



Offices of the
Inspector General

LUCY LANG
Inspector General

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December 28, 2022

Marie Therese Dominguez
Commissioner
New York State Department of Transportation
50 Wolf Road
Albany, New York 12232

Re: NYS IG 1647-007-2021

Dear Commissioner Dominguez:

On July 27, 2020, the New York State Department of Transportation (DOT) referred a complaint to the Offices of the New York State Inspector General alleging that [REDACTED], a DOT trades specialist assigned to DOT Region [REDACTED] ([REDACTED]), had been employed between April and June 2020 with prime contractor [REDACTED]. ([REDACTED] on a local DOT project ([REDACTED] I am writing to advise you of the findings of my investigation of this claim.

[REDACTED] testified to the Inspector General, admitting to his employment with [REDACTED] but credibly stating that he was unaware of DOT's outside employment/activities and conflict of interest provisions. In fact, [REDACTED] who has been with DOT for approximately ten years, could not recall receiving any paperwork, direction, or training on outside employment during his tenure. Moreover, [REDACTED] supervisors testified that they had not advised him of outside employment/activities restrictions, as is required per DOT policy. Of note, [REDACTED] hours at [REDACTED] [REDACTED] did not interfere with his COVID-19 "on call" obligations with DOT.

From a broader perspective, the Inspector General's investigation revealed deficiencies in DOT's statewide training and practices on outside employment/activities restrictions. As you are aware, DOT's policy on outside employment¹ requires that employees must complete a "PER 79b- Notice of Outside Activities" if:

engaged in outside activities, including (i) outside employment, personal business or professional activities, including any service as a director or officer for any entity (whether for profit or non-for-profit, regardless of

¹ See NYS DOT Code 4.15-1-1, PER 79 Requests for Approval, approved June 5, 2020.

whether the employee will receive compensation); (ii) real property interests that may relate to NYSDOT contracts, projects or activities; and (iii) any political or governmental activities.

DOT's Manual of Administrative Policies & Procedures requires that supervisors review requests for outside employment/activities submitted by subordinate employees and, while being cognizant of the need to avoid actual conflicts of interest, recommend to the ethics officer in the Office of Legal Affairs whether requests should be approved or disapproved. The Office of Legal Affairs will then grant or deny the request. If approved, the employee must seek re-approval annually unless otherwise directed. Per the policy, division and regional directors are responsible for ensuring that employees are advised of outside activity requirements at the beginning of their employment and reminding employees to review the provisions annually thereafter.

While this policy and procedure appears comprehensive, the investigation found several practical deficiencies in its implementation.

The Inspector General received testimony from DOT staff within [REDACTED] chain of command and found that they had, at best, a superficial understanding of outside employment restrictions and the process for seeking approval. Additionally, numerous supervisory staff advised that they had neither received training nor regular reminders on outside employment restrictions and did not provide the same to staff that they supervise. Startlingly, one such supervisor believed outside employment restrictions were limited to elected officials, another stated he had not seen or completed an outside employment form in his 19-year career with DOT, and yet another claimed to have heard of the form "through the grapevine" and speculated that it might have been included in the handbook he received 22 years ago.

In response to a request by the Inspector General to provide all announcements, emails, and/or other intra-agency communications regarding outside employment, DOT provided only four "IntraDOT" bulletins, posted on the agency's intranet, covering the last decade (January 2012, October 2015, June 2016 and July 2020).

Additionally, DOT's onboarding documentation merely asks for a "description of extra employment, personal business, or professional activities." This form (pictured below) does not remind employees of their continuing duty to disclose outside activities/employment and instead could reasonably appear to an employee as a background question limited to activities at the time of hire.

A. <input type="checkbox"/> DESCRIPTION OF EXTRA EMPLOYMENT, PERSONAL BUSINESS OR PROFESSIONAL ACTIVITIES			
DEPT/COMPANY	TITLE	DURATION DATES	
		BEGIN	END
DUTIES			
TIME REQUIREMENTS OF EXTRA WORK (Hours or Days Weekly)	TIME REQUIREMENTS ACCOMMODATED BY: <input type="checkbox"/> WEEKENDS <input type="checkbox"/> OTHER (Explain) <input type="checkbox"/> WEEKDAY AFTER HOURS		
I BELIEVE THAT THE ABOVE DESCRIBED ACTIVITY WILL NOT INTERFERE WITH THE COMPLETE AND PROPER EXECUTION OF MY DUTIES WITH THE DEPARTMENT OF TRANSPORTATION.			
EMPLOYEE'S SIGNATURE [REDACTED]		DATE SIGNED [REDACTED]	

Sporadic postings of IntraDOT bulletins are particularly problematic given the important role such outside employment related policies and procedures play in minimizing conflicts of interest and impropriety within New York State government. This is particularly true given the fact that a large portion of DOT's workforce do not have desk jobs and do not regularly use computers as part of job duties. In fact, many DOT employees do not regularly access their work email accounts or the IntraDOT. It should be noted that ██████ only began regularly using a DOT-assigned email account after being promoted to a supervisory role. The account was used so infrequently that it became disabled for inactivity.

Given these findings, the Inspector General recommends that DOT:

- In addition to the ethics training already mandated by Executive Law section 94², provide training to all new hires and current staff on DOT's specific outside employment policies and the PER-79 form. Such training should include providing staff with practical guidance on who such requests should be directed to within their particular department or unit within DOT.
- Regularly train supervisory staff on how to evaluate outside employment requests and best practices for communicating such policies to staff.
- Distribute regular reminders to staff regarding outside employment restrictions and ensure reminders are effectively communicated to staff who do not regularly have computer access.
- Ensure training on outside employment is diligently documented.
- Consider amending onboarding paperwork to remind employees of their continuing duty to disclose outside employment.
- Consider revising the outside activities/employment form to include an option for an employee to certify that they are not currently engaged in outside activities on an ongoing basis.

² Of note, New York State Executive Law § 94 requires that State officers and employees complete a live and interactive ethics training course within 90 days of appointment or employment and every two years thereafter, and an online refresher course each in between year. These courses cover, among other obligations, a State employee's obligation to report outside activities and avoid conflicts of interests in such activity. While, pursuant to the Ethics Commission Reform Act of 2022 (ECRA), which became effective in July 2022, this training is now required of all State employees, the prior version of Executive Law § 94, which ECRA replaced, similarly required such training of those State employees subject to the financial disclosure requirements of Public Officers Law § 73-a.

Please advise me of any action taken by DOT in response to these recommendations within 45 days of the date of this letter. If you require further information, please contact Deputy Inspector General Jeffrey J. Hagen at [REDACTED].

Sincerely,

A handwritten signature in cursive script that reads "Lucy Lang".

Lucy Lang
Inspector General

cc: Timothy B. Lennon, Esq.
General Counsel