



New York State Office of the State Comptroller
Thomas P. DiNapoli

Division of State Government Accountability

Dual Employment

Office of Children and Family Services



Report 2011-S-48

December 2013

Executive Summary

Purpose

To determine whether Office of Children and Family Services (OCFS) employees who are also employed at other State or New York City agencies are working their required hours at each job. The audit covered the period July 1, 2009 through December 7, 2011.

Background

OCFS' mission is to promote the safety, permanency and well-being of children, family and communities. To achieve desired results, OCFS sets and enforces policies; builds partnerships; and funds and provides quality services. As of May 1, 2012, OCFS had 3,194 employees. OCFS requires its full-time employees to obtain agency approval before accepting a second job. Second jobs may not interfere with the employee's primary job responsibilities nor represent a conflict of interest. Part-time employees must obtain agency approval if potential conflicts exist.

Key Findings

- Between July 2009 and June 2010, 160 OCFS staff members were simultaneously employed by another State or New York City agency, 28 of whom we selected for further review based on several risk factors. Follow-up showed eight of these staff (28 percent) violated time and attendance rules resulting in payroll payments for time not worked.
- Each case showed a pattern of routine, improper activity. Seven employees submitted multiple time records that indicated they had worked at two places at the same time. Additionally, three employees charged sick leave at one job while actually working at another on multiple occasions. OCFS' failure to enforce time and attendance requirements allowed these employees to circumvent controls, sometimes with management's knowledge.
- In most cases, due to poor supervision and record-keeping practices at the agencies, it is not possible to determine whether these staff failed to work required time at OCFS, another agency or both. We estimate the cost of these abuses to be as much as \$40,000. Since these employees all held second jobs for many years, it is possible that costs associated with these abuses may be significantly higher.
- Since we initially communicated our findings, actions by OCFS officials have already resulted in the resignation or termination of three of these employees.

Key Recommendations

- Work with the other agencies involved in these cases to determine whether the dually employed individuals we identified are continuing to abuse time and attendance procedures. Take appropriate actions as warranted, including recovery of salary payments, adjustment of pension salary and service, and assisting in any further investigation.
- Ensure that other dually employed staff are working the time for which they are being paid.
- Provide pertinent time and attendance training to dually employed staff and their supervisors, and ensure that required policies and procedures are followed.

Other Related Audits/Reports of Interest

[Metropolitan Transportation Authority/Metro-North Railroad: Forensic Audit of Select Payroll and Overtime Practices and Related Transactions \(2010-S-60\)](#)

[Port Authority of New York and New Jersey: Management and Control of Employee Overtime Costs \(2009-S-87\)](#)

**State of New York
Office of the State Comptroller**

Division of State Government Accountability

December 19, 2013

Ms. Gladys Carrion, Esq.
Commissioner
Office of Children and Family Services
52 Washington Street
Rensselaer, NY 12144

Dear Commissioner Carrion:

The Office of the State Comptroller is committed to helping State agencies, public authorities, and local government agencies manage government resources efficiently and effectively and, by so doing, providing accountability for tax dollars spent to support government operations. The Comptroller oversees the fiscal affairs of State agencies, public authorities, and local government agencies, as well as their compliance with relevant statutes and their observance of good business practices. This fiscal oversight is accomplished, in part, through our audits, which identify opportunities for improving operations. Audits can also identify strategies for reducing costs and strengthening controls that are intended to safeguard assets.

Following is a report of our audit of the Office of Children and Family Services entitled *Dual Employment*. This audit was performed pursuant to the State Comptroller's authority as set forth in Article V, Section 1 of the State Constitution and Article II, Section 8 of the State Finance Law.

This audit's results and recommendations are resources for you to use in effectively managing your operations and in meeting the expectations of taxpayers. If you have any questions about this draft report, please feel free to contact us.

Respectfully submitted,

*Office of the State Comptroller
Division of State Government Accountability*

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Background

The Office of Children and Family Services' (OCFS) mission is to promote the safety, permanency and well-being of children, family and communities. To achieve desired results, OCFS sets and enforces policies; builds partnerships; and funds and provides services. As of May 1, 2012, OCFS had 3,194 employees, some of whom are also employed by other government agencies. These dual employment situations can be financially advantageous for employees, but may pose management risks ranging from conflicts of interest to opportunities for payroll fraud or abuse.

State Department of Civil Service regulations prohibit employees of a State agency from accepting an additional paid State position without first obtaining approval from the head of their agency or department. In addition, the State's Public Officers' Law also addresses other activities (including any outside employment or serving on the board for a not-for-profit corporation) and requires the employee to first obtain permission of their State agency and, in certain cases, the Joint Commission on Public Ethics if certain compensation amounts are reached. These limitations are designed to ensure that secondary employment does not create a conflict of interest with the employees' primary duties and responsibilities.

At the operational level, when individuals work for more than one State agency, they receive separate payroll checks generated through the State's central payroll system, which is operated by the Office of the State Comptroller's (OSC) Bureau of State Payroll Services. To receive payroll checks for both State positions, employees are required to complete a "Dual Employment/Extra Service Approval Form" describing the work to be performed and, optionally, the work schedule of both positions. Employees must state that the second State position will not interfere with their regular duties and it must be approved by their home agency. Original approved forms must then be filed with OSC before additional salary payments can be processed.

The same concerns also apply to State employees who seek employment at other public employers, including public authorities, the City of New York and other municipalities. However, since these entities are not part of the central State payroll system, the same operational controls are not in place to ensure conflicts are avoided. In fact, the State's central systems provide no assurance that these dually employed individuals have even informed their primary employer about their other job, let alone received their required approval. As a result, it is even more critical that each State agency establish its own policies and procedures governing dual employment situations, and that supervisors diligently monitor and enforce appropriate time and attendance requirements.

OCFS requires its full-time employees to obtain approval from their supervisor, as well as from its Personnel Office and sometimes its Legal Division, before accepting a second job. This includes private employment outside government. Second jobs must not interfere with the employees' primary job responsibilities nor be, or appear to be, a conflict of interest. Part-time employees need only to request approval if there is, or may be, an appearance of a conflict of interest from the second job.

State time and attendance policies require agencies like OCFS to maintain adequate and accurate records of employee attendance. Unless specifically exempted, State employees must maintain

a detailed record of actual hours worked, which should indicate the times the employee arrived, took lunch or breaks, and departed. Certain exempted employees are not required to maintain detailed arrival and departure times, but they must still maintain a record of daily presence and absences sufficient to serve as a basis for salary payments.

Audit Findings and Recommendations

Because of weaknesses in OCFS policies and practices, managers and supervisors do not always know when staff members are involved in dual employment situations. Even when these arrangements are known and sanctioned, our review shows supervisors do not always take necessary steps to verify work schedules and attendance, or otherwise ensure that employees do not engage in payroll abuse.

We identified 160 OCFS staff members who were also employed by another State or New York City public agency during the one-year period from July 2009 through June 2010. Of these, we further identified 28 people who posed a particularly high risk for payroll abuse based on factors such as significant earnings from more than one employer during the same pay periods. Our review of time and attendance records submitted by these 28 staff identified eight individuals (almost 30 percent) who engaged in abusive payroll activity that resulted in payments for time not worked. In every case, the records showed a pattern of routine, improper activity such as claiming to have worked two places at the same time or charging sick leave hours at one employer while working the same hours for another. Specific examples of these situations are detailed in subsequent sections of this report.

Supervisors are responsible for monitoring their employees and ensuring that they accurately report their time and attendance in accordance with both Civil Service and OCFS requirements. Employees and supervisors both must certify that the time records correctly report time worked, leave accruals used and overtime to be paid. Certifications on these time records hold employees and supervisors responsible for any misrepresentations. We determined that failure to enforce time and attendance requirements resulted in an increased risk that dually employed individuals are being paid for time they do not work. We found these individuals were able to circumvent controls in place due to management's lack of supervision or, in some cases, with management's knowledge.

For each of the eight individuals whom we identified as abusing their dual employment situation, we communicated specific results to OCFS officials, as well as to officials at the other State or City agencies where they also worked. We also discussed certain cases with the employees' OCFS supervisors, some of whom told us they were not even aware that their employees had other job commitments. Others could not offer specific explanations for the inconsistencies and patterns that we observed, even though they approved many of the time records in question. Even so, almost every supervisor we interviewed at OCFS expressed confidence that their employees had not been paid for more hours than actually worked at their agency.

Except for the cases that involved sick leave abuse, in most cases it is unclear whether these staff members failed to put in their required time at OCFS, another agency or the combination of both. Collectively though, our review showed clearly that, due to the failure of supervisors to properly enforce time and attendance rules, each of the employees was paid for more time than they could have actually worked. We estimate the cost of these abuses to State and/or City taxpayers to be as much as \$40,000 for just these eight employees during a two and a half-year period for

which time records were available. Since all of the people we reviewed have held second jobs for many years, it is likely that the cost of their abuse is significantly higher. In addition, the effect of these abuses can continue to cost taxpayers for years to come, since the employees' inflated salaries can increase the cost of future pension benefits.

Overlapping Schedules and Time Entries

One of the most basic risks posed by dual employment situations is the possibility that a person claiming to be in two places at the same time may be paid for the same hours by both employers. Our analysis identified seven OCFS employees who engaged in this practice. Our analysis of their time records submitted to each employer identified 222 occasions from July 1, 2009 through December 7, 2011 when they claimed to have worked for both employers simultaneously. These claims amounted to 385 hours of work that was not performed.

One employee, a part-time Youth Developmental Aide who is also an officer with the New York City Police Department (NYPD), accounted for 159 of the instances we identified totaling 280 hours of questionable work. This employee was assigned by OCFS to perform curfew checks of troubled youths in their homes, a significant responsibility intended to ensure the safety of both the youth and the public. In one example from June 21, 2010, this employee reported working for OCFS from 8:00 p.m. to 11:00 p.m. but also for the NYPD from 7:15 p.m. to 9:50 a.m. When we asked him about this inconsistency, he admitted that he had performed his OCFS curfew checks while on NYPD time. The employee stated that he could do both jobs simultaneously and claimed that making a few, short curfew calls for OCFS during his NYPD shifts did not interfere with the performance of his police duties. He claimed that the average curfew call only took about five minutes. However, based on the amount of time for which he was paid by OCFS, the average curfew call would have taken him more than half an hour to make.

We interviewed the Aide's immediate supervisor, as well as the program director to whom he reports. Both were aware that the employee's time records did not accurately reflect the time spent working for OCFS. They knew that the Aide did not have a fixed work schedule due to his job with the NYPD and that his schedule at that job often conflicted with the hours reportedly worked for OCFS. Both were also aware that the curfew checks assigned to the Aide could be completed in significantly less time than the scheduled work shift. Yet the immediate supervisor approved all of the time records, reportedly at the direction of the program director. We referred this matter to both OCFS and NYPD. Upon internal investigation, OCFS officials reported that they have terminated the Aide. Additionally, the NYPD's Internal Affairs Bureau conducted an investigation of this matter which resulted in disciplinary action against the officer.

Another employee, a part-time Fire Safety Representative who is also a captain with the New York City Fire Department (FDNY), accounted for 26 of the instances we identified totaling 55 hours of questionable work. OCFS had assigned this employee to perform fire safety inspections. On November 10, 2009, this employee reported working for OCFS from 8:30 a.m. to 4:30 p.m., but also for the FDNY from 9:00 a.m. to 4:00 p.m. We found 20 other instances where he reported starting work for OCFS at 8:30 a.m. after coming off an overnight shift for FDNY that reportedly did not end until 9:00 a.m. We referred this matter to OCFS officials for further action and

discussed it with the New York City Department of Investigations. OCFS officials informed us that the employee has subsequently resigned.

Adjoining Work Schedules

Adjoining work schedules involve situations where an employee works two jobs, one of which ends precisely at the same time that the second begins. The problem with these situations is that they frequently do not account for the time it takes to travel between jobs. Our analysis highlighted one such OCFS employee, a part-time Youth Developmental Aide, who was also employed as a full-time Community Associate with the City's Department of Education (NYCDOE). Records show this person has been employed by both agencies for over nine years and routinely reported working 8:00 a.m. to 4:00 p.m. Monday through Friday for NYCDOE and 4:00 p.m. to 6:00 p.m. for OCFS. We estimate that the minimum amount of time needed to travel between these two work locations was 30 minutes, but could easily be greater depending on traffic congestion or travel route.

When we interviewed this employee she stated that her work location was the same for both jobs until October 2011, when her NYCDOE job was relocated. However, NYCDOE officials indicated the location change occurred a year earlier, in October 2010. As a result, it appears this employee was paid for at least 79 hours she did not work on 158 days between October 4, 2010 and July 20, 2011. Since NYCDOE time records do not show the actual location where employees work, and because of general inadequacy and noncompliance with other contemporaneous records such as sign-in sheets, we were unable to conclusively resolve the discrepancy about where this employee worked on any given day and therefore referred the issue to OCFS officials for further investigation and follow-up. As a result of that investigation, OCFS officials informed us that they terminated this employee.

Sick Leave Abuse

Dually employed individuals may use sick leave accruals to cover illnesses or other medically oriented situations such as doctor appointments, but may not use accruals at one job and report for work at the other for the same periods of time. Our analysis found that three of the OCFS employees whom we identified as having overlapping work schedules also abused their sick leave. These three employees charged a total of 63 hours of sick leave at NYCDOE on 17 occasions while working at OCFS during the same hours. For example, one employee reported working at OCFS from 9:00 a.m. to 4:00 p.m. on May 19, 2011, but charged sick leave at NYCDOE from 8:10 a.m. to 3:00 p.m. on the same day. This employee accounted for seven of the 17 instances we identified, totaling almost 40 hours. We shared our findings with both agencies for appropriate action.

Recommendations

1. Work with the other agencies involved in these cases to determine whether the dually employed individuals we identified are continuing to abuse time and attendance procedures. Take appropriate actions, as warranted, including but not limited to:

- recovering inappropriate salary payments;
 - identifying inappropriate salary and service and contacting the appropriate New York City retirement system and/or the New York State and Local Retirement System to submit salary and service adjustments for the appropriate time periods; and
 - assisting in any further investigation.
2. Ensure that other dually employed staff are working the time for which they are being paid.
 3. Provide pertinent time and attendance training to dually employed staff and their supervisors, and ensure required policies and procedures are followed.

Audit Scope and Methodology

The objective of our audit was to determine whether OCFS employees who have dual employment at other State or City agencies are working their required hours at each employer. Our audit period was July 1, 2009 through December 7, 2011.

To accomplish our objective, we reviewed OCFS policies and procedures, along with relevant regulations and employee labor agreements. We also interviewed OCFS employees and their supervisors and other State and City agency officials, and made site visits and observations. We used computer-based audit techniques to match the State and New York City payroll records for the 12-month period July 2009 through June 2010. This analysis identified 160 OCFS employees who also worked for other State or City agencies. We considered 28 of these employees to be high risk based on several factors, including employment at one or more other agencies during the same pay period with combined income of \$50,000 or more, at least \$5,000 or \$10,000 of which was from another State or City agency, respectively. For each of these 28 employees, we performed detailed tests and analyses of payroll, overtime, and salary payments. We also reviewed payroll records, time sheets and other supporting documentation. Our tests were designed to uncover conflicts in the work schedules and time records of each employee. For reporting purposes, we limited our findings to cases where the value of lost time exceeded \$500.

We conducted our performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence we obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

In addition to being the State Auditor, the Comptroller performs certain other constitutionally and statutorily mandated duties as the chief fiscal officer of New York State. These include operating the State's accounting system; preparing the State's financial statements; and approving State contracts, refunds, and other payments. In addition, the Comptroller appoints members to certain boards, commissions and public authorities, some of whom have minority voting rights. These duties may be considered management functions for purposes of evaluating organizational independence under generally accepted government auditing standards. In our opinion, these

functions do not affect our ability to conduct independent audits of program performance.

Authority

The audit was performed according to the State Comptroller's authority as set forth in Article V, Section 1 of the State Constitution and Article II, Section 8 of the State Finance Law.

Reporting Requirements

We provided a draft copy of this report to OCFS officials for their review and comment. Officials agreed with our recommendations and noted actions already taken to implement each one. Their complete response is attached at the end of this report.

Within 90 days after final release of this report, as required by Section 170 of the Executive Law, the Commissioner of the Office of Children and Family Services shall report to the Governor, the State Comptroller, and the leaders of the Legislature and fiscal committees, advising what steps were taken to implement the recommendations contained herein, and where the recommendations were not implemented, the reasons why.

Contributors to This Report

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Vision

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Mission

To improve government operations by conducting independent audits, reviews and evaluations of New York State and New York City taxpayer financed programs.

Agency Comments



August 16, 2013

Mr. John Buyce, Audit Director
Office of the State Comptroller
Division of State Government Accountability
110 State Street, 11th Floor
Albany, NY 12236

New York State
Office of
Children &
Family
Services

<http://ocfs.ny.gov>

Andrew M. Cuomo
Governor

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52 Washington Street
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12144-2834

Dear Mr. Buyce:

This is the Office of Children and Family Services (OCFS) response to draft audit report *2011-S-48 Dual Employment* received from the Office of the State Comptroller (OSC) on July 2, 2013. The report contains three recommendations intended to help ensure that second jobs for OCFS employees do not interfere with the employee's primary job responsibilities or represent a conflict of interest.

The first recommendation is that OCFS work with other agencies in the cases identified to determine whether the dually employed individuals continue to abuse time and attendance procedures. As noted in the report, OCFS has already taken action against three of the eight employees identified by OSC and confirmed by OCFS, who engaged in activities that resulted in payments for time not worked. OCFS continues to review instances where such conduct is suspected and will reach out to OSC and other entities as needed in the investigation of such situations. Recoveries and adjustments, if warranted, will be pursued.

The second recommendation is that OCFS "assure the other dually employed staff are working the time for which they are being paid." On April 3, 2012 OCFS released a memo to all employees reminding them of the rules governing extra employment and dual employment. A copy of that memo is attached to this response. OCFS will continue to take steps to inform and remind staff of the need to notify supervisors and obtain permission for extra or dual employment.

The third recommendation is that OCFS "Provide pertinent time and attendance training to dually employed staff and their supervisors, and assure required policies and procedures are followed." The rules governing extra and dual employment were addressed in recently completed ethics related training which was mandated for many OCFS managers and supervisors. Additionally, the OCFS Ethics Officer is revising the standard language in outside employment opinions to read as follows: "Any approved outside activities/employment occurring during normal work hours requires prior supervisory approval and must be charged to appropriate accruals. Please note that Sick Leave accruals may not be used for this purpose." OCFS will continue to examine ways to train and remind employees about the policies and procedures which relate to dual employment and extra employment.



An Equal Opportunity Employer

OCFS appreciates to opportunity to respond to this draft report. Please contact Ralph Timber, OCFS Audit Liaison, with any questions or comments you may have.

Sincerely,



Mikki Ward-Harper
Acting Deputy Commissioner
for Administration



New York State
Office of
Children & Family
Services

www.ocfs.state.ny.us

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An Equal Opportunity Employer

MEMORANDUM

TO: All OCFS Employees

FROM: Mikki Ward-Harper, Acting Deputy Commissioner for Administration

DATE: April 3, 2012

SUBJECT: Extra Employment/Dual Employment

This is to remind employees of the rules governing extra employment and dual employment. As noted in the Employee Manual under Section 2.13 (Outside Activities and Employment), "Before you take on any of these outside activities, notify your supervisor and obtain written permission. Filing of the required Outside Activity form and obtaining permission is required annually. Approval is based on your ability to perform your OCFS duties and whether your outside activities involve any conflict of interest. Permission for outside employment may be withdrawn if such employment interferes with your OCFS job, or if the outside job places you in a conflict of interest."

EXTRA EMPLOYMENT

Employees seeking extra employment are required to complete an OCFS-2029 form and submit it to their supervisor for approval/signature. Once approved, the supervisor submits it to their Deputy Commissioner for approval/signature. The form then goes to the Division of Legal Affairs for approval/signature. The final step is for the Division of Legal Affairs to submit the form to the Bureau of Personnel. The Bureau of Personnel will then inform the employee and the employee's supervisor of the disposition of their request for extra or outside employment.

DUAL EMPLOYMENT

Dual Employment refers to employment of an OCFS employee working in another NYS agency where the employee would be receiving two NYS checks. Dual Employment employees are required to fill out an OCFS-2029 form and an Audit and Control AC-1588 (Dual Employment/Extra Service Approval) form and submit them to their supervisor. Once both forms are approved by the supervisor, Deputy Commissioner and Legal, these forms are forwarded to the Bureau of Personnel for final approval. **NOTE:** The AC-1588 is completed by the agency where the person is regularly employed. Once the AC-1588 has been approved by the OCFS Bureau of Personnel, the original form is sent to the Office of the State Comptroller (OSC) for processing.

If you have any questions or concerns regarding Outside Activities and Employment, please contact Michael Mentis in the Bureau of Personnel at (518) 473-7936.