



INSPECTOR GENERAL REPORT

2005-01-0030

November 3, 2005

FAMILY MEDICAL LEAVE

Inspector General David O. Thomas reports to Governor Mitchell E. Daniels, Jr., after an investigation by Special Agent Albert Marshall, as follows:

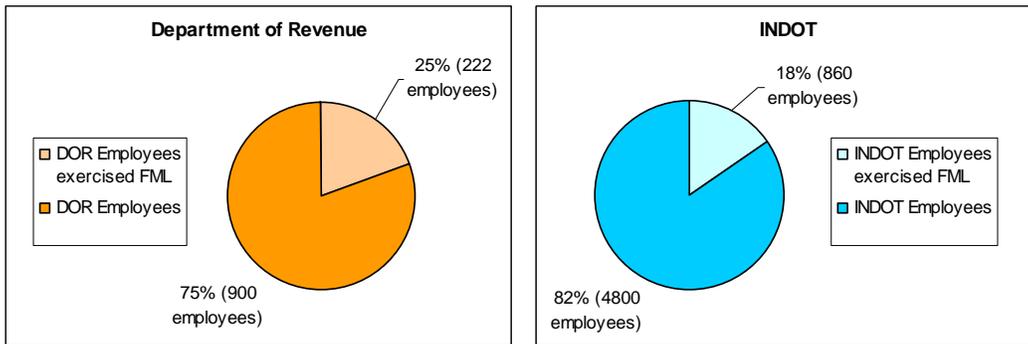
We commenced an investigation in January of 2005 involving the use of the Family Medical Leave Act of 1993 (FMLA)¹ within the Indiana Department of Revenue (DOR). The FMLA is a federal act that permits employees to leave their employment for specified periods of time if they or a family member qualify for a specified medical condition. To qualify, an employee must obtain a “Certification of Health Care Provider” from a physician. If FMLA applies, the employer must retain the employee’s position during the term of a qualified absence.

Excessive use of FMLA was alleged to be occurring within DOR. It was specifically reported, and confirmed through audit, that 222 of the approximate 900 DOR employees (25%) exercised their FMLA statutory rights in the past calendar year. DOR also confirmed that of the 99 employees hired during the past year, five exercised FMLA statutory rights.

¹ See: 29 USC 28 *et seq* and 29 CFR Part 825.

For comparison purposes, we also reviewed FMLA records within the Indiana Department of Transportation (INDOT). These show that 860 out of 4,800 employees (18%) exercised FMLA statutory rights during this same time frame.

Calendar Year 2004:



Our concern focused on our findings that past State Personnel Department (SPD) policy applications of FMLA were more expansive than the requirements of the federal FMLA act. This application made state agencies vulnerable by excusing the attendance of larger portions of a state agency's workforce.²

We were pleased to discover during our investigation that SPD Director Debra Minott was already addressing this issue. SPD commenced in mid-January of 2005 a revision of the FMLA guidelines to bring its application to Indiana employees more in line with the federal minimal requirements. A new FMLA Indiana policy was developed by SPD, mirroring the requirements of the federal

² These differences are highlighted in Director Debra Minott's April 13, 2005 memorandum, attached hereto as Exhibit A.

act. This new policy was distributed to all agency leaders on April 14, 2005, with an effective date of May 1, 2005.

Based upon our investigation we make the following findings:

1.

FMLA is a federal statute which requires compliance by Indiana state agencies and provides a penalty for non-compliance.

2.

FMLA is a lawful statutory right of Indiana State employees.

3.

Employers have minimal discretion in applying FMLA requirements once a physician completes the "Certification of Health Care Provider" form, the document which qualifies an employee for FMLA.

4.

All state agencies are responsible for administering these FMLA requirements as specified by SPD.

5.

Expanding the application of FMLA beyond the requirements of the federal act exposes a state agency to larger employee absenteeism.

6.

Past SPD policy interpretations of FMLA were more broadly applied than required by the federal FMLA statute.

7.

SPD, commencing in January of 2005, developed a remedy to this expansive interpretation of FMLA, which mirrors the federal minimal requirements.

The sole recommendation by the Office of Inspector General is that minimum skill levels be developed for personnel who administer FMLA within their agencies to enhance and correctly interpret and administer the SPD's new policy.

Respectfully submitted this 3rd day of November, 2005.



David O. Thomas, Inspector General

TO: Agency Heads
Human Resources Directors

FROM: Debra F. Minott, Director

DATE: April 13, 2005

SUBJECT: Family-Medical Leave

In an effort to ensure that our procedures for administering family-medical leave are properly balanced with the demands of running state government, the policy has been revised.

The new Family-Medical Leave Policy and Statement of Responsibilities & Procedures is effective May 1, 2005 and includes changes to eligibility, use of accrued leave, advance notice requirements, and calculation of the applicable twelve-month period during which an employee may not exceed 12 weeks of leave.

The following chart is a brief synopsis of the changes:

	Old Policy	New Policy
Eligibility	Eligible immediately upon employment.	Eligible only upon completion of: (1) an aggregate 12 months of employment, and (2) 1250 hours worked during the immediately preceding 12-month period.
Use of Accrued Leave	Required to use only 10 days of sick leave if available and appropriate.	Required to use all available sick leave if appropriate.
Advance Notice	15 working days when foreseeable.	30 calendar days when foreseeable.
Calculation of Twelve-month Period	Rolling 12-month period	Fiscal Year – July 1 through June 30
<p>Changes to Eligibility, Advance Notice, and Use of Accrued Leave are effective May 1, 2005.</p> <p>Calculation of the Twelve-Month Period will change effective July 1, 2005.</p>		

What do these changes mean?

The change in ELIGIBILITY means that employees who have not been employed in an agency under the executive authority of the Governor for at least twelve (12) months (consecutive or non-consecutive) are not eligible for family-medical leave until they reach that threshold. In addition, employees must have completed 1250 hours of work in the twelve-month period immediately preceding the use of FML. Hours worked does not include holidays, leave time, time spent on the disability program, or in out-of-pay status. It does include overtime hours worked.

The change in USE OF ACCRUED LEAVE means that employees using FML for their own serious health condition must use any available sick leave prior to using any other accrued leave or unpaid leave for FML absence(s). Plus, employees using FML to care for their spouse, child, or parent with a serious health condition must use any available sick leave prior to using any other accrued leave or unpaid leave for FML absence(s) IF that spouse, child, or parent resides in the employee's household and is dependent upon the employee for care and support. For each FML absence for which sick leave is appropriate, an employee will be required to use sick leave if available.

The change in ADVANCE NOTICE means that employees are required to submit requests for FML at least thirty (30) days in advance whenever the absence is foreseeable. A standardized form titled Request for Family-Medical Leave will be provided.

The change in CALCULATION OF TWELVE-MONTH PERIOD means that on July 1, 2005, employees who meet both eligibility thresholds will have available twelve (12) weeks of FML. And on July 1 of each succeeding fiscal year, a full twelve-week balance is reinstated IF the employee meets the eligibility thresholds. If the employee does not meet the eligibility thresholds on July 1, the employee becomes eligible at whatever time during the fiscal year s/he meets the eligibility thresholds.

What do agencies have to do now?

Agencies must review all currently-held FML approvals and determine whether each employee meets the eligibility requirements of 12 months employment and 1250 hours worked. Employees who do not meet the eligibility requirements must be notified that any further absences will not be covered by FML until such time as the employee meets the eligibility requirements.

Each agency must submit a report listing the following information on each employee who was using FML prior to this change and who lost his/her eligibility due to this change. An Excel spreadsheet is provided for this purpose. The report must be submitted to the Employee Relations Division of State Personnel on or before May 9, 2005:

- Employee's Name
- Employee ID#
- Agency
- Classification
- Biweekly Salary
- Amount (# hours) of available sick leave
- Date first used FML in previous twelve (12) months
- Amount (# hours) of FML taken in previous twelve (12) months
- General reason for FML (birth, placement, serious health condition of self, serious health condition of spouse, serious health condition of child, or serious health condition of parent) DO NOT include any medical information.
- Whether Employee failed to meet eligibility due to 12 months of employment or due to 1250 hours worked or failed to meet both criteria.

Questions regarding family-medical leave may be directed by Agency Human Resources staff to Sally Burnell at 317/233-1437 or sburnell@spd.IN.gov.

This memo is a preview to changes in the State's Family-Medical Leave Policy. A copy of the revised policy will be posted on the web page of the State Personnel Department at www.IN.gov/jobs/employeeerelations click "Family-Medical Leave."

These changes should improve our ability to track usage of family-medical leave overall, particularly in the Peoplesoft system, and bring the state in line with the federal requirements of the Family-Medical Leave Act. You will be notified of additional information about tracking in the Peoplesoft system as soon as the relevant changes have been made.