

TREASURY INSPECTOR GENERAL FOR TAX ADMINISTRATION



Improvements Are Needed When Documenting and Monitoring Employee Leave

March 16, 2022

Report Number: 2022-10-025

HIGHLIGHTS: Improvements Are Needed When Documenting and Monitoring Employee Leave

Final Audit Report issued on March 16, 2022

Report Number 2022-10-025

Why TIGTA Did This Audit

The IRS Commissioner requested that TIGTA review how Leave Without Pay and Absence Without Leave (AWOL) are tracked and approved. The overall objective of this audit was to determine whether controls are sufficient to ensure that leave taken by IRS employees is authorized, appropriate, and properly approved.

Impact on Tax Administration

Federal employees have a variety of leave options under the Federal employee leave system. Certain types of leave options have a higher risk for abuse because the leave may be unplanned and/or taken for unintended or unpermitted reasons. High rates of absenteeism could affect IRS performance and service to taxpayers.

What TIGTA Found

Automated procedures and managers' knowledge of leave policies generally prevented the overuse of the most common types of leave. For example, the controls prevented the accrual of annual and sick leave hours after employees reached 80 hours of nonpaid status and limited the amount of sick leave taken for family care and for the Family and Medical Leave Act (FMLA).

However, managers and employees did not follow procedures for requesting and approving FMLA for 44 of 50 judgmentally sampled cases. In addition, procedures were not followed for 24 (80 percent) of 30 randomly sampled cases for emergency leave offered due to the Coronavirus Disease 2019 pandemic. TIGTA estimates that managers and employees did not follow procedures for 3,401 Coronavirus Disease 2019 leave cases. Managers interviewed believed there was insufficient training and communication about the leave policies.

Additionally, our review of FMLA documentation determined that 22 (9 percent) of the 240 randomly sampled IRS employees who took FMLA leave had left the IRS and the FMLA documents were destroyed. IRS guidance instructs managers to destroy all documents except the last four appraisals and the last performance plan when employees separate from the IRS. However, Federal law requires FMLA records to be kept and available for inspection for three years regardless of whether the employees separated from service.

Finally, the IRS could improve monitoring of leave patterns to identify potential misuse. For example, TIGTA identified IRS employees who took extensive administrative leave, AWOL, or sick leave in conjunction with weekends or Federal holidays. IRS management could not determine if the leave was appropriate; however, the results show the importance of monitoring leave for potential misuse. The IRS Human Capital Office conducts an annual review of administrative leave each calendar year. The IRS could conduct similar reviews to analyze other leave types at the employee and business unit levels to reveal patterns of potential misuse. Alerting managers of this behavior could help ensure that employees comply with IRS policies.

What TIGTA Recommended

TIGTA recommended that the IRS: ensure that guidance for requesting and approving FMLA is clear and consistent; review the delivery methods of the available guidance and other resources for approving and administering leave; revise the guidance for FMLA records retention; clarify AWOL guidance; and conduct focused audits on leave types that are complex or that may expose the IRS to risk.

IRS management agreed or partially agreed with all six recommendations. Management's planned corrective actions did not sufficiently address the last recommendation to conduct focused audits. TIGTA believes conducting focused audits could help management identify patterns of potential leave misuse.



TREASURY INSPECTOR GENERAL
FOR TAX ADMINISTRATION

U.S. DEPARTMENT OF THE TREASURY

WASHINGTON, D.C. 20220

March 16, 2022

MEMORANDUM FOR: COMMISSIONER OF INTERNAL REVENUE

A handwritten signature in blue ink that reads "Michael E. McKenney".

FROM: Michael E. McKenney
Deputy Inspector General for Audit

SUBJECT: Final Audit Report – Improvements Are Needed When Documenting
and Monitoring Employee Leave (Audit # 202110021)

This report presents the results of our review to determine whether controls are sufficient to ensure that leave taken by Internal Revenue Service (IRS) employees is authorized, appropriate, and properly approved. This review is part of our Fiscal Year 2022 Annual Audit Plan and addresses the major management and performance challenge of *Enhancing Security of Taxpayer Data and Protection of IRS Resources*.

Management's complete response to the draft report is included as Appendix V.

Copies of this report are also being sent to the IRS managers affected by the report recommendations. If you have any questions, please contact me or Bryce Kisler, Acting Assistant Inspector General for Audit (Management Services and Exempt Organizations).

Table of Contents

<u>Background</u>	Page 1
<u>Results of Review</u>	Page 4
<u>Automated Procedures and Managers’ Knowledge of Leave Policies Generally Prevented Overuse of the Most Common Types of Leave</u>	Page 4
<u>Procedures for Approving Leave Were Not Always Followed</u>	Page 4
<u>Recommendations 1 and 2:</u>	Page 8
<u>Employee Leave Records Were Not Maintained in Accordance With the Law</u>	Page 9
<u>Recommendations 3 and 4:</u>	Page 10
<u>Monitoring of Employee Leave Patterns Could Be Improved to Identify Potential Misuse</u>	Page 10
<u>Recommendations 5 and 6:</u>	Page 15
Appendices	
<u>Appendix I – Detailed Objective, Scope, and Methodology</u>	Page 16
<u>Appendix II – Outcome Measures</u>	Page 18
<u>Appendix III – Form 9611, <i>Application for Leave Under the Family and Medical Leave Act</i></u>	Page 20
<u>Appendix IV – General Records Schedule Items 140 and 141</u>	Page 21
<u>Appendix V – Management’s Response to the Draft Report</u>	Page 22
<u>Appendix VI – Abbreviations</u>	Page 28

Background

Federal employees have a variety of leave options under the Federal employee leave system. The Internal Revenue Service (IRS) Commissioner requested that we review the management of Absence Without Leave (AWOL) and Leave Without Pay (LWOP). We also reviewed other types of leave that had potential for abuse, including Family and Medical Leave Act of 1993 (FMLA) leave, sick leave, blood donation administrative leave, and new leave available to employees in response to the Coronavirus Disease 2019 (COVID-19) pandemic.¹ IRS work units with high absenteeism could face difficulties meeting customer service and productivity goals. Figure 1 shows the higher risk leave options available to IRS employees and within the scope of this review.

Figure 1: Examples of Various Employee Leave Options

Type	Requirements	Limitations	Required Documentation
 Sick Leave	Incapacitation of employee or a family member due to medical or mental illness.	IRS employees are limited to the sick hours accumulated. Family care is limited to 104 hours during a leave year for general care and 480 hours for a serious health condition.	May be required to provide medical certification after three consecutive days of sick leave or when requested.
 Blood Donation	IRS employees may not be compensated for their blood donations (they must be volunteered).	Up to four hours of administrative leave for each blood donation. Additional time may be granted by the manager not to exceed remaining hours in the work day.	Employee must request and supervisor must approve in advance.
 Leave Without Pay (LWOP)	Managerial discretion based on the needs of the employee and the interests of the Service. ¹	Up to one year after five years of Federal service.	Employee must request and be approved by management based on the needs of the employee and interests of the IRS.
 Family Medical Leave Act (FMLA)	Specified family and medical needs. Must have at least 12 months of Federal service.	Full-time IRS employees are limited to 480 hours of FMLA within a 12-month period. ² For part-time employees, leave is based on average monthly hours worked multiplied by twelve.	Documentation that contains all the required information, including medical certificates or equivalent indicating a serious health condition.
 Absence Without Leave (AWOL)	A non-pay status that covers an absence from duty which has not been approved.	No limitations, however, AWOL is a conduct issue and could be the basis for taking disciplinary action.	Union employees must be notified in writing through an official letter that their supervisor has charged them with AWOL status; non-union employees are notified through email.

¹ Approval of LWOP is an entitlement for disabled veterans medical care, *Family and Medical Leave Act* and claims under workers compensation due to workplace injury or illness.

² Employees may elect to substitute paid leave while invoking FMLA.

Source: *Internal Revenue Manuals (IRM) 6.610.1 (October 12, 2016) and 6.630.1 (January 6, 2017), the National Agreement, and Office of Personnel Management (OPM), Addressing AWOL.*

¹ Pub. L. No. 103-3.

Improvements Are Needed When Documenting and Monitoring Employee Leave

In response to the COVID-19 pandemic, Congress passed legislation granting new leave options for Federal employees. For example, in April 2020, the Emergency Paid Sick Leave (EPSL) Act² provided employees affected by COVID-19 with an additional 80 hours of EPSL that could be taken up until December 31, 2020.³ IRS employees were not required to use any other paid leave before using EPSL. Figure 2 shows the major provisions of the EPSL Act.

Figure 2: EPSL Act Key Provisions

Provision	Rate of Pay	Maximum Compensation Limit Reached	Required Documentation
 Emergency Paid Sick Leave for Self-Care	Regular rate of pay, not to exceed \$511 per day and a maximum of \$5,110.	IRS employees may elect to complete the remaining hours with their own accrued leave (i.e., sick leave, annual leave, or other paid time off), or LWOP.	<ul style="list-style-type: none"> ✓ IRS employee name. ✓ Date(s) for which leave is requested. ✓ Qualifying reason. ✓ Oral or written statement they are unable to work. ✓ Name of the government entity that issued the quarantine or isolation order. ✓ Name of the health care provider who advised the employee to self-quarantine due to concerns related to COVID-19.
 Emergency Paid Sick Leave for Care of Others	2/3 rate of pay, not to exceed \$200 per day and a maximum of \$2,000.	IRS employees will incur a debt for any amount that exceeds 2/3 of their regular rate of pay.	<ul style="list-style-type: none"> ✓ All the required documentation for the Emergency Paid Sick Leave for Self-Care stated above. ✓ Name of child or individual being cared for. ✓ Name of school, place of care, or child care provider that has closed or become unavailable. ✓ Indication that no other suitable person will be caring for the child during the period of taking EPSL.

Source: IRS Human Capital Office (HCO), Interim Guidance Regarding Emergency Paid Sick Leave Act, April 22, 2020.

Additionally, in October 2020, the IRS issued a Service-wide policy that grants employees up to 20 hours of excused absence to evacuated, telework-eligible employees with caregiving responsibilities due to COVID-19 (hereafter referred to as Caretaker Leave).⁴ IRS employees must exhaust all reasonable scheduling flexibilities to use this leave. The request must be written, requested in advance, and include:

- The days, number of hours, and time frame requested.
- Information regarding the child, children, or other family members for which they have caregiving responsibilities. The information must include:
 - Name and age of the child, children, or other family member.

² Pub. L. No. 116-127, 134 Stat. 178. The EPSL Act is a provision of the Families First Coronavirus Response Act.

³ Part-time employees are entitled to up to the number of emergency paid sick leave hours equal to the average number of hours worked per pay period.

⁴ IRS HCO, Memorandum HCO-06-0920-0020, *Interim Guidance for Granting Excused Absence to Evacuated, Telework-Eligible Employees with Caregiving Responsibilities due to COVID-19* (October 13, 2020).

Improvements Are Needed When Documenting and Monitoring Employee Leave

- Nature of the relationship.
- Name of the school, childcare provider, or place of care that is closed or not available.
- Employee statement confirming all reasonable scheduling flexibilities were considered and exhausted, the employee cannot fulfill their tour of duty due to caregiving responsibilities, and no other suitable person is available to provide caregiving duties during the time period during which the excused absence is requested.

IRS managers must make case-by-case determinations, based on individual circumstances and available scheduling flexibilities, verifying that all reasonable scheduling flexibilities have been exhausted prior to granting excused absence.

Tracking and monitoring of employee leave

IRS employees enter their time and leave into the Single Entry Time Reporting (SETR) system. The SETR system provides time and attendance data to the National Finance Center, which is used to produce the employee's pay check. The IRS uses unique organization function and program codes to track IRS employees' use of leave.⁵ IRS employees must observe designated duty hours; comply with leave rules, regulations, and procedures; and use leave in accordance with its intended purpose. IRS management must administer leave procedures in compliance with applicable laws, regulations, and policies. Figure 3 shows the main responsibilities for employees and managers.

Figure 3: Employee and Manager Leave Responsibilities



Source: IRM 6.630.1 (January 6, 2017), and IRS HCO Memorandum HCO-06-0420-0007.

⁵ Organization Function and Program codes are the time codes entered into the SETR system that identify what type of leave the employee is taking.

Results of Review

Automated Procedures and Managers' Knowledge of Leave Policies Generally Prevented Overuse of the Most Common Types of Leave

The controls built into the SETR time and attendance system and requirement for managerial approval of leave requests generally prevented IRS employees from taking more leave than authorized. For example, the SETR system prevented the accrual of annual and sick leave hours after employees reached 80 hours of nonpaid status, and managers' reviews of leave requests limited the amount of sick leave taken for family care and for the FMLA.

In addition, the managers we interviewed during this review were generally aware of the procedures for administering common types of leave, such as sick leave. For example, the managers knew employees needed to submit documentation when having three or more consecutive days of sick leave. Additionally, the majority of managers tracked their employees' sick leave usage and were generally aware of employees' work status.

Annual and sick leave hours were not credited to nonworking employees' leave accounts after 80 hours of unpaid work status

After an employee reaches 80 hours of nonpaid status, they may not accrue annual and sick leave hours until they return to work. IRS records showed that 7,922 IRS employees accumulated 80 hours of nonpaid status at least one time from January 6, 2019, through January 4, 2020.⁶ We reviewed a judgmental sample of 75 employees and did not identify any instances for which annual and sick leave were credited to the employee's individual leave account after reaching 80 hours in nonpaid status.⁷

Sick leave and FMLA hours were limited

Employees are limited to an annual maximum of 104 hours of sick leave for general family care and 480 hours of sick leave for the care of family members with a serious health condition. Additionally, employees are limited to 480 hours of FMLA leave during a 12-month period. IRS records showed that, between January 6, 2019, and January 4, 2020, 7,772 (99 percent) of 7,774 employees who took sick leave to care for a family member did not exceed the maximum of 104 hours or 480 hours, and 6,572 (97 percent) of 6,749 employees did not exceed the maximum of 480 FMLA hours.⁸

Procedures for Approving Leave Were Not Always Followed

The procedures for approving leave were not always followed when employees requested less common leave types, such as FMLA leave, and the new leave provided for COVID-19 (EPSL and

⁶ We reviewed employees who took FMLA leave, LWOP, or AWOL.

⁷ A judgmental sample is a nonprobability sample, the results of which cannot be used to project to the population.

⁸ In certain circumstances, managers must deny employee FMLA leave requests to prevent them from exceeding the 480-hour limit.

Caretaker Leave). To receive these types of leave, documentation is required to support the reason why the employee is taking the leave.

We interviewed 19 IRS managers, and they all stated that they do not believe they were given sufficient training or adequate communication about leave policy.⁹ Additionally, they stated that they would like annual training on leave policy. The HCO offers guidance for administering leave, but managers must be proactive about using it.

When IRS employees are absent from work, it could have a negative effect on tax administration. For example, if leave becomes excessive within the working group, the group may be unable to provide top-quality, timely service to taxpayers because the work is performed by fewer employees. Additionally, employee morale could also be affected, as the working employees may have increased burden. Furthermore, there are financial costs to the IRS because employees are being paid while not working when using EPSL and Caretaker Leave. The IRS pays the health insurance premiums for employees in paid and unpaid leave status.¹⁰

FMLA leave

IRS records showed that 6,885 employees took FMLA leave from September 30, 2018, through October 24, 2020 (108 weeks).¹¹ We selected a judgmental sample of 50 employees who took FMLA leave and determined that six had documentation that fully supported the request and approval of FMLA leave.¹² For the remaining 44 employees, we could not determine if the employee requested or had approval for the leave because of missing or incomplete documentation.¹³ Employees and managers did not follow procedures because documentation is required for these leave options even if the employee invokes the leave verbally. Some of the documentation for the 44 employees had multiple issues.

Requesting and Approving FMLA. Of the 50 sampled employees, 16 did not have documentation showing that they requested leave as required.¹⁴ Additionally, 21 employees did not have documentation showing approval for the leave. Documentation with the required information must be provided for FMLA leave.

There are unclear instructions that may cause confusion among employees and managers. For example, the National Agreement gives Bargaining Unit employees the option to request FMLA leave electronically, orally, or in writing. HCO guidance states that the IRS is required to provide the employee Form 9611, *Application For Leave Under the Family and Medical Leave Act*, but

⁹ The majority of managers we interviewed had an employee who potentially misused leave.

¹⁰ Employees have the option to elect to have the IRS pay their portion of the health insurance premiums. The employee is required to pay back their portion of the health insurance premium when returning to active duty status.

¹¹ The 6,885 includes employees who took more than 30 hours of FMLA-LWOP from September 30, 2018, to October 24, 2020, and they could have more than one FMLA leave requests during the time period. We reviewed documentation for only this time period and for FMLA-LWOP. Employees can also charge time for FMLA-Annual Leave, FMLA-Sick Leave, and FMLA-Military Leave. We refer to FMLA leave for FMLA-LWOP. There were 107 weeks and six days between September 30, 2018, and October 24, 2020.

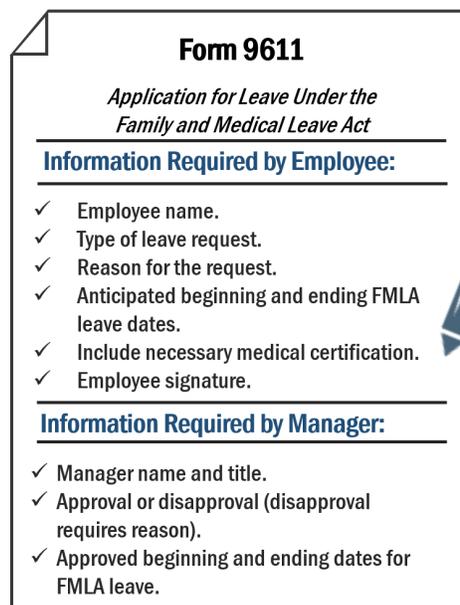
¹² A judgmental sample is a nonprobability sample, the results of which cannot be used to project to the population. In some cases, multiple procedures were not followed.

¹³ If documentation did not support leave taken during the time period, we considered the employee's leave to be missing documentation for the request; lacking medical documentation; and lacking managerial approval.

¹⁴ These employees could have orally requested leave, but they must subsequently provide documentation.

the employee is not required to use the form.¹⁵ However, the IRM requires IRS employees to submit Form 9611 when requesting FMLA leave.¹⁶ The IRM also states that, if there are conflicting instructions between the IRS and the National Agreement, the National Agreement takes precedence.¹⁷ HCO management stated that, while employees may invoke FMLA leave requests orally, they must subsequently provide documentation. However, unlike the interim guidance for Paid Parental Leave, which clearly explains that documentation (*i.e.*, Forms 9611-A and 9611-B) is required even when requests are oral, there is no further guidance for FMLA leave approval and documentation.¹⁸

If filled out properly and completely, Form 9611 provides employees the opportunity to provide information for requesting FMLA leave, such as the reason for the request, the anticipated dates of the leave, and the required medical certificates. The information provided also helps managers determine eligibility for leave approval. However, for 36 of the 50 sampled employees, we determined that at least one Form 9611 submitted had missing information. For example, 29 did not have the actual dates of the leave and 17 did not have the manager's signature of approval/disapproval. Employees have the option to submit medical documentation directly to medical professionals for approval, which can take weeks to process. Managers may have not always remembered to go back and sign their approval on Form 9611 upon receiving written approval from the medical professionals.



Form 9611
Application for Leave Under the Family and Medical Leave Act

Information Required by Employee:

- ✓ Employee name.
- ✓ Type of leave request.
- ✓ Reason for the request.
- ✓ Anticipated beginning and ending FMLA leave dates.
- ✓ Include necessary medical certification.
- ✓ Employee signature.

Information Required by Manager:

- ✓ Manager name and title.
- ✓ Approval or disapproval (disapproval requires reason).
- ✓ Approved beginning and ending dates for FMLA leave.

Medical Certificates. Medical certification providing all the information specified on Form WH-380, *Certification of Health Care Provider for Employee's Serious Health Condition under the Family and Medical Leave Act*, must be submitted if the FMLA involves a serious health condition. Employees should indicate this condition by checking either box 8c or 8d on Form 9611. However, 17 of the sampled employees did not submit medical certificates with their requests even though they checked box 8c or 8d. IRS employees may be confused because the IRM requires the employee to submit medical documents only at the request of the manager.¹⁹ However, the National Agreement, HCO supplemental guidance, and the instructions on Form 9611 all state that medical documentation is required for serious medical conditions.

Although the HCO provides online resources that managers may use to research leave policy, managers must be proactive about using it. Furthermore, there are no agency-wide instructions

¹⁵ HCO, *Family Medical Leave Act (FMLA) Medical Review Process FAQs*.

¹⁶ IRM 6.630.1.9.7(2) (January 6, 2017).

¹⁷ IRM 6.630.1.1(4) (January 6, 2017).

¹⁸ IRS HCO, Memorandum HCO-06-0920-0022, *Interim Guidance for Paid Parental Leave* (October 1, 2020). Paid Parental Leave is a paid substitute for unpaid FMLA leave. Employees must use Paid Parental Leave within the 12-month period from the date of birth, adoption, or foster placement of a child.

¹⁹ IRM 6.630.1.9.7(2) (January 6, 2017).

or guidance available for employees and managers to use when completing, processing, and approving Forms 9611. All of these factors contribute to human error.

Employees remain eligible for Federal Employees Health Benefits while on leave. If the employee is approved for FMLA leave without complete or proper documentation, the IRS may be improperly paying both the employer's and employees' portion of the health insurance premiums for an employee who may not qualify.

COVID-19 leave

IRS records showed that employees took EPSL on 4,251 occasions from April 12, 2020, through October 24, 2020.²⁰ We selected a random sample of 30 requests and reviewed the associated supporting documentation. We determined that IRS employees and management did not follow the procedures for requesting and approving EPSL for 24 requests (80 percent) because the requests did not contain the required documentation. In some cases, multiple procedures were not followed. Figure 4 summarizes the documentation missing from the leave requests.

Figure 4: Sample EPSL Requests Without Required Documentation²¹



Source: EPSL documentation.

Based on our sample results, we estimate that 3,401 requests did not provide the required documentation when requesting EPSL.²²

Additionally, IRS records showed that 286 employees took Caretaker Leave from October 4, 2020, through October 24, 2020. We reviewed a judgmental sample of 10 employees and determined that six cases had missing documentation, such as a statement that no other suitable person could perform caregiving (four cases), no manager approval (four cases), and no record of the name of the person under the employee's care or the school/child care facility closed (three cases).²³

²⁰ During this time, 3,787 unique employees took EPSL. Some employees took EPSL multiple times.

²¹ Some cases had more than one missing document.

²² Our original sample was selected using a 90 percent confidence interval, a 50 percent error rate, and a ± 5 percent precision. We reduced our sample from 264 to 30 cases because of IRS resource constraints. When projecting the results of our statistical sample, we are 90 percent confident that the actual total amount is between 2,736 and 3,863 (2,736 and 3,863 represent the lower and upper range, respectively).

²³ A judgmental sample is a nonprobability sample, the results of which cannot be used to project to the population. Some cases had more than one missing document.

In April 2020, the HCO issued guidance on the administration of the EPSL.²⁴ This guidance stated that IRS employees may receive EPSL if they are unable to work or telework because of being diagnosed with COVID-19 or being a caregiver of someone who has been affected by COVID-19.²⁵ Additionally, in October 2020, the HCO issued guidance on how to administer Caretaker Leave.²⁶ This guidance stated that IRS employees can be granted up to 20 hours per pay period of excused absence.²⁷

Managers have discretionary authority when approving leave for Caretaker Leave. IRS management stated that interim guidance for Caretaker Leave was used as an outline for a conversation with the employee about the leave. Documentation was at the manager's discretion, and they did not always require it because of empathy with the employees who needed to take leave. Furthermore, interviews with IRS managers indicated that, similar to FMLA leave, they believed there was insufficient training for the new leave policies for COVID-19.

The IRS Human Capital Officer should:

Recommendation 1: Ensure that the IRM and additional guidance available to employees and managers for requesting and approving FMLA leave is clear and consistent.

Management's Response: The IRS agreed with this recommendation and started a preliminary review of the Absence and Leave IRM. The IRS will identify and provide clarifying guidance to managers and employees in the IRM, where applicable.

Recommendation 2: Work with the business units to review the delivery methods of available training, guidance, and other resources to managers to ensure that managers comply with, and are aware of, the procedures for approving and administering leave options.

Management's Response: The IRS partially agreed with the recommendation. The HCO will continue to serve as the authoritative resource to managers for all phases of leave administration, including interpretation of the National Agreement for bargaining unit employees and the IRM for non-bargaining unit employees. However, the IRS disagreed with the word "ensure," because the HCO is not responsible for supervising all managers across the IRS business units. The HCO will (1) provide advice, guidance, and outreach training to management on various leave administration topics; (2) conduct a quality assurance review of the administrative leave internal review process; (3) conduct a risk analysis of the internal controls currently in place for the overall Leave Program; and (4) continue to review focused leave reports and coordinate with business unit representatives to address compliance issues, as needed.

Office of Audit Comment: The IRS's planned corrective actions meet the intent of the recommendation and should help ensure that managers comply with, and are aware of, the procedures for approving and administering leave options.

²⁴ IRS HCO, Memorandum HCO-06-0420-0007, *Interim Guidance for Regarding Emergency Paid Sick Leave Act* (Apr. 2020).

²⁵ See Figure 2 for a list of required documentation.

²⁶ IRS HCO, Memorandum HCO-06-0920-0020, *Interim Guidance for Granting Excused Absence to Evacuated, Telework-Eligible Employees with Caregiving Responsibilities due to COVID-19* (Oct. 2020).

²⁷ See Figure 2 for a list of required documentation.

Employee Leave Records Were Not Maintained in Accordance With the Law

Our review of FMLA documentation determined that 22 (9 percent) of the 240 sampled IRS employees who took FMLA leave had left the IRS, and IRS management stated that the FMLA documents were destroyed.²⁸ Manager's guidance for the Employee Performance File states that, when an employee leaves the IRS, managers should purge the Employee Performance File of all documents except the last four employee reviews and the last performance plan.²⁹ The Employee Performance File is then sent to the Official Personnel Folder

Consolidation Site, and the remaining documents in the former employee's temporary personnel file are destroyed, including FMLA leave documents. IRS Privacy, Governmental Liaison, and Disclosure Office employees stated that the three-year retention period no longer applies after employees separate from service.

The IRS's General Records Schedule (GRS) is issued by the Archivist of the United States to provide disposition authority for records common to several or all agencies of the Federal Government, including FMLA leave records. According to GRS 2.4, Items 140 and 141, both FMLA program administrative records and FMLA program individual case files are to be destroyed three years after the leave was taken, superseded, or obsolete. The GRS also allows a longer retention if necessary for business purposes. The legal basis for the GRS's three-year requirement comes from 29 Code of Federal Regulations (C.F.R.) § 825.500. Specifically, 29 C.F.R. § 825.500(b) requires that records created pursuant to the administration of FMLA leave must be kept no less than three years.³⁰ We were unable to identify any legal authority that alters the requirement to maintain FMLA records for three years upon employee separation. We also sent an inquiry to the National Archives and Record Administration, which advised us that the retention of such leave records "is a minimum of three years, regardless of whether the employee has left the agency or not. The GRS does not provide for destruction upon employee separation, only when the record is three years old." Privacy, Governmental Liaison, and Disclosure Office management stated that they did not consult with the IRS's General Legal Services about their guidance to destroy records upon employee separation.

Based on our sample results, we estimate that the IRS purged FMLA records for 631 IRS employees who left the IRS.³¹ The records would not be available if the employee was



Federal law requires that records created pursuant to the administration of FMLA must be kept no less than three years.

9% of the sampled IRS employees who took FMLA leave had left the IRS and the FMLA documents were destroyed.

FMLA records for an estimated 631 IRS employees who left the IRS were purged. Because there is no record of previous FMLA leave, the employee could be rehired and incorrectly take FMLA leave again.

²⁸ For an additional nine cases, the IRS stated that the employee separated from the IRS, but we did not request that the IRS identify the missing documentation.

²⁹ IRS, *Employee Performance File* (June 2019).

³⁰ See Appendix IV for GRS 2.4, Items 140 and 141.

³¹ Our original sample was selected using a 90 percent confidence interval, a 50 percent error rate, and a ± 5 percent precision. We reduced our sample from 277 to 240 cases because of the prevalence of errors. When projecting the results of our statistical sample, we are 90 percent confident that the actual total amount is between 436 and 879 (436 and 879 represent the lower and upper range, respectively).

subsequently rehired, nor will they be available upon request to Government officials investigating compliance. FMLA leave is limited to 12 administrative weeks (or 480 hours for full-time IRS employees) within a 12-month period.³² Because there is no record of previous FMLA leave taken, the employee could be rehired within the 12-month period and could incorrectly take FMLA leave again.

Recommendation 3: The Chief Privacy Officer, Privacy, Governmental Liaison, and Disclosure, should update its record management guidance to state that FMLA leave records should be retained for all employees, including those who separate from service, for a minimum of three years after the leave was taken.

Management's Response: The IRS agreed with this recommendation and will provide guidance through internal Service-wide communication channels to ensure that managers understand that FMLA records should be retained for all employees, including those who separate from service, for a minimum of three years after the leave was taken.

Recommendation 4: The Human Capital Officer should update the manager's guidance for the Employee Performance File to be consistent with the revised records management guidance.

Management's Response: The IRS partially agreed with this recommendation. Once the Privacy, Governmental Liaison, and Disclosure office provides the referenced "revised records management guidance," the IRS will compare it to the Employee Performance File manager's guidance and update, if needed, to be consistent. The IRS asserted that the Employee Performance File is compliant with 5 C.F.R. 293, Subpart D, *Employee Performance File System Records*, and IRMs 6.430.2 and 6.430.3.

Office of Audit Comment: The IRS's planned corrective actions meet the intent of the recommendation. However, the cited law and IRMs do not provide the document retention requirements for FMLA documents. These requirements were established in the FMLA.

Monitoring of Employee Leave Patterns Could Be Improved to Identify Potential Misuse

Analysis of IRS data identified leave patterns that could indicate potential misuse of leave. For example, we identified employees who took extensive administrative leave and employees who incurred extensive AWOL hours but whose managers did not document the unapproved absence as a potential conduct issue. IRS management stated that, because each situation involves unique circumstances, they cannot determine if the leave was appropriate. However, we believe the results show the importance of monitoring leave for potential misuse.

³² IRM 6.630.1.9.1 (January 6, 2017).

Administrative leave

Administrative leave is an administratively authorized absence from duty without loss of pay or charge to other leave, such as annual or sick leave. Examples of administrative leave include voting, volunteer activities, blood donation, and employee relocation. Each administrative leave type has its own criteria, and the amount of hours the employee is eligible to receive varies. The *Administrative Leave Act of 2016*³³ generally limits Federal employees to 80 hours of administrative leave in a calendar year. However, the IRS has not yet revised and implemented internal procedures to meet this requirement because the Director, OPM, has not yet prescribed the associated regulations.³⁴ Our analyses identified 92 employees who were granted more than 80 hours of administrative leave in Calendar Year 2020, including 36 employees who were granted more than 150 hours. However, some leave options that are currently classified as administrative leave subject to the 80-hour limitation, such as relocation leave, may change based on OPM guidance. Therefore, we focused our analysis on blood donation administrative leave, which is one of the more common types of administrative leave that will likely be subject to the 80-hour annual limit.

Blood donation administrative leave. IRS employees who donate blood, without compensation, are granted up to four hours of administrative leave for recuperative purposes. Additional time may be granted for traveling to and from the donation site and for giving the blood. Documentation is not required to support blood donations.

For individuals who wish to donate blood frequently, the American Red Cross suggests volunteers wait at least eight weeks between blood donations.³⁵ Using this criterion, employees could have made approximately seven donations during the period from January 1, 2020, to December 31, 2020. If an employee made all seven donations, and was granted the full four hours for each donation, the employee could have been granted 28 hours of administrative leave during this period.

We identified 54 employees who were granted more than 28 hours of blood administrative leave during this time period, including two employees who took more than 80 hours. IRS management stated that the amount of administrative leave taken by these employees could be attributable to blood platelet donations, for which people may make donations as often as every week.³⁶ Additionally, adding time for travel to and from the donation site could result in more than 28 total hours of administrative leave. We could not determine if these employees improperly misused the leave. However, the Treasury Inspector General for Tax Administration's (TIGTA) Office of Investigations has recently substantiated cases for which IRS employees improperly took blood donation administrative leave when they did not make blood donations.

From January 1, 2020, to December 31, 2020:



54 employees were granted more than 28 hours of administrative leave for donating blood, including two employees who took more than 80 hours of administrative leave.

³³ 5 U.S.C. § 6329a.

³⁴ Agencies have 270 calendar days to implement internal procedures after the OPM prescribes the regulations.

³⁵ IRM 6.610.1.3.4(2) (October 12, 2016). According to the Red Cross, whole blood may be donated once every 56 days. Blood platelets may be donated every seven days, up to 24 times a calendar year.

³⁶ Since blood platelet donations may be given more frequently, granting excused time for such donations is discretionary, subject to work load conditions.

Cases such as these could be at additional risk for misuse because, unlike traditional volunteer blood donations made to the American Red Cross, private companies may compensate individuals who make blood platelet donations, and some of these companies claim that individuals can make hundreds of dollars per month doing so. However, the IRS does not have controls in place to ensure that employees are not receiving compensation. IRS employees who make blood platelet donations could potentially get paid by both the IRS and the private companies.

Employees with large AWOL balances

AWOL is a nonpay status for any absence from duty not officially and properly authorized or approved.³⁷ AWOL should be charged when an employee is absent without permission, has not notified their manager of the absence in accordance with established procedures, or has not provided satisfactory documentation or an explanation for an absence. The National Agreement between the IRS and the National Treasury Employees Union requires managers to inform employees in writing of AWOL charges as soon as possible but no later than the end of the pay period or within two workdays of the AWOL charge. An AWOL charge may be changed later to a different type of leave if the appropriate authority determines that the employee has satisfactorily explained the absence or presented acceptable documentation. Similar to IRS employees taking FMLA leave, AWOL employees still remain in the Federal Employees Health Benefits program and the IRS pays both portions of the health insurance premium.³⁸

According to the IRS's *Manager's Guide to Penalty Determinations*, potential disciplinary actions for AWOL range from admonishment to the removal from service. Factors managers should consider include the length and frequency of absences. Suspensions or removal may be appropriate for frequent or extended absences, or for prolonged absence. We identified 10,922 employees who were charged with AWOL from September 30, 2018, to January 2, 2021. Of the 10,922 employees, 2,135 (20 percent) had a documented AWOL conduct issue. The remaining 8,787 (80 percent) did not have documented AWOL conduct issues.³⁹ Figure 5 shows the potential disciplinary actions for the number of employees charged AWOL without a conduct issue.⁴⁰

³⁷ IRM 6.630.1.13(1) (January 6, 2017).

³⁸ Participation in the Federal Employees Health Benefits program is limited to one year for employees in nonpaid work status.

³⁹ Any disciplinary actions resulting from AWOL determinations are kept in the Automated Labor and Employee Relations Tracking System. We compared the 10,922 employees to the Automated Labor and Employee Relations Tracking System to identify if any employees had an AWOL disciplinary action. The documented AWOL issue could have been for an absence before September 30, 2018.

⁴⁰ Our analysis is based on the number of times the AWOL Organization Function and Program code was reported for an employee in the SETR system. AWOL charges could be longer than a single day.

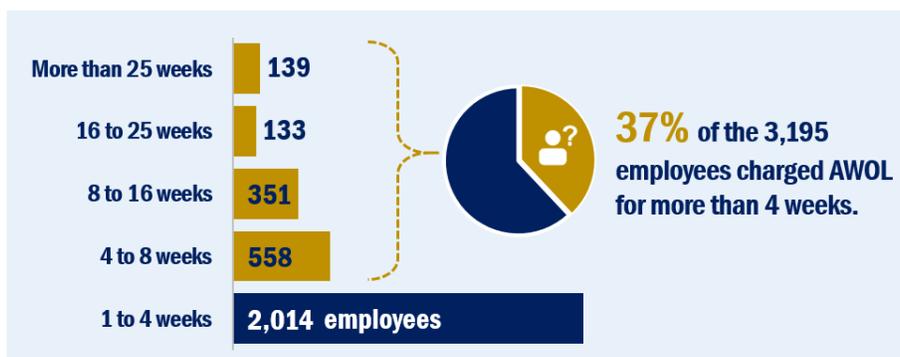
Figure 5: Potential Disciplinary Actions for IRS Employees Charged AWOL Without a Conduct Issue

Number of Offenses	Potential Disciplinary Action Recommended by Penalty Guide	Number of Employees
First Offense	Admonishment to written reprimand	2,282
Second Offense	1-day suspension to 14-day suspension	1,173
Third Offense	15-day suspension to removal from service	5,332
Total		8,787

Source: TIGTA analysis of the SETR system and the Automated Labor and Employee Relations Tracking System data.

Of the 8,787 employees, 61 percent had three or more instances of AWOL and potentially could have received a 15-day suspension or been removed from the IRS, but none of these employees had documented conduct issues. In addition, 3,195 (36 percent) of the 8,787 with no conduct issues were charged AWOL in excess of one week. Figure 6 shows how many employees had AWOL exceeding one week without documented conduct issues during this period.

Figure 6: IRS Employees With More Than One Week of AWOL Without a Related Conduct Issue



Source: TIGTA analysis of the SETR system and the Automated Labor and Employee Relations Tracking System data.

Of the 3,195 employees, 37 percent were charged AWOL for more than four weeks, including 139 employees who were AWOL for more than 25 weeks. IRS management reviewed 37 of these cases and determined that some IRS employees were incorrectly charged with AWOL and have since updated their timecards. However, some employees were still incurring high AWOL hours. We requested that IRS management research 12 of the most egregious cases to determine why the employees incurred the hours. For the 12 employees with the highest AWOL charges, nine employees are now being referred to Labor Relations for disciplinary actions or removal from the IRS. The remaining three had valid reasons for the temporary AWOL status.

The OPM advises agencies that they should address AWOL because it is misconduct.⁴¹ The OPM further advises, "Notating AWOL in and of itself is not a disciplinary action, but it could be the basis for taking disciplinary action." This means that the management action of placing employees in an AWOL status is not disciplinary in nature, so managers should not consider that action as addressing the potential misconduct. In other words, employees who are only placed

⁴¹ OPM, *Addressing AWOL*, <https://www.opm.gov/policy-data-oversight/employee-relations/training/presentationaddressingawol.pdf> (last visited November 29, 2021).

in an AWOL status have not been disciplined for their misconduct even though they were not paid for the unexcused absence. The IRS's *Manager's Guide to Penalty Determinations* provides the factors IRS managers should consider when determining whether to pursue disciplinary actions for AWOL.

However, the IRM includes different language than OPM guidance, which has resulted in inaccurate and confusing policy.⁴² The IRM and OPM guidance differ as follows:

OPM Guidance (emphasis added):

“**Notating** AWOL **in and of itself** is not a disciplinary action, **however it could** be the basis for **taking** disciplinary action.”

IRM Guidance (emphasis added):

“**Although** AWOL is not considered a disciplinary action, it **can form** the basis for **future** disciplinary action.” 

This is true for any misconduct offense; a disciplinary action is the penalty for an offense, not the offense itself.

Managers may interpret this to mean that AWOL, by itself, does not warrant disciplinary action and there must be some future aggravating offense to warrant disciplinary action.

First, the IRM excluded the words, “Notating” and “in and of itself,” from the OPM guidance. Instead of advising managers that *notating* AWOL is not a disciplinary action, the IRM says *AWOL* is not a disciplinary action, which is confusing because that is true for any misconduct offense. A disciplinary action is the penalty for an offense, such as a written reprimand or suspension, not the offense itself.

Second, the IRM says AWOL can form the basis for “*future* disciplinary action.” Managers may be interpreting the IRM to mean that AWOL, by itself, does not warrant disciplinary action and there must be some future aggravating offense to warrant disciplinary action for the AWOL. The IRS should revise the IRM to be consistent with OPM guidance and the *Manager's Guide to Penalty Determinations*.

Employee leave oversight

The HCO conducts an annual review of administrative leave each calendar year. The review is a six-year comparison of total administrative leave hours used collectively by all IRS employees and identifies employees exceeding the calendar year policy limits for the various types of administrative leave. The business units investigate these anomalies, prepare time and attendance corrections when necessary, and are required to issue policy reminders to their managers when trends are identified.

The HCO could conduct similar reviews of other leave types that are complex or that could expose the IRS to risk. Such analyses could help managers identify potential misuse within their groups and allow them to take corrective actions to improve productivity. For example, employees may appropriately schedule sick leave to coincide with weekends or Federal holidays for convenience or extended recovery time from medical procedures. However, repeatedly doing so could be an indication that employees are inappropriately taking unscheduled sick leave to extend their time off. We analyzed IRS records for sick leave from September 30, 2018, to January 2, 2021, and identified:⁴³

⁴² IRM 6.630.1.13(4) (January 6, 2017).

⁴³ We limited our review of sick leave to Organization Function and Program Code 990-59502.

Improvements Are Needed When Documenting and Monitoring Employee Leave

- 119 employees who took 20 or more days (eight or more hours) of sick leave before or after a weekend, including 17 employees who took 30 days or more. During this period, there were 117 weekends.
- 91 employees who took 10 or more sick days before or after a Federal holiday, including nine employees who took 15 days or more. During this period, there were 25 Federal holidays.

From September 30, 2018, to January 2, 2021:



119 employees took 20 or more days of sick leave before or after the 117 weekends.



91 employees took 10 or more sick days before or after the 25 Federal holidays.

The IRS routinely assigns acting managers that serve as managers for a limited amount of time. Because they serve in a time-limited role, acting managers may not be aware of leave patterns over time. Additionally, newer full-time managers may be similarly unaware of leave patterns over time. Alerting them of this behavior could help ensure that employees comply with IRS policies for using sick leave. Employees with high absenteeism could affect service to taxpayers and the morale of other employees who could be burdened with additional work.

The Human Capital Officer should:

Recommendation 5: Revise the IRM so that it is consistent with OPM guidance and the *Manager's Guide to Penalty Determinations* and clarifies the actions managers should take when employees are charged with AWOL.

Management's Response: The IRS partially agreed with the recommendation. The HCO will review the IRM to ensure consistency with OPM guidance and make appropriate changes as necessary. The HCO will also review the *Manager's Guide to Penalty Determinations* and, where applicable, incorporate clarifications to inform managers of actions they should take when employees are absent without approved leave.

Office of Audit Comment: The IRS's planned corrective actions meet the intent of the recommendation.

Recommendation 6: Conduct focused audits on leave types that are complex or that may expose the IRS to risk. The results should be shared with business unit leadership and managers for proper follow up and monitoring, if appropriate.

Management's Response: The IRS agreed with this recommendation. The HCO currently runs reports and shares information with the business unit representatives who are responsible for sharing with impacted managers within their business unit.

Office of Audit Comment: The IRS's planned corrective actions do not address the recommendation. The report acknowledges that the HCO conducts an annual review of administrative leave each calendar year; however, the HCO does not conduct focused audits on other types of leave, such as sick leave, that could be more complex or that could expose the IRS to risk. TIGTA believes that focused audits could help management identify patterns of potential leave misuse.

Appendix I

Detailed Objective, Scope, and Methodology

The overall objective of this audit was to determine whether controls are sufficient to ensure that leave taken by IRS employees is authorized, appropriate, and properly approved. To accomplish our objective, we:

- Obtained and reviewed IRS processes and procedures to determine if leave taken by IRS employees was authorized, appropriate, and properly approved.
- Determined whether IRS employees are appropriately using IRS leave programs (LWOP, FMLA, AWOL, sick leave, and administrative leave). IRS records showed that 6,885 IRS employees took FMLA leave from September 30, 2018, through October 24, 2020, (108 weeks). We originally selected a statistically valid sample of 277 employees using a 90 percent confidence interval, a 50 percent error rate, and a ± 5 percent precision. To determine if records were properly maintained in accordance with the law, we reduced the random sample from 277 to 240 cases because of the prevalence of errors. From the random sample of 240, we selected a judgmental sample of 50 cases with documentation due to the complexity of the case review.¹ The contracted statistician reviewed our sampling plan.
- Determined if IRS employees and management are properly using and administering the leave provided in response to COVID-19 (EPSL and Caretaker Leave). IRS records showed that employees took EPSL on 4,251 occasions from April 12, 2020, through October 24, 2020.² We originally selected a statistically valid sample of 264 EPSL requests using a 90 percent confidence level, a 50 percent error rate, and a ± 5 percent precision factor. We reduced our sample to 30 EPSL requests because of IRS resource constraints. A contract statistician assisted with developing the sampling plan and reviewing the projections. Additionally, IRS records showed that 286 employees took Caretaker Leave from October 4, 2020, through October 24, 2020. We reviewed a judgmental sample of 10 Caretaker Leave requests.
- Interviewed IRS managers to determine if they were aware of leave issues and to determine how leave was communicated to them and how they administered the leave.

Performance of This Review

This review was performed with information obtained from the IRS HCO located in Washington, D.C., and Atlanta, Georgia, during the period September 2020 through November 2021. We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

¹ A judgmental sample is a nonprobability sample, the results of which cannot be used to project to the population.

² During this time, 3,787 unique employees took EPSL. Some employees took EPSL multiple times.

Major contributors to the report were Heather Hill, Assistant Inspector General for Audit (Management Services and Exempt Organizations); Carl Aley, Director; David Bueter, Audit Manager; Richard Kemble, Lead Auditor; Jeremy Berry, Senior Auditor; Allison Sollisch, Senior Auditor.

Validity and Reliability of Data From Computer-Based Systems

We obtained IRS employee time and leave data from the SETR system from TIGTA data extracts and IRS employee personnel information from the Treasury Integrated Management Information System from TIGTA's Data Center Warehouse. The data were reviewed verifying that each file contained the specific data elements requested. Additionally, we compared random samples of each extract and verified that the data in the extracts matched the IRS Integrated Data Retrieval System. The data secured were analyzed to ensure the validity and reasonableness of our data, such as the minimum/maximum values of relevant data fields. We determined that the information obtained from TIGTA data extracts and TIGTA's Data Center Warehouse was sufficiently reliable for the purposes of this report.

Internal Controls Methodology

Internal controls relate to management's plans, methods, and procedures used to meet their mission, goals, and objectives. Internal controls include the processes and procedures for planning, organizing, directing, and controlling program operations. They include the systems for measuring, reporting, and monitoring program performance. We determined that the following internal controls were relevant to our audit objective: HCO policies, procedures, and practices related to IRS employee leave. We evaluated these controls by reviewing source documents, interviewing IRS management and employees, and conducting data analyses.

Outcome Measures

This appendix presents detailed information on the measurable impact that our recommended corrective actions will have on tax administration. These benefits will be incorporated into our Semiannual Report to Congress.

Type and Value of Outcome Measure:

- Inefficient Use of Resources – Potential; 3,401 EPSL requests for which procedures for requesting and granting EPSL were not followed because employees did not provide the required documentation (see Recommendations 1 and 2).

Methodology Used to Measure the Reported Benefit:

Analysis of SETR system records showed that 4,251 IRS employees took EPSL from April 12, 2020, through October 24, 2020. Originally, we selected a stratified statistical sample of 264 EPSL requests. We reduced our sample to a stratified statistical sample of 30 EPSL requests because of IRS resource constraints. We reviewed the employee requests for EPSL and determined that IRS employees did not provide the required documentation in 24 (80 percent) requests. In consultation with a contract statistician, we estimate that the IRS did not follow the procedures for requesting and granting EPSL for 3,401 employees.¹

Type and Value of Outcome Measure:

- Reliability of Information – Potential; 631 FMLA leave records (3,155 forecasted over five years) for separated employees that were improperly destroyed (see Recommendations 3 and 4).²

Methodology Used to Measure the Reported Benefit:

Analysis of SETR system records showed that 6,885 IRS employees took FMLA leave from September 30, 2018, through October 24, 2020.³ Originally, we selected a statistical sample of 277 FMLA requests. We reduced our sample to 240 FMLA requests because of the prevalence of errors. We determined that 22 (9 percent) requests for which employees took FMLA leave had left the IRS, and IRS management stated the FMLA documents were destroyed and not maintained for at least three years in accordance with Federal law.⁴ In consultation with a

¹ Our original sample was selected using a 90 percent confidence interval, a 50 percent error rate, and a ± 5 percent precision. We reduced our sample from 264 to 30 cases because of IRS resource constraints. When projecting the results of our statistical sample, we are 90 percent confident that the actual total amount is between 2,736 and 3,863 (2,736 and 3,863 represent the lower and upper range, respectively).

² The five-year forecast is based on multiplying the base year by five and assumes, among other considerations, that leave policies do not change.

³ The 6,885 includes employees who took more than 30 hours of FMLA-LWOP from September 30, 2018, to October 24, 2020.

⁴ The IRS stated that the employee had separated from service in an additional nine cases; however, we did not request that the IRS identify the missing documentation because we reduced our sample.

contract statistician, we estimate that the IRS purged 631 FMLA records before the three-year retention period expired (3,155 forecasted over five years).⁵

⁵ Our original sample was selected using a 90 percent confidence interval, a 50 percent error rate, and a ± 5 percent precision. We reduced our sample from 277 to 240 cases because of the prevalence of errors. When projecting the results of our statistical sample, we are 90 percent confident that the actual total amount is between 436 and 879 (436 and 879 represent the lower and upper range, respectively).

**Form 9611, Application for Leave
Under the Family and Medical Leave Act**

Application for Leave Under the Family and Medical Leave Act			
1. Name (please print)			2. SEID
3. Type of request <input type="checkbox"/> Regular FMLA (12-week) <input type="checkbox"/> Military Related Exigency Provision (12-week) <input type="checkbox"/> Military Family FMLA (26-week)			
4. Position title	5. Series	6. Grade	7. Organization/Function
8. Reason for request: (check all that apply)			
a. <input type="checkbox"/> (12-week) Birth of a son or daughter and care of such child. [5 CFR 630.1203a(1)]			
b. <input type="checkbox"/> (12-week) Placement of son or daughter with you for adoption or foster care. [5 CFR 630.1203a(2)]			
c. <input type="checkbox"/> (12-week) Care of your spouse, son, daughter, or parent who has a serious health condition. [5 CFR 630.1203a(3)]			
d. <input type="checkbox"/> (12-week) A personal serious health condition which prohibits you from performing the essential functions of your position. [5 CFR 630.1203a(4)]			
e. <input type="checkbox"/> (12-week) Any qualifying exigency (emergency) arising out of the fact that the employee's spouse, son, daughter, or parent is on covered active duty in the Armed Forces, or has been notified of an impending call or order to covered active duty in the Armed Forces. [5 CFR 630.1203a (5)]			
f. <input type="checkbox"/> (26-week) Care for a servicemember with a serious injury or illness incurred in the line of duty. [Sec 585(b) of NDAA, 2008]			
9. Are you currently using FMLA for any other purpose <input type="checkbox"/> Yes, I have another active FMLA request <input type="checkbox"/> No, this is my only request		10. Anticipated starting date	11. Anticipated ending date
12. How many hours of each type of leave do you anticipate using for this request			
a. Hours of leave without pay (LWOP)	b. Hours of sick leave (if applicable)	c. Hours of annual leave (if applicable)	
13. If request is for medical condition (option 8c or 8d), did you include the necessary medical certification <input type="checkbox"/> Yes <input type="checkbox"/> No		14. If request is for military family FMLA (option 8f), did you include a Form WH-385 (or other complete certification) <input type="checkbox"/> Yes <input type="checkbox"/> No	
15. Additional information relevant to your application (if applicable)			
16. Employee's signature			17. Date submitted
Approval (section completed by manager)			
18. Manager's name		19. Title	20. Date
21. <input type="checkbox"/> Approved <input type="checkbox"/> Disapproved		22. <input type="checkbox"/> Provisionally approved pending medical certification	
23. Reason for disapproval:			
a. <input type="checkbox"/> No entitlement (e.g., doesn't meet the definition of family member or doesn't meet criteria to qualify for FMLA)			
b. <input type="checkbox"/> Entitlement used for current 12-month period			
c. <input type="checkbox"/> Unacceptable medical certification (if you selected 8c, d, or f above)			
d. <input type="checkbox"/> Missing or incomplete documentation supporting exigency or military family FMLA			
24. Actual dates of FMLA			
a. Beginning date		b. Ending date	

Appendix IV

General Records Schedule Items 140 and 141

Transmittal NO. 30
December 2019

General Records Schedule 2.4

Item	Records Description	Disposition Instruction	Disposition Authority
140	<p>Family Medical Leave Act program administrative records. Records related to managing the program, including copies of policies and guidance describing employee benefits and employee use of paid and unpaid leave under the FMLA, statistics, reports, and other records not linked to individual employee participation. Legal citation: 29 CFR 825.500</p>	<p>Temporary. Destroy 3 years after superseded or obsolete, but longer retention is authorized if required for business use.</p>	<p>DAA-GRS-2016-0015-0019</p>
141	<p>Family Medical Leave Act program individual case files. Includes:</p> <ul style="list-style-type: none"> . employee eligibility to participate in program . eligibility notice given to employee . notice of employee rights and responsibilities, questions from employees about those rights and responsibilities, and responses to them . medical certifications . employee identification data . records of pay basis, compensation terms, normal hours per pay period, additions to or deductions from wages, total compensation normally paid . leave request, approval/non-approval . leave records . records of premium payments of employee benefits . records of disputes between employers and eligible employees regarding designation of leave as FMLA leave . periodic reports of employee status and intent to return to work <p>Legal citation: 29 CFR 825.500</p>	<p>Temporary. Destroy 3 years after conclusion of leave being taken, but longer retention is authorized if required for business use.</p>	<p>DAA-GRS-2016-0015-0020</p>

Source: *The GRS.*

Management's Response to the Draft Report



HUMAN CAPITAL OFFICE

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, DC 20224

March 1, 2022

MEMORANDUM FOR MICHAEL E. MCKENNEY
DEPUTY INSPECTOR GENERAL FOR AUDIT

FROM: Kevin Q. McIver Digitally signed by Kevin Q. McIver
Date: 2022.03.01 14:44:31 -0500
IRS Human Capital Officer

SUBJECT: Draft Audit Report – Improvements are Needed When
Documenting and Monitoring Employee Leave
(Audit # 202110021)

Thank you for the opportunity to review the draft report, Improvements are Needed When Documenting and Monitoring Employee Leave (Audit # 202110021). The Internal Revenue Service (IRS) is committed to documenting and monitoring employee leave.

We are pleased that the Treasury Inspector General for Tax Administration (TIGTA) acknowledged: that automated procedures and managers' knowledge of leave policies generally prevented the overuse of the most common types of leave; that controls built into the time and attendance system and requirement for managerial approval of leave requests generally prevented IRS employees from taking more leave than authorized; and that interviewed managers were generally aware of the procedures for administering common types of leave, such as sick leave.

However, TIGTA identified areas of concern in the report. The IRS takes these concerns seriously and is working towards improving the program. The IRS Human Capital Office (HCO) socializes substantial changes to existing policy through communications, training and online resources. Additionally, HCO runs reports and shares information with the business unit representatives who are responsible for disseminating leave usage information to managers.

It is a manager's responsibility to approve leave, watch for patterns of misuse, and to know what types of leave are allowed for IRS employees per the union contract between the IRS and the National Treasury Employees Union (National Agreement) and Internal Revenue Manual (IRM). To address TIGTA's concerns about leave policy, the IRS will utilize a 3-tier oversight model leveraging program administration efforts, quality assurance activities and external audits to monitor individual manager's actions around leave.

The IRS agrees with recommendations 1, 3 and 6 and partially agrees with recommendations 2, 4 and 5. We concur with the stated outcome measures as reflected in the draft report.

The IRS partially agrees with recommendation 2 “Work with the business units to review the delivery methods of available training, guidance, and other resources to managers to ensure that managers comply with, and are aware of, the procedures for approving and administering leave options.” HCO will continue to support business units by providing advice and guidance and offering training courses on Leave Guidance as a management resource, so managers are aware of the procedures for approving and administering leave options as provided in the IRM and the National Agreement. As for “ensure that managers comply with,” we disagree with the word “ensure,” because HCO is not responsible for supervising all managers across IRS business units. It is the manager’s responsibility to approve leave, watch for patterns of misuse, to know what types of leave are allowed, and to approve, disapprove, and document leave consistent with IRS policy and the National Agreement. HCO will continue to monitor reports on high-risk leave categories and provide information to business units to pursue corrective actions, where needed. In addition, the 3-tiered oversight model will enhance risk management and governance of the administrative leave program moving forward.

IRS partially agrees with recommendation 4 “The Human Capital Officer should update the manager’s guidance for the Employee Performance File to be consistent with the revised records management guidance.” The referenced management Employee Performance File (EPF) guidance, dated June 13, 2019, is compliant with 5 CFR 293, Subpart D, Employee Performance File System Records, and IRMs 6.430.2 and 6.430.3. Once Privacy, Governmental Liaison and Disclosure (PGLD) provides the referenced “revised records management guidance,” we will compare it to the EPF manager’s guidance and update, if needed, to be consistent.

The IRS partially agrees with recommendation 5 “Revise the IRM so that it is consistent with OPM guidance and the Manager’s Guide to Penalty Determinations, and clarifies the actions managers should take when employees are charged with AWOL.” The IRS agrees to review the IRM to ensure consistency with OPM guidance and make appropriate changes as necessary and to review the Manager’s Guide to Penalty Determinations and to incorporate, where applicable, clarifications to inform managers of necessary actions when employees are absent without leave.

Attached is a detailed response outlining the corrective actions HCO and PGLD will take to address TIGTA’s recommendations. If you have any questions, please contact me at 202-317-3174, or a member of your staff may contact Scott C. Delaney, Director, Policy and Audits, at 202-317-5520.

Attachment

RECOMMENDATION 1:

Ensure that the IRM and additional guidance available to employees and managers for requesting and approving FMLA is clear and consistent.

CORRECTIVE ACTIONS:

The IRS agrees with this recommendation and has started a preliminary review of the Absence and Leave IRM. The IRS will identify and provide clarifying guidance to managers and employees in the IRM, where applicable.

IMPLEMENTATION DATE:

September 15, 2023

RESPONSIBLE OFFICIAL(S):

Director, Policy & Audits

CORRECTIVE ACTION(S) MONITORING PLAN:

We will enter accepted Corrective Actions into the Joint Audit Management Enterprise System (JAMES), monitor progress towards completion monthly, and upload supporting documentation into JAMES with Form 13872 Planned Corrective Action (PCA) Status Update for TIGTA/GAO/MW/SD/TAS/REM.

RECOMMENDATION 2:

Work with the business units to review the delivery methods of available training, guidance, and other resources to managers to ensure that managers comply with, and are aware of, the procedures for approving and administering leave options.

CORRECTIVE ACTIONS:

The IRS partially agrees with the recommendation. HCO will continue to serve as the authoritative resource to managers for all phases of leave administration, including interpretation of the National Agreement for bargaining unit employees and IRM 6.630 for non-bargaining unit employees. As for “ensure that managers comply with,” we disagree with the word “ensure,” because HCO is not responsible for supervising all managers across the IRS business units. It is the manager’s responsibility to approve leave, watch for patterns of misuse, to know what provisions are allowed for IRS employees, and to approve, disapprove, and document leave consistent with IRS policy and the National Agreement. The HCO will:

2.1. Provide advice, guidance and outreach training to management on various leave administration topics such as procedural and regulatory requirements to resolve leave issues, interpret facts and identify the best course of action to correct the behavior.

2.2. Conduct a quality assurance review of the Administrative Leave internal review

process to ensure it is effectively assessing and identifying abnormalities in administrative leave usage.

2.3. Conduct a risk analysis of the internal controls currently in place for the overall Leave Program that ensure administration of leave options are in accordance with IRS policies and the National Agreement. Develop and implement an action plan to address any identified deficiencies and risks.

2.4. Continue to review focused leave reports and coordinate with business unit representatives to address compliance issues, as needed.

IMPLEMENTATION DATE:

April 15, 2023

RESPONSIBLE OFFICIAL(S):

Director, HCO Chief of Staff

CORRECTIVE ACTION(S) MONITORING PLAN:

We will enter PCAs into the Joint Audit Management Enterprise System (JAMES), monitor progress towards completion monthly, and upload supporting documentation into JAMES with Form 13872 PCA Status Update for TIGTA/GAO/MW/SD/TAS/REM.

RECOMMENDATION 3:

The Chief Privacy Officer, PGLD, should update its record management guidance to state that FMLA records should be retained for all employees, including those who separate from service, for a minimum of three years after the leave was taken.

CORRECTIVE ACTIONS:

The IRS agrees with this recommendation and will provide guidance through internal Servicewide communication channels to ensure managers understand that FMLA records should be retained for all employees, including those who separate from service, for a minimum of three years after the leave was taken.

IMPLEMENTATION DATE:

February 15, 2022

RESPONSIBLE OFFICIAL(S):

Chief Privacy Officer, PGLD Director, Identity and Records Protection

CORRECTIVE ACTION(S) MONITORING PLAN:

We will enter PCA into the JAMES, monitor progress towards completion monthly, and upload supporting documentation into JAMES with Form 13872 PCA Status Update for TIGTA/GAO/MW/SD/TAS/REM.

RECOMMENDATION 4:

The Human Capital Officer should update the manager's guidance for the EPF to be consistent with the revised records management guidance.

CORRECTIVE ACTIONS:

The IRS partially agrees with this recommendation. Once PGLD provides the referenced "revised records management guidance," we will compare it to the EPF manager's guidance and update, if needed, to be consistent.

IMPLEMENTATION DATE:

June 15, 2024

RESPONSIBLE OFFICIAL(S):

Director, Policy & Audits

CORRECTIVE ACTION(S) MONITORING PLAN:

We will enter accepted Corrective Actions into the JAMES, monitor progress towards completion monthly, and upload supporting documentation into JAMES with Form 13872 PCA Status Update for TIGTA/GAO/MW/SD/TAS/REM.

RECOMMENDATION 5:

Revise the IRM so that it is consistent with OPM guidance and the Manager's Guide to Penalty Determinations and clarifies the actions managers should take when employees are charged with absence without leave (AWOL).

CORRECTIVE ACTIONS:

The IRS partially agrees with the recommendation. HCO will review the IRM to ensure consistency with OPM guidance and make appropriate changes as necessary. HCO will also review the Manager's Guide to Penalty Determinations, and, where applicable, incorporate clarifications to inform managers of actions they should take when employees are absent without approved leave.

IMPLEMENTATION DATE:

September 15, 2023

RESPONSIBLE OFFICIAL(S):

Director, Policy & Audits

CORRECTIVE ACTION(S) MONITORING PLAN:

We will enter accepted Corrective Actions into the JAMES, monitor progress towards completion monthly, and upload supporting documentation into JAMES with Form 13872 PCA Status Update for TIGTA/GAO/MW/SD/TAS/REM.

RECOMMENDATION 6:

Conduct focused audits on leave types that are complex or that may expose the IRS to risk. The results should be shared with business unit leadership and managers for proper follow up and monitoring, if appropriate.

CORRECTIVE ACTIONS:

The IRS agrees with this recommendation. HCO currently runs reports and shares information with the business unit representatives who are responsible for sharing with impacted managers within their business unit.

IMPLEMENTATION DATE:

September 15, 2022

RESPONSIBLE OFFICIAL(S):

Director, Human Resources Shared Services

CORRECTIVE ACTION(S) MONITORING PLAN:

We will enter PCA into the JAMES, monitor progress towards completion monthly, and upload supporting documentation into JAMES with Form 13872 PCA Status Update for TIGTA/GAO/MW/SD/TAS/REM.

Appendix VI

Abbreviations

AWOL	Absence Without Leave
C.F.R.	Code of Federal Regulations
COVID-19	Coronavirus Disease 2019
EPSL	Emergency Paid Sick Leave
FMLA	Family and Medical Leave Act
GRS	General Records Schedule
HCO	Human Capital Office
IRM	Internal Revenue Manual
IRS	Internal Revenue Service
LWOP	Leave Without Pay
OPM	Office of Personnel Management
SETR	Single Entry Time Reporting
TIGTA	Treasury Inspector General for Tax Administration



**To report fraud, waste, or abuse,
call our toll-free hotline at:**

(800) 366-4484

By Web:

www.treasury.gov/tigta/

Or Write:

Treasury Inspector General for Tax Administration

P.O. Box 589

Ben Franklin Station

Washington, D.C. 20044-0589

Information you provide is confidential, and you may remain anonymous.