

Performance Audit Temporary & Seasonal Employees Human Resources

November 2016

INTERNAL AUDIT
DEPARTMENT

CITY OF SANTA FE

*Santa Fe: The
City Different,
The City
Prepared*



The Internal Audit Department and the role of Internal Auditor were created by City Ordinance No. 2012-32 and amended by City Ordinance No. 2013-34, Section 2-22 Santa Fe City Code (SFCC) 1987. A primary purpose of the Internal Auditor is to share a duty with the members of the governing body to insure that the actions of public officials, employees and contractors of the city are carried out in the most responsible manner possible and that city policies, budgets, goals and objectives are fully implemented. The Internal Auditor is also the City of Santa Fe's liaison to the Audit Committee.

The Audit Committee was created by City Ordinance No. 2013-35, Section 6-5 SFCC 1987. This committee is an advisory committee and consists of five members of the community. Of the five members, one member shall be a certified public accountant, one member shall be a lawyer or have a law enforcement background and one member shall be a management consultant.

The Internal Auditor and the Audit Committee are structured in a manner to provide independent oversight of the City operations, thereby enhancing citizen confidence and avoiding any appearance of a conflict of interest.

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Mission Statement

The mission of the City of Santa Fe Internal Audit Department is to provide independent, objective assurance and review services designed to promote transparency, accountability, efficiency, and effectiveness of City government for the citizens of the City of Santa Fe.



City of Santa Fe – Internal Audit

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Liza A. Kerr, Internal Auditor

Date: November 9, 2016
To: Brian Snyder, City Manager
From: Liza Kerr, Internal Auditor
RE: Performance Audit of Temporary and Seasonal Employees

Attached is the Internal Audit Department's report on Temporary and Seasonal Employees.

This audit is a performance audit. City Ordinance 2013-35 §2-22.6 (B) and Government Auditing Standards define a performance audit as an engagement that provides assurance or conclusions based on an evaluation of sufficient and appropriate evidence against stated criteria, such as specific requirements, measures, or defined business practices.

Internal Audit (IA) extends its appreciation to the staff at the City of Santa Fe Human Resource (HR) and Finance Departments that assisted with this audit.

If you have questions, please contact Liza Kerr, Internal Auditor, at (505) 955-5728.

cc: Lynette Trujillo, Human Resources, Department Director
Kelley Brennan, City Attorney
Renee Martinez, Deputy City Manager



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Liza A. Kerr, Internal Auditor

AUDITORS REPORT

We have completed the performance audit of the City of Santa Fe's use of temporary part-time, full-time, and seasonal employees.

The objectives of the audit were to:

- 1) Evaluate the existing internal control structure against weaknesses found during the audit;
- 2) Determine whether temporary or seasonal employees working for the City of Santa Fe are receiving medical or retirement benefits in accordance with stated Federal and State laws, and City policies.

This performance audit is authorized pursuant to City of Santa Fe Ordinance No. 2013-35, §2-22.6 (B). This audit was conducted in accordance with generally accepted government auditing standards, except for a peer review, and is intended only to conclude on the stated objectives of this audit. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence provides a reasonable basis for our findings and conclusions based on our audit objectives.

Recommendations to improve internal controls in HR as related to the audit objectives are included in the findings. IA concludes that the lack of preventive and monitoring controls in HR are the root cause of the findings as detailed in this audit.

Specific information related to indications of potential fraud, waste or abuse as related to this audit are included in a separate memorandum, which is a matter of opinion for a personnel file, provided to the City Manager, and the City Human Resources Director to determine proper action. This memorandum is confidential per the Inspection of Public Records Act 14-2-2 A. (3).

Liza Kerr, CIA, CISA, CPA, MBA
Internal Auditor

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EXECUTIVE SUMMARY

The use of temporary and seasonal employees is a long-standing practice that has been beneficial to both the City and the employees they hire into these positions. There are many legitimate reasons why a manager would find this job classification to be ideal. Primarily, it provides a short-term cost savings as the City does not pay medical or retirement benefits, sick or annual leave, or holiday pay. It provides a service to the community as well by providing jobs to people that are looking for something to tide them over on a short-term basis.

However, both Federal and State laws have changed over the years and become more stringent regarding temporary and seasonal employees. A temporary or seasonal employee becomes eligible for:

- 1) Medical benefits under the Federal Affordable Care Act (ACA) after working for a year and more than thirty hours per week¹;
- 2) Retirement benefits under the Public Employees Retirement Act (PERA) after working more than nine months and more than twenty hours per week².

These laws change the dynamics, especially if an employee works for the City more than nine months. After that time, and certainly after a year, there is no cost benefit for having a temporary employee. In addition, training an employee for nine months or a year and then letting them go so you can rehire another 'temporary' employee has costs associated with it too. For example, for a custodial or lifeguard type position that requires training, you now have to hire a new person and train them. The facts and circumstances need to be given thoughtful consideration when choosing the temporary or seasonal job classification.

We found that:

- 1) HR policies are not current;
- 2) There are no monitoring controls at the level of HR to detect non-compliance;
- 3) Thirteen of 41 employees, or 30% of those tested, were eligible for, but not receiving medical benefits; and
- 4) Twenty of 41 employees, or 50% of those tested, were eligible for, but not receiving retirement benefits.

Table 1 - Temporary and Seasonal Employees Summary of Exceptions

Entity	Total # of Employees	Employee Classification			Benefits Exception n > 1 Yr, > 30 Hrs	PERA Exception
		Temp PT	Temp FT	Seasonal		
Airport	1	0	1	0	1	1
Library	4	4	0	0	0	0
Ft. Marcy	2	0	2	0	1	2
GCCC	12	10	2	0	4	8
Muni Rec	2	2	0	0	1	0
Parks	5	0	5	0	5	2
Recreation	3	0	0	3	0	3
Senior Services	11	11	0	0	1	4
SWMA	1	1	0	0	0	0
Totals	41	28	10	3	13	20

¹ Internal Audit interpreted the ACA to mean thirty hours per week *on average*.

² Internal Audit interpreted the PERA to mean more than twenty hours per week *on average*.

INTRODUCTION AND BACKGROUND

(See Appendix A – Glossary of Terms for Definitions of Terms)

During an exit conference with a former employee, IA became aware that some managers might be abusing the temporary or seasonal employee job classification. Allegations included the long-term use of these employees as a way of avoiding paying normal benefits. During an information-gathering phase, we became aware of temporary employees that had been with the City going back as far as 1999, some of them working full time, we felt this necessitated a full audit.

SCOPE

All temporary and seasonal employees employed with the City of Santa Fe as of July 8, 2016 (as this was the data extraction date).

The scope of the audit included:

- 1) Obtaining and analyzing employee data including job classifications, start dates, date of birth, and benefits;
- 2) Obtaining and analyzing employee payroll information to determine how many hours were worked in a given pay period;
- 3) Obtaining and analyzing employee benefits to determine if employees that met the audit criteria were receiving benefits; and
- 4) Conducting interviews of employees, former employees, and staff as needed.

At times, it was necessary to expand our test work as additional relevant information became available.

OBJECTIVES

The objectives of the audit were to:

- 1) Evaluate the existing internal control structure against weaknesses found during the audit;
- 2) Determine whether temporary or seasonal employees working for the City of Santa Fe are receiving medical or retirement benefits in accordance with stated Federal and State laws, and City policies.

We designed audit objectives to ensure a comprehensive:

- 1) Understanding of any breakdown in internal controls that might have allowed this situation to occur (root cause);
- 2) List of all temporary or seasonal employees that are eligible for but not receiving medical benefits;
- 3) List of all temporary or seasonal employees that are eligible for but not receiving retirement benefits;

Accordingly, we used procedures including examination of records, voluntary interviews with appropriate personnel, and other procedures as deemed necessary to accomplish our objectives.

METHODOLOGY

We used the following methodology:

1) Phase 1 – Interviews and Information Gathering

07/01 to 8/15/2016

- a. Conduct Interviews;
- b. Download or otherwise obtain data regarding employee job classifications and hire date, and analyze;
- c. Obtain relevant policies, procedures and laws pertaining to temporary, seasonal and permanent employee status with a focus on when medical, retirement, and other benefits are supposed to start.

2) Phase 2 - Field Work

07/05 to 08/15/2016

- a. Obtain employee data using the Hubble Financial Reporting Tool, and export to Excel for analysis;
- b. Review actual hours worked ;
- c. Gather sufficient evidence to support conclusions.

3) Phase 3 – Wrap up and Report

08/11 to 08/30/2016

- a. Analyze data, and
- b. Present a report to management, the audit committee and the governing body.

SAMPLING METHODOLOGY

Due to the allegations of potential abuse made by the former employee 100% of all temporary part time, temporary full time, and seasonal employees were included in the initial data analysis.

Sampling

IA extracted the employee detail file from the Enterprise One Financial Reporting System (E-1) which included all employees working for the City as of July 8, 2016. We then filtered the file for Temporary Part Time, Temporary Full Time, and Seasonal employees.

Table 2 – Breakdown of City Employees by Job Classification

Employee Classification	# of Employees
Seasonal	87
Temporary Full Time	73
Temporary Part Time	56
Subtotal Audit Sample	
	216
Classified Full Time	1068
Classified Part Time	23
Elected Official	10
Exempt Full Time	66
Exempt Part Time	1
Term Full Time	175
Term Part Time	7
Subtotal Other	
	1350
Grand Total	
	1566

The above table illustrates that there were 1,566 employees working for the City as of July 8, 2016, however, only 216 of these are temporary or seasonal.

After filtering the sample of 216 to only include employees that have been working for the City for longer than 9 months, the final sample size was 41.

Table 3 – Sample Size by Entity and Year Employee Hired

Entity (count)	Year Employee Hired	Total # of Employees
Airport (1)		
	2015	1
Library (4)		
	2011	1
	2014	1
	2015	2
Parks and Recreation (24)		
Ft Marcy (2)		
	2012	1
	2015	1
GCCC (12)		
	2005	1
	2012	1
	2013	1
	2014	2
	2015	7
Muni Rec (2)		
	2012	1
	2014	1
Parks (5)		
	2009	1
	2010	1
	2012	1
	2015	2
Recreation (3)		
	2015	3
Senior (11)		
	1999	3
	2001	2
	2010	1
	2012	2
	2013	1
	2014	2
SWAMA (1)		
	2014	1
Total		41

RESULTS

Policies and Procedures

HR policies were last updated in 2006, and do not reflect current Federal and State laws. **(SEE FINDING 1)**

Oversight and Monitoring

Federal and State law together with City policies and procedures are designed to be preventative controls. While it is ideal for an individual manager to monitor temporary employees they hire to ensure compliance with stated law and City policies and procedures this does not always occur. Oversight and monitoring at the level of HR is intended to provide a secondary set of detective controls to ensure cohesion throughout the City and compliance with the stated law and policies and procedures. **(SEE FINDING 2)**

Medical Benefits Testing

In order to be eligible for medical benefits, the Federal ACA requires that 1) employees have been working for greater than a year, and 2) they work greater than 30 hours per week. In order to determine if the ACA rules apply, we obtained the employee's payroll data including dates and hours worked from city's financial system. We reviewed the data for each employee to determine the number of hours worked per week and to average that over the time worked. We further filtered the data to limit our review to employees that had been here longer than a year. City policy states that employees here for more than a year are not temporary. The result is an exception; 12 of the 41 employees are eligible for, but not receiving medical benefits. **(SEE FINDING 3)**

Retirement Benefits Testing

All 41 employees in the sample were potentially eligible for PERA benefits as everyone in the sample had worked more than 9 months. During the testing phase, it was determined that 9 of the 41 employees eligible under the PERA Rule were already receiving the retirement benefit. Further filtering was done on the remaining 32 employees to see if any had worked more than twenty hours per week. The result is an exception, 20 of the 41 employees are eligible for, but not receiving PERA benefits. **(SEE FINDING 4)**

FINDING 1 - Human Resource Policies Are Not Current

Condition

The City's policies and procedures do not reflect current Federal and State laws. The last update done on City Personnel Policies was in 2006.

Criteria

Public sector managers and employees are accountable for the resources entrusted to them for ensuring programs and services are administered effectively and efficiently. A significant component in fulfilling this responsibility is ensuring that an adequate system of internal control exists within City government.

The Committee of Sponsoring Organizations of the Treadway Commission (COSO) defines internal control as a process designed to provide reasonable assurance regarding the achievement of objectives in the following categories:

- 1) Effectiveness and efficiency of operations;
- 2) Reliability of financial reporting; and
- 3) Compliance with applicable laws and regulations.

The foundation of an effective internal control environment is formal policies and procedures which should be designed and implemented to ensure that the City's objectives are met. These policies and procedures are the documents that set forth the fundamental principles and methods that employees rely on to do their jobs.

Policies and procedures are considered preventative controls and are a first line of defense.

Cause

The root cause for not updating the policies regarding temporary employees since 2006 appears to be turnover within HR, and limited resources due to budgetary constraints.

Effect

Lower level managers may rely on high-level City policies and procedures for guidance in hiring employees. If the policies do not reflect current State and Federal Laws, even strict adherence to the policies may result in non-compliance with Federal and State Laws.

Recommendation

Update HR policies to ensure compliance with current Federal and State Laws. Provide training and guidelines in the form of documented procedures for lower level managers to follow regarding the appropriate use of temporary employee, and the individual manager's responsibilities.

Management's Response and Implementation Date (phrasing as received from management)

The Human Resources Department (HR) has been dedicated to assisting all Departments with their hiring needs, while that is the current practice; HR is in the process of updating and revising all City of Santa Fe Rules & Regulations along with all policies in order to assure that all Federal, State & Local laws are being adhered to. The process of updating the rules and

policies requires a somewhat lengthy process in that, HR first researches the information to be placed in the policy then assures that the City's legal team has vetted the rule or policy. Then HR will meet individually with all three union representatives to assure their agreement is obtained prior to going before committee and council.

All policies will be drafted and sent for review in the first phase anticipated to be done by March 1, 2017. Second phase will be to meet with respective unions if necessary by April 1, 2017, and the anticipated date to send to committee and council is June 30, 2017.

Once all rules are updated, HR will provide a training to all supervisors on the updated rule changes and all policies will be sent out to all employees and an acknowledgement will be needed from each to place in their personnel files.

FINDING 2 – Lack of Monitoring Procedures in Human Resources

Condition

At the time of the audit, there were no monitoring procedures in place to alert human resources when a temporary or seasonal employee might become eligible for either medical or retirement benefits.

Criteria

Public sector managers and employees are accountable for the resources entrusted to them for ensuring programs and services are administered effectively and efficiently. A significant component in fulfilling this responsibility is ensuring that an adequate system of internal control exists within City government.

The Committee of Sponsoring Organizations of the Treadway Commission (COSO) defines internal control as a process designed to provide reasonable assurance regarding the achievement of objectives in the following categories:

- 1) Effectiveness and efficiency of operations;
- 2) Reliability of financial reporting; and
- 3) Compliance with applicable laws and regulations.

There are two main types of internal controls:

- 1) **Preventative** - Protect against errors and irregularities by implementing preventative controls such as policies and procedures; and
- 2) **Detective** - When prevention fails, detective controls can identify potential errors and problems. Use these controls to gauge how effective your prevention controls are strengthening them, if possible. An example of a detective control is a monitoring procedure.

Legal and Regulatory environment

- 1) **Federal Law** - Affordable Care Act (ACA) - Employees that have been working more than a year, and greater than 30 hours per week are eligible for medical benefits.
- 2) **State Law** – PERA ACT - Employees that have been working more than 9 months and greater than 20 hours per week are eligible for retirement benefits.
- 3) **City Personnel Policy** - Employees working for the City for more than a year are no longer considered temporary.

(See APPENDIX B Legal and Regulatory Environment)

Cause

The root cause for the lack of monitoring processes and detective controls at an oversight level appears to be turnover within HR, and limited resources due to budgetary constraints.

Effect

Not complying with Federal or State Law can result in fines, and penalties. In addition, managers that fall into abusive hiring patterns remain undetected.

Recommendation

Design and implement monitoring procedures to ensure compliance with Federal and State Law and City policies and procedures.

The City is launching a new Enterprise Resource Planning (ERP) system in Finance. Coordinate with the Information Technology and or Finance Department to implement business rules in the City ERP system to send out automated alerts when a temporary or seasonal employee is approaching 9 months or 1 year to ensure they are receiving the proper benefits.

These monitoring procedures are detective controls that will work as a safeguard detecting any managers that are not complying with the preventative controls such as stated law, and policy.

Note: this does not absolve management of the responsibility to track their own employees, but rather provides a mechanism to detect managers that are not in compliance.

Management's Response and Implementation Date (phrasing as received from management)

Prior to correcting the deficiencies outlined above, HR depended on the Departments to submit a personnel action form to both HR and payroll with PERA applications attached when a temporary employee became eligible to receive PERA benefits. The majority of the time, that process is followed but in certain instances, HR must track if and when a temporary employee has gone beyond the nine-month timeframe and assure with payroll that they have worked more than twenty hours in a pay period in order to qualify for that benefit. HR is now tracking the temporary hires and if the end date placed on the personnel action form is longer than 9 months the employee is sent a PERA application form to fill out & return before hire. If the temporary employment is for 90 days, HR is requesting two personnel action forms up front, one to begin employment and one to end employment upon that 90-day mark. If the employee is in a funded temporary position, two personnel action forms are required up front, one to begin the action and the other to end the action. Both action forms are signed by the supervisor and the employee to assure that they are aware of the expiration date of the appointment.

In addition, HR will be recommending to the Departments to add Classified FTE to their budget and eliminate the temporary status if they see a true need to have those positions year round.

The new ERP system is rolling out and with an ERP committees meeting regarding all business rules that need to be incorporated into the new system. The committee is made up of staff from Finance, IT, HR and other major division staff to

assure all business rules are added that need to be addressed. This is to include entering the start date and end date into the system for each temporary employee and to send an alert that the employee will be expiring in their appointment.

FINDING 3 – Eligible Employees Are Not Receiving Medical Benefits – Non Compliance with the Affordable Care Act (ACA)

Condition

Thirteen of 41 temporary or seasonal employees, or 30% of those tested, have worked for longer than a year **AND** worked more than 30 hours per week. Per the ACA they are eligible for 1) medical benefits that they are not receiving, and 2) re-classification to full-time, benefits eligible positions.

Table 4 – Medical Benefits Exception

Breakdown by Hire Date, Entity, and Job Type - With Average Hours Worked by Employee since Start Date > 30 hours per week (or 60 hours per pay period).

	Business Unit	Job Type	Date	Avg. Hours Worked Per Pay Period Since Start Date	
				Temporary Full time	Temporary Part Time
1	Airport	Custodian	7/23/2015	60	
PARKS AND RECREATION					
2	Ft. Mar	Recreation Technician	6/25/2012	69	
3	GCCC	Rink Attendant	6/14/2012		61
4	GCCC	Custodian	6/28/2013		77
5	GCCC	Summer Youth Program Aide	2/1/2015	88	
6	GCCC	Custodian	5/2/2015		77
7	Muni Rec	Recreation Coordinator	1/6/2014		80
8	Parks	Streets Maintenance Worker	2/2/2009	65	
9	Parks	Parks Supervisor	1/19/2010	74	
10	Parks	Parks Maintenance Laborer	5/14/2012	75	
11	Parks	Parks Maintenance Laborer	3/23/2015	74	
12	Parks	Clerk Typist	6/22/2015	72	
13	Senior	Meals on Wheels Driver	1/9/2013		69

Criteria

Federal Law Affordable Care Act - If temporary/short-term employees do not meet the seasonal employee requirements and are expected to work more than thirty hours per week, then under applicable ACA rules they should be classified as full-time, benefits eligible employees.

Cause

The root cause that allowed this to go undetected for excessive amounts of time is the aforementioned lack of monitoring processes / detective controls at the level of HR, which would provide oversight and enforce accountability with managers.

Effect

Hiring an employee into a temporary position was historically a cost saving move for a manager because they do not have to pay any benefits. Exploitation of this job / hiring status by managers to achieve a stronger bottom line can result in fines, penalties to the City at a higher level.

Recommendation

Ensure the affected employees receive appropriate medical benefits.

Consider reclassify these employees to full time, benefits eligible positions.

Management's Response and Implementation Date (phrasing as received from management)

The HR Department has already addressed this with the new ACA laws that were implemented, prior to this audit being concluded. An employee orientation was given to all temporary employees identified in the audit in order to explain to them the medical benefits and register them if they wished to pick up any of the medical plans. Out of the 41 temporary employees to be at that orientation, only 7 employees showed up and only 2 are wishing to enroll in the medical plans. With the new ACA regulations, HR will be assuring that all temporary employees, upon hire, that will qualify for medical benefits be offered those plans upon hire. HR is also mandated by federal law, to send to all employees a 1095C federal tax form indicating their medical benefits by the end of January each calendar year, this assures our compliance with the ACA regulations. Yolette Catanach, Benefit Administrator, is contacting the temporary employees who did not attend the insurance orientation meeting to inform them that they must still register in Benefits Insight to waive coverage. By contacting them, Ms. Catanach can also determine if they received notice from their supervisor to attend the orientation. Most temporary employees are not on the City's email system so it is unknown if the temporary employees received the notice. The end result of this additional contact is that the temporary employees who did not know about the orientation can still enroll and if they do not want coverage, we can obtain a waiver from them. In addition, HR is assuring that if an employee will be here for a year or longer, they will receive the information to select health insurance immediately upon hire.

All Department Directors have been notified about the temporary status positions that they are budgeted for and are being asked to review them all for staffing needs and if it is found that those positions are needed year around, that during the budget process they be changed to a classified status.

FINDING 4 – Eligible Employees Are Not Receiving Benefits – Non Compliance with Public Employees Retirement Act (PERA) Rule 2.80.400.10.B. (3) (a) NMAC

Condition

Twenty of 41 temporary or seasonal employees, or 50% of those tested, have worked for longer than 9 months, and more than 20 hours per week (40 hours per pay period) are eligible for but not receiving PERA benefits. As illustrated in the graph below some of these employees have been in a temporary position since 1999.

Table 5 – Retirement Benefits Exception

Breakdown of PERA exceptions by Business Unit, Job Type, and Hire Date with average hours worked by employee since Start Date > 20 hours per week (or 40 hours per pay period).

#	Business Unit	Job Type	Start Employ Date	Avg Hours Worked Per Pay Period Since Start Date		
				Tempor ary Full time	Tempor ary Part Time	Season al
1	Airport	Custodian	7/23/2015	60		
PARKS AND RECREATION						
2	Ft Mar	Custodian	10/5/2015	83		
3	Ft Mar	Recreation Technician	6/25/2012	69		
4	GCCC	Custodian	6/28/2013		77	
5	GCCC	Recreation Technician	5/23/2015		54	
6	GCCC	Custodian	12/8/2015		79	
7	GCCC	Recreation Technician	8/28/2015		42	
8	GCCC	Custodian	5/2/2015		77	
9	GCCC	Swim Pool Lifeguard	5/9/2015		47	
10	GCCC	Summer Youth Program Supervisor	2/1/2015		88	
11	GCCC	Custodian	10/31/2015		78	
12	Parks	Streets Maintenance Worker	2/2/2009	65		
13	Parks	Parks Maintenance Laborer	3/23/2015	74		
14	Recreation	Summer Youth Program Supervisor	10/13/2015			62
15	Recreation	Summer Youth Program Supervisor	6/4/2015			48
16	Recreation	Summer Youth Program Aide	6/4/2015			48
17	Senior	Meals on Wheels Driver	1/9/2013		69	
18	Senior	Senior Services Aide	9/24/2012		43	
19	Senior	Senior Services Aide	11/1/1999		41	
20	Senior	Senior Services Aide	11/1/1999		41	

Criteria

State Law – PERA ACT Seasonal employee or temporary employee as defined in PERA Rule 2.80.400.10.B. (3) (a) NMAC “ ... means an employee who works in a position designated by the affiliated public employer as seasonal or temporary and created to last no more than 9 consecutive months.”

Cause

The root cause that allowed this to go undetected for excessive amounts of time is the aforementioned lack of monitoring processes / detective controls at the level of HR, which would provide oversight and enforce accountability with managers.

Effect

Hiring an employee into a temporary position is a cost saving move for a manager because they do not have to pay any benefits. Exploitation of this job / hiring status by managers to achieve a stronger bottom line can result in fines, penalties to the City at a higher level.

Recommendation

Ensure the affected employees receive appropriate retirement benefits.

Consider reclassify these employees to full time, benefits eligible positions.

Management's Response and Implementation Date (phrasing as received from management)

HR has resolved this issue, prior to the audit being concluded, and has met with PERA to discuss the issues of PERA back premiums, interest & penalties for those employees that should have been paying into PERA based on the PERA regulations on temporary or part-time employees. All entitled employees have been notified, have turned in their PERA applications and those have been sent to PERA. PERA is now working with payroll to assure the premiums have been sent and/or will be collected. As stated previously, HR has now placed safeguards in that the PERA forms are collected upon hire depending on the length of service indicated on the personnel action form submitted.

All Department Directors have been notified about the temporary status positions that they are budgeted for and are being asked to review them all for staffing needs and if it is found that those positions are needed year around, that during the budget process they be changed to a classified status.

RECOMMENDATIONS SUMMARY

Table 6 - SUMMARY OF RECOMMENDATIONS

#	Recommendation	Owner	Status	Implementation Date
1	Update HR policies to ensure compliance with current Federal and State Laws. Provide training and guidelines in the form of documented procedures for lower level managers to follow regarding the appropriate use of temporary employee, and the individual manager's responsibilities.	Lynette Trujillo	Open	Policies 6/30/2017 Training TBD
2	Design and implement monitoring procedures to ensure compliance with Federal and State Law and City policies and procedures. The City is launching a new Enterprise Resource Planning (ERP) system in Finance. Coordinate with the Information Technology and/or Finance Department to implement business rules in the City ERP system to send out automated alerts when a temporary or seasonal employee is approaching 9 months or 1 year to ensure they are receiving the proper benefits. These monitoring procedures are detective controls that will work as a safeguard detecting any managers that are not complying with the preventative controls such as stated law, and policy. Note: this does not absolve management of the responsibility to track their own employees, but rather provides a mechanism to detect managers that are not in compliance.	Lynette Trujillo	Open	Manual monitoring has been implemented Automated alerts though the ERP system will be implemented when that system launches. TBD
3	Ensure the affected employees receive appropriate medical benefits. Consider reclassify these employees to full time, benefits eligible positions.	Lynette Trujillo	Closed	Implemented
4	Ensure the affected employees receive appropriate retirement benefits. Consider reclassify these employees to full time, benefits eligible positions.	Lynette Trujillo	Closed	Implemented

APPENDIX A – Glossary of Terms

ACA – Federal Affordable Care Act.

Detective Control - When prevention fails, detective controls can identify potential errors and problems. Use these controls to gauge how effective your prevention controls are strengthening them, if possible. An example of a detective control is a monitoring procedure.

E-1 – The City’s financial application short for Enterprise One.

Pay Period – A two-week period

PERA – Public Employees Retirement Act

GCCC – Genoveva Chavez Community Center

Generally Accepted Government Auditing Standards – auditing standards developed by the Comptroller General of the United States, Government Accountability Office, 2011 Revision. Ordinance 2013-34 requires that the Internal Auditor comply with these standards.

Internal Control - as defined in accounting and auditing is a process for assuring achievement of an organization's objectives in operational effectiveness and efficiency, reliable financial reporting, and compliance with laws, regulations and policies.

Preventative Control - Protect against errors and irregularities by implementing preventative controls such as policies and procedures.

Seasonal Employee – an employee that works for a season.

SWMA - Santa Fe Solid Waste Management Agency

Temporary Employee – per City policy an employee that works for less than a year.

APPENDIX B – Legal and Regulatory Environment

Federal Affordable Care Act (ACA) Requirements

ACA Fact Sheet

For benefits plan years beginning in 2016, Applicable Large Employers (ALEs) may be subject to a tax penalty under Section 4980H of the Internal Revenue Code (IRC) if (1) a full-time employee receives a premium tax credit or costs-sharing subsidy through a Marketplace and (2) the company failed to offer minimum essential health care coverage (that meets the ACA’s minimum value and affordability requirements) to at least 95% of its full-time employees and their dependent children up to age 26. The offer of coverage threshold was 70% of full-time employees for benefits plan years beginning before 2016. In order to avoid potential penalties, it is important for ALEs to understand how to determine which employees are “full time” under the ACA and should be eligible for benefits.

Full-Time Employee A full-time employee is an individual reasonably expected to work at least 30 hours per week. For this purpose, “hours” include each hour for which an employee is paid or entitled to payment for performing duties for the employer or entitled to payment even if no work is done (e.g. holiday, vacation or sick time). Employees with variable hours may also be considered full time, benefits eligible employees if they work an average of 30 hours or more per week during a look-back measurement period. Temporary (short-term) employees and seasonal employees may also be considered full time.

Temporary/Short-Term Employees Temporary employees (referred to as short-term employees under the ACA), are those employees hired into a position that is less than 12 months in length. The IRS has confirmed that there is not an exemption under the IRC Section 4980H penalties for temporary, short-term employees (unless the employee meets all of the seasonal employee requirements as outlined above). If temporary/short-term employees do not meet the seasonal employee requirements and are expected to work more than 30 hours per week, then under applicable ACA rules they should be classified as full-time, benefits eligible employees.

New Mexico State Law

PERA ACT

2.80.400.10 MEMBER COVERAGE UNDER PERA

- A. **Full-time employees** who work 40 or more hours in a week and part-time employees who work 20 or more hours but fewer than 40 hours in a week shall be members.
- B. The following employees are excluded from coverage:
 - 1) Retired members of PERA or retired members from any other state system as defined in subsection D of 2.80.100.7 NMAC who subsequently become employees of affiliated public employers. This exclusion does not apply to a previously retired member whose pension has been suspended.
 - 2) **Independent contractors.** Persons who render services to an affiliated public employer as independent contractors are not employees who are entitled to PERA membership unless the employment contract provides that they are “employees” for federal and state taxation purposes, or the IRS had determined that they are “employees” under the contract.

3) Seasonal or student employees.

- a) **“Seasonal employee”** or **“temporary employee”** means an employee who works in a position designated by the affiliated public employer as seasonal or temporary and created to last no more than 9 consecutive months. Retired members returning to work with an affiliated public employer shall not be re-employed under this subsection 3(a).
 - b) **“Student employee”** means an employee who during at least 8 months in any calendar year, or during the period of employment, is enrolled at an educational institution whose academic credits would be accepted by a state educational institution or a public school district and carrying at least 12 credit hours or is enrolled in an educational institution’s graduate studies program and carrying at least 9 credit hours. Any person who is a regular full-time employee is not a **“student”** for purposes of exclusion from PERA membership.
- 4) Elected officials who file with the association a written application for exemption from membership using the form prescribed by the association within twenty-four (24) months of taking office. Prior to filing the application for exemption, the elected official shall be a member. An application for exemption may be subsequently withdrawn by filing with PERA an executed PERA membership application form.

[10-15-97; 12-15-99; 2.80.400.10 NMAC - Rn & A, 2 NMAC 80.400.10, 12-28-00; A, 8-15-01; A, 9-30-03; A, 8-31-04; A, 9-30-10]

CITY OF SANTA FE, PERSONNEL POLICIES AND PROCEDURES

Rule 4 § 4.53

4.53 Temporary Appointment.

- A. A temporary appointment is the employment of a person when the need for an employee’s services is for a period of less than one year or is on a seasonal basis.
 - 1. Temporary appointments shall be made from the appropriate list of eligibles.
 - 2. The employee’s signature on the Personnel Action Request Form will acknowledge willingness to accept a temporary appointment.
 - 3. Employees of temporary status may be converted to probationary status in the same classification and credited with up to six months service towards completion of the probationary period at the time of the conversion from temporary status to probationary status.
 - 4. The expiration of a temporary appointment shall not be considered to be a layoff or of disciplinary action.
- B. Persons who are employed in the City through student cooperative training programs, including Intern Programs, shall hold temporary appointments.