



INTERNAL AUDIT REPORT

Operational Audit
Public Health Emergency Leave Program

March 2020 – July 2020

Issue Date: October 15, 2020
Report No. 2020-14

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Executive Summary

Internal Audit (IA) completed an audit of the Public Health Emergency Leave (PHEL) program for pay periods ending March 28, 2020 through July 4, 2020. The audit was performed, at the request of the Sr. Director of Human Resources, to determine whether the use of PHEL was in alignment with Port policy.

The Families First Coronavirus Response Act (FFCRA) was created in March of 2020. One of the articles of the FFCRA required employers to provide eligible employees up to 80 hours of paid sick leave when an employee was unable to work if they met specific criteria related to the COVID-19 pandemic. In order to comply with the FFCRA, the Port created the PHEL program, which authorized 80 hours of leave. Beginning in April 2020, the Port approved an additional 160 unmandated hours, per employee, for COVID-19 related leave.

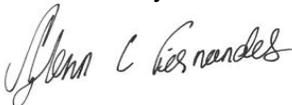
Between the pay periods ending March 28, 2020 through July 4, 2020, 952 Port employees used nearly 155,000 hours of PHEL at an estimated cost to the Port of \$7.7 million. See **Appendix B** for additional information on eligibility requirements for the use of PHEL. The Program is currently set to expire on December 31, 2020.

IA interviewed supervisors from multiple departments and reviewed documents that were used to account for the use of PHEL. IA noted that there was a wide range of interpretations on what was considered an allowable use of PHEL, especially earlier in the program. For example, IA observed that PHEL was approved to care for extended family members, employees could quarantine and use PHEL without notifying Health and Safety, and PHEL was given to staff, on a rotational basis, to allow employees an equitable opportunity to take it. Furthermore, IA noted instances where temporary and short-term employees could use PHEL.

Human Resources (HR) assigned an employee from Total Rewards to track employees who used PHEL, the criteria that made them eligible, supporting documents, and the number of PHEL hours used. Total Rewards tracking accounted for 482 of the 952 people who used PHEL in the period under review. The 470 people, not tracked by Total Rewards, were those with exposure or confirmed COVID-19 cases, and those employees who took PHEL as part of minimum essential staffing in circumstances when not enough work was available for staff. HR gave individual departments latitude on how to use PHEL in instances of minimum essential staffing, physical distancing, or because of the lack of work.

In general, we determined that the use of PHEL was in alignment with policy. However, if it is the Port's intention to continue the PHEL program, management should update the policy to be more concise, and strengthen internal controls over documentation, approval, and monitoring PHEL compliance. We identified the following opportunities where internal controls can be enhanced or developed. These are discussed in more detail beginning on page six of this report. Additionally, we communicated a matter to management related to an employee's unemployment claim via a management letter.

1. **(High)** The lack of centralized administration of the PHEL program, and vague policy language increased the potential that PHEL was abused or approved for unintended purposes.
2. **(High)** Port management did not have adequate procedures in place to monitor the potential of employees collecting unemployment insurance benefits and receiving compensation from the Port concurrently. This risk was increased by the large-scale state unemployment fraud.



Glenn Fernandes, CPA
Director, Internal Audit

Responsible Management Team

Katie Gerard, Sr. Director Human Resources
Tammy Woodard, Director Human Resources - Total Rewards

Background

On March 27, 2020, the Federal FFCRA was signed into law. A part of the FFCRA required employers to provide eligible employees up to 80 hours of paid sick leave if specific criteria were met, including when:

- The employee is unable to work because the employee was subject to a federal, state, or local quarantine or isolation orders related to COVID-19.
- The employee is advised by a health care provider to self-quarantine due to concerns related to COVID-19 or is experiencing COVID-19 symptoms and seeking a medical diagnosis.
- The employee is unable to work because of a need to care for an individual subject to a federal, state, or local quarantine or isolation order related to COVID-19 or has been advised by a health care provider to self-quarantine due to concerns related to COVID-19.
- The need to care for the employee’s son or daughter whose school or place of care is closed, or whose childcare provider is unavailable, due to COVID-19 related reasons.
- The employee is experiencing a substantially similar condition, as specified by the Secretary of Health and Human Services.

To comply with the FFCRA, the Port created the PHEL program, which authorized 80 hours of leave. Beginning in April 2020, the Port approved an additional 160 unmandated hours, per employee, for COVID-19 related leave. Between the pay periods ending March 28, 2020 through July 4, 2020, 952 Port employees used nearly 155,000 hours of PHEL at an estimated cost to the Port of \$7.7 million¹.

This was a special engagement requested by the Sr. Director of Human Resources. The objective of the audit was to determine whether the use of PHEL aligned with Port policy. In order to achieve this objective, IA utilized a risk-based approach, selected a sample of individuals who took PHEL. The table below provides additional details for the 287 employees who were included in our sample.

Criteria	No. of Employees (Audit Sample)	Hours
High risk	37	8,334
Children (school- aged/daycare closure)	16	4,132
Exposure/ Confirmed COVID-19	19	1,575
Minimum staffing ² or rotational basis- 5 departments/teams interviewed	215	40,034
Totals	287	54,075

During the audit, IA became aware that the Port approved active employees, who did not want to return to work because of COVID-19 concerns, take Leave Without Pay (LWOP) so that they could apply for unemployment benefits. IA expanded its review to determine whether individuals collected PHEL and unemployment benefits simultaneously.

¹ Average hourly burden rate of \$49.69 (average base rate \$39.44 X average Port employer burden costs of 26%) multiplied by 155,000 PHEL hours.

² Four of the five departments/teams interviewed primarily used a rotation basis, without priority given to those who met other eligibility criteria. Some of the employees may have taken PHEL for reasons other than rotation.

Audit Scope and Methodology

We conducted the engagement in accordance with Generally Accepted Government Auditing Standards and the International Standards for the Professional Practice of Internal Auditing. Those standards require that we plan and conduct an engagement to obtain enough, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our engagement objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions, based on our engagement objectives.

The period audited was March 2020 through July 2020 and included the following procedures:

Compliance with PHEL Policy

- Obtained documents and reports, including: timesheets (coded to PHEL), Health and Wellness' employee COVID-19 exposure and confirmed cases tracking spreadsheet, and departmental schedules and timesheets.
- Interviewed managers and staff from multiple departments, including: Marine Maintenance, AV Maintenance, AV Electrical & Electronic Systems, Landside Operations, PCS Construction, and AV Security.
- Obtained an understanding of how individual departments administered the use of PHEL.
- Tested a sample of employees and traced their PHEL eligibility to supporting documentation.

Unemployment Insurance and PHEL

- Obtained the following data, documents, and reports: employees who requested LWOP after exhausting PHEL, Washington State Employment Security Department (ESD) Claims for 2nd quarter 2020, payroll reports for employees who coded time to PHEL by pay period, a description of the Pandemic Unemployment Assistance Benefits program, and the Complete Claims Activity Report.
- Verified that active employees who elected to not return to work, met the criteria established by the Pandemic Unemployment Assistance Benefits program.
- Compared employees who collected unemployment benefits through the ESD to those who coded PHEL during the same period.

Schedule of Findings and Recommendations

1) Rating: High

The lack of centralized administration of the PHEL program, and vague policy language increased the potential that PHEL was abused or approved for unintended purposes.

The PHEL program was administered and monitored by multiple departments based on eligibility criteria. The following main groups were responsible to monitor PHEL:

Total Rewards Group

The Total Rewards group, within HR, was responsible for administering PHEL in accordance with Port policies. Eligible employees included those, who met the criteria of a high-risk category, those who had school-aged children, or those whose child's schools or daycare centers were closed because of COVID-19 related purposes. Employees were required to notify the Total Rewards group in order to take PHEL. An assigned person from the Total Rewards group tracked these employees, reviewed their eligibility, reviewed supporting documents, if provided, and the number of hours taken. This information was maintained in a spreadsheet.

Health and Safety

Health and Safety, within HR, maintained a separate spreadsheet. Health and Safety's spreadsheet consisted of employees who were exposed to, experienced symptoms, or tested positive for COVID-19. This group advised employees whether they needed to quarantine and the length of time. Health and Safety did not monitor or track the number of hours an employee used.

Departments approved for minimum essential staffing

Minimum essential staffing included two criteria: lack of work, or staff required reduction in order to maintain six feet of distance. The Policy did not address how PHEL was to be used for minimum staffing. Managers and supervisors worked with Total Rewards to gain an understanding of how to use PHEL for minimum essential staffing; however, HR gave departments flexibility on how to allocate, track, and monitor their PHEL use. Some managers allowed staff to take PHEL through a rotational basis, so that there was an equitable opportunity for all their employees. Managers indicated that in some cases, employees approved by HR for allowable conditions, volunteered to follow the rotation instead of the approved criteria.

There was no centralized database/spreadsheet which included names of all the employees who used PHEL, the number of hours taken, supporting documents if submitted, and which eligible criteria were used. For instance, during the period under audit, Total Rewards' spreadsheet accounted for 482 of the 952 people who used PHEL. The difference was because Total Rewards did not track how individual departments used PHEL for minimum essential staffing, or for those who took PHEL from exposure or confirmed cases of COVID-19.

IA judgmentally selected 72 employees from the spreadsheet provided by Total Rewards to determine whether the use of PHEL was allowable, and appropriately supported. Additionally, IA interviewed managers and supervisors from multiple departments who used PHEL. We noted that there was a wide range of interpretations on what was considered an allowable use of PHEL, especially during the early stages of the Program.

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The following table details our observations.

Observations	Causes Identified
PHEL was approved to care for extended family members.	Unclear guidance and difficulty in understanding the PHEL policy, especially at the start of the Program.
In one department, approved for minimum essential staffing, employees could quarantine, and use PHEL without notifying Health and Safety.	Lack of clear guidance and a centralized group to monitor the Program.
<p>Most of the departments that we interviewed, approved for minimum essential staffing, allowed their staff to use PHEL on a rotational basis.</p> <p>Departments used schedules to track hours worked, which provided an estimate of hours used as PHEL, but not actual hours used.</p>	Lack of one assigned person or department to monitor the process. Lack of proper guidance in the policy on the use of minimum essential staffing.
During our interviews, one department's manager stated that some of his staff felt it was not fair that they were required to go to the office regularly while others did not. After the manager consulted with other departments, his department decided to follow a rotation, so that everyone received a fair opportunity to use PHEL.	Lack of clear guidance and a centralized group to monitor the process. The policy did not address how PHEL was to be used for minimum essential staffing.
During one of our interviews, it was alleged employees viewed PHEL hours as an entitlement and used it for vacation. It was also alleged that some employees were not truthful when they reported COVID-19 exposure/ health conditions to Health and Safety in order to utilize this benefit.	Employees were not required to submit documentation because public health guidance recommended that employers not ask for verification from medical providers in order to decrease the potential of overwhelming the health care system. The Port could have adopted a compensating verification process, such as requiring self-certification from employees. However, Port policy did reserve the right to request documentation should it become necessary.
Some of the managers we interviewed expressed concerns that they felt people took advantage of the Program but had no way to substantiate it.	
Instances where employees had the ability to telework but took the full 80 hours of PHEL in a pay period.	Lack of one assigned person or department to monitor the Program.
One employee used an additional 16 hours of PHEL beyond the authorized 240 hours. This was not caught in the pay period the error occurred.	
PHEL coding issues, between PHEL and ESL. Also, in one instance, an employee coded a holiday as PHEL on their timesheet. In another instance, an employee coded bereavement leave as PHEL.	Lack of one assigned person or department to monitor the process. Managers did not always have first-hand knowledge of their direct reports leave. In some groups, administrative assistants approve timesheets.

Without adequate oversight and strong internal controls, there was an increased risk that PHEL may be used for unintended purposes or abuse. The lack of one assigned person or department, to monitor the Program as a whole, is a major contributor to the observations noted above.

Recommendations:

If the intention is to continue with the PHEL program, management should update the policy to be more concise, and strengthen the controls over documentation, approval, and compliance monitoring.

Management Response/Action Plan:

Human Resources (HR) concurs with many of the auditors' observations. Our intent when establishing Public Health Emergency Leave was to have it be general enough that it could apply in the future if the Port were again faced with a pandemic. To address the general nature of PHEL we developed an administrative document to help guide administration of PHEL during this COVID-19 pandemic. As information rapidly evolved about the COVID-19 virus and the Centers for Disease Control (CDC) updated their guidelines, we updated our guidance to employees and managers but did not have capacity to keep updating the administrative document as new information became available and guidelines or recommendations changed. Further, managers were given authority to approve use of PHEL when necessary, due to minimum essential staffing needs, so that employees all had opportunities to work, or to ensure that appropriate social distancing requirements were maintained within their workgroup.

Also, in an effort to honor employee privacy and keep medical information confidential while still managing the Port's response to employees exposed to, or diagnosed with COVID-19, we segregated oversight of PHEL use based on the situation while facilitating communication between HR staff about PHEL availability and usage. Finally, we developed and implemented PHEL from a position of trust and communicated this in multiple public forums. HR approved PHEL usage consistent with the current guidelines and the information provided by employees at the time without requiring documentation to confirm eligibility.

To help managers stay informed and up to date on appropriate use of PHEL, employees from HR and Labor Relations made themselves available and often met weekly, or even twice a week, with work groups to answer questions and provide guidance. Guidance offered included appropriate use of PHEL in specific situations, and information about changes to the PHEL program as it evolved. While these meetings are no longer actively taking place, communications between HR, Labor Relations and work groups continue.

We now recognize that the approach to managing the PHEL program may have added to confusion, contributed to inconsistent application of the leave guidelines, and permitted possible utilization of PHEL that was inconsistent with the intent of the leave benefit. To address this, HR has made changes to our processes including centralizing administration and oversight of PHEL and designating one person as the overall PHEL program administrator. We have communicated this across the Port and have begun referring all questions and requests for approval to use PHEL to the one individual. We have also updated our internal HR processes to facilitate stronger connections and communications between the various HR employees whose subject matter expertise requires that they engage with employees or managers and answer questions or address administration of PHEL.

We are also updating our administrative document and reviewing the PHEL FAQs to make needed updates. The updated administrative document will be posted on the Port's internal web site by the middle of October and the FAQ document will be revised and the revised version posted as soon as all the FAQs are reviewed by appropriate subject matter experts and updated as needed.

HR has also noted that time approval practices vary considerably across the Port. Because of this, HR

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is communicating the importance of managers reviewing PHEL usage of employees in their groups and has begun stating that managers are responsible for working with time approvers to ensure submitted PHEL time is accurately reported before it is approved. This includes ensuring that PHEL is only paid when it was taken as approved. To further support this HR plans to initiate conversations with other departments to begin strengthening manager oversight and approval of time reporting.

Finally, we are encouraging employees to contact our central PHEL program administrator with questions or concerns about potential inappropriate use of PHEL. HR will follow up and address questions or concerns as appropriate.

DUE DATE: 12/01/2020

2) Rating: High

Port management did not have adequate procedures in place to monitor the potential of employees collecting unemployment insurance benefits and receiving compensation from the Port concurrently. This risk was increased by the large-scale state unemployment fraud.

When a former employee applies for unemployment benefits through the Washington State Employment Security Department (ESD), the ESD will make the determination if they are eligible for benefits and will pay the former employee. On a quarterly basis, the ESD submits a billing statement to the Port for reimbursement. The ESD's billing statement includes the name of the claimant, the effective date of the first claim submitted, and the benefit payment amount. The billing statement does not have a breakdown of each weekly submittal.

Normally, unemployment benefits are only available for employees who are involuntarily no longer employed by the Port. However, when the COVID-19 pandemic began, the FFCRA included a provision called the *Pandemic Unemployment Assistance Benefits*. The change in unemployment eligibility, under the FFCRA, created an opportunity for employees to collect unemployment benefits while still employed. Even if the employees were called back to work, they could claim unemployment if they met specific criteria that was established by the Center for Disease Control (CDC). The criteria included:

- Part-time workers and others who had lost work due to COVID-19.
- Parents who had lost child-care due to COVID-19.
- People at high risk of contracting COVID-19.
- People sick or caring for someone with COVID-19.
- People who were unemployed due to COVID-19 and were not eligible for regular unemployment benefits.

Multiple departments, and one third-party vendor had separate roles in monitoring the PHEL program and unemployment claims. Under normal circumstances, the Port's internal controls would catch an ineligible unemployment benefit claim. However, given the eligibility changes in unemployment benefits that were established from the FFCRA, Port management did not adjust procedures to cover the new risks that emerged where an active employee could collect unemployment benefits and receive compensation from the Port at the same time.

The ESD billing statement, for the second quarter of 2020, included 84 former and current employees who received unemployment benefits. We compared those names to payroll reports that showed all employees who had PHEL coded to their timesheets. Through this, we identified five employees who may have reported compensable time on their timesheets and received unemployment benefits simultaneously. However, we were unable to verify the results because neither the Port nor the third-party vendor obtained detailed, weekly unemployment claim reports from the ESD.

There is a possibility that the unemployment claims for these five employees may be part of the larger unemployment fraud that occurred in the State of Washington during this time.

Recommendations:

- HR should reconcile the timesheets, of the five employees identified, to ESD weekly claim reports in order to determine whether the employees received both unemployment benefits and payroll concurrently.
- If any discrepancies are identified, HR should work with the responsible departments and/or agencies to correct the errors.
- If misconduct or fraud is identified, HR should notify Workplace Responsibility as appropriate.

Management Response/Action Plan:

Human Resources (HR) concurs with the Audit findings. We are committed to improving our unemployment administration procedures. Specifically, we are taking the following steps to better monitor the potential for employees to receive unemployment benefits and Port compensation simultaneously.

- Upon receipt of notice from Employer's Edge, the Port's third-party unemployment program administrator, of an unemployment claim filed by a Port employee, a Total Rewards Specialist runs a labor distribution report for the last pay cycle to see if the employee/claimants has been compensated by the Port (regular time, PHEL, ESL, E-FMLA Port Paid Family Leave, or accrued leave) to assess for potential fraud.
- Upon receipt of notice from Employer's Edge of an unemployment claim filed by a Port employee, the PHEL program administrator will verify whether the employee/claimant has been approved for PHEL, ESL, or LWOP because of PHEL exhaustion. If the employee/claimant has not been approved for these timecodes, the PHEL program administrator will reach out to the employee/claimant and manager to verify appropriate use.
- If the Total Rewards Specialist sees regular hours, PHEL, ESL, E-FMLA Port Paid Family Leave, or accrued leave worked in the previous pay cycle, they contact the employee/claimant to ask if they filed the claim; and if so, why. In some circumstances, employees file unemployment claims in advance of pending schedule changes resulting in LWOP due to limited staffing/PHEL exhaustion. The Total Rewards Specialist shares this information with Employer's Edge, the PHEL program administrator, and the Sr. Employee Relations Consultant, who will reach out to the employee/claimant's manager to verify work schedule and time reporting.
- Upon receipt of notice from Employer's Edge of an unemployment claim filed by a Port employee, the PHEL program administrator will verify whether the employee/claimant has been approved for PHEL, ESL, or LWOP because of PHEL exhaustion. If the employee/claimant has not been approved for these timecodes, the PHEL program administrator will reach out to the employee/claimant and manager to verify appropriate use.
- If the Total Rewards Specialist sees regular hours, PHEL, ESL, E-FMLA Port Paid Family Leave, or accrued leave) worked in previous pay cycle, they contact the employee/claimant to ask if they filed the claim and if so, why. In some circumstances, employees file unemployment claims in advance of pending schedule changes resulting in LWOP due to limited staffing/PHEL exhaustion. The Total Rewards Specialist shares this information with Employer's Edge, the PHEL program administrator, and the Sr. Employee Relations Consultant, who will reach out to the employee/claimant's manager to verify work schedule and time reporting.
- Upon receipt of the ESD quarterly bill and benefits charges details report, the Sr. Employee Relations Consultant and PHEL program administrator will work closely with Payroll to review labor distribution reports for employees who received unemployment benefits and Port compensation during the relevant time period to ensure no overpayment occurred.
- If overpayment is found, the Sr. Employee Relations Consultant will contact the employee/claimant's manager to review the claim. The Sr. Employee Relations Consultant will also direct Employer's Edge to notify ESD that the employee/claimant received unemployment benefits and Port compensation simultaneously during the relevant time period.
- If the overpayment reflects potential fraud, HR will notify Workplace Responsibility for follow up.

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- The Sr. Employee Relations Consultant will confirm receipt of reimbursement by ESD to the Port of the overpayment in the quarterly bill and benefits charges details report.

We are still collecting data from ESD regarding the five employees identified as receiving both unemployment benefits and Port compensation simultaneously during 2nd quarter. ESD has yet to provide the Port its quarterly bill and benefits charge details report for 2nd quarter. Once we receive the benefits charge details report for 2nd quarter 2020, we will review Port compensated time (labor distribution reports) to determine if the Port compensated the five employees for dates, they received unemployment benefits. If so, we will advise ESD of the overpayment and request reimbursement.

It should be noted that during this time, widespread unemployment fraud occurred in Washington State and several Port employees were impacted.

DUE DATE: 12/01/2020

Appendix A: Risk Ratings

Findings identified during the audit are assigned a risk rating, as outlined in the table below. Only one of the criteria needs to be met for a finding to be rated High, Medium, or Low. Findings rated Low will be evaluated and may or may not be reflected in the final report.

Rating	Financial Stewardship	Internal Controls	Compliance	Public	Commission/ Management
High	Significant	Missing or not followed	Non-compliance with Laws, Port Policies, Contracts	High probability for external audit issues and / or negative public perception	Requires immediate attention
Medium	Moderate	Partial controls Not functioning effectively	Partial compliance with Laws, Port Policies Contracts	Potential for external audit issues and / or negative public perception	Requires attention
Low	Minimal	Functioning as intended but could be enhanced to improve efficiency	Mostly complies with Laws, Port Policies, Contracts	Low probability for external audit issues and/or negative public perception	Does not require immediate attention

Appendix B: Scenarios for the use of Leave during COVID-19 (Non-Represented)

Last Updated: 5/18/2020

This document is subject to change as more information becomes available.

Legend:



= Yes, Applicable



= Depending on circumstance



= Not available for use



	COVID Related Leaves Available			Other Available Leaves			
	Public Health Emergency Leave	Emergency Sick Leave	Expanded FMLA	PTO/Vac	Sick Leaves	LWOP	FMLA/ADA
	All Employees	All Employees	Employees >30 days	All Eligible Employees (Represented - check CBA)	All Eligible Employees (Represented - check CBA)	All Employees (Represented - check CBA)	All Eligible Employees
Employee is mildly ill with a diagnosed case of COVID-19	✓	✓	✗	✓	✓	✓	?
Employee is severely ill with a diagnosed case of COVID-19	✓	✓	✗	✓	✓	✓	?
Employee was exposed and quarantined by a health care professional. Port remains open. Employee is unable to or refuses to telework.	✓	✓	✗	✓	✓	✓	?
Employee is caring for sick family member with a diagnosed case of COVID-19.	✓	✓	✗	✓	✓	✓	?
Employee's family member advised by Health Provider to quarantine or isolate and needs care.	✗	✓	✗	✓	✓	✓	?
Schools are closed because of COVID-19 and employee has no childcare. Employee is unable to or refuses to telework.	✓	✓	✓	✓	✓	✓	✗
Employee is immune-compromised or in a high risk group and advised by a health care professional to self-quarantine. Employee is unable to telework.	✓	✓	✗	✓	✓	✓	?
Employee is afraid of gathering in a group and refuses to go to work. Employee is unable to or refuses to telework.	✗	✗	✗	✓	✓	✓	✗
Port closes employee's primary work location due to quarantine.	✓	✓	✗	✓	✓	✓	✗
Full or partial pay	Full Pay	Full Pay	Partial Pay				
Time Reporting Code	TRC 215 Program Code 8100	TRC 216 Program Code 8100	TRC 217 Program Code 8100				
Effective Dates	3/15/2020-tbd	4/1/2020-12/31/2020	4/1/2020-12/31/2020				
Maximum Amount Available	240 hours for full time	80 hours for full time	2 weeks with ESL and 10 weeks without				