

OFFICE OF INSPECTOR GENERAL
City of Chicago



***INSPECTOR GENERAL'S OFFICE ADVISORY CONCERNING
THE CITY'S LATE PAYMENT OF SUPPLEMENTARY
VACATION PAYOUTS***

JULY 2013

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OFFICE OF INSPECTOR GENERAL
City of Chicago

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VIA ELECTRONIC MAIL

July 26, 2013

Rahm Emanuel
Mayor
City of Chicago
121 N. LaSalle St.
Room 509
Chicago, Illinois 60602

Dear Mayor Emanuel:

The Office of Inspector General (IGO) received complaints in 2012 from two former City employees from different City departments that the City was significantly late in disbursing vacation pay owed to them upon separation. These complaints prompted the IGO to review the timeliness of the City's post-separation vacation payouts. The IGO's review found that the City is consistently late in paying its employees earned vacation payouts, taking, on average, over 50 days to pay former employees money owed. Such late payments could potentially subject the City to liability, is inconsistent with state policy, and, ultimately, does a disservice to the City's employees.

In Illinois, the Wage Payment and Collection Act, 820 ILCS 115/1 et seq., generally governs the payment of final compensation, including earned vacation pay, and requires employers to pay all amounts owed in full at the time of separation or no later than the next regular payday. City employees are paid twice a month, every 15 to 16 days, meaning that, by this standard, separated City employees should receive final payout of accrued time no later than 16 days after separation.

The IGO analysis of those employees who separated from City employment in the last four years and who received vacation payouts as of March 16, 2013, found that only 14% received their earned vacation pay within 16 days of leaving the City. During this same period, the citywide average time for disbursement of vacation pay was 53 days after separation. While employees in nearly one-third of City departments were paid within an average of 30 days, employees in a few City departments received final payouts, on average, more than three months after an employee left City service.

The Wage Payment and Collection Act expressly allows collective bargaining agreements to deviate from the Act's default requirements for vacation payouts. Some, but not all, of the City's collective bargaining agreements state that vacation pay shall be paid "as soon as practicable

following the last day worked.” In addition, the City of Chicago is a home rule municipality and may legislate regarding matters of local concern unless the state legislature has precluded home rule units from acting. The City’s Annual Salary Ordinance, which addresses the compensation and benefits for City employees in the classified career service, states that, unless otherwise provided in a collective bargaining agreement, accrued vacation shall be paid “as soon as is practicable following the last day worked.” While no court has addressed whether the City’s Salary Ordinance trumps the state Wage Payment and Collection Act in this regard, the language in the Salary Ordinance ostensibly means that the City holds itself to a vague, “as soon as practicable” standard and not the state-law deadline. Additionally, a senior manager at the Office of Budget and Management (OBM) responsible for vacation payouts, was unaware of any internal City policy requiring payments be made within a specific timeframe. Nevertheless, the Wage Payment and Compensation Act deadline of the next regular payday may be regarded as a statewide benchmark for what is a reasonable and expected timeframe for an employee to receive money owed. Thus for purposes of analysis, the IGO looked at whether separated employees were paid by the next regular payday.

I. DETAILED FINDINGS

The IGO analyzed payroll data from the City CHIPPS database to generate a report of supplementary earnings designated as vacation payments for all employees separated from City employment during the 4-year period between January 1, 2009 and December 31, 2012. The IGO reviewed supplementary vacation payments issued to those separated employees from January 1, 2009 to March 16, 2013 in order to include payments made to those separated in late 2012.¹ The IGO did not determine which employees were owed a vacation payout, but rather only looked at the time between vacation payouts the City has issued and the employee’s separation date to determine if the payout was timely.²

The departmental averages and accompanying graphs are attached as Appendix A.

Vacation Payouts Citywide

- During the period of January 1, 2009 and March 16, 2013, the City paid 6212 employees separated in the previous four years (2009 through 2012) a total of \$56,757,245 in supplementary vacation pay.³

¹ The IGO excluded all employees with more than one separation date and also excluded any offsetting entries showing occasions when the City overpaid an employee and received funds to repay the amount. The analysis did not review other supplementary payments such as overtime, furlough days, compensatory time buy-backs, uniform allowances, or retroactive contract pay. Accrued vacation payments were obtained using the CHIPPS elements “VAC HR PAYOUT” and “VAC SWN HR PAYOUT” in the Business Objects PY201c report.

² The IGO used the payment date in the City’s CHIPPS database to calculate the time of the vacation payout. It should be noted that this date is the date the check is cut by the Finance Department and not necessarily the date the City department mailed or provided the check to the former employee.

³ In the 4-year period from January 1, 2009 to December 31, 2012, 9608 employees left City employment. The analysis excluded any supplementary vacation payouts disbursed to employees who were separated before January 1, 2009. Similarly, the analysis does not capture any employees who were separated in 2009 through 2012 but may still have been owed vacation pay as of March 16, 2013.

- Overall, 86% of City employees who left and received vacation payouts were paid more than 16 days after their last day. Only 14% were paid within 16 days.
- On average, separated City employees received their accrued vacation payouts 53 days, nearly two months, after their last day of employment.
- Citywide, the median vacation payout was \$7,290.⁴
- The citywide average time for processing vacation payments remained relatively static between 2009 and 2011, averaging 58 days in 2009, 54 days in 2010 and 58 days in 2011. In 2012 the citywide average improved, dropping to 43 days. It should be noted, however, that the 2012 average does not include those employees who left City employment in late 2012 and had not yet received vacation payouts by March 16, 2013.

Vacation Payouts by Department

- Looking at the past 4 years, 2009-2012, the following three departments had the longest average payment periods:
 - Department of Streets and Sanitation (DSS) (122 days) (452 employees)
 - Chicago Department of Public Health (CDPH) (104 days) (302 employees)
 - Commission on Animal Care and Control (80 days) (25 employees)
- The following three departments had the shortest average payment periods during 2009-2012:
 - Board of Ethics (7 days) (1 employee)
 - Mayor's Office of Special Events (17 days) (4 employees)
 - Office of the City Treasurer (19 days) (4 employees)
- In 2012, more than 95% of all separated employees in 8 departments were paid late:
 - Commission on Animal Care and Control (100%) (6 employees)
 - Department of Administrative Hearings (100%) (2 employees)
 - Department of Buildings (100%) (14 employees)
 - City Council (100%) (13 employees)
 - Commission on Human Relations (100%) (2 employees)
 - DSS (99%) (107 employees)
 - CDPH (99%) (106 employees)
 - Fire Department (96%) (277 employees)

⁴ The average (mean) vacation payout was \$9,137. The increase in the mean over the median is due to a number of significantly higher payouts, mostly to public safety employees. Effective January 1, 2011, the City's vacation policy for non-union represented employees was changed to limit to five the number of vacation days employees may carry over from year to year. Aside from the five days, employees were required to use all unused vacation days by the end of 2012. The vast majority of City employees, however, are unionized, and the City's collective bargaining agreements vary with respect to vacation rollover policies.

- A higher number of employees leaving a department was not correlated with a longer average payment period. For example, the Chicago Police Department (CPD) had 1820 employees receiving accrued vacation payments with an average payment period of 45 days. However, DSS, with 75% fewer employees receiving payouts than CPD, had an average payment period of 122 days. Similarly, employees from CDPH waited, on average, 104 days for accrued vacation payouts despite the fact that their department issued vacation payouts for 83% fewer employees than CPD. Interestingly, DSS issued payouts for only 6 more employees than the Water Department but it took DSS, on average, three times as long to issue payments.

II. APPLICABLE LAW ON VACATION PAYOUTS

The Illinois Wage Payment and Collection Act, 820 ILCS 115/1 et seq., “applies to all employers and employees in this State, including employees of units of local government and school districts, but excepting employees of the State or Federal governments.” Under the Act, 820 ILCS 115/5, unless a collective bargaining agreement provides otherwise, earned vacation time must be included with the final compensation payout:

Unless otherwise provided in a collective bargaining agreement, whenever a contract of employment or employment policy provides for paid vacations, and an employee resigns or is terminated without having taken all vacation time earned in accordance with such contract of employment or employment policy, the monetary equivalent of all earned vacation shall be paid to him or her as part of his or her final compensation at his or her final rate of pay and no employment contract or employment policy shall provide for forfeiture of earned vacation time upon separation.

The Act requires employers to pay all “final compensation,” including earned vacation time, in full at the time of separation or no later than the next regular payday. 820 ILCS 115/5.

Employers who violate the Act are subject to civil damages for the amount of any underpayment and damages of “2% of the amount of any such underpayment for each month following the date of payment during which such underpayments remain unpaid.” 820 ILCS 115/14(a). A prevailing employee may also recover reasonable attorney’s fees. *Id.* Employers are liable under the Act regardless of whether they willfully failed to pay the final compensation. *Andrews v. Kowa Printing Corp.*, 814 N.E.2d 198, 205 (Ill. App. Ct. 2004), *aff’d*, 838 N.E.2d 894 (Ill. 2005). However, employers who willfully violate the Act may also be subject to criminal liability. 820 ILCS 115/14(a-5).

As noted above, the Act provides an exception for variations in collective bargaining agreements. And while some of the City’s collective bargaining agreements do address the timing of vacation payouts with the “as soon as practicable” standard, some of the City’s collective bargaining agreements are silent on the matter.⁵ The City’s Annual Salary Ordinance,

⁵ Compare Collective Bargaining Agreement Between Teamsters Local 726 and City of Chicago, Section 7.2 (providing eligibility for pro rata vacation and stating “Employees separated from employment, other than for cause,

in turn, provides the vacation leave policy for those in the classified service except as otherwise provided in a collective bargaining agreement.⁶ Under Section G of the Salary Ordinance, any unused vacation “shall be paid on a supplemental payroll as soon as is practicable following the last day worked.” The “as soon as practicable” standard, with its lack of any hard deadline, appears to provide the City much more leeway in processing and paying out unused vacation time.

The City of Chicago is a home rule municipality and unless a state law expressly precludes home rule units from legislating on the matter, the City may legislate, and even contradict state law, so long as the legislation “pertains to its government and affairs.” Ill. Const. 1970, art. VII, secs. 6(a), 6(h), (i); *see City of Chicago v. StubHub, Inc.*, 979 N.E. 2d 844, 850 (Ill. 2011). Here, the Wage Payment and Collection Act does not include language excluding or limiting home rule authority to legislate on the matter of vacation payouts.

No court has considered whether the City’s Salary Ordinance prevails over the Wage Payment and Collection Act. However, should the Act apply, the City may be subject to liability for statutory damages for its late payments to those employees not covered by a collective bargaining agreement that deviates from the default state rule. But even if the City Salary Ordinance prevails, the state-law standard of the next regular payday may be regarded as a prevailing fair and reasonable deadline that the City should strive to meet. A vast majority of other Illinois employers are held to this standard, and, accordingly, employees often expect to receive their vacation payout by the next payday. Moreover, a senior manager at OBM reported to the IGO a belief that the state law governs the City’s vacation payouts and that the City could be liable for late payouts.

III. CITY PROCEDURES FOR PROCESSING VACATION PAYOUTS

In November 2012, the IGO interviewed the senior manager in OBM responsible for reviewing and approving the payment of accrued vacation time to separated City employees. The senior manager acknowledged that the late payment of accrued vacation has been an issue for several years and is largely dependent on the time it takes each department to complete the required paperwork, which varies widely from department to department.

As explained by the senior manager in OBM, the process for paying accrued vacation time begins with the departing employee’s department. The department must:

will be paid [vacation pay] on a supplemental payroll as soon as practicable following the last day worked.”) <http://www.cityofchicago.org/content/dam/city/depts/dol/Collective%20Bargaining%20Agreement2/BU8TEAMSTERLocal700.pdf>; *with* Agreement between Council 31 AFSCME and City of Chicago, Article 7 (providing eligibility for pro rata vacation and prohibiting employees discharged for “serious misconduct” from receiving earned vacation pay not taken but not addressing the timing of vacation payments.) <http://www.cityofchicago.org/content/dam/city/depts/dol/Collective%20Bargaining%20Agreement2/AFSCMECBAJuly2007toJune2012.pdf>.

⁶ The Salary Ordinance is formally titled, “Regulations Governing the Administration of the Classification Plan and Employee Benefits for Classified Positions Set Forth In the Annual Appropriation Ordinance. See http://www.cityofchicago.org/content/dam/city/depts/dhr/supp_info/JobClassification/Ordinance.pdf.

1. Request from the Department of Finance an employee indebtedness report to show whether the employee owes any money to the City. If the employee owes money, the employee is asked to either pay the debt in full or consent to have the debt paid out of the vacation payout.⁷
2. Complete and send paperwork to the Department of Human Resources (DHR) so that the employee's status in the CHIPPS database is changed to "terminated."
3. For salaried employees, ensure that all time is accounted for over the previous two years.
4. Compile and submit to OBM a request for payment. The request to OBM must include:
 - a) A Payroll Data Entry form, showing the department's calculation of the vacation time the employee is owed.
 - b) A CATA "300" report for the past two years that accounts for all of the employee's time.
 - c) A Vacation Carryover Form calculating vacation carried over from past years.
 - d) An Employee Indebtedness Form from Finance along with a signed consent form if the employee has debt to be withheld from the vacation payout.

The amount of time it takes departments to complete the request and send it to OBM can vary widely—some departments submit the request to OBM within a few days of the employee's last day, but some can take months. According to the OBM manager, delays at the department level are due to poor record keeping (employee timekeeping and tracking of vacation time) and high turnover in the ranks of department timekeepers and human resources liaisons.

Once OBM receives the request for payment, an OBM employee reviews the packet for completeness and accuracy. The most common problem is that the accrued vacation time is inaccurate or regular time is unaccounted for or unedited. Such problems require OBM to go back and forth with the department to correct the information. If the information is complete, the OBM manager explained, OBM can usually process the request within a week. Once OBM is finished, the request is sent to the Department of Finance. Finance processes the request and issues a paper check within one to two weeks. Finance gives the check to the departmental HR liaison, who mails the check to the employee.

Even if this process works perfectly, with no discrepancies in the department's paperwork, the estimated minimum time that it would take for a department to get the check for distribution to the employee is more than two weeks and likely after the next regular payday. If departments send the paperwork by email the day after the employee's last day (to ensure all time is entered and edited in the CATA system), OBM's review takes approximately one week and Finance takes at least one week to process and issue a check. Finally, Finance physically delivers the checks to the department, which must then notify the employee for pick up or mail the check to the employee. Thus, as described by City officials, the process, even at its most expeditious, likely takes three weeks to complete.

⁷ The IGO notes that the Illinois Wage Payment and Collection Act, 820 ILCS 115/9, includes specific requirements regarding an employer's ability to deduct from an employee's final compensation. Unless the employee consents, the deduction must be no more than 25% of the net payment, and the City must certify that the employee has had notice and opportunity to dispute the debt. Vacation payouts therefore cannot be conditioned upon payment of a separate City debt. Any such agreement to pay by an employee must be made voluntarily.

The OBM senior manager noted that the late payment of accrued vacation has been an issue for several years and had raised it with supervisors in the past but was not aware of any attempts to solve the issue. The manager expressed a belief that the Illinois Wage Payment and Collection Act governs the City's vacation payouts and that the City could be liable for late payouts. The manager noted that former employees have called OBM and threatened to sue the City when their vacation pay is late, but the manager was not aware of any actual lawsuits against the City. The manager was unaware of any internal City policy requiring payments be made within a specific timeframe, and OBM does not track compliance with the "next regular payday" deadline. If a department is repeatedly late in forwarding requests for payment, OBM will contact the department to try to resolve whatever issues are causing the delays.

The OBM manager noted that in 2013, the City will begin instituting a new payroll and timekeeping system called the Chicago Streamlined Workforce Integrated Payroll Enterprise ("C-SWIPE") to replace the existing CATA system. C-SWIPE should speed up the vacation payout process by automating and integrating the City's payroll function. However, the manager conceded that, even with these improvements, the City still may not be able to process vacation payouts by the next pay period if other processes remain the same.

IV. CONCLUSION

The late payment of vacation pay is a citywide, systemic issue. The IGO's review of City records shows that the issue has persisted over the past four years with nearly two-thirds of all departments consistently paying accrued vacation more than a month after separation. At its worst this problem could potentially subject the City to liability (whether under the state's Wage Payment and Collection Act or some other claim for relief), and at a minimum, does a disservice to the City's employees entitled to reasonably prompt payout on an accrued benefit. The drastic inconsistencies in the time in which employees receive their final compensation further create broad inequities and potential for intentional abuse. As reported by the OBM manager, these inconsistencies appear to be due largely to differences in the time departments take to complete and submit paperwork to OBM and departments' failure to maintain accurate timekeeping records. Such drastic inconsistencies among departments further calls into question whether the City is meeting its own "as soon as practicable" standard.

The City's process also lacks comprehensive ownership and accountability. No single department is responsible for ensuring payment is timely. Indeed, the timeliness of the payment from the employee's end date to payment date does not appear to be tracked at all.

Accordingly, we suggest that the City consider:

- Reviewing the process for issuing checks for vacation payouts with all relevant City departments, including OBM and Finance, to identify any areas of the process that may be expedited or automated.
- Identifying ways to increase accountability at the department level for providing timely information to OBM.

Respectfully,

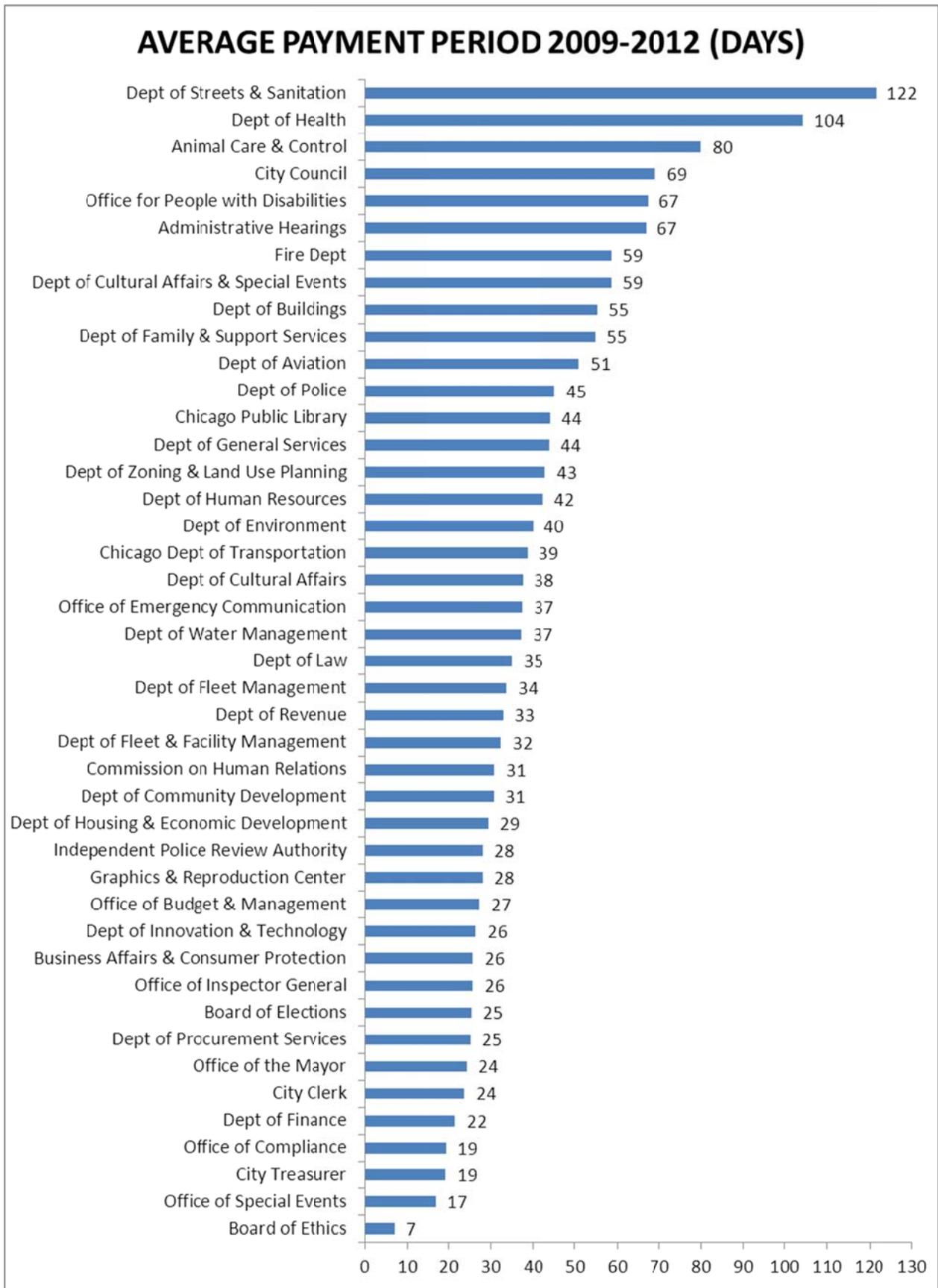


Joseph M. Ferguson
Inspector General
City of Chicago

CC: Lisa Schrader, Chief of Staff, Office of the Mayor
Alexandra Holt, Budget Director, Office of Budget and Management
Amer Ahmad, Comptroller, Department of Finance
Stephen Patton, Corporation Counsel, Department of Law
Soo Choi, Commissioner, Department of Human Resources

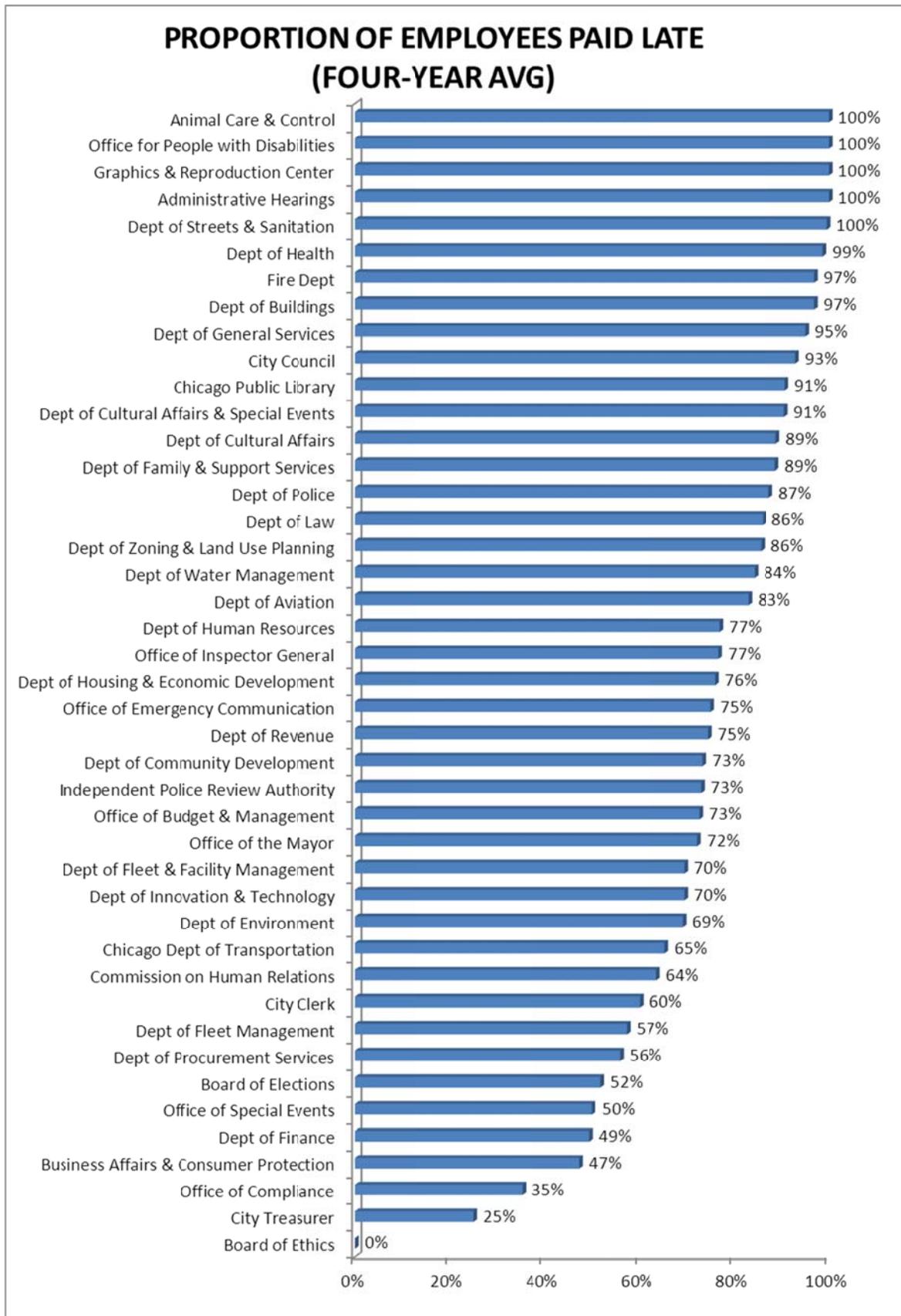
V. **APPENDIX A**

AVERAGE PAYMENT PERIOD 2009-2012 (DAYS)						
Department Name	2009	2010	2011	2012	FOUR-YR AVG	Number of Employees
Board of Ethics			7		7	1
Office of Special Events	16	17			17	4
City Treasurer		23	16	16	19	4
Office of Compliance	30	14	14		19	17
Dept of Finance	28	19	15	22	22	87
City Clerk	18	32	24	23	24	30
Office of the Mayor	30	18	25	20	24	90
Dept of Procurement Services	25	25	30	18	25	34
Board of Elections	19	14	37	37	25	29
Office of Inspector General	32	20	31	24	26	30
Business Affairs & Consumer Protection	26	35	20	23	26	38
Dept of Innovation & Technology	16	27	29	29	26	23
Office of Budget & Management	28	19	31		27	11
Graphics & Reproduction Center		28			28	4
Independent Police Review Authority	30	27	36	20	28	26
Dept of Housing & Economic Development			31	28	29	25
Dept of Community Development	43	21	28		31	30
Commission on Human Relations	47		29	32	31	11
Dept of Fleet & Facility Management				32	32	69
Dept of Revenue	42	32	28		33	51
Dept of Fleet Management	44	25	31		34	89
Dept of Law	39	29	42	26	35	258
Dept of Water Management	47	32	40	31	37	446
Office of Emergency Communication	54	30	37	33	37	164
Dept of Cultural Affairs	45	23			38	9
Chicago Dept of Transportation	49	40	41	28	39	228
Dept of Environment	92	34	28		40	26
Dept of Human Resources	68	39	37	20	42	39
Dept of Zoning & Land Use Planning	48	40			43	7
Dept of General Services	44	48	40		44	82
Chicago Public Library	43	43	54	40	44	357
Dept of Police	31	44	56	45	45	1820
Dept of Aviation	74	58	45	43	51	218
Dept of Family & Support Services	80	62	50	37	55	186
Dept of Buildings	61	36	70	48	55	65
Dept of Cultural Affairs & Special Events		67	55	23	59	32
Fire Dept	59	75	81	40	59	684
Administrative Hearings	106	70	78	39	67	6
Office for People with Disabilities	198	17	27		67	4
City Council	53	50	80	82	69	99
Animal Care & Control	117	86	63	78	80	25
Dept of Health	79	122	141	79	104	302
Dept of Streets & Sanitation	148	176	101	57	122	452
Grand Total	58	54	58	43	53	6212



Proportion of Employees Paid Late (Four-Year Avg)*						
Department name	2009	2010	2011	2012	FOUR-YR AVG	Number of Employees
Board of Ethics			0%		0%	1
City Treasurer		50%	0%	0%	25%	4
Office of Compliance	67%	20%	17%		35%	17
Business Affairs & Consumer Protection	67%	40%	38%	56%	47%	38
Dept of Finance	62%	36%	31%	55%	49%	87
Office of Special Events	0%	67%			50%	4
Board of Elections	50%	10%	88%	80%	52%	29
Dept of Procurement Services	38%	46%	88%	60%	56%	34
Dept of Fleet Management	90%	25%	50%		57%	89
City Clerk	43%	80%	70%	50%	60%	30
Commission on Human Relations	100%		50%	100%	64%	11
Chicago Dept of Transportation	86%	74%	52%	59%	65%	228
Dept of Environment	100%	78%	54%		69%	26
Dept of Innovation & Technology	50%	50%	80%	80%	70%	23
Dept of Fleet & Facility Management				70%	70%	69
Office of the Mayor	79%	55%	77%	56%	72%	90
Office of Budget & Management	100%	33%	86%		73%	11
Independent Police Review Authority	67%	67%	88%	67%	73%	26
Dept of Community Development	100%	42%	86%		73%	30
Dept of Revenue	93%	93%	50%		75%	51
Office of Emergency Communication	97%	70%	66%	78%	75%	164
Dept of Housing & Economic Development			87%	60%	76%	25
Office of Inspector General	88%	73%	80%	67%	77%	30
Dept of Human Resources	89%	80%	73%	60%	77%	39
Dept of Aviation	93%	94%	70%	82%	83%	218
Dept of Water Management	92%	77%	91%	77%	84%	446
Dept of Zoning & Land Use Planning	100%	75%			86%	7
Dept of Law	90%	84%	90%	74%	86%	258
Dept of Police	74%	83%	93%	93%	87%	1820
Dept of Family & Support Services	98%	92%	83%	84%	89%	186
Dept of Cultural Affairs	100%	67%			89%	9
Dept of Cultural Affairs & Special Events		100%	87%	50%	91%	32
Chicago Public Library	93%	87%	93%	88%	91%	357
City Council	92%	84%	96%	100%	93%	99
Dept of General Services	93%	96%	96%		95%	82
Dept of Buildings	100%	87%	100%	100%	97%	65
Fire Dept	96%	97%	100%	96%	97%	684
Dept of Health	96%	100%	100%	98%	99%	302
Dept of Streets & Sanitation	100%	100%	99%	99%	100%	452
Administrative Hearings	100%	100%	100%	100%	100%	6
Graphics & Reproduction Center		100%			100%	4
Office for People with Disabilities	100%	100%	100%		100%	4
Animal Care & Control	100%	100%	100%	100%	100%	25
Grand Total	89%	82%	86%	87%	86%	6212

*0% values represent years where all employees were paid on time. No entry means no employees were paid vacation upon separation, often where the department ceased to exist.



CITY OF CHICAGO OFFICE OF THE INSPECTOR GENERAL

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To Suggest Ways to Improve City Government	Visit our website: https://chicagoinspectorgeneral.org/get-involved/help-improve-city-government/
To Report Fraud, Waste, and Abuse in City Programs	Call the IGO's toll-free hotline 866-IG-TIPLINE (866-448-4754). Talk to an investigator from 8:30 a.m. to 5:00 p.m. Monday-Friday. Or visit our website: http://chicagoinspectorgeneral.org/get-involved/fight-waste-fraud-and-abuse/

MISSION

The City of Chicago Office of Inspector General (IGO) is an independent, nonpartisan oversight agency whose mission is to promote economy, efficiency, and integrity in the administration of programs and operations of City government. The IGO achieves this mission through:

- Administrative and criminal investigations
- Audits of City programs and operations
- Reviews of City programs, operations and policies

From these activities, the IGO issues reports of findings, disciplinary, and other recommendations to assure that City officials, employees and vendors are held accountable for the provision of efficient, cost-effective government operations and further to prevent, detect, identify, expose and eliminate waste, inefficiency, misconduct, fraud, corruption, and abuse of public authority and resources.

AUTHORITY

The authority to produce reports and recommendations on ways to improve City operations is established in the City of Chicago Municipal Code § 2-56-030(c), which confers upon the Inspector General the following power and duty:

To promote economy, efficiency, effectiveness and integrity in the administration of the programs and operations of the city government by reviewing programs, identifying any inefficiencies, waste and potential for misconduct therein, and recommending to the mayor and the city council policies and methods for the elimination of inefficiencies and waste, and the prevention of misconduct.