhoods, Department of Public Works and Engineering, Fire Department, Fleet Management Department, General Services Department and the Department of Planning and Development for their cooperation, time and effort throughout the course of the engagement. We would also like to thank the management and staff of Protiviti for their expertise, research, and data analysis, which contributed to the evidence contained in this report.



Barry B. Copeland, CPA
Lead Auditor



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City Auditor

Detailed Findings

Detailed descriptions of the risks, controls, findings, and recommendations identified during the internal audit are organized within this section.

Risk	#	Findings / Recommendations	Priority	Management Action Plan
<p><u>Leave Time Monitoring:</u> Inaccurate tracking of FMLA leave time could result in errors in recorded FMLA leave benefits, miscommunication with employees and supervisors, as well as leave requests processed incorrectly.</p>	<p>1</p>	<p><u>Finding:</u> FMLA Leave administration is a complex, paper intensive process, which requires strengthened internal controls over leave tracking, including improved system generated reports to enable error conditions to be identified and corrected on a timely basis. We noted errors such as the following:</p> <ul style="list-style-type: none"> • FMLA time was coded in the payroll system although leave was not approved; • FMLA time in the payroll system exceeded the total allowable FMLA benefit for the City’s benefit year; and • FMLA leave extended beyond the approved leave term. <p><u>Recommendation:</u> We recommend HR Department leadership and FMLA Coordinators:</p> <ul style="list-style-type: none"> • Establish a process to detect, document and monitor proper FMLA time entry and make needed corrections, as necessary. • Work with the HITS to improve IT preventative controls limiting entry of FMLA time to the approved leave period, disable FMLA time entry when annual allowances are reached and flag conditionally entered FMLA time for follow-up validation or correction. • Work with the HITS to improve internal controls and monitoring reports within the systems used to record and approve FMLA leave time to ensure accurate information is captured. 	<p>Medium</p>	<p><u>Management Response:</u> Concur. All three bullet points relate back to the supervisors and managers of the employee on FMLA. The timekeeping responsibility of FMLA is currently incumbent upon the supervisor, not the FMLA Coordinator.</p> <p>HR will establish departmental supervisors and managers refresher training on recording FMLA time for the employee. HR is in the final implementation stages of FMLA citywide web based training.</p> <p>Furthermore, HR is near the end of configuration of the Leave Module in KRONOS for FMLA. This will alleviate employees exceeding the 480 hour allotment as it will track it and stop at 480 for the defined benefit year.</p> <p>In addition, we will request all new supervisors and managers attend CAPS (City Accredited Program for Supervisors) where FMLA is a subject of instruction.</p> <p><u>Estimated Implementation Date:</u> Estimated roll out date for training is no later than June 30, 2015; which will be required training for all managers and supervisors.</p> <p>The Leave Module should yield a “soft launch” no later than June 30, 2015; which will be required</p>

training for all managers and supervisors.

Assessment of Management Response

The Management Response provided by the HR Department fully addresses issues identified in the finding. The Audit Division agrees with HR's commitment to training supervisors related to FMLA leave time regulations, process and the responsibilities. We support improving the KRONOS time capture system to incorporate preventative controls over FMLA leave time.

Detailed Findings

Risk	#	Findings / Recommendations	Priority	Management Action Plan
<p><u>Fitness for Duty:</u> Employees without full medical release could return to work putting themselves and co-workers at risk of injury or illness.</p>	<p>2</p>	<p><u>Finding:</u> Return to work documentation including the healthcare provider’s certification of the employee’s fitness for duty was not consistently obtained and verified by the FMLA coordinators. Although supervisors are responsible for obtaining and submitting the medical release to the coordinator, we noted the following potential issues:</p> <ul style="list-style-type: none"> • No fitness for duty certification was available; • Employees returned to work prior to the fitness for duty certification date; • Employees remained on FMLA leave after the fitness for duty certification date; and • Intermittent FMLA leave requires no fitness for duty release; however the leave appeared to be a continuous type leave. <p><u>Recommendation:</u> We recommend the HR Department and FMLA Coordinators:</p> <ul style="list-style-type: none"> • Modify the return to work process so the FMLA coordinator verifies the fitness for duty certification prior to an employee returning to work. • Develop FMLA leave reports to identify intermittent leave being used on a continuous basis to determine if a fitness for duty certification is needed. 	<p>High</p>	<p><u>Management Response:</u> Concur. Return to duty can occur with the proper “Fitness for Duty” certification. In some cases, employees will submit the required documentation to supervisor; who will fail to submit said documents to FMLA coordinator.</p> <p>As a solution, the FMLA Coordinators will monitor their leave cases more closely to insure each return to duty has the proper documentation.</p> <p><u>Estimated Implementation Date:</u> Directives will be communicated by no later than May 15, 2015 to all FMLA Coordinators to insure that all approved cases mandating a “Fitness for Duty” certification is currently in file.</p> <p><u>Assessment of Management Response</u> The Management Response provided by the HR Department fully addresses issues identified in the finding.</p>

Detailed Findings

Risk	#	Findings / Recommendations	Priority	Management Action Plan
<p><u>Administrative Procedure:</u> AP 3-2 should be updated to comply with current practices for administering leave under the FMLA, which if not updated, may subject the City to potential DOL investigations, fines or other claims.</p>	<p>3</p>	<p><u>Finding:</u> Based on inquiries with departmental personnel, as well as a technical review of current FMLA regulations and the City's policy in AP 3-2 we noted that:</p> <ul style="list-style-type: none"> Although the FMLA rights and responsibilities notice is part of each leave request packet, Section 1.13 of AP 3-2 requires the notice to also be sent with each FMLA determination notice. The additional communication of employee rights and responsibilities under FMLA is not required under the regulations. New regulations have recently been issued at the end of February 2015. <p><u>Recommendation:</u> We recommend HR work with ARA to begin the updating of AP 3-2 to conform to the current process of providing rights and responsibility notices along with the leave request packet. In addition, the City should consider updating AP 3-2 to incorporate new 2015 regulations.</p>	<p>Low</p>	<p><u>Managements Response:</u> The legal department is currently in the process of reviewing the administrative policy for further revisions. Directives, training and other activities are to be completed no later than June 30, 2015.</p> <p><u>Assessment of Management Response</u> The Audit Division notes that there is a shared process ownership between the Legal and HR Departments and agree that the process of reviewing AP 3-2 is part of that shared responsibility. We strongly believe that both departments should establish a target date by which new 2015 regulations are incorporated into AP 3-2 to ensure the City remains in compliance with Federal regulations.</p>

Detailed Findings

Positive Observations

All Departments:

- FMLA coordinators appear to understand the AP 3-2 as well as the regulations under the FMLA.
- FMLA coordinators promptly process leave requests to support employees receiving their FMLA leave benefits.
- The City's AP 3-2 was updated consistent with City's procedures and is in compliance with current DOL regulations as updated in February 2013.
- FMLA communication through employee orientation, the HR handbook and publicly displayed posters provide employees with awareness of their rights and FMLA leave benefits.
- FMLA eligibility notices clearly communicate the approved leave period and leave classification.

Individual Departmental Better Practices:

- Absence reports from the payroll system used to identify potential FMLA leaves, which have not been communicated to the FMLA coordinator.
- For leaves known to extend beyond the current benefit year, the FMLA coordinator will process two leaves so the full period is documented based on the healthcare provider certification.
- The FMLA coordinator documents the due date for the leave package completion on the top of the request form as the leave package is provided to the employee.
- FMLA coordinators advise the employee and their supervisor when the approved FMLA leave time is nearing exhaustion.

APPENDIX

Administrative Procedure 3-2 Family and Medical Leave



[AP 3-2.pdf](#)

NOTE: Please double Click on the Icon to open the file

Please refer to the City of Houston Website for the current version of AP 3-2.