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OFFICE OF INSPECTOR GENERAL

2021-0001-INVI-P – Suspected Violations of the Architect of the Capitol (AOC) “Government Ethics,” “Standards for Conduct,” “Authority and Responsibilities of the Office of Inspector General and Cooperation of AOC Employees” Policies and “Title 18, United States Code §1001 – Statements or Entries Generally”: Substantiated

On November 5, 2020, the AOC Office of Inspector General (OIG) received a complaint that alleged an employee worked outside employment while simultaneously being on paid Administrative Leave from the AOC due to being in a high risk category for contracting the Coronavirus (COVID-19).

The reporting party alleged that the AOC employee, a custodian with substantially similar job responsibilities, was working in a custodial capacity for a private construction company hired to remove debris from a Washington D.C. Fire and Emergency Medical Services Station.

During the COVID-19 pandemic, the AOC has placed employees who are affected differently by the pandemic into one Administrative Leave category. For example: when telework or other work arrangements cannot be made or their work areas are closed and they are not needed (such as U.S. Capitol Visitor Center tour guides) they are placed by on Administrative Leave by AOC management. Others have been granted Administrative Leave due to not having child care or elder care available during the pandemic. Additionally, there is a large group of employees over the age of 65 or with underlying health issues (making them more at risk from COVID-19) who may apply for (with proof from a doctor) this special accommodation in order to protect them from exposure while working at the AOC.

The Chief Administrative Officer for the AOC published a memorandum dated October 6, 2020, clarifying expectations of agency employee’s while on Administrative Leave. The memorandum stated in part, “Per AOC Order 630-1, Administrative Leave is an excused (administratively authorized) absence from duty without loss of pay and without charge to leave.” The memorandum directed that employees on Administrative Leave “must be available and able to work on short notice.” AOC leadership defined “an employee as ‘available’ when, during his or her normal tour of duty, he or she is communicating regularly with and responding promptly to AOC colleagues and supervisors, participating in telework activities as directed by management, and able to return to work in two to three hours, regardless of jurisdictional operating status.” In December 2020, the OIG, in consultation with the AOC Office of General Counsel, determined there was nothing specific in AOC policy prohibiting AOC employees from working another job (or engaging in other personal activities) while on Administrative Leave, under these policy restrictions, so long as they were responsive and available to be called back to AOC work on short notice, as needed during regular work hours, they received prior approval, and the position did not conflict with official duties and responsibilities.



Investigative Summary

2021-0001-INVI-P "Abuse of COVID-19 Administrative Leave"

The OIG determined through testimonial and documentary evidence that the employee has been on paid Administrative Leave since March 24, 2020, as a result of being in a medically high risk category for contracting COVID-19. The OIG reviewed the employee's Leave and Earnings Statements dating from March 15, 2020, through January 16, 2021. During that time frame, the AOC paid the employee \$40,913.04 to remain home from work in an effort to minimize their risk and exposure to the COVID-19 virus. Additionally, the employee accrued 176 hours of Annual Leave (\$3,842.08) and 88 hours of Sick Leave (\$1,921.04) during this timeframe to be utilized at a later date.

The OIG verified the employee's additional outside employment by conducting multiple interviews, reviewing Time and Attendance sheets and obtaining payroll documents from the private company.

Although there was nothing specific in AOC policy prohibiting AOC employees from working another job (or engaging in other personal activities) while on Administrative Leave, the investigation also determined the employee did not complete a "Notice of Outside Employment or Self-Employment Form" with the AOC, as required by AOC Order 38-1, Government Ethics (November 1, 2018). During an interview with the OIG, the employee was untruthful with the investigator and consistently denied any outside employment.

The employee was granted a reasonable accommodation of Administrative Leave as a result of an underlying health condition that placed them in a high risk category. Based on information obtained during the investigation, the employee's duties with the private company were specifically related to enhanced cleaning as a result of COVID-19, potentially causing exposure and increased their risk of contracting the virus (the reason they claimed accommodation from the AOC).

The AOC continues to have the authority and discretion to grant Administrative Leave; however, the current policies set forth as a result of COVID-19 do not specifically address issues of travel and outside employment for those employees receiving this special applied for accommodation. The guidance in place provides a gap that allows for employees to fraudulently seek and obtain a reasonable accommodation of Administrative Leave due to underlying health issues, then seek additional outside employment to supplement the salary that the AOC is paying them to remain at home in an effort to minimize their risk and exposure. Although the AOC OIG could not cite this individual with a crime, they took advantage of a gap in policy that places the Government at risk for continued fraud if it is not addressed.



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The OIG feels strongly that this employee’s actions were tantamount to workers’ compensation fraud: an employee has claimed a condition, which is preventing them from performing their AOC duties and is receiving compensation for that claim. Meanwhile, the employee, although claiming they cannot perform these duties, performs the same or more dangerous duties at other employment for additional compensation.

The OIG referred this case to the Department of Justice (DOJ). The U.S. Attorney’s Office, District of Columbia, declined to prosecute the employee due to lack of available resources as a result of the events that took place at the U.S. Capitol on January 6, 2021. No decision on the merits of the claims were made by the DOJ.

Final Management Action: The OIG substantiated that the AOC employee violated AOC policy when they failed to obtain advance permission for outside employment from their Agency Designee, were not truthful during the interview with the OIG investigator and did not fully cooperate with the OIG. The administrative violations were submitted to the jurisdiction for action deemed appropriate, if any. The case is closed and management action is pending.