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Report of Investigation

FILE NO: 23-0080-I

SUBJECT MATTER: Allegation of abuse of time by City employee.

STATUS: Final

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November 17, 2023
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December 14, 2023
Date of Approval

DISTRIBUTION:

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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. The City of Albuquerque (City) Office of Inspector General conducts investigations, inspections, evaluations, and reviews in accordance with AIG standards.

The Office of Inspector General (OIG) received an anonymous complaint alleging a City employee (E1) is abusing their time and teleworking days to travel to vacation locations and is incorrectly reporting their time into the City timesheet system, Kronos.

The OIG determined that the allegations contained elements of potential 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 collect evidence to substantiate or not substantiate the allegation that E1 was abusing their time and teleworking days to travel to vacation locations and incorrectly reporting their time.

As a result of the investigation, the OIG was able to substantiate that E1 violated City Administrative Instruction (AI) No: 7-66 Telecommuting/Work From Home; by working outside of their established work location and by working outside the State of New Mexico without prior authorization by the Department Director and Chief Administrative Officer (CAO) as established by AI No: 7-66. Additionally, the OIG was able to substantiate that E1 violated City Personnel Rules and Regulations, 401.4 Sick Leave, by utilizing their sick leave as vacation hours for instances that were outside of "Personal Illness" as defined by the above-mentioned policy.

In addition, the OIG noted a Subsequent Matter and Observation and provided recommendations for improvement.

ABBREVIATIONS

CITY:	City of Albuquerque
D1:	Department Director
DFAS:	Department of Finance & Administrative Services
E1:	City Employee
OIG:	Office of Inspector General
VPN:	Virtual Private Network

INTRODUCTION

The mission of the Office of Inspector General (OIG) is to promote a culture of integrity, accountability, and transparency throughout the City of Albuquerque (City) to safeguard and preserve public trust. Investigations, inspections, evaluations, and reviews are conducted following AIG Standards.

Allegation

A Department of Finance & Administrative Services (DFAS) employee (E1) is abusing their time and teleworking days to travel to vacation locations and incorrectly reporting their time into the City timesheet system, Kronos. The allegation also states that E1 was incorrectly using their sick leave outside of the defined City Sick Leave policy.

SCOPE AND METHODOLOGY

Scope:

E1's time reporting information between January 1, 2023 and September 9, 2023 and Virtual Private Network (VPN) logs for E1's City issued laptop between June 10, 2022 and September 23, 2023. Emails between January 2023 and September 9, 2023 were reviewed.

The methodology consisted of:

- Conduct information-gathering interviews
- Review City policies and procedures
- Review PeopleSoft and Kronos Data
- Review Social Media
- Review of VPN Logs
- Review of emails

This report was developed based on information from interviews, inspections, observations, and the OIG's review of selected documentation and records provided during the course of the investigation.

INVESTIGATION

Allegation:

City employee is abusing their time and teleworking agreement by using their teleworking days to travel to vacation locations while incorrectly recording their time in the City's timesheet software, Kronos.

Authority:

301.9: False Statements/Fraud

No employee shall willfully make any false statement, certificate, mark, rating, or report in regard to any test, certification, appointment, or investigation, or in any manner commit any fraud, conceal any wrongdoing, or knowingly withhold information about wrongdoing in connection with employment with the City or in connection with the work-related conduct of any City employee.

401.4: Sick Leave

Provided the employee has an accrued sick leave balance, sick leave may be granted for absence from duty because of personal illness, illness of a spouse, domestic partner, son, daughter, or parent as these terms are defined in Section 401.11, L.

Personal illness is defined to include scheduled doctor's appointments for health examination, evaluation, and/or treatment. Doctor's appointments may require documentation. Hours worked in addition to the regularly scheduled workweek will not entitle the employee to additional sick leave benefits.

C. Sick Leave Conversion

The maximum sick leave accumulation for classified employees will be 1,200 hours for a forty (40) hour workweek or a prorated amount for a regular workweek other than forty (40) hours unless otherwise specified by a collective bargaining agreement. Employees who have reached the specified accumulation levels listed below may exercise one of the available options. The option to convert sick leave will be offered only in November of each year. Employees electing to not convert sick leave will continue to accrue sick leave up to the maximum of 1200 hours.

The following conversion formula will be used to convert accumulated sick leave unless otherwise specified in a collective bargaining agreement:

Options

1. Sick leave accumulation over 500 hours may be converted at:
 - a. Three (3) hours of sick leave to one (1) hour of vacation, or
 - b. Three (3) hours of sick leave to one (1) hour cash payment.
2. Sick leave accumulation over 850 hours may be converted at:
 - a. Two (2) hours of sick leave to one (1) hour of vacation, or
 - b. Two (2) hours of sick leave to one (1) hour cash payment.
3. Sick leave over 1,200 hours must be converted at:
 - a. Three (3) hours of sick leave to two (2) hours of vacation, or
 - b. Three (3) hours of sick leave to two (2) hours cash payment.

401.11, L: Family and Medical Leave, Definitions

1. **Spouse** - husband or wife as defined or recognized under New Mexico law.
2. **Domestic Partner** – an individual who lives in a long-term relationship of indefinite duration who meets all criteria established by the City and has filed an affidavit of domestic partnership with the Human Resources Department, Insurance and Benefits Division.
3. **Son or Daughter** - a biological, adopted, or foster child, stepchild, a legal ward, or a child for whom the employee has intentionally assumed the obligations of the parental relationship, such as daily care and financial support without going through the formalities of adoption, who is under the age of eighteen (18), or who is eighteen (18) years of age or older and is incapable of self-care because of a mental or physical disability.
4. **Parent** - the biological parent of an employee or an individual who intentionally assumed the obligations of the parental relationship, such as daily care and financial support, without going through the formalities of adoption when the employee was a child. This term does not include parents-in-law.

AI No: 7-66: Telecommuting/Work from Home

Unless otherwise approved by an employee's direct supervisor, an employee's alternate work location shall be at the employee's home. The City may, with 24-hour notice, access the alternate work location to assess safety and security. The City is not liable for any injury to others at the alternate work location.

Non-Mandatory Telework Agreement Form

1. The agreement is made in accordance with AI No: 7-66, Telecommuting/Work From Home.
- 2-d. Accurately record all hours worked in Kronos; and
- 2-e. Follow all City Personnel Rules and Regulations, including those related to overtime, the use of leave, and substance abuse.
3. Your duties, obligations, responsibilities, and conditions of employment with the City remain unchanged except for those obligations and responsibilities specifically addressed in this Telecommuting/Work From Home Agreement.
5. Your immediate supervisor must be notified, via e-mail, if your planned work location changes. Remote work may only occur in the State of New Mexico. Remote work outside of the State of New Mexico may only be approved by the employee's Department Director and the Chief Administrative Officer after recommendation from their immediate supervisor for occasional, short periods of time. Such out-of-state exceptions may not be approved as the employee's permanent or prolonged remote work location.
7. The City will determine appropriate and suitable equipment for you. Internet access at the employee's telework location must be via DSL, Cable Modem, or an equivalent bandwidth

network, with a secure password-protected router. You are responsible for providing, maintaining, and repairing equipment you own. You are also responsible for all utility costs related to teleworking. If you are issued any City-owned equipment for telework, such equipment must be documented below. In the event of equipment failure or service interruption, you must notify the City immediately to discuss potential remedies, alternate assignments, or other options.

10. You shall ensure the protection of any confidential information. Any disclosure of confidential information, even if it is accidental or inadvertent, must be immediately reported to your supervisor.

Evidence:

VPN Logs

Kronos Timesheet

Interviews

City Policies

Social Media Photos

Emails

Interview:

During an interview with E1, they acknowledged signing the Non-Mandatory Teleworking Agreement Form on October 17, 2022. By signing the form, E1 acknowledged that “I have read and understood this Agreement”.

E1 stated to the OIG that they were not aware of section 5 of the Non-Mandatory Teleworking Agreement Form. E1 admitted to not paying attention to or reading the form prior to signing the document.

E1 confirmed their home resided in Albuquerque. They were then presented with sixteen (16) individual instances where their assigned laptop interacted with the City’s VPN from a location outside of Albuquerque; or when E1 reported “Hours Worked” on their Kronos but did not have any VPN log information for that day at all. E1 confirmed that they did travel to the identified locations in or around each time presented. E1 stated that on each of those sixteen (16) dates identified, they worked their scheduled eight (8) hour shift. E1 protested three (3) of the sixteen (16) identified dates, stating that they had used sick leave for those days and was completing work while not scheduled to work.

The OIG advised E1 that by working at locations that were not their home they were in direct violation of the Non-Mandatory Teleworking Agreement Form section 5 which was signed as acknowledged and understood by E1.

The OIG advised E1 that the three (3) days protested by E1 revealed that sick leave was used according to E1’s Kronos timesheet. E1 responded to this stating that the previous DFAS Department Director had approved E1 to use their sick leave in lieu of their vacation time and had requested the time off in advance. Due to E1’s admittance that they used sick leave when traveling for vacation, the OIG informed E1 that was a violation of 401.4: Sick Leave.

The OIG asked E1 about their meeting with the acting Department Director (D1) on September 6, 2023. E1 stated that D1 requested the meeting to address the performance issues of E1. D1 instructed E1 to discontinue their teleworking and to report to the assigned City work location going forward. E1 stated that D1 also addressed the use of E1's sick leave outside of the defined uses of the 401.4: Sick Leave policy. D1 stated that going forward, no employee of DFAS would be allowed to use their sick leave in this or a similar manner.

According to D1, E1 was asked why sick leave was coded if E1 was on vacation. E1 responded that they had excess sick leave and the previous director had allowed E1 to use sick leave as vacation leave. D1 identified to E1 that going forward, sick leave would not be approved for vacation leave for anyone in the department. D1 also requested that E1 cease their teleworking days as D1 believed that E1 needed to focus on their work as E1 seemed distracted and kept asking the same questions repeatedly and that it was affecting E1's performance. As a result, E1's teleworking was put on hold to potentially be revisited at a later date. When E1 was asked during their interview with OIG how their performance was affected, E1 stated that they felt that taking the amount of time off that they did when first hired for their position was a mistake in E1's opinion.

The OIG spoke with D1, to which they identified that they spoke via telephone with E1 on September 6, 2023. D1 identified that they requested an in-person meeting with E1 for September 7, 2023. E1 responded that they were teleworking that day and requested the meeting to be done via Zoom. D1 instructed E1 to report for the meeting in person as E1 had been out of the office the entire week. E1 stated that they were on vacation during the earlier part of the week. D1 reviewed E1's Kronos and identified that the vacation for that week was coded as "sick leave" and approved by the former Department Director before D1's appointment as acting Director.

Analysis:

The evidence obtained by the OIG through data, Kronos timesheets, and VPN logs shows that E1's laptop was being used at locations outside of Albuquerque, the location of E1's primary residence.

The OIG reviewed E1's Kronos timesheet dated from September 1, 2022 – September 9, 2023, which identified the time that was reported by E1.

The OIG reviewed VPN data for E1's assigned City laptop between June 10, 2022 – May 1, 2023 and July 7, 2023 – September 21, 2023. The gap between the two dates was attributable to the City transitioning to a new method of capturing VPN data.

Of the nine hundred forty-six (946) VPN logs identified of E1's laptop connecting to the City's VPN compared to E1's reported time in Kronos, the OIG identified fourteen (14) of the sixteen (16) instances of E1's laptop connecting to the City VPN from locations outside of Albuquerque and/or the State of New Mexico during times when E1 reported their time as "Hours Worked" or "Sick Leave" as identified in *Table 1* below:

Date	Reported Timecode	VPN Location
December 13, 2022	Hours Worked: 8.0	Santa Fe, New Mexico
January 5, 2023	Hours Worked: 8.0	Taos, New Mexico

January 6, 2023	Hours Worked: 8.0	Taos, New Mexico
January 20, 2023	Hours Worked: 8.0	Montrose, Colorado
March 17, 2023	Hours Worked: 8.0	Taos, New Mexico
March 23, 2023	Hours Worked: 8.0	Santa Fe, New Mexico
March 24, 2023	Hours Worked: 8.0	Santa Fe, New Mexico
April 27, 2023	Hours Worked: 8.0	Henderson, Colorado
April 28, 2023	Hours Worked: 8.0	Henderson, Colorado
May 1, 2023	Hours Worked: 8.0	Henderson, Colorado
August 1, 2023	Sick Leave: 8.0	Watertown, South Dakota
August 2, 2023	Sick Leave: 8.0	Denver, Colorado
September 6, 2023	Sick Leave: 8.0	Tlalnepantla, Morelos, Mexico Playa del Carmen, Quintana Roo, Mexico Denver, Colorado
September 7, 2023	Hours Worked: 8.0	Denver, Colorado

Table 1

E1 acknowledged that they were traveling during the above-identified times. E1 did identify three (3) instances on August 1, 2023; August 2, 2023; and September 6, 2023, as scheduled sick days off. The OIG verified that these dates were coded to sick leave instead of vacation leave in Kronos. Totalling twenty-four (24) hours of sick leave that was incorrectly applied based on 401.4: Sick Leave. The value of the misclassification has been calculated as \$923.76, based on E1's current hourly rate.

The OIG reviewed emails for evidence of approved authorization of sick leave in lieu of vacation but could not locate any emails between E1 and the previous Director requesting or authorizing the deviation. Under 401.4, C; once per year the City allows for a conversion of an employee's sick leave to vacation leave depending on the balance of their sick leave at that time. In the case of E1, they benefitted by being able to acquire vacation time at a rate greater than the conversion table permitted.

The OIG reviewed social media posts and photos to corroborate the dates in question.

Finding 1:

The evidence obtained by the OIG substantiates the allegation of abuse of time by E1 by violating AI No: 7-66 and the Non-Mandatory Teleworking Agreement Form resulting from the identified 14 instances of E1 working from locations outside of their established teleworking location and the State of New Mexico.

Recommendation:

The OIG recommends that DFAS reviews the Non-Mandatory Teleworking Agreement Form and AI No: 7-66 with Department employees annually to ensure that all employees understand the policies that govern teleworking for City employees. The Department should have employees sign an acknowledgment of their understanding.

Management Response:

Management agrees with the finding. The DFAS Director reviewed the conditions to telework in AI 7-66 with Division Directors, DFAS Personnel Coordinator, and DFAS Fiscal Officer on November 28, 2023. Included in the review of conditions were the following: remote work days are not guaranteed, remote work must be performed securely and safeguard confidential information, remote work must be performed at the location noted on the agreement, and the DFAS Director may revoke remote work for any reason. In addition, each DFAS Division Director will review with their staff the conditions of telework by December 31, 2023. All DFAS employees that telework will be required to sign the telework agreement again effective January 1, 2024.

Finding 2:

The evidence obtained by the OIG substantiates the allegation of abuse of time by E1 by violating 401.4: Sick Leave. Sick leave resulting from the identified three (3) instances of E1 recording their time as "Sick Leave" for instances that do not qualify as sick leave under the City's sick leave policy. The result was a total of twenty-four (24) hours of sick leave that was incorrectly applied. The value of the misclassification has been calculated as \$923.76.

Recommendation:

The OIG recommends that DFAS adhere to 401.4: Sick Leave. In the event there were other deviations from the policy authorized by the previous Director, DFAS should conduct training for all department employees to ensure that all DFAS employees understand the policy.

The OIG recommends that DFAS adjust E1's leave balances for the three (3) identified dates when sick leave was incorrectly applied. Conversion should be consistent with the sick leave to vacation leave at the conversion rate outlined in 401.4, C, Sick Leave Conversion. Additionally, DFAS should consider what, if any, disciplinary action may be imposed for the falsification of time sheets as outlined in 301.9: False Statements/Fraud.

Management Response:

Management agrees with the finding. The DFAS Director reviewed 401.4 Sick Leave at the DFAS meeting on November 28, 2023. The review included the allowable conditions for granting sick leave, and that sick leave cannot be used in place of vacation time. DFAS Director had the timekeeper adjust the sick leave balance to reflect vacation for E1 instead for three days: July 31, 2023, August 1, 2023 and August 2, 2023.

OBSERVATIONS

Observation 1:

When interviewed, E1 stated that they felt as though they had to work while on vacation as E1 stated that no one else in DFAS knows how to perform the position. E1 stated that this was necessary to keep up with the requirements and the day-to-day of their position.

Recommendation:

The OIG recommends that DFAS employees be provided with cross-training to provide coverage for DFAS employees who are either on vacation, out of the office, or otherwise unavailable to work. This would ensure that more than one employee knows how to perform the duties and responsibilities of a position and would also double as fraud prevention.

Management's Response:

Management agrees with the finding. DFAS Director will ensure that no one employee knows how to perform the duties and responsibilities of a position. Cross-training will be completed prior to an employee is on vacation or out of the office.

Observation 2:

The OIG identified that in any instance when a City laptop is taken out of the designated and approved work locations, poses a security risk as outlined in the Non-Mandatory Teleworking Agreement, 7, which states that "Internet access at the employee's telework location must be via DSL, Cable Modem, or an equivalent bandwidth network, with a secure password-protected router."

As identified in the interview with E1, the City laptop was connected to multiple public internet access locations at various locations which may or may not have had a "secure password-protected router."

Recommendation:

The OIG recommends that City employees be trained on what it means to connect to unsecured public internet access points with their City-issued laptops as identified in section 7 of the Non-Mandatory Teleworking Agreement to have a "secure password-protected router."

Management Response:

DFAS Director during the meeting on November 28, 2023 explained “remote work must be performed securely”. The example used that remote work should be performed using VPN under a secure password-protected router. Also, the example of using a public internet access locations is not secure and is a part of the telework agreement. Also reviewed was the section of AI 7-66 that specifies that remote work will be performed at the employee’s home unless otherwise approved by the employee’s supervisor.