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Audit Report #001-23-01 May 2, 2023

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Executive Summary

Purpose and Scope

The Comptroller of Public Accounts (Comptroller's office) performed a desk audit of dual or multiple employment compliance and overtime eligibility at state agencies (agencies) and institutions of higher education (institutions).

The objectives of this audit were to ensure agencies and employees follow state law and regulations concerning dual or multiple employment, including appropriate overtime pay for eligible employees in accordance with the <u>Fair Labor Standards Act (FLSA)</u>, <u>29 United States Code, Sections 201 to 219 (PDF)</u>, and to ensure benefits provided to a person employed by more than one agency do not exceed the benefits provided for a single full-time employee, such as insurance, leave and lifetime service credit.

Using ad hoc analysis reports from the Uniform Statewide Payroll/Personnel System (USPS), the Standardized Payroll/Personnel Reporting System (SPRS) and the Human Resource Information System (HRIS), auditors identified employees who had potential dual or multiple employment from Sept. 1, 2016, to Aug. 31, 2019. This desk audit was conducted in accordance with Texas Government Code, Section 403.071.

The audit scope included analyzing employment data for employees who work for two or more state employers, and reviewing supporting documentation and dual/ multiple employment information from 159 agencies' and institutions' internal systems to determine if:

- Employees are eligible for overtime pay in accordance with the FLSA.
- Employees notified the employing entities about the dual/multiple employment status.
- Communication/agreement between employing entities occurred to coordinate work schedules, to determine which entity is responsible for paying overtime, and to ensure the employees are paid or credited with all the time worked over 40 hours per week.
- Employers are maintaining separate leave records for these purposes.
- Employees are not receiving benefits that exceed the benefits provided for a single full-time employee.

Background

The state of Texas is considered a single employer for purposes of FLSA, so all the time worked in a week by an employee employed at more than one agency or institution must be considered when computing overtime. Accordingly, if the dually employed employee is subject to FLSA provisions at one of the employers, the employee is FLSAcovered under all employments.



As per **Texas Payroll/Personnel Resource - Dual or Multiple Employments**, the employing agencies or institutions must know that the employee is multiply employed to coordinate work schedules, to ensure that the employee is paid or credited with all the time worked over 40 hours per week, and to ensure that employees are not receiving more benefits than those provided for a single full-time employee.

During the audit period, of the 1,336 employees identified as potential dual employees, 302 employees with pay periods in fiscal 2017, 2018 and 2019 were not eligible for payment of overtime for those periods because the deadline to compensate the employees for that unpaid overtime had passed. Per <u>United</u> <u>States Code, Title 29, Section 255(a)(PDF)</u>, a claimant forfeits unpaid overtime compensation under the Fair Labor Standards Act of 1938 unless the claimant initiates action within two years of the accrual of the overtime, or three years if the employer willfully neglected to pay the overtime.

Audit Results

Auditors reviewed records for 26,633 employees across 159 agencies and institutions. See <u>Table 1</u> for a list of audited agencies and institutions and the number of employees audited. Auditors found no errors for 91 of the agencies and institutions; some of those employees were not actual dual employees, some were FLSA exempt at both entities, some were mid-month transfers or terminations, and some had breaks in service during the same month. Additionally, five agencies and institutions complied with the dual employment requirements under review.

Auditors determined that 472 employees across the remaining 63 entities had issues of noncompliance with <u>Texas Government Code, Sections 667.006 and 667.007</u> and the <u>Texas Payroll/Personnel Resource - Dual or Multiple Employments</u> policy requirements. See <u>Table 2</u> for results by agency and institution.



Detailed Findings

Missing Documented Dual or Multiple Employment Notification and Policy

When an employee seeks dual or multiple employment, the employee must inform the current and potential employing entities before accepting an additional employment with the second entity. The current employer must inform the employee of the requirements, and is also responsible for contacting the second entity to coordinate work schedules and ensure the employee is paid or credited for all the time worked over 40 hours per week. See <u>Texas Government Code, Section 667.007</u> and <u>Texas Payroll/</u> <u>Personnel Resource – Dual or Multiple Employments</u>.

The supporting documentation provided by the agencies and institutions selected for the audit showed that of the 472 employees, only 64 employees had a documented dual or multiple employment notification form or internal system information on file. See <u>Table 2</u> for detailed information.

Additionally, four entities had neither a dual employment policy nor a documented dual notification form or related internal system information.

As a result of this audit, some agencies and institutions stated they would inform current and future employees about the existing internal systems and forms for reporting dual employment; some agencies and institutions created business processes and formed dual employment task forces; and some agencies and institutions updated their dual employment policies and procedures and revised their dual employment forms. Additionally, some entities informed their employees about the financial consequences of failing to report dual or multiple employments.

Recommendation/Requirement

Agencies and institutions should establish an official method to document employee notifications of potential second employment, such as a form or an internal system, and should have their human resource and/or payroll departments follow up on these notifications by contacting the existing or potential dual employer. They should also establish a policy to ensure their employees are aware of the requirements and will complete the dual employment notification form/internal system information when applicable.

Missing Proof of Cooperation and/or Agreement

When an employee notifies their current employer that they are or will be dually or multiply employed, the current agency should contact the potential employer(s). Both employers should communicate to determine which agency or institution is responsible for ensuring the employee is properly compensated according to the FLSA overtime provisions. See <u>Texas Government Code, Section 667.006</u>.



Employers should also agree on the responsibilities and have a documented agreement in place before or soon after the employee begins the secondary work. Both employers must communicate to coordinate work schedules, determine which employer is responsible for paying overtime, and ensure the employee is paid or credited for overtime. Additionally, both employers should maintain separate leave records to prevent the employee from receiving more benefits than those provided for a single full-time employee.

If a state employee is subject to the overtime provisions of the FLSA, the employers should ensure the employee is compensated for all combined time worked over 40 hours per week in accordance with the overtime provisions of the federal law. See **Texas Government Code Section**, 667.006(b).

Agency and institution descriptions of their compliance with the overtime requirements of **Texas Government Code**, **Section 667.006(b)** indicate that only 5 employers had cooperated and had agreements or other form of communication on file for all or some of their dually employed employees; 58 employers did not have any form of cooperation/communication on file. Some agencies and institutions stated that they would create an agreement form to establish which entity would be responsible for paying overtime, ensure both entities monitor the number of hours worked in a week, and ensure both entities maintain separate leave records.

Recommendation/Requirement

Employing agencies and institutions should document their communication and the resulting agreement. The employers should have an agreement in place before or soon after the employee begins the dual or multiple employment. Agencies and institutions should monitor work schedules, coordinate with the other employer(s) to determine who will pay overtime, and ensure the employee is compensated correctly. Additionally, employers should maintain separate leave records to prevent an employee from receiving more benefits than those provided for a single full-time employee.

Employee Benefits Exceeded Single Full-Time State Employee Eligible Benefits

Auditors identified one employee who was receiving leave benefits that exceeded the benefits provided for a single full-time employee.

The employee started work at one institution in 2014, and continued that employment when beginning employment at a second institution in 2016, which resulted in the employee becoming dually employed. The employee did not notify the original or new employer, and received leave accruals at both institutions, which resulted in unpaid overtime. The second employer calculated the missed overtime payments to be \$3,527.85. Both institutions are researching the leave accrual hours and will adjust the leave records to reflect the corrections of incorrectly awarded leave.



Auditors also noted that the same employee had retired from an institution in 2012, then returned to state employment in 2014, subsequently receiving \$23,986.28 longevity payments in error from the institution the employee joined in 2014. The employee also received erroneous longevity payments from the second institution, in an amount yet to be calculated. Employees who retire from state employment on or after June 1, 2005, are ineligible for longevity pay on reemployment with the state. Both employers intend to recover the longevity overpayment.

Recommendation/Requirement

Agencies and institutions with dually employed employees should collaborate to ensure those employees do not receive benefits, including leave accruals, that exceed the benefits provided for a single full-time employee. Agencies and institutions should also ensure employees are paid appropriately for overtime.

Incorrect HRIS Reporting

Six institutions failed to correctly report 68 instances of personnel information for dually employed employees to HRIS. There were 59 instances of incorrect FLSA indicators in HRIS. The incorrect FLSA indicators could impact eligibility for overtime payments. In seven instances, the comptroller objects reported to HRIS were incorrect. Additionally, there was one incorrect termination date and one instance of a new hire reported to HRIS in error.

The Comptroller's office collects and maintains payroll and personnel information on all state employees. The information is used to report statistics to legislative and oversight bodies, media and the public. Institutions must report personnel and payroll events to HRIS as outlined in <u>34 Texas Administrative Code Section 5.41(h)-(j)</u>.

Recommendation/Requirement

Institutions of higher education must ensure all payroll and personnel transactions are reported to HRIS correctly and in a timely manner. The data submitted to HRIS must be made in the manner, frequency and form required by the Comptroller's office.



Tables

Table 1: Audited State Agencies and Institutions

Agency #	Agency Name	# Employees Audited
201	Supreme Court	12
211	Court of Criminal Appeals	5
212	Office of Court Administration	31
213	State Prosecuting Attorney	1
215	Office of Capital and Forensic Writs	1
221	Court of Appeals - First Court of Appeals District	1
222	Court of Appeals - Second Court of Appeals District	4
223	Court of Appeals - Third Court of Appeals District	7
225	Court of Appeals - Fifth Court of Appeals District	2
228	Court of Appeals - Eighth Court of Appeals District	1
233	Court of Appeals - Thirteenth Court of Appeals District	4
234	Court of Appeals - Fourteenth Court of Appeals District	1
241	Comptroller - Judiciary Section	6
242	State Commission on Judicial Conduct	3
300	Governor - Fiscal	24
301	Governor - Executive	42
302	Attorney General	306
303	Texas Facilities Commission	35
304	Comptroller of Public Accounts	172
305	General Land Office	62
306	Texas State Library and Archives Commission	11
307	Secretary of State	32
308	State Auditor	21
312	State Securities Board	5
313	Department of Information Resources	49
320	Texas Workforce Commission	291
323	Teacher Retirement System of Texas	51
326	Texas Emergency Services Retirement System	1
327	Employees Retirement System of Texas	33
329	Texas Real Estate Commission - Semi-Independent	26
332	Texas Department of Housing and Community Affairs	24
338	State Pension Review Board	1
347	Texas Public Finance Authority	1

Agency #	Agency Name	# Employees Audited
352	Bond Review Board	2
356	Texas Ethics Commission	12
359	Office of Public Insurance Counsel	2
360	State Office of Administrative Hearings	1
362	Texas Lottery Commission	33
364	Health Professions Council	1
401	Texas Military Department	548
403	Texas Veterans Commission	36
405	Department of Public Safety	328
407	Texas Commission on Law Enforcement	5
409	Commission on Jail Standards	3
411	Texas Commission on Fire Protection	2
448	Office of Injured Employee Counsel	30
450	Department of Savings and Mortgage Lending - Semi-Independent	9
451	Texas Department of Banking - Semi-Independent	9
452	Texas Department of Licensing and Regulation	59
454	Texas Department of Insurance	138
455	Railroad Commission of Texas	48
456	Texas State Board of Plumbing Examiners	7
457	Texas State Board of Public Accountancy - Semi-Independent	8
458	Texas Alcoholic Beverage Commission	37
460	Texas Board of Professional Engineers and Land Surveyors - Semi-Independent	6
466	Office of Consumer Credit Commissioner - Semi-Independent	10
469	Credit Union Department - Semi-Independent	3
473	Public Utility Commission of Texas	14
475	Office of Public Utility Counsel	5
476	Texas Racing Commission	6
477	Commission on State Emergency Communications	6
479	State Office of Risk Management	16
481	Texas Board of Professional Geoscientists	2
503	Texas Medical Board	45
504	State Board of Dental Examiners	31
506	University of Texas M. D. Anderson Cancer Center	437
507	Texas Board of Nursing	15
508	Texas Board of Chiropractic Examiners	5
514	Texas Optometry Board	2
515	Texas State Board of Pharmacy	19





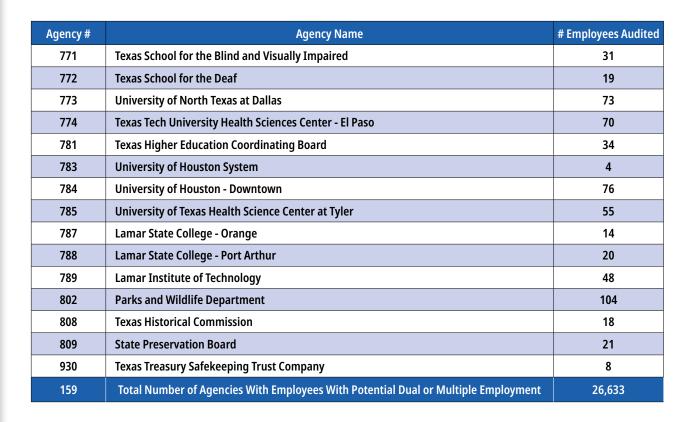




Table 2: Audit Results by State Agencies and Institutions

Agency #	Agency Name	Audit Results	Agency Response
302	Office of the Attorney General	 OAG did not have a documented dual notification for three employees. OAG did not coordinate with the other entities for three employees. 	The agency agreed with the findings.
304	Comptroller of Public Accounts	CPA did not coordinate with the other entities for two employees.	The agency agreed with the finding.
306	Texas State Library and Archives Commission	TSLAC did not coordinate with the other entity for one employee.	The agency agreed with the finding.
307	Secretary of State	 SOS did not have a documented dual notification for one employee. SOS did not coordinate with the other entity for one employee. 	The agency agreed with the findings.
320	Texas Workforce Commission	 TWC did not have a documented dual notification for six employees. TWC did not coordinate with the other entities for six employees. 	The agency agreed with the findings.
332	Texas Department of Housing and Community Affairs	 TDHCA did not have a documented dual notification for three employees. TDHCA did not coordinate with the other entities for three employees. 	The agency agreed with the findings.
405	Texas Department of Public Safety	TXDPS did not have proof of cooperation with the other entities for 22 employees.	The agency did not provide a response.
458	Texas Alcoholic Beverage Commission	 TABC did not coordinate with the other entity for one employee. No dual employment policy. 	The agency agreed with the findings.
460	Texas Board of Professional Engineers and Land Surveyors - Semi-Independent	PELS did not coordinate with the other entities for two employees.	The agency agreed with the finding.
506	University of Texas M.D. Anderson Cancer Center	 The institution did not have a documented dual notification for 44 employees. The institution did not coordinate with the other employing entities for 44 employees. 	The institution agreed with the findings.
508	Texas Board of Chiropractic Examiners	 TBCE did not have a documented dual notification for one employee. TBCE did not coordinate with the other entity for one employee. 	The agency agreed with the findings.
529	Health and Human Services Commission	 HHSC did not have a documented dual notification for nine employees. HHSC did not coordinate with the other entities for nine employees. 	The agency agreed with the findings.

Agency #	Agency Name	Audit Results	Agency Response
530	Department of Family and Protective Services	 DFPS did not have a documented dual notification for 15 employees. DFPS did not coordinate with the other entities for 15 employees. 	The agency agreed with the findings.
537	Department of State Health Services	 DSHS did not have a documented dual notification for nine employees. DSHS did not coordinate with the other entities for nine employees. 	The agency agreed with the findings.
551	Department of Agriculture	TDA did not coordinate with the other entity for one employee.	The agency agreed with the finding.
555	Texas A&M AgriLife Extension Service	 The institution did not have a documented dual notification for three employees. The institution did not coordinate with the other entities for three employees. 	The institution agreed with the findings.
582	Texas Commission on Environmental Quality	TCEQ did not have a documented dual notification for one employee.	The agency agreed with the finding.
601	Texas Department of Transportation	TxDOT did not have a documented dual notification for one employee.	The agency agreed with the finding.
644	Texas Juvenile Justice Department	 TJJD did not have a documented dual notification for one employee. TJJD did not coordinate with the other entity for one employee. 	The agency agreed with the findings.
696	Texas Department of Criminal Justice	 TDCJ did not have a documented dual notification for five employees. TDCJ did not coordinate with the other entities for five employees. 	The agency agreed with the findings.
709	Texas A&M University System Health Science Center	 The institution did not have a documented dual notification for one employee. The institution did not coordinate with the other entity for one employee. 	The institution agreed with the findings.
711	Texas A&M University	 The institution did not have a documented dual notification for 22 employees. The institution did not coordinate with the other entities for 22 employees. 	The institution agreed with the findings.
712	Texas A&M Engineering Experiment Station	 The institution did not have a documented dual notification for three employees. The institution did not coordinate with the other entities for three employees. 	The institution agreed with the findings.
713	Tarleton State University	 The institution did not have a documented dual notification for three employees. The institution did not coordinate with the other entities for three employees. 	The institution agreed with the findings.

Agency #	Agency Name	Audit Results	Agency Response
714	University of Texas at Arlington	 The institution did not have a documented dual notification for 17 employees. The institution did not coordinate with the other entities for 17 employees. 	The institution agreed with the findings.
715	Prairie View A&M University	 The institution did not have a documented dual notification for one employee. The institution did not coordinate with the other entity for one employee. 	The institution agreed with the findings.
717	Texas Southern University	 The institution did not have a documented dual notification for 12 employees. The institution did not coordinate with the other entities for 12 employees. One employee received longevity pay in error because they were a return-to-work retiree, potentially earned accruals for two FTEs and is potentially due overtime pay. The institution reported 48 incorrect FLSA indicators to HRIS. 	The institution agreed with the findings.
720	University of Texas System	 The institution did not have a documented dual notification for four employees. The institution did not coordinate with the other entities for four employees. 	The institution agreed with the findings.
721	University of Texas at Austin	 The institution did not have a documented dual notification for 20 employees. The institution did not coordinate with the other entities for 20 employees. 	The institution agreed with the findings.
723	University of Texas Medical Branch at Galveston	 The institution did not have a documented dual notification for four employees. The institution did not coordinate with the other entities for four employees. 	The institution agreed with the findings.
724	University of Texas at El Paso	 The institution did not have a documented dual notification for four employees. The institution did not coordinate with the other entities for four employees. 	The institution agreed with the findings.
727	Texas A&M Transportation Institute	The institution did not report termination for one employee to HRIS.	The institution agreed with the finding.
729	University of Texas Southwestern Medical Center	The institution did not coordinate with the other entities for five employees.	The institution agreed with the finding.

Agency #	Agency Name	Audit Results	Agency Response
730	University of Houston	 The institution did not have a documented dual notification for 21 employees. The institution did not coordinate with the other entities for 21 employees. One employee received longevity pay in error because they were a return-to-work retiree, potentially earned accruals for two FTEs and is potentially due overtime pay. The institution reported one incorrect FLSA indicator to HRIS. 	The institution agreed with the findings.
731	Texas Woman's University	 The institution did not have a documented dual notification for 18 employees. The institution did not coordinate with the other entities for 18 employees. The institution reported seven transactions with incorrect comptroller objects. 	The institution agreed with the findings.
732	Texas A&M University - Kingsville	The institution reported one new employee in error to HRIS.	The institution agreed with the finding.
733	Texas Tech University	 The institution did not have a documented dual notification for three employees. The institution did not have an agreement between entities for three employees. 	The institution agreed with the findings.
734	Lamar University - Beaumont	 The institution did not have a documented dual notification for three employees. The institution did not coordinate with the other entities for three employees. 	The institution agreed with the findings.
735	Midwestern State University	The institution reported 10 incorrect FLSA indicators to HRIS.	The institution agreed with the finding.
737	Angelo State University	 The institution did not have a documented dual notification for one employee. The institution did not coordinate with the other entity for one employee. 	The institution agreed with the findings.
738	University of Texas at Dallas	 The institution did not have a documented dual notification for three employees. The institution did not coordinate with the other entities for three employees. 	The institution agreed with the findings.
739	Texas Tech University Health Sciences Center	 The institution did not have a documented dual notification for 14 employees. The institution did not coordinate with the other entities for 14 employees. 	The institution agreed with the findings.
742	University of Texas of the Permian Basin	 The institution did not have a documented dual notification for four employees. The institution did not coordinate with the other entities for four employees. 	The institution agreed with the findings.

Agency #	Agency Name	Audit Results	Agency Response
743	University of Texas at San Antonio	 The institution did not have a documented dual notification for 38 employees. The institution did not coordinate with the other entities for 38 employees. 	The institution agreed with the findings.
744	University of Texas Health Science Center at Houston	 The institution did not have a documented dual notification for 19 employees. The institution did not coordinate with the other entities for 19 employees. 	The institution agreed with the findings.
745	University of Texas Health Science Center at San Antonio	 The institution did not have a documented dual notification for 27 employees. The institution did not coordinate with the other entities for 27 employees. 	The institution agreed with the findings.
746	University of Texas Rio Grande Valley	 The institution did not coordinate with the other entities for three employees. No dual employment policy. 	The institution agreed with the finding.
749	Texas A&M University - San Antonio	 The institution did not have a documented dual notification for one employee. The institution did not coordinate with the other entity for one employee. 	The institution agreed with the findings.
750	University of Texas at Tyler	 The institution did not have a documented dual notification for six employees. The institution did not coordinate with the other entities for six employees. No dual employment policy. 	The institution agreed with the findings.
752	University of North Texas	 The institution did not have a documented dual notification for seven employees. The institution did not coordinate with the other entities for seven employees. 	The institution agreed with the findings.
753	Sam Houston State University	 The institution did not have a documented dual notification for five employees. The institution did not have an agreement between entities for five employees. 	The institution agreed with the findings.
754	Texas State University	 The institution did not have a documented dual notification for 12 employees. The institution did not coordinate with the other entities for 12 employees. 	The institution agreed with the findings.
756	Sul Ross State University	The institution did not coordinate with the other entities for two employees.	The institution agreed with the finding.
757	West Texas A&M University	 The institution did not have a documented dual notification for five employees. The institution did not coordinate with the other entities for five employees. 	The institution agreed with the findings.

Agency #	Agency Name	Audit Results	Agency Response
759	University of Houston - Clear Lake	 The institution did not have a documented dual notification for seven employees. The institution did not coordinate with the other entities for seven employees. 	The institution agreed with the findings.
760	Texas A&M University - Corpus Christi	 The institution did not have a documented dual notification for three employees. The institution did not coordinate with the other entities for three employees. 	The institution agreed with the findings.
763	University of North Texas Health Science Center at Fort Worth	 The institution did not have a documented dual notification for one employee. The institution did not coordinate with the other entity for one employee. 	The institution agreed with the findings.
769	University of North Texas System	 The institution did not have a documented dual notification for one employee. The institution did not coordinate with the other entity for one employee. 	The institution agreed with the findings.
771	Texas School for the Blind and Visually Impaired	 TSBVI did not have a documented dual notification for four employees. TSBVI did not coordinate with the other entities for four employees. 	The agency agreed with the findings.
772	Texas School for the Deaf	 TSD did not have a documented dual notification for two employees. TSD did not coordinate with the other entities for two employees. 	The agency agreed with the findings.
773	University of North Texas at Dallas	 The institution did not have a documented dual notification for two employees. The institution did not coordinate with the other entities for two employees. 	The institution agreed with the findings.
784	University of Houston - Downtown	 The institution did not have a documented dual notification for three employees. The institution did not coordinate with the other entities for three employees. 	The institution agreed with the findings.
785	University of Texas Health Science Center at Tyler	 The institution did not have a documented dual notification for two employees. The institution did not coordinate with the other entities for two employees. No dual employment policy. 	The institution agreed with the findings.
63		Total Number of Agencies and Institutions With Issues	