

Employment Development Department

Investigations of Improper Activities by State Employees, July 2008 Through December 2008

ALLEGATION I2008-0699 (REPORT I2009-1), APRIL 2009

Employment Development Department's response as of November 2009

An employee of the Employment Development Department (Employment Development) misused his state computer and state e-mail account for personal purposes, including sending inappropriate messages to other state employees. In addition, he engaged in incompatible activities by failing to devote his full time, attention, and efforts to his job when he was at work. Furthermore, management at Employment Development failed to take appropriate action concerning the employee's inappropriate activities despite noting similar behavior for several years.

Finding #1: The employee misused state resources for personal purposes and engaged in activities that were incompatible with his job.

The employee misused his state computer and e-mail account for activities unrelated to his work at Employment Development. As part of the duties of his job, the employee is to ensure that claims are promptly paid, routed, or reissued. His duties require him to use a state computer and Employment Development data systems. However, in an eight-day sampling of e-mail messages from February 15, 2008, through April 16, 2008, the investigation revealed that the employee sent 256 e-mails that were personal, some of which were inappropriate in nature. An analysis of the e-mails on these days indicated that the employee spent periods from nearly an hour to eight hours sending e-mails that were unrelated to his duties. For example, on one day in April 2008 during a roughly seven-hour period, the employee sent 75 e-mails, all of which were personal and thus not related to his work. In addition, during an interview, the employee admitted that he sent multiple e-mail messages to an employee in another department that contained vulgar language. He also admitted that he kept three e-mails with sexually explicit photos on his state computer.

The investigation also found that the employee misused his state computer in other ways. He regularly accessed the Internet beyond minimal and incidental use. For example, on three days in April 2008, he spent from one to two hours each day browsing the Internet even though his duties do not require such access. In addition, he used his state computer to send and receive e-mails about his external employment during his work hours at Employment Development. Further, on two occasions the employee got into an Employment Development database without authorization to assist external business associates with claims. Finally, besides using his state computer for these personal purposes, the employee engaged in discourteous behavior when he used his computer and e-mail account to send several inappropriate messages

Investigative Highlight . . .

An employee of the Employment Development Department sent inappropriate e-mail messages to other state employees. Management then failed to take corrective action despite noting similar behavior in the past.

to employees at Employment Development and other state agencies. As a result of all of these actions, the employee engaged in incompatible activities when he failed to devote his full time and attention to his state employment during his work hours.

After the completion of the investigation, Employment Development informed us in December 2008 that it suspended the employee for 30 days.

We recommended that Employment Development monitor the employee's use of state resources after his return to work after the 30-day suspension.

Employment Development's Action: Corrective action taken.

Employment Development notified us that it continues to monitor the employee's use of state equipment to ensure he only conducts state business while on duty.

Finding #2: Management failed to take appropriate action despite their noting years of similar behavior.

The employee's inappropriate use of his state computer and e-mail account were just the latest installment in a series of improprieties. Since 2001 the employee had repeatedly misused his state time, telephone, and computers to engage in personal business during his workdays. In addition, he inappropriately used his state computer for personal e-mails and to access the Internet. Moreover, the employee had unexcused absences and attendance problems.

Despite the employee's long history of disciplinary problems, Employment Development did not adequately resolve these problems. From January 2001 through November 2007, Employment Development issued 10 written notifications to the employee—and held several formal discussions with him—about his unacceptable behavior. The notifications consistently cited the employee's excessive use of his state telephone, computer, and e-mail account for personal purposes. In addition, on one occasion Employment Development ordered the employee to “cease and desist” contact with another state employee through his state telephone and computer. In at least eight of the 10 written documents the employee received since January 2001, Employment Development specifically stated that the incidents discussed in the respective notifications could form the basis of an adverse action.

Even with these written notices and formal discussions spanning several years, Employment Development did not escalate either its corrective or disciplinary actions against the employee. The State Personnel Board has repeatedly ruled that agencies have the right to proceed with progressive disciplinary actions against employees where it is well documented and when lesser sanctions—such as written reprimands and memos—fail to positively influence the employee. Repeated incidents by the employee over a period of several years demonstrate a measured level of sustained inappropriate behavior. Furthermore, the employee's ongoing misuses demonstrate that his behavior did not change as a result of Employment Development's written notifications and discussions.

We recommended that Employment Development conduct training at regular intervals for its management and branch staff on methods of progressive discipline.

Employment Development's Action: Corrective action taken.

Employment Development indicated to us that all of its new managers and supervisors are required to attend a two-week course that covers managerial and supervisory roles and responsibilities, including the proper administration of the progressive discipline process. Further, refresher training is also provided on the progressive discipline process for managers and supervisors when labor contract changes are made resulting from a new collective bargaining agreement.