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**OFFICE OF THE WORKERS' COMPENSATION FRAUD INSPECTOR GENERAL**

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**LETIZIA TAGLIAFIERRO**  
INSPECTOR GENERAL

November 2, 2020

Erik Kulleseid, Esq.  
Commissioner  
New York State Office of Parks, Recreation  
and Historic Preservation  
Albany, New York 12238

Re: NYS IG 1658-010-2020

Dear Commissioner Kulleseid:

On July 15, 2020, the New York State Office of Parks, Recreation and Historic Preservation (OPRHP) alleged to the Office of the New York State Inspector General that [REDACTED], a trades generalist assigned to [REDACTED], abused expanded family and medical leave benefits related to COVID-19. Specifically, OPRHP alleged that [REDACTED] while on leave from OPRHP and collecting two-thirds salary pursuant to the Families First Coronavirus Response Act (FFCRA), continued to work at his outside employment.

The Inspector General investigated this allegation and found that under FFCRA, [REDACTED] qualified for up to 12 total weeks of paid sick leave at two-thirds of his regular rate of pay to care for a child whose school or child-care provider was closed for reasons related to COVID-19. [REDACTED] the father of a school-age child, began his leave under FFCRA on May 14, 2020, and returned to work on July 27, 2020, a total of ten weeks. Apart from his OPRHP employment, [REDACTED] operates [REDACTED], established in 2002.

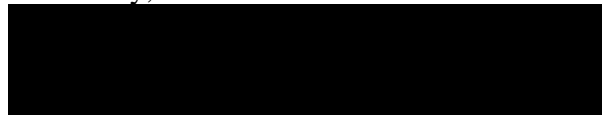
The investigation found that the U.S. Department of Labor’s Wage and Hour Division, which is responsible for enforcing FFCRA, has not issued guidance on secondary employment under FFCRA. However, under the Family and Medical Leave Act (FMLA), an employee may work a second job while on leave from a primary employer unless the leave itself was fraudulently obtained.<sup>1</sup>

FMLA regulations also provide, “If the employer has a uniformly-applied policy governing outside or supplemental employment, such a policy may continue to apply to an employee while on FMLA leave.” 29 CFR § 825.216(e). OPRHP’s outside employment policy effective at the time of ██████ leave (HR-PCD-005, enacted January 16, 2019) did not require him, a non-policy maker, to notify or obtain OPRHP’s approval for secondary employment but prohibited secondary employment if it created a conflict of commitment, such as “conducting outside activities during scheduled state time” or “calling in sick to a state job due to working at another job.” The investigation found no such conflict of commitment—while on leave under FFCRA, ██████ neither conducted work during scheduled state time nor called in sick due to working another job. On June 10, 2020, while ██████ was on FFCRA leave, OPRHP revised its outside employment policy to require non-policy making employees, such as ██████ to notify OPRHP of outside employment.

As no evidence was uncovered that ██████ abused FFCRA leave or OPRHP’s outside employment policy, I am referring this matter to OPRHP for its review. Given the recent revision to OPRHP’s outside employment policy, I recommend OPRHP advise its employees to update their secondary employment status in accordance with the new policy.

Please advise me of any action taken by OPRHP in response to this recommendation within 45 days of the date of this letter. If you require further information, please contact Deputy Inspector General James Davis at 518.474.1010.

Sincerely,



Letizia Tagliafierro  
Inspector General

Cc: Kathleen Martens, Esq.  
Acting General Counsel

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<sup>1</sup> See, Stekloff v. St. John’s Mercy Health Sys., 218 F.3d 858, 859 (8th Cir., 2000) (finding if one of two jobs can be performed without childcare or childcare is only needed during the hours scheduled for one job, then the employee is not required to take FMLA leave from both jobs).