

## FMLA/ADA/Workers Compensation Compliance

SC Department of Administration

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My study began with an analysis of the Department of Administration-Office of Human Resources' policies relating to the Family and Medical Leave Act of 1993, the Americans with Disabilities Act and Workers Compensation. It was found that policies meet Federal and State guidelines. Staff members charged with administration of the policies and procedures, were aware of the criteria set forth and knew where to reference them when needed. But a significant number of employees governed by, said policies and procedures, did not feel as if they had access to or knowledge of their content. Further it became clearly apparent that a significant number of employees did not even know who to contact if an analysis of their eligibility became necessary. Employees identified in this group included current and former employees from most divisions and levels of supervision. At times administration of these policies and procedures fell short of the "mark". Questions which arose, included but were not limited to,

- "What is the "mark" vs. the current state? or
- "How does staff at the Department of Administration, define successful administration of the Family and Medical Leave Act, Americans with Disabilities Act and Workers Compensation related leave vs. what currently exists.

## FMLA/ADA/Workers Compensation Compliance

## SC Department of Administration

**Thesis Statement:** Thorough, accurate and statutorily compliant administration of the Family and Medical Leave Act of 1983, Americans with Disabilities Act and Workers Compensation related leave, at the SC Department of Administration, is currently directly linked to employees' access to Human Resources staff and Human Resources related resources.

**Goal** – Improve employees' knowledge and access to the policies and procedures which govern the administration of the Family and Medical Leave Act of 1993, Americans with Disabilities Act related leave and accommodations and Workers Compensation.

**CURRENT STATE: Policies and Procedures**

Human Resources staff interviewed both at the Department of Administration and other state agencies, tend to believe that the Family and Medical Leave Act (FMLA) and Workers Compensation policies and procedures were, on some level, common knowledge because they have been around so long. The feeling is that the Family and Medical Leave Act, and Workers Compensation procedures have been in place for years and most employees know they are entitled to “something”.

It was mentioned that although the Family and Medical Leave Act has “morphed and expanded” to a good extent since its initial inception in 1993, the important components of the framework have remained relatively consistent. *“The Family and Medical Leave Act entitles eligible employees of covered employers to take unpaid job protected leave for specified family and medical reasons...”*<sup>1</sup> One of the only components repeatedly identified as a Family and Medical Leave Act specific training need, by fellow HR professionals was the practice of running Family and Medical Leave and Workers Compensation concurrently. *Most* HR staff members interviewed believed that if training was necessary it would be needed in implementation of leave afforded as a result of Americans with Disabilities Act (ADA) compliance more than anything, as opposed to FMLA and Workers Compensation. Their reasoning appeared to stem from the fact that ADA compliance has morphed and expanded so

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<sup>1</sup> *Leave Benefits: Family and Medical Leave*. (n.d.). Retrieved 2 3, 2019, from United States

Department of Labor: <http://www.dol.gov/dol/topic/benefits-leave/fmla.htm>

(Leave Benefits: Family and Medical Leave, n.d.)

much in the last few years. The expansion of coverage allowed under ADA guidelines and the need to look at each scenario on a “case by case” basis has become a logistical challenge for many administrators.

The Department of Administration (Admin.), references the Family and Medical Leave Act, Americans with Disabilities Act and Workers Compensation in several policies. All policies are currently on Admin.’s internal web page, which most employees have access to if they choose to look.

But it was discovered during this process that although many employees have access to policies and procedures which govern FMLA, ADA and Workers Compensation, a large percentage of the employees interviewed and surveyed did not appear aware of where those policies were housed. In fact, a large percentage of employees surveyed had never visited that section of the interoffice web page. Further a large percentage of employees who had visited the page, visited because of a direct referral from Human Resources. New employees visited in larger percentages than others and in most cases during orientation or merely as an aside during research in other areas.

### **THE MARK: Policies and Procedures**

All employees need to be made aware that the Department of Administration’s policies are located on the agency’s interoffice web page. Further a one to two-line description or synopsis of the content of each policy needs be provided in some form, either on the webpage or separately, to help identify content. Reporting timeframes which govern each domain should be stressed, ensuring managers are aware that the “clock starts with them”.

Training needs to be established for managers and HR liaisons on FMLA, ADA and Workers Compensation. Training should include a review of current policies which govern each area as well as each corresponding Standard Operating Procedures (SOP).

Training areas to be cover should include:

1. Eligibility criteria for FMLA and ADA related leave or accommodations.
2. Workers Compensation reporting procedures.
3. The way FMLA and Workers Compensation may run concurrently.
4. Required payments during a leave of absence related to FMLA, ADA and Workers Compensation, if in Leave without Pay (LWOP), highlighting similarities and differences in the manner in which each are handled.
5. Leave entries required for employees out of work on FMLA, ADA an and/or Workers Compensation.

**CURRENT STATE - Human Resources:**

When interviewed, staff members in Human Resources specifically responsible for administration of FMLA, ADA and Worker's Compensation appeared well versed in the regulations, policies & procedures, but there was still room for improvement in administration.

1. Cross training appeared necessary in eligibility criteria, specific to FMLA and ADA department wide.
2. Consistent documentation of leave, specific to SCEIS, requires improvement.
3. Documentation of FMLA and Workers Compensation concurrent charging requires improvement.
4. Leave without Pay, (LWOP), administration can be better documented and communicated.
5. Workers Compensation settlement effects on premiums required addition explanation and clarification.

**THE MARK - Human Resources:**

1. Cross training specific to the first phase of implementation, in each domain, needs to be provided to all HR staff members to facilitate easier access to resources. All HR staff members need to be cross trained in FMLA and ADA leave related eligibility as well as Workers Compensation reporting procedure. Training needs to stress timeframes which need to be adhered to as well as reporting mechanisms. Staff need to be reminded that when it comes to eligibility all HR staff should serve as resources for employees seeking eligibility criteria. Further much like supervisors, when an employee reports to any staff person in Human Resources the agency has been put on notice and the "clock" starts.

Specific to Workers Compensation initial reporting needs to be completed in a timely manner and safety follow-up sought. All HR staff members need to support and reinforce the importance of timely reporting and medical follow-up. Reporting procedures need to be reviewed with all staff during staff meetings at least twice annually and posted conspicuously.

2. The way extended absences are handled needs to be reviewed as well as leave tracking. HR tracks leave outside of SCEIS while ensuring leave is documented correctly within SCEIS. Since SCEIS is a system that defaults to payment, it is essential that leave is entered correctly to ensure employees are paid accurately. Employees are to be encouraged to enter leave remotely, when possible, with supervisors ensuring leave is entered, at least, weekly. In the event leave cannot be entered by the employee the employee needs to be given an accounting of their leave weekly to review, electronically. HR must obtain current contact information for all employees out on extended leave. Missing time is an ongoing challenge when employees are out on extended leaves of absence related to FMLA, ADA and/or Workers Compensation. Supervisors, managers and employees on leave need to be made aware of the importance of entering accurate leave, in SCEIS, when an employee is out of work. These issues may be covered in a broad sense during training and specifically on a case by case basis when the need arises.

HR staff will be charged with ensuring managers and employees are notified prior to the first day out of work, the way leave can and should be entered and the criteria for approval. HR staff will then be responsible for reviewing each individual's file weekly to ensure leave has been entered and approved in accordance with regulations.

3. In cases in which FMLA related leave and Workers Compensation run concurrently employees need to be made aware prior to the occurrence. Currently employees tend to be unaware that FMLA and Workers Compensation will run concurrently if their situation meets criteria. All employees need to be in-serviced on the way FMLA and Workers Compensation may run concurrently, prior to the situation arising. Managers and HR liaison training needs to include the criteria for concurrent charging and possible scenarios need to be explained to employees. Employees need to be reminded prior to extended absences related to Workers Compensation to have FMLA specific paperwork completed by their physician. Upon return from extended Workers Compensation leave, HR staff needs to remind employees that their time out was charged against their FMLA allotment for the year, if that was the case, and update them on their leave balances.
4. As a part of preparation for extended leave, for either FMLA, ADA or Workers Compensation, when time is charged to Leave Without Pay, (LWOP), employees need to be advised about the way benefits will be affected. As an addendum to the FMLA, ADA and/or Workers Compensation paperwork provided to employees in preparation for an extended absence, any premiums, service charges or other related fees due, should be summarized for their review. Prior to their first day out of work the way any subsequent charges will be handled should be reviewed and agreed upon.
5. When Workers Compensation related settlements are being negotiated, a discussion between the State Accident Fund representative and Human Resources staff needs to take place in reference to settlements and any subsequent premium related ramifications.

### **CURRENT STATE – Efficacy of Communication (FMLA, ADA, Workers Compensation)**

Most input was obtained from current Department of Administration employees utilizing two mechanisms. Anonymous surveys and one - on- one interviews. Being completely honest and candid, after reviewing the anonymous survey findings I was left with the impression that if given the opportunity to communicate anonymously people would lean toward negative communication. As a result, I geared my personal interviews towards addressing the same areas the anonymous surveys addressed. My hope was, those questioned would be a little more forthcoming with positive feedback, if engaged in conversation. Unfortunately, a few of the very same issues arose. Many staff interviewed and those surveyed agreed that:

- 1) They did not know who they should contact about leave specific to FMLA, ADA or otherwise.
- 2) They did not know where posted information about Workers Compensation was in their work areas.
- 3) They did not know where the policies governing each were located on the interoffice website.
- 4) They were not sure what FMLA and ADA covered and how paid leave might run concurrently.
- 5) Had no idea how Workers Compensation might run concurrently with FMLA.
- 6) A fair number thought they needed to secure counsel if they had an on the job-related accident.

After hanging my head in despair for a few days, I decided to address each issue by soliciting suggestions for improved communication between HR and the staff we serve. I learned from this process, that no matter how well we, as individuals, think we are doing, employees at the Department of Administration did not compartmentalize when they looked at the efficacy of Human Resources. Further we were all viewed as, “only as good as” their most recent interaction with someone in our department.

### **The MARK – Efficacy of Communication (FMLA, ADA, Workers Compensation)**

The team approach needs to be fully implemented. First and foremost HR staff need to conduct in-service training for HR liaisons and managers on FMLA, ADA and Workers Compensation implementation. Training should cover, the types of protected leave FMLA and ADA might provide as well as the ADA accommodation process. Training needs to also include how paid leave may or may not run concurrent Workers Compensation procedures and payment options should also be covered as well as the State Accident Fund and Compendium’s role in the process. HR liaisons and managers need to be reminded they are the first point of contact for their employees and work towards working collaboratively along with Human Resources to meet their employees’ needs.

A list of HR employees and their disciplines needs to be distributed to HR liaisons and managers. They should then be charged with reviewing it with all staff during one or more of their staff meetings. A list also needs be placed on the Human Resources shared site and updated as responsibilities change.

Managers need to be charged with ensuring Workers Compensation and Injury postings are clearly posted and locations covered during staff meetings. The procedure for reporting and

the HR staff liaison charged with receiving initial notifications needs to be identified during meetings and meeting minutes need to reflect information was reviewed with all staff members.

Access to the interoffice webpage where policies and procedures are housed needs to be reviewed with all employees at least bi-annually to ensure they are kept abreast of procedures as they are disbursed and updated.

HR points of contact need to be cross-trained in reporting procedures for each area and advised to let employees know who the subject matter experts are on a case by case basis.

CONCLUSION:

I learned several things during this process, many of which were extremely painful to accept. I have had to accept that when in a position which requires interrelated duties to get the job done, being viewed and assessed as an individual is rare. The nature of Human Resources does not lend itself to individual success or failure. I cannot stress enough how often I heard, “Well I know you’ll call me back Selina, but...” I honestly never realized how people see a department first in a scenario such as human resources as opposed to the individuals in the department. The fact of the matter is, we are frequently viewed collectively when we work in a collaborative environment. Further our accomplishments are greatly affected by how well we work together. Therefore, it behooves us all, who work in interrelated, collaborative workplaces to also assess the services provided holistically as opposed individually. Because what this process taught me more than anything, is we are not only measured by our individual actions but the actions and interactions of and with our co-workers.

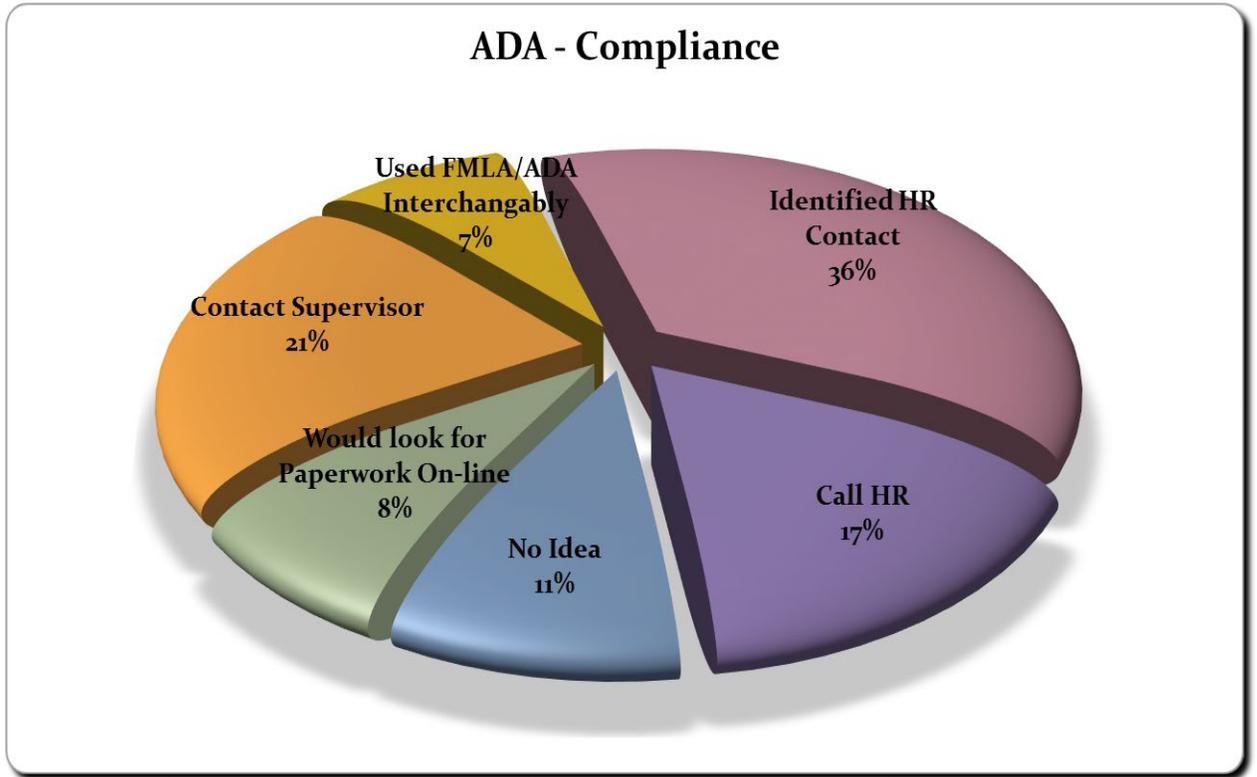
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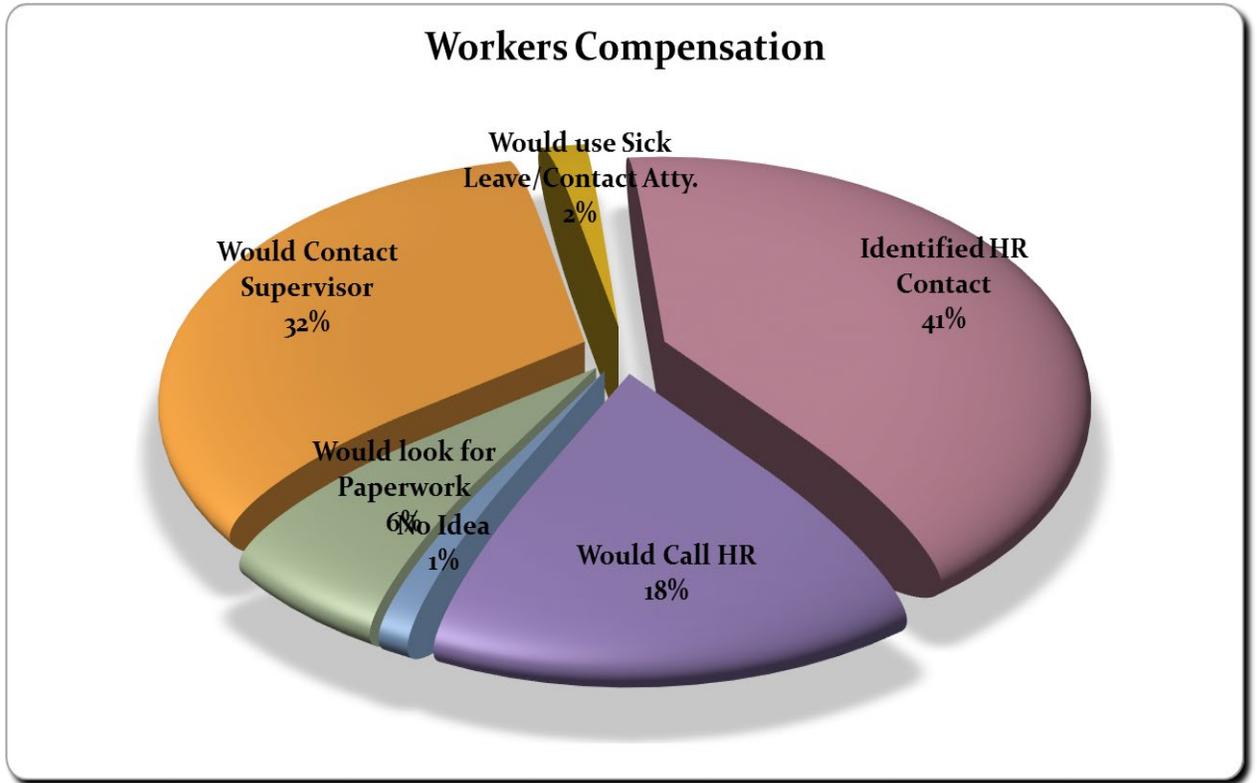
*Leave Benefits: Family and Medical Leave.* (n.d.). Retrieved 2 3, 2019, from United States

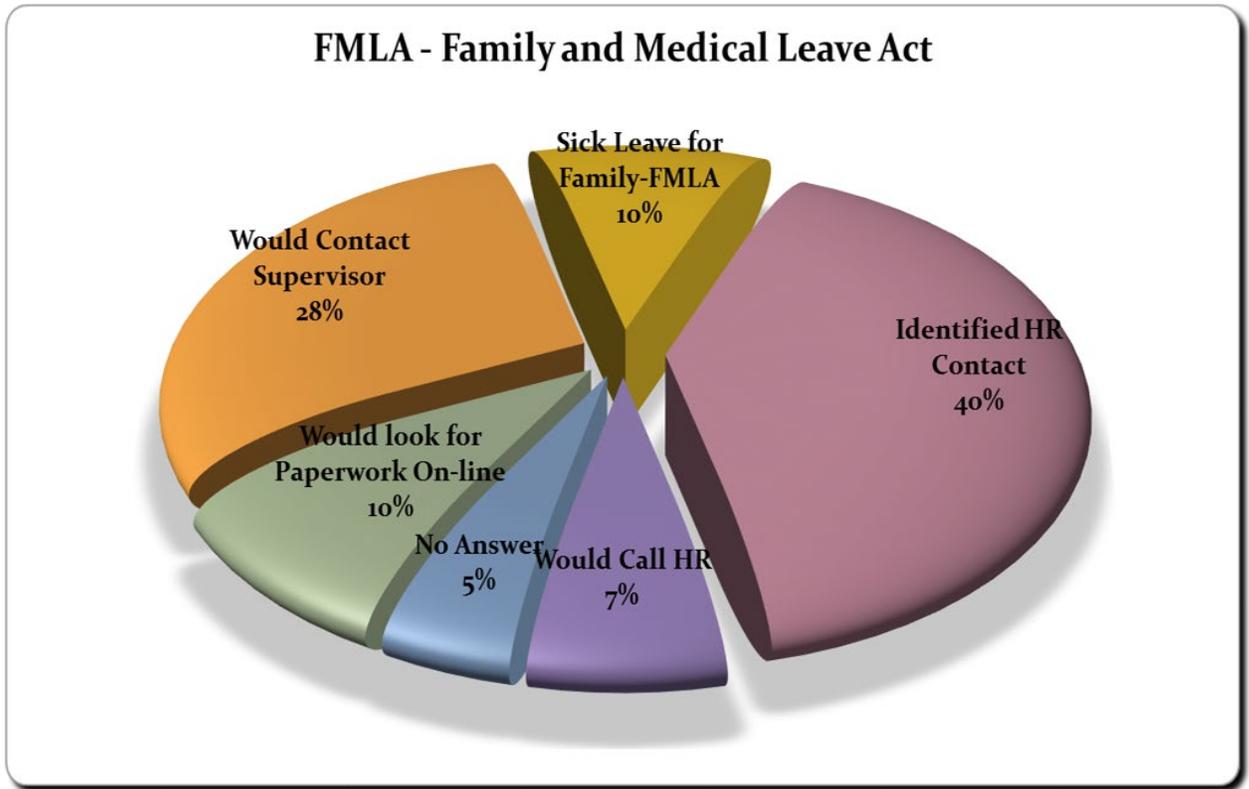
Department of Labor: <http://www.dol.gov/dol/topic/benefits-leave/fmla.htm>

(Leave Benefits: Family and Medical Leave, n.d.)

Employees were asked who they would contact for information on ADA, Workers Compensation and FMLA.









## **Appendix**

The following email was sent to all prospective survey participants.

Greetings,

I am currently gathering empirical data for completion of a Certified Public Manager (CPM), project. The purpose of the project is to objectively analyze the efficacy of services rendered in a few benefits related areas.

One method used to gather information will be an anonymous survey and follow-up interview if deemed necessary. tenure preceded the establishment of Admin. All responses will be kept in the strictest confidence.

Your opinion matters to me; therefore, I would greatly appreciate the opportunity to solicit your input.

Thank you, in advance, for your consideration.

- I. Surveys were sent to 21 employees and followed up with 10 interviews. Departments represented were: Facilities Management – 4, Department of Technology – 3, SCEIS – 2, Administrative Support - 7, Support Services 3, CHE/Shared – 2. All employees submitted feedback anonymously.

The first survey asked 3 fill in questions:

- a) Who would you contact in the event of a Workplace Accident or Injury?
  - b) Who would you contact for information on FMLA?
  - c) Who would you contact for information on ADA?
- II. Nine Human Resources professionals were interviewed. Three from agencies other than the Department of Admin. and six from the Department of Administration.

The following questions were asked:

- a) Do you have policies and mirroring procedures in place in the following areas?
  - a. FMLA
  - b. ADA
  - c. Workers Compensation
- b) Where are the policies located?
- c) Do employees have access to policies without contacting a manager or HR staff member?
- d) What has worked for you in the administration process and what has not?

### III. The final survey was sent utilizing survey monkey

#### Survey III:

- 1) Do you have access to the agency's policies and procedures related to FMLA (Family Medical Leave Act 1993)?

Yes, No, Other (please specify)

Other (please specify)

- 2) Do you have access to the agency's policies and procedures related to ADAAA (ADA Amendments Act)?

- 3) Do you have access to the agency's policies and procedures related to Workers Compensation administration?

- 4) Where do you go, in our agency, for assistance with FMLA administration?

Immediate supervisor, Human Resources, Specific Human Resources staff member, Agency website, Co-worker, Other (please specify)

- 5) Where do you go in your agency, for assistance with an ADA(AA) related accommodation request &/or an ADA(AA) related leave request?

Immediate supervisor, Human Resources, Specific Human Resources staff member, Agency website, Co-worker, Other (please specify)

- 6) To whom would you report a work-related accident or injury?

Immediate supervisor, Human Resources, Specific Human Resources staff member, Agency website, Co-worker, Other (please specify)

7) Do you know who to contact, in your current department of Human Resources, in the event of a work-related accident or injury?

Yes, No, Other (please specify)

8) Do you know who to contact, in your current department of Human Resources, for assistance with FMLA?

Yes, No, Other (please specify)

9) Do you know who to contact, in your current department of Human Resources, for assistance with FMLA?

Yes, No, Other (please specify)

Q10

**How long have you worked for your current employer?**

Less than 1 year – 16.67 %

1-5 years - 41.67%

6-10 years – 8.33 %

11-20 years – 25 %

20 or more – 8.33 %

