

David N. McClintock – Inspector General

Office of Inspector General  
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Synopsis of OIG Final Report #101376-103 (DPW)

Hon. President and Members of the City Council  
400 City Hall

5/7/2010

Attached please find a synopsis of the Office of the Inspector General's (OIG) Final Report concerning the Baltimore City Department of Public Works' (DPW) employee, Dennis McLaughlin, who was incarcerated between July of 2007 and May of 2008. During his incarceration, which was not disclosed, he maintained his position and received compensation in the amount \$12,741.20.

The OIG's investigation and report identified the timeline and facts that developed over a period of almost four years and examines DPW's application of the City's relevant policies and procedures to those facts. The OIG's role is to establish facts and assess the effectiveness of both City policy and the application of that policy. The report is also intended to serve as solid foundation for affected departments and agencies to take additional action as they deem necessary.

The concerns addressed involve whether City policy can result in employees being paid while incarcerated, the application of policy to long term absences, how City policy addresses the potential impacts of an employee's arrests or convictions, and how the relevant policies are being applied at the DPW. Lastly, the report concludes with several policy recommendations.

The OIG appreciates the assistance provided by the Department of Public Works, the Office of the Labor Commissioner, the Department of Human Resources, and the Baltimore City Office of the State's Attorney.

The OIG remains committed to providing independent investigations and audits that provide for transparency of government, a solid foundation for meaningful policy review, and a platform for staff accountability.

DNM/

Attachment

cc: OIG Admin/Case file

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100 Holliday Street  
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Baltimore, MD 21202

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## OFFICE OF THE INSPECTOR GENERAL BALTIMORE CITY

100 N. Holliday Street, Room 640  
BALTIMORE, MD 21202



### **Synopsis of the Officer of Inspector General's Report #IG 101376-103**

Department of Public Works Employee who Received Compensation and Maintained his Position while Incarcerated

In January of 2010 the Office of Inspector General was asked to review the allegations that surfaced in the media concerning a Department of Public Works employee, Mr. Dennis McLaughlin, who was able to maintain his position and was allegedly paid by the City while he was incarcerated.

This investigation involved the review of how Mr. McLaughlin, a City employee, managed to maintain his position as a Utility Repairman while he served an eleven-month period of incarceration without the knowledge of the City. Through investigation, it was determined that a combination of fraud committed by a co-worker and several failures to follow-policy by the Department of Public Works (hereinafter "DPW") led to his ability to receive \$12,741.20 in compensation and to retain and return to his position, uninhibited, after his release.

The events that bear on the review began with the employees arrest for child sex offenses in April of 2006 and culminated with the employee's suspension in January 2010. During this time period, the employee was arrested; convicted; listed on the public Maryland Sex Offender Registry; served nearly 11 months of incarceration; was released, returned to his position; was arrested again and lastly suspended.

After the employee was arrested in April of 2006 and convicted in July of 2007, it appears that neither management nor co-workers were aware of the actual situation. It should be noted that there is no current policy that would require such a disclosure. During his incarceration, from July 2007 through May 2008, the employee was permitted to use all of his leave, then receive and use 24 days from the American Federation of State, County and Municipal Employees (hereinafter "AFSCME") sick leave bank, and finally go on over 100 days of leave without pay. He was released from jail and allowed to return to his position, unimpeded. The employee's leave usage and return to work situation was the result of fraudulent medical submissions, management deficiencies and inadequate internal controls at the Department of Public Works (hereinafter DPW).

During the ensuing months, co-workers and supervisors alike became aware of the employee's status as a registered sex offender. This also led to suspicions regarding his alleged medical problems and the documentation submitted on his behalf during his absence. As the employee went about his normal duties in the City as a Utility Repairman from May of 2008 through January 2010, several employees expressed concern about being assigned to work with him. These concerns were met with mixed responses, but in no case was action taken to forward the information up the chain of command for assessment or verification.

### **Background and Chronology**

This review spans a time from 04/2006 through 01/2010, a span of almost four years. The establishment of a timeline at the outset is helpful.

- 04/21/2006 Mr. McLaughlin arrested for various criminal offenses.
- 07/25/2007 Mr. McLaughlin incarcerated - MD Division of Correction for Sexual Abuse of a Minor.<sup>1</sup>
- Registered as a Maryland Sex Offender.
  - During this period he was paid for 99.2 days in various leave status' and received 115 days of Leave without Pay (LWOP).
  - Fifteen different medical certificates/notes and a letter are received indicating the need for medical absences.
- 02/28/2008 Certified letter sent by DPW advising Absent Without Leave (“hereinafter AWOL”) status due to lack of documentation.
- 03/12/2008 Certified letter sent by DPW advising Mr. McLaughlin that there may be a qualifying need for FMLA and providing the relevant forms. This action was based on the false medical documents submitted.
- 03/13/2008 Certified letter sent by DPW advising Mr. McLaughlin of his options regarding his request for leave due to a medical condition and included a “Request for Leave of Absence without Pay” form. This letter was based on false medical documents.
- 04/17/2008 Certified letter sent by DPW informing Mr. McLaughlin that he is not eligible for FMLA leave because he did not return the completed forms.
- 05/02/2008 Mr. McLaughlin released - MD Division of Correction.
- 05/12/2008 Mr. McLaughlin returns to work unannounced.
- 01/13/2010 Mr. McLaughlin was indicted for various offenses including 3<sup>rd</sup> and 4<sup>th</sup> degree sex offenses; kidnapping, and impersonating a police officer.
- 01/19/2010 Mr. McLaughlin suspended without pay.

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<sup>1</sup> Mr. McLaughlin’s was incarcerated within the Maryland Division of Correction from 07/25/ 2007 to 05/02/ 2008. Further, that with the deduction of good conduct, industrial and special project credits, he served a total of 9 months 7 days on an 18 month sentence.

### **Pay Status**

Investigation determined that Mr. McLaughlin was carried on DPW payroll in an on-pay status from 07/20/2007 through 01/18/2008, and non-pay status from 02/01/08 to 05/09/2008.

A review of Mr. McLaughlin's pay status from 07/31/2007 through 05/13/2008 revealed the following:

1. Mr. McLaughlin was given credit and received pay for assigned "holidays" that fell during the period of his incarceration.
  - September 4, 2007 Labor Day
  - October 8, 2007 Columbus Day
  - November 12, 2007 Veterans Day
  - November 22, 2007 Thanksgiving
  - December 25, 2007 Christmas
2. Mr. McLaughlin was paid for 99.2 days in various leave status including holiday pay, sick leave, earned compensation time, and personal leave. He was also recorded in a Leave without Pay (LWOP) status for 15 days.
3. During his period of on-pay status Mr. McLaughlin was awarded 30 days leave from the AFSCME Union's Sick Leave Bank Board of Directors, which was also signed off on by the City of Baltimore's Labor Commissioner. Of the time allotted only 24 days was actually applied and resulted in compensation beginning in November of 2007 and the last being recorded in December 2008.
4. Investigation did not reveal any evidence that Mr. McLaughlin received overtime compensation while he was incarcerated as was originally reported in the media.

### **Leave Status**

The DPW utilizes a basic log sheet to record employees who call-in to advise they will be missing work and which type of leave they are requesting. This log is referred to as the "Call-In Sheet", a review of these for dates between 7/23/2007 through and including 05/13/2008 revealed only nine instances where someone purporting to be Mr. McLaughlin had called in and given a reason as to why he wasn't coming to work. The "Call-In" dates ran from 07/23/2007 through 08/27/2007. The current "Call-In Sheet" system does not require, or document, any verification efforts to ensure that it is the actual employee who is calling in. As such, there is no viable way to verify who the caller was that placed the calls.

Validity of Medical Certificates

A review of Mr. McLaughlin's file revealed fifteen doctors' certificates/letter outlining reasons and dates for Mr. McLaughlin to be out due to medical reasons. The certificates covered dates from 07/23/2007 through 05/20/2008.

A review of the certificates/letter revealed several inconsistencies between individual documents. Contact with the medical practice the certificates/letter purported to represent revealed that no one at the facility had ever treated Mr. McLaughlin and therefore they had not issued or authorized any of the documentation that had been submitted.

Agency Action Regarding Leave Status

Investigation revealed several efforts by DPW to reach Mr. McLaughlin regarding his leave status that corresponded with the time frame of his incarceration. The letters were all sent certified to Mr. McLaughlin's residence of record with the City and were all returned as unclaimed. The correspondence was as follows:

1. On 02/28/2008 DPW staff sent Mr. McLaughlin a certified letter indicating that Mr. McLaughlin's medical certification "*covers your absence up to February 8, 2008. As of this date we have not seen or heard from you. You are presently in a non-pay status and considered AWOL.*"
2. On 03/12/2008 DPW staff sent Mr. McLaughlin a letter indicating that he might have a qualifying need for FMLA.
3. On 03/13/2008 DPW staff sent Mr. McLaughlin a letter informing him of his options regarding his request for leave. This letter addresses one of the fraudulent medical certificates that indicated a return to work date of effective 05/20/2008. Attached with the letter was a "Request for Leave of Absence without Pay" form, to be returned no later than 03/20/2008.
4. On 04/17/2008, a fourth certified letter was sent to Mr. McLaughlin informing him that he is not eligible for leave under FMLA because he did not return the form within the specified time frame allowed as stated in letter dated 03/12/2008.

Despite the letters and lack of response to them no actions were taken pursuant to established policy and procedure as discussed below.

## **FINDINGS AND VIOLATIONS**

### **Findings: Dennis McLaughlin**

1. Mr. McLaughlin was sentenced to 18 months for the offense of Sexual Abuse of a Minor incarcerated within the Maryland Division of Correction from 07/25/2007 to 05/02/2008.
2. There was no verifiable contact with Mr. McLaughlin by any supervisory staff at DPW during his period of incarceration. There was no record of correspondence, telephone calls, emails, etc, from Mr. McLaughlin between 07/2/2007 and 05/02/2008 or upon his return to work.
3. A review of Mr. McLaughlin's 2007 and 2008 attendance records revealed that he carried on the DPW payroll during the period of his incarceration, being listed on-pay status from 07/20/2007 through 01/18/2008 and non-pay status from 02/01/2008 to 05/09/2008.
  - a) Payroll documentation shows Mr. McLaughlin received \$12,741.20 during the period of his incarceration. This figure is inclusive of those noted below for Sick Leave Bank and Holiday Pay.
4. Mr. McLaughlin was awarded 30 days from the AFSCME Union's Sick Leave Bank Board of Directors which was approved by the City of Baltimore's Labor Commissioner. .
  - a) Documentation indicates Mr. McLaughlin was paid for 24 days in the amount of \$2,267.52.
5. Mr. McLaughlin's was given credit and received pay for assigned "holidays" that fell during the period of his incarceration.
  - a) For the five (5) holidays, Mr. McLaughlin received his normal pay of \$613.79 for the forty (40) hours.

### **Violations: Dennis McLaughlin**

Mr. McLaughlin violated the Rules of the Baltimore City Department of Personnel and the Baltimore City Civil Service Commission. More specifically Rule 40 "Standards of Conduct and Performance" and Rule 56 "Cause for Discharge, Demotion, and Suspension" as follows:

1. Rule 40, Part C: *"Employees shall report to work on time as scheduled, and shall follow all established rules and policies for leave."*

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Mr. McLaughlin violated this rule through his failure to engage in any verifiable and/or truthful effort to follow the procedures set forth in the Administrative Manual for the use of Vacation Time, Personal Leave, Compensatory Time, Sick Leave, or Leave without Pay during his period of incarceration from 07/25/2007 to 05/02/2008. Additionally, there was no verifiable and/or truthful effort by Mr. McLaughlin to follow the rules and procedures set forth by AFSCME Union's Sick Leave Bank Board of Directors and/or the City of Baltimore's Labor Commissioner to access the Sick Leave Bank. During this

period he was paid \$12,741.20.

2. Rule 40, Part L: *“Employees shall conduct themselves at all times in a manner becoming a City employee and shall not bring scandal, expense, or annoyance upon the City through crime, conflict of interest, failure to pay, or other improper or notorious behavior.”*
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Mr. McLaughlin violated this rule through his failure to report at any time prior to his suspension in January of 2010 that he was incarcerated within the Maryland Division of Correction from 07/25/2007 to 05/02/2008 for the offense of Sexual Abuse of a Minor, resulting in his inclusion on the Maryland Sex Offender Registry.

3. Rule 56, Section (1): *“Discharge, demotion, or suspension of an employee in Civil Service shall be for any just cause. Discharge shall be only for (a) unsatisfactory conduct which cannot be corrected through training, rehabilitation, or lesser forms of disciplinary action; (b) conduct which causes irreparable harm to the health or safety of any person or; and (c) conduct which causes an irreparable breach of trust.”*
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Mr. McLaughlin violated this rule through his failure to report at any time prior to his suspension in January of 2010, that he was incarcerated within the Maryland Division of Correction from 07/25/2007 to 05/02/2008, for the offense of Sexual Abuse of a Minor, resulting in his inclusion on the Maryland Sex Offender Registry.

4. Rule 56, Section (2), Subsection (d): *“That the employee has been absent from duty without leave from a superior officer for three consecutive days without good cause and without notifying the said superior officer of his or her absence and intention to return.”*
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Mr. McLaughlin violated this rule through his benefit of 99.2 days in various leave statuses and 115 days of Leave without Pay (LWOP) from 07/25/2007 to 05/02/2008 constituting numerous absences from duty for three or more days without good cause.

5. Rule 56, Section (2), Subsection (h): *“That the employee has committed acts while on or off duty which amount to conduct unbecoming to an employee of the City.”*
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Mr. McLaughlin violated this rule through his failure to report at any time prior to his suspension in January of 2010, that he was incarcerated within the Maryland Division of Correction from 07/25/2007 to 05/02/2008, for the offense of Sexual Abuse of a Minor, resulting in his inclusion on the Maryland Sex Offender Registry and/or his indictment for various offenses including third and fourth degree sex offenses; kidnapping, and impersonating a police officer in January of 2010.



6. Rule 56, Section (2), Subsection (I): *"That the employee has been engaged in fraud, theft, misrepresentation of work performance, misappropriation of funds, unauthorized use of City property, obstruction of an official investigation, or any other act of dishonesty."*
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Mr. McLaughlin violated this rule through his failure to report his status while incarcerated and subsequent ineligibility for leave and/or acceptance of \$12,741.20 in compensation between 07/25/2007 to 05/02/2008, constituting fraud and/or theft.

7. Rule 56, Section (2), Subsection (k): *"That the employee has been convicted of a criminal offense or misdemeanor involving moral turpitude."*
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Mr. McLaughlin violated this rule through his failure to report his status as a convicted sex offender and inclusion on the Maryland Sex Offender Registry.

#### **Findings: DPW Office Assistant**

1. The DPW Office Assistant made statements that were false and/or misleading and contributed to DPW's failure to take reasonable personnel measures consistent with policy and procedure during the period of Mr. McLaughlin's incarceration. These included:
  - a) Informing DPW staff that Mr. McLaughlin was recovering in Pennsylvania with a friend.
  - b) Stating to DPW staff after the second arrest had been reported in January of 2010 that "I don't know anything about that; my name isn't on anything" despite providing medical certificates/letters on Mr. McLaughlin's behalf during his period of incarceration.
2. The DPW Office Assistant took actions that indicated involvement in Mr. McLaughlin's business affairs and that further led to the false and/or misleading belief that Mr. McLaughlin had health problems. These actions directly contributed to DPW's failure to take reasonable personnel measures consistent with policy and procedure during the period of his incarceration. These included:
  - a) Presentation/submission of fifteen falsified doctors' certificates bearing on the period when Mr. McLaughlin was incarcerated.
  - b) Signed for and receiving Mr. McLaughlin's payroll check receipt dated 12/07/2007.

#### **Violations: DPW Office Assistant**

The DPW Office Assistant violated the Rules of the Baltimore City Department of Personnel and the Baltimore City Civil Service Commission. More specifically Rule 40 "Standards of Conduct and Performance" and Rule 56: "Cause for Discharge, Demotion, and Suspension" as follows:

1. Rule 40, Part L: *“Employees shall conduct themselves at all times in a manner becoming a City employee, and shall not bring scandal, expense or annoyance upon the City through crime, conflict of interest, failure to pay, or other improper or notorious behavior.”*
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The DPW Office Assistant violated this rule by submitting false and misleading medical documentation concerning Mr. McLaughlin, which resulted in his use of sick leave, annual leave, personal leave, compensatory leave, sick bank leave from AFSCME, and the earning of holiday compensation. Further, these actions resulted in Mr. McLaughlin receiving compensation of \$12,741.20 during his period of incarceration in the Maryland Division of Correction from 07/25/2007 to 05/02/2008.

2. Rule 56, Section (2), Subsection (I): *“That the employee has been engaged in fraud, theft, misrepresentation of work performance, misappropriation of funds, unauthorized use of City property, obstruction of an official investigation or any other act of dishonesty.”*
- 

The DPW Office Assistant violated this rule through the submission of false and misleading medical documentation concerning Mr. McLaughlin, which resulted in his use of sick leave, annual leave, personal leave, compensatory leave, sick bank leave from AFSCME, and the earning of holiday compensation. Further, that these actions resulted in Mr. McLaughlin receiving compensation of \$12,741.20 during his period of incarceration in the Maryland Division of Correction from 07/25/2007 to 05/02/2008.

3. Rule 56, Section (2), Subsection (h): *“That the employee has committed acts while on or off duty which amount to conduct unbecoming to an employee of the City.”*
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The DPW Office Assistant violated this rule through the submission of false and misleading medical documentation concerning Mr. McLaughlin, which resulted in his use of sick leave, annual leave, personal leave, compensatory leave, sick bank leave from AFSCME, and the earning of holiday compensation. Further, that these actions resulted in Mr. McLaughlin receiving compensation of \$12,741.20 during his period of incarceration in the Maryland Division of Correction from 07/25/2007 to 05/02/2008.

### **Findings: DPW Policy, and Policy Observance**

The OIG is aware that there may be Department and Agency-based operational protocols for handling various issues, including leave requests and status. Notwithstanding the degree of independence Departments and agencies permissibly exercise, all internal policy must still comply with the established policy and procedure as set forth in the Administrative Manual, Personnel Manual, and the Rules of the Civil Service Commission, among other sources of authority.

It was determined that there was a common belief among DPW staff, especially those located at the Fulton Avenue facility, that Mr. McLaughlin was dealing with medical issues. This belief,

although fraudulently established, may have resulted in a relaxed application of leave use policies that is not supported by the applicable regulations.

As such, the OIG's assessment of policy compliance focuses not on the mechanical or specific process applied; rather, on whether the outcome of the agency's actions rose to the level required by established City policy and procedure.

**Holiday Compensation** (5 days credited) - The Administrative Manual policy titled Holiday Compensation and designated AM-204.1, Part III, outlines the application of holiday compensation. The policy's "Scope" section reads as follows: *"This policy is concerned with holiday compensation for City employees who have been in pay status for at least one (1) day in the payroll period in which the holiday occurs."*

- **Eligibility:** Mr. McLaughlin had been incarcerated for over thirty days prior to Labor Day. As such, he was not legitimately in a pay status for one (1) day of the pay period in which the holiday occurred and was not eligible for compensation on any of the 5 (five) holidays for which he was compensated.
- **DPW Staff Action:** Due to the fraudulent medical records being submitted by the DPW Office Assistant, DPW payroll staff reasonably believed that he was eligible for Holiday Leave.

**Vacation Leave** (18 days credited) – The Administrative Manual policy titled Vacation Leave and designated AM-204.2 outlines the process for use of such leave. The policy's "Leave Request" section reads that *"An employee who wishes to use accumulated vacation leave must obtain prior approval from his/her immediate supervisor. Vacation leave requests for one week or longer must be made one week in advance in most situations. A request to use vacation leave for less than one week must be made one workday in advance. However, the employee's supervisor may waive these time requirements."*

- **Eligibility:** Ability to use vacation leave requires only that it be requested in compliance with the policy. The policy places no use restrictions on this earned leave that would prohibit its use while an employee is incarcerated. Therefore, with a proper request, Mr. McLaughlin would have been eligible to use his accumulated vacation leave.
- **DPW Staff:** Although there were occasional "call in" requests made, there were no formal leave requests ever submitted by, or on behalf of, Dennis McLaughlin. AM-204.2 requires prior supervisory approval before use. There is no evidence that Mr. McLaughlin's immediate supervisor made any affirmative effort to enforce the requirement for a proper request and approval.<sup>2</sup>

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<sup>2</sup> The OIG recognizes that DPW was under the perception that Mr. McLaughlin was ill. However, that does not preclude supervisors establishing contact with employees by phone, filling out proper slips for them, and generally ensuring that policy is followed.

**Personal Leave** (4.2 days Credited) – The Administrative Manual policy titled Personal Leave and designated as AM-204.4 outlines the process for use of such leave. There are two relevant passages in the Policy.

First, the policy’s “Scope” section reads that *“Employees are eligible to use personal leave to provide time off with regular rates of pay to observe religious or personal holidays or to attend to personal business.”* Second, the policy’s “Request for Leave” section reads that *“An employee who wishes to use accumulated personal leave must obtain prior approval from the immediate supervisor. Personal leave requests must be made at least three (3) workdays in advance of the requested usage. However, this prior approval requirement may be waived by the supervisor in bona fide emergencies.”*

- Eligibility: Personal leave may be used for “personal business” indicating that the policy places no use restrictions on this earned leave that would prohibit its use while an employee is incarcerated. However, its use is dependant upon a proper request made at least three workdays in advance. The advance request may be waived in an emergency. Therefore, with a proper request Mr. McLaughlin would have been eligible to use his accumulated personal leave.
- DPW Staff: Although there were occasional “call-in” requests made, there were no formal or written requests ever made by Dennis McLaughlin or by any DPW employee on his behalf. There is no evidence that Mr. McLaughlin’s immediate supervisor made any affirmative effort to enforce the requirement for a proper request and approval.

**Compensatory Time** (4 days credited) - The Administrative Manual policy titled Compensatory Time and designated as AM-204.1 outlines the process for the use of such leave. There are two relevant passages in the Policy. The policy’s “Request for Leave” section reads that *“An employee who wishes to use accumulated compensatory leave must receive prior approval from his supervisor.”*

- Eligibility: The compensatory leave policy places no use restrictions on this earned leave that would prohibit its use while an employee is incarcerated. However, its use requires prior approval from a supervisor. Therefore, with a proper request Mr. McLaughlin would have been eligible to use his accumulated personal leave.
- DPW Staff: Although there were occasional “call-in” requests made, there were no formal requests ever made by Mr. McLaughlin or any DPW employee on his behalf. There is no evidence that Mr. McLaughlin’s immediate supervisor made any affirmative effort to enforce the requirement for a proper request and approval.

**Sick Leave** (43 days credited) - The Administrative Manual policy titled Sick Leave and designated AM-204.14 outlines the process for use of such leave. The policy’s “Use” section reads that *“Accumulated sick leave days may be used by employees who are required to be absent from duty because of personal sickness whether physical or mental, injury, or prenatal or postnatal disability. There are two relevant passages in the Policy.”*

Also of relevance is AM 204.14's provision addressing "Return to Work" which reads: "Agency heads shall notify the Division of Occupational Medicine, Department of Personnel of any employee who has been on sick leave for more than 60 calendar days."

- **Eligibility:** The sick leave policy restricts the use of the leave to situations where employees are required to be absent from duty due to various medical conditions. Therefore, an employee who is incarcerated would not be eligible to use accrued sick leave.
- **DPW Staff Action:** Neither the agency head, nor a designee, followed proper procedure as outlined by AM 204.14 under the return to work provision. Despite the submission of fraudulent and misleading medical documentation that lead staff to believe that Mr. McLaughlin was indeed ill or injured; there is no evidence to indicate that anyone, at any level, notified the Division of Occupational Medicine. This should have occurred on or about 09/26/2007, when Mr. McLaughlin reached 60 calendar days off for 'medical' reasons.

**Leave Without Pay** (115 days) - The Administrative Manual policy titled Leave without Pay and designated as AM-208.1, Parts I and II outline the process to use in applying for such leave in blocks of less than 30 days and in blocks exceeding 30 days, as well as, the procedure to return someone to work at the conclusion of their leave.

1. Part I, under the "Scope" section of the policy, set forth that *"A leave of absence without pay for a period not to exceed 30 calendar days or less may be granted by the employee's appointing officer."*
  - **Eligibility:** The LWOP policy does not articulate guidelines for when LWOP should or should not be granted. As such, there is no prohibition in current policy that would prohibit its use by an incarcerated employee.
  - **DPW Approval Process:** There is no evidence that indicates the LWOP policy was followed as it pertains to approvals under Part I (less than 30 days) which should have required his appointing authority's approval. Mr. McLaughlin reached 31 days of LWOP on 01/07/2008.
  - **Return to Duty:** Had DPW properly placed Mr. McLaughlin on LWOP for up to 30 days, he would have been required to return to work on the date specified. Significantly, an employee's failure to return to work within three consecutive days of the date specified, without good cause, and without notifying his appointing officer, in writing, will be deemed cause for dismissal. DPW took no action to comply with this provision.
  - **DPW Staff Action:** There was no action taken from any level in Mr. McLaughlin's supervisory chain, DPW HR, or DPW Payroll to track, report, or otherwise ensure compliance with AM-208.1.<sup>3</sup>

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<sup>3</sup> While there was a letter sent regarding his ineligibility for LWOP on 03/13/2008 he had already been carried on this status for well over 30 days

2. Part II, under the “Approval” section of the policy, sets forth that *“A leave of absence for a period in excess of 30 calendar days must be approved by the Civil Service Commission for employees in the classified service, as well as the employee’s appointing officer.”*
  - Approval: There is no evidence that indicates the LWOP policy was followed as it pertains to ensuring the appropriate approval was secured for leave exceeding 30 days. This action should have been taken in lieu of more than 100 days of LWOP that was assessed to Mr. McLaughlin.
  - DPW Staff Action: There was no action taken from any level in Mr. McLaughlin’s supervisory chain, DPW HR, or DPW Payroll to track, report, or otherwise ensure compliance with AM-208.1.
3. Part II also addresses the requirement of a “Medical Evaluation” prior to reinstatement following leave exceeding 30 days. The policy reads in part that *“medical clearance to return to duty must be obtained from the Division of Occupational Medicine when the leave of absence without pay . . . was due to personal illness or disability.”*
  - DPW Actions: There is no evidence that indicates the LWOP policy was followed as it pertains to obtaining a medical clearance in cases where the absence exceeds 30 days. Considering the fraudulent medical documentation that had been submitted, this notification and action should have been taken.
  - DPW Staff Action: DPW Human Resources staff should have been monitoring Mr. McLaughlin’s absences due to the nature of the medical documentation being submitted. Had procedure been followed a “Fit for Duty” physical would have been requested that could have led to discovery of the fraud. DPW Human Resources failed in this responsibility.

**Incompetent, Inefficient, or Negligent in the Performance of Duty** - Rule 56 *“Cause for Discharge, Demotion, and Suspension,”* Part (2), of the Baltimore City Department of Personnel and the Baltimore City Civil Service Commission sets forth various situations that are recognized as constituting *“just and sufficient cause for suspension, demotion, or discharge.”* Of interest is sub-part (b) which reads: *“That the employee is incompetent, inefficient or negligent in the performance of duty.”*

1. Policy Application DPW Supervision: There were numerous points throughout the events involving Mr. McLaughlin where the supervisory failure to act rose to the level of incompetence, inefficiency, or negligence of the nature contemplated by Rule 56, Part (2)(b). While there may be others more easily identified by DPW some of these points were as follows:
  - Exhaustion of Accrued Leave: Beginning on or about 09/26/2007, when Mr. McLaughlin no longer possessed any leave, had not requested leave without pay under AM-208.1, had not requested FMLA leave, and had not contacted any supervisor directly, he was absent from duty without leave per Rule 56, Part (2)(d). On his third

day in this status DPW supervisors should have taken some meaningful action up to and including a suspension under Rule 56 Part (3). While it is recognized that there are various options that could be considered as “appropriate” the investigation did not reveal any instance where his supervisors took any significant action. Significant action would likely have included ensuring that direct contact with the employee was established; efficient and effective efforts to further manage, investigate, and clarify the situation; ensuring that appropriate policies concerning leave use were being followed; and providing notice to more senior staff and DPW Human Resources concerning atypical leave.

- Use of Leave (Not Including LWOP): Beginning within days of Mr. McLaughlin’s incarceration a process began whereby Mr. McLaughlin was permitted to use various types of leave, to include personal leave, sick leave, and compensatory leave, without following the proper procedure for requests and approval. Investigation was unable to identify any significant actions taken by his supervisors to engage in efficient management of leave use as required by policy.
- Leave Without Pay Process: The Administrative Manual policy titled Leave without Pay and designated as AM-208.1, Parts I and II outline the process to use in applying for such leave in blocks of less than 30 days and in blocks exceeding 30 days, as well as, the procedure to return someone to work at the conclusion of their leave. There was no evidence found that Mr. McLaughlin’s supervisors followed, or even attempted to follow, the proper procedures concerning the request and approval of LWOP or for the return of an employee from LWOP. It was also noted that beginning January or February of 2008 DPW Human Resources was clearly aware of Mr. McLaughlin’s leave status and even attempted to send letters to him regarding his options. Despite this knowledge no one moved to establish efficient oversight mechanisms to ensure proper handling of Mr. McLaughlin’s situation. This lack of action or follow up also persisted beyond his return to the job.

**Absent From Duty Without Leave** - Rule 56 “*Cause for Discharge, Demotion, and Suspension,*” Part (2), of the Baltimore City Department of Personnel and the Baltimore City Civil Service Commission sets forth various situations that are recognized as constituting “*just and sufficient cause for suspension, demotion, or discharge.*” Of interest is sub-part (d) which reads: “*That the employee has been absent from duty without leave from a superior for three consecutive days without good cause and without notifying the said superior officer of his or her absence and intention to return.*”

- **Policy Application**: On 09/26/2007 when Mr. McLaughlin no longer possessed any leave, had not requested leave without pay under AM-208.1, had not requested FMLA leave, and had not contacted any supervisor directly, he should have been considered absent from duty without leave per Rule 56, Part (2)(d). On his third day in this status DPW would have been able to initiate a suspension under Rule 56 Part (3) and triggered a subsequent investigation by the appointing officer. This investigation may well have

revealed the fraud and led to a more purposeful review.

- DPW Staff Action: There was no action by DPW to ensure that he was appropriately charged an “X” day, indicating he was absent without leave and without permission.<sup>4</sup> Three consecutive days in this status could have resulted in an initiation of proceedings based on Rule 56. For the reasons set forth in the Leave Without Pay section there was no foundation for his daily status to be carried in any other capacity than absent without leave and without permission. The presence of medical certificates alone does not mitigate the requirements necessary to properly secure any legitimate form of leave. This was not a case where there was communication with the employee and good faith efforts to comply.

**Return-To-Work** - The Personnel Manual policy titled Return to Work and designated as PM-171 outlines the process for returning employees to work that have sustained injuries or suffered from various medical conditions. Section IV. “Serious or Catastrophic Injury, Illness or Disease” reads: *“When an employee has acquired a serious or catastrophic non-line of duty or work related injury, illness, or disease and is absent for more than 60 calendar days, the Department’s Human Resource Officer shall notify the Medical Director to ensure that all return-to-work options are considered early in the recovery process.”*

- DPW Staff Action: When Mr. McLaughlin simply showed up to work on 05/09/2008, two weeks before the fraudulently submitted doctor’s letter expired on 05/20/2008, his first and second level supervisors should have sent him immediately to Human Resources. Although this action should have occurred purely based on the voluminous fraudulent medical certificates, the specific information noted on the letter dated 05/08/2008 advising “life threatening complications ...” should have cemented the action. This should have resulted in Human Resources sending Mr. McLaughlin for a “Fit for Duty” exam. This action also could have led to discovery of the fraud. No such action was taken.

**Criminal Conduct/Supervisory Action** – The OIG determined that current City policy only specifically addresses mandatory disclosure of arrests and convictions as they pertain to alcohol and drug offenses via the Substance Abuse and Control Policy. Although Mr. McLaughlin’s position was deemed a sensitive class his arrests and convictions were not related to alcohol and drug violations and no disclosure was required. There are no other sources of policy or procedure specifically addressing disclosure of arrests or convictions by employees or dictating specific supervisory actions.

Baltimore City Department of Personnel and Baltimore City Civil Service Commission rules also bear on this issue.

1. Rule 40, Part (L): *“Employees shall conduct themselves at all times in a manner becoming a City employee and shall not bring scandal, expense, or annoyance upon the City through crime, conflict of interest, failure to pay, or other improper or notorious behavior.”*

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<sup>4</sup> See AM 204-17.



2. Rule 56, Part (2) which sets forth various situations that are recognized as constituting “just and sufficient cause for suspension, demotion, or discharge.”
  - One situation specifically set forth is sub-part (h) that reads: “*That the employee has committed acts while on or off duty which amount to conduct unbecoming to an employee of the City.*”
  - Another situation specifically set forth is sub-part (k) that reads: “*That the employee has been convicted of a criminal offense or misdemeanor involving moral turpitude.*”

A supervisor presented with information indicating that any of his or her subordinates is in violation with the aforementioned policies would have been justified in taking action to address the information. It is important to recognize that one may not be listed as a Registered Sex Offender without a criminal conviction to support inclusion on the list. Thus, inclusion on the list could clearly constitute a violation of the aforementioned rules and merit additional action.

The OIG believes appropriate actions could have included: 1) verification of Mr. McLaughlin’s status via a brief public internet query; 2) making an effort to identify facts beyond his “status” as a sex offender that would be relevant to employee concerns; and 3) engaging in an assessment of whether the specific facts combined with his position as a Utilities Repairman would present any concerns to the safety and well being of the public. It is understood that many of these actions would be performed at different supervisory levels, but that all would require some positive action to be initiated.

Investigation revealed that numerous supervisory level personnel were aware of Mr. McLaughlin’s status as a Registered Sex Offender after his return in May of 2008. While it is not possible to establish clear timelines for who knew what or when they knew it, the responses to the concerns voiced by several employees were inconsistent and ranged from being dismissive to providing direction to not pass on rumors. Some efforts to adjust schedules and assignments were eventually taken.

## **RECOMMENDATIONS**

1. The OIG recommends that DPW implement a protocol for leave use and pay status that requires more formalized leave use requests and approvals, as well as mandatory checks and balances upon certain occurrences to ensure compliance with the Administrative and Personnel Manuals.
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The OIG review of the processes implemented by DPW to manage the application of leave and pay status as it pertained to a Utility Repairman who was believed to be out due to medical conditions from July 2007 through May 2008 did not comply with the standards required by the Administrative and Personnel Manuals. Further, that “relaxed” leave management resulted in the use of leave that the employee was not eligible for, the placement of the employee in a leave

without pay status that was not supported by a request or policy, and in the employee being permitted to return to his position without meeting the requirements necessary of an employee who has been in a leave without pay status for more than 30 days and/or on extended medical leave.

The OIG recommends DPW implement a policy that requires written employee requests for leave and that written supervisory approvals of those requests are submitted in all cases. In those instances where absences become protracted beyond the “routine”, supervisors should have a clear procedure for briefing and working with DPW Human Resources to manage the variety of unique circumstances that may arise. Core elements of any policy addressing protracted absences should include coordination with Payroll to authorize leave and pay status, periodic actual contact with the employee, consideration of whether verification of situation or condition is needed, and definitive steps to ensure policies are followed regarding application of leave to successfully bring the employee back to work when possible.

2. The OIG recommends that the Department of Human Resources, on behalf of the City, considers policy that would require the disclosure of criminal arrests and convictions of all City employees.
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The OIG review of circumstances presented in this matter also considered the public arrest and conviction record of Dennis J. McLaughlin.

Current City policy only addresses mandatory disclosure of arrests as they pertain to alcohol and drug offenses via the Substance Abuse and Control Policy. There are no other sources of policy or procedure requiring disclosure for the arrest or conviction of other offense types.

Mr. McLaughlin’s public record reflects that he was arrested on Friday, 04/21/2006, for a series of sex offense and child abuse charges; records reflect he returned to work on Monday, 04/24/2006. The arrest was not disclosed voluntarily nor would it have been required under existing City policy. The events that resulted in the charges of 04/21/2006 eventually resulted in his guilty pleas on 07/23/2007 and subsequent incarceration until 05/02/2008.

Despite his incarceration and inclusion on the Maryland Sex Offender Registry, he did not disclose his arrest, incarceration, or status as a registered sex offender and returned to work on 05/09/2008. He remained working as a Utility Repairman until he was again arrested on 01/14/2010 for impersonating a police officer, false imprisonment, 4<sup>th</sup> degree sex offense, and 2<sup>nd</sup> degree assault. Although investigation determined that several of Mr. McLaughlin’s co-workers and supervisors had discovered that he was listed on the Sex Offender Registry, no policy required further inquiry, and none was pursued.

The OIG believes that absent proper precautions exercised by the City, arrests and criminal convictions of City employees have the potential to negatively impact the public’s personal

safety and confidence in City governance, disrupt the workplace, and adversely impact work productivity. Further, the OIG recommends that the Mayor consider policy and procedure to require disclosure of criminal arrests and convictions to a central office where the information could be properly assessed and to protect the employee from undue stress that would result in disclosure to an immediate supervisor. Additional policy considerations should include which leave types, if any, should be accessible to employees who are incarcerated.

3. The OIG recommends that the Department of Human Resources considers policy that specifically strengthens the procedure to be followed when an employee is absent from duty without leave from a superior for three consecutive days without good cause.
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The OIG determined that in this case the employee was permitted by the Department of Public Works to be carried in an unauthorized leave without pay status for 115 days. The days in question should have been assessed as absent from duty without leave from a superior and without good cause, commonly referred to as an “X” day.

Employees who are absent from duty without leave from a superior for three consecutive days without good cause are covered by Rule 56 of the Baltimore City Department of Personnel and the Baltimore City Civil Service Commission. The policy states that an “employee may be suspended by a superior officer pending an investigation by the appointing officer to determine whether the employee should be removed.” As such, the current policy simply permits a suspension and contains no mechanism that requires a suspension or other action.

The OIG recommends that policy change be considered that would require specific actions be taken upon the occurrences of certain benchmarks. The OIG believes that having no effective mandatory mechanism preventing unlimited unexcused absences is counter to the City’s interest in managing workflow, the hiring processes, disciplinary issues, etc.