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OFFICE OF INSPECTOR GENERAL

2021-0006-INVI-P – AOC Employee who committed substantiated Payroll Fraud by Abusing Coronavirus Leave Flexibilities, resigned prior to disciplinary action by AOC.

Suspected Violations of the Architect of the Capitol (AOC) “Government Ethics,” “Standards of Conduct,” “Absence and Leave” Policies and “Title 31, United States Code §3729 – False Claims”: **Substantiated**

On November 6, 2020, the AOC Office of Inspector General (OIG), received a complaint from an AOC supervisor regarding a personnel matter. The supervisor alleged Ms. Kenya Lee, formerly WG-04, Custodial Worker, Night Cleaning, Russell Senate Office Building also worked another job while utilizing AOC workplace and leave flexibilities afforded to employees as a result of the Coronavirus (COVID-19) pandemic. Lee began employment with the AOC on July 20, 2020, and had not physically reported to work due to childcare issues since September 22, 2020. The supervisor suspected that Lee worked for Amazon during the period she utilized AOC workplace and leave flexibilities, which authorized her to receive her regular income.

During the COVID-19 pandemic, 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, so long as they were responsive and available to be called back to the AOC work on short notice as needed during regular work hours.

The OIG determined through testimonial and documentary evidence that AOC management allowed Lee to take supplemental administrative leave in conjunction with her flexible schedule (one-week on, one-week off) to care for her child whose school was closed due to COVID-19 related reasons. AOC management provided additional guidance that effective October 30, 2020, supplemental administrative leave would be discontinued and AOC employees would need to apply for the Families First Coronavirus Response Act (FFCRA)¹ to continue paid leave. The FFCRA provides paid sick leave

¹ Congress passed FFCRA in response to the growing COVID-19 pandemic. The President signed it into law on March 18, 2020, and it became effective on April 1, 2020. Retrieved from <https://www.abetterbalance.org/resources/federal-coronavirus-proposal-the-families-first-coronavirus-response-act-h-r-6201/>



Investigative Summary

2021-0006-INVI-P “Suspected Violations of the Architect of the Capitol (AOC) “Government Ethics,” “Standards for Conduct,” “Absence and Leave” Policies and “Title 31, United States Code §3729 – False Claims”: Substantiated

or expanded family and medical leave for specified reasons related to COVID-19 that includes, in part, care of a child out of school closed due to the pandemic. Thus, agencies no longer had to expense the cost for COVID-19-related expanded leave flexibilities. Lee was informed of this policy change and asked to submit a FFCRA application. On October 27, 2020, Lee prepared and submitted a FFCRA self-certification, citing the need to care for a minor child whose school had closed as a result of the pandemic. On November 4, 2020, AOC management approved Lee’s FFCRA request with guidance that she could take up to 480 hours (12 weeks) of FFCRA administrative leave that expired on December 31, 2020. The OIG confirmed that Lee was also employed by Amazon from July 19 through December 26, 2020, and worked at Amazon on days when she received supplemental and FFCRA leave, counter to her claim of needing these leave flexibilities to care for a minor out of school due to COVID-19.

Based on this information as well as Lee’s grade, salary and benefits received, it was determined that based on salary and benefits received by Lee, the total of funds put to better use² was \$20,197.16.

Although AOC policy did not prohibit employees from working another job (or engaging in other personal activities) while on FFCRA Leave, the investigation also determined that Lee 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). On April 21, 2021, during her interview with the OIG, Lee admitted to working at Amazon while on FFCRA administrative leave.

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 were silent regarding outside employment. The policy gap identified increases the AOC’s risk exposure to fraud. As a result, AOC employees have been able to “double dip” by working for an outside employer during the time granted under administrative leave. The OIG feels strongly that Lee’s actions are tantamount to payroll fraud whereby she has claimed a need that prevents her from performing her AOC duties and in turn receives compensation under FFCRA administrative leave. Meanwhile Lee, who claimed she could not perform her AOC duties, performed comparable work at another employer for additional compensation.

Final Management Action: No administrative action was taken, the subject resigned from her position with the AOC effective July 28, 2021.

² As defined in the Section 5(f)(4) of the IG Act, the term “recommendation that funds be put to better use” means a recommendation by the OIG that funds could be used more efficiently if management of an establishment took actions to implement and complete the recommendation.