



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

**Whistleblower Investigation Report**  
**Department of Social and Health**  
**Services**

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Pat McCarthy**

July 12, 2018

The Honorable Jay Inslee  
Office of the Governor

**Report on Whistleblower Investigation**

Attached is the official report on Whistleblower Case No. 18-018 at the Department of Social and Health Services.

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 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: Kelly Wicker, Deputy Chief of Staff  
Andrew Colvin, Public Disclosure/Ethics Administrator  
Kate Reynolds, Executive Director, Executive Ethics Board  
Jacque Hawkins-Jones, Investigator

# WHISTLEBLOWER INVESTIGATION REPORT

## Assertion and Results

Our Office received a whistleblower complaint asserting the Secretary (subject) of the Department of Social and Health Services (Department) permitted non-essential staff to leave early on November 22, 2017, without requiring they use leave.

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

## About the Investigation

Our Office reviewed Department emails sent between November 20, 2017, and November 22, 2017, and interviewed witnesses.

On Wednesday, November 22, 2017, the subject's executive assistant sent an email to the Department's assistant secretaries, stating:

[Subject] has approved, *at your discretion*, to allow non-essential staff to leave at 3:00 today to get a start on the Thanksgiving holiday. Anyone who stays to cover phones, or continue their work, should have the option to leave 2 hours early at a later date sometime soon. Again, this is at your discretion. Let me know if you have any questions. [Emphasis in email]

During an interview, the executive assistant said "releasing" employees early the Wednesday before the Thanksgiving holiday was a past practice of the Department before the subject came into the executive position. She said the subject wanted to continue this for her employees. She said the subject reviewed the email and "gave the go-ahead to send." She said that every year on the Wednesday before Thanksgiving, one or two people contact her regarding early release.

The executive assistant said allowing employees to leave early was with the understanding that they use leave, which was the responsibility of the assistant secretaries to ensure occurred.

During an interview, the subject said because she was new in the position, she would defer to past practices until she could research, discuss and come up with her own plan of action, when needed. The subject described this as "continuity of operations," and said this was the case in this situation. She asked her executive assistant if the practice had been reviewed and approved by human resources in the past and based off her executive assistant's assurance that this was a Departmental past practice, she approved the email.

The subject said it was her understanding that employees would use leave. When asked why she needed to send out an email approving employees to use leave, she said it was because Department employees need prior approval from their supervisor to use leave and this email provided blanket approval for all employees to use leave beginning at 3 PM.

The subject said she understood she “does not have the authority to release employees early, especially 19,000 of them” and it was her intent that the employees use leave. She said it is the responsibility of the assistant secretaries to “manage their own department” and to “ensure leave was submitted.”

We spoke with numerous witnesses, holding various positions within the Department. The majority of the witnesses said the practice of early release before holidays has been going on for years and occurs around Thanksgiving, Christmas and the New Year.

One witness, who has been with the Department for more than 25 years, said this practice has taken place for as long as this witness can remember. The witness said that, if an employee takes the day before Thanksgiving off, he or she would use leave. If an employee were to take part of that day off, he or she would use leave. However, if the employee remains at work until the divisions receive notification of the early release, he or she would not have to use leave.

Other witnesses said:

- The practice has been going on for years and they are not required to use leave.
- Those who remained in the office to cover office needs were allowed to take the time off later and were not required to use leave.
- The practice is unethical because no one is required to use leave.
- There has been no communication about using leave.
- Some employees cannot leave early because their division’s management does not approve of letting employees go home early without using leave.
- They had been with the Department in the same division for over 20 years and had never heard of this practice.

Not all divisions within the Department followed this practice.

In a follow-up conversation with the subject, we asked how she came to the understanding that employees were using leave for the early release. She said:

Because it is required by policy. This has been a long-standing policy and my understanding was all assistant secretaries understood this. When I inquired with [executive assistant] who asked me whether I was going to authorize non-essential personnel to take leave early on the Thanksgiving weekend, I inquired specifically whether HR had been consulted and it was OK with them and that assistant secretaries were aware of that.

In a follow-up conversation with the executive assistant, we asked why human resources would need to be consulted to allow employees to use their own leave. The executive assistant said it was not to allow employees to use their leave, but to ensure the Department was following the leave policy when the subject allowed employees to leave early before the Thanksgiving holiday.

The executive assistant said she has been in her position for five years and served under four secretaries. She said no one has ever questioned whether to use leave for this practice. She said it was “just an assumption” that employees used leave.

## **Conclusion**

The email stated that having non-essential staff leave early was at the discretion of the assistant secretaries, and that staff who chose to stay should have the option to leave early at another time.

If the subject’s intent was, as she said, to provide blanket approval to those employees who had not previously requested to use leave, that would mean the employees who deferred the use to a later date would not need to seek their supervisor’s approval to use that time. Additionally, if long-time employees knew they were required to use leave for this time each year, it is unclear why employees would wait for some kind of approval from the subject when they could just request the leave ahead of time. There would be no need for blanket approval.

Finally, the executive assistant said that every year she receives inquiries regarding the early release. If employees were expected to use leave, there would be no need for them to make these inquiries. They would just submit a leave request.

The subject allowed Department assistant secretaries to release employees early on Wednesday, November 22, 2017. The subject did not provide direction that employees were required to use leave for this time, nor was there evidence that this was an expectation in the past. As a result, multiple witnesses confirmed that as in the past, some employees went home early without using leave.

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

## **Office of the Governor’s Plan of Resolution**

*Thank you for the opportunity to review and respond to the State Auditor's Office (SAO) draft report on Whistleblower Case No. 18-018. The Governor's Office takes the assertions seriously and appreciates the assistance of the SAO in developing important facts in its investigation.*

*Our office has discussed the matter with the Secretary, and we understand that the purpose of giving employees the option to leave early before the Thanksgiving holiday is to show appreciation for all they do as state employees. Our office also recognizes, as does the Secretary, that we have a responsibility to be good stewards of the public's resources. In the future, it is our expectation that any similar actions will include clear communication that employees who are allowed to leave early before a holiday must submit leave in accordance with applicable policies.*

## **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 42.52.070 - 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.