

The Americans with Disabilities Act (ADA), the Family and Medical Leave Act (FMLA), and Florida law require information about an employee's medical condition (physical or mental) be maintained securely by the employer. To remain compliant with this requirement, individuals who have access to this type of information should follow the procedures below to ensure its appropriate security.

**Definition** - Medical records, documents and information: documents or materials, hardcopy or electronic which refer to the employee's physical and/or mental conditions and/or his or her ability to work. For the purpose of this procedure, "medical" is being interpreted all-inclusively and as generically as possible.

**Situations Where Medical Information is Necessary** - Supervisors and other members of management, the Employee Relations Compliance Officer or the USF Attendance & Leave Administrator may require medical information to make a decision about work assignments, entitlements to FMLA, an ADA reasonable accommodation, the approval to use hours from the USF Sick Leave Pool, or the personal donation of sick leave.

The routine use of sick leave does not normally require medical documentation unless the supervisor suspects improper use of sick leave. Under this circumstance, the medical information only needs to indicate that the employee is under the health care professional's care and not able to work (or may work with some restrictions) for the designated period. Departments are to destroy any medical documents that they are not required to maintain by shredding. When you are required to maintain medical information, dispose of it in accordance with established retention requirements. (For example, ADA and FMLA have different retention periods).

**Situations for which medical information is required are the following:**

**Alcohol and Drug Testing** - The Division of Human Resources, Employee Relations Section maintains the results of alcohol and drug testing, according to Federal requirements.

**Americans with Disabilities Act (ADA)** - The only individuals who should have access to information pertaining to an employee's request for a reasonable accommodation under the ADA are the immediate supervisor, potentially the department head, specified representatives from the Office of Diversity and Equal Opportunity, and the Employee Relations Compliance Officer in Human Resources since these individuals are responsible for determining reasonable accommodations.

**Compulsory Disability Leave** - The department head and others involved in the decision whether or not to place an employee on compulsory disability will need access to certain medical information.

**Family and Medical Leave Act (FMLA)** - Many instances of FMLA covered absences require medical documentation in the determination of leave eligibility and the statement of entitlement.

**Fitness for Duty** - The Division of Public Safety maintains the results of medical and psychological testing information of its employees functioning as law enforcement officers. The Public Safety office ensures that the submitted information is not accessible by unauthorized parties.

**Leave Documents** - Maintain a hardcopy or electronic version of generated material pertaining to an employee's earning, accrual, use, transfer, or cash-out of leave which may or may not contain information about the employee's medical condition or ability to work.

**Return to Work** - When a medical release to return to work is required, for example, at the conclusion of a medical leave of absence or at the conclusion of an authorized FMLA leave, the employing department should maintain medical information consistent with the intent of this procedure.

**Sick Leave Pool (SLP) Hours** - The SLP Administrator uses medical information to determine the employee's eligibility to use hours from the Sick Leave Pool. The employing department should not retain any medical information pertaining to the use of sick leave hours from the pool but, rather, should submit all pertinent information to the SLP Administrator in Human Resources.

**Workers' Compensation (WC)** - The employing department should not maintain medical information pertaining to workers' compensation. All such information should be submitted to the Workers' Compensation Administrator within the Division of Human Resources. This office retains the medical information in addition to, ensuring that copies of medical information are forwarded to the Division of Risk Management in Tallahassee. The Workers' Compensation Administrator ensures that submitted medical documentation is not accessible to unauthorized parties. When departments retain copies of Notices of Injury, they should be maintained as consistent with other medical information.

### **Security: How to Maintain Employee Medical Information**

Case law and best practices have identified that medical documentation be secured separately from other records and personnel information.

- Only individual(s) who have a need to know about the medical condition to make a decision about Workers' Compensation, reasonable accommodation under ADA, compulsory disability leave, FMLA entitlement, use of hours from the sick leave pool or maintains documents which contain medical information may have access to the documents or materials where they are secured.
- Individuals who are not involved in making these decisions are restricted from having access to the file. Create a separate, confidential file for any medical information that is indicated as needing to be maintained.
- Discourage employees from providing written details about their medical condition in leave documents beyond the requirements needed to make appropriate decisions.
- Do not include a description of the medical condition on timesheets, leave records, or leave request forms or any other method used to request and/or evaluate leave requests. It is sufficient for an employee to simply indicate "ill", "sick", "doctor's appointment", or "medical reasons" on those documents.