



**STATE OF WASHINGTON**  
**OFFICE OF THE STATE HUMAN RESOURCES DIRECTOR**  
DIRECTOR'S REVIEW PROGRAM  
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July 31, 2012

TO: Teresa Parsons  
Director's Review Program Supervisor

FROM: Kris Brophy, SPHR  
Director's Review Program Investigator

SUBJECT: Laura Killingsworth v. Department of Corrections (DOC)  
Director's Review Request RULE-12-002

On February 27, 2012, Laura Killingsworth filed a request for a Director's review alleging a violation by the Department of Corrections (DOC) of the civil service law and rules regarding the employee performance evaluation process. The Director's review has been completed based on a review of the written documents in the record.

**Nature of Alleged Violation**

Ms. Killingsworth alleges DOC violated RCW 41.06, WAC 357-37-015 and WAC 357-37-035 with regard to the evaluation of her performance during her trial service period which began on October 3, 2011 when she was hired into a new Cost Reimbursement Analyst 3 position. RCW 41.06.176 establishes laws regarding performance evaluation.

WAC 357-37-015 states the following:

Each employer must develop and implement an employee performance management process. Employers must develop a performance management policy that documents the key points of the process.

WAC 357-37-030 states in relevant part:

Employers must provide feedback and formally evaluate the performance of:

(1) A probationary employee or a permanent employee serving a trial service period or transition review period before the employee attains permanent status in the position;

...

WAC 357-37-035 states the following:

A probationary or permanent employee whose work performance is determined to be unsatisfactory must be notified in writing of the deficiency(ies). Unless the deficiency is extreme, the employee must be given an opportunity to demonstrate improvement.

### **Background**

Ms. Killingsworth was appointed to a Cost Reimbursement Analyst 3 position with DOC on October 3, 2011. Ms. Killingsworth was required to complete a six-month trial service period.

DOC submitted a Position Description form (PDF) for Ms. Killingsworth's position (Exhibit B-2). The PDF states the position was created to plan, develop, organize and conduct analyses of complex financial data to set payment rates and policies for health care services purchases by DOC for inmates. The PDF submitted by DOC does not include Ms. Killingsworth's signature.

In Exhibit B-1, and C-1, DOC states that Ms. Killingsworth was supplied copies of the PDF prior to her interview for the position and another copy of the position description several weeks after her appointment to the position.

Ms. Killingsworth acknowledges that she reviewed a copy of the PDF prior to the interview for the position. She states in Exhibit A-3 that she did not remember getting a copy of the position description when she was appointed to the position. Ms. Killingsworth states in Exhibit C-3 that, "Ms. Noble-Desy did not provide me with any expected documents for the Cost Reimbursement Analyst position."

DOC states that several weeks after her appointment Ms. Killingsworth attended a meeting with her supervisor at the time, Mr. Lou McDermott. Also in attendance were Patty Nobel-Desy, Chemical Dependency Program Manager; Ms. Beth Goupillon, and a Spectrum representative to discuss the main priority of her position and the expectation that her position would produce a quarterly report by no later than January 2012. DOC states this meeting included a discussion about the expectations and specific projects, tasks, and specific deadlines to complete.

In Exhibit C-3, Ms. Killingsworth states, "As for the meeting that we had when I first started, this was more of an introduction meeting so that I could meet with Spectrum staff that I would be working with. It was brought up that Ms. Goupillon would work with me to get some points of the position established but that never happened."

DOC states in Exhibit C-1 that Ms. Beth Goupillon met with Ms. Killingsworth frequently to mentor her. DOC states she was also provided resources from Health Services staff as well as Spectrum staff to complete her expected responsibilities. Ms. Killingsworth was provided performance expectations from Ms. Patty Noble-Desy as she was her key stakeholder.

Ms. Killingsworth attended a scheduled meeting with Ms. Goupillon on February 16th. Also present for the meeting were Ms. Doty and Ms. Amy Bean, DOC HR Manager. During the course of the meeting Ms. Killingsworth was notified that she was being reverted from her position. DOC submitted two documents (Exhibit B-4 (a) and (b)) outlining Ms. Killingsworth's areas of deficiency. However, DOC acknowledged they were not submitted to Ms. Killingsworth but were discussed with her and used as talking points during the meeting.

DOC states this information was also shared with Ms. Killingsworth during her trial service period. Ms. Killingsworth states in Exhibit C-3 that she did not receive any written documentation regarding deficiencies in her work performance during her trial service period or during the meeting on February 16, 2012.

Ms. Killingsworth was notified in writing by letter dated February 16, 2012 that her position was being reverted to her former Secretary Senior position, effective February 24, 2012.

Ms. Killingsworth did not receive a formal written performance evaluation during her trial service period prior to her reversion on February 24, 2012.

On February 27, 2012, Ms. Killingsworth filed an appeal with the Office of State Human Resources Director.

### **Summary of Ms. Killingsworth's Allegations**

Ms. Killingsworth alleges DOC violated WAC 357-37-010 and WAC 357-37-035.

Ms. Killingsworth alleges DOC violated WAC 357-37-015 by not completing a performance evaluation for her position during her trial service period. Ms. Killingsworth asserts she was not provided any written documents outlining her work expectations. While Ms. Killingsworth acknowledges that she reviewed a copy of the PDF prior to being interviewed for the position, she asserts she did not receive a copy of the position description when she was appointed to the position.

Ms. Killingsworth alleges DOC violated WA 357-37-035 by not being notified in writing of the deficiencies in her performance, and by not being given adequate time to improve her performance prior to her reversion on February 24, 2012.

Ms. Killingsworth seeks to be placed back into the position and to receive an extension of her trial service period so that she can complete her trial service period and gain permanent status in the position.

### **Summary of DOC's Response to Alleged Rule Violations**

DOC asserts it acted in compliance with WAC 357-015 and WAC 357-37-035 and made the decision to revert Ms. Killingsworth on the basis that she did not satisfactorily complete her trial service period. DOC asserts that reversion during a trial service period is not appealable to the Board.

DOC asserts that Ms. Killingsworth received a copy of the PDF prior to her interview for the position which outlined the essential functions of the position. DOC asserts Ms. Killingsworth was provided a copy of the PDF shortly after her appointment to the position on October 1, 2011.

DOC argues that a meeting was conducted after Ms. Killingsworth was appointed which included Ms. Killingsworth, Mr. Lou McDermott, Ms. Patty Noble-Desy, a Spectrum

Representative, and Ms. Beth Goupillon. DOC asserts this meeting included a discussion about the positions expectations and specific projects, tasks, and specific deadlines Ms. Killingsworth was required to complete.

DOC contends Ms. Killingsworth was also provided performance expectations from Ms. Patty Noble-Desy, Chemical Dependence Program Manager, as she was her key stakeholder.

DOC asserts that her supervisor, Ms. Beth Goupillon, met with Ms. Killingsworth frequently to mentor her. DOC argues she was also provided resources from Health Services staff as well as Spectrum staff to complete her expected responsibilities. DOC contends that Ms. Killingsworth met with her current supervisor, repeatedly over the last four months and was provided mentorship and routine guidance.

DOC acknowledges the two documents submitted as exhibits B-4 (a) and (b) which outline Ms. Killingsworth's areas of deficiency were not provided to Ms. Killingsworth but were shared with her during her trial service period. DOC asserts the documents were used as talking points during the meeting on February 14, 2012 when she was notified by her supervisor that her position was being reverted.

DOC asserts no violation occurred (Exhibit B-1).

### **Director's Rationale and Determination**

WAC 357-37-015 states that each employer must develop and implement an employee performance management process. Employers must develop a performance management policy that documents the key points of the process. DOC established a Performance and Development Plan policy, which it submitted as Exhibit C-2. Therefore, no violation of this rule occurred.

WAC 357-37-030(1) states that employers must provide feedback and formally evaluate a permanent employee serving a trial service period before the employee attains permanent status in the position. The Performance and Development Plan process provides a method for outlining the key expectations and key competencies required of a position. It is undisputed Ms. Killingsworth was not provided a Performance and Development Plan containing written expectations during her trial service period. However, DOC did not violate WAC 357-37-030(1) because DOC had reverted Ms. Killingsworth prior to her completing the trial service period and attaining permanent status in her position.

WAC 357-37-035 states that a probationary or permanent employee must be notified in writing of unsatisfactory performance and be given the opportunity to demonstrate improvement, unless the deficiency is extreme. While a formal evaluation is only required before an employee gains permanent status after the completion of a trial service period, WAC 357-37-035 requires written notification of unsatisfactory performance unless deficiencies are extreme. In this case, there is no evidence Ms. Killingsworth had been provided written notification of unsatisfactory performance, had been given an opportunity to demonstrate improvement, or that her performance deficiencies had been extreme. Therefore, DOC violated WA 357-37-035.

Although Ms. Killingsworth seeks to be placed back into her trial service position, WAC 357-19-135 states that employees who are reverted do not have the right to appeal the reversion.

Nevertheless, DOC violated WAC 357-37-035. Therefore, DOC is directed to comply with the requirements of WAC 357-37-035 by providing written notification of unsatisfactory performance to its probationary and permanent employees in accordance with the requirements of this rule.

### **Appeal Rights**

WAC 357-49-018 provides that either party may appeal the results of the Director's review to the Personnel Resources Board (board) by filing written exceptions to the Director's determination in accordance with Chapter 357-52 WAC.

WAC 357-52-015 states that an appeal must be received in writing at the office of the board within thirty (30) calendar days after service of the Director's determination. The mailing address for the Personnel Resources Board (PRB) is P.O. Box 40911, Olympia, Washington, 98504-0911. The PRB Office is located at 521 Capitol Way South, Olympia, Washington. The main telephone number is (360) 664-0388, and the fax number is (360) 586-4694.

If no further action is taken, the Director's determination becomes final.

c: Amy Bean, DOC  
Connie Goff, DOP

Enclosure: List of Exhibits

**LAURA KILLINGSWORTH v DOC**  
**RULE-12-002**

List of Exhibits

A. Laura Killingsworth's Exhibits

1. Director's Review Request form from Laura Killingsworth, received February 27, 2012
2. February 16, 2012 DOC letter of notification of reversion
3. March 26, 2012 written argument from Laura Killingsworth

B. DOC's Exhibits

1. March 13, 2012 DOC response to alleged rule violation
2. May 2011 PDF for Fiscal Tech 3
3. Health Services Finance Unit Organizational Chart
4. June 5, 2012 email response to follow up questions from Karen Wilcox, OSHRD
  - a. Conference Points regarding performance
  - b. Notes from Patty Noble-Desy, CD Program Manager

C. Additional Exhibits in response to June 5, 2012 email from Kris Brophy, Director's Review Investigator, requesting clarification from DOC.

- a. June 14, 2012 clarifying response from Amy Bean, DOC
- b. DOC's Performance & Development Plan Policy
- c. June 20, 2012 response from Laura Killingsworth