



INVESTIGATIVE REPORT

David Cook, Inspector General

OFFICE: INDIANA EXECUTIVE BRANCH AGENCIES
TITLE: GHOST EMPLOYMENT
CASE ID: 2023-02-0041
DATE: May 19, 2023

Indiana Office of Inspector General Staff Attorney, Doreen Clark, after several investigations by special agents with the Inspector General, reports as follows:

The Indiana Office of Inspector General (OIG) investigates potential criminal activity and Code of Ethics violations within the executive branch of state government. Ind. Code § 4-2-7-3. The OIG is statutorily charged with recommending policies to deter, detect, and eradicate fraud, waste, abuse, mismanagement, and misconduct in state government. Ind. Code § 4-2-7-3 (2). It also is charged with providing advice to agencies on developing, implementing, and enforcing policies and procedures to reduce the risk of fraudulent or wrongful acts with agencies. Ind. Code § 4-2-7-3 (8).

The purpose of this report is to provide recommendations based on several OIG investigations of complaints alleging employees of various state executive branch agencies engaged in ghost employment. First, this Report will summarize four specific OIG investigations involving employees of four different executive branch agencies. More specifically, this Report will outline one case in which the OIG found sufficient evidence of ghost employment and three cases that the OIG found lacked sufficient evidence for presentation to a prosecutor or the State Ethics Commission. Second, this Report will provide recommendations that state executive branch agencies can implement to help reduce both inadvertent and deliberate instances of suspected ghost

employment activities. Along with posting this Report on its website, the OIG is distributing the recommendations in this Report to all ethics officers for state executive branch agencies.

Case 1

Beginning in January of 2022, the OIG investigated an anonymous complaint alleging that a state employee (Employee 1) had misrepresented his work hours while employed within a state executive branch agency (Agency 1). Agency 1 provided the OIG with additional documentation demonstrating that Employee 1 had misreported approximately 345 hours of work between July through November of 2021. Agency 1 also informed the OIG that Agency 1 terminated Employee 1 upon conclusion of an internal agency investigation.

The OIG's investigation revealed that Employee 1 had worked a flexible schedule while also studying to obtain a professional license. Because Employee 1 did not have the professional license needed to work some of the tasks within his division, Agency 1 assigned Employee 1 to alternative tasks.

Employee 1 had two separate supervisors during his employment. The first supervisor initially expressed slight concerns regarding Employee 1's communication, work performance, and punctuality. The first supervisor observed, for example, that Employee 1 spent long periods of time returning his work texts and phone calls, and on some occasions, Employee 1 would not answer his work texts or phone calls. The first supervisor also noticed that Employee 1 had difficulty focusing on substantial portions of his assigned projects and attending project meetings on time.

In June of 2021, the first supervisor retired, and Agency 1 placed Employee 1 under the supervision of the second supervisor. During this period, Agency 1 had experienced a fifty percent loss in executive leadership, which created challenges for the second supervisor to set aside time to properly supervise Employee 1.

The second supervisor assigned various projects to Employee 1. During this period, Employee 1 began arriving to work at inconsistent times. In the subsequent months, several employees within Agency 1 began inquiring with the Division Director about Employee 1's whereabouts and his productivity. These concerns prompted the Division Director to observe Employee 1 more closely and to speak with the second supervisor about Employee 1's productivity. The Division Director also noticed that the second supervisor's high workload, tasks, and responsibilities affected his ability to mentor and assist Employee 1 or interact with other staff.

The Division Director also observed that Employee 1 had not adhered to working his full, regularly scheduled work hours but claimed on his time sheet that he was working full hours. Over time, Employee 1's conduct prompted the Division Director to launch an internal investigation into Employee 1's time. The internal investigation revealed Employee 1's badge swipe records demonstrated that Employee 1 was arriving later and leaving earlier than his regularly scheduled work hours. During the OIG investigation, Employee 1 admitted that he had mismanaged his time as a result of being assigned administrative duties and other minimal tasks while under the second supervisor. Employee 1 also admitted that managing time for school, preparing for his licensure exams, and other personal issues were all contributing factors that led to his inaccurate time reporting.

Upon conclusion of the OIG investigation, the OIG found that Employee 1 misreported 250 hours of time, and the State incurred an aggregate loss of \$7,617.50. The OIG certified the case to the Marion County Prosecutor's Office for criminal charges under Ind. Code §35-43-4-2(a)¹, Ind. Code §35-44.1-1-3(d)² and Ind. Code §35-44.1-1(1)³. The Marion County Prosecutor's Office declined to file criminal charges; however, Employee 1 made full restitution to the State in

¹ Theft.

² Ghost Employment.

³ Official Misconduct.

the amount of \$7,617.50 as a result of the referral. The OIG declined to present the case to the State Ethics Commission because Employee 1 paid full restitution to the State.

Case 2

Beginning in May of 2022, the OIG investigated an anonymous complaint alleging that a state employee (Employee 2) who misrepresented her work hours while employed within another executive branch state agency (Agency 2). Agency 2 provided the OIG with additional documentation demonstrating that Employee 2 misrepresented 270.5 hours of work resulting in a total loss to the State of \$10,678.08.

The OIG investigation revealed that Employee 2 had two different supervisors during her employment with Agency 2. The first supervisor had both approved and permitted Employee 2 to use sick time in lieu of her personal or vacation time for use on various trips or vacations that were unrelated to her state work. Employee 2's use of sick time for vacation trips was contrary to the sick leave policy outlined by the Indiana State Personnel Department (SPD)⁴. After the first supervisor left Agency 2, Employee 2 was placed under the supervision of the second supervisor.

Under the supervision of the second supervisor, Employee 2 continued the practice of using sick time in lieu of personal or vacation time while on personal trips and vacations. Additionally, due to Employee 2's flexible work schedule, Employee 2 used her state issued laptop while on some of the trips to perform some of her state duties. Employee 2 reported a combination of sick time and regular work hours on her timesheet while engaging in these personal trips. Although the second supervisor did not permit Employee 2 to work while on trips outside the State or country, the second supervisor continued to approve the state employee's timesheets and was inattentive to the type of time Employee 2 was reporting due to his demanding job duties. Employee 2 also

⁴ SPD's sick leave policy can be found at: <https://www.in.gov/spd/files/sickrandp.pdf>.

informed many of her coworkers and other employees within Agency 2 regarding her trips through emails and virtual chats.

During her interview with the OIG, Employee 2 stated that she was unaware that she could not use sick time for time she was on vacation. Furthermore, the OIG learned from Employee 2's first supervisor that she permitted Employee 2 to use her sick time in lieu of vacation time because it was a common practice within Agency 2.

The OIG found insufficient evidence that Employee 2 engaged in ghost employment because Employee 2 was taking paid time off to engage in vacations; she was not engaging in activity unrelated to her official job while reporting regular work hours. Although Employee 2 reported the incorrect type of time on her timesheet for her vacations, the state employee stated she was not aware that this was not allowed. Additionally, Employee 2 worked partially on her job-related duties while she was on her vacations, and her supervisors approved her timesheets without inquiring about the type of leave absence she was reporting.

Case 3

Beginning in August of 2022, the OIG investigated a complaint alleging that a state employee (Employee 3) who worked for a different state executive branch agency (Agency 3) engaged in ghost employment or theft of state time based on her state computer's internet search history, which consisted of access to various internet websites that were unrelated to her job duties during her state time. The OIG learned that Employee 3 worked a hybrid schedule, working in the office three days a week and remotely two days a week.

The OIG learned that while Employee 3 was employed with Agency 3, she was struggling to complete some of her required job-related duties and was not participating in meetings. Employee 3's supervisor also held one-on-one meetings to discuss her work productivity and offered her advice to improve her work performance. As the months progressed, the supervisor

observed very little progress in Employee 3's work performance. The supervisor subsequently requested for SPD to begin an internal investigation into Employee 3's activities for the days in which she was working remotely. During the investigation, Agency 3 was able to retrieve records of Employee 3's internet history from the Indiana Office of Technology (IOT). The records showed that someone was accessing websites unrelated to Employee 3's work on her state computer, but IOT was unable to determine if Employee 3 had actively engaged on the internet websites for a substantial period of time while on state time.

The OIG investigation revealed that while the supervisor conducted the necessary steps for monitoring Employee 3's activities and worked with Employee 3 to complete her assignment punctually, Agency 3 was unable to provide the OIG with information demonstrating the start and end times that someone accessed the websites on Employee 3's state computer. The OIG also found insufficient evidence to prove definitively who accessed the websites, how long the user was on those websites, or how active the user was on those websites. As a result, the OIG found insufficient evidence that Employee 3 had actively engaged in ghost employment while working remotely.

Case 4

Beginning in September of 2022, the OIG investigated multiple anonymous complaints alleging that a state employee (Employee 4) with another executive branch agency (Agency 4) had misreported her time; however, the complaints did not specify when Employee 4 misreported her time or how the reporting parties knew that Employee 4 had misreported her time.

The OIG learned that Employee 4 worked from home occasionally. Employee 4's previous supervisor, however, did not require Employee 4 to sign a Remote Work Agreement or submit a remote log for the days that she worked from home. Agency 4 also did not regularly require the

use of Remote Work Agreements or remote work logs for its employees, contrary to SPD's Flexible Work Agreement policy⁵.

The OIG found insufficient evidence that Employee 4 had engaged in ghost employment because of the limited information contained in the complaints and discovered during the investigation. Furthermore, the OIG found little evidence of what Agency 4 expected of Employee 4 or what work Employee 4 actually performed during reported work hours. The OIG found that Agency 4 did not require employees to have Remote Work Agreements, maintain work logs, or report their work off site as remote work in PeopleSoft.

Conclusion

The OIG investigated the four cases outlined above for both potential violations of the Criminal Code and the Code of Ethics, including the Criminal Code's ghost employment statute, which is found in Ind. Code §35-44.1-1-3, and the Code of Ethics' ghost employment rule, which is found in 42 IAC 1-5-13. The Criminal Code's ghost employment statute, in relevant part, prohibits an employee of a governmental entity from knowingly or intentionally accepting property from the entity for the performance of duties not related to the operation of the entity.⁶ The Code of Ethics' ghost employment rule prohibits a state employee from engaging in work other than the performance of official duties during working hours, except as permitted by a general written agency policy or regulation.

Allegations of ghost employment under both the Criminal Code and Code of Ethics are difficult to prove, especially with the prevalence of flexible work schedules and remote work. These allegations often require the OIG to prove a negative. For example, if an employee reports

⁵ SPD's Flexible Work Arrangement policy can be found at: <https://www.in.gov/spd/files/Flexible-Work-Arrangements-Policy.pdf>.

⁶ Ind. Code §35-44.1-1-3(d), which makes Ghost Employment a Level 6 felony.

that they worked 75 hours of regular work time during a two-week pay period, the OIG must prove that they did not work for the full 75 hours reported. When an employee has a flexible work schedule and/or permission to work remotely, the employees often claim they were working irregular hours or working remotely, and the OIG must be able to prove otherwise to prove ghost employment. Proving ghost employment for remote workers or those with a flexible schedule becomes even more difficult when agencies do not provide clear expectations to employees, such as on work hours and reporting requirements, and when supervisors are not monitoring employees' activities.

In case 2, for example, the OIG found insufficient evidence of ghost employment because Employee 2 used her absence balances to take time off work (albeit she used the incorrect type of absence balance). Additionally, the OIG found insufficient evidence that Employee 2 was working less than the time she reported working on her timesheet. The primary issue in this case, however, was that the two supervisors who supervised Employee 2 did not properly enforce SPD's sick leave policy. Instead, the supervisors continued to approve Employee 2's timesheet because the practice of using sick time as personal or vacation time was considered a common practice within Agency 2. The supervisors also overlooked and approved the timesheet of Employee 2 due to their demanding and busy work schedules. Had the supervisors set aside time to review the use of Employee 2's reported absences and properly enforced SPD's sick leave policy, suspicions of ghost employment may have been avoided.

In case 3, the supervisor took several steps to ensure that Employee 3 was receiving the help she needed to increase her work productivity; however, the supervisor was still suspicious about Employee 3's remote work activity. The supervisor could have mitigated her suspicions by cancelling Employee 3's Remote Work Agreement early and requiring Employee 3 to work in the office. The supervisor could have also worked closely with Employee 3 in person to ensure that

Employee 3 was completing her assignments completely and on time. Overall, careful monitoring of Employee 3's remote log and work activity and intervening early to reduce low work productivity may have helped to mitigate any suspicions of ghost employment.

Case 4 also mirrors Case 3 regarding proper management of remote work activities among state employees and Case 2 regarding proper monitoring of timesheets among supervisors. Agency 4 could have taken the following steps to help reduce the appearance of ghost employment: Enforced the use of Remote Work Agreements, clearly expressed work expectations to Agency 4 employees, intervened early to prevent any further suspicions of ghost employment, and closely monitored the timesheets of Agency 4 employees.

In all but one of the four cases described above, the OIG found insufficient evidence that the state employee involved was engaged in ghost employment. In the three cases in which the OIG failed to find sufficient evidence of ghost employment, the employees may have failed to meet work expectations; however, poor performance does not always equate to evidence of ghost employment. In all of the investigations, the OIG found evidence that the state employees, and in some instances the agencies involved, were not regularly following SPD policy or maintaining adequate records of remote work.

Recommendations

Based upon these investigations and other similar investigations, the OIG makes the following recommendations to state executive branch agencies who suspect ghost employment among their employees. The goal of these recommendations is to help agencies reduce the instances of actual or perceived ghost employment and protect state employees from taking actions that may lead to potential complaints or investigations of ghost employment under the Criminal Code or Code of Ethics.

Recommendation 1

First, the OIG recommends that supervisors employed within state executive branch agencies provide clear expectations to employees regarding work location, hours, and performance expectations. This becomes especially important in cases where an employee is placed under a new supervisor, who may have different expectations than a previous supervisor. In several of the cases the OIG investigated, the OIG found that a new supervisor did not provide clear guidance to employees on how the employee was expected to utilize or report his or her time. Providing clear expectations to employees may help reduce the instances of employees misusing state time or provide better evidence of misuse of state time when it occurs.

Recommendation 2

Second, the OIG recommends that supervisors employed within state executive branch agencies monitor their employees' use of state time and inquire about their employees' use of state time upon first suspicion that their employees may be engaging in ghost employment. Examples of suspicious activities include: the state employee is arriving at work later than their regularly scheduled work hours and/or leaving earlier than their regularly scheduled work hours; the state employee is reporting activities on a remote log that are inconsistent with the actual activities that the state employee completed; the state employee is not reporting work hours on their timesheet when he or she worked from home; and the state employee is not arriving punctually to in-person or remote meetings. If a supervisor notices these behaviors, he or she should inquire about the employee's reported work time and his or her work activities. When appropriate, the supervisor may wish to inquire with the state employee about the underlying cause of the suspected ghost employment activity (such as transportation issues, outside employment, confusion on how to complete assigned work tasks, studying for school or board exams, etc.) to determine if the supervisor can assist the employee in addressing the underlying

issues. These steps may allow the state employee and supervisor to address the issues before the actions rise to the level of ghost employment.

Recommendation 3

Third, the OIG recommends that all state executive branch agencies enforce SPD's Flexible Work Arrangement Policy for state employees who work remotely. Enforcement of SPD's Flexible Work Arrangement policy includes: working with state employee to complete the Remote Work Feasibility Worksheet (State Form 5690), the Remote Work Readiness Assessment (State Form 56971), and the Remote Work Safety Checklist (State Form 56975); maintaining and tracking all documents related to the Remote Work Agreements; and reviewing the Remote Work Agreements no less than annually, in conjunction with performance appraisals.⁷ Ideally, supervisors employed within executive branch agencies should require remote logs for any remote work and evaluate the remote work logs of their employees on a regular basis. Requiring and evaluating a remote work log will help ensure that the activities recorded by the state employee is consistent with the number of regular hours that the employee reports on his or her timesheet. Additionally, any inconsistencies reported on the remote work logs can be detected early with careful monitoring of the state employee's timesheets.

Recommendation 4

Fourth, the OIG recommends that all state executive branch agencies educate their employees about SPD's leave policy and the purpose of each leave type. Educating state employees of SPD's leave policy will ensure that state employees understand the purpose of certain absence balances (such as sick time, vacation time, and personal time) and when they can be applied. Additionally, supervisors must ensure that they evaluate their employee's timesheet

⁷ See [SPD Flexible Work Arrangement](#)

thoroughly and inquire about their reported leave time if it appears inaccurate or suspicious. Supervisors also should carefully evaluate the timesheet of their employees to ensure that they are using their time efficiently and are reporting time correctly.

Recommendation 5

Fifth, the OIG recommends that state executive branch agencies advise their state employees of their option to seek an informal advisory opinion (IAO) from the OIG if the state employee is unsure whether his or her outside employment or volunteer activities will substantially affect their ability to complete their state work. Through an IAO, the OIG will be able to provide advice on whether the state employee's outside employment or volunteer activity is inconsistent with the Code. The OIG also can remind employees of the Code of Ethics' rules, such as the ghost employment and misuse of state property rules, that apply to outside employment and professional activities. An IAO may help an employee avoid any potential instances of ghost employment.⁸

Recommendation 6


Finally, the OIG recommends that supervisors employed within state executive branch agencies ensure that they find the time to work with a state employee that they are supervising if they discover that the state employee is struggling to complete his or her work. Some of the ghost employment cases that the OIG received involved situations in which the supervisors worked demanding schedules and either overlooked the state employees that they were supervising or left the state employee to work independently without adequate supervision. The lack of supervision helped enable the state employees engage in suspected ghost employment activities and/or inconsistent time reporting because the employees were either struggling to

⁸ The OIG can only provide advice for prospective outside employment or volunteer work. The OIG cannot provide advice on outside employment activities or volunteer work that the state employee has already accepted or is actively participating in.

understand their assigned tasks or did not have enough tasks to complete. Supervisors, therefore, should ensure that they are carefully supervising their employees, providing them with sufficient assignments and monitoring their work performance and timesheets to minimize actual instances of or the appearance of ghost employment activities among their state employees. Furthermore, supervisors who have direct reports who also manage employees should work with their direct reports to ensure they are able to provide adequate oversight of their employees. If an agency's upper-level supervisors are providing support to their managers, it should help increase accountability and compliance with the Code's ghost employment rule throughout the agency.

Dated: May 19, 2023

APPROVED BY:

A handwritten signature in cursive script that reads "David Cook". The signature is written in black ink and is positioned above a horizontal line.

David Cook, Inspector General