

**UNIVERSITY OF CALIFORNIA, SAN FRANCISCO
AUDIT AND ADVISORY SERVICES**

**Paid Investigatory Leave Review
Project #17-050**

June 2017

University of California
San Francisco



Audit and Advisory Services

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SUBJECT: Paid Investigatory Leave Review

As a planned internal audit for Fiscal Year 2017, Audit & Advisory Services (“A&AS”) conducted a review of paid investigatory leave process. Our services were performed in accordance with the applicable International Standards for the Professional Practice of Internal Auditing as prescribed by the Institute of Internal Auditors (the “IIA Standards”).

Our review was completed in April and the preliminary draft report was provided to department management in May 2017. Management provided us with their final comments and responses to our observations in June 2017. The observations and corrective actions have been discussed and agreed upon with department management and it is management’s responsibility to implement the corrective actions stated in the report. In accordance with the University of California audit policy, A&AS will periodically follow up to confirm that the agreed upon management corrective actions are completed within the dates specified in the final report.

This report is intended solely for the information and internal use of UCSF management and the Ethics, Compliance and Audit Board, and is not intended to be and should not be used by any other person or entity.

Sincerely,

A handwritten signature in black ink, appearing to read 'Irene McGlynn', is written over a horizontal line.

Irene McGlynn
Director
UCSF Audit and Advisory Services

EXECUTIVE SUMMARY**I. BACKGROUND**

As a planned audit for Fiscal Year 2017, Audit and Advisory Services (A&AS) completed a review of the processes and controls in place for paid investigatory leave at the University of California, San Francisco (UCSF). The University of California Office of the President (UCOP) provides policy around the investigatory leave process and UCSF is responsible for establishing local procedures to implement this policy.¹

Investigations at UCSF are conducted by multiple groups with different processes and points of intake. This review focuses on investigations that require placing the employee on paid leave while an investigation occurs; this population is a subset of all investigations that occur at UCSF.² The investigations under this review are decentralized, with Investigation Unit (IU), The Office for the Prevention of Harassment and Discrimination (OPHD), and the various lines of business (LOB) conducting investigations/inquiry within their jurisdiction. The Office of Labor and Employee Relations (LER) is an integral partner and a point of contact for all of these departments. LER assists with the resolution of workplace problems and provides assistance in the administration of human resources policies and practices. The LOB, in consultation with LER, will initiate the placement of an employee on investigatory leave and determination of the appropriate assignment for any investigation of the alleged activities. LER helps with paid leave protocols such as: (1) providing templates for the documentation of the paid leave process; (2) ensuring the collection of Medical Center/University property (e.g. keys, ID badge, phone/pager, laptop, etc.); (3) determining the scope of the investigation; and (4) aiding in the determination of disciplinary action(s).

Other key stakeholders in the paid investigatory leave process are IU and OPHD. IU supports the University policy prohibiting discrimination against or harassment of any person on the basis of their membership in a protected category.³ Allegations of discrimination and employee misconduct complaints are primarily investigated by IU. OPHD mainly investigates claims involving sexual harassment and sexual violence. Largely, any allegations outside the scope of IU and OPHD's framework will be examined by the LOB.

When investigative inquiries/reviews are conducted by the LOB, the manager is responsible for scheduling the investigatory meeting with the employee. The employee then has the right to have representatives present, e.g. union or legal representative.⁴ Although management is responsible for holding the investigatory meeting, the LER representative assigned to the case will be present to assist the manager with the interviewing process. The investigative inquiry/review may also require interviewing witnesses, gathering additional evidence to support the case, and drafting of an action. The investigation can conclude with any of the following documentation, including but not limited to the following: informal resolution, formal letter of warning, or notice of intent to dismiss;⁵ management is

¹ The UCOP has established "PPSM 63: Investigatory Leave" to describe the factors that the University may consider in initiating an investigatory leave.

² Note, not all investigations/inquiries require placing the employee on paid leave while an inquiry into the allegation is explored, i.e., the majority of the investigations performed through the Investigations Group do not necessarily involve the placing of the employees involved on Investigatory Leave.

³ Protected categories include race, color, national origin, sex, gender identity, pregnancy, physical or mental disability, genetic information (including family medical history), ancestry, marital status, age, sexual orientation, citizenship or service in the uniformed services.

⁴ The UCSF Health union must be informed in writing of such "investigatory meetings" in which the LOB manager is conducting an investigative inquiry.

⁵ Notice of intent to dismiss formally concludes the investigation/inquiry/review process, and occurs prior to the notice of dismissal. Paid investigatory leave concludes with the notice of intent to dismiss; although, the employee may still be afforded paid administrative leave time during the Skelly process.

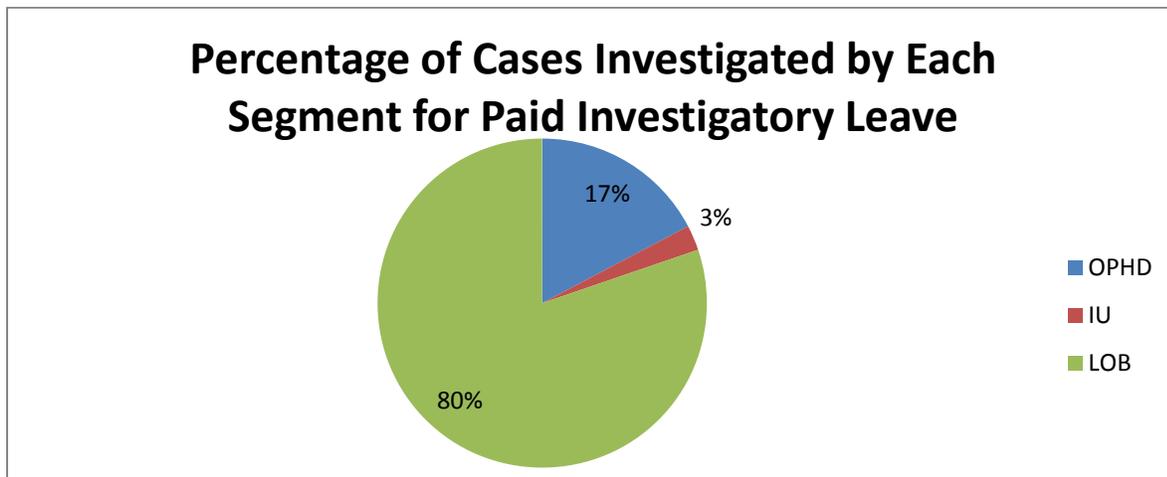
Paid Investigatory Leave Review

required to draft these letters and reports, and the LER representative is responsible for reviewing the documentation.

As part of the review, A&AS obtained a report of all paid investigatory leave cases open and closed during the period of May 2016 to November 2016. A total of 81 investigations where the employee was placed on paid investigatory leave during that time period. Please refer to Exhibit A. below for an analysis of the number of investigations conducted by IU, OPHD, and the LOB during the report period.

Exhibit A:

| Segment: | Number of Investigation/Inquiries/Reviews Conducted by Each Segment: | % of Investigation: |
|----------|--|---------------------|
| OPHD | 14 | 17% |
| IU | 2 | 3% |
| LOB | 65 | 80% |
| Total: | 81 | 100% |



II. AUDIT PURPOSE AND SCOPE

The purpose of this review was to assess controls and procedures within the paid investigatory leave process and to identify opportunities for improvement when multiple stakeholders are involved in various stages of the investigatory leave workflow. A&AS selected a diverse sample of 25 employees from the paid investigatory leave population for the period of May 2016 to November 2016 that included represented and non-represented personnel with cases investigated by OPHD, IU, and the LOB.

To conduct the review, A&AS performed the following: (1) obtained and reviewed applicable guidelines, policies, and procedures for placing employees on investigatory leave; (2) interviewed staff members and the management team within LER, IU, OPHD, and the LOB; (3) created flowcharts to document the paid investigatory leave process; (4) reviewed paid investigatory leave cases' documentation for consistency, adherence to guidelines and policy, and other opportunities for improvement; and (5) evaluated the case management system, LaborSoft, for documentation and record retention.

III. SUMMARY

During the review, A&AS noted that there are a number of factors contributing to the length of the paid investigatory leave, including: (1) delayed investigatory meetings due to requiring the attendance of union representative, employee, management, and the LER representative; (2) coordination required to manage open cases that is subject to the scheduling availability of management and the LER representative; and (3) LOB management's ability to document the investigation in a clear and thorough manner to support the final disposition of the case and help reduce LER's review time.

There are opportunities for UCSF to improve its paid investigatory leave process, better manage open cases, and consistently enforce the paid investigatory leave guidelines. The specific observations from this review are listed below.

A. Investigatory Leave Process

1. Criteria for placing employees on paid investigatory leave are not well defined.
2. The rationale for placing employees on paid investigatory leave is not always well documented.
3. Certain investigations may not be appropriate for LOB management to perform an investigative inquiry as they do not have sufficient skill sets.
4. Current practice is not aligned with University Policy and UCSF's Investigatory Leave Guidance for Managers & Supervisors.
5. Standard Operating Procedures (SOPs) for the investigatory leave process require updating.

B. Monitoring and Oversight

6. Metrics for investigation timeliness have not been developed.
7. Monitoring of investigation aging is not effectively utilized.
8. An escalation process for addressing aging open cases has not been established.

Further detail on the specific observations along with additional opportunities for improvement can be found in the below section on Observations and Management Corrective Action Plans.

IV. OBSERVATIONS AND MANAGEMENT CORRECTIVE ACTIONS (“MCA”)

A. Investigatory Leave Process

| No. | <u>Observation</u> | <u>Risk/Effect</u> | <u>Recommendation</u> | <u>MCA</u> |
|------------|--|--|---|---|
| 1 | <p><i>Criteria for placing employees on paid investigatory leave are not well defined.</i></p> <p>During the review, we noted cases where the employees were placed on paid investigatory leave for causes such as inappropriate language use in the workplace or general descriptions of job performance that were later resolved with a letter of warning or training/education.</p> <p>While each paid investigatory leave case may have certain characteristics that differ from one another in the way events unfold; there are however standard characteristics that connect these cases should be identified for a consistent application of placing employees on leave.</p> | <p>Without clear criteria for placing employees on paid investigatory leave, LER risks having inconsistencies in its paid investigatory leave practices and may result in certain cases being categorized as investigatory paid leave when they are not severe enough.</p> | <p>LER should consider reviewing and examining cases for common characteristics and establishing well-defined criteria for placing employees on paid investigatory leave. Once established, these criteria should be communicated to LOB management.</p> <p>The process for triaging incidents should be refined to ensure that the criteria for placing an employee on paid investigatory leave is sufficiently met and is consistently applied.</p> | <p>The definitions of those situations that most commonly rise to the level of placing an employee on paid investigatory leave will be reviewed and refined.</p> <p><u>Target Date:</u> December 31, 2017</p> <p><u>Responsible Party:</u> Vice President of Human Resources, UCSF Health</p> |
| 2. | <p><i>The rationale for placing employees on paid investigatory leave is not always well documented.</i></p> <p>During the review, we noted that key information, such as the rationale for placing an employee on leave, was not always sufficiently documented and retained in a central repository. In order to understand the circumstances surrounding the employee being placed on investigatory leave, we had to inquire with various individuals within LER who oversaw those specific cases rather than rely on the documentation.</p> | <p>Without sufficient documentation the circumstances behind decisions on placing employees on paid investigatory leave may not be understood or supported if the parties involved are no longer present.</p> | <p>LER should consider utilizing LaborSoft consistently to document important information such as: (1) rationale for placing an employee on paid leave while an investigation occurs; and (2) detailed information for an efficient case management transition and to support any future inquiries.</p> | <p>Based on the refined definitions, a process will be outlined for documenting rationale for leave in LaborSoft.</p> <p><u>Target Date:</u> January 31, 2018</p> <p><u>Responsible Party:</u> Vice President of Human Resources, UCSF Health</p> |

| No. | Observation | Risk/Effect | Recommendation | MCA |
|-----|--|---|---|--|
| 3 | <p><i>Certain investigative reviews/inquiries my not be appropriate for LOB management to perform as they may not have sufficient skill sets to complete them properly.</i></p> <p>The majority of the investigative reviews/inquiries (approx. 80%) are performed by LOB management. Per review of the population of cases from May 2016 to November 2016, we noted that there were three cases involving theft and misappropriation of University property that were subsequently reviewed by the LOB, who may not have the appropriate skill sets to perform the investigative inquiry. Additionally, interviews with LOB managers conducted during the course of the audit revealed limitations in the knowledge, skill sets, and availability of the LOB managers to conduct investigative reviews/inquiries in a thorough and timely manner.</p> <p>While letters/actions are provided by LER, LOB managers differ in their ability to perform reviews/inquiries and to document in a clear and concise manner, which may prolong the review time needed by LER. Additionally, extra resources is required by the LOB managers to perform the investigative review/inquiry which places an operational burden on the LOB.</p> | <p>Without sufficient experience and skill sets, investigations may take longer, be less efficient, and could potentially be inconsistent in the resulting actions.</p> | <p>An assessment of the investigation process should be performed that includes:</p> <ul style="list-style-type: none"> • Review of the process for assigning cases and implementation of procedures to ensure all cases go to the appropriate investigatory group • Increased education and training for LOB managers on conducting and documentation of investigations • Evaluation of deploying more specialist investigators to advise and work with LOB in conducting the investigations. | <p>LOB inquiries that are fairly common that may require someone to be placed on paid leave will be identified (i.e., diversion; fighting in workplace; impairment) and establish general guidelines that identify the most common elements of these inquiries in order to provide guidelines for training to the LOB management.</p> <p><u>Target Date:</u> March 31, 2018.</p> <p><u>Responsible Party:</u> Vice President of Human Resources, UCSF Health</p> |
| 4 | <p><i>Current practice is not aligned with University Policy and UCSF's Investigatory Leave Guidance for Managers & Supervisors.</i></p> <p>During the review, we noted that the notice of investigatory leave does not include the expected duration of the leave. LER management indicated that it is not always possible due to varying circumstances and complexities of the cases to state the length of time.</p> | <p>Outdated guidelines can lead to inconsistent practices and/or increased organizational liability when current procedures vary from guidelines.</p> | <p>The Investigatory Leave Guidance for Managers & Supervisors should be reviewed and updated to reflect current practice.</p> <p>LER should collaborate with UCOP to revise the PPSM 63 policy.</p> | <p>The template for employee notification of being placed on leave will be reviewed and refined to determine if there is a way to rephrase the portion regarding expected duration to allow for flexibility on duration.</p> |

| No. | Observation | Risk/Effect | Recommendation | MCA |
|-----------|---|---|---|--|
| | <p>The UCOP Policy, “PPSM 63: Investigatory Leave” and LER’s “Investigatory Leave Guidance for Managers & Supervisors” states, “Language shall be included in the notice of investigatory leave regarding the expected duration of the leave and reason for leave”.</p> | | | <p><u>Target Date:</u> December 31, 2017</p> <p><u>Responsible Party:</u> Vice President of Human Resources, UCSF Health</p> |
| <p>5.</p> | <p><i>Standard Operating Procedures (SOPs) for the investigatory leave process require updating.</i></p> <p>While general guidelines exist, to ensure consistency in the investigatory leave process, they should be updated to incorporate standard criteria or policies which would require actions to be taken based on the case situation.</p> | <p>Insufficient or outdated SOPs can create inconsistencies in performance and the need for additional rework to correct.</p> | <p>LER should update SOPs for the entirety of the investigatory leave process to ensure operational continuity and consistency.</p> | <p>The definitions of those situations that most commonly rise to the level of placing an employee on paid investigatory leave will be reviewed and refined.</p> <p>In addition to this, the SOP will be updated to include criteria, and rationale used to place an employee on paid investigatory leave along with guidance on what to document in LaborSoft.</p> <p><u>Target Date:</u> December 31, 2017</p> <p><u>Responsible Party:</u> Vice President of Human Resources, UCSF Health</p> |

B. Monitoring and Oversight

| No. | Observation | Risk/Effect | Recommendation | MCA | | | | | | | | | | | | | | |
|----------------------|---|---|--|--|----|----------------------|---|---------------------|---|-------------|---|------------|----|-------------|---|--|--|--|
| 6. | <p>Metrics for investigation timeliness have not been developed.</p> <p>LER has not established target timelines to measure and identify long outstanding cases that require the attention and oversight of key stakeholders and senior management. Investigations analyzed during this review took on average 4 months to complete with a cost of \$28k per employee; the total payment for the 81 employees on leave during the review period is approximately \$2.3 million.</p> <p>Please refer to Exhibit B and C for analysis of the length of cases open and closed from May 2016 to November 2016.</p> <p><u>Exhibit B:</u></p> <table border="1" data-bbox="170 797 890 972"> <thead> <tr> <th>Date Range:</th> <th>No. of Cases Closed During 2016</th> </tr> </thead> <tbody> <tr> <td>1-6 Months to Close</td> <td>44</td> </tr> <tr> <td>7-12 Months to Close</td> <td>6</td> </tr> <tr> <td>>12 Months to Close</td> <td>4</td> </tr> </tbody> </table> <p><u>Exhibit C:</u></p> <table border="1" data-bbox="170 1073 890 1213"> <thead> <tr> <th>Date Range:</th> <th>No. of Cases Still Open as of November 2016</th> </tr> </thead> <tbody> <tr> <td>1-6 Months</td> <td>25</td> </tr> <tr> <td>6-12 Months</td> <td>2</td> </tr> </tbody> </table> | Date Range: | No. of Cases Closed During 2016 | 1-6 Months to Close | 44 | 7-12 Months to Close | 6 | >12 Months to Close | 4 | Date Range: | No. of Cases Still Open as of November 2016 | 1-6 Months | 25 | 6-12 Months | 2 | <p>Without an established target timeline to measure the progress of open cases, LER risks not being able to address issues timely and in a cost effective manner.</p> | <p>Target milestones should be established for open cases and periodically reviewed for reasonableness and proper case management.</p> <p>The metrics should be used as an aid for management to identify factors causing delays in completing investigations and process improvement opportunities.</p> | <p>Monthly reviews of pending cases, inclusive of the cost of pending cases with LER and investigations units (Office of Diversity and Outreach, Investigations Unit and Audit) will be established.</p> <p>The monthly reviews will include discussions on appropriate updates to be provided to key stakeholders.</p> <p><u>Target Date:</u> December 31, 2017</p> <p><u>Responsible Party:</u> Vice President of Human Resources, UCSF Health</p> |
| Date Range: | No. of Cases Closed During 2016 | | | | | | | | | | | | | | | | | |
| 1-6 Months to Close | 44 | | | | | | | | | | | | | | | | | |
| 7-12 Months to Close | 6 | | | | | | | | | | | | | | | | | |
| >12 Months to Close | 4 | | | | | | | | | | | | | | | | | |
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| 1-6 Months | 25 | | | | | | | | | | | | | | | | | |
| 6-12 Months | 2 | | | | | | | | | | | | | | | | | |
| 7. | <p>Monitoring of investigation aging is not effectively utilized.</p> <p>Monitoring of investigation cases has been on an informal basis. The new LER case management system has the functionality to produce an aging report;</p> | <p>Without an aging report which identifies the current status of investigations, open cases cannot be effectively monitored.</p> | <p>A monthly aging report should be generated and sent to IU, OPHD and the LOB for status updates of their open cases. This report</p> | <p>A monthly aging report for investigations with an employee on paid leave will be developed and shared at the monthly review session</p> | | | | | | | | | | | | | | |

| No. | Observation | Risk/Effect | Recommendation | MCA |
|-----|--|---|---|--|
| | <p>however, procedures have not been established to generate an aging report on a regular basis to send to IU, OPHD, LOB and others to review and provide status updates on the investigations that these groups oversee. Without this information, prioritization and resolution of issues in investigations may not be complete or accurate.</p> | | <p>should be provided to and reviewed by appropriate levels of management.</p> | <p>with key stakeholders. <u>Target Date:</u> December, 31, 2017 <u>Responsible Party:</u> Vice President of Human Resources, UCSF Health</p> |
| 8. | <p><i>An escalation process for addressing aging open cases has not been established.</i></p> <p>LER has not established an escalation process to route the aging report of open cases to key stakeholders and senior management for review and oversight, which reduces the ability of key stakeholders and senior management to effectively oversee and help resolve the issues creating prolonged investigatory leave.</p> | <p>Without an escalation process to notify key stakeholders (e.g. senior management in the LOB and LER) of prolonged investigations, UCSF risks not being able to ensure proper oversight and monitoring.</p> | <p>An escalation process should be established by identifying key stakeholders and senior management who would benefit from receiving monthly status updates of the paid investigatory leave cases.</p> | <p>We will work with other key areas to establish a review of cases that have been on investigatory leave for more than a specific period of time. <u>Target Date:</u> March 31, 2018 <u>Responsible Party:</u> Vice President of Human Resources, UCSF Health</p> |

OPPORTUNITIES FOR IMPROVEMENT

| No. | Observation | Risk/Effect | Recommendation |
|-----|---|--|---|
| 1. | <p><i>Improved communication between investigation units would help enhance the investigatory leave process.</i></p> <p>Consultation and collaboration with other investigatory units can help provide additional input to the process to improve its accuracy and efficiency.</p> | <p>Decision-making without adequate input from additional investigatory units may lead to unnecessary investigatory leave.</p> | <p>Include a step in the process to consult with other investigatory units prior to (if time permits) or shortly after placing an employee on investigatory leave to assess whether investigatory leave is warranted when there is ambiguity in the case.</p> |