

OFFICE OF THE INSPECTOR GENERAL CITY OF BALTIMORE



Isabel Mercedes Cumming
Inspector General

Investigative Report Synopsis

OIG Case # 21-0049-I

Issued: August 24, 2021



OFFICE OF THE INSPECTOR GENERAL
Isabel Mercedes Cumming, Inspector General
City Hall, Suite 635
100 N. Holliday Street
Baltimore, MD 21202



August 24, 2021

Dear Citizens of Baltimore City,

The Mission of the Office of the Inspector General (OIG) is to promote accountability, efficiency, and integrity in City government, as well as to investigate complaints of fraud, financial waste, and abuse. In addition to complaints involving overt fraud, waste, and abuse, the OIG at times receives complaints regarding City policies or practices that could be perceived as wasteful. The OIG will investigate such practices that could potentially result in fraud, waste, or abuse.

On May 5, 2021, the OIG received a complaint regarding a Department of Public Works (DPW) engineer (Engineer). Specifically, the complaint alleged the Engineer had been employed by a private company (Company) as a full-time employee since May 2020, while being simultaneously employed full time by the City of Baltimore.

Simultaneous Employment and Overlapping Work Hours

The Engineer is assigned to DPW's Bureau of Water & Waste Water and has been employed by the City since 2009. According to DPW management, the Engineer is scheduled to work Monday through Friday, from 8:30 a.m. to 4:30 p.m. Since March 2020, the Engineer has been authorized to telework 100% of the time pursuant to provisions put in place as a result of the global pandemic.¹

In May 2020, the Company offered the Engineer a job. According to the Company, the Engineer had submitted their resume for potential employment that listed DPW as an employer from 2009-2020. The Company assumed the Engineer's tenure with the City had ended. Upon hire, the Engineer was scheduled to work remotely for the Company Monday through Friday, from 8:00 a.m. to 4:00 p.m. In 2021, the Engineer applied for an internal transfer within the Company, which prompted an employment review. During the review process, the Company discovered the Engineer had never ended their tenure with the City and had been working both jobs simultaneously.

Investigative Findings

Teleworking Policy

The Engineer has been teleworking since March 2020, the beginning of the global pandemic. However, at the time telework was authorized, the Engineer had not signed City's Telework agreement in accordance with Administrative Manual (AM) Policy 200-13 (Exhibit 1). The AM 200-13: *Telework* policy requires an annual written telework agreement between the supervisor and the employee that details the terms and conditions of an eligible employee's work away from their assigned location. AM 200-13 does not

¹ Many City employees were authorized to telework 100% of the time.

REPORT FRAUD, WASTE AND ABUSE

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specifically address the matter of secondary employment while teleworking. During the investigation, DPW informed the OIG that the lack of a signed telework agreement was a departmental oversight. DPW claimed it is rectifying the oversight to bring the department into compliance.

Concurrent Employment Policy

The AM 200-1: *Concurrent City Employment Prohibition* policy prohibits concurrent City employment (Exhibit 2). The policy states that City employees may have additional employment outside of City government provided such employment does not violate any other City policies, rules, and ordinances, such as the City's Ethics Law. AM 200-1 is unclear on the subject of dual employment while teleworking. Additionally, the policy does not address whether an employee can overlap shifts while working for the City and another entity.

Financial Disclosure Statement

The Baltimore City Public Ethics Law² requires many public servants to file annual financial disclosure statements in order to help employees and members of the public identify potential conflicts of interest. Among other information, filers are required to disclose other sources of income.

The Engineer had filed financial disclosure statements in 2017 and 2018, though most DPW engineers technically do not fall into the Ethics Law's category of required DPW filers. That category is as follows:

1. Director of Public Works
2. Deputy Director of Public Works
3. All Bureau Heads, Division Chiefs, and Assistant Division Chiefs
4. All General Superintendents
5. All inspectors³

After 2018, the Engineer stopped filing disclosures as he was not required to do so. It's possible if the Engineer had filed for 2020, their employment with the Company may have been disclosed to the City earlier. Alternately, if the Engineer had been required to file but nonetheless failed to disclose the secondary employment, there may have been grounds for an ethics investigation.

Findings

The OIG independently corroborated the allegation that the Engineer was simultaneously employed by the Company and the City. Further, the OIG determined the Engineer seemingly worked the two jobs during the same hours, enabled to do so by working remotely for both. The OIG did not find any evidence that the Engineer was physically using City resources for their secondary employment. The Engineer is still employed with DPW.

²The Ethics Law is contained in Article 8 of the City Code, which can be found at:

<https://ethics.baltimorecity.gov/sites/default/files/section%207.pdf>

³ City Code, Art. 8, § 7-8(36).

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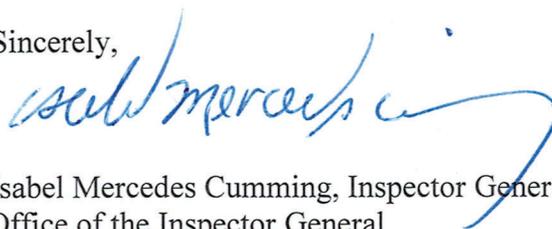
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Recommendations

Considering the COVID-19 pandemic and the necessity for at least some degree of telecommuting, the OIG recommends the following:

- Outline the hours of employment on the telework form and document that during those hours, employees may not work another job.
- Ensure all City employees who are teleworking have a signed telework agreement on file.
- Reevaluate telework authorization if performance issues are identified while an employee is on telework status.
- Review the AM 200-1: *Concurrent City Employment Prohibition* policy and enhance it to specifically address telework situations.
- Consider requiring financial disclosure statements for all non-clerical City employees and/or based on salary or skill classifications.

Sincerely,



Isabel Mercedes Cumming, Inspector General
Office of the Inspector General

Cc: Hon. Brandon Scott, Mayor of Baltimore City
Hon. Nick Mosby, President, City Council
Hon. Bill Henry, Baltimore City Comptroller
Honorable Members of the Baltimore City Council
Hon. Jim Shea, City Solicitor

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**Department of Public Works
HR Division Chief Response**

Case # 21-0049-I



August 10, 2021

Isabel Mercedes Cumming
Office of the Inspector General
100 N. Holliday Street, Suite 635
Baltimore, Maryland 21202

Re: Inspector General Case Number 21- 0049-I

Dear Inspector General Cumming

The Department of Public Works (DPW) acknowledges receipt of Management Alert 21-0049-I related to telework and concurrent employment. This response is based on the recommendations provided in the management alert. We will take the following steps to reinforce the general rules of engagement related to telework and concurrent employment based on the Administrative Manual (AM) Policy.

Ensure all employees of the City who are teleworking have a signed telework agreement on file.

On May 11, 2021, the Agency took steps to ensure on-going compliance with AM 200-13 Telework by sending notifications to our Division Chiefs to ensure that all telework agreements were renewed based on the annual review requirement of the policy. Additionally, the Agency sent a reminder on May 17, 2021 and required a response from all Divisions no later than close of business on May 21, 2021. (Attachment 1 and 2) Due to limited staffing over the past few months, there was a delay in tracking telework agreements received by DPW HR. However, in the upcoming weeks we will be sending out violation notifications to Divisions who are out of compliance and will manage each violation in accordance with related City policies

Evaluate telework authorization if performance issues are identified while an employee is on telework status.

The Agency will continue to monitor the performance of those employees under telework agreements as described in related City policies and procedures specifically, the Department of Human Resources Personnel Manual PM 201 – 370 Work Environment and Standards. For this specific case, we will ensure that the supervisor receives additional training related to progressive discipline as well as how managing performance throughout the performance cycle.

Issue guidance to agencies and employees about secondary employment outside the City.

The Agency will issue a notice to all employees reemphasizing the general rules of engagement related to telework and highlighting concurrent employment in relation to the City's Ethics Code. This notice is currently under review. The Agency will forward a copy of the notice once it is approved for distribution.

Consider reviewing the Policy AM 200-1: Concurrent City Employment Prohibition and enhance the policy to specifically address outside employment, both full time or part-time while required to work or are on call for City employment

As you know, the City's policy on concurrent employment is under the authority of the City of Baltimore Department of Human Resources (DHR). The Agency is open to collaborating with DHR if needed.

The Department of Public Works will continue to provide updates as we move through the above steps to ensure we continue to follow the City's policies and procedures governing telework and concurrent employment. Please contact me if you have additional questions and comments.

Attachments (2)

Regards,

A handwritten signature in black ink, appearing to read "Tamiko Bryant", with a long horizontal stroke extending to the right.

Tamiko Bryant
Division Chief, Human Resources
Baltimore City Department of Public Works
200 N. Holliday Street, Suite 200
Baltimore, Maryland 21202
Tel. (410) 396.3330

Cc: Jason Mitchell, Director
Julia Day, Chief Administrative Officer

Exhibit 1

Case # 21-0049-I

Telework Policy

The City of Baltimore (“City”) is committed to increasing employee productivity and improving talent recruitment by providing employees with work alternatives that enable employees to meet their work and family needs. Teleworking is a work alternative that the City offers to eligible employees when it is beneficial to both the City and its employees. Teleworking does not change the terms and conditions of employment with the City nor should it interfere with operational business needs or the delivery of City services.

I. PURPOSE

The purpose of this Policy is to establish the rules for the use of an alternate work location for employees to perform their usual job duties away from their assigned main office location. The alternative work arrangement is intended to help the City recruit and retain excellent employees; to provide more flexible work arrangements for eligible employees; and to assist in the community effort to reduce outdoor air pollution and traffic congestion attributable to automobile travel. The Policy serves to provide an effective way to meet the needs of the City, its employees, and the community.

II. SCOPE

This Policy applies to all eligible full-time and part-time employees who have successfully completed the City’s initial probationary period and who have satisfactory job performance.

III. DEFINITIONS

- A. Alternate Work Location** – An approved work site other than the employee’s assigned main office location where official City business is performed.

- B. Dependent Care** – The care provided to infants, toddlers, preschoolers, school-aged children, or adults and elderly adults.

- C. Main Office Location**– The assigned City office location of the employee.

- D. Telework** – An alternative work arrangement under which an employee performs the duties and responsibilities of such employee’s position, and other authorized activities, from an approved worksite other than the employee’s assigned main office location.

- E. Telework Agreement** – The written agreement between the supervisor and employee that details the terms and conditions of an eligible employee’s work away from their assigned

Telework Policy

main office location. Telework agreements are required for eligible employees who are authorized to telework.

IV. ELIGIBILITY

Participation of employees in the telework program will vary among Agencies depending upon the operational business needs of the particular area and the functions and responsibilities of employees. Initial determination of an employee's eligibility to telework is at the discretion of the immediate Supervisor; however, the ultimate decision to allow an eligible employee or a group of employees within the agency to telework is at the discretion of the employee's Agency Head. In determining whether an employee is eligible to telework, the Supervisor and Agency Head must consider whether:

- Service delivery to internal and external customers will be maintained;
- The Agency will maintain adequate coverage during normal business hours;
- The employee has satisfactorily performed their job responsibilities prior to their telework request as evidenced through current observations and their most recent performance management plan evaluation;
- The employee demonstrates the ability to work independently;
- The position has clearly defined deliverables and measurable tasks and productivity may be effectively quantified with minimal supervisor observation;
- Confidentiality will not be compromised and the arrangement does not require the physical removal of confidential files from the workplace; and
- Increased employee engagement will be supported through improved work-life balance.

V. LIMITATIONS

Teleworking is not appropriate for all employees and no employee is entitled or guaranteed the opportunity to telework or to the continuation of telework. An employee is not eligible to telework if:

- A.** The employee's day-to-day essential job functions includes:
1. Continuous in-person customer service;
 2. Direct handling of secure materials determined to be inappropriate for telework by the Agency Head; or
 3. On-site activity that cannot be handled remotely or at an alternative work location.

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AM 200-13

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Telework Policy

- B. The employee has been disciplined for having a pattern of excessive absenteeism as defined in *PM 305 Attendance Standards Policy (PM 305)*;
- C. The employee has ever been disciplined for violation of *AM 118-1 Electronic Communication Policy (AM 118-1)*; or
- D. The quantity or quality of an employee's work is unsatisfactory.

VI. TERMS FOR TELEWORKING

- A. All employees eligible to participate in the telework program must:
 - 1. Annually complete a Telework Agreement for their Agency and have it on file with their Agency's Human Resources Division ("HR Division"). The Telework Agreement must be refiled by the employee with their Agency's HR Division whenever:
 - a. The employee has a change in direct supervision;
 - b. The employee changes their position, regardless of whether the new position is inside or outside of the Agency; or
 - c. There is a change in the employee's job classification.
 - 2. Adhere to the approved telework schedule and work from an approved worksite;
 - 3. Seek prior approval for any deviation from the approved telework schedule including overtime and compensatory time;
 - 4. Be available by telephone and/or e-mail during scheduled work hours, with the exception of breaks as outlined in *AM 207-1 Work Hours (AM 207-1)* and the employee's respective Union Memorandum of Understanding ("MOU");
 - 5. Account for and report time spent at the alternative work location in the same manner as if the employee reported for work at the main office location;
 - 6. Maintain a level of performance that meets the expectations and timelines for completing all assignments and tasks associated with the position; and

Telework Policy

7. Not use telework as a substitution for the appropriate use of sick leave.

B. Further, employees eligible to participate in the telework program must acknowledge and agree that:

1. A specific work space is designated at the alternate work location. The employee's alternate work location will be considered an extension of the City's main office location. Therefore, the City will continue to be liable for job-related accidents of employees that occur in the alternate work location during the employee's working hours. Workers' compensation liability is limited to the designated work space as opposed to all areas of the alternate work location. A photograph of the alternate location must accompany *AM 200-13-1 Telework Agreement (AM 200-13-1)*;

2. Teleworking is not a substitute for dependent care. Employees who need to arrange care for dependents while they work at their assigned alternative work location are required to make the same arrangements as when they are at their assigned main office location;

3. The supervisor retains the right to require an employee who teleworks to commute to a City office on a regularly scheduled telework day should a work situation warrant such an action. This situation is expected to be only an occasional occurrence. If the employee is frequently required to return to a City office during a regularly scheduled telework day, the supervisor may reevaluate the compatibility of the employee's position and job responsibilities with teleworking; and

4. The Telework Agreement may be terminated by the supervisor or employee upon one (1) week notice to the other party. In cases involving a security breach or violation of City Policy, teleworking privileges shall be terminated immediately without prior notice.

VII. EQUIPMENT AND TECHNOLOGY

The City will not purchase or reimburse a teleworking employee for equipment necessary to function in a teleworking environment. Employees may use their own technological equipment provided no cost is incurred by the City and it complies with the City's electronic communications and security requirements.

Telework Policy

- A. The Employee-owned equipment used for teleworking purposes is subject to the following conditions:
 - 1. The equipment must have up-to-date virus protection and licensing software;
 - 2. The employee is solely responsible for any repairs and maintenance of employee-owned equipment;
 - 3. All City data and information must be stored on the City’s network and not on the employee’s personal equipment; and
 - 4. The City does not assume any liability for loss, theft, damage, or wear of employee-owned equipment as a result of the telework-related activity.

- B. In accordance with *AM 118-1*, an employee using employee-owned equipment to conduct telework-related activity subject their hard drive, software, and/or any other type of electronic storage media to the possibility of a lack of privacy, including the equipment being subpoenaed, due to legal action taken against or by the City.

VIII. CONFIDENTIALITY AND PROPRIETARY INFORMATION

- A. City employees may have access to confidential and proprietary information not accessible to the general public. Generally, confidential and proprietary information shall not leave the assigned main office location. Further, duplicating or disclosing confidential or proprietary information, unless it serves as a business necessity, is strictly prohibited. When teleworking, employees are required to maintain the same confidentiality of all City information as they would at their main office location. Employees shall also take the necessary precautions to ensure that confidential and proprietary information is protected while in transit between the main office location and alternative work location.

- B. Failure to exercise due care in safeguarding the City’s confidential and proprietary information is a job performance matter and will result in disciplinary action, up to and including termination.

Telework Policy

IX. TRAINING

Each Agency Head shall ensure that all employees eligible to participate in the telework program and all Supervisors/Managers of teleworkers participate in a telework training program offered by the agency or the telework training program offered by the Department of Human Resources (“DHR”). Employees eligible to telework must successfully complete the telework training prior to entering into a Telework Agreement.

X. ROLES AND RESPONSIBILITIES

A. Employee Responsibilities. Employees eligible to telework shall:

1. Initiate the telework approval process;
2. Complete *AM 200-13-1* and DHR’s telework training program;
3. Contact MOIT to ensure that telework equipment is in compliance with MOIT standards;
4. Timely submit bi-weekly timesheets in accordance with *AM 205-10 Payroll Systems (AM 205-10)*;
5. Maintain safe working conditions at their alternative work location as the employee would at their main office location;
6. Report any work interruption while at the alternative work location. In the event that the interruption requires the employee to work at the main office instead of teleworking, the employee must immediately notify their Supervisor/Manager; and
7. Report any job-related injury at their alternative work location to their direct supervisor within 48 hours and follow established procedures outlined in *AM 204-10 Job-Related Injury and Illness (AM 204-10)*.

B. Supervisor/Manager Responsibilities. Supervisors/Managers of eligible telework employees shall:

1. Review and submit the eligible employee’s Telework Agreement to the Agency’s HR Division. If the request to telework is not approved, the Supervisor/Manager must still

Telework Policy

forward the request to the Agency’s HR Division with a written reason why they are denying the request and any evidentiary support;

- 2. Discuss any changes and issues regarding the Telework Agreement or schedule with the employee;
- 3. Complete DHR’s telework training program; and
- 4. Hold regularly scheduled conferences with the telework employee to discuss assignments during the telework period and any work-related issues while at the alternative work location.

C. Agency’s Human Resources Division. Each Agency’s Human Resources Division shall:

- 1. Review all Telework Agreements for consistency with City Policy and place signed form in the employee’s official personal file;
- 2. Maintain a record of all Telework Agreements within the Agency; and
- 3. Notify all Agency employees of their eligibility to telework.

D. Agency Head Responsibilities. Each Agency Head shall:

- 1. Establish a procedure under which eligible employees of the Agency may request approval to telework; and
- 2. Make the final determination of whether employees within their Agency are eligible to telework.

VIII. COMPLIANCE

Violation of this Policy may result in disciplinary action, up to and including termination of employment. All employees are required to promptly report violations of this Policy to the Agency Human Resources Practitioners.

Telework Policy

IX. AUTHORITY

This Policy was issued pursuant to *AM 002-1* and *002-1-2 Administrative Manual* wherein the Department of Human Resources recommended changes to the Administrative Manual to the Board of Estimates for approval.

X. INTERPRETATION

The Department of Human Resources reserves the right to revise or eliminate this Policy at any time. The City’s Board of Estimates reserves the right to approve proposed policy revisions or eliminations as determined by the Department of Human Resources.

XI. RELATED POLICIES

- AM 200-13-1 Telework Agreement
- AM 118-1 Electronic Communications Policy
- AM 204-10 Job-Related Injury and Illness
- AM 204-14 Sick Leave
- AM 205-10 Payroll Systems
- AM 207-1 Work Hours
- AM 228-1 Performance Management Policy for Managerial and Professional Society
of Baltimore Covered Employees
- AM 301-10 Computer Systems and Services
- PM 305 Attendance Standards Policy
- PM 350 Discipline
- PM 370 Performance Evaluations

Exhibit 2

Case # 21-0049-I

m Concurrent City Employment Prohibition**SCOPE**

City employees may not have concurrent employment with the City of Baltimore except for employment in certain part-time capacities. City employees may have additional employment outside of City government provided such employment does not violate any other City policies, rules, and ordinances, such as the Ethics Code.

CONCURRENT EMPLOYMENT

Concurrent employment is when a City employee is employed full-time at one City agency while being simultaneously employed in a full or part-time position with the same or a different City agency.

PROHIBITED EMPLOYMENT

Neither exempt nor nonexempt full-time employees of the City of Baltimore may have concurrent employment with City of Baltimore.

PART-TIME EMPLOYEES

Part-time employees may have concurrent part-time employment with the City of Baltimore; however, the employee may not work more than 20 hours per week in each job. Part-time employees may not have employment in more than two concurrent part-time positions with the City of Baltimore.

EXCEPTIONS

Only the Board of Estimates may approve an exception to this policy. The requesting agency must show substantial justification for the exception related to the agency's fiscal and operational functions. Any request of a policy waiver must be addressed as a Personnel Action.