



Office of the Washington State Auditor  
Pat McCarthy

# Whistleblower Investigation Report Employment Security Department

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February 21, 2019

Suzan LeVine, Commissioner  
Employment Security Department

**Report on Whistleblower Investigation**

Attached is the official report on Whistleblower Case No. 19-009 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 Director of Communications Kathleen Cooper at (360) 902-0470. Otherwise, please contact Assistant Director of State Audit Troy Niemeyer at (360) 725-5363.

Sincerely,

Pat McCarthy  
State Auditor  
Olympia, WA

cc: Governor Jay Inslee  
Carole Mathews, Risk and Records Manager  
Kate Reynolds, Executive Director, Executive Ethics Board  
Cheri Elliott, Lead Investigator

# WHISTLEBLOWER INVESTIGATION REPORT

## Assertion and Results

Our Office received a complaint that an Employment Security Department (Department) employee (subject) hired a Department customer to care for a family member and failed to pay the customer for her services.

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

## About the Investigation

We interviewed the Department customer on three occasions. During all the interviews, the customer made it clear that she respected the subject and did not want to get the subject into any trouble over the situation. She at first denied that the subject hired her to care for the subject's family member, stating that the subject was doing her a favor by allowing her to stay at the family member's home. When we asked her about a wage claim she filed with the Department of Labor and Industries over the issue, which she later closed, she denied filing the claim; although she was able to verify that the hours and pay owed, as listed on the claim, were accurate. Also, in the documentation was the customer's reason for closing the claim: she did not want the subject to get into trouble.

Throughout the interviews, the customer gave an inconsistent narrative of events. The customer continued to deny filing the wage claim, going as far as asserting that someone else filed the claim with the goal of getting the subject in trouble. When we told the customer we had verified with a Department of Labor and Industries employee that she had spoken with the customer regarding the claim, she denied the conversation occurred. Eventually, she said that she had spoken with someone, but had not bothered to tell that person that she was not the person who filed the claim. During the third interview, after discussing the many inconsistencies in her narrative, the customer told us what had actually transpired.

The customer said that she had heard from a co-worker that the subject needed someone to care for a sick family member. Shortly after, while in a Department office filing for unemployment with the assistance of the subject, she told the subject that the heat in her home was not working. The subject suggested she take care of her relative and in that way she would also have a warm place to stay until the heat was fixed. The subject asked the customer to come to her home to meet and speak with other relatives so they could get to know the person who would be providing care to their relative. The customer said that she provided 120 hours of care to the relative and was owed \$1,320, but received only \$100 from the subject's brother and the offer of a broken refrigerator and broken television for payment. The customer said she withdrew the wage claim because her sister told her if she went forward with it, the subject would get in trouble and would not help them with their unemployment any longer.

We spoke with the person whom the customer said might have filed the claim. This witness told us that she had provided the claim form to the customer, had watched the customer fill it out and sign it, and because the customer had no money or transportation, offered to mail it for her; the customer accepted the offer. Another witness said she overheard parts of a conversation in which the customer mentioned the subject owing her money and referenced the subject's sick relative.

We spoke with the subject, who denied she hired the customer to care for her relative. When asked why the customer, who had spoken of her only in the highest regard and was concerned about her welfare, would make up a story like this and file a wage claim, she said she did not know. She said she had attempted to get a caregiver for her relative through the Department of Social and Health Services, but the process took too long, and the relative died. She said her relative had a friend with the same name as the customer who stayed at the relative's home due to the disrepair of the customer's home, but she never met the person.

When asked specifically if she knew the customer, she said she may have helped someone with that name, but she helps many people and does not remember names.

According to training records from the Department, the subject reviewed the Department's policies, including the employee conduct policy, on February 6, 2018. Her signature indicates she read and understood the policy, which 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.

State law (RCW 42.52.020) says 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." Nor can a state employee, "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 42.52.070).

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

## **Department'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. 19-009. The Employment Security Department takes the*

*assertions seriously and appreciates the assistance of the SAO in developing important facts in its investigation.*

*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.

### **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.