



**June 28, 2017**

Delaine Linville, Assistant Bureau Chief of Administration  
Division of Human Resources, Tennessee Department of Transportation  
505 Deaderick Street, Suite 400  
Nashville, TN 37243

### **Management Letter**

Dear Ms. Linville:

We have recently completed our agreed-upon procedures engagement, which we conducted in accordance with Government Auditing Standards (GAS), December 2011 Revision. GAS incorporates the Statements on Standards for Attestation Engagements (SSAE) established by the American Institute of Certified Public Accountants (AICPA).

In accordance with our normal practice, we write this management letter to draw your attention and to inform you of certain matters that we identified during the engagement. Those issues are set out in the attached *Schedule B* and include recommendations to enhance current practices. Because an agreed-upon procedures attestation engagement does not comprise an audit, our recommendations are propositions for process improvements rather than prescriptive requirements. You and your team could enact other methods or mechanisms to achieve the desired outcomes.

We would like to thank you and your staff for their assistance and cooperation during the engagement, and we would be pleased to provide any clarification that you may require regarding the issues raised in this management letter.

Kind regards,

Mel Marcella, CPA, CMA, CIA, CISA, CFE  
Director, Division of Internal Audit

## **Schedule B**

### **Agreed-Upon Procedures Engagement Recommendations**

#### **A – Develop robust written policies and procedures for processing FMLA**

The Human Resources Division (HR) should develop written policies and procedures that detail all of the procedure steps for processing FMLA, including flow charts and/or checklists. To achieve this, we suggest that the policies and procedures incorporate the following:

- Standardized form or process for employees/supervisors to request FMLA
- Standardized process for initiating FMLA cases
- Standardized process for entering employee leave requests in Edison and notifying HR to code leave as FMLA
- Uniform method of tracking FMLA usage against allowable leave and certified parameters
- Stated time frames in which to complete each step in the process to remain compliant
- Yearly revisions to incorporate changes and updates to the law, forms, posters, and process flow improvements

#### **B – Date stamp all documentation received**

We suggest that HR date stamp any documentation they receive in relation to an employee's FMLA, such as medical certifications and doctor's statements. Currently, HR does not have a mechanism to record the transaction date accurately. During testing, we followed HR's practice and relied upon the date that a file was saved in the employee's folder as the date that HR received the documentation. However, this practice could create inaccuracies if the file were opened and resaved at a later date; the original date would be overwritten.

#### **C – Remove ability to input FMLA codes in MMS**

We suggest that HR request that the Maintenance Division remove the capability to enter FMLA leave codes directly in MMS. Timekeepers should follow the same process as supervisors of employees that enter their time directly in Edison and request on a weekly basis for the Employee Relations Representative to change leave (sick, annual, without pay) to FMLA leave codes.

**D – Develop tracking method for FMLA**

We suggest HR develop a method for tracking FMLA leave through use of a software application, database, or well developed spreadsheets. Edison does not currently have codes to track all types of FMLA leave and it does not distinguish between different FMLA cases for employees that have more than one condition. Reliance on Payroll to track FMLA results in many discrepancies between Edison and the employee's actual amount of FMLA usage due to Payroll using Edison for tracking. Edison cannot be relied upon for FMLA tracking because of the aforementioned lack of FMLA codes and because Edison does not take into account manually corrected timesheets.

**E – Review access rights to folders containing employee FMLA files**

We suggest HR periodically review the list of individuals with user access rights to the folders containing employee FMLA information and make changes to those rights as necessary. Access roles should be limited to authorized personnel that require the access to complete their job duties. The Director of HR should request the removal of access rights for any users outside the business purpose for their roles. Currently, ER Reps from each Region can access all employee files in the FMLA folders. Going by the principle of least privilege, unless it is truly necessary for all ER Reps to be able to see all employee FMLA files, we suggest that access be further limited to each Region's employee files only.

**F – Develop procedures for removing Access Rights**

In addition to periodically reviewing access rights, we suggest that HR update their procedures for removing access for departing employees to include removing access from any folders that contain confidential medical information. This could include employees that are retiring, terminated, change Division or Department, as well as employees that move to a different position within HR and no longer require access for their new job role.

**G – Provide periodic FMLA training to Employee Relations Representatives**

As a component of proper internal controls, we suggest that HR provide periodic FMLA training to employees with FMLA processing responsibilities. Having a continuous training and development program enables the division to obtain, apply, and disseminate current and prospective federal or state regulatory requirements within the division.

### **H – Provide periodic FMLA training to Supervisors and Timekeepers**

We suggest that HR develop training materials and ensure that supervisors and timekeepers are trained at least annually (or as part of the onboarding training for new supervisors) on policies and procedures that relate to Family and Medical leave management and time entry and approvals. Some items to cover in training should include the following:

- Are managers and supervisors trained on employee rights and employer responsibilities under FMLA?
- Can they explain the FMLA policy?
- Do they understand FMLA leave procedures?
- Do they understand FMLA confidentiality rules?
- Do they have a call-in procedure for intermittent leave?
- Do they understand how to report leave hours that need to be converted to FMLA to HR?

### **I – Count holiday and compensatory hours toward FMLA leave**

We suggest that HR count holiday and compensatory hours toward FMLA leave used if an employee is on continuous leave when either type of leave occurs. If an employee is on intermittent leave, then holiday hours would not be counted toward their FMLA hours, unless they were scheduled to work on the holiday and claimed it an FMLA related absence. If an employee is on Intermittent Leave and uses compensatory leave but says that the leave is for FMLA, then the hours should be counted toward their FMLA hours used balances. Both State of Tennessee policy and Federal law require that these hours be counted toward FMLA hours if used. Using an accurate method of tracking leave will help HR to accomplish this recommendation.

### **J – Periodically review that all work locations have an FMLA poster displayed with other required notices**

We suggest that HR periodically review that all work locations for employees and job applicants have the FMLA Poster posted in conspicuous locations. Each offense is subject to a \$110 fine.

**K – Monitor intermittent usage of FMLA**

We suggest that HR monitor the usage of FMLA in intermittent cases. If FMLA is being tracked in internally developed spreadsheets, databases, or by some other method, HR can monitor the usage of intermittent cases to determine if it is in alignment with the allowable leave and medically certified parameters. Proactive monitoring of FMLA usage can help HR to identify patterns of abuse earlier allowing HR to request recertification more frequently.

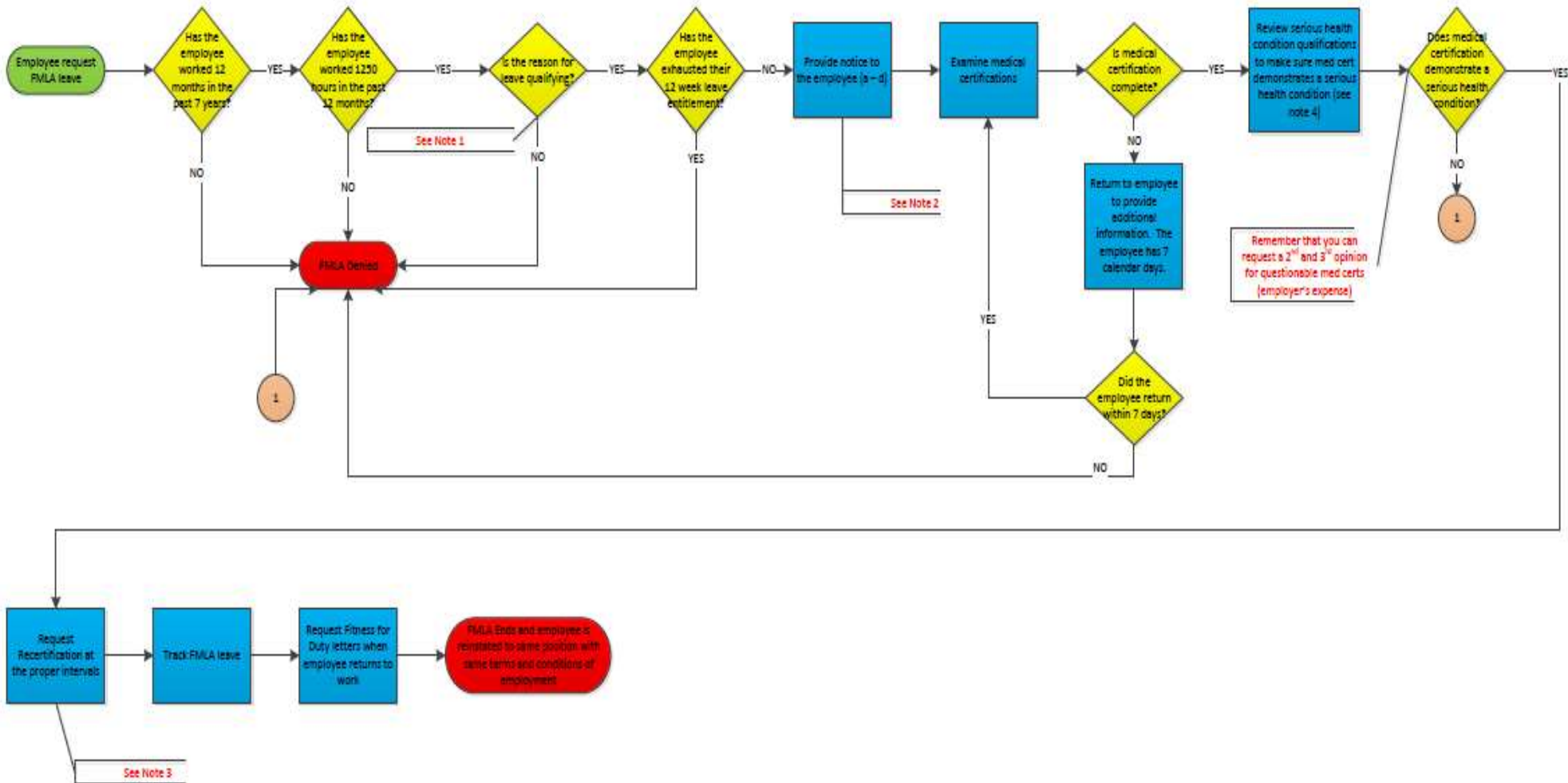
**L – Authorize only the amount of FMLA hours that is indicated on the Medical Certification for continuous leave**

We suggest that HR indicate the expected period of incapacity on the designation letter for cases of continuous leave. HR could accomplish this recommendation by reviewing medical certifications more carefully and only designating leave for time specified according to their medical certifications. Changing the wording on the designation letter to add the period of expected incapacity could help to curb FMLA abuse. The designation letter could also inform the employee that they can notify HR if their circumstances change and they need to request more leave. HR could then request recertification.

This process adds a layer of internal control that could keep employees from abusing FMLA by using their maximum amount of FMLA even if they no longer have a medical need for the leave.

### APPENDIX A – FMLA Step By Step Checklist Process Map

FMLA Step by Step Checklist in Process Map Format



**NOTE 1:**

**Qualifying Reasons**

1. Employee's own serious health condition (see note 4)
2. Employee's need to care for spouse, child, or parent with serious health condition
3. Birth, adoption, or foster placement of a child
4. Qualifying exigency of employee's spouse, child, or parent who is on active duty or called to active duty
5. Employee's need to care for a spouse, child, parent or next of kin that is a covered service member

**NOTE 2:**

**Provide Notice to Employee**

(a) General Notice. (1) Every employer covered by the FMLA is required to post and keep posted on its premises, in conspicuous places where employees are employed, a notice explaining the Act's provisions and providing information concerning the procedures for filing complaints of violations of the Act with the Wage and Hour Division.

(b) Eligibility Notice. (1) When an employee requests FMLA Leave, or when the employer acquires knowledge that an employee's leave may be for an FMLA-qualifying reason, the employer must notify the employee of the employee's eligibility to take FMLA leave within five business days, absent extenuating circumstances.

(c) Rights and Responsibilities Notice. (1) Employers shall provide written notice detailing the specific expectations and obligations of the employee and explaining any consequences of a failure to meet these obligations.

(d) Designation notice. (1) The employer is responsible in all circumstances for designating leave as FMLA-qualifying, and for giving notice of the designation to the employee as provided in this section. When the employer has enough information to determine whether the leave is being taken for a FMLA-qualifying reason (e.g., after receiving a certification), the employer must notify the employee whether the leave will be designated and will be counted as FMLA leave within 5 business days absent extenuating circumstances

**NOTE 3:**

-General rule is not more often than every 30 days if condition will not last more than 30 days

-If condition will last more than 30 days, then have to wait until that period for the initial certification is over before requesting recertification

-However, can request recertification every 6 months

Employers can request recertification even in less than 30 days if:

-Employee requests an extension of leave

-Circumstances in previous medical certification have changed significantly

-If employer receives information that casts doubt on stated reason

**NOTE 4:**

**What is considered a serious health condition?**

1. An illness, impairment, physical or mental condition that involves either:

- In-patient care, or
- Continuing treatment by a health care provider

What is Continuing treatment?

- Incapacity resulting in more than 3 days absence from work, school or regular activities:

(a) Involving treatment by a health care provider on one occasion, which results in a regimen of continuing treatment under supervision of a health care provider, and visit must be within 7 days of incapacity

(b) Involving treatment by a health care provider two or more times, 1<sup>st</sup> visit within 7 days of incapacity, 2 visits must be within 30 days of commencement of incapacity

2. Any period of incapacity due to chronic health condition (i.e. asthma, diabetes, epilepsy) (2 visits per year)

3. Any period of incapacity due to long term condition for which treatment may be ineffective (i.e. Alzheimer's or terminal stages of a disease), or

4. Any period of incapacity due to pregnancy or prenatal care