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United States Government

## MEMORANDUM

DATE: March 15, 2022

TO: J. Brett Blanton  
Architect of the Capitol

FROM: Christopher P. Failla, CIG   
Inspector General

SUBJECT: Report on Architect of the Capitol (AOC) Use of Enhanced Paid Leave Authorities

In June of 2020, the AOC Office of Inspector General (OIG) received a complaint via the OIG Hotline. The complaint alleged that employees who self-certified their eligibility for COVID-19 related administrative leave based upon age or Centers for Disease Control and Prevention identified medical condition were also working outside employment, thus receiving dual compensation. The complaint outlined a lack of oversight into the execution of the administrative leave process and no requirements for the submission of medical documentation from employees claiming to have underlying conditions. The AOC OIG has received additional, similar and corroborating complaints regarding misuse of COVID-19 related leave and inconsistencies in leave administration amongst the various AOC jurisdictions. Additionally, the AOC OIG conducted this work as a member of the Council of Inspectors General for Integrity and Efficiency (CIGIE) Pandemic Response Accountability Committee, which is charged with oversight of all pandemic related funds and identifying best practices in managing those funds.

The OIG conducted a review of the agency's reporting of time and attendance via the electronic system WebTA, relevant policies and pandemic legislation to assess the extent to which AOC employees utilized and potentially abused congressionally authorized paid leave entitlements. While we identified a number of instances of fraudulent behavior and significant potential for abuse, we ultimately determined that payroll systems were properly configured to account for the various paid leave entitlements authorized.

This report contains no recommendations. We are providing this report for your review and appropriate action. If you or AOC personnel would like to schedule a briefing to discuss this report, we are happy to accommodate and just ask that a member of your staff contact our office to coordinate. I appreciate the assistance you and your staff provided throughout the review. Please direct questions to Sally Smith, Counsel to the Inspector General and Assistant Inspector General of Operations, via phone or email at 202.925.0183 or [Sally.Smith@aoc.gov](mailto:Sally.Smith@aoc.gov).

Distribution List:

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## OFFICE OF INSPECTOR GENERAL

### Objective

To assess the Architect of the Capitol's (AOC) administration and oversight of enhanced paid leave authorities as a part of the novel coronavirus (COVID-19) public health response. Special attention shall be paid to employees who self-certified their eligibility for COVID-19 leave based upon age or Centers for Disease Control and Prevention (CDC) identified medical condition and employees in non-telework eligible roles placed on full-time administrative leave with the option for immediate recall.

### Background

The AOC OIG has received corroborating hotline complaints regarding misuse of COVID-19 related leave and inconsistencies in leave administration amongst the various AOC jurisdictions. Additionally, the AOC OIG conducted this work as a member of the Council of Inspectors General for Integrity and Efficiency (CIGIE) Pandemic Response Accountability Committee, which is charged with oversight of all pandemic related funds and identifying best practices in managing those funds.

Pandemic Relief Legislative Action	Enacted
Coronavirus Preparedness and Response Supplemental Appropriations Act, 2020 (P.L. 116-123)	March 6, 2020
Divisions C and E of Families First Coronavirus Response Act (FFCRA) (P.L. 116-127)	March 18, 2020
Coronavirus Aid, Relief, and Economic Security (CARES) Act (P.L. 116-136)	March 27, 2020
Paycheck Protection Program and Health Care Enhancement Act (PPHCEA) (P.L. 116-139)	April 24, 2020
Divisions M and N of the Consolidated Appropriations Act, 2021 (P.L. 116-260)	December 27, 2020
The American Rescue Plan Act (ARPA) of 2021 (P.L. 117-2)	March 11, 2021

*Table 1: Pandemic Relief Legislation*

Following the CDC declaration of the COVID-19 pandemic in March 2020, the U.S. Government enacted six laws to provide relief to the American public. While each law either amended existing benefits and authorities, or established new avenues for pandemic relief, enhanced paid leave provisions were a key element of the Families First Coronavirus Response Act (FFCRA). With the passage of this law, covered employers were required to provide eligible employees with paid sick and expanded family and medical leave for certain COVID-19 related reasons. While the original authorization expired in December of 2020, subsequent laws (P.L. 116-260 and P.L. 117-2) provided an alternative time-limited authority through September of 2021. This report, initiated based upon allegations of employee abuse of leave practices, examines access to enhanced paid leave provisions within each law as it pertains to the AOC, and the agency's interpretation and application of authorities granted therein.

## Leave provisions created by a time-limited statutory authority established under the FFCRA

1. The FFCRA required covered employers to provide eligible employees with paid sick and expanded family and medical leave for certain COVID-19 related qualifying needs between the effective dates of April 2, 2020 and December 31, 2020.
  - a. Qualifying Sick Leave Wages: Division E of the FFCRA “The Emergency Paid Sick Leave Act” (EPSLA) provided full-time employees (prorated for part-time employees) with up to two weeks (up to 80 hours) of emergency paid sick leave when an employee was unable to work due to: 1) a Federal/State/local quarantine or isolation order; 2) healthcare provider instructed self-quarantine; or 3) experiencing COVID-19 symptoms and seeking a diagnosis. This was in addition to other paid sick leave entitlements. The Act also provided up to two weeks of sick leave at partial pay when an employee was unable to work due to the provision of care for an individual who met the aforementioned qualifying needs, to care for an individual whose school or place of care was closed due to COVID-19, or if the employee was experiencing any other substantially similar condition. The maximum<sup>1</sup> amount required to be paid to employees using EPSLA leave depended on the purpose for which the sick leave was taken.
  - b. Qualifying Family and Medical Leave Wages: Division C of the FFCRA “The Emergency Family and Medical Leave Expansion Act”<sup>2</sup> (EFMLEA) provided paid family and medical leave for employees taking leave to care for their own minor child whose school or place of care was closed due to COVID-19. The paid leave period began after an individual had already taken 10 days of leave for the family leave purpose described above. These 10 days of leave could consist of unpaid leave, or an employee could elect to use paid vacation, personal, or another form of paid leave including sick leave provided under EPSLA. After this 10-day period, the employer must provide partially paid leave for any additional expanded Family and Medical Leave Act (FMLA) leave (up to 10 weeks). Leave is paid at a rate that is at least two-thirds of the employee's usual pay (subject to statutory limitations on the daily and aggregate amounts).<sup>3</sup>

The paid leave mandate authorized in the FFCRA expired on December 31, 2020. While the Consolidated Appropriations Act, 2021, extended the authority for paid sick leave and expanded family and medical leave until March 31, 2021 this did not apply to FFCRA partially paid leave beyond December 31, 2020. Instead the remaining authorizations allowed those employers who chose to continue, to provide eligible leave types through March 31, 2021.

2. On March 11, 2021, Congress enacted the American Rescue Plan Act (ARPA) of 2021 (P.L. 117-2). Under Title IX of this bill, the paid sick and expanded family and medical leave time limit was once again extended to September 30, 2021. In addition, ARPA reset the 10-day paid sick leave limit for leave taken after March 31, 2021 regardless of the amount of time taken prior to the

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<sup>1</sup> The EPSLA provides for paid sick leave at the greater of the employee’s regular rate of pay or the applicable minimum wage up to \$511 per day and \$5,110 in the aggregate. An employee who takes paid sick leave for any other qualifying reason under EPSLA is entitled to be paid two-thirds that amount, up to \$200 per day \$2000 in the aggregate. Source: “Paid Leave Under the Families First Coronavirus Response Act; Temporary Action,” 85 *Federal Register* 66 (4/6/2020) p. 19327.

<sup>2</sup> Amends Title I of the FMLA 29 USC 2601 *et seq.*

<sup>3</sup> Wages limited to \$200 per day, and \$10,000 total for the additional ten work weeks. Source: “Paid Leave Under the Families First Coronavirus Response Act; Temporary Action,” 85 *Federal Register* 66 (4/6/2020) p. 19328.

issuance of ARPA. The Act also allowed for sick leave to obtain a COVID-19 vaccine or illness related to immunization, or for leave taken while waiting for COVID-19 test results.

## AOC Application of Expanded Leave Authorities



Utilizing the flexibilities authorized under the FFCRA, the AOC introduced a number of paid administrative leave<sup>4</sup> options to employees who had been exposed to COVID-19 or were at increased risk for COVID-19 complications,<sup>5</sup> as well as for those in non-telework eligible roles in order to reduce transmission of COVID-19. To ensure awareness, the AOC developed and maintains a Coronavirus intranet page on AOC Compass. Among other COVID-19 related information, the page contains links to the *Employee Toolkit* and the *Daily Updates*, which are emailed to the AOC community. From the *Employee Toolkit*, staff can access information located on the *Workplace and Leave Flexibilities* webpage.

Under the leave flexibilities established: 1) employees certified their eligibility for COVID-19 leave based upon age or CDC identified medical condition; 2) jurisdictional leadership placed employees on intermittent administrative leave to support distancing and safety requirements through rotating/staggered work

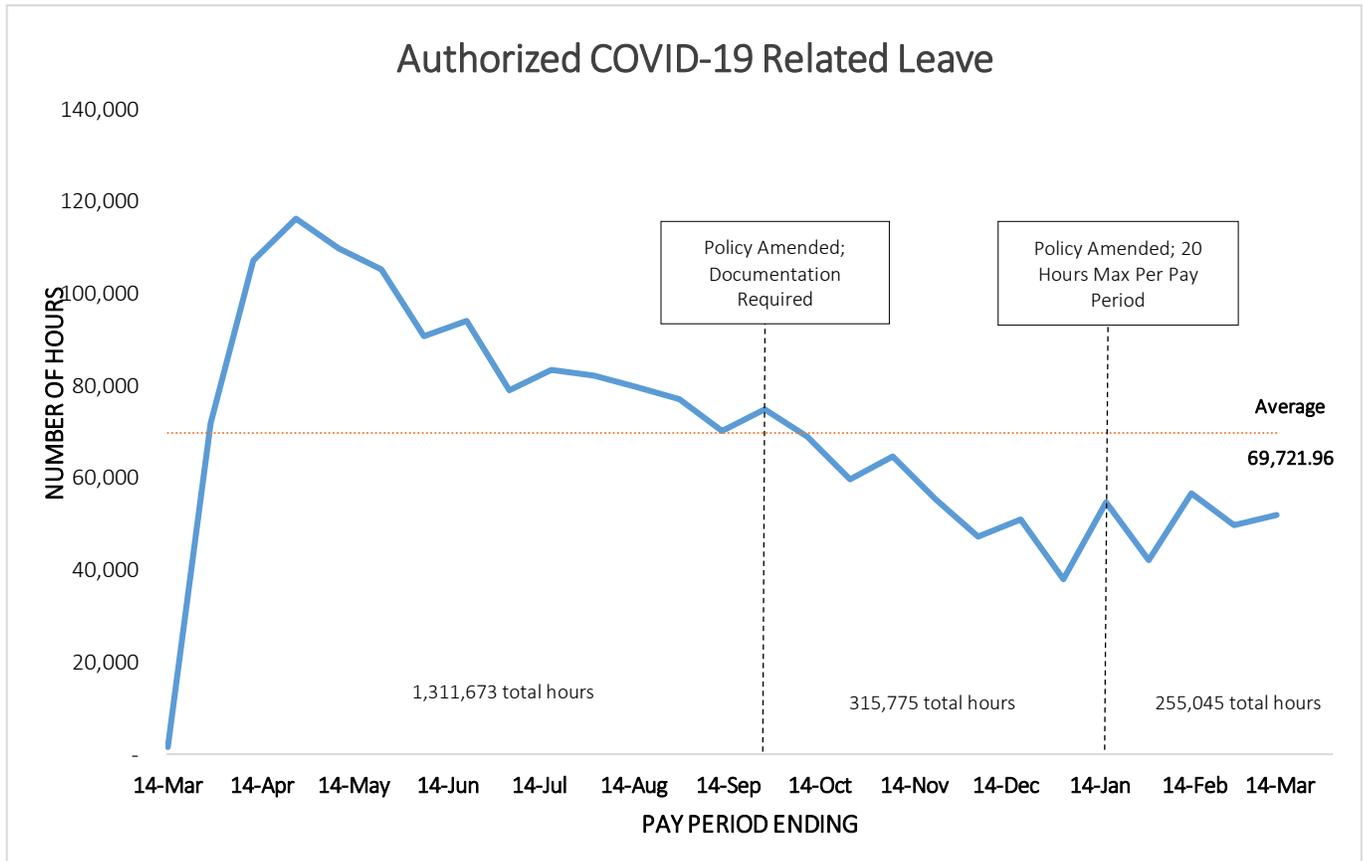
schedules; 3) jurisdictional leadership placed staff in non-telework eligible positions on full-time administrative leave due to worksite closure, (e.g. U.S. Capitol Visitor Center and U.S. Botanic Gardens) so long as they were available to return to work on short notice; or 4) employees requested leave to care for a minor child whose school or place of care was closed due to COVID-19. Given the high level of uncertainty surrounding the severity and potential duration of the virus, the AOC did not impose time limitations on the use of full-time administrative leave for certain non-telework eligible positions. Instead, staff were placed in an indefinite administrative leave status based upon the potential for significant public safety and health risks associated with performing duties on-site.

<sup>4</sup> Administrative leave is excused (administratively authorized) absence from duty without loss of pay and without charge to leave. Effective October 6, 2020, and still in effect at this time, employees on administrative leave must be available and able to work on short notice. Employees are “available” when, during their normal tour of duty, they are communicating regularly with and responding promptly to AOC colleagues and supervisors, participating in telework activities as directed by management, and able to return to work in two to three hours, regardless of jurisdictional operating status.

<sup>5</sup> Increased risk designation is based upon age—greater than 65 and/or a CDC designated medical condition.

The OIG conducted a review of the agency’s reporting of time and attendance via the electronic system WebTA<sup>6</sup>. Our review determined that payroll systems were properly configured to account for COVID-19 related leave and FFCRA partially paid leave. However, it appears that adequate controls were not in place to prevent employees from exceeding FFCRA partially paid leave statutory limits. AOC offices and jurisdictions (timekeepers and/or supervisors) were responsible for manually tracking employees’ FFCRA approvals and usage.

Figure 1: Total Authorized COVID-19 Related Leave



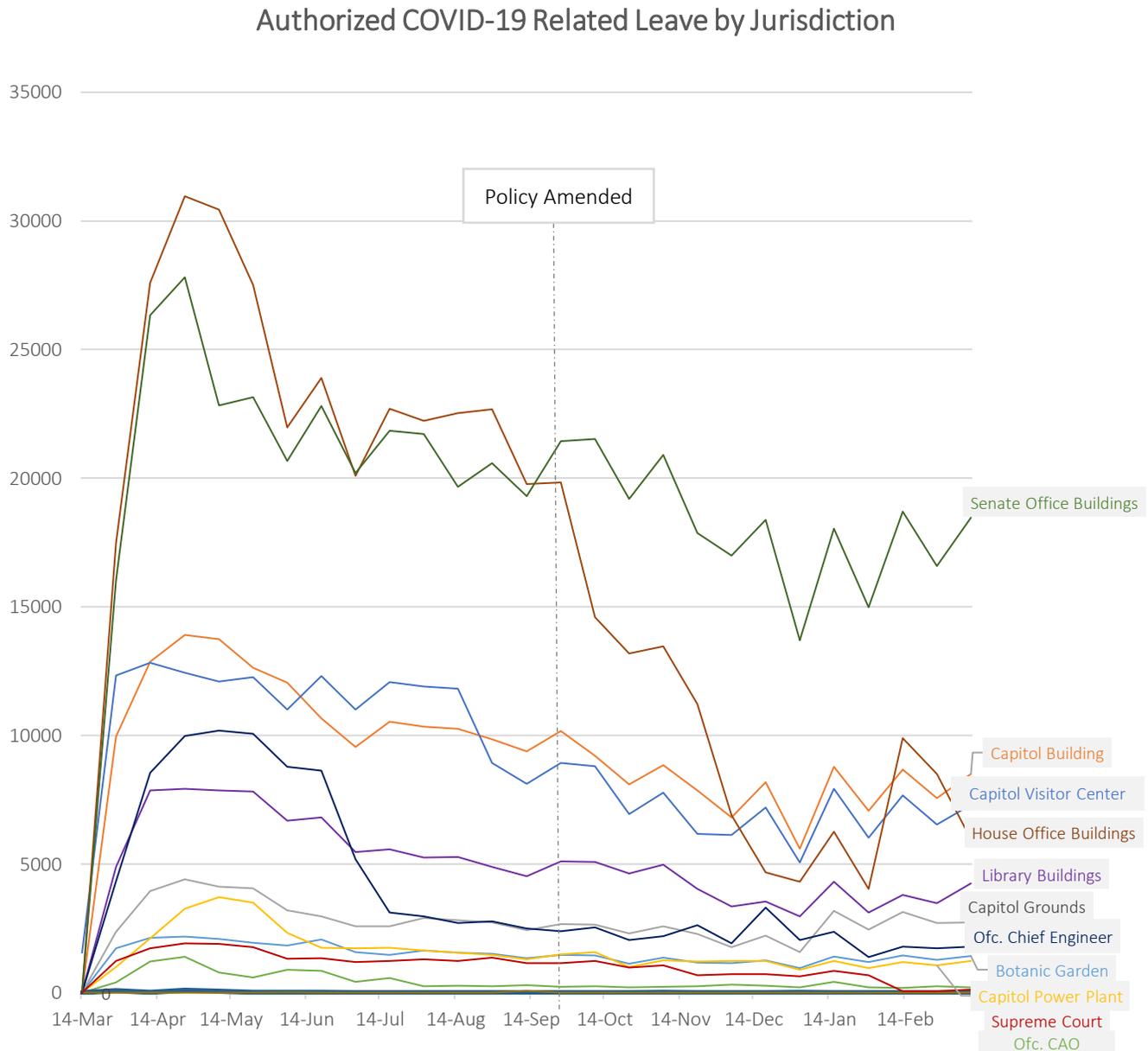
Between March 2020 and March 2021, (pay periods 05 through 26 of calendar year 2020 and pay periods 01 through 05 of calendar year 2021) we pulled the time and attendance records of employees with an approved Corona Virus Prevention and/or Remediation code (see Figure 1). We compared the number of hours of leave authorized according to the AOC policies, and corresponding legislation, in effect at the time. Between March and September of 2020, the FFCRA was in effect and the AOC did not require documentation to qualify for COVID-19 administrative leave (1.3M hours AOC authorized leave). Between October and December of calendar year 2020, the FFCRA was in effect and the AOC implemented stringent requirements supplemented by clear guidance in order to qualify for COVID-19 administrative leave (316K hours authorized). Between January and March of calendar year 2021, the full set of provisions under the FFCRA were no longer in effect (i.e., leave to care for an individual whose school or place of care was closed due to COVID-19). Instead, Congress extended certain

<sup>6</sup> WebTA is a web-based system that is used to submit work time and leave information to the AOC’s payroll/personnel service provider, the National Finance Center, for salary payments. Most employees use this system to enter biweekly time and leave data, request leave, and validate the data (called T&As) online.

flexibilities like paid sick leave and expanded family and medical leave through March 2021 (255K hours authorized). Altogether, the records reflect that the AOC authorized a total of 1,882,493 hours of leave. We estimate this amounts to approximately \$65 million.<sup>7</sup>

Figure 2 reflects the utilization of COVID-19 related leave by AOC jurisdiction. The greatest users were the: Capitol Visitor Center (243K hours over the entire period under review), U.S. Capitol Building (251K), House Office Buildings (433K), and Senate Office Buildings (520K).

Figure 2: Jurisdiction Authorized COVID-19 Leave Use



<sup>7</sup> Utilizing an average AOC employee salary of \$71,760 or \$34.50 per hour.

Amounts authorized (Figure 3) appear to be in direct proportion to the total number of employees in each jurisdiction, with the exception of the Capitol Visitor Center and the Senate Office Buildings. The Capitol Visitor Center variation is likely attributed to the jurisdiction experiencing a complete worksite closure during the period under review where all employees were placed on administrative leave due to the in-person nature of their positions. The Senate Office Buildings jurisdiction appears to be utilizing a mixed model with a heavy reliance on administrative leave and rotational schedules, as well as safety pods and telework. The majority of the staff were authorized to use a one week onsite, one week off (administrative leave) schedule for the entire period under review.

Leave Authorization in Proportion to Employee Population

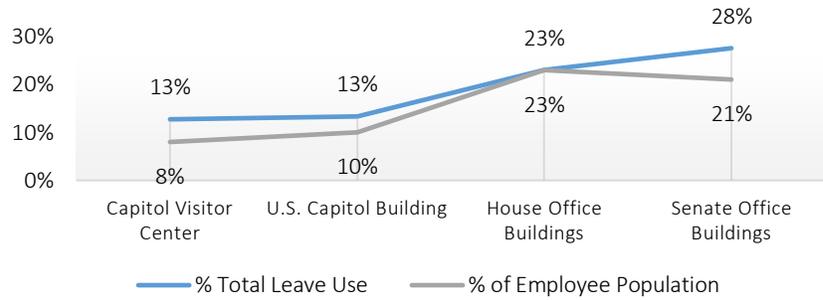
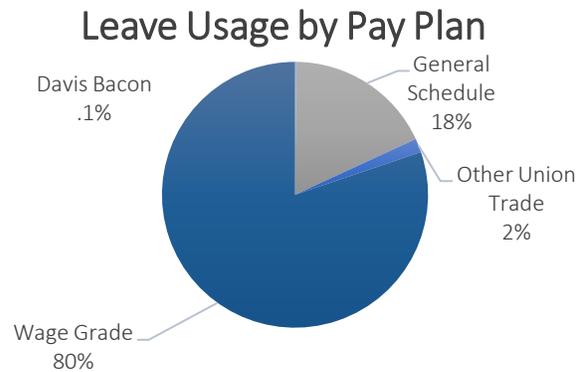


Figure 3: Leave Proportionate to Population

As seen in Figure 4, wage grade employees utilized 80 percent of the total amount of COVID-19 related leave. This is likely due to the “in-person” nature of their roles. These employees serve in roles such as: plasterer, mechanic, forklift operator, gardener and custodians – positions determined not to be telework eligible.

Figure 4: Leave Usage by Pay Plan



**Process for Initial Program Use:**

Between March 2020 and September 2020, staff at increased risk for COVID-19 complications were instructed to coordinate with the Human Capital Management Division (HCMD) to self-certify administrative leave eligibility. Jurisdictions used maximum leave flexibility—no documentation standards were in place—to confirm information received. The HCMD reported that a total of 411 employees used the self-certification administrative leave option.

During this time, several jurisdictions (e.g., Capitol Visitor Center and U.S. Botanic Garden) placed staff in public facing, non-telework eligible positions (e.g., Capitol Visitor Center tour guides) on administrative leave regardless of COVID-19 risk. Meanwhile other jurisdictions, in an effort to adhere to Office of the Attending Physician and other public health recommendations involving COVID-19 best practices concerning social distancing and safety protocols, adopted a rotational schedule so as to minimize the employee presence on the Capitol campus. This practice typically involved the use of an “every other week” administrative leave schedule where employees received up to forty hours of administrative leave during each biweekly or 80-hour pay period.

In their COVID-19 Pandemic Operations Plan<sup>8</sup> the AOC acknowledged that in order “to continue essential services, the AOC must balance fulfilling service requests with protecting employee health and safety, while maintaining a sufficient number of staff who can be recalled to backfill employees that become ill or must be quarantined.” The heads of each jurisdiction were instructed to develop an accompanying plan that outlined which staff should return on-site, when and how. The initial focus was on essential operations and AOC jurisdiction staff levels were dependent upon: 1) local public health orders and recommendations; 2) the operational status of clients; and 3) preservation and maintenance needs of the landscape and facilities.

In June 2020, the OIG received a complaint (AOC OIG 2020-0030-INVC-P) outlining the abuse of administrative leave by AOC employees claiming to have underlying medical conditions that placed them at increased risk for COVID-19 complications as identified by the CDC. The complaint outlined a lack of oversight into the execution of the administrative leave process and no requirements for the submission of medical documentation from employees claiming to have underlying conditions. The complainant also stated that AOC employees, while on paid administrative leave due to underlying conditions, engaged in outside employment all while accruing annual and sick leave hours to utilize at a later date upon their return to work. The OIG was unable to substantiate the claim due to a lack of specificity. OIG investigators requested additional information from the complainant, including employee names and associated jurisdictions, but did not receive a reply.

Despite the lack of sufficient detail to substantiate the claim, the potential for fraud and abuse remained. The program, left broadly unchecked, exposed the AOC to increased risk for payroll fraud and abuse of authorities granted under the expanded access to administrative leave. In the resultant management advisory (AOC OIG 2020-0004-INVM-P) issued in July 2020, the OIG pointed to gaps<sup>9</sup> and inconsistencies in existing leave policies as well as a lack of specific guidance referencing the responsibilities and expectations of employees while placed in an administrative leave status due to COVID-19 related concerns. Our review of the agency’s reporting of time and attendance via WebTA provided further insight into the use of COVID-19 related administrative leave and the potential for abuse.

For the time period between March 2020 and October 2020 (pay periods 5-20), there were 1,918 employees authorized to receive COVID-19 related leave, as designated by Corona Virus Prevention and/or Remediation WebTA codes. Given that the AOC did not require documentation to support the employee indicated qualifying need during this particular time period, the potential for fraudulent activity was significant. The total amount of COVID-19 related administrative leave authorized during the designated time period was 1.3 million hours.

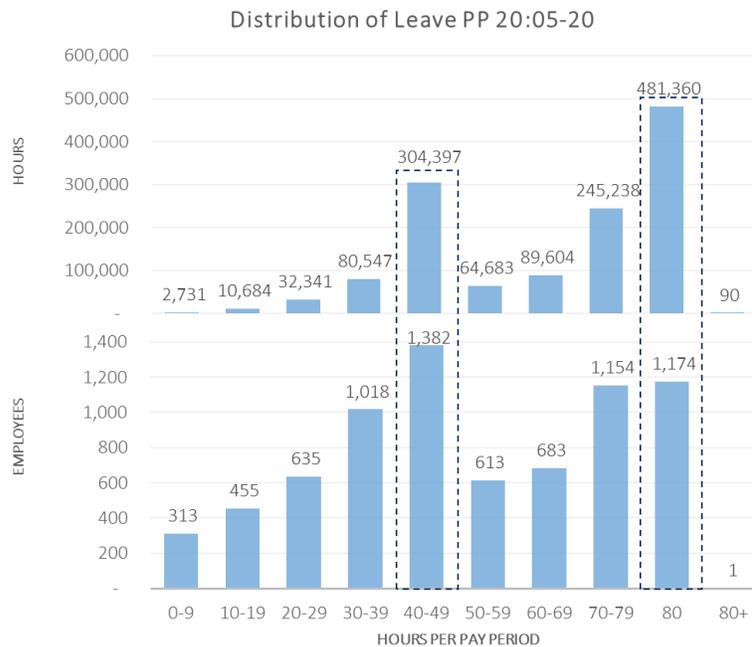
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<sup>8</sup> Architect of the Capitol COVID-19 Pandemic Operations, August 4, 2020, p.3.

<sup>9</sup> The OIG recommended the AOC provide guidance to address outside employment while on administrative leave, medical documentation requirements, and conditions for emergency recall.

Figure 5 depicts the distribution of leave according to the number of hours authorized per pay period and the corresponding number of employees within the range indicated. For instance, there were 1,382 employees authorized between 40-49 hours of COVID-19 related leave. The total hours accumulated by that particular group was 304,397. Likewise, there were 1,174 employees authorized to receive 80 hours each pay period for a total of 481,360 hours authorized.

Figure 5: Distribution of Leave 2020 Pay Periods 05-20



### **Implementation of New Policy (October 2020):**

On October 6, 2020, the AOC issued a memorandum entitled, Update on the Administration of Leave During COVID-19, advising of a new process including the submission of supporting documentation for “high-risk status.” The October 6th memorandum clarified the conditions under which an employee could utilize administrative leave. Employees were no longer able to self-certify administrative leave eligibility; instead, employees were required to submit a COVID-19 High Risk Identification Form by October 30, 2020. The AOC instructed employees seeking to either extend their administrative leave status or to request administrative leave for the first time, to utilize this process. Employees were eligible to remain on telework or administrative leave during the certification process.

Requests for administrative leave were to be evaluated on a case-by-case basis and could be granted under the following circumstances:

- *When an employee’s duties cannot be performed via telework and the employee cannot report to work onsite due to management scheduling that minimizes staff on campus, including closure of the worksite (as in Capitol Visitor Center and USBG);*
- *Due to an employee being in a high-risk category based on age or an underlying health condition as outlined in the CDC’s guidance;*
- *In addition to an employee’s approved FFCRA paid leave for childcare purposes; or*
- *Up to 80 hours of administrative leave related to an Agency-directed quarantine.*

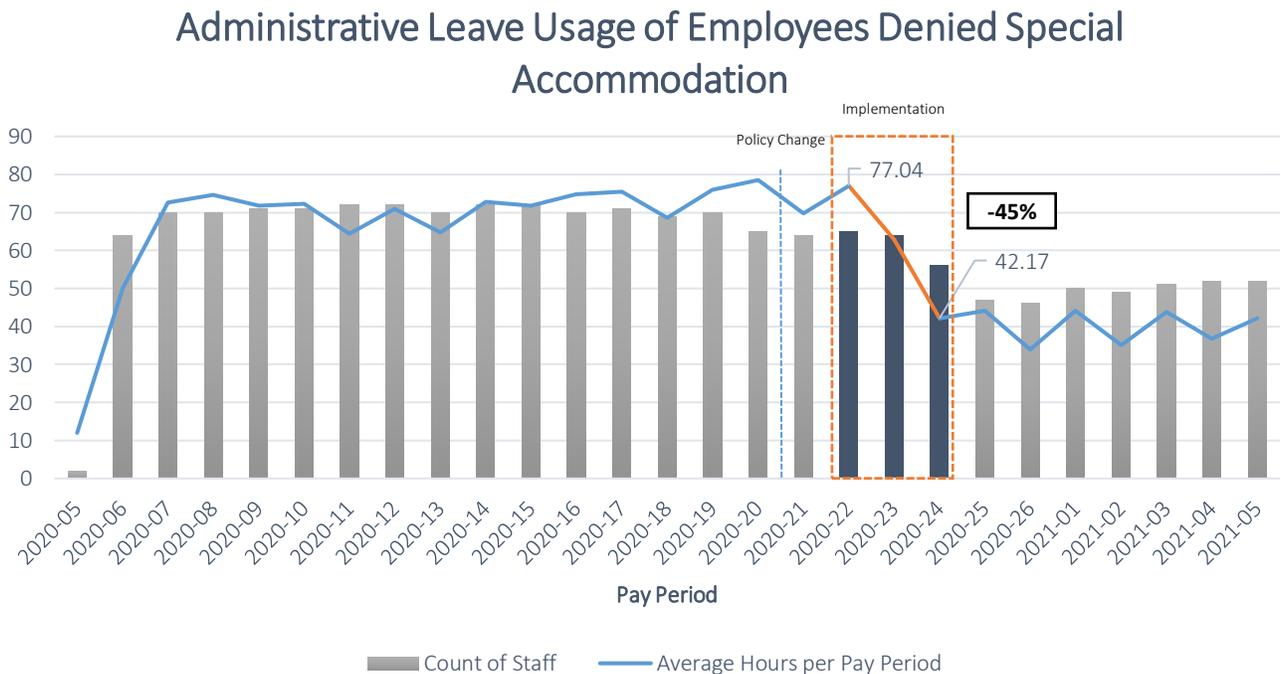
The memo also made clear that employees in an administrative leave status were to be available<sup>10</sup> and able to work on short notice. Those employees who were unavailable and unable to report to work within the defined time period were required to submit the appropriate leave request (e.g., annual or sick leave) to their supervisor for approval.

<sup>10</sup> Effective immediately, employees on administrative leave must be available and able to work on short notice. An employee is “available” when, during his or her normal tour of duty, he or she is communicating regularly with and responding promptly to AOC colleagues and supervisors, participating in telework activities as directed by management, and able to return to work in two to three hours, regardless of jurisdictional operating status. “Update on the Administration of Leave During COVID-19”. October 6, 2020. <https://www.compass.aoc.gov/home/showpublisheddocument/2041/637425299678130000> visited January 24, 2022

Management of the process shifted from the HCMD to the Diversity, Inclusion and Dispute Resolution office (DI/DR). DI/DR continued to make special leave privileges available by providing reasonable accommodations under the Americans with Disabilities Act and applying flexibilities under the FMLA. Special accommodations for qualifying employees included telework, or if they were not telework eligible, they could be considered for a reasonable accommodation, which could include administrative leave. While DI/DR determined eligibility for a special accommodation, the jurisdiction decided how to apply it based upon mission and operational hardships.

A review of DI/DR data in the eleven pay periods that followed the policy clarification revealed that a total of 375 employees applied for a special accommodation. Of those, 286 received approval, 83 were denied or pending, and 5 retired prior to determination. We accounted for all identified AOC employees who were granted administrative leave from the start of the pandemic but were ultimately denied a special accommodation<sup>11</sup> when required to provide documentation for a CDC qualifying “high-risk” exception (e.g., age, medical condition). See Figure 6. Prior to the policy change approximately 70 employees received an average of 70 hours of administrative leave each pay period. Pay periods 22 through 24 reflect a period of transition into the implementation of the October 6 policy. Once implemented, the per pay period number of hours authorized for employees denied a special accommodation declined by 45 percent to approximately 40 hours on average for the remainder of the period under review. The OIG was unable to determine if the authorization of leave, despite a denial of special accommodation, was due to an error in program administration oversight or due to the rotating/staggered schedules process utilized by many of the jurisdictions.

Figure 6: Leave Use by Employees Denied Special Accommodation



Altogether the AOC authorized 105K hours of administrative leave (\$3.6M) to employees who might not otherwise be eligible if the agency had implemented documentation standards for high-risk status

<sup>11</sup> During the period under review of March 13, 2020 to March 13, 2021.

at the start of the pandemic. Given the potential for cost avoidance, the OIG considers the \$3.6M as funds that could have been put to better use.<sup>12</sup>

### **Variance in Policy Implementation:**

The AOC is an organization responsive to a very diverse set of stakeholders and policies must be written to accommodate their needs accordingly. In their COVID-19 Pandemic Operations Plan,<sup>13</sup> the AOC notes that items “may need to be implemented differently by the various jurisdictions and adapted to address specific local requirements, while always following AOC policy.” While the OIG recognizes there is no one-size-fits-all for an organization such as the AOC and anticipates occasional variance *across jurisdictions*, we encountered a few instances of inconsistent policy application *within a jurisdiction*. The OIG found that this same jurisdiction also operated out of accordance with AOC policy.

Since March 2021, the OIG received three complaints (2021-0043-INVC-P, 2021-0044-INVC-P and 2021-0047-INVC-P) from both employees and supervisors within the Supreme Court Buildings and Grounds jurisdiction regarding unclear messaging from jurisdiction management and inconsistent application of administrative leave. The OIG issued a management advisory notifying AOC management of a possible disparity in the application of AOC policies as they pertained to the use and approval of administrative leave within the Supreme Court Buildings and Grounds during the COVID-19 pandemic. We found that the policy provided to employees made no mention of the type of leave options afforded and differed from the AOC policies in place pertaining to COVID-19. (2021-0001-INVM-P)

### **Substantiated Instances of Fraudulent Behavior:**

In addition to identifying inconsistent application of COVID-19 leave policies, the OIG also encountered an increase in fraudulent behavior.

**Leave Flexibility:** Certified eligibility based upon age or CDC identified medical condition

In November 2020, a confidential source alleged that an AOC employee held outside employment while in a paid Administrative Leave status due to having a CDC identified medical condition that placed the employee in a high-risk COVID-19 category. Over the course of the investigation, the OIG established that the employee sought and obtained a reasonable accommodation of administrative leave to minimize COVID-19 exposure and risk, then obtained outside employment and performed duties that directly placed the employee at increased risk of contracting COVID-19.

The Office of General Counsel determined there was nothing specific in AOC policy prohibiting AOC employees from working another job (or engaging in other personal activities) while on Administrative

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<sup>12</sup> As referenced through 2 USC 1808, Inspector General of the Architect of the Capitol, section (d)(1), Inspector General Act of 1978, as amended, 5 U.S.C. app. 5(f)(4), Semiannual reports; ... definitions, the term "recommendation that funds be put to better use" means a recommendation by the Office that funds could be used more efficiently if management of an establishment took actions to implement and complete the recommendation, including—

(A) reductions in outlays;

(B) deobligation of funds from programs or operations;

(C) withdrawal of interest subsidy costs on loans or loan guarantees, insurance, or bonds;

(D) costs not incurred by implementing recommended improvements related to the operations of the establishment, a contractor or grantee;

(E) avoidance of unnecessary expenditures noted in pre-award reviews of contract or grant agreements; or

(F) any other savings which are specifically identified;

<sup>13</sup> Architect of the Capitol COVID-19 Pandemic Operations, August 4, 2020, p.24

Leave, so long as they were responsive and available to be called back to AOC work on short notice as needed during regular work hours.

While the OIG was unable to cite this individual, a gap in COVID-19 guidance enabled the employee to fraudulently obtain a reasonable accommodation, then seek outside employment to supplement their AOC salary. The employee's actions were tantamount to workers' compensation fraud whereby an employee has claimed a condition, which prevents them from performing their AOC duties, and in turn received compensation for that claim. ([2021-0001-INVI-P](#))

**Leave Flexibility:** Employees taking leave to care for their own minor child whose school or place of care was closed due to COVID-19 *and* employees on intermittent administrative leave to support distancing and safety requirements through rotating/staggered work schedules

In November 2020, a complainant alleged that an AOC employee worked another job while utilizing AOC workplace and leave flexibilities afforded to employees as a result of the COVID-19 pandemic. When AOC management provided guidance that effective October 30, 2020, supplemental administrative leave<sup>14</sup> would be discontinued and AOC employees would need to apply for FFCRA entitlements to continue paid leave, the employee certified a need and applied for FFCRA entitlements. The OIG determined, through testimonial and documentary evidence, that AOC management allowed the employee to take supplemental administrative leave in conjunction with a rotating work schedule (one-week on, one-week off) to care for a child whose school was closed due to COVID-19 related reasons. The OIG also confirmed that the employee worked at an external job on the days they received supplemental and FFCRA leave, counter to the claim of needing leave flexibilities to care for a minor child out of school due to COVID-19 related reasons. In this instance, the employee was able to "double dip" by working for an outside employer during the time granted under special leave authorities. The employee's actions were tantamount to payroll fraud whereby an employee has claimed a need that prevents them from performing their AOC duties and in turn receives compensation under FFCRA administrative leave. Meanwhile the employee, who claimed they could not perform their AOC duties, performed comparable work at another employer for additional compensation. ([2021-0006-INVI-P](#))

**Leave Flexibility:** Employees on full-time administrative leave due to worksite closure so long as they were responsive and available to be called back to AOC work on short notice as needed during regular work hours

In February 2021, the OIG received a complaint that a Capitol Visitor Center employee abused AOC workplace and leave flexibilities afforded to employees as a result of the COVID-19 pandemic and held outside employment without prior approval. The Capitol Visitor Center closed to the public in March 2020 due to the COVID-19 pandemic. The employee and their peers in similar roles were placed on administrative leave because their positions required employees to interact with the public and be present in the U.S. Capitol Building, which was also closed during the pandemic. While on administrative leave the employee was expected to be available,<sup>15</sup> to stay in communication with

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<sup>14</sup> Throughout the COVID-19 pandemic, the AOC permitted supervisors to approve supplemental administrative leave in conjunction with flexible scheduling and telework for employees caring for their children whose school or place of care is closed due to COVID-19 related reasons. This benefit ended on October 30, 2020. Instead, affected employees were eligible to apply for FFCRA entitlements or use their own accrued leave.

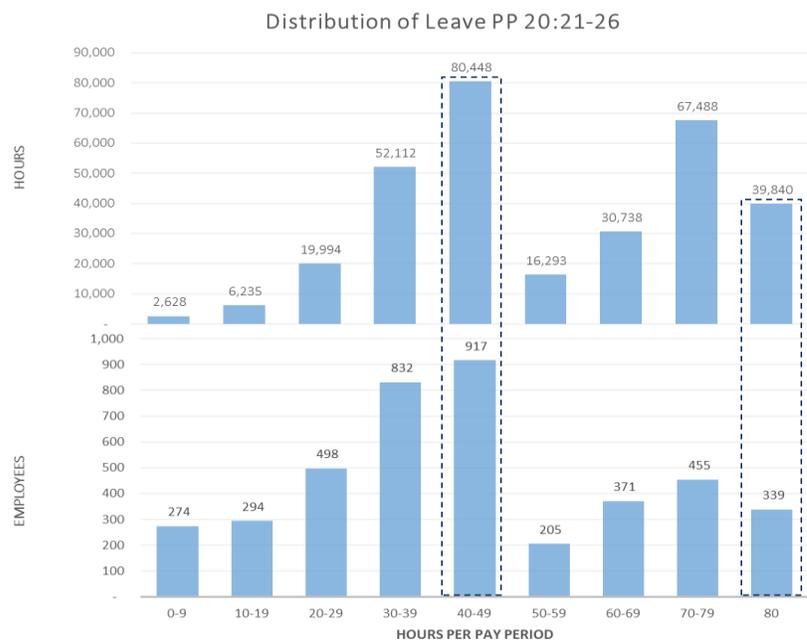
<sup>15</sup> Communicating regularly with and responding promptly to AOC colleagues and supervisors, participating in telework activities as directed by management, and able to return to work in two to three hours, regardless of jurisdictional operating status. If an employee needs to leave the Washington, D.C., metropolitan area, undergo a medical procedure or attend a medical appointment, then they are required to submit the appropriate leave request (e.g., annual or sick leave) to their supervisor for approval as they will not be able to return to work in two to three hours or will not be able to participate in

management and to complete required telework activities and training. AOC guidance further explained that if an employee needed to leave the Washington, D.C. metropolitan area, undergo a medical procedure or attend a medical appointment, then they were required to submit the appropriate leave request as these activities prevented the employee from being “available.” The OIG investigation disclosed the employee relocated to the Pacific Northwest without being on approved leave and without notifying the AOC. In addition, the employee worked an external job during their normal AOC duty hours, which constituted time and attendance fraud. ([2021-0008-INVI-P](#))

The cases<sup>16</sup> noted highlight policy gaps that exposed the AOC to significant fraud risk. Altogether, the cited employees defrauded the AOC out of \$46,299.24.

When we compared the WebTA data for the periods before and after the October 6, 2020 policy change we checked to see if there was an impact on the number of hours of COVID leave authorized. We found that the total amount of COVID-19 related administrative leave authorized during the designated time period decreased by 76 percent to 316,000 hours. Figure 7 also shows that not only did the total number of authorized hours decrease, but the total number of employees authorized between 40-49 hours of COVID-19 related leave decreased by 34 percent. The total number of employees authorized 80 hours per pay period decreased by 71 percent.

Figure 7: Distribution of Leave 2020 Pay Periods 21-26



### January Policy Update as a Result of FFCRA Expiration:

The paid leave mandate authorized in the FFCRA expired on December 31, 2020; however, the Consolidated Appropriations Act, 2021, extended the authority for paid sick leave and expanded family and medical leave until March 31, 2021. This allowed employers who chose to continue, to provide eligible leave types through March 31, 2021. Following the expiration of the FFCRA leave entitlements, AOC provided updated guidance and a frequently asked questions document related to the administration of leave for calendar year 2021. Under this guidance, employees remained eligible to receive administrative leave, up to 20 hours per pay period, for qualifying COVID-related reasons.

*Effective January 1, 2021, eligible AOC employees may use up to 20 hours per pay period of administrative leave for qualifying reasons for leave related to COVID-19 during the pandemic. Employees who have been employed with the agency for a minimum of 30 days can qualify by completing and submitting the COVID-19 Self-Certification Form for Administrative Leave and provide supporting documentation.*

telework activities as directed by management. Chief Administrative Officer’s Memorandum, Update on the Administration of Leave During COVID-19, October 6, 2020

<sup>16</sup> The OIG referred each case for criminal prosecution but the Department of Justice declined due to workload.

*Once the employee's request is approved, up to 20 hours of approved administrative leave per pay period that meet the qualifying reasons related to COVID-19 should be recorded on the employee's timesheet. At this time, maximum telework and flexible scheduling for all employees may continue to be approved as mission needs allow.*

The policy clarification document also noted that FMLA was an available alternative for eligible staff.

A review of COVID-19 administrative leave use following the January policy update until the passage of the American Rescue Plan Act (ARPA) of 2021 on March 11, 2021 (pay periods 1-5), reflects a total of 255K authorized hours. This represents a 19 percent decrease in the number of hours of COVID-19 administrative leave authorized when compared to the previous period (pay periods 21-26). The distribution of leave (see Figure 8) suggests that the majority of the hours authorized went to either employees logging between 20 and 49 hours per pay period or 80 hours. A 20-hour COVID-19 leave limit per pay period was in place at this time. However, the data suggest the majority of leave authorized can be attributed to CDC high-risk exceptions (special accommodations) and jurisdictional use of rotational/staggered schedules.

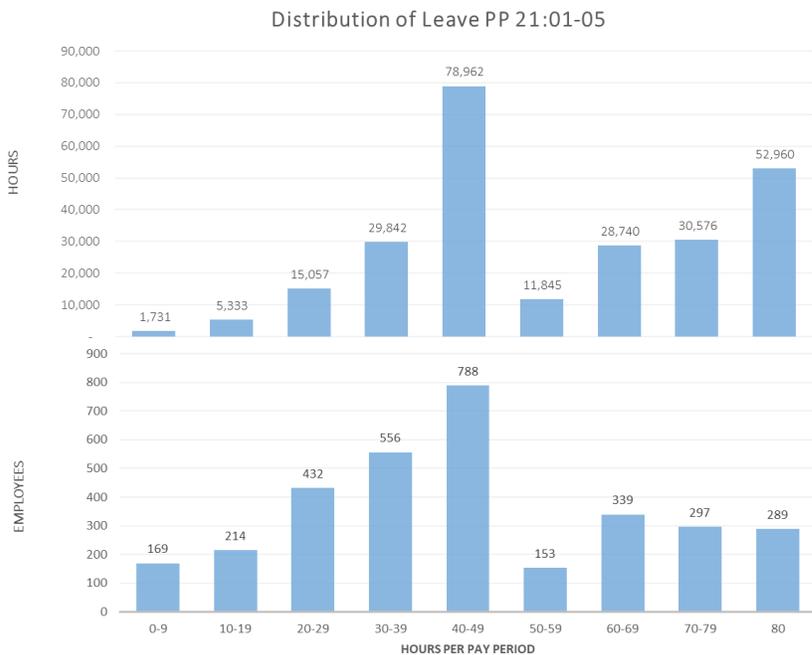


Figure 8: Distribution of Leave 2021 Pay Periods 01-05

As previously noted, ARPA extended the paid sick and expanded family and medical leave time limit to September 30, 2021. The Act also allowed for sick leave to obtain a COVID-19 vaccine or illness related to immunization, or for leave taken while waiting for COVID-19 test results. To date, AOC COVID-19 policies continue to allow for up to 20 hours of administrative leave per pay period for qualifying reasons and the Corona Virus Prevention and/or Remediation accounting codes are still in use.

## Conclusion

The AOC's administration and oversight of enhanced paid leave authorities as a part of the COVID-19 public health response helped to facilitate a safe work environment under increasingly challenging circumstances. Utilizing the flexibilities authorized under the FFCRA, the AOC introduced a number of paid administrative leave options to employees who had been exposed to COVID-19 or were at increased risk for COVID-19 complications, as well as for those in non-telework eligible roles in order to reduce transmission of COVID-19. During the first seven months of the pandemic, the AOC did not require documentation to qualify for COVID-19 administrative leave. Given that the AOC authorized approximately 1.3M hours during this period, agency exposure to time and attendance fraud risk was significant. Following a series of reported infractions and employee abuse of leave flexibilities, the agency has since implemented stringent eligibility requirements to include documentation. This change

resulted in a total decrease in the number of authorized hours of COVID-19 related administrative leave by 81 percent for the period under review.

Our review determined that payroll systems were properly configured to account for COVID-19 related leave and FFCRA partially paid leave. However, it appears that adequate controls were not in place to prevent employees from exceeding FFCRA partially paid leave statutory limits. AOC offices and jurisdictions (timekeepers and/or supervisors) were responsible for tracking employees' FFCRA approvals and usage.

Despite eligibility requirements and agency imposed time limitations, WebTA data reflect staff continued to exceed the 20-hour per pay period COVID-19 leave cap. Much of this is attributed to the continued need for jurisdictions to utilize rotating and staggered schedules as a preventative safety measure. The OIG recognizes that the COVID-19 pandemic presented unique challenges to daily operations and business functions. Although we concluded that the payroll system was adequate to account for the varied leave flexibilities authorized, it is essential that the agency refine its process to ensure staff do not exceed administrative leave limits.