



AUDIT AND ADVISORY SERVICES  
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July 22, 2021

Marc Fisher  
Vice Chancellor  
Administration

Eugene Whitlock  
Associate Vice Chancellor and Chief People and Culture Officer  
People and Culture

***Re: Internal Audit Project 20-740: Human Resources – Employees Outside of California***

Vice Chancellor Fisher and Associate Vice Chancellor Whitlock:

Audit and Advisory Services included a planned internal audit on the subject of employees working outside of California (Audit Project 20-740) in its fiscal year 2020 internal audit plan. The COVID-19 pandemic disrupted normal campus operations in March 2020, during our audit fieldwork. Since the nature of employees working remotely was clearly being impacted, we ceased our fieldwork on this audit anticipating that normal campus operations would resume prior to the end of fiscal year 2020. As you are aware, as of June 2021, campus operations are still largely remote with an expected gradual reopening of the campus scheduled for later this summer and fall.

Rather than keeping this project open into fiscal year 2022, we share certain preliminary observations identified during fieldwork that we believe are still relevant. We understand that there are many details related to human resources and the upcoming resumption of operations on the Berkeley campus that remain uncertain and that there are multiple workstreams across the system and on campus for which related policies and guidance are being developed. As a result, we are not requesting formal management action plans for these preliminary observations given that they are likely already being considered in existing workstreams.

***Purpose and Scope***

The purpose of our planned FY2020 audit was to assess the current-state design of campus processes related to UC employees working outside of the state of California and to identify potential opportunities to further improve processes and internal controls related to managing associated compliance risks and requirements. Our review was limited to evaluating processes related to United States residents who work within the United States; considerations related to non-residents or to employees working outside of the country were not included in the scope of our review.

## ***Background***

Historically, the campus workforce has been predominately based locally, except for temporary changes in work location due to research fieldwork or faculty member sabbaticals. In recent years, due to recruitment and retention challenges related to operational needs, some departments have increased their hiring of employees working outside of the state. However, because these instances have been largely exceptional, the campus has managed the requirements associated with employees working outside of the state on a case-by-case basis.

## ***Subsequent Events***

As mentioned above, we ceased audit fieldwork given the public health orders which required most non-essential employees to shelter in place in March 2020. To comply with this and subsequent public health mandates, most campus employees continued to work from home through spring 2021.

Given this rapid shift to a predominantly remote workforce, including many potentially working outside of California, we note that the underlying risk profile for this audit changed due to external factors outside of the University's control. In planning for the resumption of on-campus operations later this summer, we understand that the UC system, as well as the campus, are planning and developing guidance on flexible and hybrid work arrangements, including potentially full-time remote work in locations outside California. Given that the risk profile related to employees working outside of California will continue to evolve through the summer and fall, we have decided not to continue with further audit work at this time but instead present preliminary observations that we believe are relevant as the system and campus plans for the summer and fall.

## **Preliminary Observations<sup>1</sup>**

### **1. Tracking Where Work Is Performed**

Currently, the University does not require campuses to collect information on where work is performed (US state and, in some situations, also city) as part of UCPATH payroll timekeeping and reporting. As a result, the University relies on employees to self-disclose work outside of California and voluntarily complete out-of-state income tax withholding documentation in UCPATH. This process design may have been appropriate when the incidence of employees working outside of California was exceptional, however, the number of fully-remote employees is expected to rise after the resumption of normal campus operations. If employees work remotely from different locations in different pay periods, the campus should be prepared that campus timekeeping systems feeding UCPATH payroll may need to be modified to collect additional data elements, including where work is performed for each cycle.

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<sup>1</sup> Preliminary observations made at the time audit fieldwork was halted due to COVID disruption during March 2020 and likely still relevant.

Without such information, the University will likely not have timely and complete information to assess whether the number of employees working in any given jurisdiction forms a permanent establishment by the Regents of the University of California in that location which would entail potential corporate registration.

In addition, the campus should ensure that the data tables in UCPath that contain each campus's work location are updated to include out-of-state work locations. At a minimum, the default state-level location codes (other than California) in PeopleSoft Workforce Administration should be active and used when appropriate.

## **2. Additional Human Resources Risk Associated with Out-of-State Employees**

Given historical and ongoing challenges with recruitment and retention, the ability to maintain a workforce beyond the local campus footprint presents a potential opportunity to more reliably fulfill campus staffing needs. There are a number of special considerations related to this subset that, if not appropriately addressed, could create issues of inequity relative to on-campus employees and give rise to grievances, lawsuits, and/or lower employee morale. These include, but are not limited to

- Inconsistencies in how employee work locations are determined by managers
- Differences in compensation between employees working outside of California performing the same work as employees working in state
- Employee health and welfare benefits programs not being widely accepted by out-of-state providers
- Challenges with assessing and mitigating employee safety or cybersecurity risk in environments that the campus does not directly manage
- Challenges associated with implementing policies not written with remote employees in mind (e.g., reimbursement of employee costs associated with working remotely or with travel to campus from the home location)

Differences in treatment could also potentially damage the reputation of the campus as an employer of choice if employees outside of the state are not well supported. We recognize this collectively as a systemwide issue and that a systemwide approach to addressing the risks may be appropriate.

Our work performed through the cessation of fieldwork due to the COVID-19 pandemic was conducted in accordance with the Institute of Internal Auditors' *Standards for the Professional Practice of Internal Auditing* and the University of California Internal Audit Charter.

Thank you to the staff of People & Culture, the Controller's Office, Berkeley Regional Services, and the Office of Legal Affairs for their cooperative efforts throughout the audit process. Please do not hesitate to call on Audit and Advisory Services if we can be of further assistance in this or other matters.

Respectfully reported,

Jaime Jue  
Director

Jennifer Jones  
Associate Director

Dorothy Lipari  
Auditor-in-Charge

cc: Senior Vice President and Chief Compliance and Audit Officer Alexander Bustamante  
Associate Chancellor Khira Griscavage  
Associate Vice Chancellor and Controller Michael Riley