



Barry L. Kluger  
Inspector General

## Office of the Inspector General

Metropolitan Transportation Authority

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New York, New York 10121

212-878-0000

June 1, 2018

Mr. Andrew Byford  
President  
MTA New York City Transit  
2 Broadway, 30<sup>th</sup> Floor  
New York, NY 10004

**Re: FMLA Abuse  
MTA/OIG #2018- 38**

Dear Mr. Byford:

The Office of the MTA Inspector General (OIG) has completed its investigation into an allegation that Henry DeLeon (DeLeon), New York City Transit (NYC Transit), Maintenance of Way, Signal Maintainer, abused provisions of the Family and Medical Leave Act (FMLA). We substantiated the allegation. We recommend that NYC Transit discipline DeLeon as it deems appropriate, up to and including termination.

### INVESTIGATION

DeLeon has worked for NYC Transit as a Signal Maintainer since 2007. He is currently assigned to the Combined Action Team (CAT) for the Track Department and is responsible for responding to emergencies at various locations. His official work location is 59<sup>th</sup> Street and Lexington Avenue, and his regular tour is from 2 p.m. to 10 p.m., with Saturdays and Sundays as his regular days off.

The FMLA provides that, as is relevant to this investigation, eligible employees are entitled to a total of 12 weeks (60 work days) of leave in a 12-month period to care for a covered family member suffering a serious health condition. Employees may choose to use, or employers may require that employees use, accrued paid leave in conjunction with FMLA leave. Unlike regular vacation leave requests, which are subject to the employer's discretion, an FMLA leave request properly submitted for a qualified reason cannot be denied or delayed by the employer.

On March 18, 2016, DeLeon applied for and was approved for intermittent FMLA leave. In his application, DeLeon requested four days a month of intermittent FMLA leave, for a total of 60 work days, during the period from March 28, 2016, through March 27, 2017, to provide health related care for a parent. The application that DeLeon signed contained the following language:

I do hereby certify that to the best of my knowledge the above information is true and correct. I understand that fraudulently requesting, obtaining and/or misusing this leave will be cause for disciplinary action, up to and including dismissal for employment.

NYC Transit approved DeLeon's application for leave beginning on March 28, 2016, and ending on March 27, 2017.

By letter dated March 13, 2017, NYC Transit notified DeLeon that his FMLA leave would expire on March 27, 2017. The letter stated, in relevant part:

Should you fail to return to work or to notify us of your continued need for FMLA leave, please be advised that any leave after the expiration date will not be protected under the FMLA . . . If you have a continued need for FMLA leave, you must contact the MTA Business Service Center, Benefits Department.

DeLeon did not request additional FMLA leave.

OIG staff reviewed DeLeon's time records and found DeLeon exceeded the 60 days of FMLA leave to which he was entitled, and which had been approved. For the 12-month period from March 28, 2016, through March 27, 2017, DeLeon actually used approximately 140 days of FMLA leave, 80 days more than he was entitled to use. Further, after his FMLA approval expired, DeLeon took an additional 31 days of FMLA leave from March 28, 2017, through September 26, 2017.

OIG staff also reviewed DeLeon's credit card records from January 1, 2016, through September 7, 2017, which revealed financial transactions that showed DeLeon was not in New York State on all of the dates he claimed as FMLA leave to purportedly care for a parent. According to NYC Transit records, DeLeon claimed FMLA leave for every work day from September 1, 2016, through September 22, 2016. However, his credit card records showed multiple transactions at a hotel and spa in Westbury, New York, on September 2, 2016, and September 6, 2016. The records also showed multiple transactions in European locations including, London, Barcelona, Monaco, among other locations outside the United States, from September 9, 2016 through September 22, 2016.

OIG staff conducted an internet search that located a wedding registry at retailer Bed Bath & Beyond in the name of DeLeon (and his fiancée) which listed a wedding date of September 2, 2016, a date for which DeLeon used FMLA leave. Based on the registry information and his credit card records, it appears that DeLeon celebrated his marriage in the vicinity of Westbury,

New York and thereafter traveled extensively in Europe, and improperly claimed FMLA leave for those purposes.<sup>1</sup>

OIG staff also learned that during the relevant time period, DeLeon volunteered as a coach for the New York Grays Baseball Club, Inc. (NY Grays), a not-for-profit corporation. According to David Owens (Owens), Head Coach and Director of Operations for the NY Grays, DeLeon began coaching for them in January 2015. Owens stated that DeLeon participated in team training and traveled with the team during baseball season, including traveling to tournaments in locations outside of New York. Owens stated DeLeon drives the van when he travels with the team and is reimbursed for expenses incurred on behalf of the team.

The NY Grays tournament schedule for 2016 included three trips outside of New York including, two trips to Maryland from June 17<sup>th</sup> through June 19<sup>th</sup>, and again from August 4<sup>th</sup> through August 7<sup>th</sup>; and to Georgia, from July 8<sup>th</sup> through July 15<sup>th</sup>. According to Owens, DeLeon did not coach during the summer of 2017 due to his recent wedding and the birth of his child. Between June 27<sup>th</sup> and August 25<sup>th</sup> of that summer, DeLeon's NYC Transit time records, show that DeLeon worked only 17 days. Of the 33 days he took off, he claimed eight as FMLA leave.

OIG's review of DeLeon's credit card records revealed transactions on three additional dates on which DeLeon claimed FMLA leave that also coincided with DeLeon's NY Grays travel schedule:

1. On July 7, 2016, a purchase was made at Buffalo Wild Wings in Alpharetta, Georgia.
2. On July 8, 2016, a purchase was made at Barnes & Noble in Alpharetta, Georgia.
3. On August 4, 2016, a purchase was made at 5 Guys in Hyattsville, Maryland.

The Maryland and Georgia credit card transactions listed above correspond to NY Grays tournament dates in those states. In addition, Owens provided the written confirmation for DeLeon's stay at the Hyatt Place Hotel in Alpharetta, Georgia, on July 7<sup>th</sup> through July 13<sup>th</sup>, for which the NY Grays reimbursed DeLeon. Owens stated he could not locate any additional documents to support his statement that DeLeon was reimbursed for expenses. However, our review of DeLeon's bank records revealed that DeLeon received two checks from the NY Grays, each in the amount of \$3,500, dated December 31, 2015, and September 3, 2016. NYC Transit time records established that DeLeon took FMLA leave from June 16, 2016, through June 23, 2016; from June 28, 2016, through July 15, 2016; and from July 19, 2016, through August 19, 2016, all of which dates coincide with his travel with the NY Grays.

DeLeon's credit card records also revealed the purchase of an airline ticket for a flight scheduled to depart from New York on August 11, 2016, bound for Pierre Elliott Trudeau International

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<sup>1</sup> The credit card account records show DeLeon as the sole account holder

Airport in Quebec, Canada. On August 12, 2016, multiple purchases were made in Montreal, Canada and on August 16, 2016, a purchase or a currency exchange was made at Dorval Airport in Canada. DeLeon used FMLA leave for all of these dates.

During an interview with OIG staff on December 14, 2017, DeLeon was asked about his FMLA application and use of FMLA leave days. DeLeon confirmed it was his signature on the March 18, 2016, FMLA application and stated his application was approved. He claimed he did not know FMLA approvals expire. He stated he believed he only needed to apply for FMLA one time and, once approved, he could take FMLA leaves as long as it was needed, which he believed meant until he no longer needed to take care of his parent. DeLeon maintained he was unaware of the expiration of his FMLA leave even after he was shown a copy of his application where he wrote in his own hand that he was requesting leave for the period beginning on March 28, 2016, and ending on March 27, 2017. DeLeon further stated he believed “intermittent” meant “whenever needed.”

When told he took approximately 140 days of FMLA leave within a 12 month period when he was only permitted up to 60 days, DeLeon stated he did not keep track of his FMLA leave days and simply took FMLA leave “every time [his dad] got sick.” DeLeon was shown copies of his credit card records and asked about a number of dates that the records appeared to indicate that he engaged in activity not related to caring for a parent. Specifically, DeLeon was asked if he was married on September 2, 2016, and took a trip outside the United States after the wedding. DeLeon confirmed he was married in September, 2016 and took a trip after the wedding. When asked about July 7 and July 8, 2016, the two dates he took off as FMLA leave days when his credit card records indicated he was in the state of Georgia, DeLeon responded that the records “are clear.” When asked about August 4, 2016, a day he took off as FMLA when his credit card records showed he was in Maryland, DeLeon remained silent. When asked about the two checks payable to DeLeon from the NY Grays in the amount of \$3,500 dated December 31, 2015 and September 3, 2016, DeLeon stated they were reimbursements for out-of-pocket payments DeLeon made on behalf of the NY Grays.

## **POLICY/RULES**

### *FMLA Implementation Guidelines*

NYC Transit’s FMLA Implementation Guidelines (Guidelines) issued on April 4, 2013, in the General Provisions section states, in pertinent part, that FMLA:

Entitles eligible employees up to 12 weeks of leave in a rolling 12-month period for the... the serious health condition of the employee or employee’s covered family members. An eligible employee is one who has worked for the MTA New York City Transit Authority... for a total of at least 12 months and must have actually worked 1250 hours in the year preceding the

start of the leave.... FMLA is not intended to be an addition to existing leave policies or contractual benefits where such policy provides equal or greater rights than provided pursuant to FMLA. Existing leave policies remain in effect and employees using FMLA leave are required to follow the Authority's policies and contractual procedures.

Section I, FMLA non-military, (D) Amount of Leave, states: "The base work day is eight (8) hours for operating employees, and seven hours for non-operating career and salary employees, unless stated otherwise in the employee's applicable collective bargaining agreement."

Section I, FMLA non-military, (E) Intermittent Leave or Reduced Schedule states, in pertinent part, "Eligible employees may take FMLA leave on an intermittent or reduced schedule basis when medically necessary because of the employee's own serious health condition or to care for a seriously ill family member..."

#### NYC Transit Rules and Regulations

NYC Transit Rules and Regulations states, in pertinent part, the following:

1. Employees must report for their assignments as directed. Absence from duty without proper authority is regarded by the Authority as willful neglect of duty and as a serious breach of discipline. Rules and Regulations, Ch. 1, Rule 5(a).
2. All employees, unless otherwise directed, must report daily, on prescribed time records the amount of time on duty, the actual reporting time, the time relieved, the account, function or job number of each job and the time devoted thereto. Rules and Regulations, Ch. 1, Rule 6(b).
3. Written or oral reports must be complete and accurate. Employees who knowingly submit or make reports containing false statements shall be charged with misconduct and incompetence. Rules and Regulations, Ch. 1, Rule 8(a).

#### **FINDINGS**

1. DeLeon's FMLA use exceeded the allowable number of FMLA leave days by more than 80 days, in violation of NYC Transit's FMLA policy.
2. DeLeon used FMLA leave days after his FMLA approval expired, in violation of NYC Transit's FMLA policy and NYC Transit's Rules and Regulations Ch. 1, Rules 5(a).
3. DeLeon improperly took FMLA leave for purposes other than caring for his parent, in violation of NYC Transit's Rules and Regulations Ch. 1, Rules 5(a), 6(b) and 8(a).

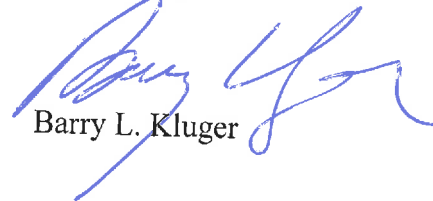
Andrew Byford  
Re: MTA/OIG 2018-38  
June 1, 2018  
Page 6

### RECOMMENDATION

We recommend that NYC Transit impose discipline as it deems appropriate, up to and including termination.

As always, we appreciate your continued courtesy and cooperation. Should you have any questions, or need additional information, please contact me at (212) 878-0007, or Assistant Deputy Inspector General, Legal and Investigations, Monica J. Hickey-Martin at (212) 878-0081.

Very truly yours,



Barry L. Kluger

Cc: Sarah Librera, VP Subways  
Kim Moore-Ward, VP Labor Relations