



THE CITY OF SAN DIEGO

DATE: December 14, 2016

TO: Stacey LoMedico, Assistant Chief Operating Officer
Rolando Charvel, City Comptroller

FROM: Eduardo Luna, CIA, CGFM, City Auditor
Office of the City Auditor

SUBJECT: Hotline Investigation of Improper Use of Discretionary Leave

The Office of the City Auditor received an anonymous Fraud Hotline report alleging that a Department Director improperly awarded Discretionary Leave (paid time off) to some employees to make up for hours not worked in order to cover for a scheduling error. Based on our investigation we determined the complaint was substantiated.

We found a Department Director gave Discretionary Leave to staff members in response to a one-time scheduling error. The Director stated that if the scheduling error was not corrected, it would have resulted in some staff receiving a “shortage” in hours for the two-week pay period when the schedule changed. However, no City policy permits Discretionary Leave payments to employees for time not worked in order to correct a scheduling error.

The Department improperly paid 114 employees Discretionary Leave on the date in question, for a total of 743 hours, at a cost of \$16,556. The amount paid to the affected employees was an additional cost to the City beyond the normal compensation for hours worked. The Department Director did not award Discretionary Leave hours to himself or herself.

The scheduling error resulted from a lack of coordination between the new schedules and the payroll cycle. The new schedules began on a Sunday, but the payroll cycle began one day prior, on a Saturday. The Department’s payroll staff were not involved in the planning related to the schedule change, but immediately identified the problem once the Department’s management announced the new schedule to the staff.



Hotline Investigation of Improper Use of Discretionary Leave

The Director did not discover the error until after the new schedule was negotiated with a labor organization and formalized with staff. The Director determined, without consultation from relevant City Departments, that the “only possible solution was to grant Discretionary Leave to the staff that would have a shortage of hours worked during that period of time.” The Director added that the Discretionary Leave was only to be used on one date.

According to the Director, if the error had not been corrected through the Discretionary Leave awards, the shortage would have reduced the staff’s paychecks or resulted in them having to use their personal Annual Leave time. Annual Leave hours are accrued by the employees and they can be used to take paid time off from work.

Additionally, we found that three employees received Discretionary Leave without formal authorization via the Department Director’s memorandum. The three identified employees also had a shortage of hours worked, and the Department’s payroll staff entered Discretionary Leave hours for these employees without formal authorization. The Director was not aware that three employees received Discretionary leave without being included on the memorandum authorizing it.

We discussed the use of Discretionary Leave to correct the Department’s scheduling error with the Office of the City Comptroller’s Payroll section and the Human Resources Department’s staff. The Department Director did not contact either the Payroll section or the Human Resources Department regarding the scheduling error, and neither approved of the plan to use Discretionary Leave to correct the error. Also, neither Department was aware of a way to correct the improper use of Discretionary Leave retroactively.

No City policy permits Discretionary Leave payments to employees for time not worked in order to correct a scheduling error. The City’s Internal Controls Process Narrative entitled, “How to Award Discretionary Leave,” defines Discretionary Leave as “Leave with pay granted up to three consecutive days or 24 hours for exceptional performance...” However, the Process Narrative does not require City payroll staff to review Discretionary Leave documents to assure accuracy and compliance with City policy. Specifically, Administrative Regulation 95.91, permits Discretionary Leave awards only as part of the City’s Employee Rewards and Recognition Program as a reward for exceptional performance.

Hotline Investigation of Improper Use of Discretionary Leave

Also, given that the award of Discretionary Leave hours to a group of employees was not made pursuant to any City policy or regulation, we asked the City Attorney's Office for a legal opinion regarding whether the Discretionary Leave granted by the Department Director constituted a gift of public funds. The City Attorney's Office concluded that the Discretionary Leave awards did not amount to a gift of public funds because a court would likely find that there was a public purpose to the awards. Specifically, their opinion noted:

In essence, so long as there is a public purpose for the award, it is not considered a gift of public funds. A court will generally defer to the City's determination on what constitutes a public purpose unless it is clearly illegal. Although there was no formal City determination in this instance, it is likely that the [Department] Director's desire to remedy a scheduling error would suffice to constitute a public purpose because it addressed concerns with employee morale.

We note that the Department Director could have changed the implementation date of the new schedule, which would have avoided the need to award Discretionary Leave improperly. While postponing the start date of the new schedule may have had some negative implications and required additional negotiations, changing the schedule was a viable option. Although the apparent abuse of discretion may, or may not, meet the legal standards for a gift of public funds, we have determined that the Discretionary Leave awards were improper because they violated City policy, and it constituted an override of Internal Controls.

Hotline Investigation of Improper Use of Discretionary Leave

Conclusion

Our investigation found sufficient evidence to support the allegation that the Department Director granted Discretionary Leave improperly because the hours were granted to the affected staff due to an administrative error, rather than as the result of “exceptional performance” as permitted under City policy. We also found that the subject Department Director did not consult with Human Resources or Comptroller’s Office staff prior to using Discretionary Leave to correct the error. Also, three employees received Discretionary Leave without authorization from the Department Director’s memorandum.

Therefore, we have concluded that the improper use of Discretionary Leave without consultation from relevant City Departments constituted an override of Internal Controls and City policy regarding the award of Discretionary Leave time. According to a legal opinion from the City Attorney’s Office, it is not likely that that the award of discretionary leave in this instance constituted a gift of public funds.

Recommendations and Management's Responses:

1. **We recommend that the City Comptroller take action to revise the existing Internal Controls Process Narrative regarding Discretionary Leave Awards to include a review step to ensure that future Discretionary Leave award documents are accurate, and that the awards are only granted in a manner consistent with City policy.**

Management agrees with the recommendation and will revise the existing Internal Controls Process Narrative regarding Discretionary Leave Awards to include proper documentation and review of the award prior to entering the discretionary leave hours into the financial system (SAP).

Target Implementation Date: January 2017

2. **We recommend that the Assistant Chief Operating Officer take the appropriate corrective action with respect to the identified Department Director.**

Management agrees with the recommendation and will take the appropriate action as it relates to this personnel issue.

Target Implementation Date: December 2016

Hotline Investigation of Improper Use of Discretionary Leave

The information in this report is being provided to you under the authority of California Government Code §53087.6, which states:

(e) (2) Any investigative audit conducted pursuant to this subdivision shall be kept confidential, except to issue any report of an investigation that has been substantiated, or to release any findings resulting from a completed investigation that are deemed necessary to serve the interests of the public. In any event, the identity of the individual or individuals reporting the improper government activity, and the subject employee or employees shall be kept confidential.

(3) Notwithstanding paragraph (2), the auditor or controller may provide a copy of a substantiated audit report that includes the identities of the subject employee or employees and other pertinent information concerning the investigation to the appropriate appointing authority for disciplinary purposes. The substantiated audit report, any subsequent investigatory materials or information, and the disposition of any resulting disciplinary proceedings are subject to the confidentiality provisions of applicable local, state, and federal statutes, rules, and regulations.

Thank you for taking action on this issue.

Respectfully submitted,

A handwritten signature in black ink that reads "Eduardo Luna". The signature is written in a cursive, flowing style.

Eduardo Luna
City Auditor