



Office of the Washington State Auditor
Pat McCarthy

Whistleblower Investigation Report

Employment Security Department

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September 11, 2017

Dale Peinecke, Commissioner
Employment Security Department

Report on Whistleblower Investigation

Attached is the official report on Whistleblower Case No. 17-014 at the Employment Security Department.

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.

If you are a member of the media and have questions about this report, please contact Assistant Director for Communications Kathleen Cooper at (360) 902-0470. Otherwise, please contact Whistleblower Manager Jim Brownell at (360) 725-5352.

Sincerely,

Pat McCarthy
State Auditor
Olympia, WA

cc: Governor Jay Inslee
Ron Marshall, Human Resources Director
Kate Reynolds, Executive Director, Executive Ethics Board
Jennifer Wirawan, Investigator

WHISTLEBLOWER INVESTIGATION REPORT

Assertion and results

Our Office received a whistleblower complaint asserting an Employment Security Department (Department) executive manager (subject) violated state law when she authorized the transfer of expenditures from one fund to another.

We found no reasonable cause to believe an improper governmental action occurred.

Background

The Department receives federal assistance through an annual Unemployment Insurance Administrative Grant (grant), which is used to cover the costs of administering the unemployment compensation program.

In March 2014, the Department implemented the Next Generation Tax System (NGTS), a software program that processes employer wage reports and payments, and automatically calculates employers' unemployment insurance tax rates.

About the Investigation

The complaint asserted that the subject authorized grant funds to be used to pay for expenses associated with NGTS. According to the whistleblower, grant funds cannot be used to pay for development costs of implementing information technology (IT) projects.

We identified \$4.9 million in grant funds that were used to pay for NGTS expenditures.

The subject said she and other members of executive management met to discuss the project budget. During one of the meetings, they discussed whether grant funds could be used for NGTS. Ultimately, the NGTS project manager who was deputy commissioner at that time and present for the discussion, instructed her to transfer all expenditures for NGTS since March 2014 to the grant. She said the commissioner agreed that the transfer was appropriate.

The subject said she is "confident" that using grant money for NGTS expenditures was appropriate. She said the work on NGTS, since it went live in 2014, is to "make corrections to, or maintain" the system, not development.

To determine whether the charges to the grant were allowable, we reviewed the grant agreement and associated laws, and spoke with the federal grantor. Although Department staff use the terms "development" and "maintenance" as terms of importance in determining allowable charges, neither of the terms are present in the grant text or associated laws.

We spoke with the project manager, who told us the transfers were appropriate. She said the confusion comes from the use of the word "development." She said with technology,

development does not necessarily mean creation, but instead is used to describe any work done to software.

The subject said the Department has spent \$9.6 million in grant funds on NGTS since March 2014 and has budgeted another \$1.4 million for the next fiscal year.

Because neither the grant nor the law prohibits the use of funds for software, we found no reasonable cause to believe an improper governmental action occurred.

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:

RCW 43.88.290 - Fiscal responsibilities of state officers and employees—Prohibitions relative to appropriations and expenditures.

No state officer or employee shall intentionally or negligently: Over-expend or over-encumber any appropriation made by law; fail to properly account for any expenditures by fund, program, or fiscal period; or expend funds contrary to the terms, limits, or conditions of any appropriation made by law.

2 CFR 200.403 Factors affecting allowability of costs.

Except where otherwise authorized by statute, costs must meet the following general criteria in order to be allowable under Federal awards:

- (a) Be necessary and reasonable for the performance of the Federal award and be allocable thereto under these principles.
- (b) Conform to any limitations or exclusions set forth in these principles or in the Federal award as to types or amount of cost items.
- (c) Be consistent with policies and procedures that apply uniformly to both federally-financed and other activities of the non-Federal entity.
- (d) Be accorded consistent treatment. A cost may not be assigned to a Federal award as a direct cost if any other cost incurred for the same purpose in like circumstances has been allocated to the Federal award as an indirect cost.
- (e) Be determined in accordance with generally accepted accounting principles (GAAP), except, for state and local governments and Indian tribes only, as otherwise provided for in this part.
- (f) Not be included as a cost or used to meet cost sharing or matching requirements of any other federally-financed program in either the current or a prior period. See also § 200.306 Cost sharing or matching paragraph (b).
- (g) Be adequately documented. See also §§ 200.300 Statutory and national policy requirements through 200.309 Period of performance of this part.