



**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. 17-012 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  
Cindy Baxley, 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 and Industries (Department) manager (Subject 2) assigned another Department manager (Subject 1) to the Vancouver office even though she performed the majority of her work at the Tumwater office. Subject 1 received reimbursement for her 90-mile commute from her home in the Vancouver area to the Tumwater office.

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

## Background

The Office of Financial Management (OFM) has published the State Administrative and Accounting Manual (SAAM) to provide for the accountability of state assets. The SAAM provides policies regarding the financial and administrative affairs of the state, and minimum requirements that state agencies must meet.

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.

The SAAM defines an employee's "official station" as:

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. . . . 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.

## About the Investigation

We examined Subject 1's emails, calendar and travel records, and conducted interviews.

Before December 2015, Subject 1 held a supervisory position in the Department's Vancouver office. On December 1, 2015, Subject 2 appointed Subject 1 to an acting management position, previously filled by an employee assigned to the Tumwater office. During this time, Subject 1's official duty station remained in Vancouver.

Shortly after her assignment as acting manager, Subject 1 received an ergonomic review for an office in Tumwater, ordered a new monitor, desk and chair, and had her name placed outside the office door.

Subject 1 remained in her acting capacity until April 1, 2016, when she was selected for the permanent position. An email between human resources staff indicated Subject 2 wanted to ensure that Subject 1's official duty station remained in Vancouver, although she continued to work in her Tumwater office.

Subject 1's actions indicated she intended to work in the Tumwater office:

- She sent an email to staff stating, "I am going to try to get to [the] Vancouver office 1-2 days a week after I get settled a bit after a month or so."
- She attended Vancouver meetings by telephone from her office in Tumwater.
- She accepted a job shadow offer in Tumwater instead of the one offered in Vancouver.
- She permanently transferred her Vancouver desk phone to her work cell phone.

We examined Subject 1's calendar and found that from December 1, 2015, through September 30, 2016, she worked 194 days – 121 in Tumwater and 59 in Vancouver. The remaining 14 days she spent at other locations. Subject 1 spent an average of 2.8 days each week in Tumwater and 1.4 days each week in Vancouver. Of the 44 weeks reviewed, there were four weeks when Subject 1 did not work in Vancouver, but no weeks when Subject 1 did not work in Tumwater. She received \$3,232 in mileage reimbursements for trips between the Vancouver area and Tumwater.

During an interview, Subject 1 said she traveled to Tumwater for meetings and conferences, and in case Subject 2 needed her for anything. She said she wanted to go "above and beyond" and to be available for last-minute meetings or conversations with Subject 2. She tried her best to carpool or use a Department car to reduce mileage costs. She said Subject 2 allowed her to check out a state vehicle for a month because it was not used enough and they were concerned they would lose it. She said leased cars need a certain number of miles each month or the Department loses the car. When she told Subject 2 the car did not have the required miles, he said, "Let's get you in that car for a while to help with the commute."

Subject 1 and 2 both said it was expected that Subject 1 would spend the first six months of her position getting acclimated, which would require her to be in Tumwater more frequently. Both also said they do not count the first four months of Subject 1's appointment, as it was only in an acting capacity. However, when asked, neither subject could explain tangible differences between Subject 1's acting and permanent appointments. Subject 1 said the main difference was "overall having my peers know that I am the [manager]."

Subject 2 said that he had no expectations for Subject 1 to be in Tumwater a certain number of days, he trusted her to be where she needed to be. When he first appointed her, he expected her to be in Tumwater more often, but gradually increase her time in Vancouver. He said it was his

understanding that if an employee traveled to a location other than their official duty station, then the commute miles to the temporary duty station were reimbursable.

We spoke with OFM's assistant director, who said that a temporary duty station needs purpose; it has to be assigned for a factual reason, and is questionable if ongoing. He said that a pattern of traveling to Tumwater three days a week for nearly a year is not temporary – it is a commute. He said the SAAM is specific that an employee's commute is not reimbursable because the IRS considers commute reimbursement to be a taxable fringe benefit.

We found Subject 1 received reimbursement for her commute to the Tumwater office, and Subject 2 allowed Subject 1 to use state resources for her commute. Therefore, we found reasonable cause to believe an improper governmental action occurred.

## **Department's Plan of Resolution**

*Thank you and your staff for meeting with L&I managers and Assistant Directors on two different occasions and discussing the State Auditor's Office (SAO) processes on whistleblower cases. We appreciate your providing the draft report on the above referenced whistleblower case for our review and the opportunity to provide a plan of resolution.*

*Based on our review, we respectfully disagree with the conclusions of the SAO. We do not agree that an improper governmental action has occurred.*

*The primary areas of disagreement include:*

- *The authority of agency management to make decisions based on their professional judgment and rationale as to what is in the best interest of the agency;*
- *The authority of the agency to determine which activities are considered to be critical and necessary that warrant travel, and;*
- *The authority to name temporary and permanent duty stations and to authorize reimbursable travel to temporary duty stations when agency vehicles are not reasonably available.*

*After conducting a thorough investigation, including interviews and review of documents, policies, laws, and efforts to identify travel alternatives, along with review of the duties of a Regional Program Manager and a Regional Administrator, we conclude Subject Two correctly identified duties that were critical and necessary to require travel done in the best interest of the agency. Additionally, the identification of the temporary and the permanent duty stations was correct. We reached the conclusion that Subject One's travel as authorized by Subject Two, was proper.*

*The facts show that Tumwater has never been Subject One's permanent duty station. L&I designated Vancouver as the permanent duty station because there was a business need to have a manager present in that office. As her training progressed, Subject One's travel to Tumwater decreased.*

*The Department of Labor & Industries takes allegations of misuse of state resources very seriously, investigates such allegations in a timely manner and takes appropriate disciplinary action when we discover violations. In this case, we do not believe there has been a violation of L&I's internal policy or of State Ethics Rules.*

*Despite our disagreement with SAO's overall conclusion, we find there is some overall confusion about how the agency correctly authorizes travel and the difference between a temporary and permanent duty station. As a proposed resolution, we plan to conduct retraining for all Managers and Supervisors on travel policies as well as authorization needed to use a privately-owned motor vehicle (POV).*

## **State Auditor's Office Concluding Remarks**

The State Administrative and Accounting Manual (SAAM) policy 10.10.10 provides that travel costs must be directly work-related, obtained at the most economical price and both critical and necessary for state business.

We agree that management has the authority to make decisions and authorize employee travel and to determine which activities are critical and necessary. However, those decisions must comply with state laws and policies. Another SAAM policy, 10.50.25.b, cautions that because there is the potential for misuse, agencies should “strictly adhere” to policy 10.10.

In fact, Subject 1 said some of her trips were “just about being there [in Tumwater] and being available.” Moreover, we found that she made trips to Tumwater solely to attend telephonic and video conferences. Although Subject 2 told our Office he trusted Subject 1 to be where she needed to be, he also told us he would often ask her why she was in Tumwater.

The Department cites its “authority to name temporary and permanent duty stations and to authorize reimbursable travel to temporary duty stations,” as justification for Subject 1's frequent travel. In fact, our investigation revealed that the Department did not designate Tumwater as Subject 1's temporary duty station. Although one document established Vancouver as her permanent duty station, she conducted most of her work in Tumwater – out of 194 work days, she worked 121 in Tumwater, 59 in Vancouver and 14 in other locations. According to OFM's assistant director, a pattern of traveling to Tumwater three days a week for nearly a year is not temporary – it is a commute.

Regarding the Department's assertion that Subject 1's travel decreased as her training progressed, the facts show otherwise. Documentation and interviews revealed Subject 1's travel did not decrease until after the start of our investigation. Subject 2 told our Office that after notification of the investigation, he pulled Subject 1 aside and told her that she needed to stop traveling and that "there are no attaboys for *extra* travel." [Emphasis ours]

We reaffirm our finding that Subjects 1 and 2 failed to follow state laws and the corresponding SAAM policies.

## WHISTLEBLOWER INVESTIGATION CRITERIA

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

### **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.

### **RCW 43.88.160(1) - Fiscal management—Powers and duties of officers and agencies. In part:**

(1) 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.

### **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, No.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.

#### **10.50.25.a - Restrictions on reimbursement for privately-owned motor vehicle use**

Daily commute transportation expenses between the traveler's official residence and official station (or agency approved teleworking site) is a personal obligation

of the traveler and is not reimbursable by the state. All other miles driven on official state business are reimbursable.

### **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.