

MARYLAND-NATIONAL CAPITAL PARK & PLANNING COMMISSION

COVID-19 Leave and Compensation Programs

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June 30, 2021

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**Maryland-National Capital Park and Planning Commission
COVID-19 Leave and Compensation Programs**

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I. EXECUTIVE SUMMARY

A. Background

On March 5, 2020, the Governor of Maryland proclaimed a state of emergency and catastrophic health emergency existed within the state of Maryland due to the outbreak of COVID-19.

The Maryland-National Capital Park and Planning Commission (M-NCPPC or Commission) has over 6,000¹ employees within numerous employment categories including: Merit/Regular, Seasonal/Intermittent, Temporary, Term Contract and Represented. Represented employees are part of the Fraternal Order of Police (FOP) or Municipal and County Government Employees Organization (MCGEO).

To address the challenges and risks of the pandemic, the Commission implemented a layered/phased approach to protect and compensate their employees. COVID-19 leave and compensation benefits included but were not limited to:

- Social Distancing Leave
- Social Distancing Pay
- Scheduled Rotations
- Compensatory Leave
- Paid Time Off
- Differential Pay
- Administrative/Sick Leave as defined within the Federal Families First Corona Response Act (FFCRA)

Exhibit A includes additional details on the above leave and compensation benefits.

The Commission's layered/phased approach for addressing employee safety and compensation during the pandemic included the issuance of seven (7) Resolutions² and seventeen (17) Notices³ designed to educate Commission employees on COVID safety protocols and approved COVID-19 benefit/compensation updates. In addition, since the onset of the pandemic, Commission leadership negotiated seven (7) memorandums of understanding/agreements with MCGEO and eight (8) agreements with FOP (15 in total). The layered strategy kept COVID-19 benefit costs down, while ensuring all employees were provided work protection.

¹ Approximately 1,491 Merit Employees, 3,836 Seasonal/Intermittent, and 747 Represented

² 20-05, 20-06, 20-07, 20-08, 20-12, 20-14, 20-15,

³ 20-03, 20-04, 20-05, 20-06, 20-07, 20-09, 20-10-A1, 20-11 (expired), 20-13, 20-14, 20-15, 20-16, 20-17, 20-18-A1, 20-19, 20-21, 20-22,

B. Objective, Scope and Methodology of the Audit

Objective

The purpose of this audit was to ensure additional leave and compensation provided to Commission employees as a result of the COVID-19 pandemic was awarded within the requirements set forth in Commission policies, resolutions, and collective bargaining agreements. In addition, the audit scope was designed to identify possible fraud, waste, or abuse with the process(es) being audited.

Scope

The scope of our audit included, but was not limited to the following audit procedures:

- Reviewed applicable Commission practices, resolutions, notices, and agreements
- Selected a judgmental sample of timecard and payroll records for:
 - non-represented Merit and appointed positions
 - term contract employees
 - seasonal/intermittent and temporary contract employees
 - MCGEO and FOP represented employees
 - Employees provided additional at-risk Administrative Leave
- Reviewed payroll and benefit records for compliance with Commission policies, notices, and resolutions

The audit covered the period March 1, 2020 through January 31, 2021.

Methodology

Inquiry, observation, data analysis, and tests of transactions to complete the objectives of this audit was performed.

The audit was conducted in accordance with the *U.S. Generally Accepted Government Auditing Standards*. Those standards require that the audit be planned, and fieldwork performed to obtain sufficient, appropriate evidence to provide a reasonable basis for the findings and conclusions based on the established audit objectives.

C. Major Audit Concerns

The results of our evaluation and testing procedures indicated no major audit concerns.

D. Overall Conclusions

The results of our evaluation and testing procedures indicate no major weaknesses in the design or operation of internal controls for the Commission's COVID-19 leave and compensations programs. On an overall basis, we consider the controls to be satisfactory.

We believe all weaknesses identified and communicated are correctable and that management's responses to all recommendations satisfactorily address the concerns. It is the responsibility of management to weigh possible additional costs of implementing our recommendations in terms of benefits to be derived and the relative risks involved.

We wish to express our appreciation to Department of Human Resources and Management and Department of Finance management and staff for their cooperation and courtesies extended during the course of our review.



Renee M. Kenney, CPA, CIG, CIA, CISA,
Inspector General

June 30, 2021

Conclusion Definitions

Satisfactory	No major weaknesses were identified in the design or operation of internal control procedures.
Deficiency	A deficiency in the design or operation of an internal control procedure(s) that could adversely affect an operating unit's ability to safeguard assets, comply with laws and regulations, and ensure transactions are properly executed and recorded on a timely basis.
Significant Deficiency	A deficiency in the design or operation of an internal control procedure(s) which adversely affects an operating unit's ability to safeguard assets, comply with laws and regulations, and ensure transactions are properly executed and reported. This deficiency is less severe than a material weakness, yet important enough to merit attention by management.
Material Weakness	A deficiency in the design or operation of an internal control procedure(s) which may result in a material misstatement of the Commission's financial statements or material impact to the Commission.

I. DETAILED COMMENTARY AND RECOMMENDATIONS

1. Incorrect Application of Leave for At-Risk Employees

At-Risk Administrative Leave was approved for employees without verification of prerequisites.

For the period May 1, 2020 – December 2020, nine (9) employees were approved for “At- Risk” leave. OIG reviewed the timecards for all nine employees and identified the following exceptions:

- Eight (8) employees did not take the required Employee Paid Sick Leave (EPSL) before being awarded At Risk Administrative Leave.
- Transfer code “90301” was not consistently used to track compensation costs related to COVID-19 as required.
- One (1) employee was provided At-Risk Administrative Leave outside of approved dates. The employee was provided At-Risk leave for the whole month of October, without approval.
- One (1) employee did not meet required two-week waiting period before receiving At-Risk Personnel Leave.
- No internal verification of Commission Sick Leave Bank eligibility was completed by Health and Benefits prior to approving requested At-Risk Leave. Five (5) employees are enrolled in the Commission’s Sick Leave Bank, however, it does not appear they applied for Sick Leave benefits.

Criteria/Risk: The Commission issued several Notices⁴ defining allowable payments to employees classified as High-Risk. The Notices defined several prerequisites such as:

- External medical/doctor recommendation.
- Prior use of COVID-19 Social Distancing Leave.
- Prior use of Employee Sick Leave (ESPL) awarded under the Federal Families First Corona Response Act (FFCRA) (for leave approved after July 31, 2020)⁵.
- Two-week waiting period (for leave approved after July 31, 2020)⁶.

⁴ 20-14, 20-15, 20-16, 20-18, 20-18a

⁵ **Commission Notice 20-16**, Issued July 29, 2020, Effective August 1-21, 2020: August 28, 2020, Effective September 1, 2020: The employee has applied for and used up any applicable and **available balance of the two weeks of Emergency Paid Sick Leave (EPSL)** under the FFCRA employee quarantine/isolation provisions.

⁶ **Commission Notice 20-16**, Issued July 29, 2020, Effective August 1-21, 2020: Following exhaustion of leave available in items C and D, the employee must meet a **waiting period of 14 calendar days**. During the waiting period, the employee may use their own accrued leave (sick, annual, personal, etc.)

- Prior use of employees accrued sick, annual, and compensatory leave (for leave approved after August 31, 2020).⁷
- If enrolled, employee must apply for assistance from Sick Leave Bank before receiving At-Risk leave (for leave approved after August 31, 2020).⁸

Recommendation: Department of Human Resources and Management (DHRM) management, in consultation with General Counsel should assess possible corrective actions for employees who received At-Risk Administrative Leave prior to meeting required prerequisites.

Commission management may also want to consider completing an in-depth review of the use of Administrative Leave since March 2020. Large amounts of leave not coded to transfer code 90301 should be investigated to help ensure the Commission receives all available funding relief.

Finally, clear roles and responsibilities should be defined to ensure future At-Risk Leave is awarded correctly. Given the relatively small number of employees in this category, perhaps Health and Benefits personnel can review timecards for compliance. If timing is a constraint, the review can be completed post award.

Risk: Medium

Management Response:

Eight (8) employees did not take the required Employee Paid Sick Leave (EPSL) before being awarded At Risk Administrative Leave.

An internal investigation was conducted by the Health and Benefits (H&B) office. After review of the application and supporting medical documentation, the eight (8) employees who considered themselves “At Risk”, and applied for the At-Risk Leave, did not meet the eligibility criteria for EPSL under the Federal Families First Corona Response Act (FFCRA) per Notice 20-11. According to federal regulations, in order to be eligible for the FFCRA, a person would have to be:

- subject to quarantine or isolation orders,
- advised to self-quarantine by a health care provider,
- test positive for COVID-19 or
- were experiencing COVID-19 symptoms.

⁷ **Commission Notice 20-18**, Issued August 28, 2020, Effective September 1, 2020: Other Agency Leave Benefits (Effective October 1, 2020): **The employee must use his/her available accrued leave including Sick, Annual, Generic, and Compensatory Leave**, before requesting COVID-19 Administrative Leave.

⁸ **Commission Notice 20-18**, Issued August 28, 2020, Effective September 1, 2020: Sick Leave Bank: An employee that is enrolled in the agency’s Sick Leave Bank and is eligible to apply due to being “physically or mentally” unable to perform his/her essential job duties, **must first apply for Sick Leave Bank leave benefits** before applying for COVID-19 Administrative Leave.

The eight employees simply did not want to increase their risk of exposure to COVID because of their underlying medical condition. As the administrator of the leave available under FFCRA, the Health & Benefits Office did not require these 8 employees to apply for the EPSL, knowing that the requests would be denied because they did not satisfy the program's criteria. Furthermore, requesting the employee to apply for the EPSL would have unnecessarily delayed processing their requests and delayed payment to the employees. This was not documented anywhere as there was no appropriate area on the at-risk administrative leave form to do so. Also, since the H&B office staff are the experts on the EPSL administration, they knew it would be futile to ask the employees to apply for the leave and thus moved the application forward.

Transfer code "90301" was not consistently used to track compensation costs related to COVID-19 as required.

On April 22, 2020 the Health & Benefits Office asked the Payroll Office to create a pay code for the new At-Risk Administrative leave, but the request was denied. The response was as follows (see attachment email):

The labor code "90301 Coronavirus" we setup a few weeks ago in Kronos was for Covid related hours. It is under the Transfer column on your timecard in the Activity field. Instructions were sent out and it is being used. Any hours entered on a timecard can use this code, we do not need to create a pay code for every potential type of hours to be used. To do so would just add more confusion and end up with more errors and difficulty getting accurate data from the system. Since all options are manual and require proper use its inevitable that we will have reporting challenges regardless but the fewer codes the better. There is no need for another admin leave code. Use the existing code and add this activity to those hours. We have way too many pay codes out there already.

When a request for At Risk Administrative Leave is approved by the Department, following H&B's recommendation to approve based on the medical condition (not based on use of other leave types, except for EPSL and/or Sick Leave bank), an email is sent to the employee, the immediate supervisor and Departmental designee advising them to use the pay code for administrative leave and activity code 90301 (see sample email). It has always been the responsibility of the supervisor reviewing the timecard to ascertain that the timecard is completed correctly and that the codes utilized are accurate for the hours documented. Furthermore, the H&B office does not have access to view, change or approve/reject other employees' timecards.

One (1) employee was provided At-Risk Administrative Leave outside of approved dates. The employee was provided At-Risk leave for the whole month of October, without approval.

The department paid the employee At Risk Leave without receiving an approval from the Health & Benefits office. After notification of these findings a retroactive review and approval was conducted for the employee on May 11, 2021.

One (1) employee did not meet required two-week waiting period before receiving At-Risk Personnel Leave.

When a request for At-Risk Administrative Leave is approved by the Department, following H&B's recommendation to approve based on the medical condition (not based on use of other leave types, except for EPSL and/or Sick Leave bank), an email is sent to the employee, the immediate supervisor and Departmental designee advising them to make sure that the requirements and prerequisites are met, such as the two-week waiting period. It has always been the responsibility of the supervisor reviewing the timecard to ascertain that the timecard is completed correctly and that the codes utilized are accurate for the time documented. The H&B office does not have access to view, change or approve/reject other employees' timecards.

The At-Risk Administrative Leave policy and procedures were developed very quickly to meet the emergent and immediate need created by the COVID-19 pandemic. In hindsight, clearly delineated roles and responsibilities should have been defined in the Notice to mitigate any confusion on who ensures compliance for certain pieces of the program. In the absence of clearly defined roles, the H&B office deferred to what was already in place, i.e., the established role and responsibility of an employee's supervisor -to ensure timecards are reviewed and approved appropriately.

No internal verification of Commission Sick Leave Bank eligibility was completed by Health and Benefits prior to approving requested At-Risk Leave. Five (5) employees are enrolled in the Commission's Sick Leave Bank, however, it does not appear they applied for Sick Leave benefits.

An internal investigation was conducted by the H&B office. To be eligible to access benefits from the Commission Sick Leave Bank, an employee must be disabled AND unable to perform their current job BECAUSE of an illness or injury to qualify for Sick Leave Bank (SLB) benefits. These five (5) employees were not ill or injured to the point where they were unable to perform their job. This was evident by the fact that they were performing their jobs immediately before the pandemic. They simply did not want to increase their risk of exposure to COVID-19 because they had an underlying medical condition and took advantage of the availability of the At-Risk Leave.

Therefore, if a claim from any of these five (5) employees were submitted, it would have been denied. Requiring the employees to apply for the Sick Leave Bank would have unnecessarily delayed processing of their requests and delayed payment to the employees. This was not documented anywhere as

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there was no appropriate area on the at-risk administrative leave form to do so. In addition, the H&B office staff are the experts on the SLB administration and knew it would be futile to ask the employees to apply for the leave.

A broader issue that has arisen from the multiple findings from the audit of the At-Risk Administrative Leave program, policy and procedures is that when one division develops policies/procedures relating to areas outside of the division's operational expertise or depth of the division's knowledge base, issues may arise in administering the policy/procedure as written. This challenge is heightened when a program must be stood up quickly to address time sensitive needs. Consequently, DHRM will be reviewing its process in creating programs/policies and its organizational structure to ensure proper alignment of roles and responsibilities.

Expected Completion Date: Completed

Follow-Up Date: December 2021

2. Incorrect Application of COVID-19 Differential Premiums

Issue: Eleven (11) represented employees incorrectly received COVID-19 front-facing differential premiums instead of onsite premium pay. Most of the errors can be attributed to supervisor's incorrect interpretation of Commission policy.

One represented employee received 10 hours of COVID-Premium while in telework status. Management confirmed this was an oversight and the issue was corrected.

The errors resulted in a total overpayment of \$259.37.

Please see **Exhibit B** for additional details.

Criteria/Risk: For represented employees, front-facing differential was only approved for Commission childcare workers

The following language was included in the Memorandum of Agreement between M-NCPPC and MCGEO approved on May 5, 2020:

Onsite Work: Covid-19 Differential

For the period of April 5, 2020 through June 30, 2020, employees performing onsite work as defined in the MOU, will be paid a \$2.75 COVID-19 differential for each hour of onsite worked performed.

For the same period, Child Care Aides represented by MCGEO and performing Front-Facing Onsite Work as defined by the MOU, will be paid a \$4.50 COVID-19 differential for each hour of front-facing work.

Failure to provide differential as approved in collective bargaining agreements may result in inconsistencies in employee pay and possible grievances.

Recommendation: Department supervisor and managers should work with the Department of Finance and Payroll Department to collect overpaid differential.

Risk: Medium

Management Response: When an overpayment is discovered and reported to the Payroll Office, payroll staff will verify the overpayment and send the details to HR for follow-up with the employee according to the Merit Rules and applicable collective bargaining agreement, if any. Upon completing the HR-Employee repayment agreement, HR will forward the approved payment plan to the Payroll Office for processing. This is the standard procedure for all overpayments.

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Prince George's County Department of Parks and Receptions and Montgomery County Department of Parks supervisors and managers will work with the Department of Finance and Payroll Department to collect overpaid differential.

Expected Completion Date: November 2021

Follow-Up Date: December 2021

3. Over Award of COVID-19 Leave for Term Employees

Issue: Twenty-two (22) Term employees were awarded 77.5 hours of Social Distancing Leave; they were only entitled to 75 hours. The employees worked 37.50 hours per week, or 75 hours per pay period.

This resulted in an over award of 55 hours of Social Distancing Leave (22 x 2.50 hours). As the benefit awarded was leave, there was not a direct financial impact to the Commission.

Criteria/Risk: Per M-NCPPC Notice 20-10-A, All Merit and Term Contract Employees received up to 80 hours of paid “Social Distancing” leave that can be taken with supervisor approval. Individuals who work less than a 40-hour workweek, will receive a pro-rata amount of Social Distancing leave. (For example, an employee who works 20 hours a week will receive 40 hours of Social Distancing leave.)

Recommendation: Department supervisor and managers should work with the Department of Finance and Payroll Department to correct leave balances.

Risk: Low

Management Response: DPR supervisors and managers will work with the Department of Finance and Payroll Department to correct leave balances, unless conversations with Department Heads and Legal Counsel approves a documented forgiveness of the over award of leave hours for Term Employees.

Montgomery County Department of Parks supports forgiving the few hours of over awarded leave.

Expected Completion Date: November 2021

Follow-Up Date: December 2021

Exhibit A
Commission Approved Leave and Compensation Benefits

Employment Category	Social Distancing Leave or Pay Eligibility Under Notices 20-09/20-10	Additional Leave from Commission Resolutions & MOAs with Unions	Differential Pay or PTO Leave Under Commission Resolutions & MOAs with Unions	Total Leave/Pay Hours
Non-Represented Merit and Appointed Position	40 hours of Social Distancing Leave.	40 hours of Social Distancing Leave. (<u>Source</u> : Resolution 20-08).	Differential pay from May 17 - June 30 at: <ul style="list-style-type: none"> • \$2.75 per hour for required back-facing onsite work. • \$4.50 per hour for required front-facing onsite work (childcare only). Note: Differential only available to positions below Division Chief. (<u>Source</u> : Resolution 20-08)	Total: 80 hours of Social Distancing Leave. Use by June 30, 2021.
Term Contract	37.5 hours of Social Distancing Leave.	<u>Non-Represented:</u> 37.5 hours of Social Distancing Leave. (<u>Source</u> : Resolution 20-12).	Same as above. (<u>Source</u> : Resolution 20-12).	Total: 75 hours of Social Distancing Leave. Use by June 30, 2021.
Seasonal/ Intermittent Contract	40 hours of Social Distancing Pay.	No leave provided.	No differential provided.	Total: up to 40 hours of Social Distancing Pay. Expires December 31.
Temporary Contract	40 hours of Social Distancing Pay.	No leave provided.	No differential provided.	Total: up to 40 hours of Social Distancing Pay. Expires December 31.
MCGEO Represented	40 hours of Social Distancing Leave.	40 hours of Compensatory Leave. (<u>Source</u> : Resolution 20-07) <u>Note:</u> Leave is earned for each hour worked	Differential pay and scheduled rotations from April 5 - June 30 at: <ul style="list-style-type: none"> • \$2.75 per hour for required back-facing onsite work. • \$4.50 per hour for required front-facing onsite work (childcare only). • For employees who are unable to telework: Scheduled rotations as 1/3 of staff rotated offsite. During days offsite employee received either telework assignments or social 	Total: 40 hours of Social Distancing— Expires June 30, 2021. 40 of compensatory Leave (no expiration).

Exhibit A
Commission Approved Leave and Compensation Benefits

		between March 29 – April 4.	<p>distancing pay. (<u>Source</u>: Resolution 20-07)</p> <p>Differential was removed for all MCGEO employees with subsequent actions for employees unable to telework.</p> <ul style="list-style-type: none"> • <u>July 10 - August 8</u> (2nd MOA): Rotated 1 day offsite per week. During offsite days employee completes telework assignments or receives Merit social distancing pay. Call back pay is granted if management requires employee to come in for onsite work during scheduled offsite rotation day. • <u>August 5 – August 29</u> (3rd MOA): same as above. • Note: There was no MOA with MCGEO in place between August 30 – Sept. 5. • <u>Sept. 6 to Oct. 3</u> (4th MOA): Rotated 1 day offsite <u>per pay period</u>. Call back pay granted if employee is required to work onsite during scheduled offsite rotation. • <u>Oct. 4 - Nov. 28</u> (5th MOA): Offsite rotations were removed and replaced with up to 4 hours PTO per pay period (2 hours of PTO when working up to 40 hours onsite/4 hours of PTO when working 41-80 hours onsite). • <u>Nov. 29 – Jan. 30, 2021</u> (6th MOA): PTO removed. Rotations added back to allow a minimum of 1/3 of staff rotating offsite at any one time. Call back pay granted if employee is required to work onsite work during scheduled offsite rotation. • <u>Jan. 31, 2021 - March 20, 2021</u> (7th MOA): Continue 1/3 offsite rotation. Call back pay granted if employee is required to work onsite work during scheduled offsite rotation. 	PTO leave is in addition to leave above and earned per pay period. Expires June 30, 2021.
FOP Represented	40 hours of Social Distancing Leave.	Up to 60 hours of Compensatory Leave. (<u>Source</u> : 1 st MOA and Resolution 20-05)	<p>Differential pay as follows:</p> <ul style="list-style-type: none"> • <u>April 5 - June 30</u> (1st MOA): \$4.50 per hour for all officers. (<u>Source</u>: Resolution 20-05) • <u>July 1 - July 31</u> (2nd MOA): Differential removed, and officers 	Total : 40 hours of Social Distancing. Expires December 31.

Exhibit A
Commission Approved Leave and Compensation Benefits

		<p><u>Note</u>: Leave is earned in 30-minute increments for each hour worked between March 8 – April 4, 2020.</p>	<p>are granted up to 5 hours of PTO per pay period (prorated).</p> <ul style="list-style-type: none"> • <u>August 1 – Sept. 5 (3rd MOA)</u>: 2.5 hours of PTO per <u>work week</u> (prorated). • <u>Sept. 6 – Oct. 3 (4th MOA)</u>: 2.5 hours of PTO per work week (prorated). • <u>Oct. 4 – Nov. 28 (5th MOA)</u>: 2.5 hours of PTO per work week (prorated). • <u>Nov. 29 – Jan. 23 (6th MOA)</u>: 2.5 hours of PTO per work week (prorated). • <u>Jan. 24 - March 20, 2021 (7th MOA)</u>: 2.5 hours of PTO per work week (prorated). 	<p>60 hours compensatory Leave (no expiration).</p> <p>PTO leave is in addition to leave above. To be used by December 31, 2021. (7th MOA)</p>
Command Staff	Same as above.	Same as above (<u>Source</u> : Resolution 20-06)	<p>Same as above for MOAs 1 – 6. Command Staff received the same pass through of the items negotiated with the FOP. (<u>Source</u>: 1st MOA and Resolution 20-06)</p> <p>Executive Committee approved the following on February 9, 2021 for the period of January 24 – March 20, 2021:</p> <ul style="list-style-type: none"> • <u>Public Facing Duties</u>: 2.5 hours of PTO for each full 40 hour work week (prorated). • <u>Non-Public Facing Duties</u>: Receive their normal rate of pay for hours worked. 	<p>Total: 40 hours of Social Distancing. Expires December 31.</p> <p>60 hours compensatory Leave (no expiration).</p> <p>PTO leave is in addition to leave above. To be used by December 31, 2021. (Feb 9, EC Memo)</p>

**Exhibit B
COVID-19 Premium**

Eleven (11) represented employees received front facing differential, but based on work assignment, they were only eligible for onsite premium.

One (1) represented employee erroneously received 10:00 of COVID Premium pay while teleworking.

Employee	Incorrect Hours	Differential (\$4.50 - \$2.75)	Overpayment
1	39.30	\$1.75	\$69.12
2	21:00	\$1.75	\$36.75
3	16:00	\$1.75	\$28.00
4	8:00	\$1.75	\$14.00
5	8:00	\$1.75	\$14.00
6	8:00	\$1.75	\$14.00
7	8:00	\$1.75	\$14.00
8	7:00	\$1.75	\$12.25
9	5:00	\$1.75	\$8.75
10	1:00	\$1.75	\$1.75
11	1:00	\$1.75	\$1.75
		COVID Premium	
1	10:00	\$4.50	\$45.00
TOTAL			\$259.37