



Office of the Washington State Auditor
Pat McCarthy

Whistleblower Investigation Report

Employment Security Department

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July 23, 2018

Suzan LeVine, Commissioner
Employment Security Department

Report on Whistleblower Investigation

Attached is the official report on Whistleblower Case No. 18-017 at the Employment Security Department.

The State Auditor's Office received an assertion of improper governmental activity at the Agency. 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 Director of 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
Carole Mathews, Risk and Records Manager
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) employee (subject) violated state ethics laws when he arranged for a WorkSource client to work and train at his small business.

We found reasonable cause to believe an improper governmental action occurred.

Background

The Department collaborates with other agencies and organizations to provide various training and employment services to Washington residents. One collaboration is a partnership called WorkSource. WorkSource is a statewide partnership of state, local and nonprofit agencies that provides an array of employment and training services to job seekers and employers in Washington.

This investigation involved a client of two WorkSource partners, AmeriCorps and ResCare.

AmeriCorps is a nationwide volunteer service program. Members volunteer at various locations including nonprofit organizations, schools and public agencies. Through this program, the volunteers can gain skills, training, and educational benefits.

ResCare helps people ages 16-24 gain work experience and training. The program receives federal funds through a Department grant. ResCare clients work at local businesses or nonprofit organizations and are paid through the program, not the business. This benefits the client, who receives work experience, and the business owner, who does not pay for the labor.

About the Investigation

From February 16, 2016, through July 15, 2017, the client worked as an AmeriCorps volunteer for the Department under the subject's direct supervision.

According to the subject, in late 2016 or early 2017, while still working as an AmeriCorps volunteer, the client approached him and asked if he could "help out" at the subject's business. The subject said he paid the client to drive a delivery vehicle for about 10 hours per week, but was unable to provide the client's employment dates because he did not have any employment records for the client.

After his AmeriCorps service ended, while still working at the subject's business, the client signed up for ResCare through WorkSource and was placed at the subject's business. According to the subject, a ResCare representative made the arrangement. The subject said he did not influence or request the placement of the client. The client, while paid by ResCare, worked the cash register and helped customers at the business.

We contacted the ResCare representative, who declined to speak with our Office. A Department regional director said records showed the ResCare representative placed the client in the subject's business for six weeks. The regional director also said the subject was a "functional supervisor" to the ResCare representative. She said although the subject does not directly supervise partner employees, he runs the office and therefore there can be an impression that he is their supervisor.

During an interview, the subject said that he had "opened the opportunity to train people" at his business, but his wife had been the one approached by the ResCare representative. He said he first met the client through a work relationship he had with the client's mother and eventually thought of him as a "nephew."

The subject signed the Department's employee conduct policy on December 5, 2015. His signature indicates he read and understood the policy. It states (in part):

[N]o employee may use, or cause to be used, state premises, materials, facilities, time, funds, equipment, **clients** or **personnel** in connection with outside employment. (Emphasis ours)

Employees must also refrain from referring or hiring clients for positions in enterprises which the employee, co-workers, relatives and/or friends control through financial investment and/or management decision-making, or from which they would receive profit resulting from the client's work. This is true even if the outside employment has been approved for the employee.

The subject said he was not aware of this portion of the policy, or he would not have allowed the client to work at his business. After reading the policy, he said he would not allow another WorkSource partner client to work at his business.

State law (RCW 42.52.020) states that "No state officer or state employee may have an interest, financial or otherwise, direct or indirect, or engage in a business or transaction or professional activity, or incur an obligation of any nature, that is in conflict with the proper discharge of the state officer's or state employee's official duties."

Therefore, we found reasonable cause to believe an improper governmental action occurred.

Department's Plan of Resolution

In accordance with Article 27 (Discipline) of the Collective Bargaining Agreement between the State of Washington and the Washington Federation of State Employees, the Department will afford the employee an opportunity to respond to the Auditor's report, as well as to any additional investigation results. The Department will then make a final determination on whether misconduct by the employee occurred. If the Department determines that the employee acted improperly and in violation of state law, the Collective Bargaining Agreement, and/or agency policies, the Department will take appropriate disciplinary action, which may include the employee's

termination from employment. The Department will notify the State Auditor of the outcome of its review and resulting actions.

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 42.52.020 - Activities incompatible with public duties.

No state officer or state employee may have an interest, financial or otherwise, direct or indirect, or engage in a business or transaction or professional activity, or incur an obligation of any nature, that is in conflict with the proper discharge of the state officer's or state employee's official duties.