

STATE OF NORTH CAROLINA

OFFICE OF THE STATE AUDITOR

BETH A. WOOD, CPA



NORTH CAROLINA DEPARTMENT OF LABOR

INVESTIGATIVE REPORT
DECEMBER 2014



NCOSA
The Taxpayers' Watchdog

EXECUTIVE SUMMARY

PURPOSE

The Office of the State Auditor received allegations through the *State Auditor's Hotline* concerning the travel expenses of three employees within the North Carolina Department of Labor's Wage and Hour Bureau.

BACKGROUND

The North Carolina Department of Labor (Department) administers inspection services for securing the safety of boilers, elevators, amusement rides, mines and quarries. The Department's Wage and Hour Bureau administers the North Carolina Wage and Hour Act and enforces the Private Personnel Service Act and the Controlled Substance Examination Regulation Act.

KEY FINDING

- A Wage and Hour Deputy Administrator received more than \$9,400 to commute to Raleigh in violation of state regulations.

KEY RECOMMENDATIONS

- Department management should comply with state regulations regarding commuting and its internal policies regarding telework. Any deviation from the regulations or policies should be justified and appropriately documented.
- Department management should review the duty station assignments for all administrative/management positions to ensure that the Department is not misapplying nor misinterpreting its policies.

Key findings and recommendations are not inclusive of all findings and recommendations in the report.

STATE OF NORTH CAROLINA
Office of the State Auditor



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AUDITOR'S TRANSMITTAL

December 15, 2014

The Honorable Pat McCrory, Governor
Members of the North Carolina General Assembly
The Honorable Cherie Berry, Commissioner, Department of Labor

Ladies and Gentlemen:

Pursuant to *North Carolina General Statute §147-64.6(c)(16)*, we have completed an investigation of allegations concerning the North Carolina Department of Labor's Wage and Hour Bureau. The results of our investigation, along with recommendations for corrective action, are contained in this report.

Copies of this report have been provided to the Governor, the Attorney General and other appropriate officials in accordance with *G.S. §147-64.6 (c) (12)*. We appreciate the cooperation received from the management and employees of the Department of Labor during our investigation.

Respectfully submitted,

A handwritten signature in cursive script that reads "Beth A. Wood".

Beth A. Wood, CPA
State Auditor



Beth A. Wood, CPA
State Auditor

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Article V, Chapter 147 of the North Carolina General Statutes, gives the Auditor broad powers to examine all books, records, files, papers, documents, and financial affairs of every state agency and any organization that receives public funding. The Auditor also has the power to summon people to produce records and to answer questions under oath.



INTRODUCTION AND ORGANIZATION OVERVIEW

The Office of the State Auditor received allegations through the *State Auditor's Hotline* concerning the travel expenses of three employees of the North Carolina Department of Labor's Wage and Hour Bureau.

To investigate these allegations, we performed the following procedures:

- Interviews with employees of the Department of Labor, the North Carolina Office of State Human Resources (OSHR), and the North Carolina Department of Administration's Motor Fleet Management Division
- Review of the Department of Labor's policies and procedures
- Review of applicable personnel files
- Analysis of travel records and expense reports
- Review of OSHR's Teleworking Program
- Review of state vehicle assignments

This report presents the results of our investigation. The investigation was conducted pursuant to *North Carolina General Statute § 147-64.6 (c) (16)*.

North Carolina Department of Labor

The North Carolina Department of Labor (Department), under the direction of the Commissioner of Labor, is responsible for promoting the “health, safety and general well-being”¹ of the working population of the State. The North Carolina General Statutes provide the Commissioner with broad regulatory and enforcement powers to implement that objective.

The Department administers inspection services for securing the safety of boilers, elevators, amusement rides, mines, and quarries. The Department also addresses wage and hour issues pertaining to maximum work hours and minimum wage laws.

Wage and Hour Bureau

The Wage and Hour Bureau (Bureau) administers the North Carolina Wage and Hour Act and enforces the Private Personnel Service Act and the Controlled Substance Examination Regulation Act. The Bureau is led by a Wage and Hour Administrator and includes 30 positions responsible for performing the Bureau's duties.

¹ <http://www.nclabor.com/agprogs.htm>



FINDINGS, RECOMMENDATIONS, AND RESPONSES

DEPUTY ADMINISTRATOR RECEIVED MORE THAN \$9,400 TO COMMUTE TO RALEIGH IN VIOLATION OF STATE REGULATIONS

The Department of Labor's (Department) Wage and Hour Bureau allowed its Deputy Administrator to receive travel reimbursements for commuting to Raleigh in violation of state regulations. The Deputy Administrator received reimbursement for commuting to Raleigh because the Department treated her home in Lexington, NC as her duty station.² However, the investigation revealed the following:

- The deputy administrator position has been Raleigh-based since February 18, 2002.
- The June 18, 2013, position posting indicated a work location of "Wake County."
- An August 1, 2013, letter from the Department's Human Resources Division stated the position is "based out of the Raleigh Office located at 111 Hillsborough Street, 6th floor, Raleigh, NC."
- The Department's telework policy included a list of positions eligible for teleworking. The list *did not* include the deputy administrator position.
- The Department did not complete a new telework agreement upon the Deputy Administrator's promotion. The Deputy Administrator's personnel file included a telework agreement for a previous position.
- According to three Department employees, the Deputy Administrator discontinued exclusive use of her assigned state vehicle when she became Western District Supervisor. The vehicle remained assigned to the Deputy Administrator although the listed address changed to that of a Wage and Hour investigator in August 2013. The Department did not change the vehicle assignment until May 2014 after it received notification of these issues as a result of this investigation.
- The Deputy Administrator has paid for a permanent parking space in downtown Raleigh since September 2013.

During an 11-month period, the Deputy Administrator's expense reimbursements for travel to Raleigh cost the State \$9,494 (approximately \$863 per month). The Deputy Administrator received these reimbursements for mileage, meals, hotels, and parking.

Department management said the position location information included on the job posting and position confirmation letter was an "oversight" because the Department used a position posting template. Department management claimed the Deputy Administrator's duties could be performed remotely and said other deputy administrators within the Department also worked from home. However, the Deputy Administrator commuted to Raleigh nearly 38% of her work days during an 11-month period but traveled to other locations in the state only 7% of her work days.

² According to the *State Budget Manual*, "'Duty station' is defined as the location where the employee is assigned."

The *State Budget Manual* prohibits employees from receiving reimbursement for commuting from their home to their duty station. Because the Deputy Administrator's position was based in Raleigh, the Department should not have reimbursed the Deputy Administrator for commuting from her home in Lexington.

In addition, the Office of State Human Resources's Teleworking Program requires that state agencies establish their own internal policies and procedures which "identify the criteria for jobs that are designated as telecommutable and shall identify the criteria for selecting employees who are eligible to engage in teleworking." The Department created a telework policy which explicitly stipulated which job titles were eligible for telework. This policy states, "If an employee laterally transfers from one supervisor to another or is promoted, the original telework agreement must be terminated and if applicable, a new telework agreement be executed between the employee and new supervisor."

RECOMMENDATIONS

- Department management should comply with state regulations regarding commuting and its internal policies regarding teleworking. Any deviation from the regulations or policies should be justified and appropriately documented.
- Department management should review the duty station assignments for all administrative/management positions to ensure that the Department is not misapplying nor misinterpreting its policies.

The Department of Labor's (Department) response to the report's findings and recommendations includes certain statements or implications that are misleading or inaccurate. The Department appears to base its conclusions on the *intentions* of its employees; the Office of the State Auditor (OSA) reviewed the *actions* of the employees within the context of existing state policy. For example:

- The Department claims the position was a telework position and the Deputy Administrator's duty station was her home in Lexington.
 - The Department provided no documentation to support this statement. Rather, the documentation provided indicated the Wage and Hour Deputy Administrator position was not, and never had been, a telework position. All documentation indicated Raleigh had always been the designated duty station. Further, a proposed position description provided in November 2014 (which was never approved by the Department's Human Resources Division) still indicated the "Location of Workplace" as "Tele-worker and 111 Hillsborough St., 6th Floor," which is in Raleigh.

- The Department claims, "As a teleworker with a home base in Lexington..." the Wage and Hour Deputy Administrator "could request reimbursement for travel, including travel to Raleigh."
 - The position was not a telework position. Even if the position had been properly designated for telework, employment in a telework position does not establish one's home as their official duty station nor does it establish eligibility for travel reimbursements to and from an employee's duty station. To the contrary, teleworking simply means one is compensated for work performed at a site other than the employee's duty station.

- The Department claims the Wage and Hour Deputy Administrator "did not commute from her home office in Lexington to Raleigh."
 - The Department provided no documentation during the course of the investigation that demonstrated a location of the duty station for the Wage and Hour Deputy Administrator position anywhere other than Raleigh. In fact, the Department's response acknowledges that an e-mail indicated the position had been approved to work "in Raleigh" and a congratulatory letter stated the position was "based out of the Raleigh office." Therefore, according to the *State Budget Manual*, travel between Lexington (the Deputy Administrator's home) and Raleigh (her designated duty station) is considered "commuting."

Throughout its response, the Department asks OSA and the public to judge the Department's spending of state resources based on what they meant to do rather than what the facts indicate actually occurred and how those facts are applied to state and department policy.

Furthermore, the Department's response uses ignorance of its own policies and failure to adhere to those policies as justifications for its noncompliance. The Department admits the Deputy Commissioner and the Wage and Hour Administrator were unaware that the Deputy Administrator position was ineligible for telework status according to Department policies. In addition, the Department admits it failed to complete a telework agreement when the Deputy Administrator was promoted to both her current and prior positions.



Cherie K. Berry
Commissioner

November 20, 2014

The Honorable Beth Wood, State Auditor
Office of the State Auditor
2 South Salisbury Street
Raleigh, North Carolina 27601

Dear State Auditor Wood:

Thank you for the opportunity to respond to the investigative report addressing allegations concerning our Wage and Hour Bureau.

You will find in our attached response that we respectfully disagree with some of your findings and we have itemized those points accordingly. I do however agree that your staff did point out some administrative processes and practices that need to be improved. We appreciate those recommendations and are already working to make the necessary changes.

Likewise, we appreciate the cooperation and professionalism of the members of your staff who conducted the investigation on your behalf.

I am available at your convenience if you would like to discuss any of these issues in greater detail.

Respectfully,

A handwritten signature in black ink, appearing to read 'Cherie', is placed below the word 'Respectfully,'.

Cherie K. Berry

The Department of Labor's response referenced nine exhibits including items such as organization charts, job descriptions, and mileage logs. Due to the volume of these exhibits, these documents are not included in this report but may be obtained from the Office of the State Auditor upon request.

Key Finding

The Auditor's Investigative Report states as its Key Finding that a Wage and Hour Deputy Administrator received more than \$9,400 to commute to Raleigh in violation of State regulations. The North Carolina Department of Labor (NCDOL) does not agree with this finding in that the Wage and Hour Deputy Administrator was a teleworker and did not commute to Raleigh.

Key Recommendations

With respect to the two Key Recommendations, NCDOL states that it is complying with state regulations regarding commuting and is reviewing the Wage and Hour Deputy Administrator position in order to comply with the NCDOL telework policy.

NCDOL is reviewing duty station assignments for administrative/management positions to ensure compliance with the NCDOL telework policy. NCDOL is also reviewing its telework policy and agreement and all employees who are currently teleworkers.

Findings and Recommendations

The Department of Labor disagrees with the Auditor's finding that the Deputy Administrator received more than \$9,400.00 to commute to Raleigh in violation of state regulations. A complete and thorough investigation of the facts and circumstances surrounding the deputy administrator's position indicates that NCDOL did not properly evaluate the position and add it to the list of job titles eligible for telework in the NCDOL telework policy.

In January 2011, a reorganization of the Wage and Hour Bureau was approved. Because the Wage and Hour Bureau receives wage complaints from throughout the state, it was determined that moving wage and hour investigators out of the central office in Raleigh and into the field would better utilize limited state resources. Placing all the investigative staff in the field allowed for closer interaction with employers and complainants.

On January 21, 2011, Mike Morrow was promoted from deputy administrator to the administrator of the Wage and Hour Bureau. Deputy Commissioner Andy Frazier gave Mr. Morrow the option of allowing the new deputy administrator, who would be selected by Mr. Morrow, to work out of the Raleigh office or to allow the deputy administrator to work out of a home office as a teleworker. Deputy Commissioner Frazier felt that allowing the deputy administrator to work from home may increase interest in the position given the fact that the wage and hour bureau had recently moved the Raleigh staff to the field. Mr. Morrow decided that he wanted the deputy administrator to work out of the Raleigh office. This decision may

have been based in part on Mr. Morrow's intent to train the new deputy administrator in both the role of deputy and in the role of administrator as Mr. Morrow had announced his intentions of retiring effective January 1, 2013.

On February 22, 2012, Valentine Eucare, III was selected to fill the position of Deputy Administrator. Mr. Eucare was first employed in the Wage and Hour Division on November 11, 2002 as a wage and hour investigator I. On January 1, 2006, Mr. Eucare was promoted to wage and hour investigator II or senior wage and hour investigator. At that time he became a teleworker. On November 1, 2008 he was promoted to wage and hour supervisor. When Mr. Eucare was promoted to Deputy Administrator, he began working in the Raleigh office. Mr. Eucare worked with Mr. Morrow to learn the role of Deputy Administrator and also observed the role of administrator. Mr. Morrow retired effective January 1, 2013. On January 1, 2013, Mr. Eucare was promoted to Administrator of the Wage and Hour Bureau.

Deputy Commissioner Frazier once again gave the wage and hour administrator, this time Mr. Eucare, the option of allowing the deputy administrator position to work out of the Raleigh office or to allow the deputy administrator to work out of a home office as a teleworker. Having served as the deputy administrator, Mr. Eucare decided that he would allow the applicant selected as the deputy administrator to have the option to work out of the Raleigh office or work out of a home office as a teleworker. Based upon Mr. Eucare's conversation with Deputy Commissioner Frazier, Mr. Eucare understood Deputy Commissioner Frazier had given him the authority to designate the position as a telework position and reflected that change on the organizational chart dated February 21, 2013 and on subsequent organizational charts. (Exhibit 1) It should also be noted that in April, 2014 the position description for the deputy administrator/assistant bureau chief was revised to state that the position is a telework position. (Exhibit 2) This position description has not yet been approved by NCDOL Human Resources.

Deputy Commissioner Frazier and Mr. Eucare did not review the NCDOL telework policy and therefore were not aware that the deputy administrator position was not listed in the job titles eligible for telework status. Had the telework policy been reviewed at the time Deputy Commissioner Frazier gave Mr. Eucare permission to allow the deputy administrator to telework, it would have been apparent that in order for the deputy administrator position to be designated as a telework position, the Chief of Staff would have to approve it and the position added to the list of eligible job titles.

The position of wage and hour assistant director/deputy administrator was initially posted in January, 2013. Due to budget concerns the position was not filled at that time and was reposted in June, 2013. NCDOL received 428 applications for this position. Ten applicants were interviewed, 7 internal applicants and 3 external applicants.

Kisha Holmes was the applicant selected to fill the position of assistant director/deputy administrator. Ms. Holmes was first employed in the Wage and Hour Division on August 27, 2007 as a wage and hour investigator I. On September 1, 2009, Ms. Holmes was promoted to wage and hour investigator II or senior wage and hour investigator. On May 1, 2011, she became a teleworker. On April 17, 2012, she was promoted to wage and hour supervisor. Ms. Holmes personnel file contains only one telework agreement dated by her on March 11, 2011. A new telework agreement was not signed when she was promoted to wage and hour supervisor as was required by the NCDOL Telework Policy.

On July 24, 2013, Renathe Cotten in NCDOL Human Resources e-mailed Mr. Eucare notifying him that Ms. Holmes had been approved as the wage and hour assistant director "in the Standards and Inspections Division, Wage and Hour Bureau located in Raleigh." On July 25, 2013, this e-mail was forwarded by Mr. Eucare to Ms. Holmes. On that same date, Ms. Holmes replied to Mr. Eucare via e-mail that she would accept the job.

By letter dated August 1, 2013, NCDOL Human Resources Director Nancy Lipscomb congratulated Ms. Holmes on her promotion. This letter stated that the promotion was effective August 1, 2013 and that the position was "based out of the Raleigh office".

Mr. Eucare told Ms. Holmes when she accepted the position of deputy administrator that she could continue to work as a teleworker. Ms. Holmes decided that she would continue to work as a teleworker. Ms. Holmes and Mr. Eucare considered Ms. Holmes' duty station to be her home office in Lexington as it had been since she became a teleworker on May 1, 2011. Neither Mr. Eucare nor Ms. Holmes reviewed the NCDOL telework policy and therefore did not recognize that the deputy administrator position was not included in the list of job titles eligible for telework status. They also did not sign a new telework agreement. Mr. Eucare was under the assumption the telework agreement that had been signed previously by Ms. Holmes was sufficient.

Ms. Holmes stated that she knew the job posting stated the work location was Wake County and that the letter from Human Resources confirming her promotion indicated the position was based out of the Raleigh office. She did not interpret these documents as requiring her to work out of the Raleigh office. Based upon her discussions with Mr. Eucare, she understood that she was continuing to work as a teleworker out of her home office in Lexington.

Because the position of deputy administrator would require more frequent travel to Raleigh and also to accommodate others in the Wage and Hour Bureau who travel to Raleigh, it was suggested that Ms. Holmes obtain a permanent parking space in Raleigh. Initially, Ms. Holmes thought the parking spot would be utilized by others in the bureau that might travel to Raleigh

and need parking. Ultimately, Ms. Holmes got a parking space in Raleigh for which she pays \$15 a month. However, no one else utilizes the space.

The Audit Findings and Recommendations states that "According to three Department employees, the Deputy Administrator discontinued exclusive use of her assigned state vehicle when she became Western District Supervisor. The vehicle remained assigned to the Deputy Administrator although the listed address changed to that of a Wage and Hour investigator in August 2013. The Department did not change the vehicle assignment until May 2014 after it received notification of these issues as a result of this investigation."

As previously stated, Ms. Holmes was promoted to wage and hour supervisor on April 17, 2012. Travel logs indicate that Ms. Holmes stopped driving the state car in May, 2012. (Exhibit 3) She became the deputy administrator August 1, 2013. The state vehicle assigned to Ms. Holmes was shared between Ms. Holmes and Wage and Hour Investigator Becky Lusk. Ms. Lusk began exclusively driving the state vehicle in May, 2012.

In July, 2012, Ms. Holmes e-mailed Shannon Council, office manager for the Wage and Hour Bureau and asked that the state car be put in Becky Lusk's name. Ms. Council replied that Mike Morrow, who was the Wage and Hour Administrator at that time, was contemplating turning the car in to motor fleet. Ms. Council advised Ms. Holmes to change the car log to show Ms. Lusk's name. (Exhibit 4) Ms. Lusk continued to drive the state vehicle until November, 2012.

In November, 2012, Courtney Martin, another wage and hour investigator began driving the state car exclusively. (Exhibit 5) The travel logs for November, 2012 forward also show that Ms. Martin was exclusively driving the state car. (Exhibit 3)

Although the vehicle was not driven by Ms. Holmes, she continued to be the "Person Assigned to Or Responsible for the Vehicle". On August 22, 2013, an "Application for Permanent Assignment of Passenger Vehicle" was filed with Motor Fleet to change the address of where the state car was parked to Courtney Martin's address. (Exhibit 6) On May 28, 2014 an "Application for Permanent Assignment of Passenger Vehicle" was filed with Motor Fleet to transfer the vehicle to Courtney Martin. (Exhibit 7)

The audit findings state that "[t]he Department did not change the vehicle assignment until May 2014 after it received notification of these issues as a result of this investigation." However, documentation in Exhibits 3 -7 clearly shows Ms. Holmes stopped driving the state vehicle in May, 2012, and the vehicle was used by others in the Wage and Hour Bureau.

The audit findings state that "the Deputy Administrator commuted to Raleigh nearly 38% of her work days during an 11-month period but traveled to other locations in the state only six percent of her work days." This analysis does not give a complete picture as it does not take

into consideration days Ms. Holmes worked from her home office in Lexington. During the 11-month period from August, 2013 to June, 2014, Ms. Holmes worked 226 days. Of those 226 days, Ms. Holmes worked from her home office in Lexington 124 days; 86 days she traveled to Raleigh; 16 days she traveled to locations other than Raleigh. More than half, or 55%, of Ms. Holmes' work days were at her home office in Lexington; 38% of her work days were spent traveling to Raleigh; and, 7% of her work days were spent traveling to locations other than Raleigh. (Exhibit 8)

Commute is defined in the Merriam-Webster dictionary as to travel regularly to and from a place and especially between where you live and where you work. Ms. Holmes did not commute to Raleigh. Ms. Holmes travel between her home office and Raleigh was not regular. The number of days Ms. Holmes traveled to Raleigh each month varied widely and was as low as 2 days and as high as 14 days. Ms. Holmes traveled to Raleigh as required for meetings, training, and interviewing applicants. (Exhibit 9) Traveling between Raleigh and her home office in Lexington 86 out of 226 work days as needed for meetings, training, and interviewing does not constitute commuting.

Conclusion

Based upon the investigation completed by NCDOL, Deputy Commissioner Frazier and Mr. Eucare did not follow the NCDOL Telework policy and receive approval from the Chief of Staff to add the wage and hour deputy administrator job title to the list of job titles eligible for telework. However, once Ms. Holmes became the wage and hour deputy administrator, Deputy Commissioner Frazier, Mr. Eucare and Ms. Holmes treated the position as a telework position. All three considered Ms. Holmes duty station to be her home office in Lexington. As a teleworker with a home office in Lexington, Ms. Holmes could request reimbursement for travel, including travel to Raleigh. Ms. Holmes did not commute from her home office in Lexington to Raleigh.

Based upon information discovered during the audit, NCDOL will do the following:

1. Review the current NCDOL Telework Policy to update and revise as necessary.
2. Review the current NCDOL Telework Agreement to update and revise as necessary.
3. In accordance with NCDOL Telework Policy, review the Wage and Hour Deputy Administrator position to determine whether it should be added to the list of job titles eligible for telework.
4. In accordance with NCDOL Telework Policy, review other positions to determine whether other positions should be added to the list of job titles eligible for telework.

5. Review all employees who are currently teleworking to determine whether they are in a job title that is eligible for telework.
6. Review all telework agreements to insure that the agreements are accurate and up to date.
7. Require supervisors of teleworkers to review the telework policy with all teleworkers.

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