

Investigative Report

Misuse of City Resources by an Animal Services Office Employee

May 2023



Luis Negrete, a former animal health technician at the Animal Services Office, violated City Code by misusing City resources in January and February 2022. Negrete took sick leave from the City while working a second job on at least 13 days.

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Cover: Aerial view of downtown Austin by RoschetzkyStockPhoto

Allegation

In January 2022, we received a concern that Luis Negrete was inappropriately using Family Medical Leave Act (FMLA) leave while working for another employer.

Background

The mission of the Animal Services Office (Animal Services) is “to enforce animal-related ordinances, to provide residents with animal care resources, and to provide a safety net for lost and homeless animals in order to achieve at least a 95% live outcome rate for sheltered pets.”

The City’s Human Resources Department has an FMLA procedure which is meant to ensure the City “compl[ies] with the federally mandated protections of...FMLA.” The procedure also explains the different types of leave an employee may take, including intermittent leave, which is described as “taking leave in separate blocks of time for a single qualifying reason...[.]”

Luis Negrete was an animal health technician with Animal Services. In this position, Negrete’s responsibilities included performing vaccinations, testing, microchipping, and various other animal health-related tasks. Negrete began using FMLA leave in December 2021. He was scheduled to take continuous leave through January 9, 2022, and then return to work on an intermittent basis. Negrete resigned from Animal Services in February 2022.

Investigation Results Summary

Luis Negrete, a former animal health technician at Animal Services, misused City resources in January and February 2022 by working a second job on days when he used sick leave at Animal Services. This occurred on at least 13 days. Negrete was paid about \$2,315 on those days.

Finding 1 Misuse of City Resources

Investigation Criteria:

Employees are prohibited from working secondary employment the same day the Employee uses a sick day.

HRD FMLA Procedure - Outside Employment

See Investigation Criteria for details

In December 2021, Animal Services' FMLA coordinator approved Luis Negrete's FMLA leave. Negrete's period of leave began on December 19, 2021. He was scheduled to remain on leave until January 9, 2022, at which point he was to return to work on an intermittent basis. However, Negrete did not return to work at Animal Services at any point between January 9 and his resignation on February 28, 2022. During the period he was on FMLA leave, Negrete used both his sick and vacation leave. His misuse stems from the sick leave he used on 13 days throughout the period.

When we spoke with Negrete, he indicated he had several other jobs in addition to his job with the City. He also claimed that his supervisor was aware of these other jobs as they were "common knowledge," amongst his coworkers. During the period in which Negrete took FMLA leave, he began working at a county office. Negrete began the hiring process for this position in September 2021, roughly two months before he applied to use FMLA-related leave as a City employee. He began working for the county in December 2021. That same month, Negrete went on FMLA leave from the City. During an interview, Negrete said he did not intend to use up his leave balances with the City and not return to work, but agreed that the timing of events does make it "seem that way."

Negrete did not disclose his secondary job with the county to Animal Services, as he was required to do under City policy. His supervisor stated he was not aware of Negrete's county job when that employment began. He specifically noted that he only became aware of Negrete's job with the county in January 2022 after speaking with Negrete.

Negrete worked his secondary job on 13 days during which he also used sick leave from Animal Services. This violates the City's FMLA procedure, which prohibits working another job while taking sick leave from the City. In total, Negrete was paid about \$2,315 on days where he used sick leave and then worked at his county job. During his interview, when asked if taking sick leave and working a second job is a legitimate use of City time, Negrete responded, "No."

After learning about Negrete's county job in late January, Negrete's supervisor confirmed this with Negrete by phone in early February. Negrete offered to resign from Animal Services at this point, however,

the supervisor instructed Negrete to submit his resignation in writing per guidance from ASO human resources. Negrete did not submit this resignation until February 14, nearly two weeks after his initial offer to resign. According to the supervisor, Negrete was difficult to get in contact with while he was out on leave. Negrete would sometimes take days to respond to calls and messages when the supervisor reached out to see if they should schedule Negrete to work.

By using sick leave and working secondary employment on the same day, Negrete violated the following portion of City Code:

- § 2-7-62(J) - Standards of Conduct

Appendix A - Subject Response

Negrete did not provide a response.

Appendix B - Management Response



MEMORANDUM

TO: Office of the City Auditor

FROM: Don Bland, Chief Animal Services Officer

DATE: May 10, 2023

SUBJECT: Management Response: City Auditor Report IN22010

Please use this memo as the official response to City Auditor Report IN22010, regarding violations of the Family Medical Leave Act (FMLA) by a former Animal Services employee.

I was unaware that Mr. Negrete held a secondary job. I was also unaware that Mr. Negrete was utilizing sick time from the Animal Services Office (ASO) while working at his secondary employer. I was informed of this after his resignation.

Moving forward our HR Coordinator will provide FMLA and City of Austin Personnel Policy training to all managers/supervisors, so they are knowledgeable on FMLA and the appropriate use of sick leave. ASO HR will have training with managers/supervisors first, and then hold mandatory department wide training. During this time, ASO will discuss the Secondary Employment Procedure which will include discussion about the requirement for staff to submit an Employee Acknowledgement Form.

Additionally, all FMLA approvals sent to employees will include information from the City of Austin **Family Medical Leave Act**, page fourteen, addressing Outside Employment.

<https://cityspace.austintexas.gov/files/assets/workspace/hr-bulletins/fmla-procedure.pdf>

Which states:

Outside Employment

A City Employee is prohibited from engaging in other employment that interferes with the performance of his or her City duties or represents a conflict of interest. Employees are

Appendix B - Management Response

prohibited from working secondary employment the same day the Employee uses a sick day. Any outside employment must be approved by the Department Director, adhere to these requirements and cannot interfere with the Employee's recovery and prescribed treatment or therapy during FMLA leave.

Should you have any questions, please contact me at 512-978-0565

CC: Jesús Garza, Interim City Manager
Stephanie Hayden-Howard, Assistant City Manager

Investigation Criteria

Finding 1

§ -7-62(J) - Standards of Conduct.

No City official or employee shall use City facilities, personnel, equipment or supplies for private purposes, except to the extent such are lawfully available to the public, or to the extent that facilities, equipment or supplies are allowed to be used in a limited or de minimis manner in accordance with City policy.

Human Resources Department FMLA Procedure – Outside Employment

A City Employee is prohibited from engaging in other employment that interferes with the performance of his or her City duties or represents a conflict of interest. Employees are prohibited from working secondary employment the same day the Employee uses a sick day. Any outside employment must be approved by the Department Director, adhere to these requirements and cannot interfere with the Employee's recovery and prescribed treatment or therapy during FMLA leave.

Methodology

We took the following steps to accomplish our investigation objectives:

- Conducted background research
- Reviewed applicable employee records
- Interviewed Animal Services Office staff
- Interviewed the subject
- Reviewed applicable City Code and policy

CAIU Investigative Standards

Investigations by the Office of the City Auditor are considered non-audit projects under Government Auditing Standards and are conducted in accordance with the general and ethics standards, procedures recommended by the Association of Certified Fraud Examiners (ACFE), and the ACFE Fraud Examiner's Manual. Investigations also adhere to quality standards for investigations established by the Council of the Inspectors General on Integrity and Efficiency (CIGIE) and City Code.

The Office of the City Auditor, per City Code, may conduct investigations into fraud, abuse, or illegality that may be occurring. If the City Auditor, through the Integrity Unit, finds that there is sufficient evidence to indicate that a material violation of a matter within the office's jurisdiction may have occurred, the City Auditor will issue an investigative report and provide a copy to the appropriate authority.

In order to ensure our report is fair, complete, and objective, we requested responses from both the subject and the Department Director on the results of this investigation. Please find attached these responses in Appendix A and C.

The Office of the City Auditor was created by the Austin City Charter as an independent office reporting to City Council to help establish accountability and improve city services. We conduct investigations of allegations of fraud, waste, or abuse by City employees or contractors.

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