



Washington State Auditor's Office

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Whistleblower Investigation Report Department of Labor & Industries

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August 25, 2016

Joel Sacks, Director
Department of Labor & Industries

Report on Whistleblower Investigation

Attached is the official report on Whistleblower Case No. 16-023 at the Department of Labor & Industries.

The State Auditor's Office received an assertion of improper governmental activity at the Department. This assertion was submitted to us under the provisions of Chapter 42.40 of the Revised Code of Washington, the Whistleblower Act. We have investigated the assertion independently and objectively through interviews and by reviewing relevant documents. This report contains the result of our investigation.

Questions about this report should be directed to Whistleblower Manager Jim Brownell at (360) 725-5352.

Sincerely,

A handwritten signature in cursive script that reads "Troy X. Kelley".

TROY KELLEY
STATE AUDITOR
OLYMPIA, WA

cc: Governor Jay Inslee
Cindy Baxley-Raves, Internal Auditor
Kate Reynolds, Executive Director, Executive Ethics Board
Jennifer Wirawan, Investigator

WHISTLEBLOWER INVESTIGATION REPORT

Assertions and results

Our office received a whistleblower complaint asserting a Department of Labor & Industries (Department) employee inappropriately used his state computer and telephone in support of his outside businesses and a charitable organization he founded. It was also asserted that the employee's supervisor allowed the use because she was an employee of one of his outside businesses.

We found reasonable cause to believe the Department employee (subject 1) committed an improper governmental action when he used state resources for non-work-related purposes. We found no reasonable cause to believe the employee's supervisor (subject 2) committed an improper governmental action.

About the Investigation

Subject 1

In addition to his position with the Department, we found subject 1:

- Runs a charitable organization;
- Provides clinical nursing care for a local hospital; and
- Provides nursing instruction at a community college.

Computer Use

Our Office obtained subject 1's hard drive and created a forensic report based on the data retrieved. Some of the Internet history files had been overwritten through the computer's normal processes, as a result, our review of subject 1's Internet history was limited to February 19, 2016, through May 17, 2016.

We found subject 1 used his computer for non-work-related purposes in excess of 22 hours over 41 days. His Internet browsing included more than seven hours visiting websites related to personal travel, and 12 hours visiting websites related to his outside employment at a community college.

We also found subject 1 had various non-work-related documents and pictures on his computer, including documents related to his charity, travel and outside employment.

Phone Use

Long-distance phone service for state business is provided by the State Controlled Area Network (SCAN) system. Each state employee whose position requires long-distance calling is assigned a personal SCAN code. When an employee makes a long-distance call, the employee must enter

their SCAN code for the call to connect. We examined subject 1's SCAN code history from May 1, 2015, through March 30, 2016.

We found subject 1 made 215 long-distance phone calls, of which 151, totaling more than 13 hours, were not work-related.

We also examined subject 1's phone records for incoming calls and local outgoing phone calls from March 1, 2016, through May 31, 2016. Subject 1 received and placed 236 phone calls, totaling nearly 15 hours, which were not work-related. Many of these phone calls were related to his employment at a local community college.

We spoke with subject 1, who said there were "no set expectations" given to him regarding the non-work-related use of state resources, and he was not aware that using his SCAN code to make long-distance phone calls would incur a cost to the state.

We spoke with subject 1's supervisor, who said she has reminded subject 1 not to use state resources for non-work-related activities. She said she also cautioned him not to use state resources to do any work related to his employment at the community college.

Conclusion

A state ethics rule¹ permits de minimis use of state resources as long as the use meets certain criteria. Among the criteria are requirements that "The use is not for the purpose of conducting an outside business, in furtherance of private employment, or to realize a private financial gain," and "The use is not for supporting, promoting the interest of, or soliciting for an outside organization or group."

Subject 1's use of his phone and computer for non-work-related activities was not de minimis; therefore, we found reasonable cause to believe an improper governmental action occurred.

Subject 2

Subject 2 said she is not connected in any way to any of subject 1's outside activities. She denied permitting subject 1 to use state resources for non-work-related activity. During an interview with subject 1, he confirmed subject 2 did not work for him.

We found no evidence subject 2 worked for one of subject 1's outside businesses or permitted subject 1 to conduct non-work-related activities using state resources. Therefore, we found no reasonable cause to believe an improper governmental action occurred.

¹ WAC 292-110-010(3)(a)

Department's Plan of Resolution

The Department will conduct a personnel investigation and follow, if appropriate, corrective and disciplinary protocols in accordance with the Collective Bargaining Agreement (CBA) by and between the State of Washington and the Washington Federation of State Employees.

State Auditor's Office Concluding Remarks

We thank Department officials and personnel for their assistance and cooperation during the investigation.

WHISTLEBLOWER INVESTIGATION CRITERIA

We came to our determination in this investigation by evaluating the facts against the criteria below:

Assertion 1:

RCW 42.52.160(1) - Use of persons, money, or property for private gain.

(1) No state officer or state employee may employ or use any person, money, or property under the officer's or employee's official control or direction, or in his or her official custody, for the private benefit or gain of the officer, employee, or another.

WAC 292-110-010(1) and (3) - Use of state resources.

(1) Statement of principles. All state employees and officers are responsible for the proper use of state resources, including funds, facilities, tools, property, and their time. This section does not restrict the use of state resources as described in subsections (2) and (3) of this section.

(3) Permitted personal use of state resources. This subsection applies to any use of state resources not included in subsection (2) of this section.

(a) A state officer or employee's use of state resources is de minimis only if each of the following conditions are met:

(i) There is little or no cost to the state;

(ii) Any use is brief;

(iii) Any use occurs infrequently;

(iv) The use does not interfere with the performance of any state officer's or employee's official duties;

(v) The use does not compromise the security or integrity of state property, information systems, or software;

(vi) The use is not for the purpose of conducting an outside business, in furtherance of private employment, or to realize a private financial gain; and

(vii) The use is not for supporting, promoting the interests of, or soliciting for an outside organization or group.

Assertion 2:

RCW 42.52.070 – Special privileges.

Except as required to perform duties within the scope of employment, no state officer or state employee may use his or her position to secure special privileges or exemptions for himself or herself, or his or her spouse, child, parents, or other persons.

RCW 42.52.160(1) – Use of persons, money, or property for private gain.

(1) No state officer or state employee may employ or use any person, money, or property under the officer's or employee's official control or direction, or in his or her official custody, for the private benefit or gain of the officer, employee, or another.

WAC 292-110-010(1) – Use of state resources.

(1) Statement of principles. All state employees and officers are responsible for the proper use of state resources, including funds, facilities, tools, property, and their time. This section does not restrict the use of state resources as described in subsections (2) and (3) of this section.