

POST-GOVERNMENT EMPLOYMENT RESTRICTIONS

The following is taken from an Army Standards of Conduct Office (SOCO) handout on post-government employment restrictions. If you are preparing to leave your government employment or are seeking another government job, the following rules probably pertain to you.

I. PRE-SEPARATION MATTERS (18 USC § 208)

A. Negotiating for employment is the same as buying stock in a company. Any discussion, even if tentative, is negotiating for employment. Something as simple as going to lunch to discuss future prospects could be the basis for a conflict of interest.

B. If a federal employee could own stock in a company without creating a conflict with his official duties, then he can negotiate for employment with that company. No special action is required.

C. A conflict of interest arises when a government employee has the opportunity to influence his personal, financial interests through the execution of his official duties. Since the conflict of interest statute identifies negotiation for employment as an accountable personal financial interest, action must be taken to resolve potential conflicts.

D. If negotiating for employment creates a conflict, there are two ways to resolve it:

1. Disqualification. With the approval of his supervisor, the employee may change duties so that he has no contact with official actions affecting that company. This means the employee is completely divorced from any action affecting the company. He cannot have knowledge or in-put to those matters. If disqualification is not an option, then;

2. Termination of Discussion. The employee must immediately terminate all employment discussions. "Leaving the door open" for the possibility of employment at a later time does not resolve the conflict.

E. Travel, Meals & Reimbursements. Government employees may accept travel expenses to attend job interviews if such expenses are customarily paid to all similarly situated job applicants.

F. Terminal Leave. Military officers on terminal leave are still on active duty. While they may begin a job with another employer during this time, their exclusive loyalty must remain with the government until their retirement pay date. Two restrictions apply to non-government employment during terminal leave:

1. All officers and employees are prohibited from representing anyone in any matter in a U.S. forum, or in any claim against the U.S. (18 USC § 205)

2. Commissioned officers are prohibited from holding a state or local government office, or otherwise exercising sovereign authority. (10 USC § 973) This does not prohibit employment by a state or local government, just the exercise of governmental authority. For example, a police officer or judge exercises governmental authority, but a motor pool chief does not.

3. Permissive TDY (PTDY) may NOT be used to begin employment. Officers may begin employment only AFTER beginning terminal leave. For permitted uses of PTDY see (AR 600-8-10 para. 5-35).

II. "SWITCHING SIDES" (18 USC § 207)

A. This statute applies to all former federal employees, whether or not retired, but does not apply to enlisted personnel. In very simple terms, this rule prohibits former federal employees from representing someone on the same matter on which they worked for the government. This restriction does not apply to

"behind the scenes" assistance. Thus, a former employee may prepare an internal negotiation or capture strategy on a covered matter, but may not present that material in discussions with federal employees

B. Former officers and employees are *forever* prohibited from trying to influence a federal employee on any particular matter involving non-federal parties in which they participated personally and substantially while working for the government.

C. For two years, former federal employees are prohibited from trying to influence a federal employee on a matter involving non-federal parties that was under the former employee's supervision during his last year of active duty. For agency heads, this restriction applies to every action pending in the agency during the last year of federal service, whether or not the former employee had any knowledge of, or personal input to, the matter.

D. Inside Information. (18 USC §§ 794 and 1905) All former employees must protect "inside information," trade secrets, classified information, and procurement sensitive information after leaving federal service.

III. PROCUREMENT INTEGRITY (41 USC § 423)

A. Former officials who fall into any of the below-listed categories may not accept compensation from the contractor or party who received the payment, for a period of one year from the date when the action occurred, or the date when they last served as an approval authority. This restriction does not apply to another division or affiliate of a contractor that does not produce the same product or services.

1. Procuring contracting officer, source selection authority, member of source selection evaluation board, or chief of financial or technical evaluation team on a contract award of \$10,000,000 or more;
2. Program manager, deputy program manager, or administrative contracting officer on a contract of \$10,000,000 or more;
3. Personally made a decision to award a contract, subcontract, modification, task order or delivery order of \$10,000,000 or more; or
4. Approved a claim or made another personal decision to make a payment of \$10,000,000 or more.

IV. FOREIGN GOVERNMENT EMPLOYMENT (U.S. Constitution)

A. Retired military members must obtain a waiver to work for a foreign government.

B. Retired officers who represent a foreign government or foreign entity may be required to register as a foreign agent. (22 USC § 611 and 28 CFR 5.2). The Registration Unit, Criminal Division, Department of Justice, Washington, DC 20530, (202) 514-1219, can provide further information.

V. REEMPLOYMENT WITHIN THE GOVERNMENT

A. Dual Compensation Laws. On 1 October 1999, 5 USC § 5532 (restricting dual compensation) was repealed. Accordingly, there are no reductions in retired or retainer pay for former or retired members of the Armed Forces who are employed in Federal Civilian positions.

B. Employment in DoD. Under normal conditions, to avoid appearances of favoritism or preferential treatment, 5 USC § 3326 (attached) and DoD 1402.1 (21 Jan 82) prohibit a retired member of the Armed Forces from being appointed to a civil service position in DoD or a component thereof for 180 days after retirement unless the retiree has received a waiver from his or her Service secretary. However, under 5 USC § 3326 this provision may be waived when the nation is in a "state of national emergency." As of September 14, 2001, this provision has been waived.

Contact your servicing Ethics Counselor at the Fort Knox administrative law division if you have further questions. Call (502) 624-7414.