



OFFICE OF THE INSPECTOR GENERAL

Montgomery County, Maryland



MEMORANDUM OF INVESTIGATION

TO: Richard S. Madaleno
Chief Administrative Officer

FROM: Megan Davey Limarzi, Esq.
Inspector General *ML*

DATE: January 4, 2022

SUBJECT: OIG Complaint C-22-121: MCFRS Alleged Abuse of Overtime for COVID-19 Testing

The Office of the Inspector General (OIG) recently concluded a limited investigation pursuant to a complaint alleging that some vaccinated Montgomery County Fire and Rescue Service (MCFRS) employees were exploiting COVID-19 testing provisions to obtain overtime pay. The complaint alleged these employees were fully vaccinated but intentionally declined to provide proof of vaccination, therefore allowing them to claim one hour of overtime each week for mandatory COVID-19 testing.

We found that county agreements with the IAFF¹ allow for up to one hour of overtime for mandatory COVID-19 testing of employees that have not provided proof of vaccination and participate in testing while off-duty. Additionally, we identified no prohibition against a vaccinated employee declining to provide proof of vaccination status and thereby allowing for the possibility that a vaccinated employee could engage in the alleged misconduct. During our investigation, MCFRS discovered five employees that wrongly utilized the MCtime reason code associated with COVID-19 testing.

Background

Council Resolution 19-975, *Board of Health Regulation to prevent the spread of COVID-19 in the County*, adopted August 5, 2021, requires that the County Executive develop an implementation plan to require each county employee who reports to work at a county facility to provide, on a weekly basis, proof of a negative COVID-19 test, or attest to the county that the employee is fully vaccinated against COVID-19.

On October 29, 2021, the county entered into a Memorandum of Agreement (MOA) with the IAFF addressing the implementation of COVID-19 testing for IAFF bargaining unit members. The MOA details that bargaining unit members who have not provided proof of vaccination against COVID-19 will submit proof of an acceptable COVID-19 test once per work week.

¹ IAFF is the acronym representing the Montgomery County Career Firefighters Association, International Association of Fire Fighters, Local 1664.

On October 29, 2021, the county also entered into to a Letter of Understanding with the IAFF prescribing that any bargaining unit employee who participates in COVID-19 testing while off-duty will be entitled to up to one hour of overtime per work week to participate in testing as long as:

1. The bargaining unit member submits proof of testing as required by the MOA;
2. The testing is done solely for the purpose of meeting the testing requirement outlined by the MOA; and
3. The County has not made available options that eliminate the need for travel to a testing site solely for the purpose of meeting the requirements of the MOA.

A December 3, 2021, memorandum from the Department of Human Resources entitled, *Timekeeping Guidance: Pay Period November 21 - To Be Determined (TBD) – Revised*, states that county employees should utilize the pay code “Hours Worked” with the reason code “COVIDTST” for travel time from a county work site to the appointment and back to the county work site. The guidance further states that MCFRS employees represented by the IAFF shall follow departmental procedures for timekeeping for COVID-19 testing.

Inquiry and Outcome

MCFRS management confirmed that there is no requirement that MCFRS employees disclose their vaccination status. MCFRS employees however must either attest that they are fully vaccinated or submit to a weekly test for COVID-19 that is provided at no cost. According to MCFRS management, because testing is a condition of employment, they cannot require employees to comply with testing procedures while off-duty without compensation. We were told by MCFRS management that the use of overtime for testing was intended as a temporary “stop gap” measure until the county obtained a sufficient supply of take-home tests to allow employees to test themselves.

MCFRS records for the three pay periods covering October 24 to December 4, 2021,² revealed that 749 hours of overtime with an associated cost of \$38,073 were claimed using the reason code “COVIDTST”. The MCFRS testing process was recently updated so that employees who are required to test are emailed a personalized link with a unique code. The employee is required to respond and provide proof of testing. MCFRS management may refer to a database of employee vaccination statuses if questions arise regarding an employee’s eligibility to receive overtime for mandatory COVID-19 testing.

Following discussions with the OIG, MCFRS management conducted a review of timesheets where overtime for testing was claimed and identified five employees who each received one hour of overtime to which they were not entitled. MCFRS management stated that payroll corrections are in process for four of the five employees, and they are currently evaluating the circumstances involving the fifth employee.

² First three pay periods covered by the IAFF agreement.

Memorandum of Investigation
January 4, 2022

Attachment: Chief Administrative Officer Response to OIG MOI C-22-11

Based on our limited investigation, it appears that MCFRS management has taken reasonable steps to ensure that the use of overtime for weekly COVID-19 testing complies with the terms of the county's agreement with the IAFF. We note however that neither of the county's agreements with the IAFF prohibit a vaccinated MCFRS employee from declining to provide proof of vaccination and thereby receiving overtime for testing, potentially incentivizing employee abuse of the overtime provision. We encourage the county and the MCFRS to expedite the implementation of additional options that eliminate the need for employees to utilize overtime to comply with weekly COVID-19 testing requirements which then should lead to additional cost-savings to the county.

Attachment: Chief Administrative Officer's Response

cc: Fariba Kassiri, Deputy Chief Administrative Officer
Scott Goldstein, Fire Chief

The OIG provided the County's Chief Administrative Officer with a confidential version of this report on January 4, 2022 and received the following response on January 10, 2022.



OFFICE OF THE COUNTY EXECUTIVE

Marc Elrich
County Executive

Richard S. Madaleno
Chief Administrative Officer

MEMORANDUM

January 10, 2022

TO: Megan Davey Limarzi, Inspector General

FROM: Richard S. Madaleno, Chief Administrative Officer *RM* for

SUBJECT: Office of Inspector General Memorandum of Investigation OIG Complaint C-22-121;
MCFRS Alleged Abuse of Overtime for COVID-19 Testing

Thank you for providing us the results of your recently concluded limited investigation concerning a complaint alleging that some vaccinated Montgomery County Fire and Rescue Service (MCFRS) employees had received overtime for COVID-19 testing to which they were not entitled. Your investigation identified five employees who each received one hour of overtime to which they were not entitled.

As noted in your January 4, 2022, memorandum, MCFRS management has taken reasonable steps to ensure that the use of overtime for weekly COVID-19 testing complies with the terms of the County's agreement with the International Association of Fire Fighters and is taking steps to complete payroll corrections where warranted.

Subsequent to the review period covered by the OIG investigation, MCFRS management established a process for MCFRS employees subject to mandatory weekly COVID-19 testing to obtain, at no cost to the employees, home test kits from the County. Effective with the pay period starting December 19, 2021, employees were no longer eligible to receive one hour of overtime compensation for travel to and from a test site. MCFRS advised timecard approvers of this change on December 15, 2021 and directed that overtime should not be approved for this reason on or after December 19. We believe this addresses the underlying concern identified in the OIG investigation.

Thank you for bringing this matter to our attention.

cc: Fariba Kassiri, Deputy Chief Administrative Officer, Office of the County Executive
Scott Goldstein, Chief, Montgomery County Fire and Rescue Services
Bill Broglie, Internal Audit Manager, Office of the County Executive