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Jeffrey Norman
Commissioner
Department of Human Resources
68 Mitchell Street, S.W., Suite 2150
Atlanta, GA 30303

Dear Commissioner Norman:

The Compliance Division of the City of Atlanta (COA) Office of the Inspector General (OIG) has conducted an investigation into the COA's hazard pay compensatory leave (hazard pay comp time) and concluded that hazard pay comp time and other employee compensation programs have been inaccurately labeled as and linked to the Family First Coronavirus Relief Act (FFCRA). OIG recommends that the COA Department of Human Resources (DHR), along with the COA Department of Finance (Finance), correct the codes for these programs and clarify the codes for COA employees.

Background

During a review of City of Atlanta (COA) payroll records, OIG noticed the frequent use of the pay code "FFCRA Comp Time" on several COA employees' earnings statements. Further review revealed that the term FFCRA referred to the federal legislation enacted in 2020 that allocated paid leave to employees impacted by the Covid-19 pandemic. At the time OIG became aware of COA employee usage of apparent FFCRA benefits, the eligibility period for FFCRA usage had expired. Accordingly, the OIG initiated an investigation to confirm the propriety of continued use of FFCRA leave by COA employees. In the course of the investigation, among other steps, OIG analyzed leave data, interviewed City employees, and reviewed federal, state, and local laws regarding Covid-19 relief funding.

Findings

After conducting a review, OIG discovered that the FFCRA Comp Time' pay code identified on employee earnings statements has no relationship to the Family First Coronavirus Response Act; rather, FFCRA Comp Time covers a separate allocation of leave, allocated to COA employees legislation approved by the Atlanta City Council (the Council) in 2020, namely hazard

pay comp time. The term “FFCRA” has been used by the COA as a catch-all pay code for several different codes related to the Covid-19 pandemic. OIG found more than ten different pay codes referencing the FFCRA in Kronos, COA’s payroll operating system. Several of these codes, like FFCRA Comp Time, have no relation to the FFCRA. This imprecise identification of payroll codes with respect to their intended programs is concerning for several reasons including the potential appearance of impropriety, potential errors in payroll processing, and general confusion for COA employees. OIG’s findings, conclusions, and recommendations are detailed below.

Federal Law and Policies

A. Families First Coronavirus Response Act

In March 2020, the United States Congress passed the FFCRA, which required that state and local employers (among others) provide employees with paid sick leave or expanded family and medical leave in specific circumstances that arose from exposure to the Covid-19 virus. Specifically, the FFCRA established the Emergency Paid Sick Leave Act (EPSLA) and the Emergency Family and Medical Leave Expansion Act (EFMLEA) to provide emergency leave to employees. The EPSLA required that employers provide two weeks of paid leave (up to 80 hours) at the employee’s regular rate of pay if the employee:

- Was subject to a federal, state, or local quarantine or isolation order or had been advised by a health care provider to self-quarantine;
- Experienced Covid-19 symptoms and sought a medical diagnosis, cared for an individual under quarantine, cared for a child whose school or place of care is closed; or
- Experienced any other substantially similar conditions related to Covid-19.

The EFMLEA granted employees an additional ten weeks of paid expanded family and medical leave to care for children whose school closed for reasons related to Covid-19. While the FFCRA provisions applied to most state and municipal employees, the FFCRA excluded health care providers and emergency responders from using leave under the FFCRA. This exclusion extended to law enforcement, public health, emergency management, child welfare and public works personnel. From April 2020 through December 2020, the FFCRA was a mandatory provision for employers; however, in August 2020, the FFCRA was extended on an optional basis through September 2021. The original FFCRA mandates expired on December 31, 2020.

B. Coronavirus Aid, Relief, and Economic Security Act

Initially, the FFCRA provided only private employers an opportunity to offset some of the costs for FFCRA paid leave via a tax credit provision. For state and local employers, the FFCRA operated as an unfunded expense. On March 27, 2020, the United States Congress passed the Coronavirus Aid, Relief, and Economic Security (CARES) Act. The CARES Act, in turn, established the Coronavirus Relief Fund (CRF). The CRF provided state and local governments a mechanism to offset certain costs related to addressing the Covid-19 pandemic, including FFCRA leave. According to language contained in the CRF, as well as guidance from the United States Department of the Treasury (Treasury), CRF funds could be used by state and local governments to cover expenses if the expenses covered:

- Were not already accounted for in a budget as of March 27, 2020;
- Were incurred during March 1, 2020, through December 31, 2021; and
- Were necessary expenditures incurred due to public health emergency with respect to Covid-19.

In January 2021, the United States Internal Revenue Service (IRS) released further guidance on the how state and local governments could use CRF funds to support payroll processes. The IRS advised that the CRF could be used to supplement payroll expenses for public safety, public health, health care, human services, and similar employees whose services were substantially dedicated to mitigating or responding to the Covid-19 emergency.¹ Treasury did not define substantially dedicated and urged the relevant state and local government employers to determine employee eligibility.

The IRS expressly prohibited the use of CRF funds to cover workforce bonus expenses. CRF may cover hazard pay payments, however; for hazard pay, there was an added requirement that hazard pay was eligible for coverage to the extent that the employees' task involved Covid-19.² Using an example to illustrate the hazard pay coverage, the IRS explained that a government employer could use hazard pay for a police officer who, through the course of enforcing a public health or public safety order, came in close contact with the public. However, an allotment of hazard pay "across-the-board" for all employees at a police department could not be covered using payments from the fund. CRF funds could be used to cover all types of leave (vacation, family-related, sick, military, etc.). Finally, the IRS stated that funds given to local governments were subject to recoupment by Treasury if they had not been used in a manner consistent with CRF guidelines.

C. The American Rescue Plan Act

In March 2021, Congress enacted the American Rescue Plan Act (ARPA). ARPA largely mirrored the provisions of the CARES Act. However, unlike the CARES Act, ARPA extended the FFCRA leave tax credit provision to government employers. Accordingly, government employers were able to apply for a refundable tax credit for eligible EPSLA and EFMLEA leave accrued April 1, 2021, through September 30, 2021. In addition, the ARPA established the Coronavirus State and Local Federal Relief Fund (SLFRF) which, similarly to the CRF, allowed state and local governments to use federal aid to offset some of the costs of Covid-19 relief, including payroll for public sector employees. However, although most of the provisions of the SLFRF mirror the CRF, the SLFRF excluded the use of SLFRF funds to cover hazard pay.

¹ There is also an additional requirement that the costs' use is for a "substantially different" use from any previously budgeted expected use.

² Under the CRF, hazard pay is unlike payroll and other benefits which, generally, may be fully covered from the fund provided that the employee's *job function* is substantially dedicated to mitigating or responding to Covid-19.

State and Local Laws and Policies

A. Georgia's CRF Policy

The State of Georgia Department of Labor (GDL) released its own guidance to local governments on the use of CRF funds. The GDL stated that, to use CRF funds, expenses must satisfy three distinct criteria. Specifically, an expense:

- Must be a necessary expenditure incurred due to the public health emergency with respect to the Coronavirus Disease 2019 (Covid-19);
- Must not have been accounted for in the budget most recently approved as of March 27, 2020 (the date of enactment of the CARES Act) for the state or government; and
- Must have been incurred during the period that began on March 1, 2020 and ended on December 30, 2020.

Regarding payroll expenses, GDL identified payroll costs for public safety, public health, health care, and human services employees whose services were substantially dedicated to mitigating or responding to Covid-19 as an eligible expense for CRF funds. In addition, the GDL listed "leave expenses for employees on FFCRA leave" and, also, hazard pay and overtime for public health and public safety employees substantially dedicated to Covid-19 response as eligible expenses for CRF fund coverage. However, bonuses for employees were identified as an ineligible payroll expense.

B. City of Atlanta Covid-19 Laws and Policies

By April 1, 2020, COA released its FFCRA Policy which largely mirrored the provisions contained in the FFCRA. In the policy, COA specified the procedure for employees to request time off under the EPSLA. The policy stated that employees must notify their manager or DHR of the specific reason (from the qualifying events listed in the FFCRA) for the leave. The policy also stated that a form would be provided on the City's intranet. For the EFMLEA, employees were required to provide a statement describing the reason the employee could not work and to provide supporting documentation to verify the justification. In a Frequently Asked Questions document released by DHR on April 20, 2020, DHR specified that mission critical essential employees and employees who could telework were not eligible to participate under FFCRA. There was no mention of "comp time" in the City of Atlanta's FFCRA policy.

On April 7, 2020, Mayor Keisha Lance Bottoms issued Executive Order 2020-30 which established that, retroactive from March 11, 2020, and continuing through June 30, 2020, COA would award hazard pay for "nearly 5,400 affected front-line employees, including sworn public safety personnel, and civilians performing critical watershed, aviation, solid waste, transportation, inspection, parks and recreation and other front-line functions." The executive order awarded monthly \$500 hazard pay payments to said employees. In addition, the policy established that front-line employees would accrue 24 hours weekly (48 hours each pay period) in "hazard compensation leave time" (hazard pay comp time). The order required that this hazard pay comp time be used in lieu of all other leave types (vacation, sick leave etc.) and that it should be the exclusive source for COA employee leave. The ordinance also established that COA employees who separate from service with the COA are paid out at a quarter rate for any remaining unused

hazard leave time hours. Executive Order 2020-30 was codified into law by the Council under Ordinance 20-O-1298 in May 2020.

On April 21, 2020, COA received approximately \$88.4 million dollars in CRF funds. Mayor Bottoms issued Executive Order 2020-83 on May 18, 2020, directing Finance to allocate \$15 million from the fund to payroll expenses for public safety, public health, health care, human services, and similar employees whose services were substantially dedicated to mitigating or responding to Covid-19. On June 15, 2020, the Council passed Ordinance 20-O-1362 which ratified Executive Order 2020-83 but reduced the total allocation for payroll expenses from \$15 million to \$13 million. Finance, in its October and December 2020 CRF deployment report to the Council, indicated that the \$13 million CARES funds had been focused on “hazard pay and payroll.”

In June 2020, the Council passed Ordinance 20-O-1415, extending the hazard pay policy through September 30, 2020. In September 2020, the Council passed Ordinance 20-O-1573 which, again, extended hazard pay for COA employees. However, Ordinance 20-O-1573 eliminated the hazard pay comp time provision for COA employees. The ordinance also removed the restriction that hazard time be exhausted before any other use of leave.

In June 2021, the COA received an additional \$85.4 million in SLFRF funds as the first tranche of its allotted \$175 million ARPA relief package. According to the 2021 City of Atlanta Recovery Plan regarding the SLFRF, \$64 million of this \$85.4 million was allocated to the personnel costs of front-line staff and sworn public safety employees designated and approved to receive hazard pay, due to providing critical government and public services to the Atlanta community during the Covid-19 pandemic. The funds reportedly covered personnel costs, including wages, salaries, and covered benefits, but not hazard pay, from March 4, 2021, through June 2021. The justification for the use of SLFRF funds to cover benefits stemmed from an excerpt of the IRS’s 2021 interim rule stating that employers may treat an employee’s covered benefits as an eligible use of Fiscal Recovery Funds.

C. COA Hazard Pay and Compensatory Time

The City of Atlanta’s Hazard Pay Policy, HR.3.20, states that “classifications within all city departments as identified by the Commissioner of Human Resources and the appropriate department officials are eligible to receive a pay differential of one step when assigned to work with hazardous materials and/or under hazardous conditions.” The policy also states that “the amount of incentive pay is authorized by legislation and may range from a one-step differential to three steps depending on the job category designation.” However, “hazardous duty pay” (i.e., work with hazardous materials and/or under hazardous conditions) is awarded at “an increase of one-step,” meaning the next higher step within the established salary range for the position. There is no mention of compensation time in the hazard pay policy.

COA’s compensatory time regulations are covered by HR.3.10 and Sec. 114-23 of the COA Municipal Code. HR 3.10 defines compensatory time as “time granted to an employee for hours worked in excess of the regular 40-hour work schedule within seven (7) consecutive day work week.” HR.3.10 also states that, for non-exempt employees, “compensatory time will be given in lieu of cash payment” at a rate of 1.5 hours for each hour of overtime and at a one for one rate for exempt employees. Sec. 114-23 states that “all city employees who qualify can

accrue a maximum of 160 hours of compensatory time.” The policy does not mention any special consideration for hazard-related compensation.

Investigative Findings

A. Kronos and Oracle

Review of the City of Atlanta’s payroll system, Kronos, indicates that the COA codified FFCRA leave using several codes including:

- FFCRA Advance Sick Leave
- FFCRA Comp Time Straight
- FFCRA Comp Time Used
- FFCRA Expanded FMLA
- FFCRA Leave-Child
- FFCRA Leave-Self
- FFCRA Leave-Spouse
- FFCRA Leave-Parent
- FFCRA Shared Leave
- FFCRA Sick Accrual Used
- FFCRA Unpaid Leave Used
- FFCRA Vacation Accrual Used
- FMLA FFCRA Comp Time Used
- OT FFCRA
- OT Premium FFCRA

OIG did not discover any codes in Kronos that identify “hazard leave” or “hazard comp time.” Records obtained from DHR indicate that in Oracle, COA’s cloud-based financial and human resources application system, the various types of Covid-19 related leave are covered under different “Absence Types.” Absence Types are coded under terms ‘Covid-19 Leave’ and ‘FMLA Covid-19,’ as well as standard “vacation” “comp time” leave.

B. Interviews

On December 8, 2021, OIG interviewed DHR Commissioner Jeffrey Norman. Norman explained that “FFCRA Comp time” is the compensatory time portion of the hazard pay policy created COA in 2020 in response to the Covid-19 pandemic. Norman stated that the comp time provision was terminated in September 2020 and that COA employees no longer accrued hazard pay comp time. Norman also informed OIG that the City did not elect to continue providing leave under the FFCRA and that there should be no usage of the FFCRA after the mandatory FFCRA provisions expired on December 31, 2020. Norman stated that the hazard pay comp time was designated as “comp time” to differentiate this compensatory time from compensatory time under the FLSA and City’s code.

Norman stated that he was unaware of why hazard pay comp time is coded as FFCRA Comp time. Norman added that DHR is not responsible for pay codes and recommended that OIG

speak with the COA Payroll department. Norman stated that DHR never communicated to any parties that the hazard pay comp time is related to the FFCRA.

On December 13, 2021, OIG interviewed Jerry DeLoach, Chief Risk Officer for the City of Atlanta Office of Enterprise Risk Management (ERM). DeLoach informed OIG that the hazard pay comp time policy was part of 2020 legislation granting mission critical employee's monthly payments in addition to monthly compensation time. DeLoach, like Norman, informed OIG that DHR developed the hazard pay/comp time policy. DeLoach stated that he was unaware of why the hazard pay comp time was identified as "FFCRA Comp time." DeLoach told OIG that, to the best of his knowledge, the hazard pay compensation time operated as an "unfunded liability." However, DeLoach also informed OIG that much of the city's payroll during the Covid-19 pandemic has been covered under the CARES Act. DeLoach also stated that ERM has submitted a request for federal relief for hazard pay expenses to the Federal Emergency Management Agency, but that he could not say whether any hazard pay comp time is included in the request. DeLoach stated he has not seen any requests involving the FFCRA.

On January 10, 2022, OIG interviewed Sabrina Black, Payroll Manager, Finance. Black informed OIG that during an April 17, 2020, meeting attended by the Human Resources Information Systems (HRIS) Control Team, DHR Business Partners, Payroll, and Finance Systems Services (FSS) personnel, there was a group decision to code hazard pay comp time as FFCRA comp time. Black stated that she could not recall the specific reason it was identified as "FFCRA" and hypothesized that it may have had something to do with the announcement of Covid-19 federal legislation.

On January 25, 2022, OIG interviewed Elaine Gooden, Director of HRIS. Gooden explained to OIG that the decision to use "FFCRA" as a label came at the onset of the COA's response to the Covid-19 pandemic, and that it was a result of the then-recently passed FFCRA legislation. According to Gooden, initially, the term FFCRA covered "family leave." However, it was later decided to expand the FFCRA descriptor internally for all Covid-19 related codes. Gooden stated, "it was a CARES thing, we just came up with as a group... [there was] no particular person [who] decided to use the prefix." Gooden then offered to send OIG a copy of documents from consulting firm Deloitte Touche Tohmatsu Limited (Deloitte) that established the pay codes. In an email to OIG, Gooden described the decision to use the FFCRA label as a "naming convention." Gooden stated that "HRIS come[s] up with names that will identify the items being configured that are related to the particular functionality that is requested."

Gooden also submitted to OIG a copy of the 2020 email chain between Deloitte and COA employees regarding the establishment of payroll codes. In the chain, there is an April 20, 2020, email from Yadav Jitendra of Deloitte summarizing various meeting items from an unspecified prior meeting. In one item, Jitendra states that at the meeting "the new Kronos pay codes were requested to be configured (FFCRA Vacation/Sick/Comp/Adv Sick/Shared)." The email was sent to several COA HRIS, DHR and Atlanta Information Management (AIM) employees. Carbon copied on the email were Aman Kapoor, Mihir Ganapathiraju and Ravi Gurusamy of Deloitte.

Conclusion and Recommendations

The misclassification of hazard pay comp time and identification of other programs as being related to the FFCRA raises the following concerns.

The FFCRA does not include hazard pay comp time

The clearest issue with the decision to use FFCRA to describe hazard pay comp time is that the COA's hazard pay comp time is entirely unrelated to the Family First Coronavirus Relief Act. In matters of employee compensation, precision is important. COA employees should have precise information provided to them on leave so that they can make decisions that fit their needs. To the best of the COA's ability, benefits and other items identified in employee compensation should match what they purport to be.

Using FFCRA as a descriptor for unrelated programs creates needless confusion

DHR and Finance created more than ten different pay codes, each nominally purporting to be part of the FFCRA. However, not all of the codes relate to the actual FFCRA. Due to the abundance of FFCRA codes, it is difficult to determine to which provision each code refers. This framework, in which several payroll codes reference a particular provision but, in use, are tied to unrelated provisions, increases the likelihood of confusion and error. While DHR released COA's FFCRA policy to COA employees and that the policy accurately described the provisions of the FFCRA legislation, OIG found no communications distributed to COA employees or departments that clarified that the "FFCRA Comp Time" on COA employee earning statements references COA's hazard pay policy. Employees eligible for FFCRA leave (because they were told to quarantine or some other Covid-19 related cause) may have mistakenly used hazard pay comp time simply because they confused FFCRA comp time with leave provided by the FFCRA.

Evidence suggests that this confusion is not merely hypothetical. For example, the Department of Watershed Management's 2020 employee 'Leave Request' form lists "FFCRA Comp Time" as a possible leave option. However, the form does not include the EPSLA or EFMLEA provisions provided for by the actual FFCRA.

Another example can be found in a January 27, 2021, email circulated internally by HRIS, titled "New FMLA pay code," in which an HRIS employee wrote:

Can the pay code FMLA FFCRA Comp Time Used be created? There are several employees that have been approved for FMLA that are using their FFCRA Comp to cover their time while they are out. Since they are using FFCRA Comp, absence is not able to count these days toward employees FMLA days. Please advise.

This communication indicates that COA employees who were eligible for FMLA leave instead used hazard pay comp time/FFCRA comp time to cover leave. This issue was addressed by the creation of two additional FFCRA Comp Time pay codes: "FMLA FFCRA Comp Time Used" and "FMLA FFCRA Comp Time Used-Split." It is not clear if these codes represent either the EFMLEA or EPSLA as described in FFCRA. The new codes appear to be unrelated to FFCRA Comp Time (which itself is unrelated to the FFCRA). While the creation of the two new codes may have addressed the coding concern, it is unclear if the issue of employees using FFCRA comp to cover FMLA leave was addressed. While COA elected not to continue providing FFCRA leave to employees after the mandatory provisions of the FFCRA expired on December 31, 2020, the above communication and the subsequent decision to create new FFCRA codes to cover FMLA leave suggest that COA employees used FFCRA leave after the December 31, 2020, FFCRA expiration.

Review of FFCRA code usage in Kronos revealed that there is an extensive disparity in the use of FFCRA Comp Time compared to other FFCRA codes. Kronos records show that, from April 1, 2020, through December 31, 2020, the COA credited 1,022,858 hours of pay code “FFCRA Comp Time used.” The next most utilized FFCRA code is “FFCRA Sick Accrual Used,” with 2,996 hours used over the same duration. No other FFCRA coded leave type exceeds 1,200 hours. The prevalence of school closures and mandatory quarantines created a nationwide shortage of available employees, yet Kronos reports 240 hours of “FFCRA Leave-Self” and 160 hours of “FFCRA Leave-Child” used during this period.

This disparity does not appear to be the result of employee classification. While the FFCRA Comp Time code covered approximately 5,400 front line employees, there remained approximately 3,000 non-essential COA employees. If the FFCRA Leave-Self and FFCRA Leave-Child codes refer to leave provisions included in FFCRA, COA non-essential employees were eligible to use the FFCRA Leave-Self and FFCRA Leave-child codes. The disparity in FFCRA Comp Time Used may be attributed to a misapplication of the “FFCRA Comp Time Used” code to leave requests that should have been credited to the employee under the FFCRA. In addition, review of the COA employee leave transactions revealed several employees who have used both the FFCRA Comp Time Used code and the FMLA FFCRA Comp Time Used (and one employee who used the FFCRA Leave-Self code along with FFCRA Comp time). However, as the FFCRA Comp Time Used is really hazard pay for mission critical employees, these employees should not be eligible for FMLA FFCRA Comp time (i.e., genuine FFCRA usage) as those employees are categorically ineligible for FFCRA leave. For those responsible for payroll processing, the abundance of FFCRA codes may have created difficulty tracking which FFCRA codes expired, which codes were still in use, and which codes were applicable to which employee.

Using the FFCRA descriptor may create an appearance of impropriety

As previously described, the FFCRA is just one of several federally funded Covid-19 relief programs. Each program has its own rules and eligibility criteria and, perhaps most importantly, specific criteria for use of funds and reimbursement. The concerns with using the FFCRA as a general label are heightened when considering eligibility for federal relief coverage. Federal government officials, as well as the public, have a vested interest in knowing how recipients have used federally funded aid. Given the scrutiny of the use of federal relief funds provided during the Covid-19 pandemic, parties using federal funds to cover Covid-19 relief should maintain accurate records so that officials, and others, can assess how these relief funds were managed. Misidentified programs, even if the misidentification is limited to internal records, may frustrate a third party’s capacity to assess program information. This is especially true in a situation such as this, in which the misidentified programs indicate a connection to unrelated federal relief aid programs. Even if no error exists, such misidentification may invite suspicion from third parties that COA has misused federal funds or that COA improperly received federal relief.

As mentioned above, due to changes in the ARPA, public sector employers are able to seek tax credit for FFCRA leave taken between April 1, 2021, and September 30, 2021. Kronos records indicate that from April 1, 2021 through September 30, 2021, COA employees used 453,565.40 hours of FFCRA Comp Time, 901 hours of FFCRA Sick Accrual Used, 8 hours of FFCRA Leave-Child, 0 hours of FFCRA Leave-Self. However, there is also a reported 10,473.43 hours of “FMLA FFCRA Comp Time Used.” While it would be improper for the COA to claim a FFCRA tax credit

for FFCRA Comp time, some of the other FFCRA codes, such as FMLA FFCRA Comp Time, should be eligible for a tax credit under the FFCRA rules. If COA should apply (or has applied) for this tax credit, extra care must be taken to avoid including ineligible, incorrectly coded “FFCRA” items in the request. Even if COA avoids comingling ineligible and eligible FFCRA leave types in a tax credit request, the abundance of codes using the FFCRA label could give rise to an allegation that COA classified hazard pay comp time as “FFCRA comp time” to disguise the nature of these expenses.

The use of the FFCRA descriptor creates concerns for other federal relief programs unrelated to the FFCRA label, in part because of the ambiguity of “hazard pay comp time” as a benefit. Hazard pay comp time would seem to merge two separate types of compensatory awards, “hazard pay” and “comp time,” into one type of award. However, hazard pay comp time is neither hazard pay nor compensatory time. It cannot be considered compensatory time, as hazard pay comp time does not fit with any ‘compensatory time’ framework as defined by the COA or federal government. The hazard pay comp time awarded to COA employees is not “paid in lieu of immediate cash payment or for overtime purposes” as described by the FLSA. Nor is the hazard pay comp time “time granted to an employee for hours worked in excess of the regular 40-hour work schedule within a seven (7) consecutive day work week” as described by the COA’s compensatory time policy. Employees were also allowed to accrue hours more than the 160-hour cap on compensatory time.

In addition, the hazard pay compensatory leave is not hazard pay. While the FLSA is largely silent on hazard pay, save that it must be treated as employee income, the US Department of Labor describes hazard pay as “additional pay for performing hazardous duty or work involving physical hardship.” While the \$500 monthly payments included in the COA’s hazard pay policy can be considered hazard pay, in that it is additional pay tied to working in unsafe conditions, the hazard pay comp time leave provision is distinct from the allocation of the \$500 monthly payment and, for reasons discussed, should be treated as ancillary to the “pay” provided to the COA employees.

First, hazard pay comp time does not accrue to match “a one-step pay differential” increase (or any pay rate increase) as described by the COA hazard pay policy. Rather, each designated employee accrues the same fixed allotment of hours per pay period at their preexisting pay rate. Second, hazard pay comp time is paid out at a reduced rate if it goes unused before an employee separates from city employment. This is akin to other leave types, particularly sick leave, and less like an increase in pay for performing hazardous duty. Finally, the COA passed legislation to make it so hazard pay comp time would be used by employees as one of several other leave options such as annual, sick leave, and straight compensatory time, thus further positioning hazard pay comp time into an additional form of leave not tied to hazard duty.

How COA elects to classify the provisions of the Covid-19 hazard pay policy impacts the eligibility of hazard pay comp time expenses for federal aid relief. For example, if COA represented that hazard pay comp time is “hazard pay,” it would be ineligible for SLFRF relief as hazard pay expenses are categorically excluded for SLFRF coverage. Also, although the CRF may cover hazard pay, the CRF requires a tight nexus between the allocation of the hazard pay payment and the work performed, requiring that each allocation of hazard pay is tied to a specific instance

of an employee engaging in hazardous duty. The CRF specifically prohibits the use of CRF funds for across the board hazard pay allotments like the hazard pay policy the COA implemented. If the hazard pay comp time is considered “leave” and not hazard pay, an increase in employee leave may not be a necessary expenditure as required under the CRF and GDL guidance. If hazard pay comp time is simply additional leave granted by COA to its employees for having provided services during the Covid-19 pandemic, then COA might better describe the hazard pay compensatory leave as a “bonus” rather than hazard pay or compensatory time. For FLSA purposes, a bonus is a “payment made in addition to the employee’s regular earnings.” However, the CRF specifically prohibits the use of funds to cover bonus expenses.

While hazard pay comp time may, arguably, be eligible for relief if it is treated as hazard pay or leave time, FFCRA payments are recoverable under both the SLFRF and CRF. Moreover, GDL, in its guidance to local governments, specifically instructed that local governments may use the CRF to cover FFCRA payments. This broader eligibility of FFCRA funds for federal reimbursement could offer to a reasonable observer a potential alternate explanation for the decision to label hazard pay comp time as FFCRA Comp time. An employer may be motivated to avoid this eligibility debate by labeling hazard pay comp time ‘FFCRA comp time’ (even though the hazard pay comp time is unrelated to the FFCRA). This reclassification would also allow the employer to recoup costs for employee compensation which might otherwise have been ineligible for relief under the SLFRF and CRF. Accordingly, the FFCRA Comp Time term should be altered, if for no other reason than to avoid an appearance of impropriety.

Recommendations

For these reasons, OIG recommends that DHR:

1. Coordinate with Finance to ensure that hazard pay comp time is reclassified to a more accurately descriptive code.
2. Ensure that this misclassification is communicated to City of Atlanta employees, preferably via a citywide announcement.
3. Clarify to COA employees the distinction between FFCRA Comp Time and hazard pay comp time.
4. Evaluate any other programs using the FFCRA label and, if it is determined that additional programs were misclassified, reclassify the codes to a more accurately descriptive code and provide similar clarifying information to City of Atlanta employees.
5. Coordinate with Finance to initiate a comprehensive review of COA employee leave usage from 2020-2022 and determine if any COA employee(s) should be credited for any leave usage that was incorrectly or mistakenly applied.

* * *

Please let me know if you have any questions concerning the investigation or if you wish to discuss this further. Please notify this office of DHR's response to the above recommendations within 30 days.

Sincerely,

Shannon K. Manigault
Inspector General

cc: Mohamed Balla, Chief Financial Officer
Lisa Gordon, Chief Operation Officer