

AUDIT REPORT



CITY OF NEW YORK
OFFICE OF THE COMPTROLLER
BUREAU OF MANAGEMENT AUDIT
WILLIAM C. THOMPSON, JR., COMPTROLLER

Audit Report on the Controls over Personnel, Payroll, and Timekeeping Practices at the Department of Investigation

MH09-092A

December 30, 2009



THE CITY OF NEW YORK
OFFICE OF THE COMPTROLLER
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To the Citizens of the City of New York

Ladies and Gentlemen:

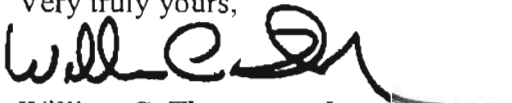
In accordance with the Comptroller's responsibilities contained in Chapter 5, §93, of the New York City Charter, my office has conducted an audit of the controls over the personnel, payroll, and timekeeping practices at the New York City Department of Investigation (DOI).

DOI acts as an independent and nonpartisan watchdog for City government, City-funded programs, and City contracts with private or community organizations. All employees of DOI are responsible for completing weekly time sheets that are reviewed by their supervisors and are then submitted to DOI's timekeepers for recording use of leave, accrual and use of compensatory time, and accrual of paid overtime. We audit agency practices such as these as a means of ensuring compliance with established policies and procedures.

The results of our audit, which are presented in this report, have been discussed with DOI officials, and their comments have been considered in the preparation of this report. Their complete written response is attached to this report.

I trust that this report contains information that is of interest to you. If you have any questions concerning this report, please e-mail my audit bureau at audit@comptroller.nyc.gov or telephone my office at 212-669-3747.

Very truly yours,


William C. Thompson, Jr.

WCT/ec

Report: MH09-092A
Filed: December 30, 2009

Table of Contents

AUDIT REPORT IN BRIEF 1

 Audit Findings and Conclusions 1

 Audit Recommendations 2

INTRODUCTION..... 3

 Background 3

 Objectives 4

 Scope and Methodology 4

 Discussion of Audit Results 10

FINDINGS AND RECOMMENDATIONS 11

 Maintenance of Personnel and Timekeeping Files 11

 Misplaced Personnel and Timekeeping Documents 11

 Some Timekeeping Files Are Maintained in a Location Accessible to Non-
 Timekeeping Personnel 13

 Recommendations 14

 Results of Timekeeping Review 14

 Monitoring Excess Annual Leave 14

 Monitoring of Comp Time and Paid Overtime 15

 DOI Did Not Convert Non-FLSA Comp Time Not Used to Sick Leave within 120
 Days of Its Being Earned 15

 Employees Forgo Lunch Breaks and Earn Comp Time or Paid Overtime without the
 Pre-Approval in Writing 16

 Documentation for Overtime Paid to Employees 17

 Recommendations 18

 Procedures for Personnel, Payroll, and Timekeeping Practices Should Be Enhanced 19

 Recommendations 20

 Additional Matters 21

 Recommendation 21

ADDENDUM DOI Response

*The City of New York
Office of the Comptroller
Bureau of Management Audit*

**Audit Report on the
Controls over Personnel, Payroll, and Timekeeping
Practices at the Department of Investigation**

MH09-092A

AUDIT REPORT IN BRIEF

Our audit determined whether the Department of Investigation (DOI) has adequate controls over its personnel, payroll, and timekeeping practices and whether its controls are in accordance with applicable City rules, Comptroller's Directives, and its own formal procedures.

DOI acts as an independent and nonpartisan watchdog for New York City (City) government, City-funded programs, and City contracts with private or community organizations. The major functions of DOI include investigating and referring for prosecution cases of fraud and unethical conduct by City employees, contractors who do business with the City, and others who receive City money either directly or indirectly.

Candidates seeking employment at DOI must fill out various documents, such as a Comprehensive Personnel Document and a Background Investigation Questionnaire, which are necessary for DOI to review each candidate's credentials and to conduct an extensive background review. All employees of DOI are responsible for completing weekly time sheets that are reviewed by their supervisors. DOI's timekeepers are then responsible for reviewing the time sheets for accuracy and for recording use of leave, accrual and use of compensatory time (comp time), and accrual of paid overtime. A total of 304 employees worked for DOI at some time during July 2007, through October 24, 2008. In addition, some City agencies provided DOI a total of 89 of their own employees to help DOI with its investigations. DOI's personal service expenditures totaled \$17.4 million for Fiscal Year 2008.

Audit Findings and Conclusions

DOI's controls over its personnel, payroll, and timekeeping practices were generally in accordance with applicable City rules, Comptroller's Directives, and its own formal procedures. Nevertheless, we identified certain minor areas where improvement is warranted.

We found that employees who were required to be City residents all lived within the five boroughs, that employees were paid within the salary ranges of their associated titles set by the Department of Citywide Administrative Services (DCAS), that salary increases were authorized

and adequately justified, that proposed lump sum payments made to employees who separated from DOI were approved by the Comptroller's Office prior to issuing the actual payments, and that managerial employees did not accrue comp time to which they were not entitled.

The following are some of the areas we identified where we believe DOI could improve its controls: maintenance of personnel documents, security of timekeeping files, segregation of duties between the payroll and timekeeping functions, and monitoring of annual leave and comp time balances and paid overtime.

Audit Recommendations

Based on our findings, we make nine recommendations, including that DOI:

- Strengthens the controls over its record-keeping practices. All records pertaining to the personnel and timekeeping processes should be securely maintained in an organized manner.
- Continues its communication with DCAS to ensure adherence to the title specifications set by DCAS for all employees appointed to positions in competitive and non-competitive class titles. If DOI believes that any DCAS specifications need to be modified, it should file an appeal.
- Ensures that approved waivers are granted for any employees whose annual leave balance exceeds the maximum limit and for any employees in competitive and non-competitive class titles whose non-Fair Labor Standards Act (FLSA) comp time has not been used within 120 days of its being earned. Any excess annual leave or non-FLSA comp time balances for which approved waivers are not obtained should be converted to sick leave in accordance with City regulations.
- Ensures that its *Employee Manual* is updated to include regulations for both managerial and non-managerial employees, including but not limited to, DCAS's "Leave Regulations for Management Employees," "Leave Regulations for Employees who are Under the Career and Salary Plan," and "Regulations Governing Compensatory Time Off, Compensation for Overtime, and Meal Allowances for City Employees."

DOI Response

In their response, DOI officials generally agreed with the audit's recommendations.

INTRODUCTION

Background

The Department of Investigation (DOI) acts as an independent and nonpartisan watchdog for New York City (City) government, City-funded programs, and City contracts with private or community organizations. The major functions of DOI include investigating and referring for prosecution cases of fraud, corruption, conflicts of interest, and unethical conduct by City employees, contractors who do business with the City, and others who receive City money either directly or indirectly. DOI is also responsible for studying agency procedures and management practices and recommending improvements to reduce the City's vulnerability to fraud, waste, unethical conduct, and gross mismanagement.

Pursuant to Mayoral Executive Order 105 of 1986, the responsibility for the Inspector General program from City agencies was transferred to the Commissioner of DOI. Therefore, Inspectors General and their staff are employees of DOI and work within DOI. There is an Inspector General for each agency who reports directly to the Commissioner of DOI. This audit focuses on the controls over the personnel, payroll, and timekeeping practices at DOI.

Candidates seeking employment at DOI must fill out various documents, such as a Comprehensive Personnel Document, which details their education and employment experiences, and a Background Investigation Questionnaire containing 41 pages, which details information such as their finances, family/household information, driving record/motor vehicle information, criminal/investigatory history, and civil/administrative proceedings. Both of these documents are necessary for DOI to review each candidate's credentials and to conduct an extensive background review, which includes verification of information with outside entities (i.e., Internal Revenue Service, New York State Department of Taxation and Finance, schools and universities, and prior and current employers). In addition, employment candidates also fill out a Terms and Conditions of Appointment document that permits DOI to submit the candidate's fingerprints as part of a required criminal history investigation. Pre-employment drug testing is also required for candidates seeking investigative titles, such as Confidential Investigator and Special Investigator.

All employees of DOI (both managerial and non-managerial) are responsible for completing weekly time sheets that are reviewed by their supervisors. During our audit scope period, there were two employees—the Timekeeper and the Payroll Officer who assisted her—responsible for reviewing the time sheets for accuracy and for completing Employee Time Records (ETRs) for use of leave (annual or sick), for accrual and use of compensatory time (comp time), and for accrual of paid overtime. The Timekeeper and Payroll Officer then entered this data in the City's Payroll Management System (PMS).

A total of 304 employees worked for DOI throughout its 39 work units at some time during July 1, 2007, through October 24, 2008. Most were in non-competitive and exempt class

titles.¹ Individuals seeking appointment to positions in non-competitive class titles (i.e., Confidential Investigator, Inspector General, and Deputy Inspector General) are not required to take competitive examinations, although their title specifications and salary ranges are set by the City's Department of Citywide Administrative Services (DCAS). Individuals seeking appointment to positions in exempt class titles (i.e., Special Investigator and Examining Attorney) also are not required to take competitive examinations. However, their title specifications and salary ranges are not set by DCAS, but by the hiring agencies.

In addition, from July 1, 2007, through October 24, 2008, and pursuant to memorandums of understanding, some City agencies provided DOI a total of 89 of their own employees to help DOI with its investigations (on-loan employees). These on-loan employees were paid by their own agencies, not DOI. DOI's expenditures totaled \$23.5 million for Fiscal Year 2008. Of this amount, \$17.4 million (74 percent) was for personal service expenditures.

Objectives

The objectives of the audit were to determine whether DOI has adequate controls over its personnel, payroll, and timekeeping practices and whether its controls are in accordance with applicable City rules, Comptroller's Directives, and its own formal procedures.

Scope and Methodology

We conducted this performance audit in accordance with generally accepted government auditing standards (GAGAS). Those standards require that we plan and perform the audit to obtain sufficient and appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives. This audit was conducted in accordance with the audit responsibilities of the City Comptroller as set forth in Chapter 5, §93, of the City Charter.

The audit scope period was July 2007 through May 2009.

To obtain an understanding of the responsibilities, goals, and regulations governing DOI regarding personnel, payroll, and timekeeping, we reviewed and used as audit criteria:

- DOI *Employee Manual*,
- City Comptroller's Directive #1, "Principles of Internal Control," as well as Directive #1's required Agency Financial Integrity Statement and Checklist, completed by DOI for Calendar Year 2007,
- City Comptroller's Directive #13, "Payroll Procedures,"
- City Comptroller's Directive #14, "Leave Balance Payments,"

¹According to §35 and §40 of the New York State Civil Service Law, the civil service of the state and each of its civil divisions are to be divided into the classified and unclassified service. The classified service comprises four classes—the exempt class, the non-competitive class, the labor class, and the competitive class.

- City Comptroller’s Directive #19, “Procedures for Recouping Payroll Overpayments to City Employees,”
- Department of Citywide Administrative Services (DCAS), “Leave Regulations for Employees who are Under the Career and Salary Plan” (City leave regulations),
- DCAS, “Regulations Governing Compensatory Time Off, Compensation for Overtime, and Meal Allowances for City Employees” (City comp time and paid overtime regulations),
- District Council 37 AFSCME, AFL-CIO, “1995-2001 Citywide Agreement” (Citywide Agreement),
- Office of the Mayor’s Personnel Order #78/70, “Establishment of Leave Regulations for Full-Time Per Annum Employees Not Covered by Other Leave Plans or By Leave Provisions in Agreements or Contracts with Employees or Employee Organizations,”
- Office of Payroll Administration (OPA), “Managerial and Supervisory Overview of the NYC Payroll Management System” (OPA guidelines), and
- DCAS, “Leave Regulations for Management Employees.”

In addition, we interviewed DOI officials, including the Deputy Commissioner for Administration and Operations, the Director of Human Resources, the Timekeeper, the Payroll Officer, and the Executive Director-Assistant Commissioner of the Background Investigation, Fingerprint, and Complaint Units (Background Investigation Unit). We also interviewed various Inspectors General, including the Inspector General of the Corrections and Probation Unit, the Inspector General of the Fire and Sanitation Units, and the Inspector General of the Environmental Protection and Buildings Units.

To further our understanding of the City regulations governing employees who are in non-competitive and exempt class titles, we interviewed DCAS officials, including the Director of the Classification and Compensation Division of Citywide Personnel Services.

Reliability of Employee Data

At our request, DOI provided us with various employee data in electronic format for the 304 employees who reportedly worked for DOI at some time during July 1, 2007, through October 24, 2008. The general data provided for each employee included first and last name, City start date, DOI start date, office (in-house) title, payroll title, title-entry date, and salary histories. Additional data was provided for 61 of the 304 employees who separated (transferred to another City agency or resigned from City service) from DOI at some time during July 1, 2007, through October 24, 2008, and 89 on-loan employees (3 of which were part of the 304 employees) who worked for DOI during this same period. All data provided to us was reportedly extracted from PMS using the City’s Human Resource Management System (CHRMS).²

To test the reliability of the data, we performed the following tests:

²CHRMS is the City's secure-access reporting function that allows authorized users to run payroll queries and prepare spreadsheets from their desktops.

- Sorted the provided data by employee name and determined whether any names appeared more than once.
- Sorted the provided data by various fields (i.e., employee name, office title, DOI start date, payroll title, and title-entry date) and determined whether any fields lacked information or contained irrelevant information.
- Independently generated a PMS listing of all employees who worked for DOI at some time during July 1, 2007, through October 24, 2008, and used this to determine whether the population of employee names provided by DOI was complete. We also compared this population to DOI's Work Unit Roster of employees as of January 2009.

Personnel Review

We judgmentally selected 51 of the 304 employees whose office titles or payroll titles we deemed critical to the operations of DOI. The critical titles included Associate Commissioner, Assistant Inspector General, Inspector General, Chief of Staff, Deputy Director, Assistant Director of Payroll and Timekeeping, Examining Attorney, Computer Operations Manager, Confidential Investigator, and Special Investigator. We then conducted the tests detailed below for the 51 employees.

To determine whether the employees met the educational qualifications for their payroll titles, we first reviewed their title specifications, which we obtained from the DCAS Title Specifications Online Web site. The Web site did not provide specifications for those employees who held non-competitive and exempt class titles.³ Instead, DOI officials provided for review the title specifications in their internal Job Specifications Book and Recruitment Postings Book.

We then checked whether the employees had the necessary credentials (i.e., college degree, Juris Doctor degree, college transcript, and high school diploma) and that copies of the credentials were maintained as required by Comptroller's Directive #13. To do so, we not only reviewed the personnel files for the credentials, but we also obtained correspondence with educational institutions requesting (and receiving) verification of diplomas and degrees from the Executive Director-Assistant Commissioner of the Background Investigation Unit.

We reviewed the personnel files for the employees to determine whether the files contained documentation necessary for the hiring and promoting process, including:

- Comprehensive Personnel Documents and, if applicable, Updated Personnel Documents,
- Terms and Conditions of Appointment forms (completed by a candidate and approved by a DOI representative prior to hiring and for any change in title),
- Drug-testing results from a medical laboratory (for applicable exempt and non-competitive class titles),

³At the time of our review, the title specifications for the non-competitive class titles in our sample were not made available on the DCAS Title Specifications Online Web site as they should have been. Thus, we obtained the specifications from DOI and verified them with DCAS.

- Employment Eligibility Verification I-9 Forms (completed by a candidate and a DOI representative prior to hiring and used to establish identity of the candidate and to confirm that he or she is authorized to work in the United States), and supporting documentation, such as copies of a U.S. Passport, a driver's license, a Social Security card, or a birth certificate,⁴
- Department of the Treasury Internal Revenue Service W-4 Forms (federal Employee's Withholding Allowance Certificate),
- New York State Department of Taxation and Finance IT-2104 Forms (State Employee's Withholding Allowance Certificate),
- Confidentiality of DOI Information forms, and
- Conflict of Interest Questionnaires.

Due to the sensitive nature of the documentation maintained by DOI's Background Investigation Unit, we were not granted access to review the unit's hard-copy files. As a result, we were not able to determine whether the required 41-page Background Investigation Questionnaires were entirely filled out by the employees in our sample. However, we reviewed the personnel files for correspondence (i.e., e-mails and memos) from the Background Investigation Unit to Human Resources giving clearances for the hiring of the employees based on its review and verification of data provided in the Background Investigation Questionnaires.

We reviewed the Terms and Conditions of Appointment documents for the employees and determined whether the employees were required to be City residents. If so, we obtained address information for the employees in the personnel files and assessed whether the addresses were within the City. If they were not, we checked whether the employees became City residents within 90 days of commencing employment, as required.

We also obtained address information from public record electronic databases for the employees who were required to be City residents. We then ascertained whether the employees were City residents at the time they were hired, at the time they entered their respective titles, and at the time we obtained the information (February and March 2009).

Payroll Review

Salaries of Employees

To determine whether employees were paid within the salary ranges of their associated payroll titles set by DCAS, we randomly selected 50 of the 302 employees.⁵ Next, we determined the current salary for each employee as well as the payroll title associated with the salary. We then reviewed the DCAS Title Specifications Online Web site and noted the salary information for the titles of each of the 50 employees. Eleven of the 50 employees did not have salary ranges set

⁴DOI's practice is to make copies of original supporting documentation and to maintain them in the personnel files as part of its internal control procedures and as evidence that the identity and employment eligibility of the candidate has been submitted and verified.

⁵Salary histories were not included for 2 of the 304 employees.

by DCAS, based on their titles—eight were in exempt class titles, one was in a temporary title (pending classification), and two were in other than per annum titles (hourly). The remaining 39 employees were either in competitive or non-competitive class titles that had salary ranges set by DCAS. Therefore, we conducted the salary test for only the 39 employees.

In addition, to determine whether there was support for merit or collective bargaining increases, we judgmentally selected 20 employees who had the highest salary increases. We then reviewed their personnel files and determined whether the files contained authorization and adequate justification for the salary increases, such as signed letters from the Commissioner of DOI and Personnel Action Forms authorized by the Director of Human Resources.⁶ Finally, we determined whether the amounts of the increases that were authorized, as indicated in the files, were in fact the same amounts reflected in PMS.

We randomly selected 20 on-loan employees and reviewed PMS information for these employees in March 2009. Our purpose was to check whether these employees were paid only by their own agencies, not DOI.

Separated Employees

We reviewed the DOI provided data of the 61 separated employees and ascertained whether the proposed lump sum payments made to the managerial employees (11 of them) were approved by the Comptroller's Office prior to making the actual payments. In addition, we randomly selected 10 of the 61 separated employees and determined whether the personnel files for these employees contained all documents necessary for the separation process. For the 9 employees who were non-managerial, we determined whether the separation payments were properly calculated based on the leave balances they had at the time their employment ended with DOI. For 6 of the 9 non-managerial employees who resigned from City service, we checked PMS to see whether they were removed from PMS when all leave balance payments were exhausted.

Timekeeping Review

Comp Time

We independently generated a PMS listing of all DOI employees who earned comp time during July 1, 2007, through October 24, 2008, and determined that there were a total of 223 employees who had earned approximately 24,000 hours of comp time. We then assessed whether any of the employees were managerial who, according to City regulations, are not allowed to accrue comp time. If we identified such individuals, we determined whether their comp time was earned prior to becoming a manager, and if earned while a manager, we determined whether it was adjusted.

We judgmentally selected 10 of the 223 employees who had the highest comp time balances (accruals minus any adjustments) and judgmentally selected for each of these employees the two months in which accruals of comp time were the highest. For each of these

⁶Personnel Action Forms are generated from DOI's internal Personnel Information Tracking System and reflect all types of salary changes.

employees, we obtained supporting documentation, such as time sheets, ETRs, and Credit for Compensatory Time forms (comp time forms) and checked for the presence of appropriate signatures and justifications. In addition, we determined whether the comp time earned was correctly calculated.⁷

Based on our review of the payroll titles for these employees, we determined that 6 of the 10 employees were either in non-competitive or competitive class titles that are covered by the City comp time and paid overtime regulations. For these six employees, we determined whether DOI was enforcing these regulations requiring that non-FLSA⁸ comp time earned (PMS codes 300 and 301) be used within 120 days of its being earned. We also determined whether there were any waivers in the employee files allowing the non-FLSA comp time to be carried forward, and if there were no waivers, whether the time was converted to sick leave as required. The remaining four employees were in exempt class titles that are not covered by the City comp time and paid overtime regulations.

We also judgmentally selected 12 of the 223 employees who had the highest comp time adjustments to determine whether there was adequate supporting documentation for the adjustments, such as approved PMS Manual Leave Adjustments or PMS Employee Time Report Adjustments, as required by OPA guidelines and Comptroller's Directive #13. If any of the adjustments resulted from the vesting of comp time when an employee became a managerial employee, we determined whether the time was correctly vested by reviewing prior balances.

Paid Overtime

From PMS, we independently generated a listing of all DOI employees who earned paid overtime during July 2007, through October 2008, and determined that there were a total of 33 employees who were paid a total of \$23,428 for overtime earned—ranging from \$33 to \$7,923 for individuals. We judgmentally selected 11 employees who were paid the highest in overtime and obtained supporting documentation for all of the dates overtime was earned for each of the employees, such as time sheets, ETRs, and Paid Overtime forms (overtime forms), and checked for the presence of the appropriate signatures and justifications. In addition, we determined whether the overtime hours earned were correctly calculated and whether the hours earned as indicated on the time sheets matched the hours earned as indicated in PMS.

Based on our review of the payroll titles for these employees, we determined that 7 of the 11 employees were either in non-competitive or competitive class titles that are covered by the City comp time and paid overtime regulations. The remaining four employees were in exempt class titles that are not covered by these regulations.⁹

⁷Our review consisted of analyzing 101 time sheets, 101 ETRs, and 99 comp time forms (2 of the comp time forms were not accounted for and we were therefore unable to test them for appropriate signatures).

⁸FLSA refers to the Fair Labor Standards Act which sets minimum wage, overtime pay, equal pay, and record keeping for employees who are covered by the FLSA. The City comp time and paid overtime regulations regarding the use of comp time within 120 days of its being earned do not apply to FLSA comp time earned (PMS Code 302). Accordingly, we did not include this comp time in our analysis.

⁹Our review consisted of analyzing 136 time sheets, 136 ETRs, and 136 paid overtime forms.

Excess Annual Leave

From PMS, we independently generated a listing of all employees working for DOI who had annual leave balances as of February 2009 and judgmentally selected 20 employees who had the highest annual leave balances—ranging from 919 hours to 2,950 hours—and determined whether these employees had annual leave accumulations exceeding the amount earned during a two-year period (excess annual leave) as of December 31, 2008, for managerial employees, and as of April 30, 2008, for non-managerial employees. If we identified such employees, we reviewed their personnel files and determined whether there were any waivers allowing the time to be carried forward. If there were no waivers, we determined whether the time was converted to sick leave, as required.

Monitoring of Undocumented Sick Leave

We obtained Absence Control Reports from PMS for its non-managerial employees for sick leave periods covering July 1, 2007, through March 4, 2009. We determined whether there were any periods that employees were restricted from use of additional sick leave without medical documentation, and if there were such cases, whether there were any subsequent periods in which these employees continued to use undocumented sick leave. For any employees who continued to use undocumented sick leave despite restrictions, we reviewed their personnel files to determine whether DOI informed them of the restrictions and whether there were any approved waivers for the restrictions.

The results of our various samples, while not projected to their respective populations, provided a reasonable basis for us to determine whether DOI has adequate controls over its personnel, payroll, and timekeeping practices.

Discussion of Audit Results

The matters covered in this report were discussed with DOI officials during and at the conclusion of this audit. A preliminary draft report was sent to DOI officials and discussed at an exit conference held on September 22, 2009. On December 2, 2009, we submitted a draft report to DOI officials with a request for comments. We received a written response from DOI officials on December 16, 2009. In their response, officials generally agreed with the audit's recommendations.

The full text of the DOI response is included as an addendum to this report.

FINDINGS AND RECOMMENDATIONS

DOI's controls over its personnel, payroll, and timekeeping practices were generally in accordance with applicable City rules, Comptroller's Directives, and its own formal procedures. Nevertheless, we identified certain minor areas where improvement is warranted.

We found that employees who were required to be City residents all lived within the five boroughs, that employees were paid within the salary ranges of their associated titles set by DCAS, that salary increases were authorized and adequately justified, that proposed lump sum payments made to employees who separated from DOI were approved by the Comptroller's Office prior to issuing the actual payments, and that managerial employees did not accrue comp time to which they were not entitled.

The following are some of the areas we identified where we believe DOI could improve its controls: maintenance of personnel documents, security of timekeeping files, segregation of duties between the payroll and timekeeping functions, and monitoring of annual leave and comp time balances and paid overtime.

The findings are discussed in greater detail in the following sections of the report.

Maintenance of Personnel and Timekeeping Files

Overall, we found that DOI generally maintained the required personnel and timekeeping documents. However, we found instances in which timekeeping files and personnel documents were misplaced. We also found that some timekeeping files were maintained in an area that was accessible to non-timekeeping personnel.

Misplaced Personnel and Timekeeping Documents

For 47 (92 percent) of the 51 employees in our sample, DOI was able to produce all personnel documents that it was required to maintain in these employees' files. Although we found the majority of the documents necessary for the hiring and promotion process in the employee files for our sampled employees, we believe that DOI could improve how the personnel records are managed.

During our review of the personnel files for the 51 employees, we found a few instances in which various documents pertaining to employees were misplaced in other employees' files. For example, we initially noted that a sampled employee's file lacked many documents that were subsequently found in the file of another employee in our sample. For another employee in our sample, we found someone else's performance appraisal in addition to the appraisal for that employee.

In addition, we found that the personnel records for employees in our sample were not always consistently maintained. For instance, although Employment Eligibility Verification I-9 Forms (I-9 Forms) and supporting documentation were to be maintained in a separate "I-9 Form File," we found that for some employees these documents were maintained in the personnel files,

while for other employees these documents were found in the separate “I-9 Form File.” Furthermore, the personnel file for some of the employees in our sample were not labeled as containing multiple volumes and the volumes were not always filed together.

As a way to improve the efficiency of the maintenance of personnel records, DOI should consider formalizing the maintenance practice of its records. One possibility would be to devise a list of all files maintained by the Personnel Unit, the location of the files, and the specific documents they contain. Such a list would ensure that the appropriate officials are aware of where the documents are maintained and that the documents are properly accounted for, retained, and organized in a manner that will ensure prompt retrieval.

With regard to timekeeping files, DOI could not initially find the files for 5 (42 percent) of the 12 employees we judgmentally selected to determine whether there was adequate supporting documentation for comp time adjustments. In addition, for one of the remaining 7 files that were found, the timekeeping records for four months were not present. According to the Director of Human Resources, the six employees had either transferred to another City agency or resigned from City service. Subsequent to the issuance of the preliminary draft report, however, DOI officials stated that they located the files for the five employees. (They were in the possession of the timekeepers who had not placed the files back in the file room after they completed the necessary paperwork for the employees’ separation.)

Additionally, our review of the employees’ files revealed that there was one employee who, based on her payroll title and the title specifications set by DCAS dated May 17, 1977, was required to have a license to practice law in New York State. However, there was no evidence in the employee’s personnel file that she obtained the license. DOI officials believed that the employee was in an exempt class title and provided specifications for this employee’s job from DOI’s internal Job Specifications Book, which did not contain a requirement for a law license. Officials further informed us that there are other employees in the same payroll title as the cited employee who *are* required to have licenses to practice law due to the nature of their jobs.

DOI officials also stated that according to DCAS, the Department of Personnel proposed a “class specification revision in 1989” that affected the duties, responsibilities, and qualification requirements for the title of the above-mentioned employee. They further stated that there appears to be no record of DOI’s approval of this revision for the title. Therefore, DOI’s understanding is that the revision—which would have eliminated the qualification requirement to have a license to practice law in New York State—was not adopted, and the original class specification for the title dated May 17, 1977, still remains in effect. DOI officials concluded that this finding “evidences an unfortunate lack of communication between two City agencies that began more than two decades ago.”

We met with the DCAS Director of the Classification and Compensation Division of Citywide Personnel Services, who stated that the above-mentioned employee is in a non-competitive class title and that DOI must therefore adhere to the title specifications set by DCAS, which require a license to practice law. The Director further stated that an agency has to file an appeal with DCAS if it wants to modify a specification that has been set by DCAS. DOI officials informed us that they have “contacted DCAS in order to resolve this issue.”

DOI Response: “The Audit Report . . . states: ‘For 47 (92 percent) of the 51 employees in our sample, DOI was able to produce all personnel documents that it was required to maintain in these employees’ files.’ Based on our review, DOI produced such documents for 49 (not 47) of the 51 employees reviewed by the auditors (96 percent rather than 92 percent).”

Auditor Comment: Four of the 51 employees in our sample had documents lacking in their files—one lacked a W-4 Form and three lacked copies of original supporting documentation that is to accompany the I-9 Forms.

Some Timekeeping Files Are Maintained in a Location Accessible to Non-Timekeeping Personnel

The timekeeping files (i.e., leave forms, weekly time sheets, ETRs, comp time forms, and overtime forms) were not all safeguarded in a manner so that they were only accessible to timekeeping personnel. According to Section 8.2 of Comptroller’s Directive #13, timekeeping records must be properly maintained and “safeguarded, retained and organized in a manner that will ensure prompt retrieval.”

During our audit scope period, there were two employees—the Timekeeper and the Payroll Officer who assisted her—who had timekeeping responsibilities such as reviewing time sheets for accuracy and for completing ETRs. One employee maintained all of her timekeeping files in a secure file room. However, the other employee maintained her timekeeping files for January 2008 through the present in various boxes near her desk. This employee stated that she maintained timekeeping files prior to January 2008 in the file room, but added that the room is too “tight,” and therefore maintains more current files in the boxes at her desk. However, these files are accessible to other employees on her floor, some of whom belong to several other units (i.e., Personnel and Payroll). Consequently, these files do not appear to be fully safeguarded in a manner consistent with Directive #13. DOI officials stated that the “boxed items are in the process of being filed away in the file room” and that they are in “the process of archiving many files and going through the retention schedule review for proper handling of records.”

We brought all matters concerning the record-keeping practices of both the personnel and timekeeping files to the attention of the Director of Human Resources, who agreed that better controls need to be implemented.

In addition to the above matters, for approximately two years, the Payroll Officer has not only been responsible for the timekeeping function but has also been responsible for the payroll function. Section 6.1 of Comptroller’s Directive #13 states that “the payroll office or unit . . . must never be under the supervision of the personnel or timekeeping office. . . .its employees must not have access to the timekeeping records that are the basis for payroll production and must not have the authority to authorize payroll actions.” Subsequent to the issuance of the preliminary draft report, DOI officials stated that the individual cited is no longer responsible for handling both the timekeeping and payroll functions.

Recommendations

DOI should ensure that it:

1. Strengthens the controls over its record-keeping practices. All records pertaining to the personnel and timekeeping processes should be securely maintained in an organized manner. Such controls may include the development of a checklist to indicate all of the files maintained by the Personnel Unit, the location of such files, and the specific documents they contain.

DOI Response: “DOI’s personnel and timekeeping files are kept in a secure location – a separate filing room that is locked at all times and access to which is limited to certain authorized DOI personnel.”

Auditor Comment: We are pleased that DOI officials will ensure that the personnel and timekeeping files are kept in a secured filing room that is accessible to certain authorized DOI personnel. However, DOI’s response does not address the maintenance and organization of its files. Based on the audit findings discussed previously, we believe that DOI should take additional steps to ensure that both the personnel and timekeeping files are maintained in a more organized manner.

2. Continues its communication with DCAS to ensure adherence to the title specifications set by DCAS for all employees appointed to positions in competitive and non-competitive class titles. If DOI believes that any DCAS specifications need to be modified, it should file an appeal.

DOI Response: “The revision of the Assistant Commissioner title specification at issue was the subject of a dialogue between DCAS and DOI two decades ago resulting in agreement between DCAS and DOI that a law degree was not necessary for this position. Since the audit, DOI has communicated with DCAS, and the title specification has been amended to reflect that a law degree is not required.”

Results of Timekeeping Review

Monitoring Excess Annual Leave

DOI does not always ensure that approved waivers are granted to non-managerial employees who carry annual leave exceeding the maximum limit. Seventeen (85 percent) of the 20 employees who had the highest annual leave balances as of February 2009 had annual leave accumulations exceeding the amount earned during a two-year period without the appropriate waivers. The excess annual leave for these employees ranged from 541 hours (approximately 77 work days) to 1,751 hours (approximately 250 work days).

Section 4.3 of the City leave regulations for managerial employees and Sections 2.3 and 2.4 of the City regulations for non-managerial employees require that to maintain leave balances in

excess of what can be earned in two years an employee must obtain a waiver authorized by the agency head for the excess leave to be carried forward. The waiver should include a prescribed period during which the excess leave should be exhausted. Any leave not used within the prescribed period must be transferred to an employee's sick leave balance. Without approved waivers, any excess annual leave must be converted to sick leave.

We found that 3 of the 20 employees in our sample were managerial employees. Two of these employees had waivers authorized by the Commissioner for their excess annual leave as of December 31, 2008, to be carried forward. The third employee, who had resigned on July 21, 2007, had a waiver authorized by the Commissioner for his excess annual leave as of December 31, 2006, to be carried forward. However, for the remaining 17 employees in our sample who were non-managerial, there were no waivers for their excess annual leave as of April 30, 2008, to be carried forward. The most current waivers on file for these 17 employees were for excess annual leave as of April 30, 2007. Thus, the excess annual leave should have been converted to sick leave for the non-managerial employees.

If an employee's excess annual leave is not converted to sick leave and the employee separates from City service, then at the time of the separation, he or she is entitled to receive the value of the earned annual leave payable at the current salary. However, if the excess annual leave is transferred to the employee's sick leave balance and the employee separates from City service, then the City would pay less for leave balances since departing employees are not entitled to receive all of their sick leave.

We brought this matter to the attention of DOI officials who stated that they are aware of the situation and are looking into it. Subsequent to the issuance of the preliminary draft report, DOI officials stated that they are preparing waivers for the 17 non-managerial employees for the leave year ending April 30, 2009.

Monitoring of Comp Time and Paid Overtime

DOI Did Not Convert Non-FLSA Comp Time Not Used to Sick Leave within 120 Days of Its Being Earned

DOI does not ensure that approved waivers are granted to non-managerial employees in competitive or non-competitive class titles who carry non-FLSA comp time beyond 120 days of its being earned, as required by Section 5.0 of the City comp time and paid overtime regulations.¹⁰

City comp time and paid overtime regulations state that non-FLSA comp time that is not used within 120 days of its being earned must be converted to sick leave unless an approved waiver is obtained from the agency allowing the comp time to be carried forward. All 6 of the 10 employees we judgmentally selected in our sample who were either in non-competitive or competitive class titles carried non-FLSA comp time beyond the 120-day limit, a total of

¹⁰Originally, the City comp time and paid overtime regulations stated that non-FLSA comp time was to be used within 90 days of its being earned. However, the time period was changed to 120 days, as indicated in Article IV, Section 10, of the Citywide Agreement.

approximately 1,816 hours—ranging from 35 hours to 742 hours. (The remaining four employees were in exempt class titles that are not covered by the City comp time and paid overtime regulations.) We reviewed the personnel files for these six employees and found that none contained waivers allowing the non-FLSA comp time to be carried forward until it could be liquidated at a time prescribed by the agency. Thus, the 1,816 hours should have been converted to sick leave.

With regard to the employees in exempt class titles, a DCAS official stated that salaries for exempt class titles are not set by DCAS but rather by the hiring agencies. Consequently, the issue of whether employees in these titles should be allowed to earn any comp time and paid overtime needs to be determined by the hiring agencies.

Employees Forgo Lunch Breaks and Earn Comp Time or Paid Overtime without the Pre-Approval in Writing

During our review of the time records for comp time and paid overtime accruals, we found 63 instances involving 11 (52 percent) of 21 employees in our sample who had forgone the required one-hour lunch breaks and received either comp time or paid overtime without the preapproval with justification in writing.¹¹ In these instances, the employees calculated the total hours they worked in a day—which ranged from 6 ½ hours to 19 hours—by including the one-hour lunch breaks they did not take.

According to Section 162 of the New York State Labor Law, employees who work more than six hours extending over the noonday meal period (i.e., from 11:00 a.m. through 2:00 p.m.) are entitled to at least 30 minutes off within that period for a break. It also states that the agency head can permit a shorter time for meal periods, but must do so in writing.

The *Employee Manual* states that comp time may be earned during lunch breaks only for surveillance or when otherwise necessary and pre-approved. (The earning of paid overtime during lunch breaks is not mentioned at all in this manual.) Based on our review of the supporting timekeeping documents, it appears that forgoing lunch breaks to earn comp time or paid overtime may not always be done for “surveillance or when otherwise necessary,” nor is it “pre-approved.” For example, one of the employees during the two-month period of our review did not take her one-hour lunch breaks 15 times and earned comp time. There was no evidence that she conducted surveillances or that working through her lunches was necessary.

DOI officials stated that the “*Employee Manual* stipulates that comp time during lunch is permitted when otherwise necessary and pre-approved, but there is no particulars laid out as to how pre-approval needs to be evidenced. The pre-approval required can be evidenced by a phone call, a discussion, or an e-mail exchange.” DOI officials further stated that for the above-mentioned 63 instances we cited “all of the comp time and paid overtime (except for 8 instances involving one employee) was approved by an Assistant Commissioner or Deputy Commissioner and was therefore properly documented.” While our review of the comp time and overtime forms found this to be true, the written approvals were all granted after the comp time and paid overtime had already been earned.

¹¹The 21 employees consisted of the 10 employees who had the highest comp balances and the 11 employees who were paid the highest in overtime.

To clarify our understanding of the rules governing the earning and documentation of comp time and paid overtime, we consulted with the Assistant Commissioner of the Office of Labor Relations. She stated that “all overtime, including comp time and paid overtime, must be pre-approved in writing as stipulated in Article IV, Section 2, of the Citywide Agreement,” in order to avoid abuse.

Given the fact that many of DOI’s employees have hand-held devices such as BlackBerrys to communicate with each other, we do not foresee a problem with DOI’s requiring pre-approval in writing. Furthermore, while we understand that in emergency or unique situations prior approval in writing may not always be possible, we believe as part of best practices, overtime earned in these cases should be reported as soon as possible along with an explanation of the need for the overtime.

DOI Response: “The auditors’ reliance on Labor Law §162 in their findings is misplaced in that nothing in that statute requires workers to take a lunch break. The Court of Appeals in *American Broadcasting Companies, Inc. v. Roberts* held that Labor Law §162 creates a right, that like most other rights, can be knowingly, intelligently and voluntarily waived by the right’s holder. 61 N.Y.2d 244 (1984); in accord see *Cruz v. Amsterdam Nursing Home Corp.*, 79 A.D.2d 1081 (3d Dept. 1981). There is no evidence in the Audit Report that any DOI employee did not so knowingly, intelligently and voluntarily waive such right. DOI does not discourage the regular and necessary taking of a lunch break by its employees. The legislature’s underlying intent as expressed in the controlling case law is thus fulfilled.”

Auditor Comment: We acknowledge that Labor Law §162 does not contain a requirement that workers take a lunch break. However, DOI’s *Employee Manual* does contain such a requirement. It states, “All employees must take one-hour lunch unless circumstances pertaining to the business of the department warrant otherwise (i.e. surveillance).” Our analysis was based on this criterion.

Documentation for Overtime Paid to Employees

Section 2.0 of the City comp time and paid overtime regulations state that paid overtime is only to be granted when an employee has been directed, in writing, to work. Furthermore, the overtime can be authorized in writing by the agency head or a representative of the agency head only.

We reviewed supporting documentation for 11 of the 33 employees who were paid for overtime earned during July 2007, through October 2008. Two employees earned a significant amount of paid overtime during this period. DOI officials stated that more than six years ago, the agency identified a need for evening coverage and identified two employees who committed to working overtime. DOI officials further stated it is their position “that the operations of the agency indeed demand that this overtime work be performed.”

However, for one of the two employees, there were no letters in the personnel file indicating the need for that individual to work paid overtime. For the second employee, we found a letter in the personnel file dated February 4, 2003 authorized by the Deputy Commissioner and stating that the employee was offered paid overtime for late coverage, to be provided on a daily basis. However, based on the content of the 2003 letter, it appears as if the overtime was “offered,” meaning that the employee was free to accept or decline. If that were the case, the employee should have earned only comp time.

To ensure full compliance with City comp time and paid overtime regulations, DOI should ensure that the written justification and authorization for working mandatory overtime is maintained in the agency’s files.

Recommendations

DOI should:

3. Ensure that approved waivers are granted for any employees whose annual leave balance exceeds the maximum limit or for any employees in competitive and non-competitive class titles whose non-FLSA comp time has not been used within 120 days of its being earned. Any excess annual leave or non-FLSA comp time balances for which approved waivers are not obtained should be converted to sick leave in accordance with City regulations.

DOI Response: “For non-managers, annual leave waivers were on file and now include waivers for the leave year ending April 30, 2008.

“DOI will convert to sick time non-FLSA comp time that has not been used within 120 days of its being earned if approved waivers are not obtained.”

4. Ensure that the forgoing of lunch breaks and earning of either comp time or paid overtime is pre-approved in writing. DOI should consult with the Office of Labor Relations for any clarification regarding the rules governing the earning of and documentation for comp time and paid overtime.

DOI Response: “DOI will not permit the forgoing of lunch breaks and earning of either comp time or paid overtime by employees unless exigent circumstances are at hand. It is DOI’s practice to require employees to obtain pre-approval for comp time and paid overtime except in emergency or unique situations. In these situations, the justification for the comp time or paid overtime must be approved by the appropriate supervisor based on the written justification therefore provided by the employee.”

Auditor Comment: It is unclear from DOI’s response how the preapproval is to be evidenced. We continue to believe that DOI should ensure that the preapproval with justification is in writing to avoid abuse.

5. Investigate whether employees in exempt class titles should be allowed to earn comp time and paid overtime. Once a decision has been rendered, the procedures governing these titles should be formalized in the *Employee Manual*.

DOI Response: “DOI will review this issue and will include any appropriate information in the *Employee Manual*.”

6. Ensure that it documents in its files the authorization of paid overtime for the two employees cited in accordance with City comp time and paid overtime regulations.

DOI Response: “DOI’s records show that paid overtime request forms were properly completed, reviewed and approved for these employees by a Unit Supervisor and co-approved by a Deputy Commissioner or the Chief of Staff with the stated purpose for such overtime in each instance. . . .

“The night coverage is required and the overtime necessary to insure that coverage is not voluntary. This agency will continue its practice of requesting employees to work these mandatory hours.”

Auditor Comment: We are not questioning whether the agency needed the employees in question to work paid overtime. We merely state that DOI should ensure that the written justification and authorization for working mandatory overtime is clearly maintained in the agency’s files in accordance with City comp time and paid overtime regulations.

Procedures for Personnel, Payroll, and Timekeeping Practices Should Be Enhanced

We believe that the matters previously discussed could be addressed, at least in part, if DOI were to enhance the procedures over its personnel, payroll, and timekeeping functions. According to DOI officials, the procedures they follow are contained in the DOI *Employee Manual* and also in applicable City rules and Comptroller’s Directives. However, these documents do not fully detail the procedures for employees to follow in carrying out their responsibilities as they relate to the personnel, payroll, and timekeeping functions.

For example, the procedures regarding how DOI should monitor the time of its employees who must report directly to the field should be clarified. According to Section 4.6 of Comptroller’s Directive #13, “The system for recording time for field employees must be accompanied by adequate procedures for the control of time records and verification of attendance and job performance.” We acknowledge that work units may have different circumstances as to when the work day should start and when it should end for its employees who work in the field. Nevertheless, while the *Employee Manual* does allow Unit Managers discretion regarding when to “calibrate the start of the clock,” more detailed parameters regarding how time is recorded should be developed to lower the risk that time abuse could occur.

Also, the *Employee Manual* does not include all leave regulations concerning both DOI managerial and non-managerial employees. For example, while it includes DCAS's "Leave Regulations for Management Employees," it does not include DCAS's "Leave Regulations for Employees who are Under the Career and Salary Plan" or DCAS's "Regulations Governing Compensatory Time Off, Compensation for Overtime, and Meal Allowances for City Employees."

Recommendations

DOI should:

7. Enhance its existing written procedures so that they sufficiently detail the personnel, payroll, and timekeeping processes to be followed by its work units.

DOI Response: "DOI implemented CityTime on June 15, 2009 so that payroll and timekeeping processes to be followed by our work units are now handled by CityTime. We will nonetheless evaluate the need for additional written procedures."

8. Ensure that its *Employee Manual* is updated to include regulations for both managerial and non-managerial employees, including but not limited to, DCAS's "Leave Regulations for Management Employees," "Leave Regulations for Employees who are Under the Career and Salary Plan," and "Regulations Governing Compensatory Time Off, Compensation for Overtime, and Meal Allowances for City Employees."

DOI Response: "The first regulation cited by the auditors, 'Leave Regulations for Management Employees,' was already in the *Employee Manual*. DOI will add the second regulation cited, "Leave Regulations for Employees who are Under the Career and Salary Plan," to the *Employee Manual*. We assume that the auditors know that the third regulation cited, 'Regulations Governing Compensatory Time Off, Compensation for Overtime, and Meal Allowance for City Employees' is outdated - when it is updated, DOI will incorporate it into the *Employee Manual*. It should be noted that the *Employee Manual* has been, and continues to be, updated from time to time and that other policy and procedure documents that govern DOI's practices are updated on an on-going basis."

Auditor Comment: We have no knowledge that the third regulation cited, "Regulations Governing Compensatory Time Off, Compensation for Overtime, and Meal Allowance for City Employees" is outdated; when we met with the DCAS Director of the Classification and Compensation Division of Citywide Personnel Services, she referred to this regulation and presented it as being currently in effect. Nevertheless, until the regulation is updated, DOI should include the most current in the *Employee Manual*.

Additional Matters

We identified several conditions that further illustrate the need for DOI to strengthen its controls. These conditions include instances in which: ETRs, comp time, and overtime forms lacked appropriate signatures, hours earned for comp time or paid overtime were either incorrectly calculated or incorrectly entered in PMS, and non-managerial employees continued to use sick leave without providing required medical documentation despite restrictions.

DOI officials stated that they believe many of the above-mentioned conditions will be alleviated since in June 2009, DOI replaced its manual timekeeping system with CityTime, which is an automated, secure, and Web-based time and attendance system. They stated that CityTime is configured to allow for the electronic approval of time sheets, comp time forms, and overtime forms only by the staff that has been authorized to exercise these functions. In addition, DOI officials stated that calculation and data entry tasks are no longer manually performed by timekeepers, and that comp time and paid overtime accruals are submitted on a weekly basis to PMS via CityTime for calculations and processing.

Recommendation

9. DOI should ensure through CityTime that:

- Time sheets, comp time forms, and overtime forms contain the appropriate approvals,
- Comp time and overtime accruals are accurately calculated and that these accruals are correctly entered in PMS,
- It monitors those employees who are restricted in the use of any more sick leave without medical documentation and notifies them of the restrictions. Unless the restrictions are waived, DOI should dock the pay for any employees who continue to use undocumented sick leave under sick leave restriction, and
- Any type of adjustment (i.e., use of annual or sick leave, and accrual and use of comp time and paid overtime) is adequately supported by the proper adjustment documents containing the required approvals.

DOI Response: “With the implementation of CityTime, DOI is monitoring and addressing undocumented sick leave through the Absence Control Program. Designed to track excessive undocumented use of sick leave and to help supervisors to detect and to correct undesirable trends, this Program uses a system of ‘steps’ to correct undesirable patterns of absence. It also enables DOI to determine what disciplinary actions, if any, may be warranted by each absence. In accordance with this Program, DOI makes every effort to monitor excessive undocumented use of sick leave in order to ensure that undesirable patterns are addressed immediately and corrective actions are taken to prevent future occurrences.”



The City of New York
Department of Investigation

ROSE GILL HEARN
COMMISSIONER

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212-825-5900

December 16, 2009

John Graham
Deputy Comptroller
Audits, Accountancy & Contracts
Office of the Comptroller
1 Centre Street
New York, New York 10007

**RE: Audit Report on the Controls over Personnel,
Payroll, and Timekeeping Practices at the
Department of Investigation
MH09-092A**

Dear Deputy Comptroller Graham:

Attached please find the Department of Investigation's response to the above-captioned Audit Report received on December 2, 2009.

Very truly yours,

A handwritten signature in black ink, appearing to read "Vincent E. Green".

Vincent E. Green
Deputy Commissioner

Attachment

**AGENCY'S RESPONSE, DATED DECEMBER 16, 2009, TO THE DRAFT
COMPTROLLER'S AUDIT REPORT, DATED DECEMBER 2, 2009, ON THE
CONTROLS OVER PERSONNEL, PAYROLL, AND TIMEKEEPING
PRACTICES AT THE DEPARTMENT OF INVESTIGATION**

1. Comptroller Recommendation #1. DOI should ensure that it strengthens the controls over its record-keeping practices. All records pertaining to the personnel and timekeeping processes should be securely maintained in an organized manner. Such controls may include the development of a checklist to indicate all of the files maintained by the Personnel Unit, the location of such files, and the specific documents they contain.

DOI Response: DOI's personnel and timekeeping files are kept in a secure location - a separate filing room that is locked at all times and access to which is limited to certain authorized DOI personnel. In addition, the building has multiple levels of security and DOI has additional security supplemental to the building's security. Thus, even those timekeeping records that were in boxes at or near a timekeeper's workstation located on the same floor as the records filing room for such timekeeper's day to day use were securely maintained. It should be noted that DOI implemented CityTime on June 15, 2009 so that timekeeping records are now electronically created and stored.

The Audit Report states that for approximately two years, the Payroll Officer had not only been responsible for the timekeeping function but had also been responsible for the payroll function. Prior to that two-year period that had not been the case. Due to a staffing shortage for what became a protracted period when DOI's former Director of Payroll and Timekeeping was on medical leave followed by his retirement, the agency was forced to collapse temporarily certain payroll and timekeeping functions so that DOI had one primary timekeeper and one payroll officer who assisted the primary timekeeper. A new Director of Timekeeping was hired last Spring and timekeeping and payroll duties are now segregated in compliance with Section 6.1 of Comptroller's Directive #13.

The Audit Report also states: "For 47 (92 percent) of the 51 employees in our sample, DOI was able to produce all personnel documents that it was required to maintain in these employees' files." Based on our review, DOI produced such documents for 49 (not 47) of the 51 employees reviewed by the auditors (96 percent rather than 92 percent).

2. Comptroller Recommendation #2. DOI should ensure that it continues its communication with DCAS to ensure adherence to the title specifications set by DCAS for all employees appointed to positions in competitive and non-competitive class titles. If DOI believes that any DCAS specifications need to be modified, it should file an appeal.

DOI Response: As the auditors know, DOI disagrees with the finding that the position identified by them requires a license to practice law in New York State. This position, namely, the Assistant Commissioner for Administration and Operation, does not require a law degree. The responsibilities for this position include oversight of various DOI units,

such as Fiscal, Training, Specialized Training (Baton, Defense Tactics, Firearm, etc.), IT and Tech and Facilities Management; a law degree is not required to carry out these responsibilities since no legal functions are performed.

The revision of the Assistant Commissioner title specification at issue was the subject of a dialogue between DCAS and DOI two decades ago resulting in agreement between DCAS and DOI that a law degree was not necessary for this position. Since the audit, DOI has communicated with DCAS, and the title specification has been amended to reflect that a law degree is not required.

3. Comptroller Recommendation #3. DOI should ensure that approved waivers are granted for any employees whose annual leave balance exceeds the maximum limit or for any employees in competitive and non-competitive class titles whose non-FLSA comp time has not been used within 120 days of its being earned. Any excess annual leave or non-FLSA comp time balances for which approved waivers are not obtained should be converted to sick leave in accordance with City regulations.

DOI Response: It is DOI's practice to issue excess annual leave waivers to employees. Any excess annual leave not approved by a waiver will be converted to sick leave. For non-managers, annual leave waivers were on file and now include waivers for the leave year ending April 30, 2008.

DOI will convert to sick time non-FLSA comp time that has not been used within 120 days of its being earned if approved waivers are not obtained. As the auditors know, after discussion with DCAS, we are advised such conversion of comp time is not typically done by City agencies.

4. Comptroller Recommendation #4. DOI should ensure that the foregoing of lunch breaks and earning of either comp time or paid overtime is pre-approved in writing. DOI should consult with the Office of Labor Relations for any clarification regarding the rules governing the earning of and documentation for comp time and paid overtime.

DOI Response: DOI will not permit the forgoing of lunch breaks and earning of either comp time or paid overtime by employees unless exigent circumstances are at hand. It is DOI's practice to require employees to obtain pre-approval for comp time and paid overtime except in emergency or unique situations. In these situations, the justification for the comp time or paid overtime must be approved by the appropriate supervisor based on the written justification therefor provided by the employee.

The auditors' reliance on Labor Law § 162 in their findings is misplaced in that nothing in that statute requires workers to take a lunch break. The Court of Appeals in *American Broadcasting Companies, Inc. v. Roberts* held that Labor Law § 162 creates a right, that like most other rights, can be knowingly, intelligently and voluntarily waived by the right's holder. 61 N.Y.2d 244 (1984); in accord see *Cruz v. Amsterdam Nursing Home Corp.*, 79 A.D.2d 1081 (3d Dept. 1981). There is no evidence in the Audit Report that any DOI employee did not so knowingly, intelligently and voluntarily waive such right.

DOI does not discourage the regular and necessary taking of a lunch break by its employees. The legislature's underlying intent as expressed in the controlling case law is thus fulfilled.

The Audit Report noted a day where a DOI employee worked for 19 hours without lunch. This was because that employee was the female peace officer assigned to an arrest operation and the processing of female detainees.

5. Comptroller Recommendation #5. DOI should investigate whether employees in exempt class titles should be allowed to earn comp time and paid overtime. Once a decision has been rendered, the procedures governing these titles should be formalized in the *Employee Manual*.

DOI Response: DOI will review this issue and will include any appropriate information in the *Employee Manual*.

6. Comptroller Recommendation #6. DOI should ensure that it documents in its files the authorization of paid overtime for the two employees cited in accordance with City comp time and paid overtime regulations.

DOI Response: DOI's records show that paid overtime request forms were properly completed, reviewed and approved for these employees by a Unit Supervisor and co-approved by a Deputy Commissioner or the Chief of Staff with the stated purpose for such overtime in each instance.

As we said to the auditors, the nature and work of this extremely busy office goes on well beyond regular business hours and two administrative employees, who alternate their evening shifts, generally work overtime until from anywhere between 7:30PM and 9:00PM for approximately six senior staff members. Due to the confidential nature of DOI's work, the specifics of what they do are not detailed, nor is that necessary. Moreover, these two employees are from our Background and Vendex Units, respectively. The volume of work in our Background and VENDEX Units is formidable, thus, these employees who provide needed coverage during busy evening shifts, also get work done from their regular docket. They are doing economically efficient double duty.

The auditors also noted that the overtime for one of these two employees was "offered" to her and that, since she was free to accept or decline it, this employee should have only earned comp time. The night coverage is required and the overtime necessary to insure that coverage is not voluntary. This agency will continue its practice of requesting employees to work these mandatory hours.

7. Comptroller Recommendation #7. DOI should enhance its existing written procedures so that they sufficiently detail the personnel, payroll, and timekeeping processes to be followed by its work units.

DOI Response: DOI implemented CityTime on June 15, 2009 so that payroll and timekeeping processes to be followed by our work units are now handled by CityTime. We will nonetheless evaluate the need for additional written procedures.

8. Comptroller Recommendation #8. DOI should ensure that its *Employee Manual* is updated to include regulations for both managerial and non-managerial employees, including but not limited to, DCAS's "Leave Regulations for Managerial Employees," "Leave Regulations for Employees who are Under the Career and Salary Plan," and "Regulations Governing Compensatory Time Off, Compensation for Overtime, and Meal Allowances for City Employees."

DOI Response: The first regulation cited by the auditors, "Leave Regulations for Managerial Employees," was already in the *Employee Manual*. DOI will add the second regulation cited, "Leave Regulations for Employees who are Under the Career and Salary Plan," to the *Employee Manual*. We assume that the auditors know that the third regulation cited, "Regulations Governing Compensatory Time Off, Compensation for Overtime, and Meal Allowances for City Employees" is outdated – when it is updated, DOI will incorporate it into the *Employee Manual*. It should be noted that the *Employee Manual* has been, and continues to be, updated from time to time and that other policy and procedure documents that govern DOI's practices are updated on an on-going basis.

9. Comptroller Recommendation #9. DOI should ensure through CityTime that:

- Time sheets, comp time forms, and overtime forms contain the appropriate approvals,
- Comp time and overtime accruals are accurately calculated and that these accruals are correctly entered in PMS,
- It monitors those employees who are restricted in the use of any more sick leave without medical documentation and notifies them of the restrictions. Unless the restrictions are waived, DOI should dock the pay for any employees who continue to use undocumented sick leave under sick leave restriction, and
- Any type of adjustment (i.e., use of annual or sick leave, and accrual and use of comp time and paid overtime) is adequately supported by the proper adjustment documents containing the required approvals.

DOI Response: As a matter of practice, a methodical review is done to ensure appropriate approvals are obtained for weekly timesheets, comp time forms, and overtime forms. Since the implementation of CityTime, all forms are tracked for appropriate approvals by authorized personnel before being electronically processed through PMS. Calculation and data entry tasks are accordingly no longer manually executed by timekeepers. Rather, comp time and overtime earnings are submitted electronically on a weekly basis to PMS via CityTime for calculation and processing.

With the implementation of CityTime, DOI is monitoring and addressing undocumented sick leave through the Absence Control Program. Designed to track excessive undocumented use of sick leave and to help supervisors to detect and to correct

undesirable trends, this Program uses a system of "steps" to correct undesirable patterns of absence. It also enables DOI to determine what disciplinary actions, if any, may be warranted by each absence. In accordance with this Program, DOI makes every effort to monitor excessive undocumented use of sick leave in order to ensure that undesirable patterns are addressed immediately and corrective actions are taken to prevent future occurrences.