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CITY OF DELRAY BEACH



Internal Audit Report: #22-01 Payroll Processing (Paid Time Off)

SERVICE • PERFORMANCE • INTEGRITY • RESPONSIBLE • INNOVATIVE • TEAMWORK

Executive Summary

May 12, 2022

Dear Mayor and Commissioners,

Gross payroll at the City of Delray Beach exceeded \$65 million in the last two fiscal years, and personnel services continue to represent the largest expenditure category of the city's annual budget. Adequate and effective internal controls around payroll processing are, therefore, critical for ensuring that taxpayer dollars are properly utilized.

Internal Audit completed a performance audit of the City of Delray Beach payroll processing (and specifically paid time off) for the period of October 1, 2020, and through September 30, 2021.¹ The audit was requested by the majority of the City Commission.

Audit results provided herein are based on inquiries, review of established procedures, data analytics, transaction examinations, and the review of other audit evidence, and provide reasonable, but not absolute assurance that controls are in place and effective. In addition, effective controls in place during and audit may subsequently become ineffective as a result of technology changes or reduced standards of performance on the part of management.

Audit Objective

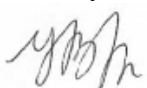
To evaluate internal controls governing payroll processing, and specifically paid time off (PTO), to ensure accuracy and compliance with City policies and procedures.

This performance audit was conducted in accordance with generally accepted government auditing standards. These standards require that the internal auditor plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for the findings and conclusions based on the audit objectives. The evidence presented herein is believed to provide a reasonable basis for the findings and conclusions based on the audit objective.

It was concluded that the majority of the City's payroll transactions are processed accurately. However, a number of findings identified and observations made point to certain weaknesses within the internal controls over payroll and leave processing. These require immediate action and improvements in order to adequately address issues noted during this audit. Recommendations to strengthen and improve controls over the payroll processing and paid time off processes are further included in this report.

I extend my appreciation to the City's various departments management and staff for their cooperation during this audit. Please contact me for questions or comments on this report.

Sincerely,



Julia Davidyan, DBA, CPA, CFE, CGAP
City Internal Auditor

¹ Certain tests included a look-back to the preceding fiscal year of 10/1/2019-09/30/2020 as a baseline.

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Audit Authority & Statement of Independence

The Internal Audit function is administratively and operationally independent of the programs and departments it audits, both in appearance and in fact. The Internal Auditor is accountable to the Delray Beach City's Commission in accordance with the City's Charter Section 4.10-4.11. Although the Internal Auditor reports exclusively to the City Commission, she shall review any matter related to City business upon request of the majority of the City Commission or the City Manager. This performance audit was conducted at the request of the majority of the City Commission.

Performance Audit Overview

The United States Government Accountability Office (GAO) promulgates government generally accepted auditing standards (GAGAS) that provide a framework for performing high-quality audit work with competence, integrity, objectivity, and independence to provide accountability and help improve government operations.

Performance audits are audits that provide findings or conclusions based on an evaluation of sufficient, appropriate evidence against a criteria. Such audits include objective analysis to assist management and those charged with governance in using the information to improve program performance, operations, and facilitate decision making by parties with responsibility to oversee or initiate corrective action and contribute to enhanced public accountability.

Compliance with Governmental Auditing Standards

This performance audit was conducted in accordance with GAGAS. These standards require that the internal auditor plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for the findings and conclusions based on the audit objectives. The evidence presented herein is believed to provide a reasonable basis for the findings and conclusions based on the audit objective.

Internal Audit Responsibility

The Internal Audit function strives to assist managers with the effective discharge of their responsibilities to achieve departmental goals and contribute to the City's mission. Internal Audit promotes effective controls and furnishes management with an independent appraisal and recommendations related to the activities reviewed. Internal audit's role is vital to maintaining the public's trust that the City's resources are used effectively and efficiently.

Management Responsibility

City management is responsible for ensuring that resources are managed properly and used in compliance with laws and regulations; programs are achieving their objectives; and services are being provided efficiently, effectively, and economically.

Payroll Processing and Paid Time Off Process Background

The following table summarizes totals for gross pay for the City and select paid time off (PTO)² hours codes by year:

	Fiscal Year	
	<u>10/1/2019 – 09/30/2020</u>	<u>10/1/2020 – 09/30/2021</u>
Gross Pay	\$65,529,296	\$66,478,794
# of Employees Paid	1,037	1,024
<i>Hours Codes:</i>		
Exempt Days Pay	\$212,416	\$240,264
Personal Holiday Pay	\$150,340	\$174,125
Sick Pay	\$1,242,920	\$1,365,674
Sick Pay - Termination	\$387,906	\$367,077
Vacation Pay	\$2,514,415	\$3,316,661
Vacation Pay - Termination	\$271,193	\$247,263

The City uses Tyler New World (TNW) as its Enterprise Resource Planning (ERP) system for various processes throughout the City. Payroll is processed through TNW for all City employees. However, TNW does not have a time and attendance component currently in use, which results in a variation of processes among certain departments, and contributes to payroll processing complexity, as described below. In addition, the following excerpt from the payroll narrative provided by the Finance Department is the only known, City-wide policy and procedure for payroll processing.

City Departments (excluding Police and Fire)

Salaried (exempt) employees submit manual (Excel) timesheets each pay period. Timesheets are also printed for departments using electronic employee timekeeping systems for hourly employees. The Administrative Assistant in each department gathers the manual/printed timesheets, along with any “Employee Leave” forms, both of which are to be signed by the employee and their supervisor.³ The purpose of the “Employee Leave” form is to request and report any leave time taken during the pay period, such as vacation, sick, personal holiday and so forth.

Once the Payroll Administrator in Finance opens payroll in TNW (which gets pre-populated with regular schedule and pay for active employees), the Administrative Assistant (Level 1 Approver) for each department enters or updates pre-populated time in TNW based on the manual timesheets. Next, the Administrative Assistant prints the Payroll Hours Register report from TNW, reviews the report, electronically approves the time entered in the TNW system, and forwards the manual timesheet to the next approver level. The Supervisor/Department Head (next level approver) reviews the manual timesheet, compares it to what was entered in TNW, and approves it

² PTO reference in this report is not suggesting that sick, vacation or other leave benefits are treated in the same way from the perspective of their intended use or terms and availability. The reference to PTO is simply meant to serve as an abbreviation throughout the report for various leave benefits offered by the City of Delray Beach, unless specifically stated which type of benefit was impacted as part of the finding presented.

³ The timesheet and supervisor approval does not have to be on a printed copy of the timesheet and could be done using email and electronic signature, as was the practice during COVID-19.

electronically. Each department has various levels of approvals, with Level 4 completed by the Department Head or designee, as the final approval level. Each department must be at a Level 4 approval status in TNW to process payroll. The manual timesheets and Employee Leave forms are not sent to the Payroll Administrator in Finance, instead these are maintained in their respective departments (either electronically or in a printed copy) along with signed Payroll Hours Register reports generated out of TNW as backup.

Once a department is approved at a Level 4, the Payroll Administrator in Finance reviews the Payroll Hours Register report in TNW for unusual hours and codes and verifies information entered at the department level to ensure it follows appropriate City Personnel Policies or respective Union Contract(s). The Payroll Administrator also makes any necessary payroll changes for the period using the “Employee Appointment” form, or the “Employee Change Notice” form.

Upon final review by the Payroll Administrator, the Accounting Manager, Chief Accounting Officer, or designee, reviews the reports, compares the payroll Changes Forms to the Payroll Hours Register in TNW, and the Pay Day Registers in TNW, and looks for unusual hours and codes. The Accounting Manager, Chief Accounting Officer, or designee signs off on the Payroll Hours Register in TNW, confirming that the payroll has been reviewed and ready for processing and the final Payroll Validation process is completed. Then, the Pay Day Register and the Payment Register are generated in TNW.

Police and Fire Departments

The Police and Fire Departments use the Telestaff software for time and attendance and roster tracking. Employees in these departments utilize Telestaff to submit requests for approval by their respective supervisor for leave time such as vacation, sick, personal holiday and so forth.

Once the Payroll Administrator in Finance opens payroll in TNW, the Administrative Assistant (Level 1 Approver) in Police and Fire generate roster reports out of Telestaff and create summary excel worksheets based on the Telestaff data. These worksheets are used to enter payroll manually into TNW. There is currently no upload, interface or import capabilities from Telestaff into TNW. From this point on, once time has been entered into TNW, the remaining steps of review and approval in TNW are the same as with other City departments, which were described in the preceding section.

Audit Objective

The objective of this audit was to evaluate internal controls governing payroll processing, and specifically paid time off (PTO),⁴ to ensure accuracy of payroll calculations and compliance with City policies and procedures.

Audit Scope & Methodology

The scope of this audit included a review of the current procedures related to payroll processing and the personnel policies outlining PTO use and accruals. The control testing covered the period

⁴ PTO reference in this report is not suggesting that sick, vacation or other leave benefits are treated in the same manner from the perspective of their intended use terms and availability. The reference to PTO is simply meant to serve as an abbreviation throughout the report for various leave benefits offered by the City of Delray Beach, unless specifically stated which type of benefit was impacted as part of the finding presented in the following section.

of October 1, 2020, through September 30, 2021.⁵ The audit scope did not include payroll processes and calculations related to pay deductions or withholdings, check printing, or payroll distribution.

The audit work included the following procedures:

- Interviews with management and staff.
- Research of applicable laws, regulations, and best practices for Payroll processing and PTO.
- Review of written policies and procedures over Payroll and PTO.
- Review of time reporting codes and examples of applicable approval forms.
- Extraction and analysis of data generated from TNW, including data analytics tests and filtering on certain criteria to identify anomalies and outliers:
 - Employees who had no PTO taken during the year under audit.
 - Employees with 24 hours or less of PTO taken during the year under audit.
 - Analysis of sick and vacation payout at termination.
 - Analysis of incompatible codes such as ‘Leave Without Pay’ concurrent with accruals.
 - Analysis of the terms of taxable moving expenses payouts.
- Control testing of a sample of 40 randomly selected employees from various departments to test for payroll accuracy:
 - Internal control and compliance testing sample selected was based on the sample guidance provided by the American Institute of Certified Public Accountants (AICPA), *Audit and Accounting Guide Government Auditing Standards and Single Audits*.

Results & Conclusion

It was concluded that the majority of the City’s payroll transactions are processed accurately. However, a number of findings identified, and observations made point to certain weaknesses within the internal controls over payroll, and paid leave processing. These require immediate action and improvements in order to adequately address issues noted during this audit. The findings and recommendations to strengthen and improve controls over the payroll processing and paid time off processes are provided in the next section.

Findings

Finding #1: Overpayment of Sick Pay – Separation

While testing sick time payout at separation (or retirement), an overpayment of \$7,305.20 was identified. Employee #1 retired after 16 years of service and was entitled to a maximum of 560 hours of sick pay at retirement.⁶ However, the payout made was based on 840 hours, resulting in an overpayment of 280 hours, which at the rate of pay of \$26.09 totaled \$7,305.20. In a different

⁵ Certain tests included a look-back to the preceding fiscal year of 10/1/2019-09/30/2020 as a baseline.

⁶ Section 7.1 of the Personnel Policies covers the maximum hours to be paid out upon retirement or separation, based on the number of years worked. Only with 20+ years of service, the maximum of the payout of sick leave increases to 1120 hours. Below the 20 year mark, the maximum is 560 hours or less (based on the table provided on page 60 of the Personnel Policies). The table in the procedures manual established the percentage reduction of the sick accrual balance at separation based on the years of service. But the maximum remains 560 hours. Thus, if at retirement, 20 years of service have not been reached, the accrual reduction and maximum at separation applies. The complete policy can be found here:

<https://www.delraybeachfl.gov/home/showpublisheddocument/698/636746416899330000>

instance, such as with another employee (who also retired with less than 20 years of service), the proper maximum of 560 hours of sick leave payout was applied.

The overpayment appears to have been caused by human error resulting from incorrect interpretation and application of the Personnel Policies regarding leave payout at separation. The payroll administrator misread the policy for payout at retirement and the error was not caught by the secondary reviewer.

Finding #2: Inconsistent Accruals Practice of PTO and Other Fringe Benefits While on 'Leave Without Pay,' Resulting in Overpayments

During the data analysis of the pay codes, three inconsistencies have been noted, where employees on 'Leave Without Pay' (LWOP) had their accruals of leave and fringe benefits continue. As a result, one employee received a payout of vacation and other fringe benefits, which they do not appear to have been entitled to under the Personnel Policies.

Currently in TNW, there is no automated stop on continuation of benefit accruals when an employee is coded to be on a LWOP. During payroll processing, a report is run of all employees classified as LWOP and the payroll administrator has to manually review them, and remove any accruals that have been automatically added by TNW, and which do not apply based on the Personnel Policies. City's Personnel Policies (Section 7.6 Leave of Absence Without Pay) indicate the effects of being on LWOP as follows: *"Any month in which an employee, while on leave of absence without pay, works less than half of the normal work days will not be considered for the purposes of accruing sick leave, vacation, or other fringe benefits [emphasis added], based on continuous service. Employees who are on leave of absence without pay the day preceding or the day following a holiday shall not be compensated for the holiday."* This section also provides for the types of leaves that could be considered under LWOP. For instance, military leave (order of draft or call-up) and general leave (personal or medical).

The following are the three instances in which the above policies were not properly applied:

- Employee #2 has been on LWOP continuously since June of 2017, following an active guard reserve call up with the Florida Air National Guard. According to the above policy, no leave and fringe benefits should have been accruing (following the first 30 days). However, vacation, sick and other fringe benefits have been accruing, and the City has paid them out upon the employee's request. The payout requests have been submitted by the employee or on their behalf via Telestaff and approved by their supervisor and next level approver, along with the payroll processing personnel in their department and in Finance.

Prior to the start of the military leave in June of 2017, the employee sent an email to their Department Head requesting to use their accrued leave while on their extended leave (with specific reference made to sick leave). An approval of the request was memorialized in an email between the Department Head, Human Resources (HR) and the Union representative, with a notation that this was a unique situation and would not set a precedent.

A request to receive a payout of an accrual that an employee is entitled to because they have earned it ("use my accrued time") is different and separate from continuing to accrue time and fringe benefits going forward (while on LWOP). However, it appears that the root cause of the error was when staff across various levels misinterpreted the June 2017 communication regarding payment of already-accumulated accruals verses ongoing accruals, and also assumed

such one email to suggest that all the fringe benefits were to continue (such as Exempt FLSA days, Holiday Options, Police Education and Career stipend, Cell Phone Allowance, and the 3% 457 Plan Management Match). As a result, when submissions were made for payout, they were processed without further questioning. Refer to Appendix A for additional analysis of this case, the applicable laws, regulations, as well as estimates of the vacation leave, sick leave, and other fringe benefit accruals pertaining to this error.

- Employee #3 has been on active military duty since July of 2018 with the U.S. Army. Initially there was supplemental pay issued to them in accordance with PER-21-Military Leave Supplemental Pay and Benefits, and as such, the status in TNW was coded as 'Away with Pay,' which meant continuation of accrual of leave and fringes. Starting with October 2019, the status changed to LWOP, and according to the above policy, no leave and fringe benefits should have been accruing from that point onward. However, accruals of sick and vacation hours continued. This error resulted from incorrect interpretation and application of the Personnel Policies regarding LWOP and military leave. The payroll administrator misread the policy and was not removing the automatically-added accruals in TNW during the review process. This error was not caught by the secondary reviewer.

In addition, effective January 2021, sick accruals continued while vacation accruals stopped. Again, this points to the issue at hand of manual review of LWOP accruals. There have not been any payouts processed of accruals that were inadvertently added to the respective leave balances during the LWOP for this employee.

- Employee #4 has been placed on LWOP effective 01/19/2021, following the expiration of FMLA⁷ (which was also without pay in the months leading to January 2021). In accordance with the above policy, there were no accruals of sick and vacation in all the months of the LWOP, except for March 2021, during which 8 hours of sick and 8 hours of vacation were incorrectly accrued. This error was caused by a human mistake of the payroll administrator and is a result of the tedious, and manual review process of accruals during LWOP. The March 2021 accruals have not been paid out and were removed from the accrued balances of this employee during the subsequent processing of their separation in August 2021 (see separate finding outlined in #3).

Finding #3: Overpayment of Regular-Pay Past Separation (After an Employee Passed-Away)

While reviewing LWOP and PTO payouts at separation, an overpayment past the date of separation was noted. Employee #4 passed away on 08/17/2021. On 08/18/2021, a notice was entered by the department representative via the IT Boss ticket process for HR to make the status change for this employee in TNW. The status changes was processed in TNW only on 08/26/2021. This should have stopped any payroll processing in TNW past the date of the updated status entry. However, it appears employee #4 remained in active status, or got inadvertently reactivated in TNW, and starting with 08/30/2021, and through 09/24/2021 (including the Holiday), the employee was paid as 'Regular Full Time' for a total overpayment of \$2,537.60.⁸

It was noted, based on inquiry of Finance Department staff and review of the TNW audit trail, that no other system changes were logged in the month of August 2021, after the 08/26/2021 entry of

⁷ FMLA stands for Family and Medical Leave Act.

⁸ No payout was made of the 8 hours of sick and 8 hours of vacation leave accruals that were inadvertently added in March of 2021 (See finding #2).

the effective date of the termination. However, the audit trail log from TNW includes very limited information to be able to assess any system glitch or to conclude on an inadvertent reactivation by the user. Finance Department staff was also unable to identify why after the payment stopped on 09/24/2021, no review of the overpayment was conducted. It is also noted that the employee may have appeared on the active payroll list with regularly pre-populated hours due to the delay in the entry of the status change in TNW,⁹ and the proximity to the following pay period.

While it appears to be a combination of a user and a system error that the employee remained active or got reactivated, the review process of the payroll at the department level should have caught this mistake. However, the procedure outlined in the Finance Department's narrative for the review process was not properly followed. At the department level, an assumption was made that since HR was already notified of the date of death that this record has been updated to be removed from payroll processing. It was also noted that employee #4 had a very similar name to another employee in the same department, who was still active, which further contributed to the error being missed during the review process. A matching of the manual timesheets against the TNW report, with one extra employee on the report versus the available manual timesheets, should have revealed that there is an extra employee on payroll.

Finding #4: Inconsistent Use of Employee Leave Forms Process

The review of 'Employee Leave' forms, which are supposed to be used by the departments (outside of Police and Fire) for documentation of employee leave requests and approvals, revealed some variation. While two departments used a slightly different form version, one used just the IT Boss Ticket system to document leave requests.

In two selections, the Employee Leave form was only signed by the immediate supervisor (and no secondary approval signature of the department head or designee¹⁰ was found). Upon inquiry of the department, it was noted that their interpretation of the form was such that so long as an immediate supervisor approved the leave, no additional signatures were required. In another selection, the form was signed by a secondary approver, but was dated a number of months later.

Upon further review of the Employee Leave form it was noted that there are no instructions for its completion. There is also no documented procedure as to the required fields and signatures. Thus, the inconsistency in the use of the form could be attributed to the lack of instructions provided.

Finding #5: Underreporting of PTO Hours

An analysis was conducted of low PTO hours (24 or less) taken during the fiscal year under audit, with a look back to the preceding fiscal year (i.e. 10/1/2019-9/30/2020 and 10/1/2020-9/30/2021 were reviewed). As part of this review, several parameters were considered: the start and end dates of employment, other types of leaves of absence due to sick time, FFCRA¹¹, bereavement, training, changes in employee position, and changes in the type of employment (e.g. part-time to full-time), high payouts of hours at separation after short tenure with the City. An assessment of reasonableness was performed, and interviews and inquiries of supervisors and staff were further

⁹ The department submitted the change status to HR on 08/18/2021. It appears that on 08/23/2021, the HR Analyst notified Payroll and Benefits personnel of the notice received. However, the TNW audit log shows that only on 08/26/2021 was the change status entered into TNW.

¹⁰ Unless the department head is the immediate supervisor, in which case only one signature is expected.

¹¹ FFCRA code in TNW refers to the 80 hours (maximum) to be used under the Family First Coronavirus Act.

conducted to specifically identify a logical reason as to why there were 24 or fewer hours of PTO reported, or if any concerns or indicators of underreporting were present in general.

The following are three instances where PTO hours appear to have been underreported:

- An inconsistency with reported sick leave was identified, suggesting that an exempt employee (#5) had underreported an estimated 24 hours of leave and instead was paid for regular time worked for the week of 08/17/2020-08/21/2020. Employee #5 used sick leave under the FFCRA for the two weeks (10 working days), from 08/03/2020 through 08/14/2020. Their immediate supervisor indicated that a remote work accommodation was provided as a result, after the above FFCRA period has ended. Given the nature of their position, and the integral part they played in assisting their supervisor with daily administrative tasks, another employee was temporarily assigned their duties and work to assist the department head, while employee #5 was on the FFCRA leave. The temporary assignment of the substitute concluded on 08/24/2020. This means that for a period of a week, or 40 hours between 08/17/2020-08/21/2020 there was an overlap, as both the substitute and employee #5 reported regular working hours (the substitute was present in the office, while employee #5 was presumably working remotely). This further means that the City has in essence paid two salaries for the same administrative position for a week. As a result, further analysis via alternative procedures was conducted to assess the reasonableness of the overlap.

Although employee #5 and their supervisor indicated there was no reduction in the hours worked during the week in question, the supervisor could not identify any special projects or assignments given to this employee, and did acknowledge that the substitute continued to work in their temporarily-assigned capacity during the overlap week. Additionally, interviews of the substitute employee and email records reveal that employee #5 could have done limited work remotely.¹² Based on this review, it is estimated that only 16 hours of work were done that week, with the remaining 24 hours deemed as underreported PTO.

- Employee #6 worked in an exempt position for the City for exactly one year from January 2020 through January 2021. Upon separation, the employee received a payout of 96 hours of accrued vacation (totaling \$6,714.24), which were all the hours advanced to them (per the offer letter), since no vacation hours were used. However, a review of an Excel worksheet employee

¹² The conclusion is based on a number of contradictions between the job description, expected duties, and the need for accessing certain resources in order to be able to complete the work of an administrative assistant to a department head. Considering the limitation on access to complete such duties remotely, while the substitute continued to complete them in the office, the following was noted: 1) The substitute employee was given access to the City's email account of employee #5 at the start of the leave of absence in order to be able to continue addressing the extensive volume of daily emails and inquiries and to have the ability to schedule the meetings for the department head. Thus, there was no substantial backlog of emails possible during the overlap week when presumably employee #5 was working remotely. 2) The substitute was answering the phone of employee #5 at the office for the entire week, as the routing to the remote employee's cell-phone only occurred at the end of the week in question (Friday, 08/21/2020). 3) Employee #5 sent no emails at the start of the week for the entire day of 08/17/2020. 4) The remaining days included very limited email activity, and during short time-frames of the day. The content was predominately of brief replies (such as "Thank you") and forwarding of a handful of emails (with the statement "FYI"). The volume was inconsistent with a regular day's worth of emails expected for this position. 5) There was only one email communication with the supervisor the entire week, further suggesting the substitute, who was in the office, handled the regular work. 6) Employee #5 did not initially have a device charger and was also unable to access City's network drives for part of the week in question, as per the IT tickets and emails reviewed. 7) No emails were sent on weekend days (this was checked in case the workweek shifted to the weekend).

#6 maintained on their City-issued device, points to discrepancies in leave time actually used verses what has been reported on the manually-submitted timesheets, and is suggestive of the underreporting of PTO.

It appears employee #6 tracked their daily hours worked as if they were a non-exempt, hourly employee. During weeks where they exceeded 40 hours (for instance, if Monday through Wednesday were nine or ten hour days, or if some work was done on the weekend from home), a substantially shorter day on a Thursday, a Friday, or before a Holiday was noted. Furthermore, during some weeks, the worksheets suggest the employee worked less than 40 hours altogether. However, their timesheets did not reflect the same. In fact, none of the weeks tracked in the worksheet appear to match any of the timesheets actually submitted to the supervisor for approval. There were also no 'Employee Leave' forms found to account for these early departures or any documented supervisory approvals permitting the modification of the workweek, or taking the time off for extraordinary hours worked.¹³

- Employee #7 completed an 'Employee Leave' form on 12/04/2020 (signed by their supervisor and the Department Head on the same date) to request the use of a Personal Holiday leave on 12/07/2020. However, the timesheet for that week listed 12/07/2020 as a regular day worked and the Employee Leave form was not attached (that is when the files for this week were requested as part of the audit testing). Thus, the 8 hours of leave appear to have been underreported.

Upon inquiry, employee #7 acknowledged being off on 12/07/2020 and stated they entered the regular working day incorrectly on their timesheet. The reviewer of the timesheet did not notice the error, possibly due to the fact the Employee Leave form was not included with the timesheets packet. Employee #7 stated they would submit a correction to payroll related to this leave.

Finding #6: Missing Provision for Repayment of Taxable Moving Expenses upon Early Resignation

The data analysis of the taxable moving expenses pay code revealed that the City paid two employees in the same department \$5,000 each, without any provision in their offer letter or contract for repayment in the event of early resignation. Such provision for repayment is

¹³ According to the City's Personnel Policies (Section 4.7), "*Departmental schedules shall provide for the completion of work tasks and delivery of public services within the standard work period of all employees of the department. Normal workday for non-shift personnel shall be from 8:00 a.m. to 5:0 p.m., Monday through Friday, unless otherwise authorized by the City Manager.*" In addition, exempt employees are not entitled to overtime pay. Instead, exempt employees receive "FLSA" or 'Exempt Days' for hours worked in excess of forty (40) hours (per Section 7.3). FLSA days can be taken in any increment of hours and were also permitted to be rolled-over if unused due to Covid-19. Finally, in addition to the FLSA days, Section 4.7 further states that "*nothing in this policy shall be interpreted to prevent a Department Director, the City Manager, or designee from allowing an exempt employee to occasionally [Emphasis added] take time off when the exempt employee has worked extraordinary number of hours or similarly exceeded the expected norm.*" In accordance with these policies, employee #6 received 10 days of FLSA, but did not use them all (only 6 such days were used). No documented approvals of time-off due to extraordinary hours were noted as the timesheets did not reflect any of the hours found in their separately-maintained Excel worksheet. Given that employee #6 and their immediate supervisor are both no longer employed by the City, no further inquiry was possible to address any verbal approval that may have been granted for "occasional" time-off. However, the fact of the matter remains that the timesheets submitted were inaccurate and that employee #6 self-regulated their schedule and underreported PTO actually used on a fairly consistent basis during the year of employment.

commonly set at some percentage to be repaid if the resignation takes place within one year, and another milestone is two years of employment. Both employees who received the payment for moving expenses resigned during the year under audit: employee #8¹⁴ around the nine month mark, and employee #6 at exactly a year (also see prior finding related to the same person). In a different department, it appears that provisions were added for repayment of moving expenses and another employee who departed after five months has repaid back this benefit.

In addition, a variation in the amount of benefit was noted, with some new hires receiving \$5,000, others \$3,000, or \$2,000. The amounts did not appear to correlate with distance of the move or seniority of the position. It was further noted that the City did not have a formal policy for taxable moving expenses.

General Observations and Recommendations

The following general observations and recommendations are made as an opportunity to strengthen and improve the payroll and PTO processing. The recommendations below, which are based on industry best practices, and discussions held with the City's management, will provide additional assurances through increased risk mitigation, which is designed to prevent errors and fraud.

Systems

1. The TNW ERP system as currently configured for payroll, is lacking the adequate audit trail and automation of many sub-processes within payroll, which are in turn defaulted to manual processing and review by staff, thus increasing the possibility of overpayments due to intentional or unintentional human error (see findings noted in this report). Even if the suggested reconfigurations to TNW (as discussed in the subsequent recommendations) are possible, the major weakness of the limited audit trail remains unresolved.¹⁵ It was further noted based on a discussion with the IT Director, that Tyler has recently informed its users that they would no longer be offering the TNW software to new clients and would not be doing any further upgrades to it. Tyler is encouraging the current users to move to Tyler Munis (their alternative ERP system). Thus, there is no foreseeable solution to the audit trail weakness of the existing system. Therefore, City's management is encouraged to explore the implementation of an alternative payroll system based on the needs of automation and most importantly, proper audit trail.
2. City's Management is also encouraged to implement a time and attendance system to eliminate the manual timesheets currently in place. There could be omissions or inaccuracies in the manual timesheets that are unintentional due to human error. However, the use of manual timesheets could also create the possibility for an easier rationalization for underreporting of leave time or overreporting of time worked. When an employee is not responsible for logging into a time and attendance system, clicking the entry of leave time, or approving the time they worked, and someone else makes these entries on their behalf (i.e. Administrative Assistants entering timesheets into TNW), the accountability on the individual is diminished. Given the

¹⁴ It was further noted that this employee was hired following a search conducted by the recruiting firm of Ralph Anderson. Thus, in addition to the moving expenses benefit of \$5,000, the City also paid the recruiting firm a finders fee of \$25,000 for this hire who resigned within eight months of hiring.

¹⁵ An automated process needs to have an adequate audit trail to ensure it is operating as intended.

many challenges noted with the current settings of the TNW payroll component and the weak audit trail, the bottom line is that the manual timesheets further increase the exposure to overpayments (such as past date of separation) and inaccuracies (underreporting of leave time), and should be avoided.

3. As noted in the background section, the Telestaff time and attendance software is used by the Police and Fire Departments. The version of Telestaff currently in use is outdated (original implementation was in 2018), but is in the process of being upgraded. If Telestaff remains for use by Police and Fire, integration with proper interface with any new payroll system should be ensured in order to eliminate the manual entry of payroll data which is the current process with TNW. Although TNW was supposed to have such interface, this proved to be not the case and thus payroll data entry of these two departments remains a tedious and manual process.

Internal Controls (Manual and Automated)

1. The Finance Department should retrain payroll processing staff and revisit the review process, with possible modifications of the following:
 - a. The process to calculate payout of accruals at separation/retirement involves a number of steps in order to properly apply the Personnel Policies. Best practice would suggest for all accrual payout policy parameters to be pre-set and automatically applied by the payroll processing software. This would limit human error and allow for consistency of application. However, such full automation of this process is unlikely with TNW given the limitations previously noted. Thus, as a supplement to the existing manual process in place, or a way to automate at least in part the payout calculation for the time being, the Finance Department should consider contacting IT to seek assistance with implanting a cap on the payout hours (560) in TNW that would require a special Supervisor or designee approval when higher payout hours (up to 1120) are deemed required as per the sick leave policy.¹⁶

While maintaining the manual calculation process, consideration should also be given to establishing a clear checklist or a procedure guiding through the calculation of the separation payouts based on the applicable sections of the Personnel Policies. When a policy appears unclear, guidance from the HR or the City Attorney's Office should be sought.

- b. The LWOP accruals removal is a tedious manual process. Best practice would suggest it should also be automated in the payroll system based on the Personnel Policy parameters. This would limit human error and allow for consistency of application. While alternatives to TNW are being sought, staff should be retrained on the LWOP manual process as well as review of unusual hours and codes while employees are in the LWOP status. When a policy appears unclear, guidance (in writing for future reference) from HR or City Attorney's Office should be independently sought in addition to any directives provided by another department's payroll processing personnel.
 - c. Employee status changes (from active to terminated) could be processed close to the start of a new payroll week. Thus, consideration should be given to establishing a review process that checks the new payroll week's pre-populated list of active employees for identification of any such employees whose status just recently changed. Since it appears that HR notified

¹⁶ Since retirement cases over 20 years of service would be less frequent, the cap of 560 would ensure that retirements and separations below the 20 years mark are less likely to be overpaid.

the Finance payroll processing team via email of the status change of an employee a week before the new payroll opened, had such review been done, it is possible the error (finding #3) could have been caught.

Additionally, HR should ensure prompt processing of separation/termination IT Boss tickets so that timely status change is made in TNW and not just via an email notification. A procedure should be further established for a reasonable processing time.

Finally, consideration should be given to adding safeguards to prevent inadvertent reactivation of employees past their date of separation. Given the potential ease of reactivation in TNW of an employee following a separation date (see finding #3), the payment instructions should be removed, or at minimum suspended upon entry of the termination date. This would prevent payroll processed in error to be actually paid out and may increase the probability of early detection.

2. Other City Departments:

- a. The analysis of PTO assessed the reasonableness of very low hours taken during the year under audit. City's management should consider reviewing a similar report annually with the assistance and input of the department heads and supervisors. For departments that maintain an internal calendar to track who is on a leave (for scheduling purposes), such calendar could be used for an annual test to match against a sample of the Employee Leave forms that are kept on file at the department. When payroll is approved every pay-period, supervisors and final level approvers are expected to focus on said period only and may not see the bigger picture. Thus, conducting this annual review for completeness and accuracy of leave would be beneficial to identify any potential underreporting in PTO or corrections needed for missed Employee Leave forms.

On the same topic, City's management should consider encouraging employees in key positions to take time-off for at least a number of consecutive days annually (for instance five) or to establish opportunities for job rotation. This would force a substitute to step in and perform at least some key functions in their absence. Such practices are commonly encouraged as anti-fraud controls¹⁷ purposes and is also a great way to establish proper succession planning given high turnover over the years in some key roles and areas across the City.

- b. On the other end of the PTO analysis, this audit also revealed that in some departments and positions employees who have been with the City for a substantial number of years reach the point where they lose their accrued PTO. This could be due to inability to take time off, further driven by staffing shortages or too many responsibilities in the hands of said employee, where they feel obligated to remain working. City's management should consider reviewing a list of such employees who have lost significant PTO on an annual basis to provide the resources needed to said departments, in order to allow the employees to take their earned time off, and further encourage taking time away from work to boost employee morale.

¹⁷ See references to job rotation/mandatory vacation in the ACFE's Occupational Fraud 2022: A Report to the Nations: <https://acfe-public.s3.us-west-2.amazonaws.com/2022+Report+to+the+Nations.pdf>

- c. City's departments should ensure mechanisms are in place to maintain security of the storage of manual timesheets and Employee Leave forms that are to be retained by their area after payroll has been submitted along with signed Payroll Hours Register reports that get generated out of TNW as backup. Electronic copies are less likely to go missing if proper controls are in place around accessibility to the storage location.
- d. The Police Department should consider teaming-up with Finance and IT to automate tracking of the Holiday Options in TNW. This is a benefit established by the Police Collective Bargaining Agreement (CBA) and is separate from Holiday hours for other City employees. Thus, there should be a separate hours code created for it. As currently set-up, the balance of such leave hours is not tracked in TNW (similar to vacation, sick, FLSA). Instead, the Police Department payroll staff tracks the Holiday Options benefit by reviewing prior months' of payroll (via reports out of TNW) to determine Holiday Options that have been already used, and this information is analyzed to determine any balance left when additional requests are made and prior to the new pay period being approved.

If automation is not feasible, documented procedures need to be established for the manual process to ensure the accuracy and completeness of this benefit prior to its entry into TNW for payroll processing, as currently no such documentation exists.

Documentation of Policies and Procedures:

1. The Finance Department should formulate a robust policies and procedure manual for payroll processing as the existing narrative of the process is limited, and as noted in the findings, is not followed consistently by all departments. The procedures manual should include any checklist and steps to be followed for manual sub-processes. The procedures manual should also identify any departments using different systems, worksheets, and sub-processes (such as the approach to approve Employee Leave forms¹⁸) to enable proper training when changes take place due to turnover or the need for succession planning. Currently there are no such documented steps, checklists or any guidelines for the manual processes in payroll (Finance Department) or the payroll processes at the respective departments.
2. City's management, and the Finance Department specifically, should consider establishing a policy or guidelines regarding recovery of funds paid-out in error and adjustment of incorrect accruals. There should also be a provision for revisiting internal controls once a root-cause-analysis has been conducted on errors identified. The sheer volume of employees and transactions further increases the risk of error, and when overpayments are made, many may not be recovered. Thus, steps should be taken to document such occurrences and implement procedures to prevent them from reoccurring.
3. If it is the intention of City's management to allow continuation of leave and fringe benefit accruals while on LWOP or specifically for military leave on LWOP, there needs to be such policy documented. Section 7.6 Leave of Absence Without Pay should further clarify any unique benefit accrual and payout provisions for active military duty versus temporary military battle drills/assemblies or training. The policy revision should define specific types of military duty and further identify any State or Federal law that is relied upon. The specific

¹⁸ Employee Leave forms should include applicable instructions on the back or bottom of the form to alert the approver as to the proper process to follow, if this process remains in place.

fringe benefits that do or do not apply while on LWOP should also be clearly established and the consistent description should be added across the City Personnel Policies as well as any applicable CBA (currently the CBA do not address military leave provisions). A requirement to seek documented City Manager approval on any unique situations should further be considered given the findings identified in this report.

4. City's management should review the Personnel Policies (Section 4.7 Overtime Work and elsewhere, as applicable) regarding the provisions for exempt employees and further consider clarifying or establishing the following: 1) Department Director, the City Manager, or designee approval of time off when an exempt employee worked the occasional extraordinary hours should be in writing. 2) The statement regarding "take time off" should be further clarified to note whether this is entailing use of accrued leave or in lieu of, and whether this time is paid or unpaid.
5. City's management should consider establishing a policy for taxable moving expenses that is offered to new hires, to be consistently applied across all City departments. The policy should also establish some guidelines and limits for the amount of the benefit. For instance: based on distance of the move or seniority of the position. Benefits in excess of established guidelines should require City Manager approval.
6. There are differences in the way data is entered for payroll processing in TNW by the Fire and Police Departments. While Fire's bi-weekly pay period information in TNW for every employee (outside of Ocean Rescue) is entered as a lump sum of hours on the first Saturday of the pay period, per pay code, per employee. Police's bi-weekly pay period information in TNW is entered per day, per pay code, per employee, similar to the remaining City departments. Thus, if one looked at TNW payroll data, it would not be possible to tell on which day a Fire Department employee took vacation or sick leave, just the fact that an x number of hours were taken during that pay period. The details of the daily hours worked or leave taken would have to be looked up in Telestaff. Determination should be made whether the approach (lump sum posting of hours per pay period versus per day) enables enough oversight during the payroll review step and this process should be documented in established procedures for use by the respective departments.¹⁹

Additionally, consideration should be given to establishing a documented process for annual review or following a system upgrade of all time codes or changes related to approval of employee requests (i.e. self-approval by employees) in Telestaff to ensure proper configuration and system controls are in place. This would be especially valuable following the upgrade of the current Telestaff version. Based on inquiry with staff, it was noted that previously a code (military leave for training assemblies) was configured in a way that did not require supervisory approval of this request code in the Telestaff. The issue has since been resolved but others may remain. Thus, an annual review process of the hours codes would be beneficial.

¹⁹ Consideration should also be given to such variation in processes, when considering any future integration of Telestaff with a new payroll system.

Training

1. There should be periodic training (at least annually) of the payroll counterparts (Administrative Assistants) at the respective departments on the policies and procedures for payroll processing and any applicable forms or manual processes currently in place. While TNW is still in use, payroll counterparts should be further re-trained on the crucial internal control of the review of the TNW reports against the manual timesheets or timecard reports in their area.
2. The City should consider implementing an employee training as part of the annual ethics or other training, for reiteration of accountability and responsibility for public funds. This means for employees to alert their supervisor or the proper department of a system issue, a practice that is not formally documented, or approved, or other various errors they come across. Supervisors, Department Heads, and management collectively, should further receive training on the importance of the 'tone at the top,' since staff is less likely to follow policies if they observe their supervisor not doing the same (for instance, there is an increased likelihood of mimicking the practice of leaving early without proper use of leave time or approval if the staff member observes their boss doing the same). Finally, both employees and their supervisors should be encouraged and empowered to question past practice that may be inconsistent with documented policies and procedures.

Actionable Items

City's management should review the findings in the report to further determine the course of action, if any, for the respective items. Internal audit will assist, as needed, in providing the necessary details and evidence gathered when documenting the findings²⁰, but will not opine on, or otherwise direct any disciplinary action to be taken.

Management Response

FINDING #1: Overpayment of Sick Pay – Separation

Management concurs with the finding.

Human Resources will revise the IT Boss Ticket - Employee Change Notice (ECN) to include an authorization section for terminating employees. The Department Administrative Assistant will enter the number of sick payout hours in accordance with the Personnel Policy and Procedures Manual or Collective Bargaining Agreements. Human Resources Management (HR) will verify that the hours are accurate and approve the ECN to comply with the policy prior to routing to Payroll for payment. Furthermore, Payroll will create an Employee Termination checklist to verify that the standard cap for sick leave is paid to the employee. Training will be developed for Administrative Assistants and Payroll staff requiring additional support in processing employee ECN and leave forms.

Corrective Action expected implementation (1): September 2022

FINDING #2: Inconsistent Accruals Practice of PTO and Other Fringe Benefits While on 'Leave Without Pay,' Resulting in Overpayments

Management concurs with the finding.

²⁰ At the request of management reference to employee id numbers within the findings noted was replaced with a generic numbering label.

The City's Administrative Policy PER-21 Military Leave Supplemental Pay and Benefits is being revised to provide more specific requirements for all aspects of pay and benefits for employees called to active duty and those in the military reserves. The policy will ensure the City follows Florida statute and USERRA and will eliminate the payment of benefits that are not due.

Additionally, Administrative Policy PER-19 Administrative Leave will also be revised to provide clear instructions in administering accruals and fringe benefits while employees are on leave without pay (LWOP), the Family and Medical Leave Act, military leave, and administrative leave for special circumstances. Training will be developed for Administrative Assistants and Payroll staff requiring additional support in processing employee ECN and leave forms.

Corrective Action expected implementation (2): September 2022

Finding #3: Overpayment of Regular- Pay Past Separation (After an Employee Passed Away)
Management concurs with the finding.

When Payroll Administrator receives an ECN to terminate an employee for any reason (dismissal, resignation, death), the Payroll Administrator will immediately delete that employee's work schedule in TNW. This action will prevent the inadvertent payment of their normal pay and will require hours to be entered manually. Monitoring of employee hours and entry of time is done at the department level. Therefore, Administrative Assistants and department managers will be retrained to understand their responsibilities to thoroughly match time entries in TNW with a corresponding timesheet for each employee.

Payroll will develop a process to document any payment made to an employee after termination and ensure that calculations are reviewed, checked for accuracy, and approved by Human Resources Management. Payroll in conjunction with HR will have created a process to ensure that any discovered overpayment is fully documented and reported; that the impacted party is notified and that a repayment plan is developed.

Corrective Action expected implementation (3): September 2022

Finding #4: Inconsistent Use of Employee Leave Forms Process
Management concurs with the finding.

HR and Payroll will revise and standardize the Leave form to include instructions for correct completion and submission for approval, which will be added to the Personnel Policy and Procedures Manual. Furthermore, training will be developed for Administrative staff and management on the leave form utilization and related instructions to ensure consistent application city-wide.

Corrective Action expected implementation (4): September 2022

Finding #5: Underreporting of PTO Hours
Management concurs with the finding.

Monitoring of employee hours and entry of time is done at the department level. Therefore, Administrative Assistants and department managers will be retrained to understand the importance that all time must be accurately reported and properly approved. Managers who approve a division payroll must utilize a calendar system that tracks time off. The Calendar system

must be matched up to the Leave Forms for each pay period to improve efficiency and mitigate underreporting of Paid Time Off.

Administrative Policy PER-23 Remote Work Assignments was created and implemented to provide clear guidance on the approval process for an employee requesting to work remotely.

Corrective Action expected implementation (5): September 2022

Finding #6: Missing Provision for Repayment of Taxable Moving Expenses upon Early Resignation

Management concurs with the finding.

HR and Payroll will research best practices for providing relocation allowances as a part of our recruitment process. The Exit Process form has already been revised to include a check-off for Human Resources to review the departing employee's offer letter to ensure that monies due back to the City are being recouped.

To assist in eliminating errors in paying out terminated employees, staff will schedule a separate, final paycheck for any leave time payouts. HR and Payroll will verify any payment to be made to an employee after termination and ensure that calculations are reviewed, checked for accuracy, and approved by Management. Payment must be authorized prior to the payroll run and documentation retained in the employee payroll file per the record retention schedule.

Corrective Action expected implementation (6): September 2022

General Observations and Comments

Management will explore the implementation of an alternative payroll system based on the needs of automation and most importantly, proper audit trail. Furthermore, Finance and Human Resources will also consider the implementation of a time and attendance system to eliminate the manual timesheets currently in place. Finally, Management will strive to implement the other recommendations listed in the report to strengthen the City's internal controls. As always, we appreciate the opportunity to strengthen procedures and controls.

Acknowledgments

It is important to recognize the significant accomplishments achieved by the staff processing Payroll. I commend them for working diligently to ensure timely and accurate entry into TNW considering the volume of entries and number of employees to be entered, as compared to the small number of employees tasked with Payroll processing in most departments.

Distribution of Report

This report is intended for the information and use of the Mayor and City Commission, management, and others within the City of Delray Beach. However, the report is a matter of public record and its distribution is not limited.

Appendix A – Relevant of City’s Policies, Military Leave Laws and Regulations

Pertinent Personnel and Administrative Policies of the City of Delray Beach:

- Section 7.6 (Leave of Absence Without Pay) states that “...employee shall be granted leave without pay, to be considered military leave, to serve in the armed forces of the United States by enlistment, draft or the call up of a reserve unit of which the employee is a member.” This policy further indicates the effects of being on LWOP as follows: “Any month in which an employee, while on leave of absence without pay, works less than half of the normal work days will not be considered for the purposes of accruing sick leave, vacation, or other fringe benefits [emphasis added], based on continues service. Employees who are on leave of absence without pay the day preceding or the day following a holiday shall not be compensated for the holiday.”
- Section 7.5 (Other Leaves of Absence With Pay) states that “...employees who are members of the reserves of any branch of the armed forces of the United States shall be entitled to up to 240 working hours of leave per fiscal year, with pay, to engage in training exercises. For periods in excess of 240 hours leave of absence, per fiscal year, the employee will be permitted to treat such additional leave of absence at the option of the employee, as: Vacation to the extent the employee is entitled to on the basis of time worked, or Leave of absence without pay.” As well as, “...under these provisions, with the exception of work-related leave (official training courses), leave of absence pay will not be considered as hours worked in computation of time and a half payment of overtime.”
- Section 7.3 (FLSA Days) states that ““FLSA” days are granted to City employees who are, as indicated on the City's Pay Plan, exempt from receiving overtime pay for hours worked in excess of forty (40) hours per week.” In addition, employees must take their designated FLSA days within each fiscal year (October 1 through September 30) or relinquish those days. Carry overs will not be permitted nor will cash payout be granted under any circumstances [emphasis added], including termination, resignation or retirement from City employment.”
- PER-21 (Military Leave Supplemental Pay & Benefits) states that “The City Manager is authorized to provide the following to the City of Delray Beach full-time employees who are members of the United States Military Reserve or Florida National Guard who are called to active duty at the Government’s request. The first thirty (30) days the employee will be with full pay and the employee is entitled to preserve all benefits.”
- Administrative Policies and Procedures EB-15 (3% Management Match) states that “City and employee contributions shall cease upon the date the employee no longer works for the City as a regular full-time employee.”

Pertinent Provisions of the CBA (Lieutenants):

- Article 11(Holidays): Section 1: “Lieutenants shall have twelve (12) holidays (96 hours), per fiscal year, the dates for which may be selected in advance by the employee.” Section 2: “Lieutenants, a maximum of 48 hours can be used for pay out of holiday options, and a minimum of 48 hours must be used for time off.”
- Article 12 (Vacation): Section 3: “Absence due to military service... shall not serve to interrupt continuous service unless the employee was employed by another employer during such period of absence. Absence due to leave without pay shall not be construed as an interruption of

continuous servicer but vacation benefits shall not be accrued during such leave [emphasis added].”

- Article 13 (Sick Leave): Section 2.C.: *If an employee works less than half the normal work days during a month for reasons other than vacation, sick leave shall not be credited for that month [emphasis added].”*
- Article 14 (Leave of Absence With Pay): No provisions specific to military leave are noted.
- Article 15 (Leaves of Absence Without Pay): No provisions specific to military leave are noted. *“Upon written request of an employee and approval by the Police Chief, the City Manager may grant a leave of absence without pay when it will not result in undue prejudice to the interests of the City.”*
- Article 34 (Sick and Vacation Pay-out Accruals): *“...employees who properly notify the City with the intent to retire, at least two years prior to Retirement date, the ability to have above noted accruals paid in payments of not more than one-third per year of total amount authorized at date of designation of retirement.”*

Florida Statutes, USERRA & Federal Code of Regulations Title 20:

Florida Statutes Chapter 115²¹, and the Federal Uniformed Services Employment and Reemployment Rights Act (USERRA), chapter 43 of Title 38 U.S.C.²² are intended to protect service members’ rights and establish the guidelines preserving seniority, pension benefits, healthcare insurance, and for reemployment upon return from service. Federal Code of Regulations (CFR) Title 20 further provides for helpful interpretation of seniority rights and benefits to uniformed service members.

Pertinent Provisions of Florida Chapter 115:

- **115.07 Officers and employees’ leaves of absence for reserve or guard training.**
 - (1) *“...employee of the municipalities of the state are entitled to leaves of absences from their respective duties, without loss of vacation leave, pay [emphasis added], time, or efficiency rating, on all days during which they are engaged in training ordered under the provisions of the United States military or naval training regulations for such personnel when assigned to active or inactive duty.”*
 - (2) *Leaves of absence granted as a matter of legal right under the provisions of this section may not exceed 240 working hours in any one annual period [emphasis added]. Administrative leaves of absence for additional or longer periods of time for assignment to duty functions of a military character shall be without pay [emphasis added] and shall be granted by the employing or appointing authority of any state, county, municipal, or political subdivision employee and when so granted shall be without loss of time or efficiency rating.”*
- **115.12 Rights during leave.**
 - (1) *“During such leave of absence such official shall be entitled to preserve all seniority rights, efficiency ratings, promotional status and retirement privileges.”*

Pertinent Provisions of USERRA:

²¹ <https://www.flsenate.gov/Laws/Statutes/2011/Chapter115/All>

²² <https://uscode.house.gov/view.xhtml?path=/prelim@title38/part3/chapter43&edition=prelim>

- **§4302 (a) and (b)** provide that this law allows for establishment of more beneficial benefits that go beyond USSERA to individuals subject to its rights, as determined by their employer supersedes any State law. But no other State law or contract or policy can reduce or limit any of the benefits outlined by USSERA (it supersedes them).
- **§4316 (d)** states that a person “... shall be permitted, upon request of that person to use during such a period of service vacation, annual, or similar leave with pay accrued by the person before the commencement of such service.”

Pertinent Provisions of CFR Title 20:

- **§1002.150²³**
 - a. “The non-seniority rights and benefits to which an employee is entitled during a period of service are those that the employer provides to similarly situated employees by an employment contract, agreement, policy, practice, or plan in effect at the employee's workplace.”
 - c. “As a general matter, accrual of vacation leave is considered to be a non-seniority benefit that must be provided by an employer to an employee on a military leave of absence only if the employer provides that benefit to similarly situated employees on comparable leaves of absence [Emphasis added].”
- **§1002.153²⁴**
 - a. If employment is interrupted by a period of service, the employee must be permitted upon request to use any accrued vacation, annual, or similar leave with pay during the period of service, in order to continue his or her civilian pay. However, the employee is not entitled to use sick leave that accrued with the civilian employer during a period of service in the uniformed services, unless the employer allows employees to use sick leave for any reason, or allows other similarly situated employees on comparable furlough or leave of absence to use accrued paid sick leave [Emphasis added]. Sick leave is usually not comparable to annual or vacation leave; it is generally intended to provide income when the employee or a family member is ill and the employee is unable to work.

²³ <https://www.ecfr.gov/current/title-20/chapter-IX/part-1002/subpart-D/subject-group-ECFR445761424bb812c/section-1002.150>

²⁴ <https://www.ecfr.gov/current/title-20/chapter-IX/part-1002/subpart-D/subject-group-ECFR445761424bb812c/section-1002.153>

Summary of the Known Details:

Employee #2 began active duty military service on 06/18/2017²⁵, with the most recently updated orders set to expire on January 31, 2024. Based on the active military order the employee was placed on LWOP. Per the policy (7.6) no accruals should continue of sick leave, vacation leave, or other fringes while on LWOP. The policy does not appear to contradict the CBA or diminish any benefit specified by USERRA. Furthermore CFR §1002.150.c. further supports the fact that accrual of vacation is a non-seniority benefit that would not otherwise be required (unless offered to other City employees who are on a similar leave, i.e. LWOP).

Prior to the start of the military leave in June of 2017, the employee sent an email to their Department Head asking if it was possible to “... use my accrued leave while on these extended orders. Thanks in advance for your assistance and for prior approving me using sick leave.” This was next addressed with the HR Department. HR’s review of the policies and the CBA did not identify a City policy or a CBA limitation on using-up the accumulated accruals (i.e. what has been accrued through that date) once employee #2 went on the active military leave. It was memorialized in an email between the Department Head, HR and the CBA representative that this was a unique situation and would not set a precedent. In all of the communications reviewed by Internal Audit, the reference to the “accrual” leave was in past tense (accrued), which is understood as “has been accrued” or “accumulated” until that point in time and ahead of the commencement of the active duty leave (LWOP) on 06/18/2017.

City policies are silent on whether the leave previously accrued and earned (before the start of the active duty) can be used during the full-time, extended active duty military leave. While USERRA §4316 (d) specifically provides for the ability to use vacation, annual or similar leave that was earned prior to the start of the military service, it does not specify sick leave. CFR §1002.153.a. notes that sick leave is not usually comparable with vacation leave and that an employee is not entitled to the use of sick time during a period of uniformed service unless the employer permits use of sick time for any reason or such use is permitted to other employees who are on a LWOP.

As of June of 2017, employee #2 has already worked for the City for over 20 years. This means the employee would have been entitled to the full payout of the 1,111 hours of sick time balance (which is below the 1,120 hours max), and the 56 hours of vacation time balance (which is below the 288 hours max), if they had separated or retired from the City at that time. Since the employee was going on a full-time military leave, these earned hours would have been fully preserved until they either returned to work or separated/retired from the City, at which point the payout of the unused hours would have been made. Thus, it appears that the “uniqueness” of the request discussed earlier, and approval thereof was tied to the timing of the sick hours payout. The employee was approved to use or get them paid out “early” during the LWOP (since this is an unpaid status code) while on active military duty. It was also unique in a sense that sick time is different from vacation and is intended to be used for the active employee’s injury, illness or that of immediate family (as per Section 7.1 Sick Leave). Therefore, although not technically paid out for the intended use, or in accordance with established policies and regulations, the payout is of legitimately earned hours that would have been paid out at retirement or separation.

The issue in this case comes down to all of the accruals and other fringe benefits that incorrectly continued, due to staff’s misinterpretation of the June 2017 email request. It appears that the

²⁵ The 2017 Military Order stated as follows: “Type of Duty: Active guard reserve initial tour. Purpose: Full-time duty. Itinerary: 18 June 2017 – 31 Dec 2021”

respective department payroll administrators misinterpreted the June 2017 communications regarding payment of already-accumulated accruals verses ongoing accruals, and also assumed such one email to suggest that all of the fringe benefits were to continue (Exempt day, Holiday Option payout, Police Education and Career stipend, Cell Phone Allowance, and the 3% 457 Plan Management Match). However, given the fact that the employee only submitted requests for sick time payout from 06/18/2017 (commencement of the active military leave) and through 10/05/2017, further suggests the June 2017 email's intention was to only obtain approval for the use of sick time hours the employee had accumulated in their leave "bank" prior to the start of the LWOP.

It was not until August 2020 that questions came about the payout of temporary military leave for training (up to the 240 hours or 30 days) while on the active duty military leave. It appears that August 12, 2020 was the first time HR was contacted regarding this employee's benefits (since 2017), at which point questions and concerns were raised on the approval process of the employee's payroll and the military leave (training) requests. In May of 2021, the Interim City Manager made a determination on this matter that took away the remaining balance in the sick leave "bank," which was subsequently a subject of a grievance. The resolution of the military training hours payouts came in February 2022, and the sick leave "bank" hours were reinstated. However, it appears that none of the communications and inquires throughout the years address the issue of the continued accruals of sick leave, vacation leave, and other fringe benefits.

Analysis of Sick and Vacation Accruals:

According to PER-21, the first 30 days following the start of an active duty (i.e. 06/18/2017 – 07/18/2017), would be processed as full pay with all benefits. Thus, leave accruals and other fringe benefits remained as usual during this period only.

Policy section 7.5 and Florida Statute 115.07 provide an enhanced benefit on top of USERRA for military training exercises of up to 240 hours or 30 days in any annual period. Such period is to be paid (Leave with Pay), and accruals of leave benefits remain. However, such a leave is not considered as hours worked for purposes of payment of overtime (as per Section 7.5), thus no FLSA benefit is applicable since it is tied to the act of working verses being on a leave with pay.

In summary, after the first 30 days from the start date of the active duty, accruals of sick leave, vacation leave, and other fringe benefits (as applicable) should have only been done for the military training exercise time (up to 240 hours or 30 days per year). This means accruals done correctly should not have exceeded 8 hours of sick and 12 hours of vacation per year, while on active military leave following the first year of active duty (assuming training exercises in accordance with Florida Statute 115.07 were indeed substantiated). This maximum assumption on the "correct accruals" was used in determining the estimates below and the split of accruals between correct and incorrect, along with the corresponding payouts²⁶ taken, with the goal of determining what the balance of the accrued leave would have been as of April 2022 (date of most recent accrual reports available), had it been done correctly.

²⁶ The last date for which requests and payouts of sick leave were made was 10/05/2017 (there was a separate 1/3 sick payout in July of 2020, in accordance with CBA Article 34). The last date for which requests and payouts of vacation time were made was 01/26/2021. No further payouts of sick or vacation leave were made since, however, the accruals continued with the last ones posted in April 2022.

	Sick Hours	Vacation Hours
Beginning Balance (06/18/2017):	1,111	56
Correct accruals (first 30 days & annual 30 days max.)	56	84
Incorrect accruals	408	612
Payout ("hours used")	(608)	(574)
Donation of time	(8)	0
Payout ("hours used") - sick 1/3 payout	(264)	0
Ending Balance per TNW (04/08/2022):	695	178
Less Incorrect Accruals:	(408)	(612)
What Ending Balance Should Be:	287	(434)

Conclusion:

Based on these calculations, it appears that the vacation leave “bank” has been overdrawn by 434 hours (overpayment of approx. \$25,054.68), while the sick leave “bank” had enough hours to be paid out based on sick time accumulated prior to the commencement of the active duty leave (but would require adjustment to the hours “bank” accordingly).

Analysis of Other Fringe Benefits:

The analysis and estimates below begin after the first 30 days of active military leave (i.e. July 2017) and as such only consider accruals, where applicable, for a maximum of one month per year (under the assumption that military training, separate from the active military leave is valid and supported).

1. Exempt Days (“FLSA Days”):

Employee #2 was promoted on 01/01/2017 to a position that was exempt from overtime pay and as such, entitled to 32 hours of FLSA/Exempt pay per year. The first lump sum of the 32 hours was added to this employee’s “bank” of hours on in July of 2017, following six months in the promoted role (a waiting period required by the FLSA/promotion policy). Furthermore, the 32 hours per year continued to be added to the employee’s “bank” at the start of each fiscal year, and got paid out within the same year as to not get lost. This practice continued through the beginning of the current fiscal year (10/01/2021). A total of 128 hours (equal to \$7,339.20) were paid out, and the last date the employee submitted a request for payout of FLSA was 02/24/2021.

While the 30 days of annual military training are with pay, such a leave is not considered as hours worked for purposes of payment of overtime (per Section 7.5), further suggesting no FLSA is applicable, as this is a benefit tied to the act of actually working verses being on a leave with pay. In addition, per policy (7.3) no cash payout is granted for FLSA hours under any circumstances, thus such benefit could not be paid out and it also does not carryover. There are no provisions in the CBA or any other regulation that require this fringe benefit to be paid out. It remains unclear why staff interpreted the policy as such and allowed for this benefit to continue being offered as well as paid out while the intended benefit was for employees working for the City in excess of 40 hours a week, and employee #2 was not working.

Conclusion: It appears the 128 hours (approx. \$7,339.20) of FLSA should not have been paid out.

2. Holiday Options:

Article 11, section 1 of the CBA establishes 12 days (or 96 hours) per fiscal year for Holiday pay that can be taken on days other than an established Holiday (in lieu of City's Holiday pay). Section 2 further permits a maximum of half (or 48 hours) of such Holiday time to be paid out (Holiday Options) instead of being used as time off.

Employee #2 received a payout for 376 Holiday hours (totaling \$21,542.40) between fiscal year starting 10/01/2017 and through the fiscal year ending 09/30/2021 (the last date this benefit was requested for payout was 02/12/2021). The payout of all Holiday hours instead of the maximum of half the hours per year (because the other half is to be actually used for time off) appears to be against the CBA provisions.

Conclusion: It appears that 184 hours (approx. \$10,542) of Holiday Options should not have been paid out.

3. Police Career and Education Stipend:

Prior to the commencement of the active military leave, employee #2 received a monthly stipend for Police Career (\$50) and Police Education (\$80). These payouts continued on a monthly basis and totaled \$7,410 (through March 2022, the most recent month posted). No provision was found in the City's policies, the CBA, or the pertinent regulations for this benefit. It is unclear why an employee on a LWOP would be entitled to these stipends while not working for the City, and given that the Cell Phone stipend was stopped in December 2017 (see #5 next). These stipends are also not subject to the 3% deferred compensation City match (which matches 3% of regular pay and other approved pay codes).

Conclusion:

It appears that the \$7,410 of the stipend should not have been paid out. Only if this stipend is intended to constitute a form of "regular pay" could it be paid during the up-to-30 days per year of military training, and the estimate of the overpayment would be reduced by \$130 per every 30 days of training, annually.

4. Deferred Compensation 3% 457 Plan Match:

A deferred compensation match totaling \$3,622.23 was processed for employee #2 through 02/13/2021. This benefit represents taxable portion of the percentage (3%) match from the City that is applied to regular pay, vacation, sick and holiday time used, as well as the military training hours (up to 240 hours or 30 days per year). In addition, as noted per administrative policy EB-15, contributions of both the employee and the City cease when the employee stops working for the City as a regular full-time employee. Thus it would appear this benefit was overmatched by the 3% on the substantial payouts of sick, vacation, and FLSA and Holiday leave hours.

Conclusion: It appears this benefit has been overmatched and should be reviewed for potential adjustment.

5. Cell Phone Stipend:

Employee #2 received a cell phone stipend through December of 2017, totaling \$225. It is unclear why an employee on a LWOP would be entitled a cell phone stipend while not working for the City.

Conclusion: It appears \$225 of the cell-phone stipend should not have been paid out.