



## ATTENDANCE-RELATED DISCIPLINARY PRACTICES AT MTA METRO-NORTH RAILROAD

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### OVERVIEW

MTA Metro-North Railroad (MNR) is responsible for providing transportation to over 80 million riders annually. To do so, it depends on the individual and collective efforts of its more than 6,600 employees. Excessive unscheduled employee absences can adversely affect productivity and efficiency, unnecessarily increase overtime costs, reduce the overall quality of service, and put additional burdens on employees who do report to work. To ensure sufficient coverage for operations, MNR has an Attendance Policy (the Policy) for represented employees that states at its outset: “All employees have an obligation to passengers, taxpayers, and their fellow colleagues to strive for perfect attendance so the agency may provide consistently safe and reliable transportation.” The Policy outlines disciplinary measures that may be taken against those employees who demonstrate unsatisfactory attendance. The agency uses an Attendance Tracking System, in accordance with the system’s reference manual (the Manual), to record absences and flag those days to be considered when assessing an employee’s attendance record.

Twice in the last ten years the Office of the MTA Inspector General (OIG) reviewed Long Island Rail Road’s implementation of that agency’s “Absence Control Policy” and found that significant improvements were made, in part attributable to the recommendations made by this Office. Therefore, in 2016, the OIG initiated a review of MNR’s attendance-related disciplinary process to determine whether: 1) the Attendance Policy and the Manual together provide sufficient guidance to management to ensure consistent implementation of the Policy; and 2) management appropriately identified employees whose patterns of absence exceeded “reasonable levels.”

### Summary of Findings

While the Attendance Policy creates hard and fast rules that do not afford any discretion to staff or management to excuse absences—that is, to remove them from potential disciplinary action—the departments have used language introduced by the Manual to effectively assume that authority by allowing absences to be excused on a case-by-case basis. Further, our statistical review revealed inconsistencies among the departments in their implementation of the Policy and their exercise of discretion, with some having much higher rates of excused absences than others. Additionally, the discretion afforded by the Manual often lacked specific requirements or contained requirements that were not followed, which led to problems. For example:

- The departments effectively developed their own “customized” interpretations of the Policy and Manual provisions for removing absences from disciplinary consideration.

- Although the Manual required that when excusing absences managers must select a “Reason Code” and write a “Comment” justifying the excuse, we found that approximately 20 percent of all absences excused by department officials were missing adequate justification.

In a positive development, two of the six departments implemented an additional level of review to determine whether each removal of an absence from disciplinary consideration met departmental standards. Other departments, however, had no similar quality-assurance process, increasing the likelihood of inconsistent treatment of employees, incorrect application of the Policy, and favoritism.

Our analysis also revealed a lack of guidance in the Policy concerning the disciplinary action to be taken when employees repeatedly arrive late to work or leave early at the end of the day. Without direction as to how many such arrivals or departures constitute unreasonable attendance, or definitions as to what is considered “late” or “early,” departments used their own definitions, which sometimes differed.

To help us determine whether individual absences were correctly identified and discipline properly assessed, we obtained the attendance statistics for all employees covered by the Policy and analyzed the case histories of 91 individuals selected from the major MNR operating departments who had at least one sick-leave absence in 2015. We then compared the 91 employee attendance and discipline histories to MNR’s Policy as well as to each department’s interpretation of the Policy. Through this analysis we found, as shown below, that supervisors did not identify all attendance violations, nor was each suspension for this group served in full as required:

- Supervisors responsible for reviewing attendance records were not always in compliance with their own departments’ customized versions of the Policy concerning late arrivals and early departures.
- In 11 instances, the supervisor took no action, neither classifying the absence as a violation of the Policy nor removing the absence from consideration for discipline. Management did not detect this inaction within the time frame required by the collective bargaining agreements to pursue appropriate disciplinary measures.
- In two out of the seven suspensions issued to this group of employees for repeated absences, the employees did not serve the entire suspension period as required by the Policy.

### **Summary of Recommendations**

To help make implementation of the Attendance Policy more effective and fair, and its enforcement appropriately consistent, Metro-North should: Clarify whether, to what extent, and by what standards departments may excuse attendance violations related to sick leave that are not Excluded under the current Policy; better define key terms such as “late” arrivals and “early” departures; create a computerized alert to management when violations are not addressed in timely fashion; and develop and implement a quality assurance review process across all departments.

### **Summary of Agency Response**

MNR agreed with all of our recommendations and outlined a series of corrective actions that are in various stages of implementation. In its response, the agency noted: “We realize that differences arise in how departments manage the Attendance and Discipline process, and have been striving for consistency in recent years. We are addressing these differences and have taken a series of steps to tighten the monitoring and controls over Attendance issues on a department by department basis. [...] We acknowledge that further improvements can be made and that additional consistency is needed.” The agency anticipates implementation of all of our recommendations by the second quarter of 2017.

## BACKGROUND

### MNR Attendance Policy<sup>1</sup>

First written in 1988, the Attendance Policy, applicable within the six major operating departments of Metro North<sup>2</sup>, proceeds from the premise that proper staffing furthers the railroad's mission to provide consistently safe and reliable transportation, and toward that end the Policy declares that "All employees have an obligation to MNR, our customers, the taxpayers of our service territory, and their fellow employees to strive for perfect attendance." Balancing that declaration, however, and even as it asserts an expectation that employees "not allow minor ailments or inconveniences to prevent them from reporting to work as assigned," the Policy makes clear that "While perfect attendance is a goal, an employee should not report for duty if he or she is suffering from an impairment that would pose a threat to the safety of railroad passengers, fellow employees or the employee's own safety."

Violations result from unsatisfactory attendance patterns, including frequent late arrivals to work, early departures, and excessive absences of one day or more. These broad concepts of frequency and excessiveness, used within the Policy, seem to be more narrowly defined by another Policy provision as "three occurrences of absences within any thirty day calendar day period or four occurrences of absence within any six month period, with an 'occurrence' being consecutive work days that an employee does not report for work due to illness or injury."<sup>3,4</sup> For example, because multiple, consecutive missed work days are considered a single occurrence for disciplinary purposes, an absence of one day would count as one occurrence, as would an absence of three days or 30 days, if consecutive.

As a further guide for assessing satisfactory performance, the Attendance Policy lists certain absences such as vacation, holidays, and time authorized under the Family and Medical Leave Act (FMLA) that should not be considered when evaluating an employee's attendance record; these are referred to as "Excluded Absences." Notably absent from this list is any reference to "sick leave."

Indeed, to make clear that sick leave is not counted as an Excluded Absence, the Policy specifically states that "The Procedures and Agreements that provide payment for sick leave **do not** excuse an employee for his or her absence on any given workday" (emphasis in the original). Actually, most sick-leave absences are included in the assessment of an unsatisfactory attendance record, which includes, for example, the one-day absences, late arrivals and early departures described above. Employees whose use of sick leave exceeds the "reasonable levels" set by MNR are considered as having unsatisfactory attendance and are subject to progressive

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<sup>1</sup> MNR Operating Procedure 21-021B, *ATTENDANCE – Represented Employees*, March 4, 2015 (the Attendance Policy or Policy or Procedure), section A(1).

<sup>2</sup> These departments consist of Customer Service, Grand Central Terminal, Maintenance of Equipment, Maintenance of Way, Procurement and Material Management, and Transportation.

<sup>3</sup> The Policy includes more restrictive standards for employees with attendance-related violations within the preceding 12 months (see §A[5]).

<sup>4</sup> A similar policy is in place for non-represented (management) employees.

discipline ranging from a warning letter to termination. Management must address potential infractions within time frames established in collective bargaining agreements.

### **The Attendance Tracking System Process**

MNR administers its attendance program through the use of a computerized Attendance Tracking System (Tracking System) developed by the agency. As described in the Tracking System Manual (the Manual), its overall purpose is “to create an objective, consistently applied process to identify employees whose patterns of absence violate the Procedure, and to prompt their supervisors to initiate the disciplinary process.” Specifically, the system is programmed to compare each “occurrence” (as defined above) to the criteria for unsatisfactory attendance outlined in the Policy. The operating departments rely on this automated process to detect employee occurrences that might generate a violation. We briefly describe the Tracking System process below, highlighting its key decision points.

Each Sunday evening, the prior week’s data is uploaded from the Kronos payroll/time-keeping database into the Tracking System. When the frequency or pattern of an employee’s occurrences meets the violation criteria established by the Policy, the Tracking System automatically generates a notification, labeled a “pending task.” An initial Approver, usually an operating manager or supervisor, is required to review the pending tasks each week to confirm that the occurrences meet the criteria for a violation, e.g. three occurrences within a 30-day period. If the Approver finds that one or more of the absences constituting the occurrence(s) should be excluded according to the Policy or Manual, the Approver will enter that determination into the system and the Excluded Absence(s) will not be subject to discipline.

If the Approver finds no reason to exclude an absence, the Approver should submit the record as a potential violation. The Tracking System then automatically sends an email notification to the department’s Employee Availability Specialist (Specialist), who performs a further review before the department formally initiates discipline.<sup>5</sup> Because the Specialist is responsible for communicating with absent employees and relevant MNR personnel, he or she often has more up-to-date information about the nature of an employee’s absence (e.g. FMLA status) than the Approver and therefore may identify an Excluded Absence that the Approver did not. Both Approver and Specialist (collectively, the Reviewers) are responsible for appropriately justifying any absences they exclude.

In the final step of this oversight process as described in the Manual, an Administrator in each department should be responsible for reviewing Approvers’ and Specialists’ justifications for excluding absences in the Tracking System.

If the Specialist agrees with the Approver’s determination that the occurrences that generated the pending task are not Excluded Absences and thus violate the Policy, the Specialist then assesses the employee’s recent attendance history to determine the appropriate level of progressive discipline. If the employee has not been issued a warning or other attendance-related discipline

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<sup>5</sup> In some operating departments, the staff members performing this function use other titles.

within the prior 12 months, the Specialist generates a formal Warning Letter to the employee. If the employee has been issued any attendance-related discipline within the prior 12-month period, the Specialist initiates a Notice of Investigation, the first official step toward further discipline, which ranges from a Reprimand, to deferred and then actual suspension, and finally to termination.

As this brief description makes clear, the Reviewers involved in this process may determine that an occurrence does *not* represent a violation of the Policy because it constitutes an Excluded Absence. Notably though, as our findings below make clear, the *Manual*—but **not** the Policy—additionally provides that in some cases Reviewers may also exercise discretionary judgment to *excuse* an absence that does not qualify as an Excluded Absence, a practice not authorized by the Policy. And, as our findings also make clear, this practice, lacking guidance and standards, leads to excusals that are subjective and inconsistent.

## FINDINGS

### Practice Authorized by the Manual of Excusing Absences is Not Authorized by the Policy

According to the Attendance Policy, as previously explained, the only absences not considered in assessing unsatisfactory attendance are Excluded Absences, consisting of the following:

- Holiday Leave
- Vacation and Personal Leave
- Bereavement Leave
- Personal Leave of Absence
- Jury Duty
- Military Leave
- FMLA and Medical Leave
- An absence resulting from a documented workplace injury

As also made clear above, “sick leave” does not constitute an Excluded Absence.

According to the Tracking System Manual, for every absence that is removed from consideration for discipline, a Reviewer must enter into the system both a “reason code” and a brief explanation of the relevant circumstances. To supplement the Excluded Absences set forth in the Policy, the Manual identifies two additional reason codes (“EAP” and “OHS”), both concerning official action regarding an employee’s medical condition or fitness for duty, which are not listed in the Policy but are nonetheless available for Reviewers to describe Excluded Absences:

- EAP: “Employee has been removed from service and is receiving mandatory treatment under the supervision of MNR’s EAP Unit.” (The Employee Assistance Program provides confidential counseling services to assist employees with personal problems that may affect job performance.)
- OHS: “Employee is being held out of service by MNR’s OHS Department.” (The Occupational Health Services Department is responsible for monitoring the medical care of employees who leave active service because of an on-the-job injury.)

Additionally, the Manual effectively provides Reviewers with an extraordinary mechanism to use their own discretion. Without basis in the Policy, and without offering much, if any, guidance as to the exercise of such discretion, the Manual describes three codes that appear to give Reviewers wide latitude in excusing absences on a case-by-case basis (hereafter referred to as “Excused Absences” as distinct from “Excluded Absences”):

- EAS: “To be used only by Employee Availability Specialist.”
- MGR: “To be used by Manager/Initiator” [the Approver].
- ADMIN: “A Departmental Administrator has excluded the individual absence date based

on special considerations unique to the specific case. The Administrator must write a detailed comment explaining what the special considerations were. E.g., Employee given prior departmental approval ...to attend external training event....” While this particular code refers to an “excluded” absence, our review confirmed that the code is also used for Excused Absences, including those involving sick days.

These codes do not necessarily describe *why* the absence should be considered Excluded or Excused, but instead merely capture *who* is making the decision. Thus the availability of these discretionary codes has the practical effect of expanding Reviewers’ authority beyond Policy limits without clearly defining the boundaries of their role.

To determine whether Reviewers complied with the Manual when removing absences from disciplinary consideration, we examined approximately 6,200 records from 2014 and 2015 in which reviewers used the Manual’s three discretionary codes (ADMIN, EAS, and MGR) for Excused Absences. When we discussed the use of these codes with departmental officials, we learned that in five of the six departments the frequent use of the codes reflected Reviewers’ common understanding that certain (loosely defined) categories of absence—as a practical matter and although not qualified as Excluded Absences—do not warrant discipline.

For example, officials in the Maintenance of Way department (MOW) told us that an absence should be excused if it occurs during the period immediately preceding an employee’s retirement. Because the agency’s full disciplinary process often lasts longer than 30 days, MOW officials argued that there is not enough time to resolve a violation in an employee’s final month on the job. While this seems to be a reasonable, pragmatic basis for excusing an absence, it is not authorized—directly or indirectly—by the Policy. And even assuming that the Manual somehow has the authority to afford discretion, it neither describes this category specifically nor provides standardized criteria for exercising that discretion.

Further, we learned that Reviewers among the departments—lacking guidance—utilize reasoning that is highly subjective and potentially inconsistent when excusing absences in certain circumstances. Departmental officials described a variety of situations in which this may occur:

- According to MOW officials, an Approver may excuse an absence when family emergencies occur, such as a car accident or the birth of a child.
- A Reviewer in the Maintenance of Equipment department (Equipment) explained that he may excuse absences for an employee experiencing a serious illness or injury and whose doctor advises taking time off from work.
- An official at Grand Central Terminal said that depending on an employee’s work history, an absence could be excused if the employee had talked to officials before the absence.
- A Transportation Department Reviewer excused an absence for an employee who had worked extremely long hours over three consecutive days because of a snowstorm.
- Customer Service officials told us that a Reviewer may excuse an absence for a family

emergency, e.g. the hospitalization of an employee's parent.

In contrast, an Administrator in the sixth department, Procurement and Material Management (Procurement), told us he would excuse an absence only if too much time has elapsed since the absence to pursue discipline, according to the applicable collective bargaining agreement. Otherwise this Administrator, responsible for reviewing all absences within his department, makes no allowance for subjective or informal criteria. In fact, Approvers within this department must fill out a departmental form and obtain the Administrator's approval before excusing an absence.

In our discussions with Approvers across the agency, we learned they had received little to no instruction about the discretionary process for excusing absences, nor any written criteria describing when an Approver should—or should not—exercise this discretion. The lack of guidelines in the Manual—let alone the utter lack of authority in the Policy—for excusing (as opposed to excluding) absences increases the potential for inequitable treatment: Two employees working in separate departments who are absent for essentially the same reason could face significantly different consequences.

Thus, if MNR management believes that Reviewers' ability to exercise their discretion in the form of an Excused Absence is a valuable element of reasonable, equitable attendance-control practices, such authority should be clearly defined, with standardized criteria, and documented in the agency-wide Attendance Policy. Concomitantly, management should also clarify the Tracking System Manual to conform to the revised Policy and provide guidance on the appropriate use of any discretionary codes. Further, MNR should provide training to Approvers and Specialists across the agency to ensure their understanding—and consistent application—of that guidance.

### **Departments Inconsistently Discipline Employees for Partial-Day Absences**

A partial-day absence occurs when an employee arrives late to work or leaves early. MNR has no written guidelines explaining how employees should be disciplined for such absences. The Policy provides that “frequent lateness to work or early departures” may be considered unsatisfactory attendance, but it does not specifically define “frequent,” “late,” or “early.” In the absence of an agency-wide policy, the various departments have developed their own practices for addressing partial-day absences. While most of the departments count three late starts, three early quits, or some combination of the two as one occurrence, there were exceptions. For example, one Reviewer told us she treated each partial-day absence as a stand-alone occurrence. Additionally, although most departments provide a five-minute grace period for each late start and early quit, Procurement includes no grace period in its calculations.

As part of our review, we analyzed the case histories of 91 individuals selected from the six major MNR operating departments who had at least one sick-leave absence in 2015 (the 91 Disciplinary Histories). As a result, we identified four employees from three departments who were not disciplined for partial-day absences in accordance with the applicable department's

particular practice, including one employee in the Grand Central Terminal Department who was not disciplined despite accruing 37 partial-day absences in 2015.

We reviewed our findings with officials in each of the three departments. Equipment Department officials expressed their belief that the Tracking System does not always accurately generate pending tasks for partial-day absences, and consequently the Approvers are responsible for verifying them in the separate Kronos payroll/time-keeping system. The officials speculated that in the two cases of lax discipline we identified within Equipment, the Approver likely failed to identify the late starts and early departures in Kronos because they are not readily visible. Officials further said that while Approvers received training on the use of Kronos to view partial-day absences, less experienced Approvers did not always remember how to do so.

Regarding the third case, involving a Customer Service employee, department officials told us that in 2015 (and unrelated to the OIG audit), they determined that the department did not have consistent rules for disciplining partial-day absences, a shortcoming they believed may have contributed to inconsistent practices across its varied crafts and multiple locations. Accordingly, in 2016 the department worked with MNR's Human Resources and Labor Relations departments to develop a written policy on partial-day absences—the first such formal guidelines at Metro-North, but applicable only to Customer Service. Departmental officials told us they believe this change will improve the consistency and fairness of the department's discipline of partial-day absences.

Lastly, in the case of the employee who accrued 37 partial-day absences in 2015, Grand Central Terminal officials could not explain the lenient treatment afforded to the individual. However, we learned that as of early 2016 the responsibility for overseeing the disciplinary function of Grand Central Terminal had been assigned to MOW, a department we found to have more effectively administered discipline for partial-day absences.

To address the disparities we found among the departments' practices, we recommend that MNR update its agency-wide Attendance Policy to provide further guidance regarding partial-day absences. Specifically, the Policy should define partial-day absences, establish how many absences constitute an occurrence, and state the length of any grace period granted to employees who arrive late or leave early. Further, if Reviewers are authorized to use their discretion in excusing these absences, the Policy should describe when that discretion may be used and how such decisions must be documented.

## The Process for Scheduling and Enforcing Suspensions Needs Improvement

Under the Attendance Policy, progressive-discipline guidelines specify that an employee with multiple attendance-related violations within a time period defined by the Policy may be required to serve a suspension, which necessarily involves unpaid time away from work. According to Labor Relations officials, the suspension start and end dates should be determined by Labor Relations—with input from applicable departmental management—and then recorded on the Notice of Discipline (G-32 Form), which includes a description of the violation causing the suspension and is signed by the employee. The employee's immediate supervisor is then responsible for ensuring that the suspension is served in full.

To evaluate departmental practices in assessing attendance-related suspensions, we reviewed the 91 Disciplinary Histories and found that six employees were assessed with seven suspensions. We then reviewed the 2015 and 2016 payroll records to determine whether these employees served their suspensions in full and MNR withheld their pay appropriately.

We found that two of the six employees did not fully serve their suspensions. In one instance, an Equipment employee accepted the imposition of a five-day suspension. However, rather than arrange for the suspension to begin on the first day of the employee's work week consisting of five consecutive days – which would cause the employee to lose a full five days' pay – the employee's supervisor scheduled it to begin on the employee's first day off, effectively reducing the suspension to three days of unpaid leave. When OIG brought this finding to the attention of Equipment officials, they were unable to provide a sufficient rationale for this action. We learned that in contrast to the process described to us by Labor Relations, in which that department is responsible for setting the suspension dates, within Equipment the immediate supervisor was authorized to do so.

In the second case, a Maintenance of Way employee was assessed a 10-day suspension but served only nine of those days in November 2015 and was allowed to return to work one day early. When OIG brought this to the attention of MOW officials, they could not explain why this early return had been allowed. We later learned that based on our finding, management required the employee to serve the remaining day of the suspension in July 2016. Further, we found in this case that the G-32 form—the official record of the agreement between management and an employee on a disciplinary matter—included no start and end dates for the suspension. The G-32 forms governing the remaining five suspensions reviewed were similarly incomplete.

In seeking the cause of these procedural weaknesses, we determined that MNR had no written policy governing the assignment and documentation of suspension dates, and no one was held accountable for confirming that suspensions were served as required. Thus supervisors could potentially schedule suspensions without any prior guidance *or* oversight after the fact—a deficiency that increases the likelihood of inconsistency and even favoritism in the disciplinary process.

In response to our findings, a MNR Labor Relations official sent an email to department managers stating in part that the start date on a G-32 Form should always be the first work day in the employee's schedule:

...subjective determination [of suspension start and end dates] is improper since it allows for employees who are assessed the same penalty to be treated differently under our disciplinary program. The effective date of an actual suspension set forth in the G-32 should be the employee's first work day of his/her scheduled work week. For example, if an employee is assessed a 5-day suspension and his first work day is Monday, the employee must start to serve the suspension on Monday and serve it for 5 consecutive days ending that Friday.

We consider this clarification a positive development and believe that MNR should formalize the new guidance by creating an official written policy governing the assignment of suspension start dates and, further, by requiring responsible officials to include the exact dates a suspension will be served on the G-32 form. We also believe that management should develop a process for confirming that employees have served their suspensions in full, as scheduled and required.

### **Inadequate Controls Hindered Scrutiny of Potential Violations**

To reduce absenteeism effectively, an attendance control process must consistently perform several functions: (1) identify each alleged violation; (2) support timely managerial review; (3) appropriately penalize each confirmed violation; and (4) enforce the penalty. Further, a comprehensive system must be capable of identifying any failure in one of these tasks and promptly notifying the responsible personnel. Management is itself responsible for establishing the necessary procedural and technical controls to ensure that these functions are working properly.

To determine whether Approvers and Specialists documented, evaluated, and properly acted on all potential absence violations noted in the Tracking System, we compared the occurrences recorded in 2015 for our subject group of 91 employees to their payroll data and disciplinary records.

In reviewing the subject group, OIG identified 11 employees whose occurrences failed to trigger action by an Approver or Specialist, either removing the occurrences from disciplinary consideration or submitting them for the next level of review. As described below while management attributed six of the eleven failures to a single superintendent and one to a lack of automated controls in the review process, management could not explain the other four:

#### *A Single Superintendent Failed to Process Six Pending Tasks*

We found that an Equipment superintendent responsible for supervising coach cleaners failed to address six instances in which occurrences represented potential disciplinary violations. Equipment officials explained that the superintendent likely received the initial pending task notification but then elected not to consult the Tracking System to determine whether the

employees' individual absences forming these occurrences should be classified as Excluded according to the Policy/Manual, Excused according to the Manual, or referred for additional review.

In discussing this finding with Equipment officials, we learned that while they said the superintendent might not have been processing Tracking System notifications for a significant length of time, these officials discovered his non-compliant practice only shortly before the superintendent retired in August 2015. They also told us that upon his retirement, management authorized several other superintendents to review occurrences for the coach cleaners assigned to their respective work locations—a modification to the centralized process overseen by the prior superintendent. The officials told us they believed the change in personnel and the decentralization of the authority structure would ensure more thorough processing of attendance-related violations for this group of employees. However, we recommend that management also create a process to ensure in the future that any failures to perform adequate oversight are quickly identified and rectified.

*Management Received No Notice of Delays in Processing Potential Violations*

In the seventh case, disciplinary action was initiated but never fully processed. According to the agency's various collective bargaining agreements, departments are held to narrow time limits, generally between seven and 30 days, when deciding whether to pursue discipline. Despite these clear requirements, OIG found that Transportation failed to issue a warning letter to an employee in April 2015, and the task was still pending completion when we reviewed the Tracking System in March 2016—meaning that no letter had ever been generated or sent to the employee. When we discussed this case with a Transportation official who had previously been unaware that a warning letter was never generated, he explained that the initial Approver had, in fact, addressed the record and submitted it as a task for further review. However, because of a staffing vacancy no Specialist had been assigned to the task, which thus remained unattended in the system indefinitely. The official expressed concern that the Tracking System includes no automated mechanism to alert management when a task is left pending for a long period. We agree that this control weakness should be addressed.

Additionally, we found that one sizable operating department did not submit any attendance-related disciplinary records for approximately six months in 2015. This occurred because the Specialist responsible for reviewing occurrences experienced email problems that prevented the system from creating any warning letters or Notices of Investigation. We found the likely cause for this six-month lapse to be the lack of either an automated notification process to inform management that no disciplinary records had been submitted or a quality-assurance method to identify patterns indicative of absence-related violations. This control weakness was only brought to light in August 2015, when Maintenance of Equipment officials became aware that their department had not issued attendance-related discipline in several months and officials convened a meeting to determine the cause. Notably, because of the system's inadequate controls, neither OIG nor the agency is able to state with accuracy the number of actual or potential violations that occurred during this period.

## Management Was Unable to Explain Four Failures to Process Pending Tasks

In the last four of the 11 cases—two in Transportation and one each in Customer Service and MOW—an employee’s payroll records indicated a pattern of absence that should have generated at least one pending task notification, but in fact no disciplinary follow-up occurred. In seeking the reason for this inaction, we were unable to determine whether the Tracking System had failed to create an initial notification after the upload of payroll data or, conversely, whether the system properly generated the notification but the Reviewer then failed to follow the required steps to address the task. When we reviewed these instances with departmental officials, they agreed that each of the pending tasks should have led to discipline but could not explain why this had not occurred. Further, the officials had not previously been aware of these overlooked absences. Additionally, we learned the Tracking System contains no control mechanism to generate a master list of pending tasks to identify occurrences that were never addressed.

To deter unnecessary absenteeism, Reviewers must process legitimate attendance-related disciplinary action within specified time periods, and to accomplish this objective they must consult the Tracking System regularly. Additionally, the Tracking System should alert a departmental manager whenever a Reviewer fails to take timely action on a pending task.

## Departmental Oversight of Excluded/Excused Absences Was Uneven

Formal, written guidelines represent a fundamental control mechanism and an effective way to encourage consistency and fairness across departmental lines. However, MNR management has not implemented agency-wide guidelines requiring a quality-assurance process to ensure that absences are excluded for reasons enumerated in the Policy. And of course, since the Policy does not currently permit “*Excused Absences*” there are no agency-wide guidelines for those reasons allowable under the Manual or deemed acceptable by management on a case-by-case basis. Instead, each department has developed its own informal practice.

Once a Reviewer removes an absence from consideration for discipline, the Tracking System provides two mechanisms for management to learn of this action: one screen displaying all Excluded and Excused Absences by Reviewer, and another screen showing all Excluded and Excused Absences by date (collectively, the Excused List). Officials in only two of the six departments, MOW and Procurement, told us they conduct periodic reviews of the Excused List, while the other four do not consult it at all.

As part of our review, we obtained the attendance statistics for all employees covered by the Policy. Our review of the explanations provided for absences excused on a case-by-case basis indicates that a quality-assurance process using the Excused List reduces the number of vague or unallowable reasons noted for excusing an absence. Our review of the Excused List for 2014 and 2015 found 670 Excused Absence records with a vague explanation, e.g. “manager’s discretion” or “excused.” Of these 670 absences, only 13 (two percent) were for employees in Maintenance of Way, the largest department and one of the two that regularly consult the Excused List. In contrast, 477 (71 percent) of the absences were for employees in Equipment, the second-largest MNR department, which does not review justifications for Excused Absences.

Neither Equipment officials nor those in the other three departments that disregard the Excused List could explain their failure to use this quality-assurance mechanism.

Although we found no evidence of favoritism or other abuse, without adequate oversight a Reviewer could purposefully excuse an absence wrongfully to prevent a particular employee from being disciplined for violating the MNR Policy. Currently, the process for excusing absences allows Reviewers a degree of discretion and flexibility to carry out their responsibilities but neither the Policy nor the Manual explicitly authorizes the exercise of such discretion or describes its limits. This represents another control weakness in the agency's system of oversight. If management chooses to permit discretion, it must also establish mechanisms to ensure that this discretion is reasonable and standardized and require decision-makers to document their actions. Further, departmental officials must be directed to periodically review the Excused List and discuss with Tracking System users any Excluded or Excused Absences lacking sufficient justification.

## RECOMMENDATIONS

Metro-North Railroad should:

1. Revise its Attendance Policy (Operating Procedure 21-021B) to include:

- a. Clarification as to what extent and by what standards departments may excuse attendance violations that are not Excluded under the current Policy.

*Agency Response:*

*Accepted. In its response to this overarching Recommendation 1 to revise the Attendance Policy in six enumerated aspects (a–f), MNR wrote that management is “in the process of reviewing and updating the policy” to address them. Additionally, as to this first aspect (a), the agency wrote that it will implement a standardized form for discretionary exceptions across all departments.*

- b. A requirement that department officials must review the Excused List to confirm that absences are excluded/excused consistent with policy.

*Agency Response:*

*Accepted. MNR wrote that “[a]pprovals for exceptions, and Excused List review, will now be done at the Assistant Director level, or above.”*

- c. A definition of partial-day absence violations including clarification as to: how many absences constitute an occurrence, the length of any grace period, and instruction on how these absences are to be addressed for disciplinary purposes.

*Agency Response:*

*Accepted and in progress.*

- d. The new requirement that suspensions must begin on the first day of an employee’s work week, run consecutively, and be served in their entirety without modification or revocation.

*Agency Response:*

*Accepted. MNR’s response noted that Labor Relations has communicated these new requirements to departmental administrators. The agency further specified that employees cannot use vacation or personal leave “to receive payment for one (or more) of the days the employee is on suspension.”*

- e. A requirement that the exact dates a suspension will be served must be documented on the G-32.

*Agency Response:*

*Accepted. The agency stated that Labor Relations has also communicated this requirement to departmental administrators.*

- f. A reminder that any implementing regulation or documentation (e.g. the Manual) must

itself conform to and require implementation consistent with the Policy.

*Agency Response:*  
*Accepted and in progress.*

2. Issue a written clarification to the Manual to ensure conformity with the Policy.

*Agency Response:*  
*Accepted. MNR will update the Manual after management completes its policy review. Further, “[a]t that time, a written clarification will be issued to all departments to ensure conformity and consistency with the revisions.”*

3. Create a computer-generated alert to management when a Reviewer has not taken action on a pending task within a given time period.

*Agency Response:*  
*Accepted as follows: “At this time, a computer generated alert is not available based on system limitations. However, manual follow-up has been implemented in certain departments to ensure that actions are taken on a timely basis. The remaining departments are initiating this process as we move forward.”*

4. Develop a mechanism to confirm that an employee directed to serve a suspension has done so in full and according to schedule.

*Agency Response:*  
*Accepted. MNR stated that management is in the process of developing such a mechanism. Further, “[c]urrent workflow is being redesigned to ensure timely processing of personnel actions.”*

5. Provide training to relevant personnel on the following topics:

- a. The appropriate use of any authorized discretion and corresponding documentation codes used for excusing absences;
- b. The importance of documenting and reviewing all potential disciplinary violations;
- c. The correct use of the Kronos payroll system in verifying partial-day absences; and
- d. The requirements of the new suspension policy.

*Agency Response:*  
*Accepted. MNR management “will ensure that employees are provided with the relevant information and support necessary to effectively implement” the revised Policy and disciplinary process. Further, MNR wrote, “Management will issue written guidance and initiate training and reinstruction as appropriate and necessary for the affected personnel.”*

*MNR anticipates implementation of all of our Recommendations by the second quarter of 2017.*