



OFFICE OF THE INSPECTOR GENERAL
Illinois State Toll Highway Authority

NOTICE OF POSTING
OIG Case # IG-20-003
Respondent: Melissa Mulroy

Pursuant to 605 ILCS 10/8.5 (e)(3), the attached redacted summary report is being posted to the Illinois Toll Highway Authority's public website. As required by law, the Office of the Inspector General for the Illinois Toll Highway Authority (OIG) sent a copy of this report to the Respondent and gave her until April 29, 2021 to provide suggested redactions or a written response. Respondent provided no response.

The OIG issued this Summary Report of Investigation (SRI) following an investigation that established reasonable cause to find that Equipment Operator Laborer (EOL) Melissa Mulroy violated Tollway outside employment and leave policies by submitting a false outside employment disclosure and by taking Family Medical Leave Act (FMLA) leave to call off from Tollway shifts and then work at a hospital on several days. The OIG recommended that the Tollway impose discipline as appropriate under the circumstances.

The Tollway agreed with the OIG findings and initiated the termination process. OIG received notification that Mulroy's employment had been terminated on February 17, 2021, and that the Union had filed a grievance. On March 2, 2021, OIG learned that the Union had withdrawn its grievance.



**OFFICE OF THE INSPECTOR GENERAL
SUMMARY REPORT OF INVESTIGATION
OIG Case # IG-20-003
January 8, 2021**

This report provides a summary of evidence set out in the attached investigative materials, and the Office of the Inspector General's (OIG's) analysis of that evidence. An index of these investigative materials is attached.

I. INTRODUCTION

The OIG initiated an investigation after receiving an allegation about possible Family and Medical Leave Act (FMLA) abuse committed by Melissa Mulroy (Mulroy) an Equipment Operator Laborer. Specifically, there were concerns that Mulroy had used approved FMLA leave to work outside employment¹ that she had not disclosed to the Tollway.

This investigation confirmed that Mulroy worked a second job as a Phlebotomist at Hospital A from January 16, 2017 until January 1, 2020, which overlapped her Tollway tenure. The OIG also obtained disclosure forms in which Mulroy identified this job, but on one dated November 17, 2019 she reported that she had not worked any hours in the previous year; yet hospital payroll records show she did. In addition, the OIG obtained documentation that on several days in September 2018 Mulroy called off from her regularly scheduled Tollway assignment, citing FMLA parental leave, but worked as a Phlebotomist.

This investigation established reasonable cause to find that Mulroy violated Tollway outside employment and leave policies by submitting a false disclosure and by taking FMLA leave to call off from several Tollway shifts and working at the hospital. The OIG recommends that the Tollway impose discipline commensurate with the circumstances.

In addition, this investigation identified areas for further attention by the Tollway as more fully detailed in this report. These recommendations include: Enhancing the outside employment disclosure process; Increasing collaboration among Tollway stakeholders regarding FMLA leave requests and use; and, Providing additional training for staff, especially frontline supervisors.

II. APPLICABLE RULES, REGULATIONS, LAW

A. Illinois Tollway Employee Policies and Procedures Manual

1. Chapter 7. Employee Conduct and Discipline

Section A: Employee Conduct, Provides in Relevant Part:

To ensure orderly operations and provide the best possible work environment, the Tollway expects employees to follow rules of conduct that will protect the interests and safety of both the employees and the organization. Violations of the rules of conduct may result in

¹ The term outside employment is used interchangeably with the term secondary employment in this report.

disciplinary action, up to and including discharge. The rules of conduct include, but are not limited to, the following:

- Falsification of any information contained on the employment application, or during any interview, claim form, or other document provided to the State or Tollway.
- Other conduct unbecoming a Tollway employee.

2. Chapter 7. Employee Conduct and Discipline

Section H: Outside Employment, provides in relevant Part:

Outside employment must not adversely affect an employee's job performance or the employee's work schedule at the Tollway. The same performance standards will be used for all employees when evaluating the Tollway work performance and [all employees] will be subject to the Tollway's scheduling demands, regardless of any outside work commitments.

B. Outside Employment Forms

In order to identify conflicts of interest and conflicts of commitment, the Tollway has long required employees to submit information regarding their outside employment. Prior to April of 2020, the Tollway required employees with outside jobs to notify and receive approval before engaging in outside employment using the Tollway Outside Employment Approval Request Form. That form provided spaces to list current Tollway job duties and hours and to report outside employment duties and hours, and included the following language:

"I certify that the facts contained on this form are true and complete to the best of my knowledge and understand that false statements on this form may be grounds for dismissal."

These forms were submitted to the department chief who would review and approve or deny the request; the form was then sent to Administration. Supervisors were generally advised to check on outside employment as part of the annual evaluation process, and employees were required to acknowledge on-going secondary employment.

In April 2020, recognizing deficiencies in the Tollway outside employment process as illustrated in several OIG matters², Tollway policy changed and required all employees to annually complete and submit an "Outside Employment Disclosure Form." This form was sent to all employees via email and includes sections to list current Tollway duties and hours, and any outside employment duties and hours. Once the employee completes and signs, the forms are electronically sent to department chiefs for approval and then forwarded to the Tollway Ethics Officer for review and approval.

This new form requires the employee to sign attesting that either they have no outside employment or that the outside employment identified in the form will not interfere with their Tollway responsibilities, and confirming their obligation to keep the information up to date.

² See IG-16-003, IG-16-011, and RF-20-023.

C. Family and Medical Leave Act

The Family and Medical Leave Act (FMLA) is a federal law that provides eligible employees up to 12 workweeks of unpaid leave a year, and requires group health benefits to be maintained during the leave as if employees continued to work instead of taking leave.³ Employees are also entitled to return to their same or an equivalent job at the end of their FMLA leave.

A covered employer, like the Tollway, must grant an eligible employee up to a total of 12 workweeks of unpaid, job-protected leave in a 12-month period for one or more of the following reasons:

- for the birth of a son or daughter, and to bond with the newborn child;
- for the placement with the employee of a child for adoption or foster care, and to bond with that child;
- to care for an immediate family member (spouse, child, or parent – but not a parent “in-law”) with a serious health condition;
- to take medical leave when the employee is unable to work because of a serious health condition; or
- for qualifying exigencies arising out of the fact that the employee’s spouse, son, daughter, or parent is on covered active duty or call to covered active duty status as a member of the National Guard, Reserves, or Regular Armed Forces.

An employer may require that the need for leave for a serious health condition of the employee or the employee’s immediate family member be supported by a certification issued by a health care provider.

An employee must comply with an employer’s call-in procedures unless unusual circumstances prevent the employee from doing so (in which case the employee must provide notice as soon as he or she can practicably do so).

D. Illinois Tollway Employee Policies and Procedures Manual

1. Chapter 4 – Benefits/Approved Leaves
 - a. Section B. Employee Leaves

The Tollway Policies and Procedures Manual describes several types of leave available to employees, including FMLA. *See* Section B. 7). The Manual confirms that the Tollway will comply with the federal FMLA to permit eligible employees to take job-protected leave for various reasons set forth in the Act and provides the general eligibility and specific Tollway processes required for request and use.

³ See US Department of Labor website: <https://www.dol.gov/agencies/whd/fmla/faq> (last accessed 12/21/2020).

III. BACKGROUND

A. Allegation

The OIG received information, including a series of emails from ██████████ General Manager ██████████, outlining concerns arising from Mulroy's use of FMLA and possible unauthorized outside employment. OIG followed up with ██████████ to confirm and obtain additional information.

In brief, ██████████ provided documentation of Mulroy's FMLA use and expressed concern that Mulroy might be using FMLA when she doesn't want to work, rather than because of a medical issue. ██████████ cited the frequency with which she used it to avoid snow duty, and some of her comments when she told supervisors she was using FMLA. ██████████ expressed concern that her actions were causing a decline in morale at M-5, especially since there was a belief that Mulroy was working outside employment at Hospital B (or a hospital in Elgin) and/or ██████████ Cafe⁴ – but he believed she had no approved outside employment. ██████████ further became suspicious when he reviewed Mulroy's I-Pass transponder usage as part of the Tollway-wide audit, which showed frequent exits at Barrington Road (near several hospitals) on some days she had called off from work.

██████████ emails show that ██████████ reported some of these concerns to ██████████ supervisors and sought recertification of Mulroy's 2019 leave request. ██████████ also noted that in 2020 Mulroy's approval for intermittent leave evolved from 8-hour episodes 3 times per week to 8-hour episodes 7 days a week.

B. Subject

1. Melissa Mulroy

Tollway records reflect that Melissa Mulroy has been an Equipment Operator Laborer at Maintenance Garage 5 (M-5) in Arlington Heights since August 4, 2017. Tollway records reflect that Mulroy is currently on leave ██████████
██████████.

⁴ ██████████ closed on January 1, 2020. See <https://www.dailyherald.com/business/20191219-██████████-to-close-jan-1> (last accessed January 5, 2021).

C. FMLA Source

According to its website⁵:

FMLA Source is a ComPsych Corporation company that specializes in reviewing, approving, processing and tracking FMLA leave requests with the oversight of expert legal staff. FMLA Source helps assure compliance with state and federal law, consistency in processing and coordination, and facilitates communication to supervisors, managers, HR and employees.

In January 2018, the Tollway entered into contract 17-0123 with FMLA Source Inc. Under this contract, FMLA Source provides administrative services such as reviewing, approving and processing Tollway employee leave requests made under the Family Medical Leave Act (FMLA), Victims Economic Security and Safety Act (VESSA), Authorized Leave Without Pay (ALWOP), and Uniformed Services Employee Reemployment Rights Act (USERRA).

Section 1 describes the following services as follows:

1.1 Supplies and/ or Services Required:

Vendor is required to be able to handle employee requests and notify the agency of these approvals in a timely manner. This may include employee leaves that many begin during the contract term or are already in effect. The Vendor must be able to transition current and previous leave status information, determine employee eligibility, and report approval to the employee and the Tollway in a timely manner.

Vendor may also provide training to Tollway management on the Family Medical Leave Act (FMLA), Victims Economic Security and Safety Act (VESSA), Authorized Leave Without Pay (ALWOP), and Uniformed Services Employee Reemployment Rights Act (USERRA) leaves as they relate to our employees.

This contract is managed by the Employee Benefits section of the Administration department. Administration provided contact information for the Tollway's FMLA Source liaison for more details on their work. According to FMLA Account Representative [REDACTED], FMLA Source's main function is to relay paperwork to the doctor, employer and employee and keep records of the history of FMLA usage. [REDACTED] said that FMLA Source does not proactively search for or identify FMLA fraud or abuse, but if prompted by the employer they can provide information and review suspicions of fraud. [REDACTED] provided documentation respecting Mulroy's leave requests and approvals, and indicated that their compliance team would look into the matter more fully and forward a report.

After several follow-ups seeking this report, [REDACTED], Senior FMLA Account Manager for FMLA Source, informed the OIG that FMLA Source does not do any investigation or research of possible FMLA fraud or abuse claims, and apologized for any miscommunication.

⁵ See <https://www.fmlasource.com/FMLAWeb/login/login.xhtml> (last accessed December 20, 2020).

If a suspicion is brought to the attention of FMLA Source, a document is sent to the doctor advising them of the claim. The employee is also sent the same documentation requiring them to follow up with the doctor. [REDACTED] indicated that all FMLA Source reports and documentation on Mulroy had been provided to OIG Investigators.

IV. SUMMARY OF INVESTIGATION

A. Documents

1. Employment Records - Hospital B

Based on information provided in the intake, OIG spoke to [REDACTED], Human Resources for [REDACTED], for any employment records regarding Mulroy at Hospital B in Elgin, Illinois. [REDACTED] responded that there were no such records for her at Hospital B, nor any record at any [REDACTED] location. He noted that [REDACTED] is a laboratory services company with which [REDACTED] subcontracts for laboratory work at their hospital locations.

OIG also spoke to [REDACTED] Human Resources with [REDACTED], for any employment records regarding Mulroy. [REDACTED] responded that there were no such records for Mulroy at [REDACTED].

2. Outside Employment Approval Request Form- August 4, 2017

OIG obtained an Outside Employment Approval Request Form that was signed and dated by Melissa Mulroy on August 4, 2017. The form was signed by [REDACTED] on behalf of [REDACTED] Chief Engineering Officer. This form was completed as a part of Mulroy's new hire paperwork.

Mulroy indicated that she worked in phlebotomy at Hospital A in Barrington, Illinois.

3. Outside Employment Approval Request Form – November 15, 2017

OIG Obtained an Outside Employment Approval Request Form that was signed and dated by Melissa Mulroy on November 15, 2017. The form was approved by [REDACTED], Chief Engineering Officer.

Mulroy indicated that she worked as a cab driver for [REDACTED] on Saturdays only.

4. Outside Employment Approval Request Form – November 17, 2019

OIG obtained an Outside Employment Approval Request Form that was signed and dated by Melissa Mulroy on November 17, 2019.

Mulroy reported that she had worked as a Phlebotomist at Hospital A in [REDACTED] but wrote that her work hours were “0 [zero] hours over 1 yr”

OIG learned from Mulroy’s supervisors that this form was sent to CA but never approved because a revised form was sent.

5. Outside Employment Approval Request Form – November 22, 2019

OIG obtained an Outside Employment Approval Request Form that was completed, signed and dated by Melissa Mulroy on November 22, 2019. Mulroy reported that she worked as a Phlebotomist at Hospital A in Barrington, Illinois. The form was approved by [REDACTED], Chief Engineering Officer.

According to Mulroy’s supervisors, this form was emailed to Central Administration with a note that it should replace the form dated November 17, 2019.

6. Outside Employment Disclosure Form - July 21, 2020

OIG obtained an Outside Employment Disclosure Form that was completed, signed and dated electronically by Melissa Mulroy on July 21, 2020. The form was approved by [REDACTED], Chief Engineering Officer.

Mulroy reported that she had no outside employment.

7. Employment Documentation from [REDACTED] Health Care

In response to an OIG subpoena, [REDACTED] reported that on January 16, 2017 Mulroy began working as a Phlebotomist at Hospital A in Barrington, Illinois (Hospital A) and had submitted her resignation on May 29, 2020. The documentation included specific days and hours Mulroy worked at Hospital A from January 2017 until May 2020. Specifically, the records show:

- a. Between August 4, 2017 until January 1, 2020⁶, Mulroy worked 59 days at Hospital A.
- b. Between November 2018 and November 2019, Mulroy worked seven shifts⁷ at Hospital A.
- c. On September 17, 2018 Mulroy worked at Hospital A from 2:34 pm to 2:32 am.

⁶ Although [REDACTED] records show Mulroy resigned in May 2020, it appears that the last day she actually worked was January 1, 2020.

⁷ Comparing the dates to Tollway Kronos records shows that there was no overlap between these shifts and Mulroy’s Tollway assignments.

d. On September 20, 2018, Mulroy worked at Hospital A from 2:21 pm to 11:03 pm.

e. On September 21, 2018, Mulroy worked at Hospital A from 12:36 pm to 10:15 pm.

8. FMLA Source Documentation

FMLA Source confirmed that during her employment at the Tollway, Mulroy has regularly sought approval for FMLA leave for a variety of events – ranging from her own serious medical condition to caring for a relative to the adoption of a child. Some of these requests were denied, but at least five were approved, and FMLA Source provided OIG with records related to these requests and approvals.

The chart below lists Mulroy’s approved FMLA leaves that are most relevant to the investigation.

Date Approved by FMLA Source	Medical Certification Required	Leave Number	Dates Covered	Reason for Leave
August 27, 2018	NO	2215740	August 16, 2018 to August 15, 2019	Time to Bond with Adopted Child
March 2, 2020	YES	2834686	December 26, 2019 to February 25, 2020, and later approved for February 26, 2020 to December 25, 2020.	Unspecified Episodic [REDACTED]. Initially approved for 3 8-hour episodes per week, and later approved for 7 8-hour episodes per week

FMLA Source also provided records documenting Mulroy’s use of that FMLA leave. These records show that Mulroy requested to use FMLA leave on September 17, September 20, and September 21, 2018.

These records also show that Mulroy requested FMLA leave for multiple days in December 2019 and January and February 2020 although such leave was not formally approved until March 2, 2020.

9. Email [REDACTED] - March 4, 2020

OIG obtained an email titled “FMLA Melissa Mulroy Leave Request #2834686” from [REDACTED] Employee Benefits Coordinator, that was sent to [REDACTED], Chief Engineering Officer. The email provides:

“The following dates are approved for self:

Intermittent Leave Beginning on 2/26/20 Ending on 12/25/20

Estimated frequency of absence: On an intermittent basis for up to 7 episodic incapacitation(s) per week lasting up to 8 hour(s) per episode”

10. Kronos Records

The Tollway uses the Kronos timekeeping system to record employee hours worked. These records reflect that Mulroy was granted FMLA parental leave on the following days: September 17, 2018, September 20, 2018, and September 21, 2018. On these days, Mulroy’s assigned shift was 7:00 am to 3:00 pm.

Kronos records further reflect that between January and October 2020, Mulroy called off from her Tollway assignment or declined to appear for storm duty approximately 39 times. 29 of those days are coded as FMLA. During this time, Mulroy’s assigned shift was generally 11:00 pm to 7:00 am.

11. Supervisors’ Notes - Mulroy FMLA leave (2020)

OIG obtained notes and call-off documentation regarding Mulroy’s use of FMLA, which were maintained by her supervisors [REDACTED] and [REDACTED]. The notes document times and dates as well as the general substance of these interactions.

a. On January 19, 2020, [REDACTED] noted that Mulroy contacted him at 9:46 pm to advise “[REDACTED] this is Melissa I won’t be in tonight FMLA”. [REDACTED] notes indicate that Mulroy did not have an approved open FMLA case or benefit time.

NOTE: Kronos records show ULWOP (Unauthorized Leave Without Pay).

b. On January 20, 2020, [REDACTED] noted Ms. Mulroy (EOL) contacted him at 9:29 pm to advised “[REDACTED] this is Melissa I won’t be in tonight FMLA sick”. [REDACTED] notes indicate that Mulroy did not have an approved open FMLA case or benefit time.

NOTE: Kronos records show ULWOP.

c. On January 24, 2020, [REDACTED] noted that Mulroy was called at 5:26 pm for snow and ice Storm # 8, for a 7:00 pm start. Mulroy stated “I won’t be in tonight, FMLA”. [REDACTED] indicated that he advised Mulroy: “You still do not have an approved FMLA”, and Mulroy said “I do have it, I have an email”. [REDACTED] advised Mulroy that “until the Tollway has an approved FMLA case for you it isn’t approved.”

NOTE: Kronos records show ULWOP.

d. On January 31, 2020, [REDACTED] noted that he called Mulroy at 6:45 pm for a 9:00 pm start for snow and ice. Mulroy told [REDACTED] she’s taking a FMLA day, and called

█████ back at 7:03 and asked, “Is this a full call out?” █████ said “No, it’s 1 under crew,” and Mulroy said “Ok. I would come in for a full call out but since it’s not I’ll keep my appointment.”

NOTE: Kronos records show FMLA- No Pay

e. On August 5, 2020, █████ noted that Mulroy called him at 15:06 and inquired how much sick time she had. █████ informed her that she “Probably only had 7 hours remaining since she went home an hour early the other day.” Mulroy then asked to take a vacation day, and █████ said “No, since 72-hour notice wasn’t given.” Mulroy then said “Fine, I’ll just take a FMLA day”. █████ told her that he would record it as such.

NOTE: Kronos records show FMLA-Sick.

B. Interviews

1. █████

a. Telephone Interview

On October 7, 2020, OIG spoke via telephone to █████ Maintenance Section Supervisor, regarding Mulroy’s FMLA use. █████ confirmed that he has supervised EOLs including Mulroy assigned to M-5. █████ said that there were 15 snow and ice instances that the Tollway classified as storms last year, and that according to his records, Mulroy called off for at least half of them. █████ said that other EOLs expressed frustration because Mulroy would return to work after she had called off all weekend and ask her coworkers how their weekend was. She would then say hers was great since she didn’t have to work. █████ recalled that Mulroy had used FMLA leave for events such as her uncle passing away or someone in her building committed suicide. When █████, would question her about her FMLA use, she would become very defensive. There were instances when management would advise her that she did not have FMLA to use or what she was using FMLA for was not covered by FMLA. She would become defensive as a result and tell management not to worry about it and that FMLA would cover it. █████ felt that she would at times try to provoke management by using a “Bait and Trap” type of scheme so she could file a complaint or claim as a result.

█████ told the OIG that due to the pandemic, EOLs were placed on a modified work schedule. Under this schedule EOLs receive full pay under an arrangement where they are assigned 3-day work weeks and are required to call in on the other 2 days to let management know they are feeling healthy and are available to work if needed. █████ said that Mulroy would use FMLA leave on her 3 scheduled days to work and would be available the days she was not scheduled to work. █████ said he has heard from other co-workers that Mulroy may have secondary employment, and he said he knew that she had previously submitted secondary employment forms for work as a phlebotomist and as an Uber driver. █████ said that when he asked her recently about secondary employment, she told him that she no longer works a second job.

b. Webex Interview

On November 19, 2020, OIG interviewed [REDACTED] via Webex. [REDACTED] was provided both orally and in writing, Administrative Advisements for Non-Union Employees which he signed and acknowledged understanding. [REDACTED] consented to audio and video recording the interview.

[REDACTED] has supervised Mulroy for the last 3 years at maintenance garage 5 in Arlington Heights. On November 17, 2019, [REDACTED] asked all his employees at the request of Illinois Tollway Central Administration (CA), if they have secondary employment. The employees who stated they had secondary employment were given the Outside Employment Approval Request Form to complete. According to [REDACTED], Mulroy stated she had outside employment and was given an Outside Employment Approval Request Form to complete. She completed the form and signed it and wrote that she was a Phlebotomist at Hospital A in Barrington. The form was put in an envelope and was sent to CA. After [REDACTED] reviewed the form, he noticed that Mulroy had completed the form incorrectly. He stated Mulroy put her secondary employer's information in the wrong sections. On November 22, 2019, [REDACTED] Maintenance Section Manager, brought this to Mulroy's attention, and she completed a new Outside Employment Approval Request Form. [REDACTED] said that [REDACTED] scanned the form and emailed it to [REDACTED] and [REDACTED] at CA and indicated that this new form dated November 22, 2019 should replace the form dated November 17, 2019.

[REDACTED] attended an FMLA training at CA a year and a half ago. He showed investigators a packet which appeared to be PowerPoint slides clipped together from a FMLA training from 2018 that he keeps in his desk. [REDACTED] knows that FMLA leave can be complicated, so he keeps detailed notes of important interactions with employees for his own record. When he became a supervisor, he saw his predecessor doing it and decided to continue documenting his interactions.

2. [REDACTED]

a. Telephone Interview

On September 24, 2020, OIG spoke to [REDACTED] Maintenance Section Manager, regarding Mulroy's FMLA use. [REDACTED] confirmed that he supervised EOLs including Mulroy at M-5. [REDACTED] said that Mulroy would use FMLA time when she was required to work snow and ice removal. He also recalled that she would come into work after using FMLA time for her shifts over the weekend and ask her coworkers how their weekend was knowing they worked. She would then tell her coworkers her weekend was great. [REDACTED] recalled that Mulroy had used FMLA time for the death of an uncle and for the adoption of a 15-year-old girl.

According to [REDACTED], Mulroy told him that she has always been a "earn a day burn a day" kind of worker even at her previous jobs. During her review, [REDACTED] recalled that she became angry about the score she received. She stated the review was incorrect and that she needed to show people her review.

█████ said that recently Mulroy received discipline for I-Pass transponder violations. She attempted to use vacation time to cover the 10-day suspension she was receiving as a result of the violation. █████ stated when he reviewed her transponder history, he noticed that she would use the same interstate entrance and exit. He found it interesting how the violations would happen on the same dates she would use FMLA or unauthorized leave without pay.

█████ said that recently Mulroy told him that she had no outside employment, and he instructed her to still complete the form. █████ stated it was reported to him through other co-workers that Mulroy worked secondary employment at a hospital.

b. Webex Interview

On November 24, 2020, OIG interviewed █████. He was provided both orally and in writing, Administrative Advisements for Non-Union Employees which he signed and acknowledged understanding. █████ consented to audio and video record the interview.

█████ said that he has managed Mulroy for the last two and a half years. On November 17, 2019, █████ stated he received an email from Illinois Tollway Central Administration (CA) regarding a request for employees to complete the Outside Employment Approval Request Form. He understood that it was only for employees who informed management that they had outside employment. █████ confirmed that in November 2019, Mulroy admitted she had outside employment and was given the form to complete. Mulroy was the last employee to turn the form in and █████ stated they had to reach her about completing the form. After she completed the form, a copy was made and put into her file. The original was mailed to CA. After the form was put in the mail, █████ was told that she had incorrectly written the employment information in the wrong sections. Mulroy was instructed to complete the form correctly and █████ e-mailed the corrected form on November 22, 2019 to █████ at CA. He said he knew that these forms provided different information about Mulroy's continued outside employment at the hospital but was unsure of the specific details or why Mulroy reported different information on the forms she submitted on November 17, 2019 and November 22, 2019.

█████ acknowledged that he received FMLA training about what management had the right to ask employees. He recalled being trained to inquire about whether an employee's request to use FMLA leave was related to an episode, hospitalization, or appointment. He believes it is management's job to educate their employees about FMLA because the employees do not really understand it.

V. ANALYSIS AND FINDINGS

This investigation established reasonable cause to find that Melissa Mulroy violated Tollway policies governing outside employment and the use of FMLA leave.

Outside employment

Tollway policy requires employees to report outside employment, and that such work not conflict with their Tollway duties. When Mulroy started at the Tollway in August 2017, she

submitted an Outside Employment Request form indicating that she worked in phlebotomy at Hospital A. Based on interviews, it appears that Mulroy’s current supervisors were unaware of this form or her outside employment until November 2019, when Mulroy was asked to complete a new form. On her first form, dated November 17, Mulroy listed her outside employment as Phlebotomist and her employer as Hospital A, but she wrote “zero hours in past 12 months.” Mulroy signed the form, certifying that the information was true and correct, and █████ submitted the form to his supervisors at CA. █████ said that he subsequently looked at the form and saw that Mulroy had inserted the information in the wrong sections, so he and █████ asked her to complete a new form. On November 22, Mulroy completed a new form indicating the same position and employer, but this time indicated that she was still working there.

OIG obtained confirmation that Mulroy had worked at Hospital A as a Phlebotomist from January 2017 until January 2020. In fact, the records reflect that she worked approximately 59 days during her Tollway tenure. However, when she reported this work on November 17, 2019, she certified that she had worked “0 hours” in the past year. Subsequently, Mulroy submitted a new form, at the request of her supervisors, that acknowledged her continued work at Hospital A. It appears that Mulroy initially tried to conceal the ongoing nature of this employment by indicating that she had not worked at Hospital A for a year. The fact that she ultimately corrected this in a second form provides little mitigation since she only completed the new form at the request of her supervisors and not because she had a change of heart.

In any event, as discussed more fully below, Mulroy allowed this outside employment to interfere with her Tollway duties when she called off from her shift citing FMLA – parental leave in September 2018, but then worked at Hospital A during at least part of her regularly assigned Tollway shift.

Misuse of FMLA Leave

This investigation established reasonable cause to find that Mulroy violated Tollway leave policies by taking FMLA leave in September 2018 and working at Hospital A, instead of using that time for FMLA purposes.

The following chart illustrates how Mulroy’s outside employment overlapped with her regularly assigned Tollway shifts on three days in September 2018 when she called off citing FMLA – parental leave.

Date	Hours scheduled to work at Tollway	FMLA Used	Hours worked at Hospital
September 17, 2018	7:00 am to 3:00 pm	Yes (Leave # 2215740)	2:34 pm to 2:32 am
September 20, 2018	7:00 am to 3:00 pm	Yes (Leave # 2215740)	2:21 pm to 11:03 pm
September 21, 2018	7:00 am to 3:00 pm	Yes (Leave # 2215740)	12:36 pm to 10:15 pm

General FMLA Leave Process

This investigation also identified potential opportunities for increased collaboration among Tollway stakeholders, including the third-party administrator FMLA Source, regarding FMLA leave requests and use.

Documentation from FMLA Source shows that Mulroy also had approved FMLA leave in March 2020 for a serious health condition (#2834686). The leave, initially episodic for up to 8 hours 3 days per week, was revised to up to 8 hours 7 days per week. Tollway records reflect that Mulroy cited this as the basis for not reporting to work between January and October 2020 on nearly a weekly basis. [REDACTED] notes documenting their interactions with Mulroy, apparently maintained as part of their personal administrative practice and not required by the Tollway, provide insight into the difficulties that frontline managers face when dealing with FMLA use. This is especially complicated when the employee has approval for “intermittent leave” of 8-hour episodes, 7 days a week.

While these supervisors were notified that Mulroy had approved FMLA leave, they expressed frustration that there is little they can do even if they suspect misuse. Officials from FMLA Source describe their role as facilitating the request process and reviewing paperwork to ensure it has been filed. In this role they have access to the information underlying the leave, but they do not perform any proactive fraud review. Instead, they will take some steps – to contact the doctor and the employee – if directed by an employer. Records and information obtained from FMLA Source do not reflect prior contact from the Tollway regarding concerns about Mulroy’s potential misuse of FMLA leave.

VI. RECOMMENDATIONS

The OIG makes the following recommendations:

1. Based on evidence that Mulroy has violated Tollway outside employment and FMLA leave policies and procedures, the OIG recommends that the Tollway take disciplinary action against Mulroy commensurate with the circumstances.
2. The OIG encourages the Tollway to build on the solid improvements to the outside employment disclosure process by requiring that direct supervisors review and sign off on these forms.

Currently the employee completes the form, which gets forwarded to the department head for review and sign off. But department heads likely do not always have the details necessary to assess the request, and there is a chance that the direct supervisor may not know about their subordinate’s second job. Requiring a supervisor’s signature or initials would ensure that it is reviewed with the employee for completeness and accuracy, and that the supervisor is aware of the outside employment.

3. The OIG recommends that the Tollway collaborate with FMLA Source to develop a proactive process to identify and root out misuse. One important area is training which should be

coordinated with FMLA Source to keep management and frontline supervisors up to date on FMLA laws and best practices. Tollway records reflect that the last FMLA-related training was presented by Central Management Services in October 2018. The OIG understands that training is being scheduled for 2021, and we recommend establishing more regular training that includes FMLA Source and CMS.

4. To ensure consistent application of leave and to enhance operational/scheduling efficiency, the OIG recommends that the Tollway develop and implement a policy and standard practice for frontline supervisors to handle FMLA absence notifications. While [REDACTED] and [REDACTED] have some notes of their interactions with Mulroy, it appears that was their own personal choice and not required by the Tollway. The Tollway should consider requiring standard documentation that reminds frontline supervisors to ask employees to identify the FMLA Leave Request number, and to indicate if such absence is for an episode, hospitalization or appointment. A standard checklist would assist these supervisors who may feel unsure about what they can legally ask, and the resulting documentation would allow for a regular review by those who can determine if further inquiry is appropriate.