

# OFFICE OF THE INSPECTOR GENERAL SCHOOL DISTRICT OF PHILADELPHIA INVESTIGATIVE REPORT SYNOPSIS

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## INTRODUCTION

The Office of the Inspector General for the School District (OIG) received an allegation from the District's third-party administrator (TPA) for workers' compensation claims, that an employee received workers' compensation benefits while out on leave although the employee was fully capable of working. Additionally, the TPA alleged that the employee may have received alternative income or, at the very least, was self-employed while receiving workers' compensation benefits and filed false Pennsylvania Department of Labor & Industry Bureau of Workers' Compensation (LIBC) Forms 750 and 760 relating to wages and verification of employment in violation of Pennsylvania law. Furthermore, during the investigation the OIG discovered that the District approved the employee for professional development sabbatical leave immediately following the employee's return from workers' compensation injury leave and the employee failed to complete the required educational or professional development activities.

## APPLICABLE POLICIES

### *Worker's Compensation*

According to the District Workers' Compensation Manual ("Manual"), there is a defined process for employees and their supervisors to follow regarding work-related injuries. Employees seeking compensation for a work-related injury must strictly comply with the requirements outlined in the Manual.<sup>1</sup>

Per the Manual, workers' compensation is designed to provide wage loss benefits and reimbursement for reasonable medical care for an employee who is injured on the job. Additionally, workers' compensation law provides wage loss and medical benefits to employees who cannot work, or who need medical care because of a work-related injury. Further, it is incumbent upon employees to report any wages that they generate and any change in physical condition while receiving workers' compensation benefits.

Sections 3.11.1(a) & (b) of the Pennsylvania Worker's Compensation Act (Act) require employees who are receiving workers' compensation, or who have filed a petition to receive workers' compensation, to report earnings from employment or self-employment within thirty (30) days of beginning such employment or self-employment.

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<sup>1</sup> See Workers' Compensation Procedure Manual dated 3/27/2017 updated on 1/8/2020.

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Additionally, the Act requires employees who are receiving workers' compensation, or have filed a petition to receive workers' compensation, to verify employment, self-employment, wages and changes to physical condition. The employee reports such information by completing LIBC Forms 750 and 760.

Likewise, under the same Act, any individual who knowingly files misleading or incomplete information with the intent to defraud is in violation and may be subject to criminal and civil penalties. That is, it is incumbent upon employees to make accurate disclosures regarding alternative income or employment. An injured employee who seeks compensation under the Act must report wages and must verify their employment status.

### **Sabbaticals**

According to the District's website, there are three types of sabbaticals available to certain District staff. They are Professional Development, Restoration to Health, and Continuous Service. Professional Development sabbatical requires ten years of satisfactory service in public schools of the Commonwealth with at least five consecutive years of such service in the District. The Office of Talent Support Services oversees and manages professional development sabbatical leave through School Board Policy 338.1, "Compensated Professional Leaves." More specifically, the policy defines professional development sabbatical leave as "a leave of absence granted for the purpose of improving professional competency or obtaining a professional certificate or commission."

"Restoration to Health" sabbatical requires the employee to provide documentation from an attending physician and appropriate specialist to include dates of treatment, type of treatment, and current medical report. "Continuous Service" sabbatical requires 20 years of continuous service for Philadelphia Federation of Teachers represented employees only.

According to Section 2.8 of the Employee Handbook issued October 2017, a sabbatical must be for a period of one full school year, one half school year, or two half school years during a period of two years. During a sabbatical, employees receive one-half of their regular salary. Employees are entitled to the same medical, health, and life insurance benefits as active employees and the same retirement deductions will occur. Employees who fail to comply with the approved educational plan, unless prevented by illness or physical disability, shall forfeit all benefits for the period of the absence.

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## **OIG INVESTIGATION**

### **Workers' Compensation**

OIG investigators reviewed an audio recording of a consensually recorded conversation between a TPA representative and the employee as well as an investigative report from a private investigation agency, along with video surveillance of the employee's activities. The TPA representative contacted the employee to confirm details regarding the employee's injury claim and, suspecting that the employee may have additional employment, specifically questioned the employee about other sources of income and any other employment than the school district.

The TPA warned the employee that any person filing misleading or incomplete information knowingly or with intent to defraud is a violation of the Act and may be subject to criminal and civil penalties. Despite these warnings, the employee responded "no" to both questions pertaining to other employment or additional income. However, a surveillance report from the private investigation agency along with video footage of the surveillance indicated that the employee was indeed working at a personally owned business. Further, the video surveillance clearly showed the employee attending a medical appointment, driving a vehicle, and conducting day-to-day activities all in a normal manner without displaying any signs of a lingering injury for which the employee was receiving workers' compensation benefits.

OIG investigators did not find a social media presence for the employee but discovered a website featuring contact information related to the employee's business. Additionally, investigators confirmed through the local business center that the employee was, in fact, the owner and operator of the business and further corroborated that information through the franchisor. A representative of the franchising company told investigators that the employee was a franchisee since 2011 and that their records indicate the employee was the owner and operator of the business and current and up-to-date with all franchise operating fees. Further, the representative told investigators that franchisees are not permitted to have additional full-time employment outside of the business as this could create a scheduling/priority conflict. In fact, the representative was quite surprised to learn that the employee was working full-time with the School District of Philadelphia and told investigators that the employee had violated a chief provision of the franchise agreement by maintaining full-time employment beyond their role as owner and operator of the franchise.

The franchise disclosure document specifically states that an individual owner "must [perform the work] personally. [The owner] must be at the [business] during all [hours] except in extraordinary circumstances of a personal nature. [The owner] must devote full-time to the operation of your [ ] franchise throughout the franchise relationship. Accordingly, [an owner] must obtain prior written approval to be employed in any other job or have any other business interest that might prevent them from devoting their full time to the [business]."

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OIG investigators reviewed the TPA documentation and determined that the employee did suffer an injury and received medical attention from a variety of providers. The employee told investigators that they still had residual pain that affected their dexterity and flexibility, which prohibited the ability to perform normal daily functions. Yet, the surveillance video clearly showed the employee handling a cell phone, retrieving mail from a mailbox, and stooping down to pick up an envelope dropped in the driveway. Furthermore, the video showed the employee opening and closing a car door, driving a vehicle and pushing open doorways all without showing any signs of discomfort.

The employee told investigators they did not receive any supplemental/alternative income while receiving workers' compensation benefits. When shown a copy of the LIBC Form 760 Employee Verification of Employment, the employee verified their signature on the form and acknowledged signing the form under penalties relating to unsworn falsification to authorities. The employee also acknowledged checking all boxes "NO" with regard to employment, self-employment, changes in physical condition, and other information relevant to determining entitlement to worker's compensation benefits. Investigators later discovered that the employee also signed a LIBC Form 750, "Employee Report of Wages," indicating no employment or self-employment at any time while receiving workers' compensation benefits. Again, the employee signed this form under penalties relating to unsworn falsification to authorities.

Eventually, the employee admitted to owning a franchise business for the past 12 years but seemed deliberately evasive when asked about receiving income from the business while receiving workers' compensation benefits. The employee claimed that although the business had revenues, they were "operating at a loss" and the employee did not receive any profits from the business. The employee stated they were never present at the business during the day while working for the District and was not aware that the license agreement prohibited full-time employment while managing the franchise.

### **Sabbatical Leave**

The employee applied to the District for a one-year professional development sabbatical while the employee was still receiving worker's compensation benefits. Upon approval, the Office of Talent sent the employee a letter explaining the sabbatical period and advising the employee, among other topics, the requirements for completing specific undergraduate or graduate credits from a four-year accredited college or university or the number of hours of professional development activities necessary during each one-half year of the sabbatical.<sup>2</sup>

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<sup>2</sup> SDP Policy 338.1

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The investigation disclosed that the employee did not meet the minimum educational requirements of the sabbatical by receiving fewer graduate credits and conducting less professional development activities than necessary to meet the standards outlined in the policy. The policy clearly states, “[i]f the employee fails to provide satisfactory evidence of program compliance . . . the employee shall forfeit all benefits to which the employee would otherwise have been entitled under the conditions of the leave.”

The investigation also disclosed that the employee seemingly did not intend to return to work prior to the start of sabbatical leave. The TPA records showed that the employee was cleared for modified duty three weeks after sustaining the work related injury yet, the employee expressed no desire to medical providers of returning to work with two months left prior to the end of the school year. Furthermore, the employee did not schedule a follow-up appointment with the physician wanting to wait until completion of all therapy sessions. Oddly, Employee Health Services sent an email to Employee Records that the employee was fully released to return to work the same time when classes began for the employee’s sabbatical. Without viewing the employee’s medical file with Employee Health Services, the OIG offers no opinion as to whether or not the timing of the employee’s clearance was a coincidence or contrived plan to remain out of work until the start of the sabbatical.

### **CONCLUSION AND RECOMMENDATION**

The OIG investigation substantiated that the employee intentionally circumvented Pennsylvania Workers’ Compensation law by not disclosing ownership of a privately owned business. During a conversation with the TPA, the employee stated unequivocally that they neither received additional income beyond their role as a District employee nor were they employed elsewhere. To the contrary, OIG investigators discovered that the employee did in fact own the franchise business as a for-profit business entity. Furthermore, under section 3.11(d) of the Workers’ Compensation Act, employees who are receiving workers’ compensation must verify any and all employment, self-employment, wages as well as changes to physical condition. On the employee verification, the employee checked and signed the box “No” that they were not self-employed during any time while receiving workers’ compensation benefits. In addition, the employee violated the franchise agreement that requires franchise owners to work for the franchise full-time and prohibits franchise owners from having other full-time employment.

Submission of false verification of employment documents violates basic ethical standards of the District as well as Pennsylvania law. The School District of Philadelphia Employee Code of Ethics states, “[a]ll School District employees should conduct themselves in a manner that promotes and supports the development of good character by teaching, enforcing, advocating and modeling ethical principles.” The Code of Ethics’ core principles require that all employees are expected to be honest, take responsibility and demonstrate accountability for their actions, obey all laws and regulations, and represent the School District in a manner that engenders public trust in its integrity and competence.

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The investigation also substantiated that the employee failed to meet the requirements of the approved professional development sabbatical. The employee's actions reflect a lack of respect for the importance of the District's investment in the professional development of its employees through its commitment to the sabbatical program. The OIG consulted with Employee Records to determine the total amount of the restitution. Contrary to District policy, it is the position of Employee Records to view the one-year sabbatical in two half years with the fall sabbatical running from August 16 through January 15 and the spring sabbatical from January 16 through June 15. Based on this premise, Employee Records established that the employee provided sufficient information to successfully complete the requirements for one-half of the sabbatical, which is the fall semester. Thus, Employee Records concluded that the employee should recompense the District only for the salary and benefits the employee received during the spring semester, which amounts to \$31,428.30.<sup>3</sup> Further the Office of Retirement and Unemployment computed a credit from the Public School Retirement System (PSERS) in the amount of \$14,389.86 and a deduction of \$6,333.98 from the employee's pension balance.

Considering the facts established in this investigation, the OIG recommended appropriate disciplinary action against the employee. Consequently, the employee resigned from the District in lieu of termination. Furthermore, the OIG recommended that the School District of Philadelphia pursue appropriate restitution of all salary and benefits the employee received, including payments to PSERS on behalf of the employee while under the conditions of the sabbatical leave. This investigation was also referred to the appropriate law enforcement authorities for consideration of criminal violations of PA law.

The OIG also recommended that Employee Records review its practice of accepting sabbatical requirements based on two half-year periods for an employee approved on a full year sabbatical. According to District Policy 338.1, sabbatical leave for professional development may be taken for a half or full school term or for two (2) half-school terms during a period of two (2) years, at the employee's option. The Policy also states, "Upon completion of the leave, the employee must provide satisfactory evidence that the employee's approved plan for professional development was **fully complied with** [emphasis added] during the leave of absence." In this instance, the employee elected to take a one-year professional development sabbatical leave and should be obligated to meet the requirements of a full school term sabbatical. However, Employee Records has taken the position of giving the employee credit of completing the minimum requirements of the sabbatical as if the employee had elected two half-school terms.

The Office of Talent verbally notified the OIG that they concur with this recommendation. Office of Talent will consider changing its practice and no longer accept sabbatical requirements based on two half-year periods for an employee approved on a full year sabbatical.

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<sup>3</sup> This total is computed as salary \$21,164.53 plus benefits \$10,263.77.

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