



**Office of the Washington State Auditor**  
**Pat McCarthy**

**Whistleblower Investigation Report**  
**Department of Labor and Industries**

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Joel Sacks, Director  
Department of Labor and Industries

**Report on Whistleblower Investigation**

Attached is the official report on Whistleblower Case No. 17-025 at the Department of Labor and 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.

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  
Todd Bishopp, Audit Coordinator  
Kate Reynolds, Executive Director, Executive Ethics Board  
Jacque Hawkins-Jones, Investigator

# WHISTLEBLOWER INVESTIGATION REPORT

## Assertion and Results

Our Office received a whistleblower complaint asserting a Department of Labor and Industries (Department) employee (subject) was using a state vehicle and state time to commute to and from work.

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

## Background

The Office of Financial Management (OFM) has established policies in the State Administrative and Accounting Manual (SAAM) that all state agencies must follow.

Chapter 10 of the SAAM outlines the policies and procedures for state employee travel and reimbursement. According to these policies, the cost of the daily commute between a traveler's official residence and official station are a personal obligation of the traveler and are not reimbursable.

## About the Investigation

The subject began his employment at the Department on December 26, 2016. According to the complaint, the subject was living in Olympia and using a state vehicle to commute to and from Everett, his official workstation.

We examined the subject's emails, calendar, vehicle logs and travel records between December 26, 2016, and May 31, 2017.

During our review period, we found the subject traveled from Everett to Department headquarters in Tumwater on 10 occasions, for a total of 25 days. The subject claimed meal reimbursements for all 10 trips, claimed mileage reimbursements for one trip and did not claim lodging reimbursement for any of the trips.

We spoke with the subject, who said during this time he was not living in Olympia, although he still owned a house there and was preparing to sell it. He said he rented a cabin on Whidbey Island beginning January 1, 2017. The subject said when he was in Tumwater for business he stayed at his home in Olympia.

Because the subject had two homes, we contacted OFM and asked if one or both are the subject's "official residence" The OFM representative said the subject could only have one official residence, which the Department determines. If the Department determined the subject's official residence is Everett, then he qualifies for meal reimbursements.

The subject's official station and official residence were listed in his personnel file and travel records as Everett.

Therefore, we found no reasonable cause to believe the subject committed an improper governmental action.

### **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 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.

### **RCW 43.88.160 - Fiscal management—Powers and duties of officers and agencies.**

This section sets forth the major fiscal duties and responsibilities of officers and agencies of the executive branch. The regulations issued by the governor pursuant to this chapter shall provide for a comprehensive, orderly basis for fiscal management and control, including efficient accounting and reporting therefor, for the executive branch of the state government and may include, in addition, such requirements as will generally promote more efficient public management in the state.

(1) Governor; director of financial management. The governor, through the director of financial management, shall devise and supervise a modern and complete accounting system for each agency to the end that all revenues, expenditures, receipts, disbursements, resources, and obligations of the state shall be properly and systematically accounted for. The accounting system shall include the development of accurate, timely records and reports of all financial affairs of the state. The system shall also provide for central accounts in the office of financial management at the level of detail deemed necessary by the director to perform central financial management. The director of financial management shall adopt and periodically update an accounting procedures manual. Any agency maintaining its own accounting and reporting system shall comply with the updated accounting procedures manual and the rules of the director adopted under this chapter. An agency may receive a waiver from complying with this requirement if the waiver is approved by the director. Waivers expire at the end of the fiscal biennium for which they are granted. The director shall forward notice of waivers granted to the appropriate legislative fiscal committees. The director of financial

management may require such financial, statistical, and other reports as the director deems necessary from all agencies covering any period.

**WAC 292-110-010(1), (2) 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.

(2) Permitted uses.

(a) Use of state resources for official state purpose. "Official state purpose" includes use of state resources to conduct official duties, activities reasonably related to the conduct of official state duties, activities related to state employment, and activities otherwise allowed by statute. Examples of official state purposes include:

(i) Training and career development approved by the employing agency under RCW 41.06.410;

(ii) Membership or participation in professional associations that enhance job-related skills of the state officer or employee, so long as use of state resources for this purpose has been authorized in writing;

(iii) State or agency sponsored health, safety, or diversity fairs;

(iv) Management of or access to state-provided or state-sponsored benefits, including health, deferred compensation, insurance, retirement, and the employee assistance program;

(v) Searching and applying for state jobs, including taking an examination or participating in an interview; and

(vi) Placement of nongovernmental web page links on an agency web site for official state purposes as long as the use does not violate RCW 42.52.180.

(b) Agency approved use. An agency head or designee may authorize limited use of agency staff time and resources for the following uses as long as that use is specifically authorized in an agency policy and conforms to that policy:

(i) Supporting, promoting, or soliciting for charitable activities;

(ii) Employee recognition, including birthday, retirement, wedding/baby showers, or other similar celebrations;

(iii) Activities supporting agency organizational effectiveness provided the agency's policy allowing use of state resources for such purposes is approved by the executive ethics board;

(iv) State or intermittent agency sponsored health activities, for example, vaccinations, diabetes screenings, cholesterol screenings; or recording participation in an agency or PEBB sponsored wellness program.

(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.

**State Administrative and Accounting Manual 10.10.20 – These criteria must be used for selecting and approving travel**

In addition to complying with state travel policies and procedures, an agency head or authorized designee must use the following criteria to determine whether to authorize a person to travel on official state business, and to determine what travel alternatives to authorize.

1. Select the travel alternative that is most economical to the state.

Agencies must use this criteria except in the situations noted in Subsection 10.10.20, #2.

All costs should be considered--travel, labor, etc.--in making the determination. For example: Is it less expensive to drive than fly out of Sea-Tac Airport? Is it cheaper to fly out of Sea-Tac than out of Port Angeles?

2. Select the travel alternative that is most advantageous to the state.

An agency may use this advantageous criterion only in the following situations:

- To ensure the health and safety of agency travelers (Subsection 10.10.35)
- To comply with the Americans with Disabilities Act (Subsection 10.10.40)
- Process and travel situations for meals with meetings (Subsection 10.40.60)
- Use of privately owned motor vehicles (Subsection 10.50.20)
- The personal travel plans of the traveler shall not influence this criterion.

#### **10.10.25 - Implement alternatives to travel**

Agencies are to develop and implement alternatives to travel, as well as less expensive means of travel. These methods should include, but are not limited to:

- Teleconferencing and video conferencing;
- Video recordings and published reports;
- Car-pooling and greater use of public transportation;
- Reduced frequency of regularly scheduled out-of-town meetings;
- Restrictions on the number of staff traveling to the same destination; and

- Coordinating between agencies for joint travel arrangements when more than one agency is involved.

## **Definitions**

**OFFICIAL STATION** – The city, town, or other location where the state official or employee's office is located, or the city, town, or location where the state official or employee's work is performed on a permanent basis. For the purposes of these travel regulations, Olympia, Tumwater and Lacey are considered to be the same official station. A state official or employee's official station is to be designated by the agency. It is to be determined by the needs of the agency and not assigned because it is the home or preferred living area of a state official or employee.