CLERK & COMPTROLLER

PALM BEACH COUNTY

COUNTY's PLANNED TIME & ATTENDANCE (TEA) SYSTEM

LIMITED INQUIRY OF REGULATORY COMPLIANCE

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Division of Inspector General

Audit Services Unit

September 25, 2014

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Chief Operating Officer Finance

At your request, we conducted a limited-scope inquiry to determine to what extent the functionality of the Palm Beach County's planned time and attendance system (TEA system), currently in development to replace the Timeserver system, is anticipated to comply with recordkeeping requirements of the Fair Labor Standards Act (FLSA).

The objectives of this inquiry were to: obtain and document the FLSA regulatory requirements in relation to recordkeeping, gain a basic understanding of the County's planned TEA system functionality and implementation status, and obtain the Clerk's Legal Counsel interpretation of the regulatory requirements.

The County's planned implementation of a new payroll timekeeping system (TEA system Phase 1) will enable minimal compliance with the provisions of the FLSA, with concurrence received from the Clerk's Legal Counsel. The County will continue to rely upon department timekeepers and supervisors manually executing the controls required to document complete and accurate time records.

Our limited-scope inquiry also identified two matters warranting management's attention. Cost reduction and efficiency improvement opportunities exist due to the highly manual timekeeping and reconciliation processes, which result in expenses totaling approximately $536,000 annually (wages only). Also, risks present in the current time and attendance system will continue to exist as it relates to the adequacy of accurate documented time worked by non-exempt employees including potential underpayment of hours worked, uncompensated work performed during meal breaks, and unrecorded absences paid.

We appreciated the cooperation of management and staff during the course of this limited-scope inquiry.

Respectfully submitted,

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Executive Summary

At the request of Clerk & Comptroller office management, the Division of Inspector General performed a limited-scope inquiry to determine to what extent the functionality of the Palm Beach County's planned time and attendance system (TEA system), currently in development to replace the Timeserver system, is anticipated to comply with recordkeeping requirements of the Fair Labor Standards Act (FLSA). It is our role to identify and communicate risks and improvement opportunities; FLSA compliance complaints and related lawsuits have been expanding significantly throughout the U.S. in recent years.

Our scope and procedures did not include interviews with County management (e.g., Information System Services, Human Resources) or any direct analysis of the TEA system's structure or functionality. We did not perform any testing of the time and attendance records of County employees. We reviewed the laws and implementing regulations and reviewed County policies and procedures related to FLSA. We obtained the Clerk's Legal Counsel interpretation of the regulatory requirements. Our limited-scope inquiry included interviews with Clerk Finance management having knowledge of the TEA system's (Phase 1) current plans related to functionality and implementation. We also evaluated prior audits and reviews which contained analyses of relevant practices either in the County or in other governmental organizations.

We concluded that implementation of Phase I of the TEA system will only meet the minimal legal standards of compliance with the provisions of the FLSA, with concurrence from the Clerk's Legal Counsel. Based on information obtained from Clerk & Comptroller management, the TEA system (Phase 1) functionality will continue to provide exception-based time and attendance information for input/upload to the Payroll system. The TEA system will be dependent upon department timekeepers and supervisors manually executing the controls required to document complete and accurate time records. While the TEA system will allow tracking of the number of hours worked on a daily basis, it relies on employee and supervisory sign off.

Our limited-scope inquiry identified two additional noteworthy considerations.

- Cost reduction and efficiency improvement opportunities exist. Within County departments, timekeepers must spend significant time preparing time and attendance reports, and entering them into the current Timeserver system (or into the TEA system when implemented). The Clerk's Payroll staff reconcile the time

and attendance reports and coordinate with the County to correct errors. Available information indicates approximately $536,000 is incurred annually (wages only) to support these timekeeping functions.

- Risks present in the current time and attendance system will continue to exist when the TEA system (Phase 1) is implemented. These risks involve the failure to adequately document time worked by non-exempt employees and the payment of wages and overtime premiums. More specifically, the risks include but are not limited to employee claims for: unpaid hours not reflected on fixed schedules, time worked during meal breaks, and incorrectly calculated overtime. The burden of proof rests with the County to ensure all actual hours worked and any deviations from scheduled hours are accurately recorded to satisfy FLSA requirements. Employers found to be in non-compliance with FLSA face potential payment of back wages (up to three years) if errors are identified, an equal amount in liquidated damages if a DOL or private lawsuit is decided against the employer, and potential civil penalties if the non-compliance is found to be repeated or willful.

During our inquiry, we gathered additional information that demonstrated the ongoing nature of the risks that have persisted within the County and related payroll timekeeping risks identified in other jurisdictions in recent years. Beginning in 2008, the Clerk's Finance management team has been providing input to the County on risks inherent in the time and attendance recordkeeping tools and practices and opportunities to enhance them. For example, a review commissioned by the Clerk & Comptroller office and conducted by an experienced wage and hour compliance attorney in 2008 identified the following weaknesses in the manual timekeeping processes in place at that time in the County. Fixed schedules were accepted as worked without documentation of supervisory review. The two departments reviewed with time clocks were found to routinely override the clock-in and clock-out times in amounts exceeding that which could be deemed "de minimis". No record of actual meal breaks was maintained to support non-compensation for those times. The compliance attorney stated that the County was exposed to "litigation and USDOL (U.S. Department of Labor) investigations in the currently active arena of wage-hour law" and that issues noted "represent problems of proof on hours worked and potential overtime liability."

Two reviews by the Palm Beach County Internal Auditor published in 2009 characterized payroll and timekeeping practices as adequate, but specifically mentioned lack of supervisory attestation as to the accuracy of timesheets and failure to completely document actual overtime hours worked as areas needing improvement.

Audits in other Florida government jurisdictions between 2012 and 2014 indicated similar deficiencies relating to cumbersome, ineffective manual processing and monitoring of timekeeping records. The deficiencies noted in two other jurisdictions included:

- missing supervisory approvals in 20 percent of the documents reviewed and incorrect hours paid in 25 percent of the paychecks examined (City of Tallahassee, City Auditor's Office issued September 5, 2012), and
- significant incorrect payments based on errors in manually counting and recording hours worked, which was addressed by transitioning from its labor-intensive manual recordkeeping system to installation of KRONOS (City of Gainesville, City Auditor's Office issued January 2014).

For a broader perspective, a Government Accountability Office (GAO) report (issued December 2013) analyzed private lawsuits filed regarding FLSA compliance issues during the period from 2001 through 2012. GAO concluded that lawsuits were on a rising trend during the period. They noted that for this 12-year period, Florida accounted for 33 percent of the lawsuits filed nationwide. The basis for the lawsuits included failure to keep proper records of hours worked, failure to properly pay overtime, and failure to pay off-the-clock hours.

The report contains two observations.

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Introduction

Overall Conclusion

The County's planned implementation of a new payroll timekeeping system (TEA system Phase 1) will enable minimal compliance with the provisions of the FLSA, with concurrence from the Clerk's Legal Counsel. Similar to the current environment, the TEA system will be dependent upon department timekeepers and supervisors consistently adhering to County policies and manually executing the controls required to document complete and accurate time records. This places the burden of proof on the County to ensure all actual hours worked and any deviations from scheduled hours are recorded to satisfy FLSA requirements if the DOL or any parties question the accuracy of the records. Employers determined to be in non-compliance with FLSA face potential exposure of back wages and liquidated damages as well as potential civil penalties.

Our limited-scope inquiry also identified two matters warranting management's attention.

- Cost reduction and efficiency improvement opportunities exist. Significant time is required for County timekeepers to prepare and enter time and attendance reports into the current Timeserver system (or the TEA system when implemented) as well as for the Clerk's Payroll staff to reconcile and correct the data. These timekeeping duties result in expenses totaling approximately $536,000 annually (wages only).

- Risks present in the current time and attendance system will continue to exist when the TEA system (Phase 1) is implemented. These risks involve the failure to adequately document time worked by non-exempt employees including potential underpayment of hours worked, uncompensated work performed during meal breaks, incorrectly calculated overtime earned, and unrecorded absences paid.

Objectives, Scope and Methodology

At the request of Clerk & Comptroller office management, the Division of Inspector General performed a limited-scope inquiry to determine to what extent the functionality of the Palm Beach County's planned time and attendance system (TEA system), currently in development to replace the Timeserver system, is anticipated to comply with FLSA recordkeeping requirements. We were also requested to include the Family Medical Leave Act (FMLA) requirements in our inquiry, though it was determined that compliance matters involving FMLA were documented within the Human Resource Information System (HRIS) and no recordkeeping was anticipated in Phase 1 of the planned TEA system. Therefore, FMLA compliance was excluded from our scope.

The objectives of this inquiry were to:

- Obtain and document the FLSA regulatory requirements in relation to recordkeeping.
- Gain a basic understanding of the County's planned TEA system functionality and implementation status.
- Obtain the Clerk's Legal Counsel interpretation of the regulatory requirements.

In order to meet these objectives, we reviewed the laws and implementing regulations and reviewed County policies and procedures related to FLSA. We conducted interviews with Clerk Finance management having knowledge of the TEA system's (Phase 1) current plans related to functionality and implementation. We identified and evaluated prior audits and reviews which contained analyses of relevant practices either in the County or in other governmental organizations. We performed other procedures that were deemed necessary.

Our scope and procedures did not include interviews or meetings with County management (e.g., Information System Services, Human Resources) or any direct analysis of the TEA system's structure or functionality. We did not perform any testing of the time and attendance records of County employees.

Background

The Clerk & Comptroller's Payroll Department (Payroll) is responsible for processing the County employees' payroll. In performing this support function for the County, the Payroll Department is largely dependent on County department timekeepers and supervisors to review and approve time and attendance data that is reported on an "exception basis" via the County's current Timeserver system. When exceptions are reported for processing, Payroll largely relies on the County department timekeepers and supervisors to have ensured the exceptions are in accord with County policies and procedures manuals (PPMs).

The County is currently developing and preparing to implement the TEA system to replace the Timeserver system. Implementation is currently expected to begin in October 2014, with installation of Phase I planned in the County's Parks and Recreation Department. Additional installations in other County departments, excepting Fire Rescue, will comprise the remainder of Phase I. For this Phase I implementation, the County currently expects to retain the functionality of Timeserver and incorporate only limited additional functionality. The Clerk's Payroll Manager and Finance Business Analysis Manager have been participating in meetings with the County regarding the new system.

The U.S. Department of Labor (DOL) is responsible for administering the Fair Labor Standards Act. Additionally, DOL publishes implementing regulations, which provide guidance to organizations subject to the law. Finally, the DOL conducts investigations of covered organizations to assess their degree of compliance with the law. The results of those investigations can include mandates to pay back wages if underpayments are identified and, in addition, penalties if the failures to pay are deemed to have been intentional. Further enforcement of compliance with the law includes lawsuits brought by the DOL for failure to comply and private lawsuits by employees for improper payment under the law – including minimum wage issues, overtime payment issues, and failure to pay for hours "suffered or permitted" to be worked by the employer. In the instances where the DOL or a private individual file suit for compliance violations, there may be awards of back wages plus an equal amount of liquidated damages.

Fair Labor Standards Act

The Fair Labor Standards Act (FLSA) contains the following three principal provisions for which the employer must be able to show compliance:

- Payment of minimum wage for all hours worked by non-exempt employees.

- Payment for all hours worked by non-exempt employees, whether scheduled and planned by the employer or suffered or permitted to be worked on behalf of the employer.
- Payment of overtime at a rate no less than one and one-half times the regular rate for any hours worked by non-exempt employees in excess of 40 during any work week.

To show compliance, the employer must maintain adequate records. The FLSA requires that employers be able to correctly identify employees, their hours worked each day and each workweek, their pay rate and basis of determining the rate, total straight-time earnings (daily or weekly), total overtime earnings for the workweek, total wages paid each pay period, and dates of payment including data on the pay period covered by the payments. The records are required to be complete and accurate, though specific forms or methods of recordkeeping are not required by the FLSA.

Observations

1. Cost reduction and efficiency improvement opportunities exist.

One of the most reputable payroll timekeeping systems being utilized by many government organizations is KRONOS. Converting to KRONOS throughout the County could ensure compliance with the FLSA as well as substantially reduce the cost associated with preparing and processing time and attendance records. Within County departments, timekeepers and supervisors must spend significant time preparing time and attendance reports, and entering them into the Timeserver system (or when implemented, into the TEA system) for submission to the Clerk's Payroll department.

In response to a public records request in early 2014, County Human Resources (HR) asked the Clerk's Payroll department to provide information regarding the work time spent by County department timekeepers each pay period to perform these tasks. As a result, the following survey information was obtained:

- Clerk's Payroll staff surveyed County department representatives to identify the employees devoted to preparing time and attendance data as well as their salaries and amount of time spent each pay period. The survey was limited to actual timekeepers, which did not include supervisory time devoted to timekeeping duties (required regardless of the system in place). The survey disclosed 65 timekeepers incurred 875 hours per pay period to support 4,579 County employees (not including Fire/Rescue). The related payroll cost (salary rate only, no benefits) was approximately $18,200 per pay period, totaling $473,000 annually (26 pay periods).

- The majority of four Payroll clerks' time is devoted to reconciling the time and attendance reports and working with County department timekeepers to correct errors. The Clerk's Payroll Manager estimated that converting to KRONOS would allow her to reduce staff devoted to these functions by as much as two full-time equivalents (FTEs), representing approximately $63,000 in payroll costs annually (salary only, no benefits).

In addition, converting to an automated time and attendance processing system that includes specific start and stop times would provide the documentation required to more

adequately support County assertions that employees' payroll payments comply with the FLSA.

When the Clerk's Payroll department began analyzing the potential use of KRONOS, it queried other jurisdictions regarding their use of KRONOS. In 2011, 13 other counties in Florida were using or in the process of implementing KRONOS. More recent analysis in 2014 disclosed that:

- The Palm Beach County's Fire/Rescue Department has requested to purchase and implement KRONOS to complement the Telestaff scheduling module of KRONOS that is already in place.
- The City of West Palm Beach has implemented KRONOS.
- The City of Gainesville is implementing KRONOS for its police department in order to reduce errors, minimize compliance risk and improve efficiency and data control.
- The Brevard County Clerk internal audit staff recommended implementation of KRONOS in a county department having issues with the accuracy of hours worked, untracked tardiness and premature departures, and problems inherent with manually tracking time and attendance data.

Additional cost savings may be realized by reporting all hours worked, rather than just exceptions, to provide additional assurance that employees were only paid for hours actually worked. As time and attendance reporting is limited to "exceptions" from the work schedule, the County is dependent on employees to report any time they are scheduled to work but did not actually work. The entire structure of exception-based time and attendance reporting is dependent on the integrity and attention to detail of employees and supervisors.

- For example, the 2008 review of County payroll records by the wage and hour compliance attorney discouraged the use of exception-based timekeeping records because of the difficulty in demonstrating that hours paid were actually supported by documentation that would satisfy the employer's burden of proof. The compliance attorney stated that the lock-in time in one department reflected as few as five hours actually being worked even though the timekeeping record submitted for payroll purposes showed eight hours were reported as worked.

2. Risks present in the current time and attendance system will continue to exist when the TEA system (Phase 1) is implemented.

Risks in the current time and attendance system involve the failure to adequately document time worked by non-exempt employees and the payment of wages and overtime premiums. More specifically, the risks include but are not limited to employee claims for: unpaid hours not reflected on fixed schedules, time worked during meal breaks, and incorrectly calculated overtime. The burden of proof rests with the County to ensure all actual hours worked and any deviations from scheduled hours are accurately recorded to satisfy FLSA requirements. Employers determined to be in non-compliance with FLSA face potential exposure of back wages and liquidated damages as well as potential civil penalties.

These risks are explained in more detail below.

a. Risk for claims those hours worked before and/or after scheduled hours were not paid.

The current Timeserver system and the proposed TEA system (Phase 1) will continue to report only the number of hours worked during a day, based on scheduled hours. The actual start and stop times are not recorded. The scheduled hours are accepted as correct unless an "exception" is recorded. Supervisory staff must ensure all actual hours worked and any exceptions from scheduled work hours are accurately recorded.

The 2008 wage and hour compliance attorney's review of a sample of County payroll records demonstrated that the hours actually worked in the two departments using time clocks, of the five total departments reviewed, were being modified by supervisors. The review found clock-in times were as much as 61 minutes earlier than the scheduled start time, and clock-out times were frequently as much as 15 minutes later than the scheduled end time. The worked hours were rounded to match the schedule when entered into the timekeeping system and certified to the Clerk's Payroll department. The FLSA allows rounding of clock in/out times to the nearest five minutes. Implementing DOL regulations (29 CFR 785.48) state that major differences between the clock records and actual hours worked should be avoided, as they raise doubt as to the accuracy of the records of hours actually worked. In one County department, the reviewer found that clock times indicated as many as ten hours being worked on days where the scheduled eight-hour shift was entered and paid.

The 2008 attorney's review stated that his firm "discourages employers from using the "by exception" method of reporting hours worked by employees on a fixed schedule, particularly today where class action lawsuits commonly allege hours worked "off the clock"." If employees reviewed and/or sent emails, completed phone calls, or performed any other work-related tasks before or after scheduled work hours, those time periods could be compensable under the concept of "work suffered or permitted to be worked." This concept considers "work performed for the benefit of the employer" to be compensable time even if the employer has not specifically authorized the work outside the scheduled work hours.

The GAO cited similar deficiencies in records of hours worked as root causes for 45 percent of the FLSA non-compliance lawsuits filed in the United States during the period from 2001 through 2012.

b. <u>Risk for claims that employees worked through unpaid meal breaks.</u>

The current Timeserver system and the proposed TEA system (Phase 1) both report hours worked during the day without including specific start and stop times, and without recording meal breaks during the day.

Bona fide meal breaks are considered non-compensable time under FLSA if they are for 30 minutes or longer and if the employee is completely relieved of any duty during the break period. If an employee takes a meal break at his or her desk, the employee may still be relieved of duty, but only if the employee performs no actual duties. If the employee is suffered or permitted to work during the meal break, even if not authorized to do so, it is also considered compensable time. It is the burden of the employer to be able to document that employees are completely relieved of duty during meal breaks if those periods are not to be paid.

The 2008 review of County timekeepers cited the failure to account for meal breaks as one of the highest risk areas for wage and hour compliance reviews, and it was deemed a deficiency in County timekeeping.

c. **Risk for claims that overtime paid may have been incorrectly calculated.**

Hours worked by non-exempt employees in excess of 40 during each workweek are compensable as overtime under the FLSA. Each workweek must be considered on its own, whether employees have identical work schedules for both workweeks in a pay period or have differing work schedules for the two workweeks. County policy correctly describes the computation of overtime as a matter involving weekly hours worked – over 40 hours payable at time and a half. Historically, the time and attendance records used by the County (as described in the County Payroll Policy Procedure Manual) indicate that overtime is recorded based on the approved overtime hours scheduled, without reference to the actual additional hours worked.

Our understanding of the TEA system is that the County intends to include annotations of the actual hours worked on the approved overtime request. Nonetheless, those actual hours worked may not be reflected in the start and stop times reported in the TEA system. The 2014 timekeeping audit report of the City of Gainesville, Florida noted that errors in counting hours of work for calculating holiday and overtime pay required significant corrections to employee pay, which was a direct result of manual tracking and assembly of actual hours worked.

The GAO report issued in 2013 stated that 95 percent of the FLSA-related lawsuits filed in 2012 involved improper payment of overtime under the law. If the actual hours worked are not documented with specific times and dates worked within the time and attendance records, the computation and payment of overtime may not be supportable if challenged.