



OFFICE OF INSPECTOR GENERAL
City of Albuquerque

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Investigative Informative Case Synopsis

FILE NO: 23-0060-C

SUBJECT MATTER: Allegation that the City is not consistently following its hiring policies.

STATUS: Final

INVESTIGATOR: C. Saavedra

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Christopher Saavedra

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CHRISTOPHER SAAVEDRA
INVESTIGATOR
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August 14, 2023
Date of Completion

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August 14, 2023
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ACCOUNTABILITY IN GOVERNMENT
OVERSIGHT COMMITTEE CHAIRPERSON

August 30, 2023
Date of Approval

DISTRIBUTION:

- Honorable Mayor**
- President City Council**
- Chief Administrative Officer**
- City Councilors**
- Director Council Services**
- City Attorney**
- Department Director**
- Members, Accountability and Government Oversight Committee**
- File**

EXECUTIVE SUMMARY

According to City Ordinance 2-17-2, the Inspector General's goals are to (1) Conduct investigations in an efficient, impartial, equitable, and objective manner; (2) Prevent and detect fraud, waste, and abuse in city activities including all city contracts and partnerships; (3) Deter criminal activity through independence in fact and appearance, investigation and interdiction; and (4) Propose ways to increase the city's legal, fiscal and ethical accountability to insure that tax payers' dollars are spent in a manner consistent with the highest standards of local governments.

On June 27, 2023, the Office of Inspector General (OIG) received an anonymous email alleging unfair hiring practices on the part of the City. In that, a former City employee (E1) was rehired by the City after resigning when E1 was informed that they were to be terminated from their employment. The allegation further stated that the referring party knew of several other individuals attempting to reapply for employment with the City that were denied due to their prior terminations.

The OIG determined that the allegations contained elements of fraud, waste, or abuse and that it was appropriate for the OIG to conduct a fact-finding investigation. The purpose of the investigation was to determine if the allegation of the City using unfair hiring practices is supported by evidence that may substantiate or not substantiate the complaint.

The OIG reviewed E1's Human Resource employee file, New Mexico Court records, Central Albuquerque HR policies, and HRMPROD.

As a result of the investigation, the OIG determined it was inconclusive that the allegation of unfair hiring practices in E1 being rehired. The OIG made three observations for improvement.

ABBREVIATIONS

E1:	City Employee
City:	City of Albuquerque
OIG:	Office of Inspector General
HR:	Human Resources Department
HR1:	Human Resources Department Employee
NOFA:	Notice of Final Action
DiHRT:	Department Initiated Human Resources Transactions

INTRODUCTION

The mission of the Office of Inspector General (OIG) is to provide independent and objective insight, oversight, and foresight in promoting integrity, efficiency, overall effectiveness, accountability, and transparency in government to safeguard and preserve public trust.

Complaint:

An allegation of unfair hiring practices by the City pertaining to the rehire of employees who resign in lieu of termination.

Background:

On June 27, 2023, the Office of Inspector General (OIG) received an anonymous email alleging unfair hiring practices on the part of the City. In that, a former City employee (E1) was rehired by the City after being scheduled to be terminated from their position and submitted their resignation before the termination went into effect. The allegation further stated that the referring party knew of several other individuals (names not specified in the allegation) attempting to reapply for employment with the City that was denied due to their prior terminations.

The City, as outlined in Personnel Rules and Regulations; Section 104. Application for Reemployment, states that “interviewing or hiring supervisors may review the personnel records and performance ratings of former employees who apply for rehire” and that “Employees terminated for cause will not be considered for rehire”.

The OIG conducted a fact-finding investigation and determined that the allegation that the City engaged in unfair hiring practices by rehiring E1 after they resigned from their position with the City on January 4, 2018, after receiving a Notice of Final Action (NOFA) on December 27, 2017 was inconclusive. The NOFA was for the termination of E1’s employment with the City due to E1’s “failure to maintain the required licensure to perform the duties of his position” at the time.

INVESTIGATION

Allegation:

Allegation of unfair hiring practices by the City pertaining to the rehire of employees who resign in lieu of termination.

Authority:

HR Personnel Rules and Regulations; Section 104. Application for Reemployment states “All former employees of the City of Albuquerque are required to complete employment procedures in the same manner as other external applicants. The interviewing or hiring supervisor may review the personnel records and performance ratings of former employees who apply for rehire. Employees terminated for cause will not be considered for rehire”. The OIG identified the pertinent section of this policy that pertains to this subsequent matter of employees terminated for cause will not be considered for rehire.

HR Personnel Rules and Regulations; Section 801. Resignation states “Resignation is the voluntary termination of employment, prior to retirement. City employees who wish to resign in good standing shall submit a letter to their immediate supervisor at least two (2) weeks before leaving employment. The letter shall include the date the resignation will become effective”. The OIG identified the pertinent section of this policy that pertains to this subsequent matter that an employee wishing to resign in good standing shall provide a letter at least two (2) weeks before leaving employment.

Evidence:

Review of Employee Records

December 27, 2017: Interoffice Memorandum titled “Notice of Final Action”

January 4, 2018: Resignation letter from E1

Analysis:

The OIG reviewed the Code of Conduct and City ordinances and identified two relevant policies; HR Personnel Rules and Regulations; Section 104. Application for Reemployment and Section 801. Resignation.

The OIG’s investigation identified that E1 was provided with an Interoffice Memorandum with the subject line “Notice of Final Action” (NOFA) dated December 27, 2017, which identified that E1’s employment with the City was to be terminated based on the “failure to maintain the required licensure to perform the duties of his position”. E1 then submitted a letter of resignation on January

4, 2018, which was effective immediately. On January 5, 2018, E1 was officially recorded as having resigned from his position by HR. On January 12, 2018, E1's City employee file was updated with E1's Letter of Resignation and the December 27, 2017, NOFA. In the "Additional Comments" section of the Detail Transaction Information section of E1's employee file, it was noted that the "Employee resigned in lieu of termination". On February 11, 2023, E1 was then rehired as an Electrician II with the City.

The OIG spoke with HR1 from the City's Central HR and requested clarification on an employee's eligibility to be rehired after being terminated and/or resigning in lieu of termination. HR1 identified that if an employee is scheduled to be terminated for cause and then submits their resignation, that employee would still be considered ineligible for rehire based on 104. Application for Reemployment. HR1 identified that the proper procedure for that instance is to identify in the "Additional Comments" section of the employee's Central HR file when updating their termination as a result of resignation, that the employee resigned in lieu of termination. HR1 also stated a copy of the NOFA should be included in the file along with the employee's letter of resignation. HR1 stated for E1's termination that the NOFA was uploaded to the Department Initiated Human Resources Transactions (DiHRT) action that was approved by Central HR. However, HR1 stated that PeopleSoft does not capture the notes or additional attachments. HR1 stated that a review of the termination reason would have had to be reviewed on E1's Central HR employee record file.

Based on our investigation, it was identified that E1 was scheduled to be terminated from their City employment for cause on December 27, 2017. HR Personnel Rules and Regulations; Section 104. Application for Reemployment, states an employee is ineligible to be rehired by the City. E1 then submitted their resignation from their City employment on and effective January 4, 2018. Under HR Personnel Rules and Regulations; Section 801 Resignation, this would make E1 "not in good standing" as E1 did not provide their letter to their immediate supervisor at least two (2) weeks before leaving E1's employment. Based on the evidence and Personnel Rules and Regulations, it was inconclusive as to if E1 should not have been considered for rehire.

Conclusion:

Based on the evidence obtained, the allegation that the City engaged in unfair hiring practices pertaining to the rehire of employees who resign in lieu of termination was inconclusive as no policy or procedure is established which addresses the issue of an employee who resigns from their position during the course of a Notice of Final Action which would result in termination with cause; thus, making them ineligible for rehire in the future.

GENERAL OBSERVATIONS AND RECOMMENDATIONS

Observation 1:

Departments do not have access to PeopleSoft, when reviewing a potential rehire record, to view the notes or additional attachments that are available in an employee's file on record with Central HR.

Recommendation:

When hiring or rehiring employees, Departments must follow the guidelines of the City's Central HR. Departments should review rehire candidate's Central HR files and the reason of their termination(s) to ensure they are eligible to be rehired.

Management Response:

Department of Arts and Culture Response:

DAC does follow the guidelines of the City's Central HR. We do consult with Central HR on all rehires and review all information available to us.

Unfortunately, the DAC Director was not provided with details on this particular investigation and was not included in this investigation, so the department is unable to provide a response based on the details of this investigation or the particular context of this situation. It is important to note that occasionally there are extenuating circumstances for some re-hires. Recently, an employee was re-hired into the City and placed in DAC as the result of a court-ordered settlement. In a situation like this, the settlement overrides the guidelines.

Central Human Resources Response:

When an individual who previously worked for the City of Albuquerque applies to work for the City again, departmental HR Coordinators have the ability to review the employee file prior to making an offer of employment to the individual. It is common practice for city departments to review a rehire candidate's Central HR file in order to determine their eligibility for rehire within the organization.

Observation 2:

HR's PeopleSoft electronic file stated that E1 resigned, but in review of E1's uploaded HR file, the Termination Detail Transaction Information form had, "in lieu of termination" in the additional

Recommendation:

HR should ensure that PeopleSoft and that an employee's HR file contain the same information for an employee leaving the City.

Management Response:

Central Human Resources Response:

The information contained in PeopleSoft and the employee's HR file did contain the same information. The reason entered into the system for the termination of E1 was resignation, not termination. Since the employee resigned the position and was not terminated for cause, the individual was eligible for rehire. Rule 104 of the City's Personnel Rules and Regulations states that "employees terminated for cause will not be reconsidered for rehire." It does not say that employees who resign in lieu of termination are not eligible for rehire. The City often enters agreements restricting the ability of individuals to apply for new positions within the City, but in the absence of such agreements employees who resigned in lieu of termination are eligible for rehire.

Observation 3:

There is no clear and established policy or ordinance to address the situation of when an employee who is to be terminated for cause, resigns before the Notice of Final Action is completed and that employee is considered terminated with cause; thus, making them ineligible for rehire with the City in the future.

Recommendation:

The City should establish clear policies and ordinances on how to address when a City employee resigns in lieu of termination with cause.

Management Response:

We appreciate the recommendation to this Personnel issue and will take it into consideration as we make revisions to Personnel Rules and Regulations.