



M E M O R A N D U M

SUBJECT: Audit of WMATA's Separated Employees'
Unearned Annual Leave Overpayments
(OIG 19-01)

DATE: August 1, 2018

FROM: OIG – Geoffrey A. Cherrington *GA*

TO: GMGR – Paul J. Wiedefeld *PJW*

As part of the *Audit of WMATA's Human Resources Separation Process*, the Office of Inspector General (OIG) assessed unearned annual leave overpayments made to separated non-represented employees. We found the Washington Metropolitan Area Transit Authority (WMATA) paid unearned annual leave to 429 non-represented employees, a total of over 37,000 hours, upon separating from the Authority. As of December 2017, the unearned annual leave overpayments totaled over \$1.9 million in a 24-month period. While OIG realizes paying for unearned annual leave is considered a benefit, WMATA is facing serious financial challenges and constantly needs to evaluate new ways to achieve cost savings.

WMATA agreed to review the current policy and determine an appropriate eligibility criteria for inclusion in the policy, with particular attention to entitlement of employees separating from the Authority. OIG will close the recommendation when the policy has been updated, which is scheduled to be completed by August 31, 2018.

Background

In 2016, WMATA adopted an "at-will"¹ condition of employment for non-represented employees.² As a means to provide consideration for the change in employment status, WMATA enhanced existing Policy Instruction (P/I) 7.5.5/1 so that non-represented employees would receive the full annual leave allotment on January 1 of each year. As a result, non-represented employees were able to separate from WMATA and receive unearned annual leave,³ which OIG classifies as overpayments.

¹At-will employment is defined as employment undertaken without a contract and that may be terminated at any time, by either the employer or the employee, with or without cause.

²Non-represented employee refers to any employee who is not within a unit of employees represented by an exclusive bargaining agreement.

³Unearned annual leave means annual leave not received in exchange for labor or services.

What is Required

A chronology of WMATA's policies and notices on annual leave follows:

- Staff Notice 2015-045, *Annual Leave Accrual Change*, dated December 17, 2015, states, "Effective January 1, 2016, non-represented employees in grades 12 through 15, regardless of salary plan, will accrue 100% of their annual leave entitlement on January 1 and each year thereafter."
- WMATA's P/I 7.3.3/2, *Separation from Employment*, dated September 1, 2016:
 - Section 4.03 states, "Final pay will include any recorded overtime, non-exempt compensatory time and unused annual leave, less any Outstanding Claims. Exempt recorded compensatory time is forfeited on the date of separation."
 - Appendix A states, "ACCT/PAYROLL computes the final pay, including recorded annual leave and non-exempt compensatory time owed to the employee."
- WMATA's P/I 7.5.5/1, *Leave*, dated September 1, 2016, Appendix A states, "Beginning January 1, 2017, employees will receive their full allocation of annual leave during the first week of January and every January 1 thereafter. Employees in grades 15 and below are allocated leave based on continuous years of service on a calendar year basis..." Also, it states, "Employees in grades 16 and above are provided 27 days on a prorated basis on the date of hire, appointment or promotion, and 27 days on January 1 of every year thereafter."
- Staff Notice 2016-043 REVISED, *Administrative Notice: Human Resources Policy Revisions*, dated September 8, 2016, addresses the annual leave allotment and establishes an at-will condition of employment for all non-represented employees.

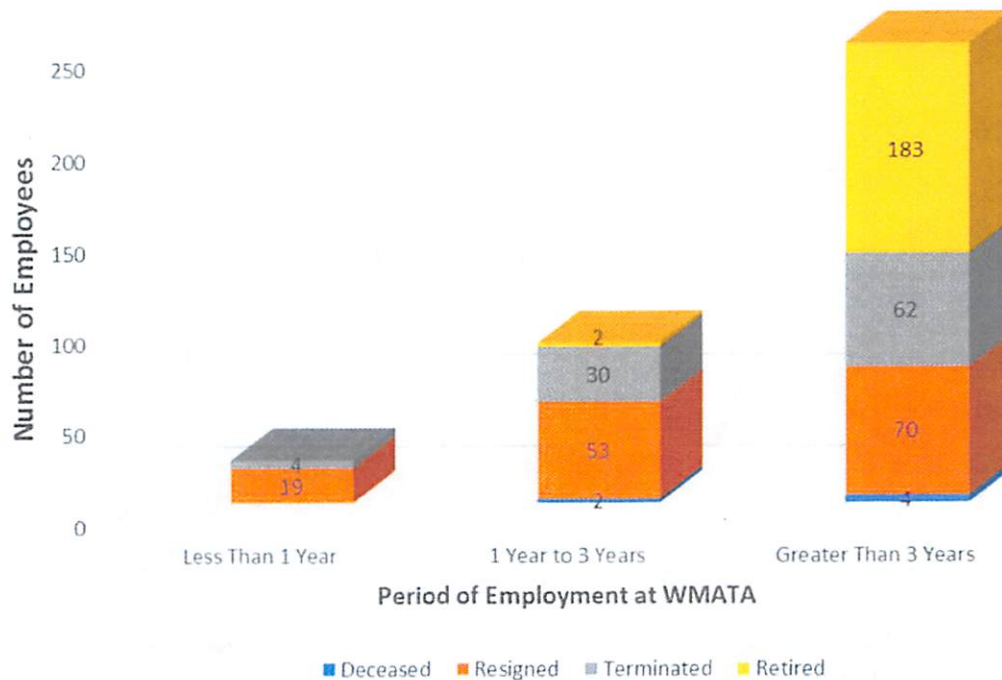
We benchmarked other entities and found mixed results. While WMATA is not required to follow federal regulations, the Federal Government requirements under Code of Federal Regulations 630.209 states, "When an employee who is indebted for unearned annual leave is separated, the agency shall require him to refund the amount paid him for the period covering the leave for which he is indebted or deduct that amount from any pay due him."

In addition, we contacted other mass transport authorities (MTA) and found one MTA paid unearned annual leave while two other MTAs did not pay it upon employees' separating from their respective authorities.

What We Found

WMATA paid unearned annual leave to non-represented employees upon separating from the Authority. As of December 2017, WMATA paid 429 employees⁴ a total of over 37,000 unearned annual leave hours over a 24-month period (see chart below).

Calendar Years (CY) 2016 & 2017 Separated Non-Represented Employees

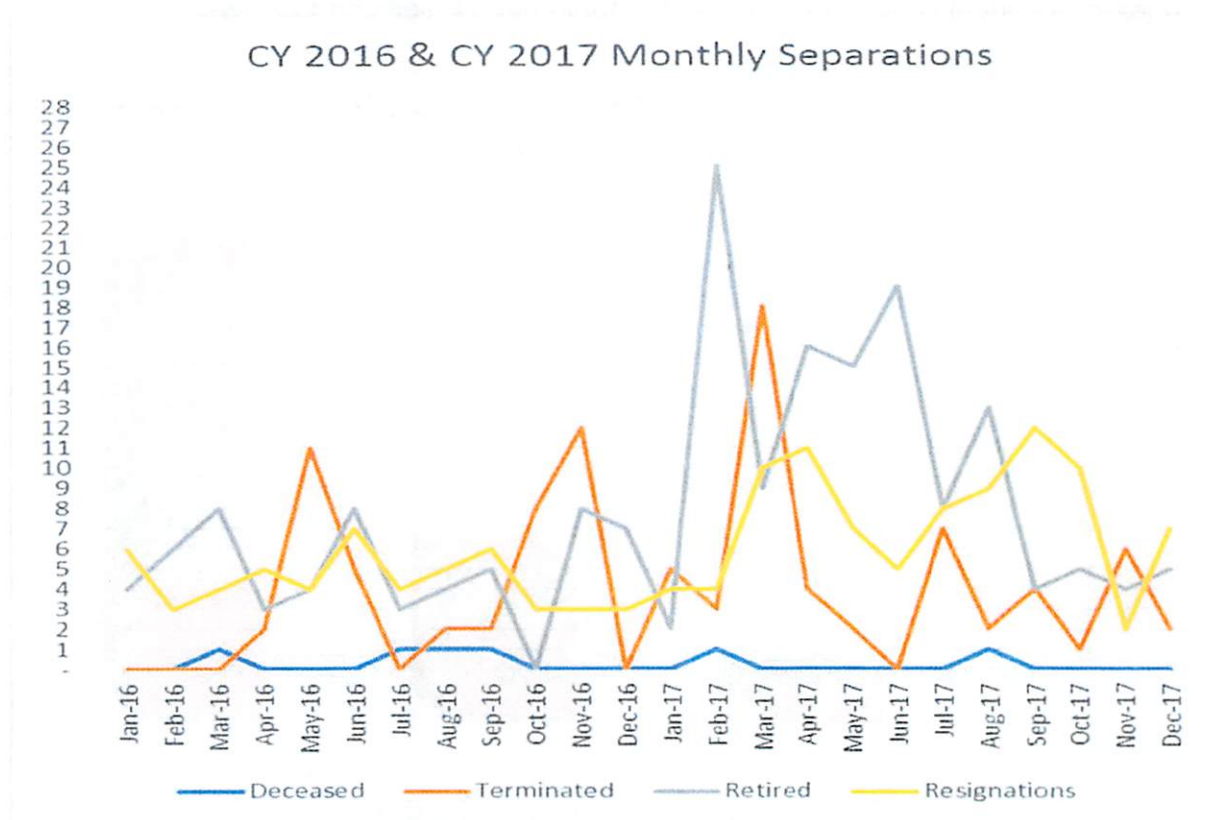


As shown in the chart, WMATA paid unearned annual leave to 23 separated employees with less than a year of employment at the Authority. Of these 23 separated employees, two were employed at WMATA for less than a month. Specifically,

- A separated non-represented employee only worked nine days in March 2017, and received \$5,171.15 in unearned annual leave overpayments for the 19 unworked pay periods.
- A separated non-represented employee only worked 16 days in September 2017, and received \$1,019.03 in unearned annual leave overpayments for the six unworked pay periods.

⁴This number does not include employees who separated from WMATA on the date of hire because they did not receive the full annual leave allotment.

There were 32 employees who received from \$10,000 to \$22,000 in unearned annual leave overpayments when they separated from WMATA. Also, there was a spike in non-represented employee separations in February 2017; specifically, retirements (see chart below). Retirements increased by 108.33 percent from Calendar Year (CY) 2016 to CY 2017.



Why This Occurred

The following contributed to the condition cited in the finding:

- *Unearned Annual Leave Overpayment is a Benefit* – WMATA pays for unearned annual leave as it is considered a benefit and was implemented in conjunction with the “at-will” condition of employment. WMATA’s Staff Notice, 2016-43 REVISED states, “The GM/CEO approved changes to HR policies in order to transition to an ‘at-will’ condition of employment.”
- *Policy is Unclear* – While WMATA P/I 7.5.5/1 includes paying for recorded annual leave, it does not specifically cover unearned annual leave as a type of leave, or the associated payment for separated employees. In addition, while WMATA P/I 7.3.3/2 requires WMATA to “pay recorded leave” upon separation, it does not specifically address paying for unearned annual leave. Furthermore, there are no stipulations in either policy for vesting periods, types of separations (voluntary or involuntary), or minimum periods of employment at WMATA.

Why This is Important

As of December 2017, the unearned annual leave overpayments totaled \$1,945,264 in the 24-month period. While OIG realizes paying for unearned annual leave is considered a benefit, WMATA is facing serious financial challenges and constantly needs to evaluate new ways to achieve cost savings.

Recommendation

We recommend the General Manager/Chief Operating Officer:

1. Cease paying unearned annual leave for separated non-represented employees who are "at-will," or develop and implement a policy addressing unearned annual leave. At a minimum, the policy should include eligibility requirements.

Management's Comments

During the exit conference, WMATA management indicated they will keep paying for unearned annual leave for separated non-represented employees as they consider the payout a benefit. WMATA agreed to review the current policy and determine an appropriate eligibility criteria for inclusion in the policy, with particular attention to entitlement of employees separating from the Authority (see Attachment). The Corrective Action Plan, due in 30 days from the issuance of this report, should address specific corrective actions to the recommendation. OIG will close the recommendation when the policy has been updated, which is scheduled to be completed by August 31, 2018.

Objective, Scope and Methodology

The objective of this audit was to assess unearned annual leave overpayments made to separated non-represented employees. This audit was the first phase of the announced audit entitled, *Audit of WMATA's Human Resources Separation Process*, which specifically focused on, among other things, unearned annual leave overpayments.

The scope of the audit was separated non-represented employees unearned annual leave payments in CYs 2016 and 2017. To accomplish our audit objective, we:

1. Reviewed relevant documents, including WMATA P/I's, Staff Notices, employee paystubs, and a section of the Code of Federal Regulations;
2. Interviewed employees from the Department of Human Resources, Department of the Chief Financial Officer, and the Office of Internal Compliance to obtain an understanding of the unearned annual leave process;
3. Evaluated the internal controls in place regarding unearned annual leave overpayments for separated employees;

4. Benchmarked Federal Government and other MTA practices on unearned annual leave; and
5. Extracted from Cognos Business Intelligence Reporting the universe of separated non-represented employees during the audit period. The unearned annual leave overpayments in the 24-month period was calculated using the employee's hourly rate of pay, multiplied by their remaining unearned annual leave balance at separation.

OIG assessed the data for accuracy, sufficiency, and appropriateness. We judgmentally selected 26 separated non-represented employees and validated the accuracy of the unearned annual leave payments using payroll records. We also selected separated non-represented OIG employees and tested specific elements including reason for separation, non-represented status, name, identification, separation effective date, balance of annual leave upon separation, hourly rate of pay, and total annual leave payout upon separation. We found this data to be reliable, without any exceptions.

On August 30, 2017, we held an entrance conference on the audit. Subsequently, we suspended the audit due to staff constraints and competing priorities. On February 14, 2018, we restarted the audit and concluded it in June 2018.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards required that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

M E M O R A N D U M



SUBJECT: Response to OIG's Draft Audit-19-XX, DATE: July 12, 2018
Separated Employees' Unearned
Annual Leave Overpayments

FROM: CIBO - John Kuo

THRU: GM/CEO - Paul J. Wiedefeld

TO: OIG - Geoffrey Cherrington

The following represents the Chief, Internal Business Operations' response to OIG's draft audit, Separated Employees' Unearned Annual Leave Overpayments.

OIG Recommendation 1:

Cease paying unearned annual leave for separated non-represented employees who are "at-will", or develop and implement a policy addressing unearned annual leave. At a minimum, the policy should include eligibility requirements.

Management's Response:

Management will consider OIG's recommendations, and will review the current policy and determine an appropriate eligibility criteria for inclusion in the policy; with particular attention to entitlement of employees separating from employment. The payout of unused annual leave to separating employees was all made in accordance with existing policy.