

# Independent Auditor's Report on Applying Agreed-Upon Procedures

Division of Human Resources  
Family Medical Leave Act of 1993 Processes and Procedures

Tennessee Department of Transportation - Division of Internal Audit  
*Government Accountability Professionals*  
**Final Report | June 2017**

*The mission of the Division of Internal Audit is to provide objective analysis and information critical to better decision making and enhancing the overall governance capability within the Tennessee Department of Transportation.*





**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

### **Independent Auditor's Report on Applying Agreed-Up Procedures**

Dear Ms. Linville:

The Tennessee Department of Transportation's (TDOT) Division of Internal Audit (IA) has performed procedures described in the attached Schedule A. We performed these agreed-upon procedures in order to assist you in evaluating the processes, application, and integrity of transactions pertaining to the Human Resources Division's management of the *Family Medical Leave Act of 1993* (FMLA) program for the period July 1, 2013 to March 31, 2017.

We performed this agreed-upon procedures engagement in accordance with *Government Auditing Standards* (GAS), December 2011 Revision, which incorporates the *Statements on Standards for Attestation Engagements* (SSAE) established by the *American Institute of Certified Public Accountants* (AICPA). The sufficiency of these procedures is solely the responsibility of the specified users of this report. Consequently, we make no representation regarding the sufficiency of the procedures described in Schedule A for the purpose for which this report has been requested, or for any other purpose.

We provided a separate management letter to accompany this report. Schedule B of the management letter delineates our suggestions and recommendations to enhance current practices. Recommendations are suggestions for process improvements designed to address gaps from actual to expected outcomes and provide your Division's management structure the information needed to achieve the desired outcomes. Recommendations are not prescriptive but rather suggestive; your management team could enact other measures, not mentioned in Schedule B, to achieve similarly desired results.

**Division of Human Resources FMLA Agreed-Upon Procedures**

**Date: June 28, 2017**

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We were not engaged to and did not perform an audit or an examination, the objective of which would be the expression of an opinion or provide negative assurance on the specified elements, accounts, items, the efficiency of processes, the effectiveness of operations, and government service delivery. Accordingly, we do not express such an opinion here. Had we performed additional procedures, other matters might have come to our attention that would have been reported to you.

This report is intended solely for the information and use of the specified users of this report and should not be used by those who have not agreed to the procedures and taken responsibility for the sufficiency of the procedures for their purposes.

We appreciate the courtesies and cooperation extended to us by the management and staff of the Human Resources Division. We also acknowledge the following auditors for their efforts in completing this engagement:

- Jessica Hill, MACC – Internal Auditor-In-Charge
- Nichole Sly – Staff Internal Auditor
- Alisa Brock – Staff Internal Auditor
- Roger Miller, CPA – Quality Assurance

Kind regards,

Mel Marcella, CPA, CMA, CIA, CISA, CFE  
Director, Division of Internal Audit  
Tennessee Department of Transportation  
505 Deaderick Street, Suite 1800  
Nashville, TN 3724

## **Schedule A**

### **Agreed-Upon Procedures Engagement Procedures and Observations**

We performed the following agreed-upon procedures for the Human Resources (HR) Division. The scope of the work was for the period July 1, 2013 through March 31, 2017. We have detailed the procedures and results below.

#### **Agreed-Upon Procedure #1**

*Conduct a thorough process flow review (of the FMLA process) and assess for appropriate internal controls at each processing stage.*

#### **Procedures and Observations**

IA performed an evaluation of the FMLA process flow by conducting the following:

- Obtained and reviewed a copy of 29 CFR Part 825 *The Family and Medical Leave Act of 1993*
- Obtained and reviewed a copy of TCA § 4-21-408 *Leave for adoption, pregnancy, childbirth and nursing an infant*
- Obtained and reviewed a copy of the United States Department of Labor (DOL), Wage and Hour Division's (WHD) *FMLA Compliance Guide*
- Obtained and reviewed a copy of the DOL, WHD's *FMLA Employee Guide*
- Obtained and reviewed copies of the DOL, WHD's Fact Sheets (28, 28A-N, 44, and 77B)
- Obtained and reviewed copies of the DOL, WHD's Forms (WH-380-E, WH-380-F, WH-381, WH-382, WH-384, WH-385, WH-385-V)
- Obtained and reviewed a copy of the State of Tennessee's *Attendance and Leave Manual*
- Obtained and reviewed a copy of the State of Tennessee's *Employee Handbook*
- Obtained and reviewed copies of other local government audit reports concerning the administration of FMLA
- Interviewed staff members within the HR Division involved with processing FMLA
- Interviewed staff members within the Finance Division involved with the Payroll process
- Created process flowcharts for the FMLA process at Headquarters (HQ) and the four regional locations
- Obtained and reviewed copies of employee FMLA files in the HR shared drive
- Obtained and reviewed copies of employee Payable Time records from Edison
- Obtained and reviewed copies of employee Time Audit records from Edison

- Created a lead schedule to delineate dates that employees began and ended FMLA leave according to their Designation Letter and when FMLA was first and last recorded in their Edison time records
- Performed analytical procedures to ascertain whether employees were approved for FMLA before it was recorded in Edison
- Performed analytical procedures to ascertain whether or not the employees FMLA was entered only through the Materials Maintenance System (MMS)

Processing FMLA requests involves ensuring that an employee eligible for FMLA have an available leave balance and have filled out the proper DOL form (or have some other form of supporting documentation to substantiate their need for leave). Processing FMLA also involves sending out the proper notices to the employee and appropriate staff, coding time as FMLA in Edison, and notifying the employee's supervisor when their FMLA has ended.

As we conducted a thorough process flow review of the FMLA process, we noted the following observations:

- The Benefits Coordinator at HQ processes FMLA requests for employees at HQ, while each region has an Employee Relations Representative that processes FMLA for employees in that region
- A form/checklist was developed in house to help process FMLA and make sure that all of the supporting documentation is included in the employee file
- Each regional HR representative has a slightly different process for FMLA
- HR runs an Edison query to determine an employee's eligibility, and this query is included in each employee file
- Supervisors notify the Benefits Coordinator or the Employee Relations Representatives each week that an employee is using FMLA leave so their leave time can be converted to FMLA in Edison
- Only employees with Time and Labor Agency Admin rights can code time as FMLA leave
- FMLA is entered through MMS for employees that work in the Maintenance Division; these time entries are uploaded to Edison on a weekly basis and at the end of the pay period. FMLA is entered through Edison for all other employees

To conduct a process flow review, we interviewed all of the employees directly involved with FMLA and developed process flowcharts to document the FMLA process. After reviewing the process and performing a risk assessment, we noted a significant risk in the process due to the absence of a formal mechanism, which enables supervisors or employees to notify HR about leave that qualifies for FMLA. In addition, we also noted internal control risks associated with FMLA coded through MMS and Edison, for Maintenance Division employees,

potentially creating concurrency issues. Concurrency issues arise when an employee's timekeeper enters FMLA time in MMS without HR's validation. Timekeepers entering FMLA leave through MMS bypasses HR review and could lead to employees with unapproved FMLA leave recorded on their timesheet. We observed an instance in one region where the Employee Relations Representative coded leave as FMLA for all employees, regardless of which system was used for time entry. This situation creates concurrency issues when the timekeeper also codes the leave as FMLA, instead of annual, sick, or leave without pay. FMLA gets entered twice, and timesheet corrections have to be made to correct the coding error.

We performed analytical procedures to ascertain whether employees were approved for FMLA before FMLA leave was recorded in Edison. All of the employees tested in this sample enter time through MMS. Results of the procedures identified the following:

- One of 30 records (3.33%) – FMLA leave entered before authorized start date
- Nine of 30 records (30%) – FMLA entered through MMS with zero additional FMLA entries from HR or payroll during the FMLA period
- Seven of 30 records (23.33%) – Manual Timesheet corrections completed to correct FMLA entered before or after the employee's authorized FMLA period
- Two of 30 records (6.67%) – Exceeded 450 hours of FMLA even with manual timesheet corrections. In one case, Payroll sent emails changing the ending date of FMLA twice, months apart, and the employee still exceeded FMLA hours
- One of 30 records (3.33%) – Exceeded 450 hours of FMLA with no manual timesheet corrections

As the results of the testing show, we observed several issues with the time records of MMS employees. Time entries occurred before the start of the FMLA period for one record and after the end of the FMLA period for two records that were not corrected by timesheet corrections. There were seven other records with time entered before and after the FMLA period that were later corrected with manual timesheet corrections. With the ability to enter FMLA leave in MMS without any supervision by HR to ensure that an employee is actually approved for the FMLA leave, errors in time entry can occur frequently. (See recommendations A and C)

### **Agreed-Upon Procedure #2**

*Evaluate FMLA transactions for compliance with the following:*

- *Program eligibility requirements*
- *Consistent application of intervening Federal and State rules and regulations*

- *Consistent application of applicable State of Tennessee requirements*
- *Supporting documentation requirements*

### **Procedures and Observations**

IA performed an evaluation of FMLA transactions by conducting the following:

- Relied on documents obtained for *agreed-upon procedure #1*
- Created a lead schedule to delineate dates HR received medical documentation, dates employees began and ended FMLA leave according to their Designation Letter, dates when FMLA was first and last recorded in their Edison time record, and the existence of FMLA documentation
- Performed analytical procedures to ascertain whether employees received their designation notice within five days of submitting sufficient information to qualify the employee for FMLA leave (Medical certification, doctor's notice, etc.)
- Performed analytical procedures to ascertain whether or not the employee's FMLA file contained required documentations
- Performed analytical procedures to determine the level of access rights for all employees with access to the folders containing confidential FMLA information

In performing the aforementioned procedures, we noted the following observations:

- One of 30 records (3.33%) – Letter sent more than five days after receiving medical documentation
- Three of 30 records (10%) – We were unable to determine the span of time between receiving sufficient information to designate FMLA and the Designation Letter being sent due to lack of any medical documentation
- Four of 30 records (13.33%) – The designation letter was sent more than five days **before** the medical documentation was received
- Thirty-nine unique users identified with read, read/write, modify, and/or full access to FMLA employee files
- We identified one user whose user rights remained active two months after resignation
- Thirteen of 39 users (33.33%) identified do not require access to the folders to complete their job duties
- Two of four regions – FMLA Posters were not located with other required Federal postings

We performed these procedures to determine if an employee has all of the required documentation in their FMLA folder and whether or not HR has followed Federal guidelines

regarding the timing requirements in sending out the notifications of eligibility, rights and responsibilities, and the designation notice. Compliance with Federal regulations for providing notice of rights and responsibilities, as outlined in 29 CFR 825.300, requires that the notice (a) must be in writing and (b) provided at the same time as the eligibility notice. Notification must occur within five business days of the initial request for leave, or when the employer acquires knowledge that an employee's leave may be for an FMLA-qualifying reason. The employer must also give notice of designation in writing within five business days of having enough information to determine whether the leave is FMLA-qualifying.

As required by 29 CFR 825.500 (g), "records and documents relating to certifications, recertifications or medical histories of employees or employees' family members, created for purposes of FMLA, shall be maintained as **confidential** medical records in separate files/records from the usual personnel files." Existing data systems currently in use present significant security concerns as access rights to shared drives used by those processing FMLA are not kept up-to-date. One-third of the employees that have permission to, at the very least, read confidential medical information do not require any access to these files to perform their job duties.

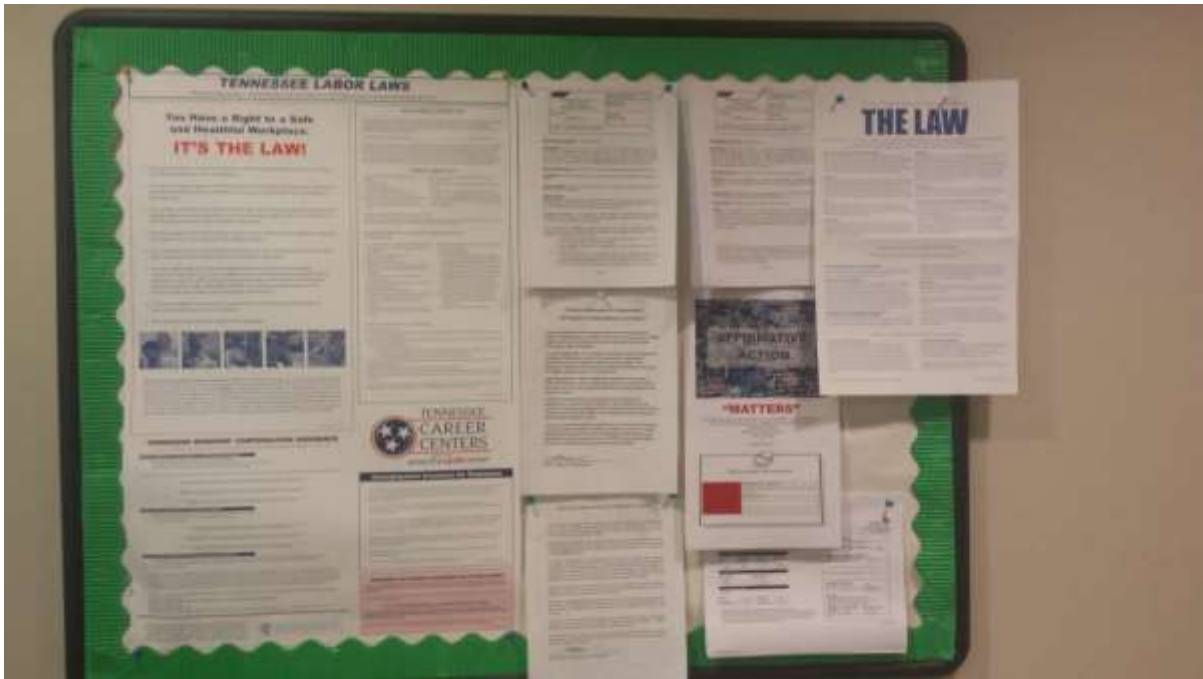


Figure 1- Region 4 bulletin board noting lack of required FMLA poster





**Figure 2 - Region 3 bulletin board noting lack of required FMLA poster**

We also observed that two of the four regions did not have FMLA posters on their bulletin boards with other federal required notices or anywhere that we would consider a conspicuous location. The FMLA poster must be displayed for all workers and applicants to see, in areas that are frequented by employees (e.g. common areas for each division, region, and county offices). The potential DOL fine for not displaying the poster is \$110 per occurrence. (See recommendations B, E, F, and J)

### **Agreed-Upon Procedure #3**

*Review regional process flows for appropriate tracking of FMLA cases.*

### **Procedures and Observations**

IA performed a review of regional (FMLA) process flows by conducting the following:

- Relied on documents obtained for *agreed-upon procedure #1*
- Performed analytical procedures to ascertain whether or not the employee received the correct amount of leave
- Performed analytical procedures to ascertain whether or not employees that exceeded the FMLA leave did so due to holiday hours that were unaccounted for as FMLA hours

In performing the aforementioned procedures, we noted the following observations:

- Five of 30 records (16.67%) – Received incorrect amounts of leave
- Five of 30 records (16.67%) – Leave overages affected by holiday hours that were incorrectly excluded from FMLA leave totals
- One of 30 records (3.33%) – FMLA coded in Edison prior to start date
- One of 30 records (3.33%) – FMLA coded after the ending date
- One of 30 records (3.33%) – Leave exceeded even with timesheet corrections
- One of 30 records (3.33%) – Compensatory leave incorrectly excluded from FMLA totals
- In all tested transactions, zero hours of holiday and compensatory time counted toward employee FMLA
- All 30 records had 450 hours ( the maximum amount of FMLA leave possible for non-military related reasons) as the approved amount of leave

We performed these procedures to determine that process flows had adequate internal controls to ensure FMLA tracking is accurate and employees receive the appropriate amounts of leave. We found that five employees exceeded the 450 hours maximum leave limit due to holiday hours not coded for FMLA.

When determining if an employee had received the correct amount of leave we looked at the amount of leave they were authorized to take (in the case of this sample, the whole sample was authorized to take 450 hours), and we calculated the amount of leave that was coded FMLA. We also took into consideration timesheet corrections, as well as any leave that was taken during their continuous block of leave that was not coded as FMLA (such as sick, annual, or compensatory). We counted holiday hours toward FMLA if the holiday occurred during the period that the employee took FMLA leave.

We counted FMLA hours in this manner based on the State of Tennessee's *Attendance and Leave Manual* that states, "accumulated leave shall run concurrently with the employee's family and medical leave entitlement," and "an employee... must use all accrued leave prior to being eligible for unpaid leave." Leave is taken as unpaid once all accumulated sick, annual, or compensatory leave balances have been used. Furthermore, it also states that except when on leave to care for a covered service member with a serious injury or illness, "this twelve (12) work week limit is equivalent to sixty (60) workdays, **including holidays.**" The manual also specifies that "any **compensatory leave** used for qualifying FMLA leave will be counted against the twelve (12) or twenty-six (26) week entitlement."

We found that five of 30 records exceeded the 450 allotted hours when we applied the prescribed method as stated in the manual. Additionally, we noted more records that received incorrectly calculated amounts of leave due to the exclusion of holiday hours but

did not include those numbers in our count because they did not fail the parameters of our test by not exceeding their authorized amount.

We expected to have some Designation Notices with approved FMLA leave that was less than 450 hours, but this was not the case. All of the records that we reviewed had 450 hours listed as the approved amount of leave on their designation notice with an ending date for their FMLA that was 12 weeks after the start date. FMLA leave can be used for a period of **up to** 12 weeks, but HR does not have to designate the full 12 weeks unless the medical certification supports the need for that amount of leave. Once an employee is able to return to work, they no longer have a condition that qualifies for that particular FMLA case. For example, if a medical certification states that the employee needs six to eight weeks off following a surgery, leave should only be approved as FMLA for up to eight weeks, in accordance with the medical certification. The employee can always submit an updated medical certification and request more leave if their circumstances later change. Giving employees the full amount of leave regardless of need could lead to employees using more time off than is necessary once their need for leave for a serious medical condition has subsided. Business operations suffer when employees are out for long periods unnecessarily. (See recommendations C, D, G, H, I, and L)

#### **Agreed-Upon Procedure #4**

*Assess transactional integrity and identify instances of potential abuse and misuse of FMLA privileges.*

#### **Procedures and Observations**

IA performed an evaluation of FMLA transactions by conducting the following:

- Relied on documents obtained for *agreed-upon procedure #1*
- Obtained and reviewed articles on best practices for FMLA compliance and curbing abuse
- Performed analytical procedures to determine if the employee took potentially excessive amounts of FMLA on Mondays and Fridays
- Performed analytical procedures to determine if the employee potentially abused their FMLA privileges by using more FMLA leave than was indicated on their medical certifications
- Performed analytical procedures to determine if HR followed up with employees that used more FMLA than was intended to request updated medical certifications

In performing the aforementioned procedures, we noted the following observations:

- Three of 30 records (10%) used more than 25% of total FMLA hours on Mondays

- Nine of 30 records (30%) used more than 25% of total FMLA hours on Fridays
- Two of 30 records (6.67%) exceeded 450 hours
- Ten of 30 records (33.33%) used more FMLA hours than they were authorized to take for a given time period. The time period is defined by the frequency and duration listed in their medical certifications and designation notices. In only two of 10 records (20%) did we observe that HR requested updated medical certification due to changed circumstances (employee using more leave than designation notice indicated)
- Two of 30 records (33.33%) showed FMLA leave outside of the initial timeframe stated on their designation letter. Although employees did not exceed the upper bounds limit on total hours authorized, these employees used FMLA hours outside the approved time frame, inconsistent with their medical certification

Intermittent Leave is more likely than Continuous Leave to be abused and/or misused due to the employee's ability to take small, incremental absences that are sporadic in nature. Our research indicates that most cases involving abuse of leave centered on employees taking a much greater percentage of days off on Mondays and Fridays or not using their leave in accordance with their medical certification. For this reason, we based our testing on identifying potential abuse and/or misuse of FMLA around employees on intermittent leave. Twelve of 30 employees tested took more than twenty-five percent of FMLA leave on Mondays and/or Fridays.

To limit the incidence of Intermittent Leave abuse, employers may request recertification every 30 days (or more often when necessary) for cases where no minimum duration of capacity is specified on the employee's medical certification. This FMLA requirement is useful when an employee's pattern of absences casts doubt on the validity of the certification or condition.

The WHD released an opinion letter clarifying that it does not violate the FMLA to request recertification if an employee regularly claims FMLA leave for Fridays and Mondays. The letter goes on to say that, *"the FMLA does not prohibit an employer from including a record of an employee's absences along with the medical certification form for the health care provider's consideration in determining the employee's likely period of future absences. Nor does the FMLA prohibit an employer from asking, as part of the recertification process, whether the likely duration and frequency of the employee's incapacity due to the chronic condition is limited to Mondays and Fridays."* (See recommendation K)

#### **Agreed-Upon Procedure #5**

*Identify opportunities for standardization of workflow including the development of checklists, appropriate approval sequence, and the use of software application(s).*

### **Procedures and Observations**

To identify opportunities for standardizing workflow, IA performed the following procedures:

- Relied on documents obtained for *agreed-upon procedures #1*
- Completed a Skill Educators Webinar, *Step-by-Step FMLA Checklist*
- Created Process Flow map of FMLA process as demonstrated in *Step-by-Step FMLA Checklist* Webinar (see Appendix A)
- Obtained and reviewed articles on best practices for leave management FMLA
- Obtained and reviewed data sheets for leave management products
- Reviewed all test work and observations for *agreed-upon procedures #1-4*

In performing the aforementioned procedures, we noted the following observations:

- HR does not have a formal process and procedures manual that standardizes FMLA workflow
- HR has not developed comprehensive training materials for employees new to processing FMLA
- HR does not have an accurate method for tracking FMLA leave
- HR does not have a process in place to identify potential red flags that could indicate possible abuse and/or misuse of FMLA leave

We observed many opportunities for the standardization of workflow during the course of performing these procedures. Standardization of workflow could be optimized by formalizing the processes and procedures for implementing and tracking FMLA leave and applying it across all four regions and headquarters. Having a formalized procedure manual will serve as a guide on how to process FMLA leave requests accurately, as well as provide a resource for training new employees on handling FMLA requests. This formalized document could include narrative descriptions of the steps in the process, checklists, and/or process flow charts. (See recommendation A) We have provided a process flow chart for the FMLA process, which can be seen in Appendix A.

HR currently uses an internally developed checklist, which could be improved with the inclusion of the following information:

- Date employee first requests FMLA or HR is made aware than an employee may be out for an FMLA qualifying reason
- Dates documentation is received (doctor's note, medical certification, etc.)
- Beginning and ending dates for leave if less than 12 weeks requested/needed according to medical certification or employee request

- Type of leave being requested (birth of child, adoption, family member serious health condition, own serious health condition, care for covered service member, or qualifying exigency)
- Dates documentation is sent to employee (eligibility notice, rights and responsibilities, designation notice, request for certification)
- Was the leave foreseeable? If yes, did employee provide at least 30 days advance notice or an explanation for the lack of notice

We noted that a standardized FMLA request form could incorporate the additional information requirements and provide needed information to document each FMLA eligible case accurately.

Leave tracking is another area of the process that could be optimized by standardization. Currently, only payroll tracks FMLA leave using TRC codes in Edison. HR relies upon information provided by payroll to ascertain accumulated amounts of employee FMLA leave. This method of tracking FMLA can be inaccurate due to several factors including, (a) manual timesheet corrections not reflected in Edison, (b) lack of codes for FMLA for certain types of leave, and (c) entry errors.

As the process owner, HR should track employee FMLA usage rather than relying on payroll information. We found several employees that had incorrect amounts of FMLA due to the way employee FMLA is currently tracked. In a few cases, the employee exceeds their maximum 450 hours of FMLA leave entitlement. (See recommendation D)

In an audit report on FMLA for the City of Denver, a case is made for acquiring leave management software to create an automated FMLA system. Benefits of using software to track FMLA includes (a) comprehensive administration of FMLA leave (owing to the fact that policies can be built into the system and applied consistently), (b) minimizing risks found in a manual process, and (c) reducing labor costs from time spent manually tracking FMLA hours.

In contrast, the State of Colorado uses spreadsheets to track employee FMLA leave hours. Tracking FMLA hours with a spreadsheet could be more cumbersome than using automated software, but the cost could also be lower. Without an idea of how much time it will take to track FMLA with spreadsheets, it is difficult to ascertain if it is more cost effective versus saved time in using an automated system.

TDOT has averaged less than 250 employee FMLA cases over the past three years. This breaks down even further to an average of 35 to 66 employees per region and headquarters.

**Table 1: Summary of FMLA Cases per Year by Region**

Year	HQ	Region 1	Region 2	Region 3	Region 4	Total
2014	72	50	48	46	74	290
2015	47	49	22	33	68	219
2016	34	51	35	26	56	202
Average	51	50	35	35	66	237

Source: TDOT Human Resources Division

**Agreed-Upon Procedures #6 and #7**

*Provide a report of procedures and observations. Provide suggestive recommendations for process improvements and highlight opportunities for improved internal controls.*

Procedures and observations are included in this report. The accompanying Management Letter enumerates suggestions for enhancing process improvements and strengthening internal controls.