



METRO-NORTH RAILROAD: STATUS AND RETURN TO DUTY REQUIREMENTS FOR PERSONNEL ON EXTENDED HEALTH-RELATED ABSENCES

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The Office of the Inspector General (OIG) has completed its audit of Metro-North Railroad's (MNR) identification and monitoring of employees on lengthy health-related absences. This audit grew out of an OIG investigation conducted at MNR in 2006. The investigation found that in 2002 a supervisor misrepresented the reason for one employee's lengthy absence as health-related, when the employee was actually in prison after being convicted on federal drug charges. In accordance with MNR's policies regarding health-related absences, the employee was allowed to return to work in his safety-sensitive position after a medical evaluation.¹ This audit takes a systemic look at how effectively MNR tracked and monitored the status of employees who were absent in 2006 for extended periods for health reasons, and at whether MNR complied with its policy to ensure that employees were fit when they were ready to return to work.²

We found that most employees were following MNR policies regarding documentation when absent for health reasons. We examined the cases of employees absent for long periods for reported health reasons and found that most were appropriately tracked by MNR and given required health examinations upon their return to duty. Nevertheless we did find some individual cases where employees were absent for lengthy periods for claimed medical reasons without supplying medical documentation. Of particular concern were the cases where no substantive documentation was supplied to the health officer administering return-to-work examinations.

During the course of this audit, MNR implemented a new Employee Information Operating Procedure (#21-027), referred to in this report as the March 2007 Procedure, to ensure that employees on extended leave for health-related reasons have their employment status properly updated and that the absences are monitored. While we found that the March 2007 Procedure was designed to improve the monitoring of employees on lengthy leaves, MNR has also elected not to implement a key aspect of the procedure as written. Thus, we believe MNR needs to adjust its policies and/or its practices. We also note opportunities for further improvement in three specific areas which remain relevant despite the March 2007 procedure: the initiation of employment status changes to place absent employees on leave; absence monitoring and documentation; and return-to-work medical evaluations. We believe that implementation of the

¹ This investigation was reported in "Metro-North Power Department," MTA/OIG #2006-08L issued March 14, 2006. The employee resigned before disciplinary proceedings commenced and his supervisor had retired at the time of our investigation.

² This audit was performed in accordance with Generally Accepted Government Auditing Standards. The full statement of the audit's Objectives, Scope, and Methodology is contained in Appendix A.

OIG's recommendations for these areas will further enhance MNR's status monitoring and absence control efforts.

In responding to our inquiries during the audit, MNR took action to strengthen some of its procedures. Further, its response to our draft indicates the railroad has already adjusted some of its practices and procedures and will complete all of our recommended changes to its operating procedures by December 31, 2008 or earlier.

SUMMARY OF FINDINGS

During 2006, MNR Human Resources (HR) required that MNR departments change the status of employees on health-related absences from "active" to some form of "leave" once the employee had been absent for 4 consecutive weeks. However, the departments did not always comply with this requirement. Of the 126 employees who experienced health-related absences of greater than 4 consecutive weeks in 2006, 39 – or 31 percent – did not have their status changed by the end of the fourth week. In fact, 37 of the 39 never received status changes before either they returned to work or the year ended.

Some employees taking lengthy sick leaves failed to provide medical documentation that was requested by their department, which could have been used to explain their absences and aid OHS staff in assessing their fitness for duty before returning to work. From a sample of 72 employees with health-related absences that lasted at least 8 weeks³ in 2006, four (6 percent) had no medical documentation on file at MNR's Occupational Health Services (OHS) describing the nature of their health conditions, other than doctors' notes that only stated they could return to work. Three of the four employees without documentation held safety-sensitive⁴ positions.

MNR's Employee Medical Evaluations Operating Procedure states that, under certain circumstances, employees may be required to undergo medical examinations. One such circumstance is when employees return from health-related absences of 14 or more calendar days that are not for care of immediate family members. The vast majority of returning employees did undergo the evaluations, but four did not. Here also, three of the four employees held safety-sensitive positions.

In March 2007, MNR issued a new Employee Information Operating Procedure that should address some of the causes of the lapses we found. The procedure assigned HR with overall responsibility for monitoring employees absent over 30 days. However, the personnel performing this function will continue to be located in MNR's various departments. As a result, we believe MNR should monitor the effectiveness of the changes it has made and make adjustments to its practices as needed. We also see a need for MNR to clarify its procedure governing the confidentiality and security of health-related personal information that employees

³ See Appendix A – Objectives, Scope, and Methodology for sample design.

⁴ Safety-sensitive employees in MNR include: train crew personnel (i.e., locomotive engineers and conductors); various other maintenance and operation employees such as electricians, shop workers, signal maintainers, various repairers, rail traffic controllers; power equipment employees; as well as numerous employees whose work involves the operation of motor vehicles.

are expected to provide to comply with the March 2007 operating procedure. In addition, if much of the monitoring responsibility is to remain at the departmental level, MNR should adjust its March 2007 procedure to accurately reflect the departmental responsibilities and ensure that departmental administrators have the needed tools to adequately perform their roles.

MNR DID NOT EFFECTIVELY TRACK THE STATUS OF 39 EMPLOYEES ON LENGTHY SICK LEAVES IN 2006

An up-to-date record of each employee's employment status enables MNR to have an accurate history of each employee and keeps management up-to-date on its need to back-fill positions. During the time period covered by our audit, employees working their regularly scheduled duty (including vacation or sick leave of up to 4 weeks) were listed as being on active status; those who were on extended leave were categorized as on a paid or unpaid leave of absence. When an employee was absent for a period of 4 weeks,⁵ MNR supervisors and/or administrators were expected to change the employee's status from active to the appropriate leave of absence. In examining whether the status of each employee with an absence lasting more than 4 weeks during 2006 was changed, we obtained timesheet data for all MNR employees. Out of 6,279 employees, we found 126 who took more than four consecutive weeks of sick leave. Of the 126 employees, 39 – or 31 percent – were still classified as being in active status after 4 or more weeks of continuous absence, rather than classified in a paid or unpaid leave of absence status as required by MNR procedures.

The Impact of a Status Change

When MNR changes an employee's status, the employee's eligibility for benefits may be affected. Depending upon the status in which the employee is placed, the employee may lose all or some of his or her benefits after a predetermined period of time. In one case, an employee was kept in active status by local facility supervisors for the duration of an eight-month absence. A form placing the employee on leave of absence for "Personal Reasons" was processed at the end of his eight-month absence on the day after his resignation became effective. It was made retroactive to the date his absence began. Despite the *post facto* tidying, however, the employee had been in active status, with all the benefits pertaining to it, for about eight months. Timesheets during this period indicate that he never came to work. Given the official reason code for his leave of absence as "Personal Reasons," this represented employee received benefits to which he would not be entitled had his status been updated timely, in accordance with MNR policy.

MNR Issued a New Employee Information Operating Procedure in March 2007

During our audit, MNR officials acknowledged that status changes were not always submitted in a timely fashion and indicated that the railroad's March 2007 procedure should prevent most

⁵ While past and present written procedures required status changes after 2 weeks of absence, our discussions with HR officials revealed that, at the time of our audit, the two-week threshold was often waived because a four-week time frame was considered more realistic. Although valid procedure required the status changes be made after 2 weeks, we used the four-week period to be conservative in our analysis.

similar occurrences in the future. The March 2007 procedure establishes deadlines and specifies responsibilities for status change implementation. The March 2007 procedure also states that departmental supervisors, who are tasked with monitoring absences that last less than 30 days, are required to submit status changes for any employee whose absence meets certain conditions. With regard to two of these conditions, however, determining whether either of them has been met could require a judgment call by the supervisor.

Under one condition, the March 2007 procedure states that an employee's status is to be changed whenever it "becomes apparent" that the employee will be absent for more than 2 weeks from the current date. While this could provide needed flexibility in determining whether to submit a status change, it also leaves a great deal to the supervisor's discretion. The exercise of discretion by facility supervision and management has created some problems for the railroad, as will be discussed in later sections of this report dealing with absence documentation and follow-up.

Under the other condition, the March 2007 procedure instructs supervisors to change an employee's status to absent without leave once he/she has been absent for more than 2 weeks for unexplained reasons. This requires that the supervisor judge whether or not an absence has been explained. This would be a straightforward judgment when an employee remains absent and does not contact MNR, and indeed this is the scenario presented in the "Steps" portion of the March 2007 procedure. However, the procedure does not address situations in which an employee contacts MNR, but does not either provide appropriate documentation or commit to return to work immediately. This ambiguity could allow a re-occurrence of the case described in the prior section, in which the absent employee remained in telephone contact with the facility, but provided no documentation or commitment to immediately return to work. As the March 2007 procedure is written, a supervisor may, on the basis of such ongoing contact, choose to consider an absence explained, thereby delaying a status change.

We recommend that MNR:

1. Clarify its policy regarding when an employee must be classified as absent without leave and provide realistic examples of situations when supervisors should change an employee's employment status.

In response to our draft report, MNR stated that by December 31, 2008 it will revise the Operating Procedure's wording to make this clearer.

Status Changes Will Continue To Be Initiated Outside HR

The OIG agrees that the new March 2007 procedure should improve the timeliness of status changes because it includes explicit instructions requiring status changes for unexplained absences and absences expected to last for two or more weeks. These instructions were not present in the guidance accompanying the HR-1, the form previously used to initiate status changes. The March 2007 procedure also shifts responsibility for monitoring absences from the employee's department to HR, once an absence extends for 30 days. HR officials believe that this transfer of monitoring responsibility will act as a further control, ensuring that employee status changes will be completed in a more accurate and timely manner in 2007.

The March 2007 procedure also requires that HR change the status of employees absent for more than 30 days as appropriate. However, an HR official stated that HR will not directly change the status of employees, but will leave that function within the departments despite the explicit language in the March 2007 procedure. We expressed concern that HR intends to provide oversight rather than directly carry out status changes as directed by the March 2007 procedure. It will leave all status changes to the same administrators who will still be partly relying on local supervisors' interpretations of status change procedures. In response to our concern, HR officials stated that during 2007 HR began providing departmental staff with periodic absence control lists of all employees and also have been meeting with department administrators on a bi-monthly basis. Despite these added controls, we are still concerned that the deviation from the March 2007 procedure may not result in a successful improvement in the accuracy and timeliness of status changes. As a result, we believe that HR will need to monitor status changes made by its operating departments and determine if the March 2007 procedure, as implemented by HR, improves the quality and timeliness of MNR's personnel status information. In addition, MNR will need to supplement the March 2007 procedure to reflect HR's oversight role and the continuing responsibilities of departmental administrators.⁶

We recommend that MNR:

2. Monitor compliance with the March 2007 Employee Information Processing Operating Procedure and report periodically on the timeliness of status changes to MNR's Vice President for Human Resources & Diversity. If the timeliness does not improve over 2006 levels, MNR must identify the source of the breakdown and adjust its oversight as needed.

In response to our draft report, MNR stated that it is currently assessing status change processing performance for 2007 and will continue to monitor and report status change timeliness on an ongoing basis.

MEDICAL DOCUMENTATION ISSUES

When employees take health-related leaves, MNR procedures require that they provide appropriate documentation to justify their absences. The documentation requirements vary depending on whether the employees are represented – union employees, or non-represented – management employees and employees in technically covered positions. Sick leave usage by non-represented MTA employees is governed by the MTA All-Agency Sick Leave Policy. As described below, we found that MNR policies do not incorporate key medical documentation requirements of the All-Agency Sick Leave Policy. We also tested the adequacy of medical documentation provided by employees and found that while most employees taking lengthy sick leaves provided the required medical documentation, a small number provided no documentation concerning the nature of their absences.

⁶ See recommendation #6.

MNR's Medical Documentation Procedures for Non-Represented Employees Should Conform to MTA's All Agency Sick Leave Policy

Sick leave usage by non-represented employees in most MTA agencies, including MNR, is governed by the MTA All-Agency Sick Leave Policy. Among its various provisions, this policy requires non-represented employees who use sick leave exceeding five consecutive work days, to provide appropriate documentation justifying the leave when they return to work. We reviewed the following MNR policies and procedures covering health-related leaves to determine if the five-day provision was included in MNR policies. We found the following:

- MNR Sick and Disability Leave Operating Procedure (#21-005) requires employees wishing to qualify for short-term disability to submit a Medical Report (MD-1) form completed by their health care practitioner, for review by an OHS physician. The procedure does not contain any documentation requirement for short-term sick leave.
- MNR Attendance – Non-Agreement Employees Operating Procedure (#21-021A) lists the various leaves available to employees and does discuss the need for medical documentation when an employee seeks a “reasonable accommodation” for a “temporary disability” as defined by New York State law.⁷ However, it does not include any medical documentation requirement for short-term sick leaves.
- Family and Medical Leave Act (FMLA) Procedures⁸ always requires medical documentation when employees seek to have their absences covered by FMLA.

In sum, the MNR Sick & Disability Leave Procedure and the MNR Attendance – Non-Agreement Employees Procedure do not have provisions that are in accord with the MTA All-Agency policy requirement regarding the submission of medical documentation, when sick leave usage exceeds five consecutive work days.

We recommend that MNR:

3. Incorporate the medical documentation requirements of MTA's All-Agency Sick Leave Policy for its management employees and employees in technically covered positions into MNR's Sick & Disability Leave Operating Procedure and MNR's Attendance – Non-Agreement Employees Operating Procedure.

In its comments to our draft report, MNR stated that it will modify its Operating Procedure 21-005 Sick & Disability Leave by September 30, 2008.

⁷ The applicable law is Title 9 of the New York Code of Rules and Regulations (NYCRR) §466.11.

⁸ The Family and Medical Leave Act of 1993 (29 CFR Part 825), effective August 5, 1993, allows an employee to take unpaid leave due to a serious health condition that makes the employee unable to perform his or her job, or to care for a sick immediate family member, or to care for a new son or daughter (including by birth, adoption or foster care). Generally, the Act ensures that all workers are able to take time off from work to handle family issues or illness without fear of being terminated from their jobs by their employers or being subject to other kinds of retaliation.

Medical Documentation Requirements for Represented Employees

With respect to represented employees, MNR collective bargaining agreements⁹ and MNR's Attendance – Represented Employees Operating Procedure (#21-021B) indicate that employees who are absent due to illness “may” be required to produce medical documentation explaining their absences. The attendance procedure specifically states that: “Management may notify employees that they will be required to submit a doctor’s note explaining an absence upon their return to work.” The March 2007 procedure, as well as some of the agreements, provide further guidance on when medical documentation should be requested.

Medical documentation serves to verify that an employee is entitled to receive sick pay and is not misusing sick leave. In addition, it aids MNR's OHS in evaluating employees' fitness for duty upon their return to work. Our audit sought to determine whether lengthy health-related absences were documented in accordance with MNR policies and procedures. As discussed below, we approached this by identifying and reviewing documentation for a sample of such absences.

Some Employees Did Not Submit Medical Documentation

From MNR's 2006 timesheets and status change records, we identified 72 employees who were out over 8 weeks after excluding those with an MNR-approved disability or an absence resulting from an occupational injury.¹⁰ We examined the records for these 72 employees and found that 68 contained appropriate documentation for the sick leave they were claiming, and that 4 employees from the Operations Division (6 percent), provided no medical documentation to justify or explain their lengthy absences. Three of the four employees held safety-sensitive positions, and are referred to in the discussion below as employees A, B, and C. The fourth employee, referred to as D, did not hold a safety-sensitive position.

We examined each of the four cases to determine how an employee was allowed to take a lengthy health-related leave without supplying written documentation explaining the leave. As described in the report sections that follow, we found that the absences lacked documentation due to breakdowns in departmental procedures, permissive treatment of absent employees who fail to comply with documentation requests, and the acceptance of perfunctory doctors' notes.

⁹ MNR collective bargaining agreements (CBAs) vary with respect to requirements concerning medical documentation; some indicate that employees absent for more than 4 days may be required to submit documentation, while others do not specify any time period. In addition, most CBAs prohibit MNR from making any “across the board” demands for doctors' notes.

¹⁰ See Appendix A – Objectives, Scope, and Methodology for sample design.

Procedures to Inform Absence Control Administrators of Lengthy Absences Have Been Improved

Absence control administrators were responsible for devising procedures within their respective departments to monitor lengthy absences.¹¹ However, breakdowns in these procedures occurred in one department when administrators relied upon facility staff for critical information, especially the identification of lengthy absences. In the cases of employees A and D, the employees' supervisors waited six and three months, respectively, after the start of the absence before informing the department's administrator. This occurred despite the administrator's instruction that she be informed of any absences lasting five or more consecutive work days. The administrator stated that she needed to know who was absent for at least five consecutive days in order to request medical documentation from those employees. Consequently, no medical documentation was demanded of the two employees during these months of absence. Referring to safety-sensitive employee A, whose absence was not reported for six months, the Facilities Director of A's division stated that this employee "fell through the cracks" in that the departmental administrator was not notified of the employee's absence.

Prior to this audit, MNR had developed computer applications intended to allow administrators to independently identify absences that met certain criteria. Although HR officials believed that the applications would be useful tools for identifying absent employees, administrators in two departments told us that they had difficulty using these applications to identify all absences that required monitoring. However, as our audit ended, HR officials stated that they are now e-mailing bi-weekly reports to administrators that inform them of employees who have been absent for 2 weeks. In addition, HR officials are meeting with administrators on a bi-monthly basis to discuss employees in lengthy absences. We followed up with departmental administrators and they confirmed that they receive these reports and participate in meetings with HR at least every 2 months.

Departmental Practices Allow Employees to Remain Absent for Extended Periods Without Submitting Medical Documentation

Two of the three departments in MNR's Operations Division whose representatives we interviewed stated that it was their practice to mail, and request the completion of Medical Report forms (MD-1) to employees absent for health reasons on a monthly basis.¹² The MD-1 instructions direct the employee's private health care practitioner to complete the form and mail it directly to MNR's Occupational Health Services unit. Departmental administrators further explained that, 1 month after the form has been mailed, the employee's department will contact OHS to determine whether the completed form was submitted as requested. Depending upon the department, failure to submit an MD-1 would result in either a mandatory medical evaluation at

¹¹ As noted in our Object, Scope, and Methodology, we examined the procedures of three departments in MNR's Operations Division.

¹² MNR's Operations Services Crew Management Center sends MD-1s to employees once they are absent for 1 month; Maintenance of Equipment sends MD-1s to employees absent over 5 days; and Maintenance of Way only sent MD-1s to employees unable to report for medical evaluations at OHS. MNR HR has subsequently informed us that MOW's procedures have been changed to be more consistent with the other departments.

OHS or the mailing of another MD-1 form. More recently, HR officials reported that OHS alerts the departments when appropriate documentation is received.

We found that OHS received no written information from private health care practitioners explaining the lengthy illnesses of employees A, B, C, or D. As stated previously, employee A's absence was not reported. The departmental administrator for employees B, C, and D confirmed mailing some MD-1 forms, accompanied by written requests for their completion, in 2006. However, none of the MD-1s were completed and returned to OHS as the form instructed.

Our review of departmental records found that two additional MD-1 requests were mailed to employees B and C, and three were sent to employee D. Subsequently, only employee C complied by undergoing a medical evaluation at OHS. Because employees B and D did not comply with documentation requests, their departments ordered them to undergo medical evaluations. Employee D did not appear for his medical evaluation and continued his absence into 2007. Combined with the time it took to initially identify the absences and ultimately schedule and perform medical evaluations, department practices allowed employees to remain absent for as long as eight consecutive months in 2006 without submitting required medical documentation.

Some Return-To-Work Medical Documentation Lacks Detail

MNR's Employee Medical Evaluations Operating Procedure states that, under certain circumstances, employees may be required to undergo Return-To-Work (RTW) medical examinations. Examples of such circumstances include instances when employees return from health-related absences of 14 or more calendar days or unpaid absences of 30 days or more, that are not for the care of immediate family members. The procedure also states the need for RTW medical evaluations after specific kinds of absences, such as for substance abuse, psychiatric treatment, furlough, or hospitalization of three or more days. RTW evaluations are more extensive for employees in safety-sensitive positions. These employees must undergo an additional drug screening before being declared fit for duty. These requirements reflect the particular importance attached to ensuring that employees in such positions are verified as being fit for duty before returning to work.

OHS Performs Some RTW Evaluations Without Documentation Explaining the Absences

An OHS official informed us that, as part of their procedures for medically evaluating employees returning from protracted absences, MNR requires that these employees present notes from their private physicians. In order for OHS to qualify any employee to return to work, the note should explain the employee's illness and communicate the physician's opinion that the employee is able to work. We found that two of the four employees – employees B and C – who returned to work after failing to supply the documentation requested from them by their department, furnished perfunctory notes which stated only that they were fit to return to work. These notes did not explain the natures of their health conditions or whether they were, indeed, suffering from health-related conditions for the entire durations of the absences.¹³ While OHS staff

¹³ Both of these doctor notes simply identified the employee and stated that he was fit to work.

accepted these notes as complying with MNR medical evaluation procedures, this level of documentation does not meet the standards of acceptable medical documentation as required by MNR policies. MNR's Operating Procedure, "Attendance – Represented Employees," (#21-021B) requires that returning employees submit medical documentation *explaining* their absences when requested by management. Furthermore, both the Employee Medical Evaluations Operating Procedure which was in effect in 2006, and the March 2007 Employee Information Processing Operating Procedure, specify the form MD-1 as the appropriate means by which private health care providers should apprise OHS medical staff of an employee's condition. This form requires the physician to provide a diagnosis, describe the illness or injury, provide its date of onset, and estimate the duration of the condition, among other details.

Explanatory Medical Documentation Aids OHS Staff in Performing RTW Medical Exams

OHS officials told us that they need detailed medical documentation from health care providers to help their medical personnel conduct more effective RTW medical evaluations. With the information contained in such documentation, OHS medical staff can gear medical evaluations specifically toward assessing the returning employees' particular medical conditions and can make more informed judgments about employees' fitness for duty. We asked an OHS official how they were able to perform an examination without information about the health conditions that caused the employee's absence. The official responded that the physician or physician's assistant performing the evaluation would have to rely on the employee to explain what the health problem had been. Without detailed information from a health practitioner explaining the exact reason for the returning employee's absence, as well as assessing the employee's present health condition, OHS staff may not receive pertinent information for assessing the employee's fitness for duty.

We recommend that MNR:

4. Inform OHS that it should not qualify any employee for duty who returns from a health-related absence requiring an RTW medical evaluation, unless the employee has submitted a completed MD-1 form, or documentation from his/her doctor that contains all the information required on the MD-1 form, in addition to the doctor's statement that the employee can return to work.

In response to our draft report, MNR stated that as of May 30, 2008, it now requires a completed form MD-1 or equivalent information before qualifying an employee for return to work.

Doctors Write Perfunctory Notes Out of Concern for Employees' Privacy

An OHS official explained that OHS staff accepted perfunctory fitness-for-duty notes because it was their understanding that MNR's policy for such documentation required only this minimal level of information. She stated that, in her experience, doctors write such uninformative notes out of concern for their patients' privacy. This concern has been heightened since the promulgation of the Privacy Rule in 2003 of the Health Insurance Portability and Accountability

Act (HIPAA).¹⁴ The Privacy Rule prohibits medical practitioners from releasing personal health information to unauthorized persons or entities (including employers), except under certain specific circumstances, without the patient's consent. OHS sometimes uses New York State Department of Health-approved form #960 – Authorization for Release of Health Information Pursuant to HIPAA – to obtain additional medical information in a manner compliant with the rule.¹⁵

Employee Medical Documentation is Not Always Handled in Compliance with MNR's Procedures Governing Confidential Employee Information

The OHS official stated that, in conversations with physicians from whom OHS needed additional information, those physicians communicated their understanding that notes they wrote on behalf of employees might be viewed by the employees' supervisors. The OHS official further explained that MNR departments had a longstanding practice whereby employees would submit their RTW notes to their supervisors rather than to OHS. As a result, employees and their physicians were reluctant to provide detailed information on a note that would be seen by departmental staff, instead of only by OHS medical practitioners. Our discussions with departmental managers and administrators, in the course of our visits to HR and two MNR facilities, confirmed that departmental personnel do review and retain doctors' notes from employees.

Our review of departmental records showed some cases where detailed medical documentation concerning some employees' conditions and treatment, is present in departmental files. Such practices are not consistent with MNR's Operating Procedure 21-016, "Confidentiality & Security of Personal Information," which states: "If a manager or supervisor maintains thumbnail files on employees, such files should contain only job-related information and should also be handled in a confidential manner in accordance with this policy.... Additional files about employees containing beneficiary, employee assistance, medical, and performance evaluation information, etc., are maintained separately (Exhibit A)." The policy goes on to specify in its Exhibit A that medical information belongs in OHS with MNR's Medical Director. However, it does not clearly prohibit departmental supervisors and managers from reviewing or storing detailed medical documentation, as is in fact, happening in some cases, nor does it contain procedures for ensuring that all detailed medical information is forwarded to OHS.

We recommend that MNR:

5. Clarify Operating Procedure 21-016, "Confidentiality & Security of Personal Information," with language that prohibits departmental supervisors and managers from reviewing or storing detailed medical documentation and that establishes procedures for ensuring that all detailed medical information is forwarded to OHS.

¹⁴ The Health Insurance Portability and Accountability Act (HIPAA) (PL 104-191) was enacted in 1996. The Privacy Rule (45 CFR Part 160 and Subparts A and E of Part 164) took effect on April 14, 2001.

¹⁵ The OHS official further explained that the use of this separate release is not required when an MD-1 form is submitted because, in asking a health care practitioner to complete the form and send it to MNR OHS, the employee is explicitly consenting to a release of personal medical information.

In its response to our draft report, MNR stated it will clarify Operating Procedure 21-016 by September 30, 2008.

RTW EVALUATIONS ARE BEING PERFORMED

As discussed earlier in this report, MNR's Employee Medical Evaluations Operating Procedure states that employees may be required to undergo medical examinations when they return to work. We found that, with a small number of exceptions, MNR managers and administrators complied with the RTW medical evaluation guidelines in 2006. Of the 631 employees returning from absences in 2006 that would have required such an evaluation, only four who were absent due to health issues did not receive an RTW evaluation.¹⁶ They comprise a locomotive engineer and an elevator repair technician, who were improperly excepted from the requirement by departmental management, and a conductor and a clerk, who were incorrectly thought to be on vacation when, in fact, both were on sick leave. Three of the four employees held titles classified by MNR as safety-sensitive.

In two of the four cases, departmental supervisors did not schedule medical evaluations because they mistakenly believed that the conditions which gave rise to the employees' absences did not warrant RTW medical evaluations. In fact, discussions with departmental administrators reveal that both employees were absent due to a medical condition requiring an RTW medical evaluation. In the two other cases, departmental staff incorrectly failed to schedule RTW medical evaluations because they believed that the employees were returning from vacations. According to departmental managers, the confusion in the latter two cases arose from the fact that the employees used a mixture of sick, and then vacation, days for their health-related leaves. However, according to an HR official, because the leaves were requested for health reasons, they should have been treated as such when the employee returned to duty, even though mixtures of sick and vacation days were used.

MNR ACTIONS TO IMPROVE RECEIPT OF MEDICAL DOCUMENTATION

When this audit began, MNR's Operating Procedures contained medical documentation guidelines that were either vague or focused on specific kinds of leave, such as disability and FMLA. MNR took steps to address this by initiating its March 2007 Employee Information Processing Operating Procedure, which helped to clarify when MNR will request documentation from employees, what form it should take, and how to handle employees who fail to submit documentation. Also, by the end of our audit, HR officials informed us that all administrators were taking more direct steps to monitor absences, such as directly contacting absent employees rather than relying upon facility staff for follow-up.

While HR will assume responsibility for tracking absences lasting 30 days or more, much of the actual work continues to be performed at the departmental level. HR officials have indicated that they will continue to rely on departmental administrators, or staff with analogous responsibilities, for absence monitoring and follow-up because those administrators are already performing these tasks within their respective departments. MNR has elected not to relocate these employees, or

¹⁶ These four employees do not coincide with employees A, B, C, and D described in the preceding section.

their functions, to HR. Therefore, the ability of departmental administrators to identify problematic absences and effectively follow-up remains an important matter that warrants MNR's attention.

We recommend that MNR:

6. Supplement the March 2007 Employee Information Processing Operating Procedure to reflect the continuing responsibilities of departmental administrators and the oversight responsibility of HR, for monitoring employees absent for more than 30 days. These responsibilities include submitting status changes, requesting medical documentation, consulting with OHS, and initiating direct follow-up with absent employees.

In its response to our draft report, MNR stated it will clarify Operating Procedure 21-027 by December 31, 2008.

CONCLUSIONS

Metro-North needs to know when employees suffer from conditions that could harm their abilities to safely and effectively perform their duties. Further, it needs to have a full understanding of the availability of its work force. We generally found that MNR's ability to satisfy these needs was sometimes hampered by policies and procedures that were inadequate or unclear, by the over-reliance on judgment calls in administering these policies and procedures, and by fragmented or unavailable information. MNR's March 2007 procedure at least partly addresses each of these issues. While MNR never applied elements of the new procedure, improvements in oversight clearly resulted. In addition, we note opportunities for further improvement in MNR's internal controls governing employee status, medical documentation, and fitness for duty.

The March 2007 procedure continues to require supervisors to exercise individual judgements in deciding when to submit status changes. Specifically, it asks them to determine whether an absence has been adequately explained, and also to judge whether it has become apparent that the employee will be absent for more than 2 weeks from the current date. With regard to medical documentation, the March 2007 procedure specifies the MD-1 as the means by which private practitioners document ongoing employee health conditions to MNR. However, as we found, at times employees fail to submit MD-1s over the course of lengthy absences. For such cases, neither the March 2007 procedure nor any other written policy states that employees must adequately document the basis and duration of their absences before they can be cleared for duty. Thus, the March 2007 procedure does nothing to set standards for the content of medical documentation that employees are required to provide to OHS when undergoing return-to-work medical evaluations. MNR's ability to obtain meaningful documentation may be at least partly undermined by departmental practices, such as supervisors' accepting and retaining RTW notes meant for OHS, which we believe violates Operating Procedure 21-016, "Confidentiality & Security of Personal Information."

Finally, the March 2007 procedure's centralization of responsibility in HR for monitoring absences lasting 30 days or more should result in a more uniform and controlled application of MNR policies. However, HR officials have indicated that they will continue to rely on

departmental staff for monitoring and follow-up as MNR has elected to keep these functions within the departments. Therefore, improved and consistently applied departmental procedures and controls throughout the agency, not only at HR, remain key to effectively monitoring both lengthy absences and absences below the 30-day threshold.

LIST OF ALL RECOMMENDATIONS IN THIS REPORT

MNR should:

1. Clarify its policy regarding when an employee must be classified as absent without leave and provide realistic examples of situations when supervisors should change an employee's employment status.
2. Monitor compliance with the March 2007 Employee Information Processing Operating Procedure and report periodically on the timeliness of status changes to MNR's Vice President for Human Resources & Diversity. If the timeliness does not improve over 2006 levels, MNR must identify the source of the breakdown and adjust its oversight as needed.
3. Incorporate the medical documentation requirements of MTA's All-Agency Sick Leave Policy for its management employees and employees in technically covered positions into MNR's Sick & Disability Leave Operating Procedure and MNR's Attendance – Non-Agreement Employees Operating Procedure.
4. Inform OHS that it should not qualify any employee for duty who returns from a health-related absence requiring an RTW medical evaluation, unless the employee has submitted a complete MD-1 form, or documentation from his doctor that contains all the information required on the MD-1 form, in addition to the doctor's statement that the employee can return to work.
5. Clarify Operating Procedure 21-016, "Confidentiality & Security of Personal Information," with language that prohibits departmental supervisors and managers from reviewing or storing detailed medical documentation and that establishes procedures for ensuring that all detailed medical information is forwarded to OHS.
6. Supplement the March 2007 Employee Information Processing Operating Procedure to reflect the continuing responsibilities of departmental administrators and the oversight responsibility of HR, for monitoring employees absent for more than 30 days. These responsibilities include submitting status changes, requesting medical documentation, consulting with OHS, and initiating direct follow-up with absent employees.

In responding to our inquiries during the audit, MNR took action to strengthen some of its procedures. Further, its response to our draft indicates the railroad has already adjusted some of its practices and procedures and will complete all of our recommended changes to its operating procedures by December 31, 2008 or earlier.

Appendix A

OBJECTIVES, SCOPE, AND METHODOLOGY

Our overall objective was to determine how effectively MNR records and monitors the status of employees who are absent for extended periods for health reasons and assures their appropriate return to work. Specifically, we wanted to determine whether MNR's managers and administrators:

1. Maintain accurate information about employee status in employee information databases.
2. Effectively monitor and obtain supporting documentation from employees on extended health-related absences.
3. Ensure that all employees who return from extended health-related absences are medically evaluated to assess their fitness for duty.

To accomplish our audit objectives, we reviewed applicable MNR Operating Procedures, and obtained necessary oral clarifications of these procedures from HR officials. We met with managers and administrators responsible for absence control in three of the largest departments and developed a detailed understanding of departmental policies and procedures for tracking the status of personnel.

To assess compliance with MNR policies that govern the changing of employee status, we obtained two databases from MNR HR. One contained all status changes that moved employees in and out of Leave status in 2006. The other comprised all 2006 absences (excluding holidays, and rest days), identified by time recording codes on employee timesheets.

We identified all instances in which employees were marked off as sick (paid or unpaid) for more than 20 consecutive work days (i.e., 4 weeks). We compared this data with the Leave status database to determine which absent employees had status changes.

To assess monitoring and documentation of lengthy health-related absences, we identified the lengthiest absences occurring in MNR in calendar 2006. We did this by reviewing MNR timesheet and status change records, and identifying absences that fell into each of two categories:

- The lengthiest absences consisting of consecutive "Short-Term Sick" days taken by employees in active status and recorded on timesheets. All of the 34 absences in this sample lasted at least 8 weeks.
- The lengthiest leaves of absence for health reasons taken by employees placed in leave status. To yield a manageable sample size, we looked at 38 of the absences lasting approximately 4 or more months.

Appendix A, Continued

In addition, we obtained a database showing all employees approved for all types of FMLA leave partly or wholly occurring in 2006.

From our sample of lengthy absences in 2006, we excluded employees on, or approved for, disability leaves in 2006 and employees on leaves for occupational injuries. This resulted in a final sample of 72 employees with lengthy absences. Departmentally, the sample broke down as follows:

TABLE 1: Employees on Sick Leave or Leave of Absence Due to Health Reasons, Excluding Those on Disability or With Occupational Injuries

Department	Number of Employees
Operations: Operations Services	29
Operations: Maintenance of Equipment	20
Operations: Maintenance of Way	14
Finance and Administration	4
Operations: Grand Central Terminal	3
Human Resources and Diversity	<u>2</u>
Total	72

Because 63 – 88% – of the 72 employees were located in Operations Services, Maintenance of Equipment, and Maintenance of Way departments, we chose to focus on these departments when assessing processes and procedures for handling lengthy absences.

With the assistance of OHS staff, we determined whether files at OHS contained medical documentation pertaining to the absences we identified. When necessary, we contacted managers and administrators to find out why documentation was not present. We noted which employees were approved for FMLA and in those cases applied MNR’s FMLA policy as the criterion for establishing whether their absences were documented.

To assess compliance with MNR’s RTW medical evaluation policy, we used both the timesheet absence and status change databases to identify all employees with absences of two or more weeks. We cross referenced this group of employees against OHS’s log of all 2006 encounters to determine which employees returned from absences without undergoing medical evaluations. We then compared these employees with HR’s database of employees approved for FMLA to exclude employees approved for FMLA to care for family members. We contacted managers and administrators in those employees’ departments to determine why those employees were not scheduled for medical evaluations at OHS.

Appendix A, Continued

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 objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our objectives.