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OFFICE OF INSPECTOR GENERAL

2021-0006-INVI-P – 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 a subordinate employee also worked another job while utilizing AOC workplace and leave flexibilities afforded to employees as a result of the Coronavirus (COVID-19) pandemic. The employee 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 the employee worked for Amazon during the period they utilized AOC workplace and leave flexibilities, which authorized them to receive their 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 the employee to take supplemental administrative leave in conjunction with their flexible schedule (one-week on, one-week off) to care for their 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. The employee was informed of this policy change and asked to submit a FFCRA application. On October 27, 2020, the employee 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 the employee's FFCRA request with guidance that they could take up to 480 hours (12 weeks) of FFCRA administrative leave that expired on December 31, 2020. The OIG confirmed that the employee was also employed by Amazon from July 19 through December 26, 2020, and worked at Amazon on days when they received supplemental and FFCRA leave, counter to their claim of needing these leave flexibilities to care for a minor out of school due to COVID-19.

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 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). On April 21, 2021, during their interview with the OIG, the employee 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 the employee's actions are tantamount to payroll fraud whereby an employee has claimed a need that prevents them from performing their AOC duties and in turn receives compensation under FFCRA administrative leave. Meanwhile the employee, who claimed they could not perform their AOC duties, performed comparable work at another employer for additional compensation.

The employee was a Wage Grade (WG)-4 step 1 during the period under review. Their salary from 7/19/20 through 10/10/2020 was \$18.73 per hour. WG employees received an annual pay adjustment effective 10/11/2020; thus, their hourly rate subsequently increased to \$18.92 per hour.

The employee is assigned to the third, or overnight, shift, so they received a night shift differential, which is equivalent to 10 percent of their hourly rate. The night shift differential is added to the regular hourly rate and paid to the employee based upon the number of hours worked.

The \$18.73 hourly rate including 10 percent night shift differential for Pay Periods 15 - 20 (7/19/20 through 10/10/2020) amounts to \$20.60 per hour.

The \$18.92 hourly rate including 10 percent night shift differential for Pay Periods 21 – 26 and 01 (10/11/2020 through 01/16/2021) amounts to \$20.81 per hour.



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In Pay Periods 22-26, the employee was paid in accordance with the FFCRA due to school closures. Employees using FFCRA leave due to school closures were entitled to pay at two-thirds their regular rate. This amounted to \$13.74 during Pay Periods 15-20 and \$13.87 during Pay Periods 21-26 and 01 (including the night shift differential).

Based upon the information provided, the employee defrauded the AOC out of:

Table 1: Salary and Benefits Table

Object Class Name	National Finance Center Object Code Name	2020	2021	Grand Total
Full-time Permanent - Payroll	FULL-TIME, WAGE BOARD, PERMANENT APPT.	\$15,184.34	\$1,483.20	\$16,667.54
Other Personnel Compensation - Payroll	NIGHT DIFFERENTIAL	\$1,661.80	\$164.80	\$1,826.60
Total Personnel Compensation - Payroll		\$16,846.14	\$1,648.00	\$18,494.14
Civilian Personnel Benefits	FEGLI (AGENCY CONTRIBUTION)	\$37.80	\$3.15	\$40.95
	HOSPITAL INSURANCE TAX (AGENCY CONTRIBUTION)	\$244.29	\$23.90	\$268.19
	FEDERAL EMPLOYEES RETIREMENT SYSTEM (FERS)	\$2,679.29	\$255.44	\$2,934.73
	FULL FICA CONTRIBUTIONS - FERS (K)	\$1,044.47	\$102.18	\$1,146.65
	THRIFT SAVINGS PLAN GOVERNMENT BASIC CONTRIBUTION	\$168.46	\$16.48	\$184.94
	THRIFT SAVINGS PLAN GOVERNMENT MATCHING CONTRIBUTION	\$505.37	\$49.44	\$554.81
Civilian Personnel Benefits Total		\$4,679.68	\$450.59	\$5,130.27
Pay Adjustment	FOR DAYS NOT IN CONFLICT WITH AOC SCHEDULE	(\$3427.25)		(\$3427.25)
Grand Total		\$18,098.57	\$2,098.59	\$20,197.16

Salary:

Pay Periods 15 - 26 from July 19, 2020 through January 2, 2021: \$16,846.14

Pay Period 1 from January 3, 2021 through January 16, 2021: \$1,648.00

Subtotal of funds put to better use² for salary are: **\$18,494.14**

Benefits:

Pay Periods 15 - 26 from July 19, 2020 through January 2, 2021: \$4,679.68

Pay Period 1 from January 3, 2021 through January 16, 2021: \$450.59

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.



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Subtotal of funds put to better use for benefits are: \$5,130.27

Adjustment for days not in conflict with AOC schedule:

15 days at regular pay plus benefits: \$3167.66

Two days at two-thirds pay plus benefits: \$259.60

Subtotal of adjusted funds: \$3427.25

Total of funds put to better use = \$20,197.16

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 and claimed a need that prevents them from performing their AOC duties and in turn received compensation under FFRCA administrative leave. The administrative violations were submitted to the jurisdiction for action deemed appropriate, if any. Where applicable and allowable, the OIG suggests the AOC attempt to recoup identified funds put to better use. This investigation and other cases involving administrative leave will be collectively presented to the Assistant United States Attorney for potential prosecution. The case is closed and management action is pending.