




Via Electronic Mail

Memorandum

To: Qiana Spain
EVP/Chief Human Resources Officer

From: George L. Dorsett 
Assistant Inspector General, Investigations

Date: October 20, 2020

Subject: Management Information Report: *Observations and Opportunities to Detect and Reduce FMLA Abuse and Improve Efficiencies in the Program*
(OIG-I-2021-504)

This report presents our observations from recent and ongoing administrative and criminal investigations involving fraud, waste, and abuse in the Family Medical Leave Act (FMLA) program at Amtrak (the company) and our analysis of the company's FMLA data. Our investigations identified certain patterns of abuse by employees, and our analysis of the company's FMLA data indicates that certain locations (stations, crew bases, and other facilities) may be at greater risk for FMLA abuse. We also identified issues within the company's administration of FMLA leave that may have contributed to the abuses we identified. Accordingly, the observations in this report could help the company review its controls over FMLA leave and strengthen its oversight of the FMLA program.

Why We Conducted the Investigations

In recent years, while conducting investigations of employee violations of company policies, we observed that some of these employees were also abusing FMLA leave. Notably, we found that employees were using FMLA leave for a wide range of impermissible reasons. This included use of FMLA leave to engage in illegal conduct, and then attend to the legal ramifications of that conduct including incarceration—or engage in outside employment or self-employment without the company's knowledge and authorization.

While conducting these investigations, our Central Field Office, based in Chicago, received complaints from managers throughout the Central region of alleged FMLA

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Certain Information in this report has been redacted due to its sensitive nature.

abuse and their frustrations with the company's Leave Management's FMLA Unit (FMLA Unit), which administers the program. Our Chicago office proactively began investigating FMLA-related complaints to determine the extent of the problem. To better understand the extent of the potential abuse, we interviewed department managers, supervisors, and timekeepers in the Central region; FMLA Unit personnel; and witnesses and suspects from the cases we investigated. In addition, our data analytics team analyzed the company's timekeeping data for employees who were approved for FMLA leave at all geographical locations. Assessing employees' applications for FMLA leave or the company's processes for approving, denying, and recertifying FMLA leave were outside the scope of this review. Nonetheless, information from our interviews—combined with the results of our data analysis—identified a risk of abuse of FMLA leave that may warrant the company's attention.

Our preliminary analysis of the data also found that certain locations had high percentages of employees approved for FMLA leave. While we understand that some locations might have legitimate reasons for more FMLA approvals than others, whether because they have more employees or because of the nature of the work performed at those locations, we identified high percentages of employees approved for FMLA leave at some locations—about 30 percent during 2019, compared to an industry average of approximately 10 percent.¹ Additionally, we identified a prevalence of prolonged intermittent FMLA leave—leave that employees can take sporadically for chronic and episodic medical conditions—which is inherently harder to monitor without proper oversight and, therefore, more prone to abuse.

This report discusses potential opportunities for improving the administration of FMLA based on our investigations of FMLA abuse from 2018 to the present,² the details of which are summarized in Appendix B. This report also discusses patterns we identified in our analysis of the company's FMLA and corresponding timekeeping data that indicate that some locations may be at higher risk of abuse. Appendix C provides a list of those locations.

Background

FMLA is a federal law that entitles eligible employees to take unpaid, job-protected, leave when the employee is unable to work due to a serious health condition or to care

¹ Our analysis indicates that, in 2019, about 30 percent of the employees were approved for FMLA leave at certain locations in Beech Grove, Indiana and Chicago, Illinois in the Central region; Los Angeles and Riverside, California in the Western region; and Philadelphia, Pennsylvania and Washington, D.C. in the Eastern region. The 10 percent industry average is based on information the Human Resources department provided. We did not independently verify this number.

² This report does not seek to quantify costs associated with FMLA abuse.

for a family member with a serious health condition. To be eligible, employees must have 12 months of completed service and must have worked at least 1,250 hours in the 12-month period immediately preceding the leave start date. FMLA generally guarantees these employees up to 12 weeks of leave (480 hours/60 days) in a 12-month period.³

FMLA requires employers to maintain employees' health benefits during leave and to restore employees to their same job or an equivalent job after they return. The law also sets requirements for notice—by both the employee and the employer—and provides employers with the right to require medical certification of the need for FMLA leave in certain circumstances. The law protects employees from interference and retaliation for exercising or attempting to exercise their FMLA rights. The law also includes certain employer record keeping requirements.

The company's Medical Leave and Absences Policy, which incorporates the company's FMLA policy, generally mirrors the provisions in the federal FMLA law. The company's Leave Management Unit within Human Resources (HR) Business Services—is responsible for administering FMLA in accordance with federal law and the company's policy. As of May 2020, three full-time employees were dedicated to overseeing and rendering FMLA decisions for the company. These three employees process approximately 800 FMLA requests per month.⁴ Once the FMLA Unit approves employees for leave, tracking of individual employees' use of that leave is left to departments and individual work units to manage—typically foremen, supervisors, or managers.

The Results of Our Investigations

We interviewed department managers, supervisors, and timekeepers in the Central region, and the majority of them expressed their opinion that FMLA is abused, and that it can adversely affect safety, productivity, costs, and employee morale.⁵ In addition, to track FMLA use and identify potential abuse, managers must coordinate with the FMLA Unit and manually compare data from various timekeeping systems and

³ While the FMLA provides a statutory minimum amount of unpaid leave, company employees may be granted leave beyond 12 weeks through local laws, a reasonable accommodation under the Americans with Disabilities Act, or other negotiated leave provisions under various collective bargaining agreements.

⁴ According to the Senior Manager of HR Business Services, all incoming requests are initially considered FMLA, but they many not ultimately be processed as FMLA.

⁵ The feedback we received in these interviews was solely on approved FMLA leave and not on broader leave use and attendance issues.

spreadsheets. Through our work, we found that the company may have opportunities to better address potential FMLA leave abuse.

Our recent investigations and interviews also found that employees abused FMLA leave for myriad purposes, including the following:

- To maintain health insurance while engaged in outside employment or self-employment.
- For personal reasons, including unexcused absences, extended weekends and holidays, vacations, travel, criminal activity, and even while incarcerated.
- To seek the additional protection of FMLA in order to avoid or delay disciplinary process and hearings or undesirable work assignments.
- To obtain leave beyond what is granted to employees under the terms of the company's various collective bargaining agreements or the company's attendance policy.⁶

Further, we have observed from our investigations that employees who were abusing FMLA leave were complacent toward company values and reluctant to cooperate with our agents. In many cases, we investigated these employees for other egregious violations of company policies, including multiple undisclosed arrests and convictions for violent or drug- and alcohol-related crimes and histories of workplace violence. Others were engaged in elaborate fraud schemes—including schemes targeting the company's customers. In many cases, other company employees, including supervisors, had knowledge that these employees were abusing FMLA leave. Many of these same employees and supervisors, however, expressed that they felt powerless to address these issues.

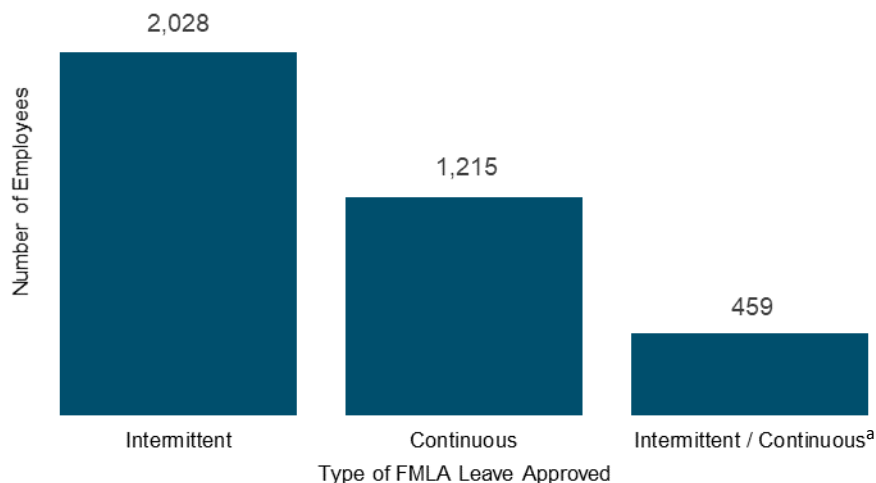
Review of Company FMLA Data

During 2019, the company approved intermittent or continuous FMLA for 3,702 agreement employees—about 20 percent of the total agreement employee population.⁷ Of these, 2,487 were approved for intermittent leave (67 percent), as Figure 1 shows.

⁶The company's collective bargaining agreements with employees represented by unions provide varying limits on paid leave, including sick leave. In addition, the company's attendance policy limits employees' use of other types of approved absences, but FMLA leave is excluded under this policy.

⁷We analyzed data on approved FMLA applications that corresponded to timesheets for payroll year 2019—December 18, 2018 through December 15, 2019. Reviewing the effectiveness of the FMLA Unit's processes for reviewing and approving or denying leave was outside the scope of this review.

Figure 1. Agreement Employees Approved for FMLA Leave (2019)



Source: OIG analysis of company data on approved FMLA leave

Note: ^a These individuals have approvals on file for both intermittent and continuous FMLA.

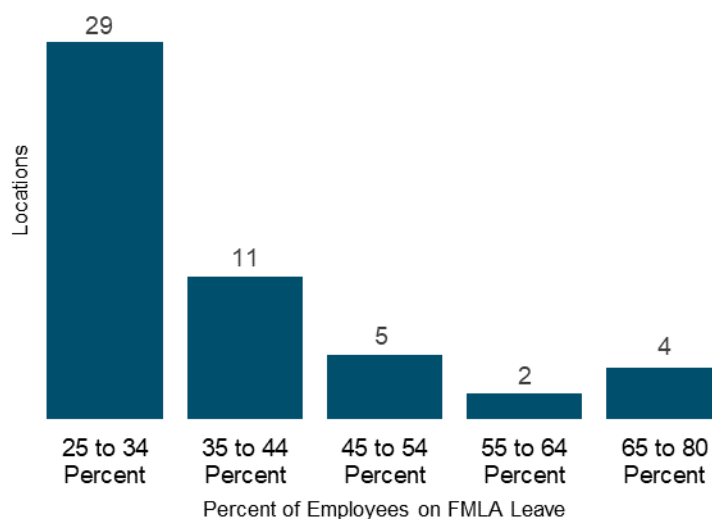
Our analysis of these employees' timesheets and FMLA approval data indicates that certain work locations may be at a higher risk of abuse. Specifically, we analyzed all 283 work locations with agreement employees⁸ and identified 51 locations where 25 to 80 percent of employees were approved for continuous or intermittent FMLA leave.⁹ Of the 3,702 employees approved for FMLA leave in 2019, 1,515 (41 percent) worked at these 51 locations. Appendix C lists the 51 locations.

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⁸ When an employee reported time at multiple locations, we aggregated the employee's hours at all locations and reported them for the location where the employee reported the most hours.

⁹ The agreement workforce at each location varies greatly; therefore, locations with fewer employees show a higher impact. For instance, of the six locations we identified with more than 55 percent of employees approved for FMLA leave, five have fewer than ten total employees.

Figure 2. Top Locations for Percentage of Employees Approved for FMLA Leave (2019)



Source: OIG analysis of company data on approved FMLA leave

In addition, our analysis indicates that certain locations had higher rates of approved FMLA leave than others—in particular, locations in Beech Grove, Indiana and Chicago, Illinois in the Central region; Los Angeles and Riverside, California in the Western region; and Philadelphia, Pennsylvania and Washington, D.C. in the Eastern region. HR officials noted that its employees are more concentrated in these locations; therefore, these locations would be expected to also have more employees approved for FMLA leave. These locations, however, also had disproportionately high percentages of employees approved for FMLA leave compared to other locations—approximately 30 percent in 2019, compared to an average of 11 percent at other locations and an industry average of approximately 10 percent. HR officials cited factors that can result in a higher rate of FMLA leave in certain locations, such as the more generous FMLA leave laws in California. They also noted that locations with a higher proportion of more sedentary jobs such as call centers may attract workers with health conditions that could result in a higher use of FMLA leave. In any case, locations with higher rates of approved FMLA leave are inherently at higher risk of FMLA abuse and may warrant stronger monitoring controls.

During our investigations and subsequent department interviews, managers, supervisors, and timekeepers in the Central region reported that they suspect employees have been abusing FMLA leave for years in some cases and seem to be using FMLA as an excuse for tardiness and absenteeism, to avoid discipline and undesirable work assignments, and for extra days off. They also stated that the high numbers of

approved intermittent FMLA leave creates an administrative burden because it is hard to monitor whether an employee is staying within their allowance of approved leave and because the FMLA Unit delegates the tracking of FMLA use to department managers. In addition, they told us it is an operational burden because it prevents them from reliably estimating the number of employees available to meet anticipated workloads. Some also reported safety concerns when crews are unable to adequately staff a train, when employees are late and miss safety briefings, and when replacement employees are required to perform assignments they do not ordinarily perform and are unfamiliar with or not adequately rested for.

When we compared the FMLA use and timekeeping data of employees at the 51 locations that had high percentages of employees approved for FMLA leave with similar data in the remaining 232 locations, we observed the following:

- Employees at these 51 locations averaged higher FMLA and unpaid sick leave from 2017 to 2019 than employees at other locations—539 hours compared to 419 hours over the three years.¹⁰
- Employees at these 51 locations applied for more intermittent FMLA leave than employees at other locations. In 2019, 73 percent of the employees approved for FMLA leave at these locations applied and received approvals for intermittent FMLA leave compared to 63 percent at other locations.
- Employees at these 51 locations also took more intermittent FMLA leave for longer periods. We identified 135 employees at these locations that were on intermittent FMLA or unpaid sick leave for more than six months in 2019—averaging up to 20 hours per week—compared to 92 employees at other locations. Notably, six of the employees we investigated for abusing FMLA leave had company approval for intermittent leave of a year or more.
- A higher number of employees at these 51 locations repeatedly use FMLA and unpaid sick leave for fractions of an hour, which may indicate they are using it to excuse lateness. We recognize that some employees are approved to take FMLA leave for late arrivals, but we identified 24 employees using FMLA and

¹⁰ To develop a trend analysis, we examined three years of timesheet data. We analyzed timesheets for payroll years 2017 to 2019 as reported in SAP's Cross Application Time Sheet Database and used a list of FMLA-approved employees that the company generated as of May 1, 2020, to determine FMLA status. We focused on time that agreement employees claimed for FMLA or unpaid sick leave, independent of any other company-paid sick time they might have received.

unpaid sick leave for less than one hour for 31 to 190 days each at these locations, whereas only 6 employees showed similar trends at other locations.

These trends appear to be in line with the information managers reported during our interviews.

Observations

We identified factors in the company's administration of FMLA that may have contributed to the FMLA abuse. Accordingly, the company may want to consider undertaking a comprehensive review of their FMLA policies to strengthen the program. As part of this review, the company might consider the following:

- **Improve the FMLA data system and make FMLA data available to managers.** The company does not fully use its available data to monitor for FMLA abuse. The FMLA Unit's database does not include all the fields necessary to monitor these data, is not easily accessible, and is not integrated with other relevant company systems—including SAP's timekeeping records. In addition, the company does not have a "dashboard" or other centralized system that would allow managers to review the hours their employees' use FMLA leave.
- **Regularly monitor for potential abuse.** The company does not have automated controls to monitor patterns that may indicate FMLA abuse, such as employees who frequently take FMLA leave around weekends, holidays, or vacation time; or employees who use FMLA leave and claim overtime hours on the same day. In addition, the company does not have automated controls to identify employees using FMLA leave without approval, identify employees exceeding their FMLA limits, or ensure employees are properly recording their use of FMLA leave. HR officials stated that the abuse of FMLA leave is a component of an over-arching abuse of the company's attendance policy by agreement employees, and that the company currently does not have effective tools to monitor leave use and identify patterns of abuse. Given the company's limited resources, focusing on the locations with the high rates of approved leave may help the company take a more risk-based approach to monitoring its FMLA program.
- **Improve FMLA Unit response to field management.** Although HR department personnel acknowledged a need for improvements, they generally stated they were responsive to inquiries related to FMLA, but many of the managers we interviewed reported unresponsiveness by the FMLA Unit. These managers told us that the initial process—whereby the FMLA Unit authorized an employee for

FMLA leave—went smoothly and was timely, but that subsequent communication with the unit was problematic and slow—especially email inquiries submitted to Leave Management’s FMLA mailbox and inquiries involving suspected FMLA abuse. The managers stated they received more timely responses by calling into the HR service number, and that they have recently noticed significant improvements to response times.

- **Develop a process to routinely refer potential FMLA abuse to our office.** We did not find any independent referrals from the FMLA Unit to our office regarding FMLA abuse or fraud. Instead, we identified the abuse during unrelated investigations, where we collaterally discovered FMLA fraud. For example, during our interviews of FMLA Unit personnel for this report, we were informed of a California-based medical provider from whom many employees of the now-closed Riverside Call Center were receiving their FMLA certification forms. We recently learned that this provider had been previously indicted and convicted for health care fraud. Had we been alerted earlier to such a pattern at the time of the submissions, we could have proactively investigated this provider.
- **Provide training on proper use of FMLA.** Most of the timekeepers, supervisors and managers we interviewed stated they did not receive training or guidance for managing FMLA use and identifying potential abuse. Although the company has uploaded a readily available and current Leave and Absences Policy and related FMLA FAQs on its intranet site, the company does not have an FMLA training program for department or supervisory staff. Further, our interviews showed that managers did not feel supported when addressing FMLA concerns. Some told us they do not even try to hold employees accountable for potential FMLA misuse because they feared potential disciplinary repercussions or even litigation if they inadvertently did something incorrectly. HR officials told us that Amtrak Leave Management is unable to provide ongoing training to managers, supervisors and timekeepers at current staffing levels, but the company reports that an online training course is planned for development within the next fiscal year.
- **Utilize provisions allowing for more stringent certification of medical opinions.** The FMLA law and the company’s medical leave policy contain provisions allowing the company to seek recertification of an employee’s medical condition from the medical provider under certain circumstances, such as when absences occur after the employee’s approved FMLA leave has expired or when the company is alerted to potential FMLA abuse. Additionally, the company can

request a second or third medical opinion if it has reason to doubt the validity of the initial medical certification the employee provided. During our review, HR department personnel stated that the company rarely exercises its authority to use these provisions but has the capability to do so.

MANAGEMENT COMMENTS AND OIG ANALYSIS

In commenting on a draft of this report, the company's Executive Vice President/Chief Human Resources Officer acknowledged the importance of our observations and described the company's actions and plans to address them, which we summarize below.

- **Observation 1:** Management acknowledged the need to improve the FMLA data system and make FMLA data available to managers. The company approved a Leave Optimization Capital project for fiscal year 2021 that will include more robust tracking and communication systems and provide greater workforce planning capabilities.
- **Observation 2:** Management acknowledged the need to monitor for potential FMLA abuse. The planned Leave Optimization Capital project will assess how best to deliver absence administration data to managing organizations and provide opportunities to detect inconsistencies in use.
- **Observation 3:** Management acknowledged the need to improve FMLA Unit response to field management. HR will continue to identify opportunities for process improvement and will provide service level agreements for its employees so expectations are clear.
- **Observation 4:** Management acknowledged a need to refer potential FMLA abuse to our office. Prior to sharing confidential FMLA information with our office, HR will confer with the company's Law Department to determine the limits of its compliance obligations.
- **Observation 5:** Management acknowledged that training is needed on the proper use of FMLA leave. The Office of Learning and Development plans to create a computer-based training for managers.
- **Observation 6:** Management acknowledged that it must utilize provisions allowing for more stringent certification of medical opinions. HR will work with the Law Department to create appropriate criteria for use of a third medical opinion, to include assessing potential for abuse, risk, compliance, and cost.

We will assess these actions as we continue our work. For management's complete response, see Appendix D.

For Your Information

Appendix A provides additional information about how we conducted our work. Appendix B provides details about the 11 recent investigations we refer to in this report. Appendix C provides a list of the 51 locations with high percentages of employees approved for FMLA leave.

At the request of the appropriate officials, we are available to discuss the information referenced in this report. Please advise us within 45 days of the date of this report of any action taken on this matter. If you have any questions about this investigative report, please contact me at 202-906-4364 or George.Dorsett@amtrakoig.gov.

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Roger Harris, EVP/Chief Marketing and Revenue Officer
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Tracie Winbigler, EVP/Chief Financial Officer
Eleanor Acheson, EVP/General Counsel and Corporate Secretary
DJ Stadtler, EVP/Senior Advisor
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Keren Rabin, Deputy General Counsel
Mark Richards, Senior Director, Risk Management & Controls

APPENDIX A

THE ACTIVITIES WE CONDUCTED

To conduct this review and the associated investigations, we took the following actions:

- Used data analytics tools to compare data from SAP on employees' work locations and timekeeping records to the information in the FMLA Unit's FileMaker Pro database
- Interviewed department managers, supervisors, and timekeepers in the Central region in high-risk business units
- Interviewed FMLA Unit personnel
- Interviewed numerous witnesses and suspects
- Reviewed FMLA and personnel records
- Conducted physical surveillance in some investigations
- Coordinated investigative efforts with various prosecutors and other federal and local law enforcement agencies, when appropriate

APPENDIX B

INVESTIGATIVE RESULTS

This appendix presents details from our recent investigations involving misuse of FMLA and medical leave.

Open Cases

Active Investigation (Case Number: IL-20-0309-S)

This employee has been on extended FMLA leave, medical leave, or both since early 2019—immediately after the employee was scheduled to be disciplined for his role in a workplace violence incident. While the employee remains on medical leave, disciplinary actions for his workplace violence incident are delayed, and the company continues to pay for his health care benefits. This investigation is ongoing.

Active Investigation (Case Number: IL-20-0300-P)

Multiple employees appear to be routinely taking FMLA leave on the same days to operate an outside business. This investigation is ongoing.

Completed Cases

Violation of Company Policy by Coach Cleaner, New Orleans, Louisiana (OIG-I-2020-522)

In May 2020, we reported on an investigation that found a Coach Cleaner had violated company policy by failing to report his multiple arrests and criminal convictions for drug and weapons related charges. We also found that the employee had been on FMLA and medical leave for much of his tenure. Specifically, he was on a medical leave of absence or medical disqualification from [REDACTED], through [REDACTED], and again from [REDACTED], through the date of our report. In 2018, the employee was convicted for Illegally Carrying Weapons and Possession of Marijuana, and in January 2020, he was convicted for Possession of Stolen Things (Firearm) and Possession of Marijuana. The employee was on probation for these convictions.

On [REDACTED], the employee was terminated from the company following an administrative hearing.

Violation of Company Policy by On-Board Services Employee, New Orleans, Louisiana (OIG-I-2019-513)

In August 2019, we reported that an Amtrak On-Board Services employee violated company policies by advertising and accepting payments for a non-existent Amtrak charter excursion while out on extended FMLA/medical leave. We also determined that, while she was on medical leave, she was working at a local hospital and engaged in fraudulent conduct. Specifically, the employee defrauded at least 35 individuals who each sent her approximately \$400 to \$500 for what they believed was an excursion from New Orleans to New York City. The employee not only defrauded the company's customers; she also tarnished the company's brand in the New Orleans community.

On August 7, 2019, we executed a federal search warrant at the employee's residence and obtained evidence of her fraud scheme, leading to her arrest and prosecution under federal Wire Fraud charges. On October 9, 2019, after we issued our Report of Investigation and following a company hearing at which neither she nor her union representative appeared, the employee was terminated from the company for violating company ethics policies for her role in the scheme.

Violations of Company Policy by Assistant Passenger Conductor, Washington, D.C. (OIG-I-2020-521)

In April 2020, we reported that an Assistant Passenger Conductor violated company policies by providing false information on his employment application regarding his identity and submitting false FMLA documentation. The employee had been approved for FMLA leave on and off during his tenure with the company and, at the time of our report, had been on FMLA leave since [REDACTED].

The employee had been approved for either intermittent or continuous FMLA from [REDACTED] through [REDACTED]; [REDACTED] through [REDACTED]; and [REDACTED] through [REDACTED]. The company approved these requests based on medical certifications with doctors' signatures, but both doctors whose signatures appeared on the documents told us that they did not complete and sign these certifications.

The employee was arrested and convicted several times while working for the company. His convictions included receiving for purpose of prostitution, passport fraud, and violating federal probation.

On September 23, 2019, the employee was arrested for supervised release violations and, on December 5, 2019, he pleaded guilty to four counts involving probation

violations. On January 15, 2020, he was sentenced to ten months federal prison, and in February 2020, he went to prison. Because he did not notify the company and was already on leave, however, the company continued to pay the employee's and his family's premiums for their medical, dental, and vision benefits while he was in prison, as well as assuming the employee's contribution towards his benefits—costing the company approximately \$22,287.

On May 27, 2020, the employee was terminated from the company following an administrative hearing.

Violation of Company Policy by Carman/Welder, Beech Grove, Indiana (OIG-I-2020-519)

In April 2020, we reported that a Carman/Welder violated company policy by failing to disclose his criminal convictions occurring prior to and during his employment, including multiple drug- and/or alcohol-related arrests once employed. During his tenure, the employee's convictions included driving under the influence and disorderly conduct, and he served jail time on seven occasions. When we compared his company time sheets to his incarceration records, we found that the employee took FMLA and sick leave during three of his jail sentences.

On May 19, 2020, the employee was terminated from the company following an administrative hearing.

Violation of Company Policy by Electrician, Chicago, Illinois (OIG-I-2020-518)

In April 2020, we reported that an Electrician violated company policy by using FMLA leave to establish a business in order to engage in fraudulent activity. The employee was approved for continuous FMLA leave for a health condition beginning on [REDACTED] and ending on [REDACTED]. In early March 2018, he registered a business with the state of Illinois and opened a business checking account and credit card for this company. He then used these accounts to engage in credit card fraud, including the fraudulent transfer of \$11,944 from one identity theft victim's account to his own business account.

In February 2020, as a result of our investigation, the employee was indicted on charges of Financial Institution Fraud, Theft by Unauthorized Control over \$10,000, and Wire Fraud. The employee resigned from the company after the issuance of our Report of Investigation to the company. The criminal case is ongoing.

**Violation of Company Policy by Customer Service Representative, Joliet, Illinois
(OIG-I-2020-509)**

In January 2020, we reported that a Customer Service Representative violated company policy by engaging in outside employment while on FMLA leave. He was approved for intermittent FMLA leave from [REDACTED] to [REDACTED] to care for [REDACTED], to include one four-hour appointment per week and up to one time per month for up to seven days per episode. During this period, the employee took 193 hours (approximately 24 days) of FMLA leave. We surveilled him on two of the dates for which he claimed full 8-hour days of FMLA leave and observed him working at a restaurant he owned. Notably, on [REDACTED], he went on a continuous medical leave of absence, and a source told our agents that the employee was in the process of opening a second restaurant and needed additional time to work on his businesses.

The employee was initially dishonest with our agents and until we confronted him with our surveillance photographs and information indicating he had used FMLA leave to cater an event. He then admitted that he used FMLA leave to cater an event and that he “might have” conducted business for his restaurant on other days when he took FMLA leave.

On March 16, 2020, the employee was terminated from the company following an administrative hearing.

**Violation of Company Policy by Equipment Operator, Chicago, Illinois
(OIG-I-2019-508)**

In June 2019, we reported that an Equipment Operator violated company policy by engaging in outside employment while on FMLA leave. He was initially approved for continuous FMLA leave from [REDACTED] to [REDACTED], for “a serious health condition” that prevented him from performing the essential functions of his job. He was then approved for intermittent FMLA leave to care for [REDACTED] beginning on [REDACTED] for up to three times per month and up to one day per episode.

From [REDACTED] through [REDACTED], the employee used 29 days of FMLA leave. During this time, we found that he was operating a business that he incorporated in June 2016 that provides snow removal and other maintenance services. When we compared his leave dates with records from the National Oceanic and Atmospheric Administration (NOAA), we confirmed that there was snow, ice, rain, or melting snow on 17 of the 29 days that he took leave. In particular, there was snow the day of or day before all of the employee’s leave days during January and February 2019.

The employee admitted to our agents that he operated his business while on FMLA leave but claimed he took [REDACTED] with him while he plowed snow. He also told our agents that he did not know about the company's policy regarding FMLA leave as it related to outside employment.

On July 5, 2019, the employee resigned from the company prior to his disciplinary hearing.

**Violation of Company Policy by Lead Service Attendant, Chicago, Illinois
(OIG-I-2018-514)**

In August 2018, we reported that, during an investigation that resulted in a Lead Service Attendant's arrest for theft of company property, we determined that he applied for and was granted FMLA leave after management questioned him about missing remittances. We also determined that he was engaged in outside employment while on FMLA leave. The employee was on FMLA leave from [REDACTED] to [REDACTED], when the company notified him that he was medically disqualified (that is, still employed with the company, but in an inactive status) based on the length of his health-related absence and need for continued treatment. We learned that, during this time, he was employed as a security guard at a university, working from 7:00 a.m. to noon daily, Monday through Friday.

In August 2018, the employee was terminated from the company following an administrative hearing that he failed to attend.

**Violation of Company Policy by Service/Train Attendant, Chicago, Illinois
(OIG-I-2019-504)**

In February 2019, we reported that a Service/Train Attendant fraudulently used a Social Security number that belonged to a developmentally disadvantaged individual. She had previously worked for the company in Los Angeles until June 1995 and was rehired in 2016. She was on a continuous FMLA/medical leave of absence from [REDACTED] through [REDACTED] — the period of time we were conducting this investigation. Additionally, she was not cooperative with our agents when we interviewed her — she refused to provide any information about her fraudulent use of another person's Social Security number and walked out of the interview. As a result, we were unable to determine how she obtained the victim's Social Security number and used it to gain employment with the company.

The employee failed to attend a formal disciplinary hearing in May 2019, which was conducted in her absence. Shortly thereafter, she was terminated from the company.

APPENDIX C

LOCATIONS WITH HIGH PERCENTAGES OF EMPLOYEES APPROVED FOR FMLA LEAVE IN 2019

This appendix lists 51 company locations by geographical region that, in 2019, had 25 to 80 percent of employees approved for FMLA leave.¹¹

**Table 1. Central Region,
17 Locations with 25 Percent or More Employees Approved for FMLA Leave**

Location Name	City	State	Total Employees	Employees Approved for FMLA	Percent
Beech Grove Maintenance Facility	Beech Grove	IN	508	134	26.38
Chicago Locomotive Shop	Chicago	IL	234	65	27.78
Chicago Union Station	Chicago	IL	206	62	30.10
Miami Station	Miami	FL	168	48	28.57
New Orleans Station	New Orleans	LA	181	47	25.97
Brighton Park Facility	Chicago	IL	110	43	39.09
Charlotte Station	Charlotte	NC	61		
Material Control Facility	Indianapolis	IN	32		
Pontiac Crew Base	Pontiac	MI	31		
Jackson Michigan Station	Jackson	MI	32		
Battle Creek Station	Battle Creek	MI	19		
Orlando Station	Orlando	FL	11		
Chicago Track	Chicago	IL	12		
Ft Worth Station	Ft Worth	TX	12		
Ann Arbor Station	Ann Arbor	MI	6		
Tampa Station	Tampa	FL	7		
Dallas Station	Dallas	TX	8		

Source: OIG analysis of company data on approved FMLA leave

¹¹ We excluded FMLA data for locations where fewer than five employees reported time.

**Table 2. Western Region,
21 Locations with 25 Percent or More Employees Approved for FMLA Leave**

Location Name	City	State	Total Employees	Employees Approved for FMLA	Percent
Los Angeles Offices	Los Angeles	CA	772	196	25.39
California Reservation Sales Office	Riverside	CA	282	77	27.30
Metrolink San Bernardino Crew Base	San Bernardino	CA	48	█	█
Metrolink Lancaster Crew Base	Lancaster	CA	35	█	█
Fullerton Station	Fullerton	CA	16	█	█
Metrolink Riverside Station	Riverside	CA	19	█	█
Metrolink Los Angeles Taylor Yard Crew Base	Los Angeles	CA	26	█	█
Emeryville Station	Emeryville	CA	9	█	█
Santa Ana Station	Santa Ana	CA	5	█	█
Oceanside Station	Oceanside	CA	7	█	█
Los Angeles Commissary	Los Angeles	CA	8	█	█
Davis Station	Davis	CA	5	█	█
Metrolink San Bernardino Crew Base	San Bernardino	CA	6	█	█
Anaheim Station	Anaheim	CA	6	█	█
Eugene Station	Eugene	OR	9	█	█
Oxnard Station	Oxnard	CA	5	█	█
Stockton Station	Stockton	CA	5	█	█
Everett Station	Everett	WA	5	█	█
Metrolink Moorpark Crew Base	Moorpark	CA	6	█	█
Whitefish Station	Whitefish	MT	6	█	█
Tacoma Station	Tacoma	WA	7	█	█

Source: OIG analysis of company data on approved FMLA leave

Certain Information in this report has been redacted due to its sensitive nature.

**Table 3. Eastern Region,
13 Locations with 25 Percent or More Employees Approved for FMLA Leave**

Location Name	City	State	Total Employees	Employees Approved for FMLA	Percent
Philadelphia Reservation and Sales Office	Philadelphia	PA	477	197	41.30
Transportation Building	Washington	DC	538	143	26.58
Bear Car Shop	Bear	DE	356	93	26.12
Union Station	Washington	DC	220	59	26.82
Consolidated National Operations Center	Wilmington	DE	177	49	27.68
New York Division Headquarter	New York	NY	169	46	27.22
Baltimore Station	Baltimore	MD	102	32	31.37
Trenton Station	Trenton	NJ	44		
Penn Station	New York	NY	32		
Two Boston South Station	Boston	MA	44		
Newport News Station	Newport News	VA	13		
Wilmington Station	Wilmington	DE	6		
Alexandria Station	Alexandria	VA	8		

Source: OIG analysis of company data on approved FMLA leave

APPENDIX D

MANAGEMENT COMMENTS

NATIONAL RAILROAD PASSENGER CORPORATION

Memo



Date	September 21, 2020	From	Qiana Spain, EVP CHRO <i>Qiana Spain</i>
To	George Dorsett, Assistant Inspector General, Investigations	Department	Human Resources
cc	William J. Flynn, President & CEO Eleanor Acheson, EVP General Counsel Stephen Gardner, Sr. EVP COCO Carol Hanna, VP Controller Roger Harris, EVP Marketing & Revenue Scot Naparstek, EVP COO Dennis Newman, EVP Strategy & Planning Steven Predmore, EVP CSO Mark Richards, Sr. Director Amtrak Risk & Controls Tracie Winbigler, EVP CFO Christian Zacariassen, EVP CIO Denyse Nelson- Burney, AVP Total Rewards & HR Compliance		

Subject Management Response to *Management Information Report: Observations and Opportunities to Detect and Reduce FMLA Abuse and Improve Efficiencies in the Program (OIG-I-2020-XXX)*

This memorandum provides Amtrak's response to the draft management advisory report titled, "*Management Information Report: Observations and Opportunities to Detect and Reduce FMLA Abuse and Improve Efficiencies in the Program*". Management appreciates the opportunity to respond to the OIG's observations. The observations provided meaningful input and we will initiate actions to address each in a timely manner, as further described below.

Observation 1:

Improve the FMLA data system and make FMLA data available to managers.

The company does not fully use its available data to monitor for FMLA abuse. The FMLA Unit's database does not include all the fields necessary to monitor these data, is not easily accessible, and is not integrated with other relevant company systems—including SAP's timekeeping records. In addition, the company does not have a "dashboard" or other centralized system that would allow managers to review the hours their employees' use FMLA leave.

Management Response/Action Plan: Management agrees with this observation. An FY21 Leave Optimization Capital project has been approved and funded. It will assess how best to deliver absence administration to the organization including more robust tracking and communication systems which will provide greater transparency for and workforce planning capabilities.

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Certain Information in this report has been redacted due to its sensitive nature.

NATIONAL RAILROAD PASSENGER CORPORATION

Responsible Amtrak Official(s):

Denyse Nelson-Burney, AVP Total Rewards and Compliance
LaToya Warner, Sr. Manager HR Business Services

Target Completion Date: September 30, 2021

Observation 2:**Regularly monitor for potential abuse.**

The company does not have automated controls to monitor patterns that may indicate FMLA abuse, such as, employees who frequently take FMLA leave around weekends, holidays, or vacation time; or employees who use FMLA and claim overtime hours on the same day. In addition, the company does not have automated controls to identify employees using FMLA leave without approval, identify employees exceeding their FMLA limits, or ensure employees are properly recording their use of FMLA leave. HR officials stated that the abuse of FMLA leave is a component of an over-arching abuse of the company's attendance policy by agreement employees, and that the company currently does not have effective tools to monitor leave use and identify patterns of abuse. Given the company's limited resources, focusing on the locations with the high rates of approved leave may help the company take a more risk-based approach to monitoring its FMLA program.

Management Response/Action Plan: Management agrees with this observation. An FY21 Leave Optimization Capital project has been approved and funded. It will assess how best to deliver absence administration to the organization including more robust tracking and communication systems which will provide greater transparency and opportunities to detect inconsistencies in usage.

Responsible Amtrak Official(s):

Denyse Nelson-Burney, AVP Total Rewards and Compliance
LaToya Warner, Sr. Manager HR Business Services

Target Completion Date: September 30, 2021

Observation 3:**Improve FMLA Unit response to field management.**

Although HR department personnel acknowledged a need for improvements, they generally stated they were responsive to inquiries related to FMLA, but many of the managers we interviewed reported unresponsiveness by the FMLA Unit. The managers told us that the initial process—whereby the FMLA Unit authorized an employee for FMLA leave—went smoothly and was timely, but that subsequent communication with the unit was problematic and slow—especially relative to email inquiries submitted to Leave Management's FMLA mailbox and inquiries involving suspected FMLA abuse. The managers stated they received more timely responses by calling into the HR service number, and that they have recently noticed significant improvements to response times.

NATIONAL RAILROAD PASSENGER CORPORATION

Management Response/Action Plan: Management agrees with this observation. Human Resources will continue to identify opportunities for process improvement and will provide service level agreements, so expectations are clear.

Responsible Amtrak Official(s):

Denyse Nelson-Burney, AVP Total Rewards and Compliance
LaToya Warner, Sr. Manager HR Business Services

Target Completion Date: March 31, 2021

Observation 4:

Develop a process to routinely refer potential FMLA abuse to our office.

We did not find any independent referrals from the FMLA Unit to our office regarding FMLA abuse or fraud. Instead, the identification of abuse was typically during our investigations of other violations of company policies. For example, during our interviews of FMLA Unit personnel for this report, we were informed of a California-based medical provider from whom many of the employees of the now-closed Riverside Call Center were receiving their FMLA certification forms. We recently learned that this provider had been previously indicted and convicted for health care fraud. Had we been alerted earlier to such a pattern at the time of the submissions, we could have proactively investigated this provider.

Management Response/Action Plan: Management agrees with this recommendation. Human Resources will confer with the Law Department to determine the limits of Amtrak's compliance obligations relative to sharing confidential FMLA information with the OIG.

Responsible Amtrak Official(s):

Denyse Nelson-Burney, AVP Total Rewards and Compliance
LaToya Warner, Sr. Manager HR Business Services

Target Completion Date: November 1, 2020

Observation 5:

Provide training on proper use of FMLA.

Most of the timekeepers, supervisors and managers we interviewed stated they did not receive training or guidance for managing FMLA use and identifying potential abuse. Although the company has uploaded a readily available and current Leave and Absences Policy and related FMLA FAQs on its intranet site, the company does not have an FMLA training program for department or supervisory staff. HR officials told us that Amtrak Leave Management is unable to provide ongoing training to managers, supervisors and timekeepers at current staffing levels, but the company reports that an online training course is planned for development within the next fiscal year. Our interviews showed managers did not feel supported when addressing FMLA concerns. Some told us they do not even try to hold employees accountable for potential

NATIONAL RAILROAD PASSENGER CORPORATION

FMLA misuse because they feared potential disciplinary repercussions or even litigation if they inadvertently do something incorrectly.

Management Response/Action Plan: Management agrees with this observation. We have engaged Learning and Development to create a computer-based training for managers.

Responsible Amtrak Official(s):

Denyse Nelson-Burney, AVP Total Rewards and Compliance
LaToya Warner, Sr. Manager HR Business Services

Target Completion Date: September 30, 2021

Observation 6:

Utilize provisions allowing for more stringent certification of medical opinions.

The FMLA law and the company's medical leave policy contain provisions allowing the company to seek recertification of an employee's medical condition from the medical provider under certain circumstances, such as when absences occur after the employee's approved FMLA leave has expired or when the company is alerted to potential FMLA abuse. Additionally, the company can request a second or third medical opinion if it has reason to doubt the validity of the initial medical certification the employee provided. During our review, however, HR department personnel stated the company rarely exercises its authority to use these provisions, but that it has the capability to do so.

Management Response/Action Plan: Management agrees with this observation. Human Resources will work with the law Department to create appropriate criteria for use of a third opinion depending on potential for abuse, unusual or inconsistent patterns, risk, compliance, and cost.

Responsible Amtrak Official(s):

Denyse Nelson-Burney, AVP Total Rewards and Compliance
LaToya Warner, Sr. Manager HR Business Services

Target Completion Date: November 30, 2020