



UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

Office of Inspector General

May 15, 2019

MEMORANDUM

FROM: Andrew Katsaros
Inspector General

TO: David Robbins
Executive Director

SUBJECT: Management Advisory on Involuntary Departures

I. Background

The purpose of this advisory is to alert management of potential security risks the Office of Inspector General (OIG) identified during informal reviews of three unrelated incidents [REDACTED] involving the involuntary departures of one full-time equivalent (FTE) employee and two contractors.¹ [REDACTED]

[REDACTED]

This advisory highlights the risks presented to the agency when all appropriate parties are not given advance notification of an impending separation or are excluded from the process completely. While the three incidents collectively do not represent a systemic failure in the procedures for managing

¹ One matter identified involved [REDACTED]. The other two matters involved conduct identified through complaint reviews.

² The two contractor personnel that were involuntarily separated were both working under separate non-personal services contracts. A non-personal services contract is a contract under which the personnel providing the services are not subject to the supervision and control usually prevailing in relationships between the government and its employees. A personal services contract, by contrast, is characterized by the employer-employee relationship it creates between the government and the contractor's personnel. *See* 48 C.F.R. Part 37.

involuntary departures, each revealed how security and/or legal expertise should be systemically utilized for similar future incidents. Our recommendations herein offer considerations for FTC management in handling future similar incidents.

II. Applicable Offices and Authorities

The safety of personnel, facilities, property, and information is paramount in all aspects of the work conducted at the FTC. The FTC has several offices and working groups in place to address incidents and threats to the agency, including the Insider Threat Working Group, Computer Incident Response Team, and Breach Incident Response Team. Building security for FTC Headquarters and the Constitution Center is primarily the responsibility of the Office of the Chief Administrative Services Officer's (OCASO) Physical Security Branch (PSB), which is tasked with physical security and employee health and safety, and for implementing all necessary security measures.

The Commission also has in place its *Workplace Violence Prevention* policy [REDACTED]. The policy's stated purpose is in "identifying potentially violent situations early and responding to them before any harm is incurred." The policy applies to a wide range of violent acts, including physical assaults and threats of assaults, the use of threatening or offensive language, as well as bullying, harassment and other disruptive behavior in the workplace.

III. Findings

The OIG conducted informal reviews of the facts surrounding the FTC's actions in the separation of an employee, the FTC's involuntary separation of a contractor, and a contracting company's termination of its employee on FTC premises. Our corresponding findings are provided below.

Incident 1: Employee Termination

[REDACTED]

Upon Employee's departure, PSB placed a block at all guard gates barring Employee's further entrance into any FTC facility due to concerns raised via their observations, and they retrieved Employee's General Services Administration (GSA) Access Card. However, the FTC was unable to immediately retrieve other assigned FTC equipment in Employee's possession, [REDACTED]

[REDACTED]

This incident is an example of the potential threat aggrieved employees pose to personnel, property, and information between the times they are informed of potential adverse actions and their involuntary departures. It further highlights vulnerabilities that could be mitigated with the involvement of PSB and/or OGC in planning for an employee's termination.

Incident 2: Contractor Separation

[REDACTED]

Contractor 1's documented aggressive behavior upon separation in the presence of physical security professionals, without immediate subsequent notification to the COR and other appropriate staff, highlighted an opportunity for coordination between PSB and program offices in mitigating future potential security threats.

Incident 3: Contractor Termination

[REDACTED]

[REDACTED]

[REDACTED]

Also as a result, the Chief Administrative Services Officer and two PSB officials had a conversation with the contracting company's management team about the processes for releasing their employees within FTC spaces and the hazards that could result from this practice. [REDACTED]

[REDACTED]

IV. Conclusion

Each incident identified above presents a unique situation and challenge, and FTC leadership has considerable discretion in addressing these and other personnel matters on a case-by-case basis in the manner it deems appropriate. An important consideration for management should be the timely consulting of experts, including PSB, which serves as the agency's subject matter experts (SME) on security threats; OGC, which serves as the SMEs on the laws in place to reduce or eliminate potential risks to the agency; and the OIG, which serves as the SMEs on matters potentially involving criminal, civil, and administrative violations. Based on the individual circumstances, management should also consider whether the matter is appropriate for referral to the OIG.

The FTC currently has no formal policy or practice in place for consulting with agency experts on risks to agency personnel, facilities, property, and information when an employee or contractor is notified of a pending separation. Thus, an opportunity exists for FTC management to better ensure that future separations are handled without incident. Policies and practices on employee and contractor separations could instruct on when to involve agency SMEs in separation considerations. It could also address other important considerations, such as whether an employee should remain in a regular duty status while management assesses the facts or be placed on leave (e.g., Administrative Leave,³ Investigative Leave,⁴ or Notice Leave⁵) based on the circumstances.⁶ In instances where separation is imminent, these experts would be informed in advance so that the appropriate professionals could be available and present to make determinations on the security of FTC personnel, data, and property.

Additionally, the FTC could enhance the security of its personnel, data, and property by including a provision in a new policy, or via language in new contracts, that bars the separation of contractors on

³ 5 U.S.C. § 6329a, *Administrative Leave*.

⁴ 5 U.S.C. § 6329b, *Investigative Leave and Notice Leave*.

⁵ *Id.*

⁶ We recognize that federal agencies will receive additional guidance on the requirements for utilizing these categories of leave once the Office of Personnel Management finalizes its regulations.

FTC premises. For instances where onsite contractor separation is deemed necessary, the policy could require the advance notification of FTC officials so that measures could be taken in advance, including ensuring that the appropriate professionals are available and present when a separation is executed. Any new provisions should also consider methods of retrieving FTC property in the employee or contractor's possession prior to or at the time of the separation.

V. Recommendations

We recommend that the FTC Office of the Executive Director:

1. Develop a new, or update an existing, policy for consulting with the appropriate offices (e.g., PSB, OGC, OIG) prior to the involuntary termination or separation of employees and contractors. The new/revised policy should include a consideration for placing an individual on Investigative, Administrative, or Notice Leave, as appropriate.⁷
2. Develop a new, or update an existing, policy that either bans contracting companies from terminating its employees on FTC premises, or requires advanced consultation with FTC management prior to the execution of any termination action.

In its response to a draft of this Management Advisory (attached), FTC management concurred with the two OIG recommendations and provided additional clarity on planned actions. This final report is also updated with information exchanged between the OIG and FTC management subsequent to the draft's issuance.

This report will be posted on the OIG's website pursuant to section 8M of the Inspector General Act of 1978, as amended (5 U.S.C. App., § 8M).

We greatly appreciate the courtesies extended to the OIG by you and the OCASO team throughout the development of this product. If you have any questions concerning this report, please feel free to contact me at (202) 326-3527.

Attachment

⁷ *Id.*



UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

Office of the Executive Director

April 26, 2019

MEMORANDUM

FROM: David Robbins
Executive Director

TO: Andrew Katsaros
Inspector General

SUBJECT: Management's Response to Draft Management Advisory dated April 5, 2019

The Federal Trade Commission (FTC) understands the critical mission of the Office of the Inspector General (OIG) and appreciates the OIG's work to identify potential risk to the FTC due to employee or contractor behavior and actions that are contrary to established FTC policy.

The draft OIG Management Advisory dated April 5, 2019 discussed potential security risks the Office of Inspector General (OIG) identified during informal reviews of three unrelated incidents [REDACTED] involving the involuntary departures of two contractors and one full-time equivalent (FTE) employee. The draft Advisory recommends that the FTC Office of the Executive Director:

1. Develop a new, or update an existing, policy for consulting with the appropriate offices (e.g., PSB, OGC, OIG) prior to the involuntary termination or separation of employees and contractors that includes a consideration for placing an individual on investigative, administrative, or notice leave.
2. Develop a new, or update an existing, policy for either banning contracting companies from terminating its employees on FTC premises, or requiring advanced consultation with FTC management prior to the execution of any termination action.

FTC agrees with these recommendations and proposes addressing them as follows. FTC notes that the primary subject matter experts for the matters related to the OIG draft management advisory on involuntary departures reside with the following offices: The Office of the Chief Administrative Services Officer's (OCASO) Physical Security Branch; the Human Capital Management Office's (HCMO) Employee and Labor Relations and Personnel Security Branches; and the Financial Management Office's (FMO) Acquisitions Division. Personnel in these organizations collectively manage the agency's programs for involuntary departures of employees and contractors including development and implementation of procedures to address any potential disruptive incidents that may be associated with such departures.

OIG Recommendation 1: The agency currently has a number of policies that address, in part, many of the concerns raised by the OIG's Management Advisory. The agency will address this recommendation through the thorough review and, where appropriate, modification of a number of different policies so that there is greater clarity and specificity regarding the roles and responsibilities with respect to coordinated decision making and planning by, and the tools available to, the teams assigned to manage risk to the agency with respect to disruption or violence in connection with the involuntary termination of employees and contractors. In addition, HCMO will amend [REDACTED] to provide for the use of notice, investigative and administrative leave, but only after issuance of final guidance with respect to these leave policies by OPM.

First, OCASO will update [REDACTED] to cover physical security and communication protocols between OCASO, HCMO, FMO, FTC managers, and OIG, as appropriate, in the event a federal employee or contractor working for or at the FTC must be relieved involuntarily from duty or the building via termination, suspension, or other means that gives rise to concerns about potential disruption to FTC staff and operations.

Specifically, HCMO in concert with the applicable FTC managers (for employees), or the FMO Acquisition Division in concert with the applicable CORs (for contractors) will notify Physical Security in writing at least 3 business days prior to the planned action. Such notification shall include information such as name of the individual, their manager or COR, the individual's office location, appropriate contact information, a description of any previously identified, ongoing, or possible safety or security concerns regarding the individual, and who specifically will take part in the termination or suspension notification to the individual. Upon receipt of notification, the Physical Security Branch shall collaborate with designated agency officials, as noted above. The Physical Security Branch will develop a security support plan to facilitate the removal or suspension of employees or contractors. The updates to [REDACTED] will be completed by June 2019.

If employees and contractors who are being involuntarily terminated identify as high risk for workplace violence, the agency will manage the termination also utilizing the processes established in the agency's Workplace Violence Prevention Policy at [REDACTED]. Specifically, the Workplace Violence Response Team led by the FTC Security Office and consisting of appropriate and trained agency personnel from HCMO, management officials, the OGC, and the OIG, as appropriate, will assess and address potential threats to the safety of the workplace.

OIG Recommendation 2: FMO has drafted a contract clause covering the suspension, termination, or removal of contractor personnel that will be incorporated into new contracts and added to existing contracts. By October 1, all contracts should contain the updated clause. This clause requires that the contractor shall coordinate with the FTC before providing notice of or actual suspension or termination of the services or employment of any contractor or subcontractor personnel with access to FTC facilities or networks or in possession of FTC equipment or materials during the term of the contract. The clause also will state that contractors and subcontractors may not notify or conduct the suspension or termination of any individual's services or employment while that individual is present on FTC's premises, except as expressly

permitted in writing by the Contracting Officer in consultation with relevant FTC officials, or where required by law. Agency policy, procedures, and guidance to staff (e.g., roles and responsibilities under this clause) will be incorporated into [REDACTED]

[REDACTED].